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A Historical and Legal Analysis of the Formation and Development of the Stages of Land Planning Fees (from 1917 to the Present)

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Introduction: *the article analyzes legal regulation of land planning fees during a period of more than a century, showing their dynamics at different stages. Land planning fees have existed throughout the entire period of the existence of land planning institution itself. The changing political systems only affected the specifics of their legal regulation. In modern-day Russia, an ambiguous situation with land planning fees is observed: on the one hand, they are not mentioned in either the Land Code of the Russian Federation or the Federal Law 'On Land Planning': on the other hand, such fees exist and are charged depending on the requester of the works, which creates a certain gap in the regulation of this institution. In anticipation of the adoption of the new law 'On Land Planning' it is essential to analyze the development of land planning fees in terms of positive and negative aspects.* ***Purpose:*** *based on an analysis of legal regulation, to determine the need for the regulation of land planning fees under current legislation.* ***Methods:*** *historical, logical, comparative-legal, structural-functional.* ***Results:*** *the study has showed that the development of land planning fees has gone through three separate stages: the first stage refers to the period before the revolution, it can be regarded as the genesis of the phenomenon under consideration, which was also taken as a basis by the Soviet government; the second stage is framed by the historical period from 1917 through 1990, it lasted until the land reform; the third stage covers the period after the land reform and up to the present moment.* ***Conclusions:*** *there is a direct connection between the financing of land planning fees from the relevant budget and the performance of the state's public function of managing the country's lands. The paper substantiates the hypothesis that land planning fees should be included as an independent component into land fees through legislative formalization.*

Keywords: state; legislation; paid land planning; budget; lending; plans; estimates; contractual relations; benefits; market economy; financing

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Information in Russian

Историко-правовой анализ становления и развития этапов платы за землеустройство (с 1917 года по настоящее время)

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Введение: *статья посвящена анализу правового регулирования платы за землеустройство за более чем столетний период развития, который показал динамику ее изменения в разные промежутки времени. Плата за землеустройство была на протяжении всего периода существования самого института землеустройства. Меняющийся политический строй отражался только на специфике ее правового регулирования. В современной России сложилась двоякая ситуация с платой за землеустройство: с одной стороны, о ней не упоминается ни в Земельном кодексе РФ, ни в ФЗ «О землеустройстве», с другой стороны – такая плата существует и оформляется в зависимости от заказчика работ, что создает определенный пробел в регулировании данного института. В преддверии принятия нового Закона «О землеустройстве» необходимо рассмотреть исторический путь развития платы за землеустройство с точки зрения оценки его преимуществ и недостатков.* ***Цель****: на основании анализа правового регулирования определить необходимость регулирования платы за землеустройство нормами действующего законодательства.* ***Методы:*** *исторический, логический, сравнительно-правовой, структурно-функциональный.* ***Результаты:*** *доказано, что формирование платы за землеустройство прошло три самостоятельных этапа: первый этап – дореволюционный, но мы его выделили как генезис рассматриваемого явления, который был взят за основу и советской властью; второй этап определен историческими рамками периода с 1917 до 1990 года включительно, то есть до момента проведения земельной реформы; третий этап – это период после проведения земельной реформы и по настоящее время.* ***Выводы:*** *установлено существование прямой связи между финансированием платы за землеустройство из соответствующего бюджета и выполнением публичной функции государства по управлению земельным фондом страны. Обоснована гипотеза о том, что плата за землеустройство должна быть включена в качестве самостоятельного элемента в плату за землю посредством законодательного закрепления.*

Ключевые слова: государство; законодательство; платность землеустройства; бюджет; кредитование; планы; сметы; договорные отношения; льготы; рыночная экономика; финансирование.

Introduction

Availability at a fee related to the use of natural resources has always been an object of attention of specialists from various domains. First of all, it is a source of replenishment of the budget, so economists and specialists in financial law pay particular attention to it. One of such natural resources is land. K. V. Getmantsev and E. M. Krylova have pointed out that the system of economic regulators of land relations in market conditions includes the following: land tax; land rent; market price of land; collateral price of land; compensation payments for land withdrawal; compensation payments for land conservation; payments for improving the quality of land; fines for environmental damage; taxation in civil land transactions; payment for the leasehold right, etc. [6, pp. 18–19].

In order for such payments to be used to replenish the budget and ultimately benefit the society, a regulatory framework is needed, hence the need for research by legal scholars. They regard payment for land as it is stipulated in Article 65 of the existing Land Code of the Russian Federation[1], which establishes that land use

[1] Land Code of the Russian Federation: Federal Law No. 136-FZ of October 25, 2001. *Parliamentary Newspaper*. 2001. Nos. 204-205.

is paid and that the forms of payment include land tax (before the real estate tax was introduced), rent charge, as well as other payments specified in the Land Code of the Russian Federation.

The institution of land planning has a very long history. It is generally accepted that the term 'land planning' was first mentioned in sources in 1906 [18, p. 29, 36], but this only refers to the term itself. Some works, 'narrower' in their essence, had been carried out earlier, but these were called land marking. Assessing such a long history of this institution, it should be noted that it has experienced a variety of moments – from being in great demand to insignificant demand, but it has never been excluded from the legislation. Furthermore, land planning works have always been paid. There have been changes in prices for their implementation, in the performers, in the sources of financing, and in many other aspects, but land planning has never been done free of charge. It appears that, though being an integral part of the entire economic mechanism of the state in different time periods, the availability of land planning at a fee has practically not been studied by specialists. Numerous works on land planning contain only separate paragraphs devoted to the land planning mechanism where attention is paid to its availability at a fee. There are no works providing a comprehensive study of payment for land planning and evolution of such payment over such a long period.

In solidarity with the point of view of E. A. Galinovskaya that the collection of land fees is an integral part of the financial activities of the state and local government aimed at the accumulation, distribution, and use of funds to fulfill state and municipal tasks [5, p. 242], we believe that the lack of due attention to land planning fees is unjustified.

In addition, it should be noted that in developed countries, land planning, including fees for performing it, is built into the state economic system [9, p. 17]. This approach has also been developed in doctrinal studies [34; 42; 43]. In a number of cases, land planning is enshrined as an element of land resources administration [36; 38; 41; 45].

Thus, it appears that this fee, being one of the stable components of the economic system, should become the subject of an independent study, within the framework of which it is necessary to trace its historical development and evolution through an analysis of regulatory legal acts of Russia, then the Soviet Union, the RSFSR, and modern-time legislation. It is also necessary to determine the legal essence of payment for land planning, describe its constituent elements that affect the amount, analyze the sources of financing, and ultimately demonstrate the connection between land planning fees and the implementation of the state's public function of using the lands of Russia. Research into these aspects will make it possible to identify the genesis and development of payment for land planning as well as those of its significant elements that can be taken as a basis to prove the hypothesis that payment for land planning is an element of payment for land.

Legislative Framework for Legal Formalization of Payment for Land Planning

The beginning of the legislative consideration of the issue in question is clearly connected with the adoption of the Decree 'On Land' in 1917[1], which abolished private ownership of land. As part of its development, the Regulation on socialist land planning and on measures aimed at the transition to socialist agriculture was adopted in 1919. Despite the fact that the Regulation formalized a whole range of issues related to land planning, it did not establish payment for land planning works. Meanwhile, such works were not free of charge, and we can see the confirmation of this in the Instruction on the application of the Regulation on socialist land planning[2], where Item 10 of Chapter I stated that expenses for carrying out land planning actions and land surveying works on the allocation of lands for the needs of Soviet farms and other Soviet institutions, organizations, and enterprises were to be charged to the state's account[3].

The rhetoric regarding the source and amount of expenses for land planning started to change at the time of the New Economic Policy (NEP). These changes can be seen both in the decisions of party organs and in the provisions of regulatory legal acts.

Article 34 of the Law on Family Labor Land-Holding[4] stipulated that mandatory land planning works at the initiative of land authorities were to be carried out only in the following cases: a) the formation of a land fund for resettlement from unoccupied and excess lands; b) the elimina-

[1] On Land: Decree of the II All-Russian Congress of the Soviets of Workers', Soldiers', and Peasants' Deputies of October 26, 1917. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1917. No. 1. Art. 3.

[2] Published on the basis of Article 20 of the Regulation on Socialist Land Planning and on Measures Aimed at the Transition to Socialist Agriculture. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1919. No. 4. Art. 43.

[3] Instructions on the Application of the Regulation on Socialist Land Planning: Resolution of the People's Commissariat for Agriculture of March 11, 1919. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1919. Nos. 39-40. Art. 384.

[4] Law on Family Labor Land-Holding: Resolution of the 3rd Session of the All-Russian Central Executive Committee of the 9th Convocation of May 22, 1922. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1922. No. 36. Art. 426.

tion of significant inter-volost and inter-settlement strip land areas, if recognized by land authorities as subject to immediate elimination for economic reasons. In all other cases, land planning works were to be carried out at the expense of the interested population and at their request, which meant that continuous and mandatory land planning was terminated. An analogous approach was subsequently introduced in the legislation of the republics[1].

With the introduction of the Land Code of the RSFSR in 1922[2], land planning fees were charged to the party in whose interests the works were carried out [13, p. 95]. It was noted in the literature that the adoption of this Code stimulated a significant development of land planning works. As soon as in 1923, it was planned to perform land planning works within an area of more than 12 million dessiatines, including an area of more than 2 million dessiatines at the expense of the state [28, p. 152].

P. Lyashchenko noted that one of important features of land planning works during the NEP years, resulting from the recognition of the population's freedom to choose forms of land use, was providing the population with the initiative in land planning, along with charging all expenses to the people themselves. According to Lyashchenko, such an approach was clearly leading not only to the 'neutrality' of the authorities but also to their passivity, both in the process of land planning itself and in the choice of preferred forms as well as in the assistance to low-efficient segments of the village population. The state land planning apparatus became just an executor of the requirements of the customer, i.e., of the population. Given the general conditions of the developing and differentiating village of the period, as well as the terms of payment, it was easy to predict that they were more affluent peasants who managed to 'land-plan' themselves, which was, of course, to their own advantage [16, p. 27].

A more specific position was expressed by D. Zaytsev, who pointed out that the successful implementation of the main tasks in the field of land planning was disrupted by the fact that land planning for the needs of the working population was carried out at that time exclusively at their own expense, upon their requests, with fees based on the principle of self-repayment of land planning for land agencies. As a result, it turned out that land planning works were carried out wherever the groups of the population capable of paying for them wished as well as in such a way they wished, and the principle of state regulation of land planning was enormously lessened here. This situation led to the formation of undesirable (individual) forms of land use and to broad poor segments of the peasantry being left without land planning assistance [8, p. 48].

Finally, as experience showed, land planning in some underdeveloped national republics and regions was feasible only under the condition that it was carried out at the expense of the state [ibid]. The historical development of the land planning institution will clearly demonstrate the correctness of this conclusion[3].

In accordance with the Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of September 13, 1931 'On Amendments to Article 20 of the General Principles of Land Use and Land Planning', Article 20 was amended and, in its new version, established the following: land planning for newly emerging collective farms, as well as land planning, caused by the emergence of new collective farms and expansion of their areas, carried out for poor and low-efficient middle-peasant farms not yet having joined collective farms, was to be performed at the state's expense. As to land planning actions for collective farms that had lands previously allocated, as well as for other land users, a fee could be established in accordance with the legislation of the Union Republics. Economically weak old collective farms, dominated by poor and low-efficient middle-peasant farms, were provided with long-term loans to cover land planning costs; the amount and the procedure for granting the loans were determined by the USSR People's Commissariat of Finance jointly with the USSR People's Commissariat of Agriculture and the USSR Kolkhoz Center[4].

As was noted by V. Khitev, in order to guarantee that the loans issued by the state for land planning were actually spent as intended and that land planning works

[1] See, for example: The Basic Law on Family Labor Land-Holding in the Kyrgyz Republic: Decree of the All-Russian Central Executive Committee of August 26, 1922. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1922. No. 55. Art. 695.

[2] On the Introduction of the Land Code: Resolution of the All-Russian Central Executive Committee, adopted at the 4th session on October 30, 1922. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1922. No. 68. Art. 901.

[3] See, for example: Regulation on Land Planning in Nomadic and Semi-Nomadic Regions of the Turkestan Autonomous Soviet Socialist Republic: Decree of the All-Russian Central Executive Committee of May 10, 1923. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1923. No. 43. Art. 455; On Approval of the Regulation on Continuous and Mandatory Land Planning in the Mari Autonomous Region: Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of December 10, 1929. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1929. Nos. 89-90. Art. 902.

[4] On Amendments to Article 20 of the General Principles of Land Use and Land Planning: Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of September 13, 1931. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1931. No. 60. Article 386.

were paid in a timely manner, land authorities collected claims from borrowers according to which the loans, after they were issued by a credit institution, were not handed directly to borrowers, but were deposited in the branches of the state bank onto the account of the People's Commissariat of Agriculture, while borrowers were given a receipt indicating that a certain amount of money had been accepted from them to pay for land planning works [27, p. 77].

The mention of the financing of the works from state budget is found not only in documents that directly regulate land planning but also in general documents concerning agriculture. For example, according to the Report of the People's Commissariat of the Workers' and Peasants' Inspectorate of the RSFSR on the state of economic activity of agricultural trusts and on measures for their financial recovery, in order to bring existing Soviet farms to optimum sizes, territorial consolidation of Soviet farms involving land planning works was to be carried out during 1929, where it was possible on the basis of the state land fund. It was to be performed in accordance with existing legislation and with financing from state budget[1].

Thus, an analysis of the abovementioned acts shows that the phrase 'continuous and mandatory land planning' was more and more often used by the legislator, which indicates a great interest of the state at that time in its implementation. That is why the legislator assigned it the feature of being 'mandatory'. The continuous principle of land planning as applied in relation to agriculture indicates the desire of the state to provide the population with food. Both features clearly demonstrate the state's performing the public function of ensuring food security.

It should also be noted that the poorest peasants were completely exempt from land planning fees. Nonetheless, as it is noted by L. V. Aliyeva, the funds allocated for free land planning works were clearly insufficient, while obtaining land planning loans was quite difficult due to bureaucratic red tape and the need to collect a large number of documents [1, p. 151]. These loans were guaranteed by the Regulation on Credit for Land Planning Works of September 22, 1924[2]. Such loans were granted for a period of no more than five years and, in accordance with Item 14 of the abovementioned Regulation on Credit, were collected as state taxes without recourse.

In addition to insufficient funds, the cost of the works also caused concern among legislators. This conclusion is confirmed by the Resolution of the XI All-Russian Congress of Soviets of Workers', Peasants', Red Army, and Cossack Deputies of January 29, 1924 dedicated to the development of agriculture[3]. Its Item 1 stated that the Congress decided to 'pay special attention to the need to reduce the cost of land planning works'.

In 1925, the People's Commissariat of Agriculture put before the government the issue of covering all land planning expenses by the state budget, but the country's financial situation did not allow this to be done [13, p. 29]. Therefore, the Resolution of the XII All-Russian Congress of Soviets of Workers', Peasants', Cossack, and Red Army Deputies of May 11, 1925 stipulated the following decision: 'Attaching exceptional importance to land planning as the basis for proper economic management, and noting that the progress of land planning works is delayed by a lack of funds among the population and takes much time, the Government shall be instructed to develop a land surveying plan aiming to quickly resolve the entire land-planning task, to increase lending for land planning works, and make these more accessible to small farmers and the poor segment of the rural population'[4].

The Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of March 16, 1927 'On Collective Farms' proposed that the central executive committees of the Union Republics shall instruct the people's commissariats of agriculture to complete land planning works for existing collective farms by the fall of 1927, and that in the future the costs of such works for collective farms shall be paid from the funds allocated by the People's Commissar of Agriculture for land planning works[5].

The Resolution of the IV Congress of Soviets of the USSR of April 26, 1927 'On the Main Tasks of Agriculture in Connection with the Development of the National Economy and Industrialization of the Country' highlighted that the results were satisfactory since over the

[1] According to the Report of the People's Commissariat of the Workers and Peasants' Inspection of the RSFSR on the State of Economic Activity of Agricultural Trusts and onn Measures for Their Financial Recovery: Resolution of the Economic Council of the RSFSR of February 14, 1929. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1929. No. 23. Art. 245.

[2] Regulation on Credit for Land Planning Works: Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of September 22, 1924. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1924. No. 80. Art. 812.

[3] On Measures to Improve Agriculture in the Russian Soviet Federative Socialist Republic: Resolution of the 11th All-Russian Congress of Soviets of Workers', Peasants', Red Army, and Cossack Deputies of January 29, 1924. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1924. No. 27. Art. 261.

[4] Resolution of the XII All-Russian Congress of Soviets of Workers', Peasants', Cossack and Red Army Deputies of May 11, 1925. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1925. No. 31. Art. 219.

[5] On Collective Farms: Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of March 16, 1927. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1927. No. 15. Art. 161.

preceding two years the volume of lending for land planning works had been increased and part of the works for poor farms had been charged to the state's account[1].

In addition, the Congress noted the need to further implement and develop the measures of the Central Executive Committee and the Council of People's Commissars of the USSR from September 10, 1926 aimed at expanding the practice of land planning loans and at reducing their cost as well as at expanding the practice of exempting poor farms from paying for land planning works at the expense of the state. The Congress also pointed out the need to simplify land planning works, reduce their cost, and improve the quality of these works, enhance resettlement, decentralize the land planning apparatus in order to speed up the land planning process and expand the network of land planning educational institutions[2].

Such attention of the state to land planning led to significant progress in the field of land planning and melioration. Thus, it was decided to continue this work in the future[3]. This can be traced in the regulatory framework, which, although not being devoted to the legal regulation of land planning, included this institution as an integral element in the implementation of other processes. This position is clearly seen in Item 15 of the Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of January 18, 1928 'On the Tasks of Resettlement, Its Organization, the Principles of Drawing Up Resettlement Plans, and on the Procedure for Financing Resettlement Activities', where land planning actions were stated among other measures related to resettlement issues[4].

The Regulation on the Committee for Land Planning for Working Jews under the Presidium of the Council of Nationalities of the Central Executive Committee of the USSR in Item 3 established that loans for land planning activities among working Jews, regardless of whether land planning was carried out on plots that were part of the all-Union resettlement and settlement fund or on plots of resettlement and settlement funds of republican significance, were financed from the all-Union budget[5].

Efforts to accelerate land planning were also made in the republics[6].

A. E. Trukhanov noted that in Soviet times, land planning was aimed at studying the state of agricultural land, planning its effective use, and its protection. Land planning activities were carried out systematically by specialized enterprises. The financing of land planning was centrally managed and provided from the state budget. This situation corresponded to the fact that all land was state-owned [25, p. 33]. This point of view does not seem indisputable to us, and not all researchers agree with it.

For example, K. Kindeev believes that the financing of land planning activities is based on the following sources:

- state budget,
- budgets of the Union Republics,
- local budget,
- loan funds,
- funds of the population itself [15, p. 103].

We partially agree with the abovementioned points of view since, in addition to the sources listed above, the all-Union budget was also mentioned in regulatory legal acts as a source of financing. For example, according to the Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of March 6, 1929, dedicated to the resettlement issue, the all-Union budget covered expenses for land planning carried out for Armenian refugees from abroad in the Soviet Socialist Republic of Armenia[7].

The funds of organizations were also specified as a source of financing. The legislator indicated that works

[1] On the Main Tasks of Agriculture in Connection with the Development of the National Economy and Industrialization of the Country: Resolution of the IV Congress of Soviets of the USSR of April 26, 1927. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR.* 1927. No. 21. Art. 240.

[2] See: On the Main Tasks of Agriculture in Connection with the Development of the National Economy and Industrialization of the Country: Item 3 of the Resolution of the IV Congress of Soviets of the USSR of April 26, 1927. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1927. No. 21. Art. 240.

[3] For more details, see: Comrade Kuibyshev's Report on the Ten-Year-Period Results and Prospects for Economic Development of the USSR: Resolution of the Central Executive Committee of the USSR, adopted at the 2nd Session of the IV Convocation on October 20, 1927. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1927. No. 61. Art. 614.

[4] On the Tasks of Resettlement, Its Organization, the Principles of Drawing Up Resettlement Plans and on the Procedure for Financing Resettlement Activities: Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of January 18, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1928. No. 8. Art. 63.

[5] Regulation on the Committee for Land Settlement of Working Jews under the Presidium of the Council of Nationalities of the Central Executive Committee of the USSR: Resolution of the Presidium of the Central Executive Committee of the USSR of March 21, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1928. No. 21. Art. 188.

[6] See, for example: On the Report of the Government of the Uzbek Soviet Socialist Republic: Resolution of the Council of People's Commissars of the USSR of May 17, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1928. No. 29. Art. 264; On the report of the Government of the Byelorussian Soviet Socialist Republic: Resolution of the Council of People's Commissars of the USSR of October 19, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1928. No. 64. Art. 593.

[7] On the Report of the People's Commissariat of the Workers and Peasants' Inspection of the USSR on the Investigation of the Resettlement Case: Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of March 6, 1929. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1929. No. 24. Art. 209.

performed to serve the needs of departments, state organizations, institutions, and enterprises, for cities and for urban-type settlements were to be carried out at the expense of the interested organizations[1]. Therefore, it appears that such financing should be identified as an independent source and it would be wrong to associate it with the funds of the population.

This conclusion can be supported by the norms of the Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of July 10, 1932 'On Payment for Land Planning Works', which stipulated that land planning works were paid:

a) from the state budget of the RSFSR, the budgets of the ASSR and local budgets;

b) by the population and those institutions, organizations, and enterprises that the works were carried out for[2].

State budget primarily financed those works that were of national importance or were crucial for the development of local initiatives.

Later, the legislator started to pay attention to the payment for land planning works under contracts. In 1934 there was established a norm stipulating that an advance payment should be made for land planning works performed under contracts, the amount of which should not exceed 30% of the total cost of works under the contract[3]. This position tells us not only about the contractual nature but also about the structure of such a contract, which included provisions on payment for land planning works.

Characterizing these agreements, I.V. Pavlov noted that they specified the volume of land planning works, listed their types, and indicated the cost of works, the execution of which was formalized by an act signed by the parties [10, p. 374].

From 1937, there started an active discussion on the issue of introducing proper crop rotations, the need for which (as well as the need to eliminate the neglect of land planning) was strongly emphasized by the XVIII Congress of the All-Union Communist Party (Bolsheviks), held in March 1939. The Congress took a decision to eliminate the neglect of land planning works and adjust land planning on collective farms, transfer the payment for land planning works to the state budget [28, p. 179].

Details of the financing of the abovementioned works can be seen in the documents of the commissariats. For example, the joint Instruction of the People's Commissariat of Finance of the USSR (May 7, 1940, No. 305) and the People's Commissariat of Agriculture of the USSR (May 7, 1940, No. 320) 'On the Procedure for Financing Land Planning Works on Collective Farms'[4] established not only the amount of financing with reference to government-approved plans but also the financing of the staff of land planning departments approved by the People's Commissariat of Finance of the USSR and the People's Commissariat of Agriculture of the USSR on April 28, 1940, No. 285/102 and 320-322; before the adoption of this instruction, the details were given in letters from various departments[5].

It should be noted that during the Great Patriotic War, as well as in the post-war period and the period of the Virgin Lands Campaign, legislation regarding land planning fees did not change. The activization of legislative initiative was associated with the adoption of the Fundamentals of Land Legislation of the USSR in 1968[6].

Studying the issues of land planning carried out within the framework of the abovementioned Fundamentals, V. N. Khlystun and F. I. Pal'chikov emphasized that these works were carried out by state land planning organs at the expense of the state [28, p. 23]. For clear understanding, it should be noted that there is no such a statement in the Fundamentals themselves. The researchers clarified that the legislative basis for the statement they made was provided by the amendments made to the Fundamentals by the Decree of the Supreme Soviet of the USSR of January 7, 1980.

[1] See, for example: On Approval of the Regulation on Continuous and Mandatory Land Planning in the Autonomous Buryat-Mongolian SSR: Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of January 30, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1928. No. 20. Art. 152.

[2] On Payment for Land Planning Works: Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of July 10, 1932. *Collection of Laws and Regulations of the Workers and Peasants Government of the RSFSR*. 1932. No. 77. Art. 341.

[3] See: On Advance Payments for Land Planning Works: Resolution of the Council of People's Commissars of the RSFSR of October 28, 1934. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1934. No. 40. Art. 251.

[4] On the Procedure for Financing Land Planning Works on Collective Farms: Instruction of the People's Commissariat of Finance of the USSR (No. 305 of May 7, 1940) and the People's Commissariat of Agriculture of the USSR (No. 320 of May 7, 1940). Available at: https://search.rsl.ru/ru/record/01005230153?ysclid=lw3v4uyaob504345359.

[5] See, for example: Letter of the Main Land Planning Directorate of the People's Commissariat of Agriculture of the USSR and the Agricultural Bank of the USSR 'On the Procedure for Financing Land Planning Works' No. 859 of September 4, 1938; Letters of the People's Commissariat of Finance of the USSR: a) No. 126 of March 2 'On the Procedure for Financing Land Planning Works on Collective Farms', 1940, b) No. 125/37 of March 2, 1940 'On the Apparatus of Land Planning Bodies of Regional Land Departments and the People's Commissariat of Agriculture' of the Republics; Letters of the Agricultural Bank of the USSR: a) No. F-7-34 of January 25, 1940 'On the Procedure for Financing Land Planning Works on Collective Farms' , b) No. 981 of March 28, 1940 'On the Procedure for Financing Land Planning Works on Collective Farms'.

[6] On Approval of the Fundamentals of Land Legislation of the Union of the USSR and the Union Republics: Law of the USSR No. 3401-VII of December 13, 1968. *Gazette of the Supreme Soviet of the USSR*. 1968. No. 51. Art. 485.

The Land Code of the RSFSR adopted in 1970[1] contained Section IX, including only five articles (from 121 to 124), which enshrined the provision that land planning was to be carried out by state land planning organs. This arrangement of the norms is not surprising since, as it was noted in T. F. Yashchuk's monograph, the Fundamentals of Land Legislation of the USSR and Union Republics and the Land Code of the RSFSR of 1970 were characterized by high similarity both conceptually and in terms of the content of the most basic norms [32, p. 362].

Summarizing the abovementioned, it is possible to conclude that the legislative framework regulating land planning fees, fiscal in nature, was formed. This framework specified: the amount of such fees, the procedure for paying them, the sources of financing, and the procedure for collecting fees. Most of the legal rules were formed before the war. In subsequent years, they were applied and improved. At this point, the period of Soviet rule with regard to the issue under study ends, since new transformations will begin in the 1990s.

Formation of the Amount of Land Planning Fees

In legal relations that are classified as non-gratuitous, the issue of price is important, and the issue of land planning fees is no exception. Obviously, the calculation of such fees lies in the domain of economists and financial officers, while our task is to evaluate the elements that constituted it in different historical periods.

In accordance with Article 176 of the Land Code of the RSFSR of 1922, land planning institutions collected a special fee for the performance of land planning actions from the parties in whose interests these actions were performed. In cases of mandatory actions aimed at forming special-purpose land funds (resettlement, concession, etc.), land planning costs were paid from local or national funds depending on the purpose of the fund being formed.

The amount and the procedure for collecting, storing, and spending amounts received as payment for the performance of land planning actions were established by special rules.

The Resolution of the Council of People's Commissars of the RSFSR of June 14, 1923[2] introduced differentiated rates for land planning works: the fee for the division of villages into khutors or land plots was twice the fee for group land planning. It was also allowed to establish an extra fee in addition to the above (for travel there and back) or to reduce the fee for certain categories of the population. The procedure for collecting and spending the amounts received from land users was determined by the instructions issued by the People's Commissar of Finance and the People's Commissariat of Workers' and Peasants' Inspectorate. The same instructions established the distribution of these amounts in the expenditure systems of both the national and local budgets. This approach indicates that the amounts collected for land planning works were transferred to the budget.

For a clear and complete understanding of this approach, it should be noted that the given Resolution was supplemented by the Decree of the Council of People's Commissars of the RSFSR of December 2, 1925 that introduced amendments concerning cases of allocation of land to schools outside the land surveying plan, which required a special visit of a land surveyor to the site of the works. In this case, the interested parties were charged not a per-dessiatine fee, but a daily fee of five rubles for each day of work and the travel expenses it caused[3].

On May 3, 1927, the Resolution of the Council of People's Commissars of the RSFSR 'On Payment for Land Planning and Land Registration Works' was adopted[4]. This Resolution repealed the previously issued decrees on payment for land planning and land registration works of June 14, 1923, December 2, 1925[5], and May 15, 1926[6]. By the named Resolution of 1927, all regions and provinces were divided into groups. There were four such groups in total, and for each group *a maximum per-hectare rate* for basic land planning and land registration works was established. It is noteworthy that for works that were not subject to per-hectare payment, as well as for works performed on plots of less than 100 hectares (with the exception of land planning performed for labor-use plots), a maximum daily payment

[1] Land Code of the RSFSR of July 1, 1970. *Gazette of the Supreme Soviet of the RSFSR*. No. 28. Art. 581.

[2] On Payment for Land Planning and Land Registration Works: Decree of the Council of People's Commissars of the RSFSR of June 14, 1923. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1923. No. 60. Art. 567.

[3] On Amendments to the Decree of June 14, 1923 on Payment for Land Planning and Land Registration Works: Decree of the Council of People's Commissars of the RSFSR of December 2, 1925. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1925. No. 86. Art. 640.

[4] On Payment for Land Planning and Land Registration Works: Resolution of the Council of People's Commissars of the RSFSR of May 3, 1927. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1927. No. 41. Art. 265.

[5] On Payment for Land Planning and Land Registration Works: Decree of the Council of People's Commissars of the RSFSR of December 2, 1925. *Collection of Laws and Regulations of the Workers and Peasants Government of the RSFSR*. 1925. No. 86. Art. 640.

[6] On Payment for Land Planning and Land Registration Works: Decree of the Council of People's Commissars of the RSFSR of May 15, 1926. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1926. No. 29. Art. 227.

was Established for each day of work and the travel expenses caused by it.

The Resolution of the Council of People's Commissars of the RSFSR of November 27, 1929 'On the Establishment of Different Payment Rates for Land Planning and Land Registration Works for Different Groups of the Population' supplemented the Resolution of the Council of People's Commissars of the RSFSR of May 3, 1927 on payment for land planning and land registration works by establishing an increase in the maximum per-hectare rates by three times for kulak farms and by one and a half times for wealthy farms[1].

By the Resolution of the Council of People's Commissars of the RSFSR of September 21, 1929 'On Supplementing Article 4 of the Resolution of the Council of People's Commissars of the RSFSR of May 3, 1927 'On Payment for Land Planning and Land Registration Works'', it was established that land planning works on land allocation, preparation and issuing to the railway administrations of plans (on a scale of 1:5000) concerning land for railway tracks were charged at the rate of ten rubles per day for the entire period of execution of the work and for the time spent on travel in connection with its execution[2].

In accordance with the Regulation on land planning in mining and metallurgical districts of the Ural region, it was established that for the performance of land planning actions, land planning institutions collected a special fee from the parties in proportion to the allocated areas under the specified tariffs, in the manner and within the timeframes established by law; the part of the costs covering inter-settlement land planning works was to be financed from the state budget[3].

The Regulation on continuous mandatory state land planning in the Autonomous Bashkir SSR established that costs associated with land planning were paid from national funds in accordance with estimates made, with the imposition on the population of all districts of only in-kind duties that were stipulated by Article 177 of the Land Code of the RSFSR of 1922. A similar instruction was also included in the Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR 'On the Allocation of Land to Gypsies Transitioning to a Settled Labor-Based Way of Life'[4].

In accordance with Article 177 of the Land Code, land planning participants, in addition to the fee for the performance of land planning actions, were obliged to provide land surveyors with: a) premises suitable for living; b) materials for the works and for embedding the boundary markers; c) horse carts for transporting tools and materials for land planning works; d) the necessary labor force.

The General Principles of Land Use and Land Planning of 1928 established in Item 20 that land planning for all poor farms, low-efficient middle-sized farms, and all collective farms was charged to the state's account. A fee may be imposed for the performance of land planning actions for other land users in accordance with the legislation of the Union Republics. In addition, the legislation of the Union Republics may provide for in-kind duties of the population necessary for land planning works to be carried out[5].

These issues were covered by the Regulation on land planning in the nomadic and semi-nomadic areas of the Turkestan Autonomous Socialist Soviet Republic[6], Regulation on land planning for the nomadic, semi-nomadic population, and population transitioning to a settled way of life of the autonomous Kirghiz Soviet Socialist Republic[7], Regulation on continuous and mandatory land planning in the Autonomous Dagestan Soviet Socialist Republic, stipulating that all types of land planning works for the needs of various departments,

[1] On the Establishment of Different Payment Rates for Land Planning and Land Registration Works for Different Groups of the Population: Resolution of the Council of People's Commissars of the RSFSR of November 27, 1929. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1929. Nos. 89-90. Art. 929.

[2] On Supplementing Article 4 of the Resolution of the Council of People's Commissars of the RSFSR 'On Payment for Land Planning and Land Registration Works' of May 3, 1927: Resolution of the Council of People's Commissars of the RSFSR of September 21, 1929. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1929. No. 72. Art. 708.

[3] On Approval of the Regulation on Land Planning in Mining and Metallurgical Districts of the Ural Region: Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of May 9, 1927. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1927. No. 48. Art. 318.

[4] On the Allocation of Land to Gypsies Transitioning to a Settled Labor-Based Way of Life: Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of February 20, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1928. No. 28. Art. 203.

[5] General Principles of Land Use and Land Planning: Resolution of the Central Executive Committee of the USSR of December 15, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1928. No. 69. Art. 642.

[6] Regulation on Land Planning in the Nomadic and Semi-Nomadic Areas of the Turkestan Autonomous Socialist Soviet Republic: Decree of the All-Russian Central Executive Committee of May 10, 1923. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1923. No. 43. Art. 455.

[7] Regulation on Land Planning for the Nomadic, Semi-Nomadic Population, and Population Transitioning to a Settled Way of Life in the autonomous Kirghiz Socialist Soviet Republic: approved by the Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of April 17, 1924 'On Land Planning for the Nomadic, Semi-Nomadic Population, and Population Transitioning to a Settled Way of Life in the autonomous Kirghiz Socialist Soviet Republic'. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1924. No. 40. Art. 366.

government organizations, institutions and enterprises, for cities, urban-type settlements were to be carried out entirely at their own expense on the basis of Articles 176 and 177 of the Land Code of the RSFSR *on a contractual basis* at the fixed price[1].

As we can see, the payment consisted of budget funds and the costs of land planning works incurred by the population itself.

An analysis of the above norms shows that additional costs (the so-called in-kind obligations) were imposed on the employable population. Later, such in-kind obligations would also be imposed onto organizations and collective farms [10, p. 374].

In confirmation of this conclusion one can refer to the Regulation on continuous and mandatory land planning in the Autonomous Buryat-Mongolian SSR, Item 14 of which established that all land planning works performed in accordance with this Regulation were financed from national funds allocated according to the estimates of the People's Commissariat of Agriculture of the Autonomous Buryat-Mongolian SSR. Land planning works serving the needs of departments, state organizations, institutions, and enterprises, cities and for urban-type settlements were to be carried out at the expense of interested organizations[2].

All types of land planning works for the needs of various departments, state organizations, institutions, and enterprises, for cities, workers' settlements, and summer suburban settlements were to be carried out entirely at the expense of these institutions and organizations.

In accordance with Article 178 of the Land Code of the RSFSR of 1922, the duties specified in Article 177 were distributed among land planning participants in proportion to the areas of land being arranged for them and in accordance with the type of actions being performed. If land planning participants for whom the works were carried out on a mandatory basis (Item 'b' of Article 166) refused to voluntarily cover the costs of land planning, then the necessary costs were charged from the party in an administrative procedure on a prorate basis specified above.

The party that filed a petition for land planning actions had the right to request the termination of the case at any of its stages, with payment of the costs of the actions performed before the termination of the case. However, the case was to proceed if a motion for its dismissal was filed by the party after the approval of the land planning project or if any of the other land planning participants insisted on the case proceeding. In this case, the party that withdrew was also obliged to participate in land planning costs on a general basis if land planning was carried out on its lands together with the lands of the other parties.

A thorough analysis of the above provisions of the Land Code of the RSFSR of 1922 shows that there is used the term 'land planning actions', including payment for such actions. Subsequently, the terminology changed and instead of 'land planning actions' the legislator began to use 'land planning works'. It seems that the change in legal terminology was due to the adoption of the first Civil Code of the RSFSR[3] (which occurred a day after the Land Code of the RSFSR was adopted on October 31, 1922), which enshrined rules on a contract for works that regulated the performance of works on a reimbursable basis (Article 230 of the Civil Code of the RSFSR).

Assessing this event, S. A. Bogolyubov writes that it indicates a partial intersection of land and civil law issues, tasks, regulators, conditioned by a certain commonality of the subjects, objects, substance, methods of regulation, and ultimately – the content of legal relations, insofar as land plots were initially allowed for, albeit limited, civil circulation [2, p. 137].

Summarizing the abovementioned, it can be said that in Soviet times the amount of payment for land planning could be set by rates, tariffs, estimates, as well as in-kind duties. After the USSR's collapse and the establishment of private land ownership, the amount of payment for land planning started to be set, among other options, under an agreement for the performance of land planning works. Subsequent codified regulatory acts of land legislation did not contain any norms devoted to payment for land planning works.

Benefits When Paying for Land Planning Works

K. Kindeev noted that the fee-based principle of land planning works was harmful from the political point of view since poor and middle peasants suffered from it the most [15, p. 105]. Therefore, the legislation periodically

[1] On Approval of the Regulation on Continuous and Mandatory Land Planning in the Autonomous Dagestan Soviet Socialist Republic: Decree of the All-Russian Executive Committee and the Council of People's Commissars of the RSFSR of September 6, 1926. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1926. No. 60. Art. 463.

[2] On Approval of the Regulation on Continuous and Mandatory Land Planning in the Buryat-Mongolian Autonomous SSR: Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of January 30, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1928. No. 20. Art. 152.

[3] On the Enforcement of the Civil Code of the RSFSR: Resolution of the All-Russian Central Executive Committee of October 31, 1922. Available at: https://normativ.kontur.ru/document?moduleId=1&documentId=10512&ysclid=lwc5gi2kbh739955913.

established benefits in the payment for land planning works, which was expressed in full financing from the budget, or partial payment, or full payment for such works by the population, but through soft loans.

The concept of a benefit as a general scientific category has changed with the development of the society. Initially, in the period before the 18th century, a benefit in Rus' was understood as life easing for a certain category of citizens [29, p. 8].

In the 18th-19th centuries, the concept of a benefit expanded: a benefit was understood as the convenient conditions for economic relations between different categories of the population. By means of benefits, the state began to solve major problems [29, p. 8].

The Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of September 21, 1925, 'On Measures for the Restoration of the Central Black Earth Provinces in Economic and Cultural Aspects' stipulated the plans to accelerate the process of intra-settlement land planning by resettling multi-yard villages into settlements and transitioning to wide land strips with multi-field crop rotations. For this purpose, it was decided to allocate 982 thousand rubles from the budget for land planning and 4 million rubles for resettlement both within the district and outside it, of which one million rubles came from the budget and three million rubles – as a loan[1].

The abovementioned funds were probably not enough, otherwise how can we explain that such important categories of subjects as servicemen of the Workers' and Peasants' Red Army and the Workers' and Peasants' Red Navy of the USSR and their families, being beneficiaries, were not exempted from paying for land planning works. In accordance with Item 10 of the Instruction for the application of benefits in the field of labor land-use and agriculture for servicemen of the Workers' and Peasants' Red Army and the Workers' and Peasants' Red Navy of the USSR and their families, they had a discount of fifty percent when paying for these works[2].

At the same time, control over the spending of funds allocated from the budget was tightened. The Decree of the Council of People's Commissars of the RSFSR of October 9, 1925 'On Measures to Improve Land Planning' provided for the possibility of suing persons who used special funds allocated from the state budget for the maintenance of land planning organizations for any purpose other than it was intended[3].

The Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of September 10, 1926, 'On Benefits for the Peasant Population in Land Planning and Resettlement' established land planning fees to be charged to the state's account for the poorest part of the peasant population in farm communities that carried out land planning (intra-settlement and inter-settlement) with the transition to the multi-field system or with the correction of faults in land use. The land planning expenses were borne by the Union Republics. The republics also determined the groups of the poorest population and the sequence of land planning works[4]. In addition, the republics themselves had to determine the groups of the population that were to be provided with a long-term (up to 8 years) loan on preferential terms to pay for land planning[5].

The Resolution of the Economic Meeting of the RSFSR of December 2, 1926, 'On Lending for Land Planning Activities' established the distribution and change of loans for land planning activities with the recognition of the need to extend the terms of lending for such activities from two to five years, depending on the type of land planning works being financed. The interest rate on long-term loans could not exceed six per cent per annum. The document also noted the inadequacy of the existing lending procedure related to land planning and the need to simplify the process of granting such loans[6].

[1] On Measures for the Restoration of the Central Black Earth Provinces in Economic and Cultural Aspects: Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of September 21, 1925. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1925. No. 65. Art. 523.

[2] See: On Approval of Instructions for the Application of Benefits in the Field of Labor Land-Use and Agriculture for Servicemen of the Workers and Peasants' Red Army and the Workers and Peasants' Red Navy of the USSR and Their Families: Decree of the Council of People's Commissars of the RSFSR of July 13, 1925. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1925. No. 50. Art. 383.

[3] On Measures to Improve Land Planning: Decree of the Council of People's Commissars of the RSFSR of October 9, 1925. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1925. No. 72. Art. 572.

[4] On Benefits for the Peasant Population with regard to Land Planning and Resettlement: Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of September 10, 1926. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1926. No. 61. Art. 455.

[5] See: On Land Planning Benefits: Resolution of the Council of People's Commissars of the RSFSR of February 1, 1927. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1927. No. 14. Art. 100.

[6] On Lending for Land Planning Activities: Resolution of the Economic Meeting of the RSFSR of December 2, 1926. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1927. No. 8. Art. 64.

On October 15, 1927 the Manifesto of the Central Executive Committee of the USSR[1] was adopted, and on November 19, 1927 – the Resolution of the Council of People's Commissars of the RSFSR 'On the Undertaking by the State of Expenditures for Land Planning Performed for Poor and Low-Income Middle-Peasant Households'[2]. In accordance with these documents, the funds in the amount of 10 million rubles were allocated in addition to the estimate-based allocations for land planning from the local and state budgets. E. I. Kviring then wrote that these additional funds would allow all the poor peasants to be exempted from land planning fees [14, p. 35].

In our opinion, such an approach taken by the state indicates its interest in ensuring that land planning was provided even for the poorest segments of the population. This conclusion is supported by the fact that in the documents quoted above, funds were allocated not only for the land planning procedure itself but also for restocking geodetic tools and organizing intensive training of newly-recruited land planning personnel. The groups of the population for whom land planning was carried out at the expense of the state were determined in accordance with the resolution of the Council of People's Commissars of the RSFSR of February 1, 1927, 'On Benefits in Land Planning'[3], amended by the resolution of the Council of People's Commissars of the RSFSR of August 26, 1927[4].

Nomadic and semi-nomadic population transitioning to sedentary farm patterns, as well as settled population migrating and resettling during the land planning process from one region to another, were provided with benefits and assistance from specially allocated state funds[5].

The Resolution of the Council of People's Commissars of the RSFSR of March 24, 1928, 'On Benefits Facilitating Agriculture for Red Partisans and Red Guardists' stipulated that the state had to bear the costs of land planning for peasants from former partisans and red guardists, as well as their children, who, due to their low income, enjoyed discounts on the unified agricultural tax, in farm communities carrying out land planning (both intra-settlement and inter-settlement)[6].

According to the Report of the Council of People's Commissars of the Autonomous Chuvash SSR on its activities as well as on the cultural and economic state of the Autonomous Chuvash SSR in the field of agriculture and forestry, it was decided to recognize it necessary to carry out continuous and mandatory land planning in the Chuvash Republic with the expenses for land planning performed for poor, low-efficient, and middle-peasant farms charged to the state's account[7].

The Decree of the Central Executive Committee of the USSR 'On Measures to Increase Crop Yields' established preferential terms for land planning carried out in villages transitioning to public forms of farming and also those using improved farming methods[8].

According to the General Principles of Land Use and Land Planning of 1928, benefits in the field of land use and land planning for servicemen of the Workers' and Peasants' Red Army and their families were granted by special laws of the USSR and the Union Republics.

The Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of January 14, 1929, 'On Approval of the Regulation on Continuous and Mandatory Land Planning in the Autonomous Chuvash SSR'[9] established that all works on inter-settlement land planning carried out in accordance with this Regulation, as well as on

[1] Manifesto to All Workers, Toiling Peasants, and Red Army Soldiers of the USSR. To the Proletarians of All Countries and Oppressed Peoples of the World: Resolution of the Central Executive Committee of the USSR, adopted at the 2nd Session of the IV Convocation on October 15, 1927. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1927. No. 61. Art. 613.

[2] On the Undertaking by the State of Expenditures for Land Planning Performed for Poor and Low-Income Middle-Peasant Households: Resolution of the Council of People's Commissars of the RSFSR of November 19, 1927. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1927. No. 118. Art. 801.

[3] On Land Planning Benefits: Resolution of the Council of People's Commissars of the RSFSR of February 1, 1927. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1927. No. 14. Art. 100.

[4] On Amendments to the Regulation on the Management of State Land Property: Resolution of the Council of People's Commissars of the RSFSR of August 26, 1927. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1927. No. 88. Art. 589.

[5] On Approval of the Regulation on Continuous and Mandatory Land Planning in the Buryat-Mongolian Autonomous SSR: Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of January 30, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1928. No. 20. Art. 152.

[6] On Benefits Facilitating Agriculture for Red Partisans and Red Guardists: Resolution of the Council of People's Commissars of the RSFSR of March 24, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1928. No. 36. Art. 274.

[7] On the Report of the Council of People's Commissars of the Chuvash Autonomous SSR on Its Activities as well as on the Cultural and Economic State of the Chuvash Autonomous SSR: Resolution of the Council of People's Commissars of the RSFSR of August 30, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1928. No. 120. Art. 756.

[8] On Measures to Increase Crop Yields: Resolution of the Central Executive Committee of the USSR, adopted at the 4th Session of the IV Convocation on December 15, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1928. No. 69. Art. 643.

[9] On Approval of the Regulation on Continuous and Mandatory Land Planning in the Chuvash Autonomous SSR: Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of January 14, 1929. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1929. No. 10. Art. 114.

land planning on Soviet and collective farms, would be carried out at the state's expense.

In 1929, the Rules for providing assistance and benefits to the working population of the autonomous Chuvash Republic involved in land planning in the process of implementation of continuous and mandatory land planning were adopted. According to these rules, working population could receive preferential loans intended to cover per-hectare payments for land planning works. Such loans were granted to beneficial borrowers for a period of up to ten years, at 2.5% per annum[1].

According to the Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of September 17, 1928 'On measures to ensure the restoration of farms of disabled war veterans, partisans, families of the fallen in war from among the rural poor and low-income peasants', it was decided to propose that the People's Commissariat of Agriculture of the RSFSR carried out priority allocation of land from the state fund for free land planning to collective farms organized by disabled war veterans, granting them in this case the preferential right to intra-provincial settlement, with the greatest benefits[2].

The Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of April 2, 1930, 'On New Benefits for Collective Farms and Their Members' stipulated that farms that joined collective farms were to have their debt for land planning carried out before their joining the farms written off[3].

Based on the above, the benefits of that period of time can be classified into different groups depending on the following grounds:

1) the persons for whom the benefits were intended: for individuals and legal entities;

2) *the amount of the benefit*: full and partial exemption from payment for land planning works;

3) *the social status of the individual*: rural poor, low-efficient peasantry;

4) *the status of the individual*: disabled war veterans, Red Army soldiers, etc.

In the five-year plan for land planning works it was proposed that the categories of persons exempt from the relevant payments made up no less than 51 % [22, p. 57].

Assessing all of the above, it is possible to conclude that land planning fees performed not only an economic but also a social function of the state.

Appreciating the importance of land planning, even with a lack of funding, the state tried to increase its volume and rate by establishing benefits for various categories of the population with regard to payment for land planning works. Noteworthy is that that the list of beneficiaries was expanding, which indicates a direct interest of the state in carrying out such works.

It should also be pointed out that the period 1917 – 1930s can be characterized as a period of rapid lawmaking in the field of land legislation and land planning issues, including the establishment of benefits in payment for land planning.

The Legal Essence of Payment for Land Planning

An analysis of the abovementioned regulatory legal acts shows that during the historical period under study there was no universal approach to what land planning fees were taken for. Different documents used different names for land planning 'operations': land planning works[4], land planning actions[5], land planning activities, activities on land planning[6], land

[1] Rules for Providing Assistance and Benefits to the Working Population of the Chuvash Autonomous Republic Involved in Land Planning in the Process of Implementation of Continuous and Mandatory Land Planning. Approved by the resolution of the Economic Council of the RSFSR of July 4, 1929. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1929. No. 54. Art. 536.

[2] On Measures to Ensure the Restoration of Farms of Disabled War Veterans, Partisans, Families of the Fallen in War Among Rural Poor and Low-Income Peasants: Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of September 17, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1928. No. 123. Art. 770.

[3] On New Benefits for Collective Farms and Their Members: Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of April 2, 1930. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1930. No. 21. Art. 230.

[4] See, for example: Law on Family Labor Land-Holding: Resolution of the 3rd Session of the All-Russian Central Executive Committee of the IX Convocation of May 22, 1922. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1922. No. 36. Art. 426.

[5] See, for example: Instructions for the Application of the Regulation on Socialist Land Planning: Resolution of the People's Commissariat of Agriculture of March 11, 1919. *Collection of Laws and Regulations of the Workers and Peasants' Government*. 1919. No. 39-40. Art. 384.

[6] See, for example: Regulation on the Committee for Land Planning for Working Jews under the Presidium of the Council of Nationalities of the Central Executive Committee of the USSR: Resolution of the Presidium of the Central Executive Committee of the USSR of March 21, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1928. No. 21. Art. 188; On the Tasks of Resettlement, Its Organization, the Principles of Drawing Up Resettlement Plans and the Procedure for Financing Resettlement Activities: Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of January 18, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1928. No. 8. Art. 63.

planning measures[1], simply land planning[2], organization of land planning[3].

There were also regulatory acts that simultaneously used in their norms different word combinations: 'land planning actions', 'land planning works' and 'land planning'[4], 'land planning actions' and 'land planning works'[5], 'land planning' and 'land planning works'[6], 'land planning measures' and 'land planning works'[7].

It appears that the concept 'land planning' was used as the basic one, and the others – as its constituent elements. We came to this conclusion judging from the definition of land planning given by Professor O. A. Khauke, who wrote that land planning is a certain activity of certain state institutions consisting in each individual case of a number of individual actions that together form the land planning process [26, p. 89].

This doctrinal position was later reflected in legislation[8].

It is also necessary to look at the issue of payment for land planning from the perspective of identifying the elements that make up the cost of land planning works, sources of financing, the provision of benefits with regard to such payments, etc. However, all these elements do not clarify what the payment for land planning works is. We will try to answer this question by analyzing the features of such payment with regard to the key terms. There are several of them.

Among the first to be named is taxes. Experts in the field of financial law distinguish the following features of taxes:

- obligatoriness – all taxpayers must pay legally established taxes and fees;

- individual gratuitousness – in exchange for paying a tax, taxpayers do not receive any individual benefits from the state;

- payment in monetary form – taxes cannot be paid in kind or in any other form different from monetary;

- the purpose of collecting taxes is providing the state with money necessary to cover the expenses in the course of its activities [20, p. 134].

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[1] See, for example: On the Report of the Government of the Uzbek Soviet Socialist Republic: Resolution of the Central Executive Committee of the USSR, adopted at the 4th session of the IV convocation on December 15, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1928. No. 69. Art. 644.

[2] See, for example: On Changing the Deadline for the Completion of Works on Internal Land Planning on New Large Grain Soviet Farms on the Territory of the Russian Soviet Federative Socialist Republic: Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of December 19, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1929. No. 3. Art. 18.

[3] On the Report of the People's Commissariat of the Workers and Peasants' Inspection of the USSR on the Investigation of the Resettlement Case: Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of March 6, 1929. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1929. No. 24. Art. 209.

[4] See, for example: On Land Planning in the North Ossetian Autonomous Region: Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of June 19, 1926. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1926. No. 37. Art. 295.

[5] See, for example: Item 20 of Section III 'Land Planning' of the General Principles of Land Use and Land Planning: Resolution of the Central Executive Committee of the USSR of December 15, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1928. No. 69. Art. 642.

[6] See, for example: General Principles of Land Use and Land Planning: Resolution of the Central Executive Committee of the USSR of December 15, 1928. *Collection of Laws and Regulations of the Workers and Peasants' Government of the USSR*. 1928. No. 69. Art. 642; On Approval of the Regulation on the Management of State Land Property: Decree of the Council of People's Commissars of the RSFSR of February 19, 1926. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1926. No. 11. Art. 88; On Providing Rural and Volost Peasant Mutual-Aid Communities with Lands: Decree of the All-Russian Central Executive Committee of March 29, 1926. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1926. No. 28. Art. 219.

[7] See, for example: On Lending for Land Planning Activities: Resolution of the Economic Meeting of the RSFSR of December 2, 1926. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1927. No. 8. Art. 64.

[8] See, for example: On Approval of the Regulation on Mandatory Land Planning in the Yakut, Olekminsky, Aldansky, and Vilyuysky Okrugs of the Yakut ASSR: Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of July 29, 1929. *Ibid*. 1929. No. 60. Art. 595. The following land planning actions are performed when carrying out land planning for the population: a) allocation of land to groups of working cattle breeders and farmers; b) distribution of pastures for common use among groups of working cattle breeders and farmers, as well as between the sedentary population, on the one hand, and the nomadic and semi-nomadic population, on the other; c) planning of rural areas for the population in new settlements that are to be formed under the present Regulation; d) allocation of lands provided for the use by state organizations, institutions, and enterprises and cities; d) formation of land funds for special purposes (resettlement, pasture, concession, meadow funds, etc.) and transfer of lands from one fund to another; e) construction, relocation, or abolition of roads, cattle drives, provision of watering places and relocation of land-uses in connection with the fundamental improvements to lands (land reclamation); g) identification of state land property; h) registration of the boundaries of districts, uluses and naslegs, approved in the established manner.

With regard to the feature of obligatoriness, it should be said that payment for land planning was obligatory since there had been formed a regulatory framework and mechanism for its collection. Unpaid land planning fees were collected under administrative procedure. According to the Resolution of the Council of People's Commissars of the RSFSR of April 23, 1929, 'On the Report of the Council of People's Commissars of the Autonomous Karelian Republic', it was necessary to increase the pace of land planning works by reducing the time period for land planning activities, and, in particular, to take vigorous measures to liquidate the population's debt for land planning works[1].

In early January 1930, the Resolution of the Council of People's Commissars of the RSFSR 'On the Liquidation of Debts of the Population for Land Planning Works'[2] was adopted, which obliged regional (oblast) executive committees to urgently identify debts through tax commissions and collect them within three months under the procedure for collecting arrears on state taxes.

Two years later, a new Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR devoted to the payment for land planning works was adopted. It established that payments for land planning works not made by collective farms on time under a contract were subject to collection under executive inscriptions issued by notary organs[3].

As to individual gratuitousness, land planning fees did not correspond to this feature of taxes: in exchange for the payments made it was necessary to carry out land planning works (or land planning activities).

The next feature is the payment of tax in monetary form. It should be noted that this feature is formed in relation to the existing legislation. S. S. Shchepkin was absolutely right to note that the history of statehood, including the history of the Soviet state, knows not only monetary, but also in-kind forms of taxes [30, pp. 311-319]. For example, in a publication of the Rybinsk Provincial Political Education Department in 1925 it was stated that, at the request of the population and with the consent of land registry bodies, it was permissible to accept payment in kind at the equivalent established by the Provincial Land Administration [24, p. 14].

As to the purpose of collection, namely, providing the state with money necessary to cover its expenses, payment for land planning corresponded to this feature. However, it should also be emphasized that dues and state duties served the same purpose. The question of the purpose of collecting various payments from the point of view of raising funds to cover state expenditures has repeatedly been the subject of scientific discussions, among foreign scientists as well [33; 39; 40].

Thus, payment for land planning, by its nature, does not possess the feature of individual gratuitousness, and this is sufficient to conclude that it was not a tax in the historical period under study.

Since state institutions carried out land planning works at a fee in the amount established at the legislative level, then the question arises whether this fee was a state duty.

V. I. Gureev defines a duty as a fiscal payment essential for issuing a legal document to a citizen or organization. In this definition of a duty, the distinguishing feature is 'issuance of a legal document' [7, p. 54].

Based on the above, it seems that the answer to the question about the legal essence of payment for land planning as a state duty should be negative: state duties are charged for the provision of state and, currently, municipal services, while we are discussing land planning works. However, it should be emphasized that, given the historical development, the answer is ambiguous. For example, today a state duty is charged for state registration of title to real property. And the Resolution of the Council of People's Commissars of the RSFSR of January 10, 1929, 'On payment for land registration works carried out in urban settlements and workers', summer suburban settlements, and health-resort villages'[4] called this not a service, but works, which is reflected in the name of the document itself.

In addition, there are no rights granted and no obligations imposed as a result of land planning works. Thus, a land planning fee is not a duty in its legal essence.

It remains to analyze the payment for land planning works to verify whether it is a fee in its essence.

[1] On the Report of the Council of People's Commissars of the Karelian Autonomous Republic: Resolution of the Council of People's Commissars of the RSFSR of April 23, 1929. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR. 1929*. No. 35. Art. 365.

[2] On the Liquidation of Debts of the Population for Land Planning Works: Resolution of the Council of People's Commissars of the RSFSR of January 18, 1930. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1930. No 3. Art. 35.

[3] On Payment for Land Planning Works: Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of July 10, 1932. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1932. No. 77. Art. 341.

[4] On Payment for Land Registration Works Carried Out in Urban Settlements and Workers', Summer Suburban Settlements, and Health-Resort Villages: Resolution of the Council of People's Commissars of the RSFSR of January 10, 1929. *Collection of Laws and Regulations of the Workers and Peasants' Government of the RSFSR*. 1929. No. 8. Art. 86.

E. A. Imykshenova defines a fee as a contribution of individuals and organizations established for the purpose of regulating relations with the state or with local government regarding the implementation or obtaining of subjective rights [12, p. 9]. Fees are usually paid not to the treasury, but to various funds. Professor D. S. Rozenblyum specifically wrote about the transfer of payments for land planning to the fund. In particular, the scientist noted that payment for land planning and land registration works, although made into the state treasury, constituted a special fund in it, this used to maintain the entire land planning apparatus and carry out all land planning measures. This fund was spent under the deficit-free principle [23, p. 385].

Based on the above, we come to the conclusion that the legal essence of payment varies depending on the period of its formation. The study has established that payment forland planning in the Soviet period was a fee (non-tax payment) that went to the treasury, but was transferred there through a special fund. After the collapse of the USSR, such payment started to be regulated by market relations, through the conclusion of relevant contracts, with a freely formed price for the implementation of land planning works.

A New Stage of Development Marked by the Recognition of Private Ownership of Land

With the beginning of the transition from a centralized planned economy to a market economy, a new sector of Russian economy started to develop – the real property market. According to K. V. Maltsev, the starting point of its development should be considered to seen in1990, when the law 'On Property in the USSR' recognized the concept of private ownership, which was subsequently (in the Land Code of 1991, Civil Code of the Russian Federation of 1994, Urban Planning Code of the Russian Federation of 1998) formalized for land plots, buildings and constructions as well as their separate parts – premises [17, p. 23].

The right of ownership is one of the central institutions throughout the world [35; 37; 44]. The legal environment of the Russian Federation is no exception. Particular attention has been paid to this institution since the land reform in Russia, which began with the Law of the RSFSR of November 23, 1990, No. 374-1 'On Land Reform'[1], having radically changed land ownership relations in the Russian Federation [21, p. 3].

Until the end of 1990, the right of land ownership in the Russian Federation belonged exclusively to the state. According to I. A. Ikonitskaya, the RSFSR law 'On Land Reform' established, along with state property, the citizens' right to the ownership of land, which they could obtain for agricultural production and individual housing construction [21, p. 3].

Both of the abovementioned researchers are right, but K. V. Maltsev focused on the legislation of the USSR, while I. A. Ikonitskaya considered the legislation of the RSFSR; hence there are differences in their approaches to determining the starting point for legal formalization of private property.

Among the normative legal acts of that period, it is also necessary to mention the 'Fundamentals of the Legislation of the USSR and Union Republics' of February 28, 1990[2]. These Fundamentals did not establish anything new in relation to land planning, but only duplicated the norms that land planning was carried out by state land planning organizations with funding from the budget.

With the collapse of the Soviet Union on December 26, 1991, a new stage in the development of our country began, sharply changing its course from a planned to a market economy. In connection with the return of private land ownership, on October 11, 1991, Law No. 1738-1 'On Payment for Land'[3] was adopted, proclaiming the use of land to be paid since then. According to the law, the forms of payment included land-use tax, land rent, and normative price for land.

The Constitution of the Russian Federation newly adopted on December 12, 1993[4] proclaims the diversity of forms of ownership, freedom of entrepreneurship, protection of competition, unity of economic space, and a number of other elements inherent in a market economy. From that moment on, according to the Constitution of the Russian Federation, land and other natural resources can be in private, state, municipal, and other forms of ownership.

As to the institution of land planning itself, within one year, namely in the year 2001, two normative legal acts (the Federal Law 'On Land Planning' and the Land Code of the Russian Federation) were adopted to regulate land planning.

[1] On Land Reform: Law of the RSFSR No. 374-1 of November 23, 1990. *Gazette of the Congress of People's Deputies and the Supreme Soviet of the RSFSR*. 1990. No. 26. Art. 327 (with latest amendments). No longer in force.

[2] Fundamentals of the Legislation of the USSR and the Union Republics No. 1251-I of February 28, 1990. *Gazette of the Congress of People's Deputies of the USSR and the Supreme Soviet of the USSR*. 1990. No. 10.

[3] On Payment for Land: Law of the RSFSR No. 1738-1 of October 11, 1991. Gazette of the Congress of People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation. 1991. No. 44. Art. 1424.

[4] Constitution of the Russian Federation (adopted by popular vote on December 12, 1993) with subsequent amendments. *Russian Gazette*. 1993. December 25. No. 237 (original text).

Speaking about land planning, it is worth noting the role of the Land Code of the Russian Federation[1] in its regulation. Only a few articles of this code are devoted to land planning, and some of the provisions are duplicates, for example, these concerning the definition of land planning. As to the initiative to carry out land planning, the Land Code of the Russian Federation (in Article 69) provides a broader list of the parties involved than the Federal Law 'On Land Planning': in addition to those specified in the law, it mentions owners of land plots, land users, and landowners, but, at the same time, this list does not include public authorities of the constituent entities of the federation. Meanwhile, the code also does not contain rules defining the relationship between the initiator (customer) and the performer of land planning works, only providing in Article 3 the rule on the application of civil legislation to property relations.

It should be noted that current Federal Law of June 18, 2001 No. 78-FZ 'On Land Planning'[2], like the Land Code of the Russian Federation, does not contain a separate rule regulating land planning fees. Article 4 of this law, which regulates the grounds for land planning, mentions land planning contracts. Despite the lack of specifics, today such contracts are de facto paid, i.e., land planning works are carried out for a fee, the amount of which is determined by the parties through mutual agreement. This position is consistent with the provisions of the Civil Code of the Russian Federation on contracts[3]. However, Article 4 does not provide a clear answer to the question of land planning being paid or not since, in addition to contracts, this article also establishes as grounds the decisions on land planning taken by federal government bodies, government bodies of constituent entities of the Russian Federation as well as local government bodies and court decisions.

A careful analysis of the full text of the Federal Law 'On Land Planning' allows us to state that its provisions do not regulate the relationship between the customer ordering land planning works and the contractor performing these. The law only contains an indication (Article 24) that persons carrying out land planning are obliged to transfer a free copy of the land planning documentation prepared by them to the state fund of data obtained as a result of land planning works. This norm refers to the gratuitous essence of such relations, but they develop not between the customer and the contractor, but between the state fund and persons carrying out land planning.

Today, the given Law No. 78-FZ 'On Land Planning' does not meet modern requirements, so a new draft law[4] is being developed by the Ministry of Agriculture of the Russian Federation to replace it. It would be reasonable to establish rules therein concerning payment for land planning.

We take as a premise the fact that land planning is an institution of land law. In the scientific literature of the Soviet period, an opinion was expressed that land planning is a separate type of specific land relations [19, p. 235]. Despite the difference in terminology, the essence of the statement that land planning is regulated by the norms of land legislation has not changed. Accordingly, the statement about the establishment of payment should be correlated with the norms of land legislation, in particular with the norms of the Land Code of the Russian Federation.

In our opinion, in terms of terminology such a norm does not contradict the norms of the Land Code of the Russian Federation on the availability of land at a fee, namely with Article 65, which regulates payment for land. In accordance with this article, payment for land is established in the form of a land tax (before the introduction of real estate tax), land rent, and other payments provided for by the Code.

It is still necessary to clarify the issue of the correlation between payment for land planning and Article 1 of the Land Code of the Russian Federation, which establishes the basic principles of land legislation, among which there is the principle of paid land use. This position requires a more careful study since the question arises about the correspondence between 'payment for land planning' and the concept of 'paid land use'. Obviously, land planning works are not equivalent to land use from the point of view of the intended use of land, but it seems that that the established concept of 'paid land use' is incorrect due to the following.

The Legal Encyclopedia defines the use as one of the powers of the owner, their subjective right, which is a legally based possibility of exploitation, economic or other use of property by gaining benefits from it for both entrepreneurial (economic) and other (personal, family, household) needs [31, p. 767]. From this definition it follows that the essential point is the use of a thing. However,

[1] Land Code of the Russian Federation: Federal Law No. 136-FZ of October 25, 2001. *Parliamentary Newspaper*. 2001. Nos. 204-205.
[2] On Land Planning: Federal Law No. 78-FZ of June 18, 2001. *Russian Gazette*. 2001. Nos. 118-119.
[3] Part Two of the Civil Code of the Russian Federation: Federal Law No. 14-FZ of January 26, 1996. *Collection of Legislative Acts of the Russian Federation*. 1996. No. 5. Art. 410.
[4] New draft of the Federal Law 'On Land Planning' Version 3.0. Available at: https://kiportal.ru/biblioteka/stati-i-analitika/novyj-proekt-federalnogo-zakona-o-zemleustrojstve-redakciya-30.html?ysclid=lm4skbgef3974831152.

a situation is possible that the owner or tenant does not use the land plot legally owned by them, but they are not exempt from paying the tax or rent, except in cases explicitly stated by law (for example, the owner entered into a lease agreement but did not transfer the plot to the tenant under the relevant act). Consequently, the owner or tenant pays not for the fact of using the land, but for the fact of their possession on the grounds determined by law. For comparison, it can be noted that the Law of the RSFSR 'On Payment for Land' indicated in Article 15 that the ground for imposing the land tax and land rent is a document certifying the right of ownership, possession, and use (lease) of the land plot.

At the moment, the legislator also recognizes that land may be not used. In support of this fact, it is possible to cite Article 6 of Federal Law of July 24, 2002 No. 101-FZ 'On Turnover of Agricultural Land' which stipulates the seizure of a land plot in the event of its non-use for its intended purpose for three or more years[1].

This thesis is also supported by the norm enshrined in Article 269 of the Civil Code of the Russian Federation[2] and Article 39.9 of the Land Code of the Russian Federation, which establish that lands in state or municipal ownership can be transferred to government bodies, state-owned enterprises, historical heritage centers, etc. for permanent (unlimited) use. In this case, we get a different statutory concept: the lands are used de facto, but no payment is provided for their use and, accordingly, no payment goes into the budget.

Thus, it appears that it would be more consistent for the legislator to use in the principles of land legislation not the term 'payment for land use', but the term 'payment for land'.

Conclusion

Summarizing all of the above, we come to the following conclusions.

1. There can be distinguished three stages in the formation of land planning fees. Their specifics are reflected in the formation of the funding sources for land planning works.

The first stage refers to the pre-revolutionary period. We considered it necessary to define it as independent, although it is not included in the historical framework of the period under consideration. It can be named the genesis of land planning fees, and it was taken by the Soviet government as a basis.

The second period started in 1917 and lasted until 1990, i.e., until the initiation of the land reform. At that stage, in our opinion, it is possible to distinguish the following sources of financing:

- all-Union budget,
- state budget,
- budgets of the Union Republics,
- local budget,
- loan funds,
- funds of organizations and collective farms,
- funds of the population itself.

The third stage developed after the adoption of the Constitution of the Russian Federation in 1993, and here we agree with S. N. Volkov, who identified the following sources of financing for land planning works:

- federal budget funds,
- budget funds of the constituent entities of the Russian Federation, local budget funds,
- customer funds,
- other funds for financing land planning obtained through international projects, commercial activities, assistance from public organizations and funds.

Citizens and legal entities may be provided with paid services related to the processing, registration, and issuance of documents certifying their right to land, advisory assistance in project development, certain types of surveys and investigation. The fee is established by the state executive bodies of the constituent entities of the Russian Federation [4, p. 362].

A common factor for all the stages is the presence of mixed sources of financing. In the overwhelming majority of cases, these are funds from the relevant budget as well as funds from legal entities and individuals, with budget funds most often dominating.

2. It is essential to study the arguments for the validity of the hypothesis about the need for legislative regulation of land planning fees.

In accordance with Article 4 of Federal Law No. 78-FZ 'On Land Planning', the grounds for carrying out land planning works are as follows.

Decisions of federal government bodies, government bodies of the constituent entities of the Russian Federation, and local government bodies. In our opinion, this ground deserves special attention since it demonstrates the dominant position of government bodies, which is due to the fact that the state is the largest owner of land plots.

[1] On Turnover of Agricultural Land: Federal Law No. 101-FZ of July 24, 2002 (as of August 4, 2023). *Collection of Legislative Acts of the Russian Federation*. 2002. No. 30. Art. 3018.

[2] Part One of the Civil Code of the Russian Federation: Federal Law No. 51-FZ of November 30, 1994. *Collection of Legislative Acts of the Russian Federation*. 1994. No. 32. Art. 3301.

According to Rosreestr (Russian Federl Service for State Registration), 92.2% of the Russian territory is owned by the state. It is worth noting that municipalities, that is, cities and districts, own 1.2% of the country's territory, regions also own 1.2%, while the federation, that is, literally the country 'Russian Federation', owns 59.7%. The ownership of the remaining 30.2% of the country's territory is not determined [11]. Land planning for these areas is currently carried out by the Federal Real Estate Cadastre Agency, which is a federal executive body for state management of land resources, exercising special (executive, supervisory, permissive, regulatory, etc.) functions of maintaining cadastral records of lands located on land plots and real estate objects firmly connected with them, land planning, state cadastral valuation of lands, land monitoring and state control over the use and protection of lands. Many land planning functions are implemented by territorial bodies of this agency, which are in charge of land planning on lands in federal and regional ownership, provide services in the field of land planning, state cadastral registration, state cadastral valuation of lands, as well as valuation of other real estate objects, and conduct an expert examination of land surveying documentation [3, p. 306]. With such a high percentage of lands in state ownership, the financing of such works ought to come from the budget. In such a case, it is necessary to establish a fee for each type of land planning works since there can be conducted both works in full scale and their separate types. Such regulation appears to be appropriate from the point of view of planning the expenditure budget and permanent financing since some amount of work is currently financed within the framework of state programs[1] that are adopted for a certain period of time.

Contracts. The next ground for conducting land planning is contracts. Since 92% of land is owned by the state, less than 8% remains for contracts and court decisions. Despite such a small percentage, we deem it essential to discuss this issue. First of all, it is necessary to determine what kind of contract should be concluded for land planning works to be performed. The most common is a works contract, but even at first glance such a contract has the features of being public and may affect the interests of third parties. It is possible to provide an example with the establishment of boundaries of land planning objects on the ground. Consequently, such a contract will be mixed, containing not only obligations of the parties to the contract but also public obligations of the executor. This may include the obligation of persons carrying out land planning to hand over a free copy of the land planning documentation prepared by them to the state fund of data obtained as a result of land planning.

Court decisions. Another ground for land planning is provided by court decisions: land planning is carried out if the court has made such a resolution. However, land planning on any of the listed grounds involves costs, regardless of the source of funding. As a general rule, the court imposes such costs on one of the participants in the process, most likely this will be the person who is obliged to carry out land planning. However, the obliged person himself or herself is unlikely to be able to carry it out, which presupposes that an agreement is concluded with an organization that carries out such works. Here two situations may arise: when an agreement is concluded with a privately owned organization, the price of the agreement is set freely; when land planning works are carried out by an organization that is in state or municipal ownership, it is a completely different situation. We believe that in this case, the issue of the amount and procedure of payment for such works should be regulated. The price should be established by law and be economically justified. This position seems reasonable also because the court, during consideration of a case, can commission an examination related to land planning issues. At the moment, such procedures, called land planning examinations, are commissioned quite often to establish the boundaries of a land plot in question. Examinations are also conducted for a fee. We believe that pricing policy legally established for the works would also be a guideline for conducting forensic examinations.

Based on the above, we believe that payment for land planning should be regulated at the legislative level. We do not mean establishing such a fee as a fiscal payment, but we are in for establishing maximum price rates for the performance of such works, which, in our opinion, can be set as a percentage of the cost of the land.

[1] See, for example: On the State Program for Effective Involvement in the Turnover of Agricultural Lands and the Development of the Reclamation Complex of the Russian Federation: Resolution of the Government of the Russian Federation No. 731 of May 14, 2021 (as of December 27, 2023). Available at: https://docs.cntd.ru/document/603604725?ysclid=lypw8wsox2846555857.

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A Retrospective and Rethinking of Frank Goodnow's Stay in China

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Introduction: *in the early years of the Republic of China, significant disagreements emerged between the republicans, led by Sun Yat-sen, and the constitutionalists, with Yuan Shikai as their leader, on critical issues such as the Qing dynasty's abdication and the political structure that would follow the Manchu dynasty's fall. In this politically charged environment, Frank J. Goodnow, an American scholar, arrived in China at Yuan Shikai's invitation. From a constitutional monarchy perspective, Goodnow argued that monarchy might be more suitable for China than a republic.* ***Purpose:*** *there has formed a negative perception of Goodnow and Yuan Shikai in China, with many viewing Goodnow as providing Yuan Shikai with the theoretical foundation for proclaiming himself the emperor. This paper attempts to provide an assessment of Goodnow's contribution taking a broader perspective of public administration rather than focusing solely on his theoretical positions.* ***Methods:*** *traditional theoretical and empirical methods: analysis, synthesis, analogy; historical, legal method of interpretation.* ***Results:*** *given the national context of the time, China faced an urgent need for stable governance, specifically, for an effective government capable of ensuring peace, order, and internal security. To consolidate national power and counter the political fragmentation caused by warlords fighting to establish their rule in the provinces, China required a strong central government.* ***Conclusion:*** *the lack of a cooperative spirit and organizational discipline among the populace, along with limited awareness of human rights and lack of universal education, suggested that a monarchy might have been the optimal form of government for China as it could promote state integration and foster social cohesion.*

Keywords: Frank Johnson Goodnow; Yuan Shikai; Sun Yat-sen; constitutional monarchy; Republic; Constitutionalism; China

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Information in Russian

Ретроспектива и переосмысление пребывания Гуднау в Китае

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Введение: *в первый год существования Китайской Республики республиканцы во главе с Сунь Ятсеном и конституционалисты с Юань Шикаем в роли лидера имели серьезные разногласия по таким важным вопросам, как, например, скорейшее отречение цинской династии от престола, а также форма политического устройства после падения маньчжурской династии. В такой политической обстановке Гуднау прибыл в Китай по приглашению Юань Шикая. С точки зрения конституционной монархии в период правления Юань Шикая американский ученый считал, что монархия больше подходит Китаю, чем республика.* ***Цель:*** *в Китае в целом сложилось отрицательное отношение к Гуднау и Юань Шикаю. Считается, что Гуднау обеспечил Юань Шикаю теоретическую базу для провозглашения себя императором. Однако с точки зрения государственного управления к оценке Гуднау следует подходить с более общих позиций, а не только с позиций разбора и анализа его теоретических воззрений.* ***Методы:*** *традиционные теоретические и эмпирические методы: анализ, синтез, метод аналогии; исторический, юридический метод толкования.* ***Результаты:*** *в соответствии с национальными условиями того времени Китаю необходимо было решить ключевой вопрос национального управления, а именно как организовать эффективное правительство, которое могло бы гарантировать мир, порядок и безопасность внутри страны. На самом деле Китай нуждался в сильном центральном правительстве, чтобы консолидировать национальную власть и изменить ситуацию, в то время как военные бароны делили провинции.* ***Выводы:*** *отсутствие среди китайцев духа сотрудничества и организационной дисциплины, а равно сознания прав человека и всеобщего образования, потенциально делает монархию наиболее оптимальной для Китая формой управления, поскольку монархия способствует интеграции государства и формированию социальной сплоченности.*

Ключевые слова: Фрэнк Джонсон Гуднау; Юань Шикай; Сунь Ятсен; конституционная монархия; республика; конституционализм; Китай

Introduction

In early 1913, the Beiyang government [18, p. 99] passed a proposal, through Charles William Eliot (1834-1926), a former president of Harvard, and the Carnegie Endowment for Peace, to hire an expert well-versed in constitutional law to work as a constitutional adviser to the government. Frank Johnson Goodnow (1859-1939), a 54-year-old law professor at Columbia University, stood out among other candidates for his unrivaled academic authority. Nicholas Murray Butler (1862-1947), a then president of Columbia University, commented in his letter of recommendation: 'In my judgment, Goodnow's academic spirit, his worldly skills, and his generous personality made him the best candidate for the position' [16, p. 502]. Goodnow signed a three-year contract with an annual salary of $12,000 and, having travelled by train through Siberia, on May 3, 1913 he arrived in Beijing, where he began his trip to China. Goodnow himself may not have realized that he was setting foot in China at a critical moment for China's constitutional system. Some scholars summarize this as follows: when he arrived in Beijing on May 3, 1913, it was the time when Song Jiaoren was killed (March 20); Sun Yat-sen rushed back to Shanghai from Japan (March 25) and urged the governors of the three provinces to raise troops to defeat Yuan Shikai; the latter also mobilized his army in the south, aiming to cut down the feudal domain, and a civil war was on the verge of breaking out [19, p. 156].

Goodnow's trip to China can be divided into two phases, the first of which lasted more than a year, from May 1913 to August 1914. He returned to the United States as President of Johns Hopkins University. At that stage, Goodnow worked under the Constitutional Research Society led by Yuan Shikai. In the autumn semester of 1913, he gave a full course on constitutional law at Peking University. In January 1914 Yuan Shikai dissolved the National Assembly, and in May the Constitution of Yuan Shikai was promulgated [22, pp. 227-233],

repealing the Provisional Constitution of the Republic of China of 1912 [3, pp. 168-175]. At that time, the new constitution was also known as the 'Goodnow Constitution'. In fact, Goodnow did not play any role in the drafting of the constitution. In his personal letters, Goodnow mentions that he did not give any official advice during the drafting of the Constitution and that his only contribution was its translation into English [21, p. 139]. However, it cannot be denied that the presidential system established in the Constitution of Yuan Shikai was in line with Goodnow's long-standing proposal. Goodnow's position between the 1912 Provisional Constitution and the Yuan Shikai's Constitution was also very clear. In a letter to Nicholas Murray Butler, he confessed: 'I must admit it...On the whole, I agree with the Constitution of Yuan Shikai'. As late as 1921, Goodnow still assessed this version as being 'generally in accordance with Chinese conditions' [16, pp. 504-505].

The second stage covers the period of July-August of 1915, when Goodnow came to China during the summer vacation to perform his duties as a consultant, and it was during that stay that Goodnow wrote the famous memorandum [4] entitled *Republic and Monarchy*. Paul Samuel Reinsch (1869-1923), a then U.S. minister to China, described in his memoirs the background in which Goodnow wrote this article: Dr. Frank Johnson Goodnow, an American who was a constitutional adviser, returned to Beijing for a short stay in mid-July of 1915. Yuan asked him to prepare a memorandum for the president, comparing the form of republic and monarchy in terms of which was more suitable for China's national conditions. Dr. Goodnow agreed [17, p. 135].

While Goodnow was in Beijing, Yuan Shikai hoped that he would be able to help him solve the central problem of national governance: how to organize an effective government that could guarantee peace, order, and security within the country. At that period, China leant toward the traditional monarchical system, and the concept of nationalism was not as strong as in the West. Therefore, China needed a strong central government capable of consolidating state power and changing the situation in which the provinces were divided and controlled by warlords. Of course, a strong central government was exactly what Yuan Shikai himself wanted [14, pp. 104-105].

Goodnow argued that the form of monarchy could be considered more suited to Chinese traditions and their actual political development. In his opinion, one of the particular advantages of the monarchy was that, under such a system, the succession of power was prescribed, so that it was not repeatedly the object of contention. Goodnow's essay was subsequently translated as *Republic and Monarchy* and became a nationwide document, made public by the Preparatory Security Council,[1] which was established in mid-August. In its founding declaration, the Preparatory Security Council declared: the United States is the first of the world's republics. Dr. Goodnow, a great political scientist of the United States, said that in the world system, monarchy is better than democracy, and China in particular cannot do without monarchy [21, p. 140]. Goodnow was dismayed at being instrumentalized for political purposes, but he did not part ways with the Beiyang government because of the memorandum incident, nor did he break with Yuan Shikai because of this. According to the *New York Times*, Goodnow was in Shanghai before returning to the United States at the end of August, saying that Yuan Shikai was the first person to hold the republic. Upon his return to the United States, he continued to serve as a constitutional adviser until 1917 [16, p. 515].

Goodnow was thus co-opted as a symbolic representative of Western constitutional expertise to bolster the imperial restoration campaign. It is precisely because of this that Goodenow's visit to China constitutes a fragment of the general record of constitutional failure in the early years of the Republic of China. Goodnow is often regarded as 'the agitator' of Yuan Shikai's restoration movement. Although he came to China during the formative years of the Republic, instead of earning a place in the nation's constitutional hall of fame, Goodnow was later castigated for what many viewed as an attempt to turn back the tide of history [13]. Even if there is occasional sympathetic understanding, the ridiculing of Goodnow's 'old-school political naivety' is not forgotten [19, p. 160].

Controversy over Constitutional Monarchy in China

Academic inquiry has frequently been marred by ad hominem dismissals, and the subject of Goodnow's involvement in Chinese constitutionalism has yet to receive a study that would combine theoretical sophistication, historical insight, and political concern [21, p. 134]. To take Goodnow seriously from an academic point of view is to abandon the narrative based on certain political correctness. Rather, it is necessary to acknowledge

[1] Preparatory Security Council is a political group that openly supported the restoration of monarchy and the establishment of a constitutional monarchy. The group was organized in 1915 by six people: Yang Du (1875-1931), Sun Yuyun (1870-1926), Yan Fu (1854-1921), Liu Shipei (1884-1919), Li Xiehe (1873-1927), Hu Ying (1884-1933).

Goodnow's 'intervention' with his memorandum in China's constitution-making as an important milestone in the drafting of the Chinese constitution. As some scholars have pointed out, the one-and-a-half-year period of Goodnow's visit to China was a crucial moment for China's trial of a republican form of government. With Goodnow's authoritative position in the academic world, the impact of his words on Chinese politics is incalculable [19, p. 155]. From the perspective of constitutionalism, Goodnow's influence on the constitution of the Republic of China lay not so much in his authoritative position in the academic community as in his political status as a constitutional adviser to the president. Such a perspective becomes a crucial framework for reassessing the significance of Goodnow's theoretical engagement with China. Goodnow's visit to China as a constitutional adviser to the president has already formed part of China's constitutional history. From the perspective of historical research, it is necessary to examine how Goodnow, as an external variable, 'intervened' in the constitutional dispute of the Republic of China, and how he was integrated into the constitutional system of the early Republic of China. In addition, Goodnow is recognized as the founder of three disciplines in the United States: political science, administrative science, and administrative law [20, p. 21]. Goodnow was known to be a progressive reformer in the United States, but he became an active conservative 'restorationist' in China. Therefore, to evaluate Goodnow's activities, it is necessary to go deep into his academic works related to China to compare, analyze, and even criticize.

In addition to Goodnow's *Republic and Monarchy*, his treatises on China mainly cover three aspects. First, Goodnow published academic works on China's constitutional reform. The main ones are *The Parliament of the Republic of China* [6], published in *The American Political Science Review* in 1914, and *Reform in China* [7], published in 1915. At the end of 1914, he gave a lecture at the School of Political Science in New York *The Adaptation of a Constitution to the Needs of a People* [8]. The monograph *China: An Analysis* [9], published in 1926, contains a large number of chapters discussing Chinese politics and the political situation in the country at that time.

Second, during his stay in China, Goodnow gave lectures on comparative constitutional law to Peking University students in the fall semester of 1913, and in 1916, in the United States, he published *Principles of Constitutional Government* [10] based on the lectures delivered at Peking University. Although the publication was intended as a textbook for American students, it contains numerous comments concerning China's constitutional system.

Third, Goodnow published general scholarly commentary, for example, pioneering works on public administration *Politics and Administration* [11], *Comparative Administrative Law* [12], and other classical academic works.

Goodnow's conclusion in *Republic and Monarchy* was that monarchy was more suitable for China than republicanism. This has led many to view him as if he were a criminal caught red-handed at a crime scene. It is argued that he took the wrong side in the contest between monarchy and republic. However, the reality is more complex. *Republic and Monarchy* was essentially a commissioned response to a question posed by Yuan Shikai, making it more of a 'prompted composition' than an independent scholarly treatise. Thus, any final judgment about Goodnow based solely on this text may lead us to the misunderstanding of Goodnow's position, reducing it to fragmented and disjointed interpretations that fail to grasp the full picture.

Assessment of Goodnow's Views at the Present Time

In *Republic and Monarchy*, Goodnow argues that the form of government in a country rarely depends on the intuition of the country's people or elites, but is mainly determined by forces beyond the control of manpower, which Goodnow calls 'the necessities of real life'. These forces include the country's previous historical traditions, social and economic conditions, the most important of which is violence. Under normal circumstances, monarchy means a strong man who can defeat all competitors and monopolize state power. As a rule, a monarchy can solve the problem of transfer of executive power, which is the 'most difficult problem' of human government. Since monarchy is a hereditary form of government, it is more likely that 'rules of succession' will be formed that are both clear and recognized [4, pp. 53-54]. Goodnow goes on to describe the historical experience of republics in Europe and Latin America. He believes that, in human history, monarchies have always been the mainstream of political organization, while republics only exist in small countries and oligopolies with high homogeneity. However, in the last 150 years, the world has seen a shift from monarchy to republic. Goodnow cites the experiences of the United States, the United Kingdom, and France as a set of success stories, and those of Latin America, especially Mexico, as examples of failures. In the 17th century, Britain internally overthrew its monarchy, but the republic that followed failed to resolve the issue of succession, ultimately leading to the restoration of the royal family. In contrast, American revolutionaries established a republic after their own revolution, in part because 'there was no royal house in the United States to which the government could be entrusted', and also because the foremost founding father, George

Washington, had no heirs.[1] Of course, there is another important reason: Americans had a long period of training in self-government before gaining independence. It is for all these reasons that the American republican system has survived. The case of France looks more complex. After the Revolution, there were many alternations of republics and monarchies. However, at the time of Goodnow's writing, the French Third Republic had existed for nearly half a century. Therefore, Goodnow was optimistic believing that the French republic had solved the problem of the transfer of law enforcement powers, which was due to, among other things, the French experience of self-government and the popularization of public education by the government.

The republican experiment in Latin America constitutes a set of contrasting cases. After gaining independence, Latin American colonies followed the United States as a model, but their republican experiments led to 'persistent scenes of disorder' that could sustain brief periods of peace when strongmen were in power. Once a strongman is old and decrepit, the competition among various warlords for the political center will lead to 'disorder', 'anarchy', and 'chaos'. Therefore, the 'fate' of the republican system implemented

where the 'republican soil' has not been created yet is the alternation of short-lived strongman politics and long military melee [4, pp. 54-56]. Thus, the difference between a monarchy and a republic lies in whether the government's power to enforce the law is hereditary. The issue of the transfer of enforcement powers is a difficult problem for any government. Accordingly, it must be taken into account in the design of the polity. The hereditary system of the monarchy's enforcement power can solve this problem provided that a recognized operational norm is formed; if a republican system is to solve this problem, it requires that the people have a high level of political wisdom and ability, which means that it requires training in self-government and cultivation of public education. This is the key to the success or failure of a republic [4, pp. 56-57]. Since China lacked the necessary conditions for the development of a republican system, republicanism was ultimately unsustainable in the Chinese context. It would inevitably degenerate into military dictatorship, which, according to Goodnow, represented the worst possible form of government, as it would lead to disorder, chaos, and the state of political and social anarchy.

After answering Yuan Shikai's question, Goodnow provided supplementary comment. Although the monarchy is more suitable for China than the republic, China has moved toward a republic, and under these conditions, for the reverse movement from republic to monarchy to be made, Goodnow proposed that the following three conditions must be met: first, the Chinese people and overseas powers do not oppose the restoration of monarchy; second, it is necessary to establish recognized and effective rules of succession, thereby resolving the issue of the transfer of enforcement powers; third, the new monarchy is a constitutional monarchy, not an absolute monarchy. However, Goodnow also makes it very clear that whether these three conditions are met is not something that he, an expert from outside, can judge about and that the decision must be taken by 'someone who is familiar with China and is responsible for its future development' [4, p. 58]. Goodnow believed that China at that time was unable to adopt a republican form of government for various reasons and that without the proper soil for growing a republican system (the practice of self-government, public education, resulting in the people's political wisdom and capacity thus cultivated), a republican government, that is, a government with non-hereditary power to enforce the law, would generally lead to the worst possible form of government, which is a military dictatorship. This would, in turn, lead to disorder, chaos, and anarchy in the political landscape. The best that can be expected under such a system in such conditions is the alternation of times of peace and chaos [4, p. 57]. Therefore, Goodnow's theoretical advocacy of the adoption of a monarchy in China is the question of what to do after Yuan Shikai's death. Yuan Shikai was the one who kept China as a single entity during his lifetime. After Yuan Shikai withdrew, starting from the late Qing Dynasty, the situation in China was characterized by localization of political, military, and financial power; so 'how could China avoid warlord division and constant wars?' was the core issue that Goodnow considered. In this sense, what Goodnow calls the worst form of government, that is, the naked struggle for power by force in a primitive state, is what Thomas Hobbes called the state of nature of the war of all against all, that is, the failed state.

In the article *The Parliament of the Republic of China*, Goodnow said that the realistic choice facing China is not that between monarchy and republic, but whether to follow the path of republic with Chinese peculiar characteristics [6, p. 549] or to form one military

[1] Although the United States has no royal family, before the Philadelphia Convention was adopted, the Confederate Chief Law Officer wrote to Prince Henry of Prussia asking if he could come to the United States as a constitutional monarch. There was also rumor that King George III's second son would be invited to become King of the United States. The question of heir was equally complex, with only Adams having a son among the first five presidents of the United States. But it was the only exception. John Quincy Adams later became President of the United States [1].

dictatorship after another, with the barrel of a gun holding the central place in the political arena. The republican system is based on sovereignty belonging to the people, so there can be different forms of government organization here. Goodnow argued that China should adopt a presidential system under the *Constitution of Yuan Shikai* of 1914, rather than a parliamentary system prescribed by the Provisional Constitution of the Republic of China of 1912. In this article, Goodnow also made the following suggestions concerning the design and functions of the parliament of the Republic of China: 1) who to represent: mainly the merchant class, which has already become politically conscious; 2) how to represent: legislators are appointed by local governments rather than directly elected; 3) the parliament should be advisory, without agenda-setting and decision-making powers, and it should be unicameral, which could reduce the constraints within the government. What the Chinese government needs most at the moment is swift and effective action [6, pp. 552-560].

In his article *Reform in China*, Goodnow argued that it was not enough for China to merely study Western institutions and concepts or become familiar with Western ideas. While such familiarization was indeed necessary, it was equally important for China to understand itself [7, p. 217]. For a foreign adviser like Goodnow, who was not appointed as a specialist on Chinese affairs, such a perspective was remarkably insightful. Upon his arrival in China, Goodnow wrote to Nicholas Murray Butler that from the perspective of an academic, China is a 'mysterious country' [16, p. 509]. Even after the publication of the classic work *China: An Analysis* in 1926, China was still regarded by Goodnow as 'the incredible East' [2]. China's problem is a Chinese problem. Its solution should not simply replicate European solutions, although it may be influenced by European ideas. The solution of China's problems must be carried out prudently and slowly on the basis of China's traditions and history, and in a way that is in line with the peculiarities of Chinese life [7, p. 218].

According to the preface to Goodnow's *Principles of Constitutional Government*, Goodnow once lectured at Peking University on the basic question of what the essence of constitutional government is. It is precisely because of the academic significance and value of the material discussed during lectures at Peking University that Goodnow compiled and published the lecture notes of the course after returning to the United States. In Goodnow's view, constitutional government is first and foremost a 'government of law' rather than a 'government of man' [10, pp. 2-3]. It is also in the preface to this textbook that Goodnow wrote about his observations made in China. He noted that China's political and intellectual elites had only a superficial understanding of constitutional theory, and that their conclusions were largely borrowed from studies of foreign constitutions. The problem, he argued, lay in the stark differences between the 'traditions' and 'conditions' in China and those of Western nations. For this reason, Goodnow held a critical view on the Provisional Constitution enacted by the Nanjing government in 1912. He believed that 'this constitution was based on the assumption that the constitutional text itself could exert a controlling force over political behavior, regardless of the traditions and practical conditions of the people to whom it was applied' [8, p. 31]. Thus, Goodnow raised a question that is rarely addressed by normative constitutional theory – how a written constitution (the 'parchment') can restrain the use of force (the 'gun'). In a letter to Butler written in 1913, Goodnow remarked that 'any constitution likely to be adopted in the near future would be the product of the domestic balance of political power, rather than the result of foreign influence or imported ideas' [16, p. 510].

There is a famous saying in American constitutional law: 'The Constitution is not a suicide pact' [15]. It is said that in a state of emergency, the sovereign should not protect the fundamental rights of the enemy, but must always take it as his duty to preserve the unity of the society. Of course, this does not mean that those in power can arbitrarily undermine constitutional norms and deprive private persons of rights in the name of national unity or national security. In the *Principles of Constitutional Government*, Goodnow made a comparative review of the constitutional value of national unity: 'The wonderful civilization that China has developed in history is largely due to the fact that China had a great state in the past. After the formation of China, foreign wars basically stopped, and the energy of the Chinese people could safely turn to the transformation of internal conditions without having to waste it on wars against external nations. China's history also shows that whenever there is a hostile political power on the borders, it creates a great disadvantage. The facts of China's past are even more so of the United States of America. The United States is a vivid demonstration of the positive significance of political unity, protected by vast oceans on both sides of its borders, and by occupying a vast territory where internal commerce can be carried out on the greatest extent possible. It was the awareness of the importance of reunification that led the people of the North to make great sacrifices during the Civil War in order to maintain the political unity that already existed. 'Defend the Federation' became the basis for the rallying cry, and its momentum was unstoppable' [10, p. 19].

Goodnow was born in New York City on the eve of the American Civil War, and such background meant that it was impossible for him to analyze constitutional issues without bringing Lincoln's famous statement that 'a house divided cannot stand'. Goodnow arrived in China at the time of Song Jiaoren's assassination, Sun Yat-sen's second revolution, and Yuan Shikai's southward movement to quell the chaos. Therefore, in Goodnow's eyes, the second revolution of Sun Yat-sen and South China, repealing the Provisional Constitution of the Republic of China of 1912, as well as political legitimization of Yuan Shikai and North China to quell the local rebellion of the forces are hardly regarded as a repeat of the American Civil War in China. Thus, the question of the North and the South was always the main, if not the only, way through which Goodnow thought about China's internal pluralism: 'China is from the point of view of climate, of geography and of race divided into two great sections, viz., the north and the south' [8, p. 29].

Re-Evaluation of Yuan Shikai

Goodnow never changed his support for Yuan Shikai. As he said before he left China, Yuan Shikai was the first person to hold the republic in China. On the one hand, Goodnow had no shortage of praise for Yuan Shikai and considered him to be the most capable person at the end of the Qing Dynasty. He also said: 'I say he's a conservative, but his conservatism is only relative'. Before the revolution, Yuan Shikai had always been considered the most progressive of China's top officials. On the other hand, Goodnow also had a clear understanding of Yuan Shikai, who was 'both a statesman and a politician... Otherwise, he would not be where he is today' [8, p. 31].

In 1912, Mr. Wellington Koo (1888-1985), known as the first diplomat of the Republic of China, met Yuan Shikai for the first time in Beijing and commented: 'He struck me as strong and resolute; anyone who met him would immediately sense that he was an ambitious, decisive, and naturally commanding leader' [14, p. 79]. Yuan Shikai was born in the military and completely belonged to the old school. However, in contrast to the die-hard conservatives, he seems to be somewhat liberal. He was a doer, a brilliant administrator, and a leader [14, p. 85].

However, it is undeniable that in Chinese and even Russian historiography, the evaluation of Yuan Shikai is basically negative. The reason for this may be based on Marxist theory or the narrative position of socialism, or even the relationship between Sun Yat-sen and Soviet Russia. However, from the macro level of national governance, from the perspective of political science and constitutional law, Yuan Shikai, a national leader of China at that time, should be examined and evaluated from a new perspective.

The reason why Goodnow always supported Yuan Shikai was that he saw that Yuan Shikai himself assumed the political function of a de facto monarch (as distinguished from a legal monarch) within the republican constitutional system. 'If we look back upon these years we see that Yuan Shih Kai has been able to prevent the disintegration of China, that he had almost succeeded in reor- ganizing its finances when the present lamentable European war broke out, and that he is bringing order out of disorder' [8, p. 37]. While Yuan Shikai's North represents a conservative and progressive force in China, the 'young China' of the South, with its group of radical returned students, must be regarded as destructive rather than constructive. Goodnow not only theoretically opposed the parliamentary form of government promoted by the 'returned students' in the provisional constitution of 1912 but also ridiculed the operation of the Republic of China's parliament in reality. 'The Parliament which resulted from these elections may not be said to have been representative of any of the important interests in the country with perhaps the exception of the returned students'. Before Yuan Shikai dissolved the Parliament in early 1914, its most important legislative act was that legalizing high salaries of the parliamentarians. Although Goodnow regarded Yuan Shikai's dissolution of the parliament as 'arbitrary', he also argued that the parliament did not represent any important interests in China, so no one lamented its death [8, p. 34].

Finally, Goodnow put forward suggestions regarding China's national construction. Firstly, it is necessary to strengthen the organization of the central government, defend the country externally, and cultivate the Chinese people's respect for political authority internally; secondly, it is necessary to develop the country's natural resources and progress from agricultural life to industrial life; thirdly, by all possible means, the spirit of social cooperation within political and industrial organizations should be fostered, and political participation for politically conscious classes should be expanded (first of all, there should be established advisory legislatures at the central and provincial levels); fourthly, the protection of private rights should be gradually promoted, and the rights to life, liberty, and property of individuals should be better protected; fifthly, it is necessary to reconstruct China's education system so that Chinese can apply the scientific method to their daily lives [7, pp. 219-222].

Conclusion

From the perspective of drawing on Western constitutional experience to promote China's constitutional development during the period in question, Professor Goodnow's proposals were not without merit, at least, at the time. Perhaps this can be explained by the fact that Goodnow himself was in China, where he witnessed intense struggles for power and the complex realities of Chinese society. From the professor's point of view, since the Chinese people lacked the spirit of cooperation and organizational discipline, an awareness of individual rights, and they had no access to public education, a monarchical system might have been more suitable for China as conducive to national integration and social cohesion. Of course, Sun Yat-sen opposed the establishment of a constitutional monarchy, yet in practice, the presidential republic he advocated was also highly centralized, even though the system was intended to be democratic in form.

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The Future of Welfarism and Future Welfare State in the Context of Digitalization

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Introduction: *the presence of norms concerning the welfare state and the state's welfarism in the Constitution of the Russian Federation and in the constitutional legislation of foreign countries leads to a conclusion about the ideal trend of state policy in this area. The development of various information technologies in the modern world certainly affects and will further have an impact on all areas of government policy. Therefore, it is important to understand how this novelty will influence the concept of a welfare state and whether such a state needs such innovations at all.* ***Purpose:*** *based on the study into the evolution of the welfare state, various approaches to defining its concept, scope, and content, the paper attempts to answer the question of whether the modern welfare state needs digitalization in its various manifestations.* ***Methods:*** *the methodology of the research is based on the authors' scientific constitutional-legal theories of the welfare state and the state's welfarism, the administrative-legal theory of public administration deviance studies, as well as on the basic scientific concept of forecasting the future in law and a complex scalable multimodal array of tools used in predictive legal analytics.* ***Results:*** *the researched scientific sources, materials, and regulations suggest that successful development and existence of a modern welfare state is impossible without digitalization. The task of any modern welfare state is to minimize digital risks to state welfarism.* ***Conclusions:*** *the research undertaken shows the impossibility of abandoning the social function of the state and its constitutional basis – the welfare state. The task of digitalization in relation to a welfare state lies in proposing digital solutions that reduce the risks associated with the distribution of various*

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benefits, with abuse of budgetary funds intended for social purposes, their misuse, as well as make the state's social policy reasonable and rational.

Keywords: state's welfarism; welfare state; digitalization; Russia's Constitution; poverty; indigence; blockchain

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Будущее социальности государства и социального государства в контексте цифровизации

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Введение: *наличие в Конституции Российской Федерации и конституционном законодательстве зарубежных стран норм о социальном государстве и социальности государства позволяет сделать вывод об идеальном направлении государственной политики в данной сфере. Развитие различных информационных технологий в современном мире, безусловно, оказывает сейчас и окажет в будущем воздействие на все направления государственной политики. Поэтому важно понимать, каким образом данная новизна будет влиять на концепт социального государства, нужна ли она ему вообще.* ***Цель:*** *на основании изучения эволюции социального государства, различных подходов к определению его концепции, объема и содержания попытаться ответить на вопрос о том, нужна ли современному социальному государству цифровизация в различных ее проявлениях.* ***Методы:*** *методология исследования основана на авторских научно-правоведческих конституционно-правовых теориях социального государства и социальности государства, административно-правоведческой административно-правовой теории девиантологии государственного управления, а также базового научного концепта прогнозирования будущего в праве и комплексного масштабируемого и мультимодального инструментария предиктивной правовой аналитики.* ***Результаты:*** *рассмотренные научные материалы, нормативные акты позволяют говорить о том, что без цифровизации успешное развитие и существование современного социального государства невозможно. Задача любого современного социального государства состоит в минимизации влияния цифровых рисков на социальность государства.* ***Выводы:*** *проведенное исследование свидетельствует о невозможности отказа от социальной функции государства и основы его конституционного строя – социального государства. Задача цифровизации в рамках взаимоотношения с социальным государством состоит в предложении цифровых решений, позволяющих снизить риски в распределении различных благ, злоупотреблений в обращении с бюджетными средствами социального назначения и их нецелевого использования, сделать социальную политику государства рациональной.*

Ключевые слова: социальность государства; социальное государство; цифровизация; Конституция России; бедность; нищета; блокчейн

Introduction

What is the future of the Welfare State?
This question has now acquired
an unprecedented urgency.
Dennis J. Snower *[28].*

Today, the welfarism of the state has become a seemingly integral feature of a modern rule-of-law democratic state, a kind of a global state identity.

As Gøsta Esping-Andersen put it more than 30 years ago, the advanced welfare state, which became one of the hallmarks of the 'Golden Age' of post-war prosperity, implied more than a mere upgrading of existing social policies in the developed industrial world. In the broadest of terms, the welfare state concept represented an effort to bring about economic, moral and political reconstruction. Economically, it departed from the orthodoxies of the pure market nexus and required the extension of income and employment security as a right of citizenship. But the existing structural shifts challenge traditional social policy thinking. Chronically high unemployment in Europe, like rising inequality and poverty in North America, is a symptom

of what many believe is the underlying dilemma in today's open economies: a basic trade-off between employment growth and generous egalitarian social protection. Heavy social contributions and taxes, high and rigid wages, and extensive job rights make the hiring of additional workers prohibitively costly and the labor market too inflexible. Morally, the welfare state concept sought to defend the ideas of social justice, solidarity and universalism. In today's globally integrated open economies, however, many of the assumptions that guided post-war welfare states in the advanced industrial world seem no longer to obtain [12]. European welfare states are increasingly facing serious problems of employment restructuring due to globalization and technological changes [11].

In most countries of the world, when it comes to strategic planning in public administration, particular attention is given to ensuring the long-term sustainability of national social security systems. However, the total permanent transformations of world orders that have been taking place over several years (regardless of what we mean under such transformations and of how many of these we can count in different research coordinate systems, including the pronounced trends of de-mondialization (de-globalization and counter-globalization) and deliberation, as well as the increasing articulation of the 'right of the strongest' against the background of the world's extreme financial tension) objectively put before us a significant number of issues that are difficult to resolve and still poorly understood, including the future fate of state welfarism.

The evolution of the state's welfarism and the welfare state is carried out in rather complex socio-economic and legal contexts that can hardly be characterized as 'favorable'.

The positions regarding the future of the welfare state by, for example, 2050 vary greatly. They are partly reducible to the pessimistic scenario of distrust, which was well described by Guntram Wolff and Pia Hüttl [33]. According to Éloi Laurent, the welfare state offers an adequate response both to the intensification of globalization, and, as we also believe, to the intensification of deglobalization [20]. But in the context of the increasing complexity of law, all this is becoming more and more complex and, as a result, difficult to predict in its dynamics of development [2].

In any case, discussions about the sustainability of the welfare state are now gaining the highest degree of relevance, while getting more and more attention not only from interested and reference specialists but also from politicians.

Digitalization is the process in the course of which a subject adopts or, conversely, expands the use of digital/computer technologies (including mobile applications). Most often, digital technologies are introduced in order to create a communication infrastructure that connects various types of activities within various processes related to the subject. Digitalization and digital transformation are two of the most useful/meaningful terms to explain the changes and the impact that digital technologies have had on society as a whole [19]. All this also has a very significant impact on the future of the welfare state and predetermines it.

The article discusses these issues providing a deep and multifaceted predictive (prognostic) constitutional-and-legal perspective.

The methodology of the studies partially included into the article in their substantive provisions is based on:

– the author's scientific and legal-constitutional theory of the welfare state and state welfarism developed by one of the authors of this article (E. . Aristov) and his basic scientific concept of forecasting the future in law described in his relevant publications;

– the author's scientific-legal, administrative-legal, and constitutional-legal theory of deviantology of public administration developed by the other author of this article (I. V. Ponkin), his concept of the digital state, and his complex scalable and multimodal set of tools for predictive legal analytics described, presented in his relevant publications.

The General Concept of a Welfare State

A welfare state is the most effective institution created in the long history of human cooperation. The rejection of state welfarism in consequence of following the short-sighted ideological prejudices deprives us of our most useful common good and paralyzes the very essence of our social prosperity.
Éloi Laurent [20]

The 'welfare state', according to Jonathan McCully, is a common and sometimes controversial term used to describe policies, programs, and practices aimed at providing social protection to people. It is one of the main aspects of modern government, and ultimately it serves for the benefit of every member of the society. Misinformation, myths and misunderstandings associated with this term have led to its being used in a narrow sense to describe those aspects of social protection that cause political controversy and are least popular (for example, 'handouts', 'parasitism', 'subsidies', etc.). In fact,

it includes a wide range of activities and measures that make up the 'social safety net' which allows all people to enjoy minimum standards of health, social well-being and economic security [22].

Many researchers of the welfare state are right to believe that the classical (at the same time, quite relevant, conceptually capacious) definition of the welfare state was first given in 1961 by the British social historian Asa Briggs, already mentioned above; it sounded as follows (we consider it reasonable to cite a fairly extensive quote coming from the classic):

'A welfare state is a state in which organized power is deliberately used (through politics and administration) in an effort to modify the play of market forces in at least three directions— first, by guaranteeing individuals and families a minimum income irrespective of the market value of their work or their property; second, by narrowing the extent of insecurity by enabling individuals and families to meet certain 'social contingencies' (for example, sickness, old age and unemployment) which lead otherwise to individual and family crises; and third, by ensuring that all citizens without distinction of status or class are offered the best standards available in relation to a certain agreed range of social services. The first and second of these objects may be accomplished, in part at least, by what used to be called a 'social service state', a state in which communal resources are employed to abate poverty and to assist those in distress. The third objective, however, goes beyond the aims of a 'social service state'. It brings in the idea of the 'optimum' rather than the older idea of the 'minimum'. It is concerned not merely with abatement of class differences or meeting the needs of certain groups but with equality of treatment and the aspirations of citizens as voters with equal shares of electoral power. Thus, the definition of the phrase 'welfare state' points to a number of historical considerations. First, the conception of 'market forces' sets the problems of the 'welfare state' (and of 'welfare') within the context of the age of modern political economy. Second, the conception of 'social contingencies' is strongly influenced by the experience of industrialism. Sickness, old age and death entail hardships in any kind of society... Unemployment, however, at least in the form in which it is thought of as a social contingency, is a product of industrial societies, and it is unemployment more than any other social contingency which has determined the shape and timing of modern 'welfare' legislation... Third, the idea of using organized power (through politics and administration) to determine the pattern of welfare services requires careful historical dating. The possibility of using governmental power has been related in each country to the balance of economic and social forces; estimates of the proper functions and, true or false, of the available resources of the state; effective techniques of influence and control, resting on knowledge (including expert knowledge); and, not least, the prevalence (or absence) of the conviction that societies can be shaped by conscious policies designed to eliminate abuses which in earlier generations had been accepted as 'inevitable' features of the human condition' [7].

And one can hardly agree with the assessment given by Heikki Ervasti, Jorgen Goul Andersen and Kristen Ringdal that, in accordance with modern research interests, this definition of Asa Briggs is 'quite outdated' [11]. The basic concept of the sociality of the state has remained consistent with this interpretation.

At the same time, today the concept, goals or structure of a welfare state cannot be defined in a specific universal comprehensive way. However, its main goal is to help the governments to reconcile the often competing and even contradictory dynamic ontologies of the market economy, justice, and democracy [5]. Many definitions included within the numerous models of state welfarism / welfare state understanding and legal interpretation are given in detail and commented on in the works of one of the authors of this article. This can be considered a completely reliable theoretical basis for continuing our research in this article.

Background: Some Remarks

If we do not know how something was formed,
we will not understand it.
August Schleicher [2].

As Asa Briggs notes, the word combination 'welfare state' (otherwise known as the state of universal prosperity in various interpretations; *État providence* in French) appeared in the 1940s. It was first used to describe Britain after 1945. From Britain, the phrase spread all over the world. As a rule, it was freely used in relation to various societies at different stages of development but not only by politicians and journalists. Historians almost immediately adopted the phrase. Attempts have even been made to rewrite the history of the 19th and 20th centuries, especially the British one, in terms

of the 'emergence' and 'development' of the welfare state [7, p. 221].

As noted by Anthony Larsson and Robin Teigland, the welfare state as we know it today has existed for about 100-150 years. Although some authors claim that the first welfare state appeared in the Islamic caliphate under Umar (584-644), it existed in its modern concept only at the end of the 19th century in Imperial Germany (1871-1918) under Chancellor Otto von Bismarck, when he developed legislation on social support that extended the privileges of certain noble social strata to ordinary Germans [11, p. 1]

German historiography states that the birth of the welfare state concept at the end of the 19th century coincided with the adoption of the occupational accidents law as a concession provided by Chancellor Bismarck to the German workforce tempted by communism [20, p. 20]. The French would provide their dates and events, while the Italians would provide theirs. Around the end of the 19th century, there was a turn of the active transformation of the state building toward establishing and increasing welfarism. Noteworthy is that welfare states in Europe did not result from a grandiose plan but arose gradually from multiple laws and regulations, both minor and considerable, these contributing to improving the well-being of the population [11, p. 8].

> **The evolution of the welfare state is neither linear nor successive but is associated with many conflicts and potential hysteresis loops along its trajectories**

The future of the welfare state depends on many socio-economic, political, and cultural factors.

According to Heikki Ervasti, Jorgen Goul Andersen and Kristen Ringdal, in any economic environment, the state's policy of welfarism should be based on the attitudes, preferences, and willingness of ordinary people to support social protection mechanisms. In addition to the fact that the support of the welfare state depends on time and space, it is increasingly recognized as multidimensional. This is not just a question of the welfare state 'pros and cons', and therefore it is necessary to talk about its various aspects and about a multitude of such. Here are just a few: there are different policy areas; there are issues of the social protection systems scale and design; there are issues related to their effectiveness. There are even positive and negative aspects of attitudes towards welfare policy. All this means that the study of attitudes towards the welfare state should include both the perception of collective policy issues and the perception of individual risks, since they make up a part of the foundation on which attitudes are formed [11, p. 2].

It is believed that the welfare state (otherwise known as the state of universal prosperity) has repeatedly experienced crises since what was called the golden period of its development from 1960 to the first oil crisis in the early 1970s. Welfare states have been recalibrated, rebuilt, dismantled, restructured; many other words have been used to describe various types of changes in what and how welfare states finance and provide social services in kind and in cash. How the balance between the state, the market, and civil society has changed and continues to constantly change is the issue constantly open to study. However, it seems that numerous and diverse gradual changes in welfare states, on the one hand, follow a historical path (for example, there is a certain dependence on the path), and on the other hand, welfare states are changing in such a way that they are no longer the same type and model as they were before [15, p. 525].

In our time, the inconsistencies between social protection and equitable social redistribution have significantly increased, this resulting in conflicts, and the problem of inefficient social spending has worsened. The recent disclosure by Elon Musk of information about abuses in the North American social insurance system (when expenses for many and many millions of people, allegedly aged over 120 years, were revealed), whether it was a joke or not, reflects the realities when social protection does not allow law-abiding citizens to get out of indigence while considerable sums are easily being earned by criminals from their abusive practices. The recent criminal cases initiated regarding the 'motorcade of generosity' with the illegal provision of apartments in one of the cities of the Moscow region fit well into this context.

There is a lot of talk about state welfarism as slowing down the country's economic development. However, according to Éloi Laurent, scientific research in the field of economics does not prove that the welfare state affects economic efficiency by representing a serious disincentive for work, capital accumulation and production [20].

Reinterpretation and more focused crystallization of the understanding of who deserves and who does not deserve different types and kinds of benefits, of what the limits are for officials' discretion in these matters, of who exactly we want to socially stimulate and support in our country (our peoples of Russia or an unlimited circle of 'alien whoever') are extremely important today. This will settle the model of such

Russia's welfare state that will be a reference point for the current model of the evolutionarily and conversely progressing welfare state, quite amorphous and hardly satisfying (let us at least get back to the tasks set by the President of Russia on reducing the scale of the poverty disaster in our country). This is all the more important in the context of an aging population – unfavorable expected demographic changes, when the number of elderly people increases in comparison with those who are active in the labor market.

The welfarism of the state is not only giving money to those who are objectively in dire need, it is also a broader view on sociality. According to Éloi Laurent, it happened as early as in 1306 that King Edward I of England tried to ban the use of coal in London for health safety reasons due to the thick cloud of polluting sulfur that enveloped the city [20].

If we consider the state's humane attitude and concern for people to be the center of state welfarism, we will be able to gain a better understanding of the future of state welfarism, to see it more clearly and from the perspective of more distant horizons of events.

But even in this case, we come across many counter versions (contradictions, counteractions) of a wide variety of hypotheses.

According to Miguel Glatzer and Dietrich Rueschemeyer, the discussion about globalization and the future of welfare states is shaped by two broad competing hypotheses which have been called efficiency hypotheses and compensation hypotheses. Do these competing statements really contradict each other, or can they be compatible with each other, valid under some conditions and not under other conditions? To begin answering this question, it is useful to consider causal mechanisms – more specific hypotheses that each of the main hypotheses claims. The compensation hypothesis points to the dislocations and tensions resulting from participation in a market that is beyond the control of most national governments. However, apart from mentioning politics as a likely response to dislocations, tensions, and conflicts, this view leaves the following questions open: how problems are anticipated or made politically visible after they arise; how strong the political forces are that respond to the problems; which policies will be proposed, adopted, and implemented; whether there will be any responses at all. The efficiency hypothesis states that economic globalization exerts strong downward pressure on social protection policies through various mechanisms. The first argument, as already mentioned, is that trade competition puts pressure on social spending which increase costs and make products less competitive in international markets. Lower transportation costs and the spread of technology have resulted in low-paid competitors in developing countries. Thus, globalization triggers downward spirals of social protection, since the countries compete with each other not by improving skills and developing infrastructure (which, after all, requires time and resources), but by reducing tax rates and social benefits [14].

Globalization, Personal Risks and Needs as the Factors Influencing the Welfare State

There are various reasons for citizens to support universal mechanisms of state welfare, but some consistent patterns can be identified. One of the components of the systemic element of the welfare state's support is related to whether people primarily benefit from or contribute to the financing of the state social protection, with low-income and low-skilled workers particularly actively supporting the social protection provided by the state. Many studies confirm the support of the income redistribution by the state [10].

Recent studies have shifted attention from the importance of the previous economic situation to the importance of beliefs about changes in income. In accordance with this, the objective risk of income loss seems to determine preferences for state income redistribution [25]. It is emphasized in one of the sections in these sources that the expectations of increasing incomes make some current beneficiaries of general social protection mechanisms be less active in supporting these mechanisms, because they expect to become pure investors in the future and/or view widespread government activity as an obstacle to their own mobility [3]. This shows how the objective and perceived risks of losing future income are related to preferences regarding the welfare state. We complement this knowledge by going beyond preferences on redistribution, and by exploring how objective and subjective risks of income loss relate to preferences associated with the welfare state scale and design. By going beyond preferences on redistribution, we capture how risks affect preferences on social insurance. We are researching the design to find out if people at risk will be more likely to claim progressive design of social benefits and income taxes.

We are not aware of any studies devoted to the latter, and we consider this fact important, given that program development is closer to real political discussions than the more abstract issues of income redistribution which were most often used in previous studies. In reality, governments are strengthening the insurance principle of social benefits in a number of European countries [9]. We believe it is plausible that the characteristics at the level of the country can influence citizens' preferences regarding the welfare state, as well as potentially influence personal risk and preferences. For example, we assume that the impact of personal risk may depend on GDP per capita and the level of income inequality: personal risk will be more important for the preferences with regard to the design and scale in poorer countries and in countries with higher income inequality just because the consequences of the loss of income are potentially more severe. To take into account the effects both at the country level and at the level of individuals, we will use multilevel models based on data from the 2008 European Social Survey.

The social and economic status of a person is of great importance for his preferences regarding public welfare. A large number of studies have shown that the prevailing economic situation, the employment situation, and the level/type of human capital are important determinants for an individual's support for the idea of social responsibility in the field of economic well-being [10]. Recently, comparative studies have begun to differentiate the influence of the prevailing economic and employment situations from the influence of objective and subjective variables that measure personal income loss risks. The abovenamed situations strongly correlate with the personal risk of income loss [10]. However, they are theoretically different from each other. If citizens care predominantly about their income, we should expect an ideal relationship between income and preferences regarding public welfare. The poor will be for it, while the rich will be against it. If people also reasonably care about the future economic situation, some wealthy people will support public welfare measures because their future economic situation is uncertain [24]. However, the extent to which people are risk-seeking, able to assess the risk of loss of future income and discount the future, and the way in which the risk of loss of income affects preferences beyond the requirement of 'more government' are largely unknown.

The literature on political economy focuses on the objective risks of the income loss. These studies begin from a position of rational choice, when people are moderately risk-seeking, understand their future incomes and care about them. Most of these studies involve the development of hypotheses about the welfare state preferences of the employed people, depending on the characteristics of their employment. Obviously, personal risks related to the welfare state preferences depend not only on a person's profession and employment situation.

In sociological studies, a distinction is sometimes made between 'old' and 'new' social risks, where the first ones are associated with an industrial society, and the second ones are associated with risks related to the transition to a post-industrial society (for example, with the changes in the family structure and the faster technological changes which imply the need for continuous professional development of the employees) [30]. Although we are mainly interested in the importance of the risk of job-related income loss, our choice of control variables is driven by the studies of the new social risks.

P. Rehm's work provides an excellent review of the literature on the risks associated with employment characteristics. He distinguishes between arguments and measures rooted in the classification of industries and professions [25]. One area of the studies highlights the risks posed by an open-to-trade economy. As stated in the study on compensations in trade, open economies have large welfare states, since workers demand income protection as compensation for income vulnerability associated with an open economy [8; 26]. Thus, workers in sectors that are open to trade should be more supportive of public welfare than workers in protected sectors. Although the trade compensation hypothesis has been used to explain why countries with more open economies have larger welfare states, empirical verification of the hypothesis at the individual level have been ignored until recently. Based on the respondent codes in the Industrial Classification (NACE) in combination with the OECD labor force statistics, P. Rehm determined whether respondents work in a sector open to trade and whether this sector has comparative advantages [25]. Proceeding from the trade compensation hypothesis, one should expect that workers in sectors open to trade will be more supportive of the welfare state that those who work to a lesser extent. This will be conditioned by the sectors with comparative advantages, or protected sectors. However, P. Rehm found no support for the hypothesis of compensation in trade [25]. Moreover, he found that none of the variables derived from the industrial classification, including the unemployment rate of industries, affect preferences concerning redistribution.

P. Rehm's main contribution was the conclusion that exposure to risk at the professional level is important for preferences concerning redistribution [25]. The main argument in favor of this was that changing a profession is more difficult and potentially harmful to a person than changing an industry. Changing professions often requires periods of preparation and training. Therefore, exposure to risk at the level of profession is more important than exposure to risk at the industry level. In his analysis, P. Rehm included two variables measuring exposure to the risks associated with the profession: the risk of unemployment measured by the unemployment rate according to the ISCO-88 two-digit occupation codes and the specifics of skills (also taken from the occupation codes) [25].

The argument about the importance of specific skills was developed by Iversen and Soskice [17]. They stated that the type of human capital possessed by a person determines his preferences regarding the welfare state policies. They distinguish between skills specific to a particular company or profession and skills transferable between companies. The more formal or informal on-the-job training is required to do the job, the more specific the skills are for a particular company [17]. To invest in the company-specific skills, workers need a higher level of their workplace protection and, more importantly for this chapter, require more generous income protection than workers with transferable skills. This is because if employees with the company-specific skills lose their jobs, they are likely to face a longer period of unemployment due to lower demand for their skills. Iversen and Soskice presented empirical data from the International Social Survey Program (ISSP) confirming this claim [18].

The relationship between trade openness, welfare state preferences and welfare state policies is part of a broader discussion about the relationship between globalization and the welfare state. While trying to assess the impact of economic globalization on social policy preferences, Walter and Maduz combined two models from the literature on political economy to determine the winners and losers of globalization [32]. The industry-focused model assumes that people employed in sectors with comparative advantages will benefit from globalization, while workers in disadvantaged sectors will lose out. The factor-focused model assumes that those who have a large number of production factors will benefit from globalization. In most European countries, capital and highly educated workforce are major production factors.

This means that highly educated people will benefit from globalization, while low-skilled people will lose out. Having combined the two models, Walter and Maduz predicted that the winners of globalization would be highly skilled professionals employed in professions affected by offshores, while the losers would be low-skilled workers employed in professions that could potentially be relocated abroad. They classified the offshoreability of each profession on a scale from 0 to 3, where at one end of the scale is a job that needs to be done at a specific workplace in a certain country (for example, a hairdresser), and at the other is a job that can be done almost anywhere (for example, data programming). Using this rating, they found that losers in globalization are significantly more likely to support income redistribution than the winners of globalization. As mentioned above, personal income loss risks are not only related to industries and professions and may not be fully related to objective circumstances. The ESS data include a number of questions in which respondents are asked to assess their future risks of unemployment and loss of income. This will allow us to assess the importance of the personal risk perception for the preferences regarding the welfare state. Is risk perception only a reflection of the objective risks associated with employment, or does it make an independent contribution to the preferences regarding the welfare state?

Although we focus on the importance of objective measurement of the risks associated with employment, this does not mean that we do not recognize the importance of risks arising in other areas. The profession and the economic sector are one of the three levels at which the risk of income loss can be caused, the others are the individual level and the level of the country. On an individual level, current income and educational level are certainly important in addition to gender differences related to family obligations, general family obligations, the risk of health problems related to life position and family situation (for example, the advantages from living with a partner), income loss and / or preferences regarding the state of social protection.

At the country level, several variables can influence not only individuals' preferences regarding the welfare state but also the strength of the relationship between risks and welfare state preferences. Perhaps the most important one is the unemployment rate.

Blekesaune showed that a low level of employment is associated with greater support of government responsibility [6]. Moreover, the level of occupational unemployment within the country correlates

with the overall unemployment rate in the country. The level of GDP per capita is important for a country's ability to expand its welfare state, and voters can take this into account when shaping their preferences.

The level of income inequality is a potentially important factor. Both wealth, as measured by GDP per capita, and the level of income inequality correlate with current well-being and therefore can also influence attitudes to the welfare state. With regard to cross-level interactions, we assume that the relationship between risk and the preference for generous social protection measures provided by government will be stronger in poorer countries and countries with higher levels of income inequality, simply because status losses in the case of downward income mobility are relatively greater in more unequal countries and stronger in poor than in rich countries.

The studies discussed above assess the importance of risk for preferences associated with redistribution. Both Rehm and Walter and Maduz explicitly recognized the inefficiency of reducing the welfare state preferences to the income redistribution [25; 31]. P. Rehm justified this by the fact that most social insurance mechanisms have redistributive effects [25]. We agree with this statement but nevertheless believe that empirical support for their arguments will increase if it turns out that the risk of income loss is associated with supporting the welfare state broader coverage and progressiveness of the unemployment insurance schemes, pension schemes and income taxation.

Based on the above, the following conclusions can be formulated. Firstly, national differences in supporting the welfare state have different dimensions, and these dimensions are surprisingly poorly correlated with each other. The difference between supporting social insurance and supporting income redistribution has long been recognized in theory, and more recently also in empirical research. The conclusion that the support of the broad state responsibility for social insurance at the national level does not correlate with the support for a more progressive social insurance system confirms this difference. However, at the individual level, the variables that significantly correlate with the support of state responsibility for social insurance generally coincide with those that significantly correlate with a more progressive social insurance system. Presumably, this entails a strong correlation between the current income and the individual's employment situation and the risk of income loss in the future [10].

Secondly, our results convincingly affirm the opinion that respondents should always be reminded of the certain costs associated with increasing social benefits, since the support of increased social spending decreases significantly when respondents are aware of the need to raise taxes in order to increase social spending. This is comparable with the often overwhelming support that is usually observed when respondents are simply asked if they want an increase in the state spending on social security.

Turning to the conclusions and implications for the theoretical arguments, we found no evidence for the compensation hypothesis, that is, that people who are more at risk due to employment in a sector or a profession open to trade are more committed to the welfare state. We also did not find that employment in a sector with comparative advantages matters for the preferences regarding the welfare state. The last risk variable associated with economic globalization, the Walter and Maduz indicator, which determines how likely your workplace is to be relocated abroad, is not related to attitudes to social protection in our results [32]. However, those employed in the public sector are more supportive of the public welfare.

We also find surprisingly little support for the widely cited claim by Iversen and Soskice that having company-specific skills is meaningful for the preferences regarding the welfare state [17]. Finally, we believe that the unemployment rate in the professional sphere is related to preferences in favor of the welfare state [17]

Unsurprisingly, the subjective risk of income loss has a stronger correlation with support for the welfare state, in particular with direct measurement of the risk of economic problems. Moreover, subjective risk is clearly determined not only by objective risk variables. It seems that those who express a high level of risk are more likely to demand broad state responsibility and a more progressive social insurance system. However, they are less likely to support tax increases to increase benefits.

The Nonlinear Dynamic Management of State Welfarism

Modern social security systems are totally characterized by low efficiency, lack of transparency, vulnerability to corruption, bureaucratic red-tapism, and, objectively speaking, perform their functions poorly. The introduction of digital solutions in this area also does not yet make it possible to achieve at least minimal usefulness,

especially since a significant part of the population still does not understand and use digital technologies. But one must understand that 'self-fulfilling prophecy, whereby fears are translated into reality, operates only in the absence of deliberate institutional controls', according to Robert Merton [23, p. 210]. And we are quite capable of managing the flow of events and situations if we had the necessary desire and diligence.

For a very long time, the governments of many states have been demonstrating their inability (not unwillingness, because no state wants to provoke revolutions) to cope with the problem of pronounced poverty and its extreme form – indigence. This is true with regard to states governed by the rule of law, possessing developed market economies as well as the potentials for breakthrough innovative development and for technological superiority in a particular area or a set of areas. Meanwhile, the main integral output produced by state welfarism is precisely the absence of poverty (or at least the maximum achievable level of its reduction, alleviation); different formations of states – socialist and capitalist – have different approaches, but these goals are postulated and articulated in any case.

There are no magic universal solutions here. Public management of state welfarism is always nonlinear, and is often subject to fuzzy logic, since it is always a dynamic management of contradictions and compromises. Handling of the settings and parameters of state welfarism can be figuratively compared with a huge equalizer console, when one dynamically sets the necessary levels of control signals for fine manual tuning.

According to Bent Greve, the main problem of the welfare state is that in order to meet a number of needs, measures and various types of support from the state are often required. However, it is more difficult to deal with this problem when deciding on who should be supported and who should not, with due regard for their claims to get benefits in kind or in cash. This is because we, as humans, have different preferences, but also because the place and lifestyle can cause differences in the needs to be met. Therefore, it is necessary to know more precisely what is really necessary, and, given the limited resources, how the welfare state should decide what to support and what not [16]. According to Dennis Snower, social measures of the welfare state targeted directly at the poor inevitably lead to distortions. However, when choosing from all possible types of redistributive policies of this kind, two general criteria should be followed: 1) redistributive policies that promote employment and production growth are generally preferable to those that simply transfer income from the rich to the poor; 2) countercyclical incentives for unprivileged social economic groups are usually preferable to those that do not perform the function of an automatic stabilizer. The first requirement is reasonable since the standard of living of the poor enables the creation of goods and services through employment and at the same time eliminates the harmful psychological and sociological consequences of unemployment. The second requirement is important because it protects against inefficiency and inflationary consequences that occur when government activity forces the private sector activity out [28].

Concepts of Digital Welfare and the Digital Welfare State

Poverty and vulnerability are reduced to problems that can be 'solved' or 'fixed' by technological innovation.
Jonathan McCully [22].

Increased accessibility and customization are two of the most common consumer demands these days [19]. And digitalization is the best way to meet these requirements.

The terms 'digital welfare' and 'digital welfare state' have been introduced and are becoming increasingly important.

According to Muradiye Ates, the term 'social problem' means difficulties in meeting the basic needs of individuals and groups. The social problem concept became more apparent after the Industrial Revolution which resulted in severe class differentiation and increased polarization. As a result, many developed and developing countries began to pay attention to the formation, implementation, evaluation, and dissemination of innovative ideas for satisfying social needs and solving deep social problems. In recent years, there has been a growing interest in the concept of social innovation from civil society, the private sector and government agencies. As a result, different types of products and services, new types of cooperation, and new policy tools have emerged. In this regard, social innovation can be viewed as a useful tool of social policy for governments at the local, regional and national levels. Given the accelerating urbanization, cities now need to be designed in a smarter way, as the processes of managing complex urban life require new innovative methods and solutions. The world is gradually becoming digital in all areas of life. Cities, management systems, economics, social life,

the environment, and more are all affected by this transformational progress and are involved in digital ecosystems. Digital ecosystems are redefining how cities interact and create value. They can have a significant impact on various life quality parameters such as safety, time and convenience, health, environmental quality, social relation and civic engagement, jobs and cost of living. These parameters are also the driving factors of smart cities and innovation. Smart digital solutions are becoming an effective tool for the long-term sustainability of cities and contribute to 'digital welfare' around the world [4].

According to Chloe Tartan, **'digital welfare'** (within the corresponding concept) is a notion with multi-layered contexts and connotations of use. One of the most well-known interpretations of this increasingly common notion is digitalization and the digital ontology of social services and social support measures. Another interpretation of the 'digital welfare' term concerns the digital reflection (relevant digital image) of the real welfare of people in the digital world [29].

The concept of digital welfare refers to the psychological and emotional health of people associated with the use of technology, and includes online time management, the quality of digital interaction and the way a person is affected by the constant flow of information, as well as his ability to withstand negative digital pressure. The goal is to find a reasonable balance between online and real life (offline) for improving the overall quality of life [22].

When properly used, digitalization of social protection and the public sector is reasonably treated as a way to offer a more efficient and cost-effective solution to meet the ever-growing needs of the population [19].

According to Georgia van Toorn, Paul Henman, and Karen Soldatić, the **digital welfare state** is a challenging domain for research as it sits at the intersection of two sizeable bodies of social science investigation – digital technologies and the social policy/ welfare states both of which involve a broad spectrum of rapidly changing technologies, actors and processes. Broadly speaking, the digital welfare state refers to a particular state formation in which wide-ranging digital technologies, including automated decision-making systems, algorithms, big data analytics and artificial intelligence (AI), are integrated into the administration and provision by government agencies of welfare services, which, in some cases, are then delivered through a complex set of contracted providers. This is what social policy scholars call the mixed economy of welfare. These changes are occurring across a range of areas, from social security, public and social housing, healthcare, disability and child protection services, to food aid, border security, law enforcement and justice systems. At times, they have extensive overlap spanning various socio-technical systems, despite appearing to lack any clear connection. For example, biometric authentication systems, which verify individuals' identities through distinct biological traits, such as fingerprints or facial features, are used in the distribution of welfare services and the securitization of borders, while also enabling greater conditionality in social policy. In various social service domains, citizens increasingly interact with governments through digital platforms and mobile applications. Aiming to improve access and efficiency in service delivery, digital welfare states target substantial cost reductions by reducing dependence on manual human interventions and administrative labor, and integrating algorithms to automate decision-making processes related to eligibility, service levels and other aspects of social resource allocation for citizens and their households [31, pp. 508–509].

Blockchain in Ensuring the Future of the Welfare State: The Authors' Concept

Can advanced technological and regulatory solutions within the framework of the Industry 4.0 and 5.0 concepts help to stabilize and maintain the sustainability of the track of the future welfare state development and evolution?

Our research allows us to confidently answer this question in the affirmative. At the same time, it should be taken into account that the latest digital solutions can both open up new positive opportunities and produce risks, uncertainties, exacerbate existing problems.

First of all, we are talking about the use of blockchain technologies that ensure transparency, verifiability, and accountability (this is the case of domestic developments that are 'torn off' from their developers on a fee-paying basis in terms of intellectual property rights to such technologies and in terms of post-sale management of such technologies).

Let us describe the blockchain concept in short. There is a well-established understanding of blockchain as a decentralized, distributed database that reliably and transparently stores information because each block in the chain contains 3 data elements: the data itself, their

unique identifier (hash) and the unique identifier (hash) of the previous block in the chain. Thus, each block is so bound up with the previous one that in case there are attempts to change it, this change becomes immediately obvious since the hashes will no longer match. Section 1 of Nevada Law No. NV SB398 (USA) of May 2017, supplemented Chapter 719 of the Nevada Revised Statutes with a norm containing the following definition: 'Blockchain means an electronic record of transactions or other data which is: 1) uniformly ordered; 2) redundantly maintained or processed by one or more computers or machines to guarantee the consistency or nonrepudiation of the recorded transactions or other data; and 3) validated by the use of cryprography'. We will proceed from this definition.

The potential intellectualized functional load of blockchain systems in the field of ensuring state welfarism can be decomposed into the following palette of positions:

– comprehensive discrete recording of payout flows and conditions underlying such payments; collection, processing, and storing of high-quality reference data at all levels of the social protection system and, in general, of data on the ontology of the current welfare state at all levels of the system of public authorities, with the conversion of multiple benefits paid into a single integrative one calculated for the beneficiary (family of beneficiaries) based on all significant circumstances and ensuring that social protection measures will be delivered in a targeted manner to those who need it most;

– recording, storing, and monitoring of data on all government budget expenditures on the implementation of state welfarism at all levels of the social security system, providing measurements and assessments of the overall effectiveness of social support programs;

– recording, storage, and control of the entire system of acts that provide a legislative framework for state welfarism and of all relevant administrative and executive acts at all levels of the system of public authorities (including the municipal level and cases of delegation to non-public legal actors) and of all data regarding any and every change (in real time) in the legislative framework in question at all levels of the public authorities system;

– digital accounting of the full range of digital state as well as municipal services completed and provided remotely in the fields of healthcare, social security, education, etc.

– a digital platform-based organization (blockchain-based) of the interaction of charity providers with a system of social support for marginalized individuals and others in need, as well as for supporting socially valuable and significant projects, with the technological control of how much money 'sticks to the fingers' of the charitable organizations' owners and officials; as the platform model focuses on potential beneficiaries – socially marginalized individuals, – activities aimed directly at them are launched;

– digital platform organization (blockchain-based, within the framework of the distributed finance concept) that stimulates contracts between such platforms and users and is implemented through micropayment transactions to encourage people in need to systematically interact with the digital platform:

• for performing small tasks (works) on a daily basis – as a form of paid temporary employment for the unemployed during the job search period (doing this on the blockchain will ensure greater transparency in paying fees and the possibility to track and audit traces of the social protection funds use);

• for daily performance of certain tasks in personal interests, for example, checking the social services portal daily, keeping up-to-date one's own data about the social protection posted on it.

– a digital platform-based organization (blockchain-based, within the framework of the distributed finance concept and the digital crypto assets concept) of implementing the social support measures for citizens living abroad without losing ties with their homeland (for example, pensions);

– a digital platform organization (blockchain-based) of monitoring the flow of job search requests and job offers and managing their variable combinations;

– an integrating synthetic set of all data received and collected from all levels of the social protection system for the dynamic formation and modification of the state system of the state welfarism macroeconomic management;

– integration of digital technologies in the system of gerontological social care for the elderly;

– a digital platform-based option for people on the edge of the financial subsistence, involving targeted instant preferential micro-loans or social benefits aimed at helping them to avoid being thrown out of their homes and becoming homeless for late payment of rent and utilities or housing mortgages (clearly, up to a certain cost level), as well as providing assistance to such persons through a network of social food stores.

The level of the Internet provision and digitalization, objectively one of the best in the world, significantly reduces the risks that all of the above positions may remain ink on paper due to the 'digital immaturity' of the regions. Today, there are all the necessary and sufficient conditions to begin implementing the abovementioned items of the ambitious, large-scale project of 'blockchainizing' the welfare state ontology sphere ('life' and 'operation', functioning and development).

Not to harm state welfarism through digitalization of the welfare state

Many authors admit that digital technologies most often adhere to the paradigm of control and supervision, exaggeratedly prioritizing efficiency over the social care nuances [31]. In addition, digital solutions are often difficult to scale for the social protection sector, and the rapid development of digital technologies challenges some of the existing structures by providing citizens with new opportunities in areas where they see a need for something that is currently not provided by the state [19, p. 1]. On the other hand, there is a problem that digital tools are being introduced in this sector with minimal public discussion or accountability [22].

It is very important that everything we describe does not turn into a so-called 'digital concentration camp'. It is believed that this forcibly and ideologically-motivationally marginalized phrase is actively used by the yellow press. But this is not true.

Admittedly, Philip G. Alston, the UN Special Rapporteur on extreme poverty and human rights, was right to state in 2019 as follows: 'The embrace of the digital welfare state is presented as an altruistic and noble enterprise designed to ensure that citizens benefit from new technologies, experience more efficient government, and enjoy higher levels of well-being. Often, however, the digitization of welfare systems has been accompanied by deep reductions in the overall welfare budget, a narrowing of the beneficiary pool, the elimination of some services, the introduction of demanding and intrusive forms of conditionality, the pursuit of behavioral modification goals, the imposition of stronger sanctions regimes, and a complete reversal of the traditional notion that the state should be accountable to the individual' (Item 5 of the Report, p. 3); 'But as humankind moves, perhaps inexorably, towards the digital welfare future it needs to alter course significantly and rapidly to avoid stumbling zombie-like into a digital welfare dystopia. Such a future would be one in which: unrestricted data matching is used to expose and punish the slightest irregularities in the record of welfare beneficiaries (while assiduously avoiding such measures in relation to the well-off); evermore refined surveillance options enable around the clock monitoring of beneficiaries; conditions are imposed on recipients that undermine individual autonomy and choice in relation to sexual and reproductive choices, and in relation to food, alcohol and drugs and much else; and highly punitive sanctions are able to be imposed on those who step out of line' (Item 77 of the Report, p. 19)[1].

This warning highlights the significant negative consequences of the active measures of the world governments taken to digitalize, automate and informatize their social protection systems. Philip Alston expressed concerns that had previously been voiced by scientists and activists, but have not yet received widespread attention, especially those related to the possible weakening of privacy rights, increased surveillance and the fast growth of social inequality. Philip Alston was also disquieted by the excessive influence of the government and the further marginalization of vulnerable groups due to obstacles in digital systems accessing and navigating. The report became an important presentation and shifted the discussion from talking about the distant future to acknowledging current circumstances. It emphasized that 'the digital welfare state has either already become a reality or is just emerging in many countries of the world', while the associated risks and inequalities are actively revealed [31].

And these concerns are quite reasonable. According to Jonathan McCully, the development of forecasting algorithms and sophisticated risk models has prompted governments to implement automated tools for detecting fraud in the social protection sphere. One of the most vivid examples was the SyRI system in the Netherlands. It included applying a black-box risk calculation model to a huge amount of personal data obtained from various government agencies in order to prevent and combat fraud in areas such as social protection, taxation and labor law. Risk profiles created using a secret model were used to identify individuals with the increased risk of committing fraud. In addition to the fact that the SyRI system rather arbitrarily invaded the privacy of social

[1] Report of the Special Rapporteur on Extreme Poverty and Human Rights of October 11, 2019. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Poverty/A_74_48037_AdvanceUneditedVersion.docx.

protection recipients, it was constantly implemented in poorer and vulnerable areas. This resulted in additional stigmatization, stereotyping and clearly excessive control of certain communities. In 2020, the Hague District Court cancelled the legal platform of SyRI based on the concept of the human rights priority. Risk models are also used to identify 'problem' families, which the child protective authorities are focused on. In 2019, local councils in the UK processed the personal data of hundreds of thousands of people to create computer models in an attempt to predict child abuse and intervene before it happened. These systems have been heavily criticized for relying on highly subjective indicators, such as estimates made rather arbitrarily by child care professionals or courts, to determine the accuracy of predicting child abuse [22].

Failures of digital technologies in public administration are especially frequent in the social sphere [34].

Conclusion

Miguel Glatzer and Dietrich Rueschemeyer reasonably point out that even if the real prospects for successful social policy in the current and foreseeable future period are not very good for many middle-income countries, not to mention their poorer developing counterparts, the idea of politically supported and state-funded social protection will remain on the global agenda for an indefinite time in the future [14]. According to Bent Greve, the welfare state concept will remain relevant, but its size, structure, and ability to achieve the goals of equality and full employment, as well as the impact of national states on the welfare in an increasingly global and regionalized world, are the subject of debate. In the last few years, we have witnessed a slight reduction in the welfare state classical activities (for example, income payments), but at the same time, the role of the welfare state in relation to new social risks and service provision has increased, which means that the welfare state is bridging the gap between generations and is more in line with the social investment approach [15, p. 532].

Efforts to reform the social protection system, as Iain Begg, Fabian Muchövel and Robin Niblett put it, are connected with a number of dilemmas on the appropriate forms of decision-making and democratic control, but there are reasons to be optimistic about the future of the European social model [5].

Jack Lawrence Luzkov reasonably writes about the value of the welfare state collectivism: 'Societies built on common values produce happier and less alienated people because they are no longer left to themselves, more willing to cooperate as they have something in common with everyone else' [21, p. 21].

According to Éloi Laurent, the bright future of the welfare state, of course, is not carved in stone, it is the result of a century of social progress and human development gained by the most developed societies of the world thanks to their freedom. Éloi Laurent asks essential questions and answers them himself confidently and thoroughly. – Does social protection contribute to the moral weakening of the individual? This is not true: it ensures his well-being. Does the welfare state limit economic dynamism and stifle wealth creation and innovation with its unbearable expenses? This is a lie: it encourages risk, develops human abilities and supports social cohesion. Is the welfare state financially unstable? This is not true: it has never led to an economic crisis [10, p. 20].

The 'cloud' of the welfare state mystification, accumulated over many decades, demands that we dispel this fog of myths, uncertainties, and ambiguities about the nature and ontology of state welfarism, as a guarantee of the correct and accurate vision of the trajectories of its evolution in the future.

Predictive analytics is implemented through various statistical methods, including data mining, predictive modeling, and machine learning, which analyze current and historical facts in order to forecast future events [27].

The scenario predictive modeling carried out by the authors of this article for several dozen trajectories of the possible events (up to the possible but unlikely, excluding scenarios where a very low probability level comparable to the calculation error is reached) led to the formulation of the following forecasts:

1. The welfarism of the state as one of the fundamentals of the constitutional order and as one of the basic constitutional principles will remain embedded in the ontology of statehood of any state in the world.

2. The welfare state in its basic design and ontology will undergo transformations and technologically driven conversions. At the same time, throughout this rather intensive evolution of the welfare state, there will be a conflict between the digital emasculation of the 'spirit' of welfarism in the state construction and the desire to retain and strengthen it in every possible way.

3. If used correctly, digital solutions will significantly reduce the risks of the social budget funds abuse and misuse and will make the state system of macroeconomic management of the state's welfarism, and consequently the state system of scalable management of the horizons of 'macro-welfarism' and 'micro-welfarism', more reasonable and rational and more sensitively iteratively adaptable. With this, such digital technologies must undergo double or triple redundancy and binding by multiple control and evaluation feedback loops.

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Prospects for Legal Regulation of Social Relations in Healthcare in the Conditions of Artificial Intelligence Application

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Introduction: *the article discusses current trends and risks associated with the use of artificial intelligence in healthcare. Medicine is one of the main areas of application of many modern technologies. However, the utilization of some technological innovations is insufficiently regulated by law or not regulated at all, which results in organizational difficulties and causes distrust among a large number of patients.* ***Purpose:*** *to review the main technologies based on artificial intelligence used in healthcare, to analyze the international and domestic legislative framework regulating this field, to identify the most dangerous obvious and non-obvious risks of using such technologies in modern medicine, to evaluate the risks and propose possible ways to overcome them.* ***Methods:*** *the study employed general scientific methods, including description, observation, analogy, comparison, induction and deduction, analysis and synthesis, as well as special scientific methods such as comparative-legal and formal-legal ones.* ***Results:*** *the paper presents the mechanisms for improving the quality of medical care that take into account the risks of the application of artificial intelligence; the study shows that the development of genetic technologies threatens the constitutional right to health protection, the right to protection of personal data, the right to protection of genetic information, the right to work, the principles of non-discrimination, social equality. Currently, the collection, storage, analysis, and use of genetic information by private companies should be restricted by law.* ***Conclusions:*** *it is necessary to improve domestic legislation regulating the rights of individuals and citizens to control the use of their genetic information, to regulate the procedure for training doctors and other specialists providing medical care through the use of technologies based on artificial intelligence, to create new state systems for assessing the quality of medical activities. The widespread introduction of artificial intelligence into all social processes is one of the main trends of our time; therefore, large-scale reforms of law, healthcare, education, and scientific activities seem inevitable.*

Keywords: healthcare; artificial intelligence; medicine; law; risks; legal regulation; bioethics; high-tech care; ethics; medical law

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Information in Russian

Перспективы правового регулирования общественных отношений в сфере здравоохранения в условиях применения искусственного интеллекта

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Введение: *в статье рассматриваются имеющиеся тенденции и риски применения искусственного интеллекта в здравоохранении. Медицина – одно из основных направлений прикладного использования множества современных технологий. Однако применение некоторых технологических новшеств недостаточно регулируется или вообще не регулируется законом, следствием чего является возникновение организационных трудностей, а также недоверия у большого числа пациентов.* ***Цель:*** *рассмотреть ключевые технологии, основанные на искусственном интеллекте, применяемые в здравоохранении, проанализировать международную и отечественную законодательные базы, регулирующие данную сферу, выявить наиболее опасные очевидные и неочевидные риски применения технологий, основанных на элементах искусственного интеллекта, в современной медицине, дать им оценку и предложить возможные пути их преодоления.* ***Методы:*** *в работе использовались общенаучные методы, такие как описание, наблюдение, проведение аналогий, сравнение, индукция и дедукция, анализ и синтез, а также частнонаучные методы: сравнительно-правовой и формально-юридический.* ***Результаты:*** *представлены механизмы повышения качества медицинской помощи с учетом рисков применения искусственного интеллекта; установлено, что развитие генетических технологий ставит под угрозу конституционное право на охрану здоровья, право на защиту персональных данных, право на защиту генетической информации, право на труд, принципы недискриминации, социального равенства. В настоящее время законодательно следует ограничить сбор, хранение, анализ и использование генетической информации частными компаниями.* ***Выводы:*** *требуется усовершенствовать отечественное законодательство, регулирующее права человека и гражданина на распоряжение своей генетической информацией, регламентировать порядок обучения врачей и иных специалистов, оказывающих медицинскую помощь посредством применения технологий, основанных на искусственном интеллекте, создать новые государственные системы оценки качества врачебной деятельности. Повсеместное внедрение искусственного интеллекта во все общественные процессы – одна из главных тенденций нашего времени, в связи с чем крупномасштабные реформы права, здравоохранения, образования и научной деятельности представляются неизбежными.*

Ключевые слова: здравоохранение; искусственный интеллект; медицина; право; риски; правовое регулирование; биоэтика; высокотехнологическая помощь; этика; медицинское право

Introduction

The Constitution of the Russian Federation establishes the right of every citizen to healthcare and medical assistance (Article 41). This assistance is provided to citizens free of charge in state and municipal healthcare institutions and is financed from budget funds, insurance premiums, and other revenues. In accordance with the current legislation on healthcare, medical assistance is divided into three types: primary, specialized, and high-tech. Modern medical science progresses every year.

In the modern world, artificial intelligence (hereinafter referred to as AI) plays an increasingly important role in medicine. The advances of modern information and telecommunication technologies, including AI, are more and more widely implemented in practice. A significant part of scientific papers describing the practical application of the latest AI technologies is devoted to medicine. In 2024, during a press conference, President of Russia V. V. Putin

made a number of important statements. The head of state emphasized the importance of fundamental research in the field of AI: 'Artificial intelligence is very important and necessary, but without the ability to think of those who make decisions, AI can do a lot in a direction we do not need'[1].

Today, many experts believe that in the near future, AI will become an indispensable tool for all medical workers [20, p. 778]. Nevertheless, according to surveys, our compatriots, as well as Americans, are quite skeptical about the process of introducing AI technologies into healthcare. This is evidenced by the results of studies conducted by VCIOM (Russia) and the Pew Research Center (USA). The share of patients who feel uncomfortable if a doctor relies on AI solutions to make diagnoses is 49% in Russia and 60% in the US. Less than half of respondents in both Russia and the US believe that the use of AI in diagnosing diseases will lead to positive results.[2] Thus, in rather different societies, there is distrust in the use of AI in the treatment process. Interestingly, it is also possible to use AI to investigate the problem of mass perception of AI technologies (and any other phenomena) [33]. It can also offer options for reforms or influence on public opinion to address this problem.

We believe that public opinion will also change over time as the entire healthcare delivery system improves through the increased efficiency and reliability of new technologies. When the quality of diagnostics and treatment in all healthcare institutions significantly increases, then the majority of patients will trust AI-based technologies more. This process may take considerable time, but an abrupt transition to the widespread use of AI in medicine cannot be ruled out in the event of rapid advances in technology.

Mathematically, the implementation of AI is feasible from a safety point of view when its error rate is less than the error rate of humans performing the same activity. For some medical technologies, this level of error-free AI has already been achieved or will be achieved in the coming years [41]. Therefore, the state should take measures to educate the population about what these technologies are and why they should not be feared. It seems that such work may be not necessary; however, human history indicates a number of features that are typical of the introduction of any new technology in medicine or other areas. It is always necessary to pay increased attention to safety issues, to show citizens the results of experiments and test trials confirming the safety, productivity, and benefits of new technologies. Only by operating with data and facts, it is possible to convince people not to be afraid of AI and to trust it in the process of treatment.

The market of innovative medicine continues to grow rapidly: the segment's volume in Q1 2024 amounted to RUB 11.5 billion, which is 38% more than a year earlier. The industry leaders are Sberzdorovye, Tsifromed, and Motorika. In particular demand are telemedicine consultations: the demand for them has shown growth of 94%[3]. Other top technologies include AI consultants, chatbots, remote health monitoring, bioprinting, and a range of preventive medicine technologies. The application of innovations is currently proceeding at a rapid pace, as many of them can improve the quality of medical care.

In accordance with Decree of the President of the Russian Federation No. 529 of June 18, 2024 'On Approval of Priority Areas of Scientific and Technological Development and the List of the Most Important High Technologies', preventive and personalized medicine have been included among the priority areas of scientific and technological development[4]. At the same time, the application of the latest technologies based on the elements of artificial intelligence is very poorly regulated by law today. The researchers' observation that 'the problem of legal regulation of artificial intelligence is acute in the field of jurisprudence because neither doctrine nor laws provide a clear understanding of the specifics of its legal status and activities' [5, p. 21] is entirely justified.

The problems of legal regulation of AI applications in medicine in recent years are increasingly reflected in scientific research. S. A. Krasnyy considers medical and legal aspects of the application of artificial intelligence in e-health [11, pp. 45-53], Sh. S. Gadzhimagomedova raises problematic issues of legal regulation of artificial intelligence in medicine [8, pp. 517-522], while E. I. Denisov studies legal and ethical aspects of the use of

[1] Putin believes that AI can mislead the path of development without human ability to think. *TASS* [website]. Available at: https://tass.ru/ekonomika/19867895.

[2] VCIOM: Half of Russians would not like artificial intelligence to be used in medicine. *TASS* [website]. Available at: https://tass.ru/obschestvo/190357816.

[3] Medtech market grew by 38% in Q1 2024. *Smart Ranking*. Available at: https://smartranking.ru/ru/analytics/medicinskie-tehnologii/medtech-rynok-vyros-za-i-kvartal-2024-goda-na-38/.

[4] On Approval of Priority Areas of Scientific and Technological Development and the List of the Most Important High Technologies: Decree of the President of the Russian Federation No. 529 of June 18, 2024. Access from the legal reference system 'Garant'.

augmented reality technology in the treatment of patients [9, pp. 5-10], etc.

In the Russian Federation, the digital transformation of healthcare outpaces legal regulation of this sphere. This is explained by the pace of scientific advances, which are successfully tested and implemented in practice, by the scientific and technological race against foreign countries, by the need to ensure promptness and improve the quality of medical care. Some modern types of diagnostics and treatment would be impossible without digitalization.

Digital transformation of healthcare as a process of introducing advanced information technologies in the organizational and practical part of medicine is an integral part of the implementation of the state policy in the field of digitalization. Comprehensive digitalization of the industry involves the introduction of a set of technological, managerial, and legal changes. Since 2022, the domain 'Healthcare' has been formed in our country. A domain is understood here as an area of activity of state bodies and extra-budgetary funds belonging to one branch of the economy and social sphere, having common segments (profiles) of individuals or legal entities, and formed with customer paths taken into account. Among its main tasks is the creation of 'digital twins' of medical organizations, doctors, and patients[1]. Data openness and completeness will contribute to improving the quality of medical services and optimizing MHI (mandatory health insurance) services.

The idea behind the digitalization of the industry is to fully ensure the constitutional right of citizens to healthcare and medical assistance in the new reality. In a federalized state, this implies that a citizen has the opportunity to receive fast and high-quality care in any region on the basis of a unified medical card available throughout the country. It includes personal data, information on vital signs, information on social status (disability), a digital MHI policy, research history, vaccinations, and a patient model (risks, clinical data).

At the same time, the course for import substitution in the process of healthcare digitalization is becoming more apparent. The state has actively started investing in the software field, and state companies have been given the task of switching to domestic software. Unfortunately, domestic software has not yet reached the level of world leaders, as Russian developers do not have sufficient access to global markets and cooperation with international partners. In addition, the country currently lacks a unified strategy for the industry development. This requires a comprehensive approach, including reforms in healthcare, stimulation of innovations, and creation of favorable conditions for attracting investments.

Main AI-Powered Technologies Used in Medicine

Let us take a look at some individual AI technologies used in medicine today. The most common technology is machine learning. This technique allows computer systems to use algorithms to automatically learn and improve performance on specific tasks, such as diagnosing diseases based on available CT (computed tomography) scans, ECGs (electrocardiogram), X-rays, or analyzing other patient data. Notably, technologies based on AI elements can detect disease dynamics at an early stage, determine the effectiveness of treatment, and anticipate the risks of disease complications.

Some elements of AI are already being applied in practice in the healthcare system. In Russia, for example, the 'Aida' algorithm[2], introduced at the initiative of the Moscow Department of Healthcare, has proven itself perfectly effective. In 2023, the algorithm reached a new level: now it not only analyzes reported symptoms and recent test results but also takes into account retrospective information from the electronic medical record – protocols of past examinations, laboratory, and instrumental tests over the past two years. Specialists note that this service is expected to soon appear in all adult polyclinics in the capital.

It is important to point out that today's AI does not replace doctors but assists them (the 'second opinion' effect) in diagnosing one of 95 serious diseases that require additional tests – diabetes, heart failure, and others. If the doctor's and AI's opinions do not coincide, the system signals this by issuing a notification. The specialist is offered to consider the proposed alternative, but the final decision on the diagnosis is only made by a human doctor[3]. Z. Li holds a similar position: 'Currently, artificial intelligence is effective only in the field of focused research, and there are still some

[1] All medical services will be united on one digital platform. *Russian Gazette*. Available at: https://rg.ru/2022/07/11/vse-medicinskie-servisy-obediniat-na-odnoj-cifrovoj-platforme.html?ysclid=m0yidu101g477038853.
[2] There have been found AI solutions for doctors. *Kommersant*. Available at: https://www.kommersant.ru/doc/6199795.
[3] Sber Med AI [website]. Available at: https://sbermed.ai/diagnostic-center/aida/.

limitations in its application in everyday life and healthcare' [32, p. 243].

Here is another example. On November 14, 2023, in Moscow was launched the 28th clinical direction that employs AI algorithms in order to recognize pathologies. The preliminary result of the study is achieved in 2-3 minutes[1]. The service is based on computer vision technology, which is able to detect various diseases, including sinusitis, a serious pathology. Algorithmic studies of other body parts have also been introduced earlier: the brain, mammary glands, chest organs, spine, abdominal organs, knee joints, and feet.

A little earlier, in 2022, scientists from St. Petersburg presented a similar IT architecture of a medical organization that uses computer vision in its work, created on the basis of a reference model of IT and the technological architecture of a medical organization. The architecture involves the use of cloud infrastructure and specialized software and makes it possible both to introduce new types of equipment, such as 3D cameras and image sensors, and use traditional equipment: ultrasound machines, X-ray machines, and MRI machines [29, p. 224].

Three advanced engineering laboratories in the field of biotechnology and microfluidics of the Cognitive Engineering School are operating at Novosibirsk State University. New personnel, planned to be trained in digital engineering, will have sufficient qualifications to work on decoding the genome, creating DNA chips, test strips, and micromotor technologies.

Novosibirsk University is also planning to open Siberia's first center for preclinical research on large animal models for oncology treatment. A computer tomography scan has already been purchased. Studies conducted by scientists from the Institute of Nuclear Physics of the Siberian Branch of the Russian Academy of Sciences with the use of boron-neutron-capture therapy in animals with cancerous tumors have shown positive results. To confirm the effectiveness of the treatment, experiments must be conducted on hundreds of animals of the same type in the conditions of the new laboratory. The project is being implemented jointly with the N. N. Blokhin Oncology Center with the support of the state program 'Priority 2030'[2].

A new supercomputer named after the famous Russian mathematician Sergey Godunov has been launched in the Novosibirsk Region to forecast epidemics. The project was implemented jointly with the Institute of Mathematics of the Siberian Branch of the Russian Academy of Sciences. The super system is able to perform calculations on critical tasks in the field of AI application: medical tomography, nature-like technologies, construction of system development scenarios along the axis 'biosphere – economy – society', and others.[3]

Another important and promising area related to machine learning is the processing of biometrics. The Center for Biometric Technologies plans to collect palm vein patterns, use fingerprints and retinas for identification[4]. Especially noteworthy is the fact that the system will definitely not include genetic information – its distribution is strictly prohibited. The new modalities can be used at secure facilities where increased security measures are applied and time is counted.

Another application of AI in medicine is natural language processing. In today's world, 'the prevalence of artificial intelligence applications using artificial neural network architecture for functions such as natural language processing, object detection, speech, and image recognition has increased significantly' [29]. In particular, medical data should be mentioned. They represent huge layers of information (impersonal descriptions of patients' complaints during illness, treatment recommendations, journals, cards, etc.), which will be impossible to analyze and compile. It is necessary to make a reservation that all such data in polyclinics and hospitals are systematized with the help of information systems, but there are no unified standards on how to do it. The programs that are used to collect statistics also differ. At the same time, more detailed and specific information will be useful for the doctor[5].

That is why applications for doctors that allow them to analyze the symptoms of a patient with diagnoses from

[1] Moscow has taught artificial intelligence to detect ENT (Ear, Nose, and Throat) diseases on X-ray. *TASS* [website]. Available at: https://tass.ru/obschestvo/19275911.

[2] NSU will create a center for preclinical research on large animal models. *Website of Novosibirsk State University*. Available at: https://www.nsu.ru/n/media/news/nauka/v-ngu-budet-sozdan-tsentr-doklinicheskikh-issledovaniy-na-modelyakh-krupnykh-zhivotnykh/.

[3] In Novosibirsk the supercomputer 'Sergey Godunov' has been created. *RBC*. Available at: https://www.rbc.ru/life/news/65dd749b9a7947709b4a928c?ysclid=m0yilsi3x9860983124.

[4] The Unified Biometric System is planned to collect palm vein patterns. *Izvestia*. Available at: https://iz.ru/1626347/2023-12-26/v-edinuiu-biometricheskuiu-sistemu-planiruiut-sobirat-risunki-ven-ladonei?ysclid=m0v4khkywu942836172.

[5] Natural language processing in the healthcare. *Azati*. Available at: https://azati.ai/natural-language-processing-in-the-healthcare-industry-2022/.

the database and medical reports are becoming particularly relevant. This reduces the probability of errors in establishing a diagnosis and simplifies the doctor's work when dealing with an array of electronic medical records. Such technology has been successfully tested and implemented in the Salt Lake City Clinic in the USA[1]. Canadian scientists have successfully applied similar AI methods in the rehabilitation of stroke survivors [31].

AI-powered chips. The pace of development of neurotechnology is undoubtedly impressive. One of the most successful and innovative technologies in this field is the cochlear implant, which is an interdisciplinary development. The essence of the development is that millions of deaf people around the world have already gained the ability to hear.

In the future, sensory interfaces that stimulate the development of different parts of the nervous system and restore sensations can be developed and popularized. For example, visual implants are being introduced for visually impaired people – electrodes receive signals from cameras on glasses and send impulses to the brain. In general, artificial intelligence today is used to conduct a lot of medical scientific research and create new drugs, equipment, and treatment methods.

Practical application of neurointerfaces. Russian researchers are currently working on the creation of the country's first artificial neuron (neuristor), which will become the basis for the operation of a neuromorphic computer. A neuromorphic computer mimics the human brain. Connecting neuristors with already created memristors (artificial brain synopses), it is possible to get a chip capable of calculating the most advanced of currently existing neural network algorithms at the physical level[2]. Such devices could be installed in drones, robots, and other equipment.

The situation in the sphere of chip implantation in humans is different today. Modern science still does not know how exactly information is encoded in the brain, but it is getting closer to understanding the neural code. There have been created interfaces the algorithms of which make it possible to read information directly from the brain. AI has great prospects for application in the development of prostheses that work like a human organ[3]. And for people with severe injuries, AI can improve the quality of life, up to the ability to earn their own money [34].

In early 2024, Neuralink owner Elon Musk announced the implantation of a neuro implant into the human brain. The neurochip called 'Telepathy', designed for patients who have lost control of their limbs, consists of thread-like electrodes attached to a receiver capsule via Bluetooth to control personal computers, smartphones, and bioprostheses[4]. Patient Nolan Arbaugh was paralyzed as a result of an accident. At the age of 29, desperate to continue his normal lifestyle, the young man decided to take part in the experiment announced by Elon Musk's Neuralink company.

The chip implantation experiment was a success – the patient was discharged from hospital after a few days, without cognitive impairment. A few months after the operation, Nolan could play chess and the video game Civilization using the power of thought through the implanted chip. In total, the study is supposed to last about 6 years. Of course, monitoring of the patient is under the strict control of a team of doctors, programmers, and specialists in other fields. The head of Neuralink, Elon Musk, said that the next vector for the company's development, in addition to the development of these chips, is the creation of implants for blind people.

In May 2024, news broke that a neurochip would be implanted in a second patient: the American neurotechnology company Neuralink received permission from the country's authorities to do that. Each new case of neurochip implantation is to be approved by executive authorities because of the risks of using these technologies and due to the lack of experience and sufficient application practice.

Despite a number of imperfections in the experimental technology, it is planned to surgically place an implant in 10 patients by the end of the year. In total, more than 1,000 people are already on the waiting list for the implantation. Further, the company is planning to expand its activities and begin the process of registering device trials in Canada and the UK. Neuralink hopes that in the future implants will be able not only to control cursors and keyboards but also to restore motor function in people with spinal cord injuries[5].

[1] Why we need natural language processing in medicine: Current tasks and challenges. *Habr*. Available at: https://habr.com/ru/companies/docplus/articles/411123/.

[2] Up to the brain parts: the first artificial neuron is being assembled in Russia. *Izvestia*. Available at: https://iz.ru/1715539/denis-gritcenko/do-mozga-chastei-v-rossii-sobiraiut-pervyi-iskusstvennyi-neiron?ysclid=m0wesuxy6j492045702.

[3] Iron that can feel: how high technology helps in prosthetics. *Habr*. Available at: https://habr.com/ru/companies/sberbank/articles/781308/.

[4] Elon Musk says Neuralink has implanted its first brain chip in human. *The Guardian*. Available at: https://www.theguardian.com/technology/2024/jan/29/elon-musk-neuralink-first-human-brain-chip-implant.

[5] US FDA clears Neuralink's brain chip implant in second patient, WSJ reports. *Reuters*. Available at: https://www.reuters.com/science/us-fda-clears-neuralinks-brain-chip-implant-second-patient-wsj-reports-2024-05-20/.

Elon Musk's company often highlights that the mass use of neurochips is a matter of the near future. Today, chips can be placed in virtually any system of the nervous system to read or stimulate nerve endings. Neurochips can improve cognitive performance, restore sensation and motor control, and much more. So far, the technology is very expensive and unreliable, so in the near future, despite the most optimistic forecasts, we will not see its mass introduction in practice.

It is plausible that AI will merge with natural intelligence over time. The question of using neurochips for healthy people is controversial, but such chips can obviously be used to monitor a person's condition, for example, for the prevention of cancer or even seasonal diseases (flu, acute respiratory viral infections, COVID, etc.).

Some scientists claim that the fusion of artificial intelligence and humans is inevitable. AI, with its algorithms, will help decode information from the brain. This is a more complex process than those noted earlier. Chinese researcher D. Zhao from Jimei University (China) holds the following point of view: '...modern trends will lead to the cybernetization of the human body, while the physical composition of replicants (androids, AI, etc.) is gradually becoming similar to the human body' [43, p. 135]. This statement is not science fiction: Chinese robots are already being controlled by human brain cells. MetaBOC open-source software, developed in China, allows human brain cells grown on a chip to control robots. The software is an interface between a biocomputer based on brain organoids and other electronic devices. The organoid perceives the world through electronic signals and controls connected devices. The robot is trained in a virtual environment, which is safe for brain cells. This is far superior to pre-existing technologies, such as a system for controlling robot movement using extraocular muscles through a special headset [26, pp. 1-4]. In the scientific paper *Research on General-Purpose Brain-Inspired Computing Systems*, published in 2024, a team of Chinese scientists stated that their tests had been successful and the results obtained may become the key to the emergence of general artificial intelligence [37, p. 4].

The stated changes are producing new trends – professions will inevitably become multidisciplinary. A neurosurgeon will eventually be not only a doctor but will also acquire skills in working with AI, neuro interfaces, and the basics of robotics. Such trends are clearly visible in Russia, as our country is one of the world leaders in the introduction of AI in various spheres of human life, including medicine.

In the summer of 2024, the robotic complex for cardiopulmonary resuscitation 'CardioRobot', manufactured by Roselectronics, was presented at the exhibition 'Russia'. As standard, doctors can qualitatively perform indirect cardiac massage for no more than 5-7 minutes, which is sometimes not enough to bring the patient to the hospital and continue resuscitation with specialized equipment. The new device is capable of non-stop massage for up to 45 minutes[1]. The robots are expected to be installed in intensive care units, transplant units, and ambulances.

Similar processes have been observed in foreign practice: Sony has developed a robot for microsurgery. During the experimental operation, surgeons of different specialties (i.e., not specializing in microsurgery) performed unique manipulations: they sutured a corn kernel and performed anastomosis (a surgical connection of blood vessels with a diameter of about 0.6 mm) in animals. A distinctive feature of these robots is that they include the function of operating room nurses. The robot autonomously automatically switches between several surgical instruments[2].

In 2023, researchers talked about the prospects of using AI in the planning of surgical operations, for example, when installing dental implants [16, p. 94]. And it was in the middle of 2024 that a robot-dentist performed the first operation on a human. The autonomous device was created to prepare a tooth for a crown. The robot creates a detailed 3D model of the oral cavity with teeth, gums, and nerves without using X-rays. Then, it independently performs the appropriate procedures, drills the tooth. In general, the work is done 8 times faster than if performed by a dentist[3].

Spanish researchers in 2023 presented a study that compared the convenience of performing surgery with and without the help of an AI assistant.

[1] 'Ruselectronics' showed a robot for pulmonary resuscitation at the exhibition 'Russia'. *Medical portal 'Healthy Chuvashia'*. Available at: https://www.med.cap.ru/press/2024/2/5/roselektronika-pokazala-na-vistavke-rossiya-robota?ysclid=m0yi2311dd955303185.

[2] Sony's robot microsurgeon has sewed a cut on a corn kernel. *Hightech+*. Available at: https://hightech.plus/2024/05/19/robot-mikrohirurg-sony-zashil-porez-na-zernishke-kukuruzi.

[3] A robot has performed the world's first dental surgery on a human. *Russian Gazette*. Available at: https://rg.ru/2024/08/01/robot-vpervye-v-mire-provel-na-cheloveke-stomatologicheskuiu-operaciiu.html?ysclid=m0yhe8j1sd653880432.

The main surgeon rated robotic surgery as less tiring, more comfortable than laparoscopic surgery. The surgeon considered the 3D vision, functionality, and ergonomics of the AI assistant to hold great promise, and robotics itself – to be a step up from laparoscopy and open surgery, regardless of experience level or procedural complexity [24, p. 294].

Nevertheless, E. N. Afanas'eva points out the following concerns: 'Many digital health algorithms are already working in consumer smartphone applications, and others are likely to enter medical practice in the coming years. The legal risks, however, are significant. Despite the tremendous help of smart apps, we cannot ignore the fact that physicians cannot fully understand all the technologies they use or the choices that such technologies help them make when they are not provided with relevant information' [3, p. 48].

This is why all doctors must undergo mandatory training on the use of AI technologies before using them, as they must understand how they are set up, how they work, and what risks and liability may follow.

Another common technology worth mentioning is computer vision, which makes it possible to analyze and interpret medical images such as X-rays, MRI or CT scans.

Artificial intelligence is also actively used in the development of patient-specific treatment plans. In addition, neural networks can be used to analyze data on the human genome and molecular processes in the body, which will allow specialists to create new, unique approaches to treatment. As Yu. F. Shutilin notes: 'Molecular processes in the body are almost neglected in human sciences, discussing metabolic efficiency, temperature, fatigue and relaxation, stretching and tearing of tissue cells, their healing, symptoms of diseases, etc. The system approach to the study of biopolymer transformations has not yet been realized in human sciences' [22, p. 238]. With the use of AI, the systemic approach to human treatment will become a reality.

On the Problem of Legal Protection of Human Genetic Materials

Let us start this section with an example: 'Rosneft' has created the largest genome database in Russia. Since the start of operation of the Full Genetic Sequencing Center at the site of the Shemyakin and Ovchinnikov Institute of Bioorganic Chemistry of the Russian Academy of Sciences in 2022, the laboratories have already received more than 34 thousand genetic samples, 25 thousand of which have already been sequenced. A total of 100 thousand samples are planned to be collected.

The research is conducted as part of a technological partnership under the federal scientific and technical program for the development of genetic technologies. A supercomputer, which is among the top twenty Russian computing clusters, is responsible for storing and processing information. The project volunteers are Rosneft employees and their families – 70% of the database will be formed on the basis of their genomes, and the remaining 30% will be provided by the program's medical partners. The company's presence in all regions will enable it to collect information on all ethnic groups and peoples of the country.

The project's uniqueness lies in its complete genome sequencing rather than testing for individual diseases. The research has already made 11 scientific discoveries in the field of hematologic diseases. In the future, the project will make it possible to develop gene therapy methods, develop domestic equipment, and improve software.

This kind of research and development will expand the possibilities of AI application in medicine and improve the results of disease diagnostics and patient treatment. Nevertheless, certain concerns cannot be overlooked: how legitimate will it be in the future to collect genetic data into a single bank or database?

M. A. Belova expresses concerns about the collection and processing of information containing the human genome and points out that 'in terms of regulating the issue of attributing genetic information to a certain category of data, Russian legislation is in an intermediate position. Of particular concern is the state of ethical problems associated with the use of human genetic data. The uncertainty of ethical perceptions and legal regulation of the circulation of genetic information gives rise to a large number of questions about the possibilities of various abuses' [4, p. 62].

Nevertheless, Prime Minister Mikhail Mishustin has ordered to create the National Genetic Information Base by September 2025. The objectives of the Base are as follows: to ensure national security; to protect the lives and health of citizens; to ensure the exchange of information in genetic engineering activities[1].

The database is intended for storage of the whole range of genetic information: from biosamples of wildlife, agricultural plants and animals to personal human genetic data. Genes of especially dangerous microorganisms and viruses are also included in the task. The system being

[1] Mishustin has ordered to create the National Database of Genetic Information by September 2025. *TASS*. Available at: https://tass.ru/obschestvo/20010611.

created will be equipped with tools for searching, classifying, and visualizing gene samples for the convenience of scientists' work with the database. It is assumed that the system will be configured not only as closed but also as a publicly available open loop.

Obviously, any genetic information must be obtained legally, and it must be collected for good purposes, such as analyses and analytics, direct treatment of patients, scientific research. For example, for such purposes collection is carried out in the Center of Genetic Dermatoses in Tatarstan. In the Republic of Tatarstan, there are 218 thousand patients with dermatoses. More than 40 thousand of them are sick with a group of genetically determined rare diseases with a wide range of manifestations with predominant skin lesions.[1] That is why a specialized center for the treatment of genetic dermatoses was opened in Kazan. The management of patients with skin diseases is not limited to dermatology. These diseases affect different organs and systems of the body. A multidisciplinary team of doctors will work with patients of the center.

The Center for Genetic Dermatoses in Kazan became part of a network of regional centers for genetic dermatoses, which will form the basis of a state-level support system for patients with genetic and autoimmune skin diseases. This format was invented by the 'Butterfly Children' Foundation to provide affordable medical care of good quality in the regions. Previously, such centers were opened in the Moscow region, the Penza region, and Bashkortostan.

That is why the issues of normative enshrinement of genetic information in the legislation of the Russian Federation are now acute. We hold the conviction that every citizen should have the right to dispose of his or her genetic information at his or her own discretion, to allow or prohibit the provision of biosamples, etc. The provisions of the International Declaration on Human Genetic Data[2] enshrine basic principles, but the mechanism of legal regulation in our country is currently only being formed. Responsibility for illegal manipulations with human and citizen genome and biosamples should be stipulated.

If we do not develop legal regulation in this area, problems of a national or even global nature may arise. The situation with genetic modification of babies in China a few years ago stirred not only the scientific community but also the entire world community. Chinese geneticist scientist He Jiankui, in 2018 at the II International Summit on Human Genome Editing in Hong Kong, announced the birth of the world's first transgenic twins. Using CRISPR/Cas9 technology, he edited the genomes of seven couples' embryos, resulting in one of the couples giving birth to girls with lifelong immunity to HIV from a healthy mother and an HIV-infected father.

The news caused a flurry of criticism. All possible prohibitions and bioethical norms were violated. The scientific community believes that the use of CRISPR technique on humans poses great risks and can have unpredictable consequences. The researcher was sentenced to three years in prison and fined three million yuan. According to the estimates of Ya. Peng, J. Lv, L. Ding, H. Gong, and Qi Zhou, 'the regulatory system for germline genome editing requires further improvement in three aspects: coordination of legislation and agencies, establishment of an ethics review system at high levels, and public participation and education' [35, p. 261].

At the same time, human genome research continues to the present day. For example, Y. T. Dabi and S. T. Degechisa presented a paper on the technology of genome editing and human pluripotent stem cells for the treatment of diabetes [25, p. 1785]; a group of Chinese researchers invented a genome editing tool that makes it possible to delete and insert genes in the human intestine [44, p. 464]; another group of scientists presented advances in the field of mitochondrial genome editing as a potential new method of osteoarthritis treatment [45]; researcher from the USA J. M. Rosenbluth is studying new possibilities of genome editing for modeling mutations associated with breast cancer [38]; a scientific team consisting of German and Japanese researchers is studying the possibilities of inheriting certain types of genes by genome editing [28].

Here is cited only a small list of works that have appeared after 2018. An analysis of open scientific databases shows that every year the interest in the topic of genetic engineering does not fade, but on the contrary, only increases. The main difference between these studies and the situation with He Jiankui is that scientists do not put the results of their work into practice (directly into the genome of human embryos).

[1] The Center of Genetic Dermatoses has been opened in Kazan, the fourth in Russia. *Official website of the Ministry of Health of the Republic of Tatarstan of the Russian Federation*. Available at: https://minzdrav.tatarstan.ru/index.htm/news/2307639.htm?ysclid=m0vmk077u5763988798.

[2] International Declaration on Human Genetic Data: adopted by Resolution of the General Conference of UNESCO on the report of Commission III at the 20th plenary meeting, October 16, 2003. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000122990.

There are researchers and members of the public who not only did not condemn but, on the contrary, supported the Chinese scientist. For example, a position was expressed according to which genetic modification of children can be very attractive for parents: with the help of special technology, a couple has the opportunity to continue the family with an 'ideal' child. When editing, it is possible to choose the color of eyes and hair as well as predetermine talents and intellectual abilities.

However, these technologies contradict the ethics of genetic research and are absolutely prohibited. Let us assume that the experiment was successful, and, as a result, a person has received perfect appearance, talents, immunity to many viral diseases, has cured from genetic diseases. However, there is no guarantee that such modifications will not lead to other irreversible consequences. By improving one thing, it is possible to provoke changes in the human body that cannot be predicted or modeled.

A. A. Troitskaya draws attention to the fact that one of the main problems is 'to create the correct sequence of nucleotides in the gene cut for editing purposes and to preserve the structure of the chromosome' [18, p. 78]. In other words, no one can guarantee that gene modification is safe and that there will be no health complications in the future.

In addition, there are risks of illegal procedures, so this area requires increased attention of the international community. There are also fears that the collection of genetic information in certain states gives rise to the possibility of creating 'genetic weapons'. These are viruses capable of affecting carriers of certain genes. Of course, this sounds like one of conspiracy theories, but when talking about risks even most unlikely options should not be ruled out.

And the most unobvious danger is the unknown consequences. Like any developing technology, genetic technologies carry a number of risks. Often, scientists do not know what editing or tampering with the genome will lead to. The current generations on the planet are the first to have the opportunity to use genetic technologies. For objective reasons, how this process will affect subsequent generations is unknown.

Further let us consider how international law regulates aspects related to human genome editing. T. Vidalis points out the following in his work: 'In Europe, the situation has changed with the appearance of a recent official position that clarifies the meaning of the relevant provision of the general legal instrument on human rights and biomedicine (the Oviedo Convention[1]). This provision explicitly prohibits alteration of the embryo genome and provides for caution with regard to genetic interventions in human reproductive material' [42, p. 1].

At the same time, V. A. Es'kova notes: 'The signatory states agreed on the need to protect human rights, fundamental freedoms, human dignity and personality. The Convention authorizes interventions aimed at altering the human genome, but only for prophylactic, diagnostic or therapeutic purposes and only if the purpose of such intervention is not to introduce any changes into the genome of any offspring. The Universal Declaration on the Human Genome and Human Rights takes, on the contrary, a more liberal position, according to which research, treatment or diagnosis involving the human genome may be carried out only after a careful assessment of risk and benefit and in accordance with national legislation' [10, p. 31]. However, according to the position of M. M. Spaander, '...the ECHR still cannot decide on the legal status of embryos' [40, p. 458], which complicates legal regulation throughout the European space. From this, we can conclude that in many respects, the regulation of gene research is, to a greater extent, the responsibility of national legislations, and fundamental decisions are made by the leadership of specific countries.

In April 2024, He Jiankui announced the resumption of research on gene editing of human embryos; he is interested in treating rare inherited diseases such as Duchenne myodystrophy and Alzheimer's syndrome[2]. As noted earlier, the main danger is not just the violation of ethical boundaries, but the danger of the research being conducted.

We agree with A. A. Pestrikova's position: 'It should be taken into account that the presence of a mutated gene is not always an irrevocable condition for the presence of a disease. Genetic predisposition to a disease should not become an indicator for genome editing. Germline or gamete editing should be used if there are no other alternatives and, there is a high probability of a child being born with a genetic disease, and there is no other way to select healthy eggs for fertilization or embryos for implantation' [15, p. 69].

Thus, by providing immunity from one disease, in theory, it is possible to trigger a chain of uncontrolled mechanisms in the human body, which will create conditions for the development of other diseases.

[1] Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine.

[2] The scientist convicted of genetic experiments on children has returned to work. *Russian Gazette*. Available at: https://rg.ru/2024/04/14/osuzhdennyj-za-geneticheskie-eksperimenty-nad-detmi-uchenyj-vernulsia-k-rabote.html?ysclid=m0xvw1qgb7159417574.

In this regard, the remarks of D. V. Mikhel' and O. N. Reznik that '... biomedical technologies have begun not only to change the activities of medical institutions, but also to influence the nature of social relations, psychology, and culture. Legal regulation of the use of these technologies is necessary for their adaptation to the usual order of things' are fair [13, p. 31]. Only after a long period of clinical trials and in the presence of confidence in full control over all stages of gene modifications it will be possible to raise the question of practical application and legislative regulation of this procedure. It should be noted that one of the tasks of bioethics is not to hinder the development of science but to provide assistance in accordance with the principle of 'do no harm', using proven technologies in the interests of patients.

Here it is worth pointing out the main problems of legal regulation of genetic information:

- depersonalization of personal data;

- the obtaining of informed voluntary consent for the collection and storage of biological material for the purpose of scientific research;

- the problem of genetic discrimination as a consequence of the dissemination of genetic information;

- the plurality of actors interested in accessing genetic information.

Improving domestic legislation can solve these problems in the legal field. Moreover, these issues are particularly relevant in connection with the Government of the Russian Federation's plans to create the National Database of Genetic Information, as well as centers and research institutes and private companies that are engaged in the collection of genetic material and research.

Here are some examples from Russian practice. At the moment, three bioresource centers are being created[1], whose activities will be aimed at their own biosecurity when working with biocollections and at contributing to the biosecurity of the Russian Federation. The activities of the established bioresource centers will be aimed at two key areas.

The first area deals with the observance of safety and bioethical norms, adherence to the principle of responsible conduct of research by scientists while taking into account the presumption of biological danger of planned economic and other activities at potentially dangerous biological objects with the imposition of the obligation to respond in a timely manner to emerging biological threats (dangers). For example, scientists conducting research on microorganisms and exchanging them should be held responsible for the improper use of inherently dangerous microorganisms (i.e., those with such characteristics as pathogenicity or toxin production). In this regard, it is worth agreeing with the position of the researchers who emphasize the following: '...the problems and risks caused by the use of AI in medicine require bioethical assessment and are a challenge for modern ethics' [7, p. 97]. If ethical issues begin to be solved at the stage of implementation or realization of a project, it is pointless to speak about ethics, as it is impossible to change anything.

The second area deals with the following task: bioresource centers can concentrate laboratories that study external threats to the biosecurity of the Russian Federation and develop measures to counter threats. The work of such centers should cover not only biosecurity systems, such as hazard identification, risk assessment and management, but also the development of detection and decontamination technologies, as well as crisis response. Such a biosecurity risk management structure should focus resources on the most likely risks and not jeopardize the development of biological sciences.

In this connection, new rules for the circulation of biomedical cell products were approved in 2024. In accordance with Decree No. 384 of the Government of the Russian Federation, ethical and biomedical assessment must be conducted for the production and use of biomedical cellular products (hereinafter – BMCPs). The new rules, which came into force on September 1, 2024, stipulate that medical organizations will be able to produce and use individual BMCPs on the basis of a special permit[2]. In order to obtain it, a clinic must obtain a medical license for the production of BMCPs and have an intensive care unit. Information on each use of an individual product will be placed in the Unified state information system in the healthcare sphere.

The issuance of permits will be based on two assessments of an individual BMCP:

[1] Three large bioresource centers will have appeared in Russia by 2024. *RIA Novosti*. Available at: https://ria.ru/20211117/biomaterialy-1759469065.html.

[2] On Approval of the Rules of Circulation of Biomedical Cellular Products Intended for the Individual Medical Purpose of the Biomedical Cellular Product That Has Been Specially Produced for an Individual Patient Directly in the Medical Organization in Which This Biomedical Cellular Product Is Used: Decree of the Government of the Russian Federation No. 384 of March 28, 2024. Access from the legal reference system 'Garant'.

- ethical (conducted by an ethics board);

- biomedical (conducted by a commission of experts of the Scientific Center for Assessment of Medical Devices of the Ministry of Health).

The Decree establishes a list of information to be placed on primary and secondary packaging as well as on transportation containers in which a BMCP is placed. The rules for granting, confirmation, and cancellation of the permit for the production and use of a BMCP for individual use are approved by Decree of the Government No. 385 of March 28, 2024, which also came into force on September 1, 2024[1]. According to the document, the issued permit will be valid indefinitely, subject to confirmation every five years. Authorizations will be granted, re-issued, confirmed and canceled by the Ministry of Health of the Russian Federation.

Thus, the resolution of biological safety issues arising at the present stage of science and technology development is already the sphere of activity of specialized state structures. Research, education, and breeding activities are organized on the basis of the centers. Bioresource centers can be a new type of research clusters specializing in biotechnology and biosafety [1, p. 103].

Prospects for the Development and Improvement of the Quality of Medical Care Through the Application of Artificial Intelligence

The application of AI can significantly improve the management of medical institutions. Process automation, optimization of costs and resources, and more efficient patient care planning all help to improve the efficiency of medical organizations and reduce queues at polyclinics[2].

The use of AI in medicine can also improve access to medical services, especially for people who live in remote areas. This approach has become possible thanks to the implementation of a project to introduce telemedicine. There is no separate law regulating telemedicine in Russia, but the general rules are established in the main regulatory act of the medical industry – Federal Law No. 323-FZ of November 21, 2011 'On the Fundamentals of Health Protection of Citizens in the Russian Federation'. In 2017, it was supplemented with the definition of telemedicine technologies and Article 36.2, which defines the peculiarities of delivering online medical care. The amendments officially came into force in 2018.

Telemedicine technologies, in which AI plays a key role, enable remote consultations and diagnostics, which significantly expands the opportunities for providing medical care to patients. However, despite all its advantages, the application of artificial intelligence in this area also raises certain concerns. Researchers note the following disadvantages of telemedicine: 'the advanced age of doctors, low level of education, lack of experience in the use of digital technologies reduce the benefits of using existing digital technologies. Legal aspects play a negative role, for example, the lack of legislative acts establishing the degree of responsibility in case of damage to health or illegal actions, problems related to personal data and confidentiality' [17, p. 104].

It is also worth considering the opinion of practitioners: 'The future of medicine can no longer be imagined without telemedicine, which expands the boundaries of clinical practice, making specialized care more accessible and less dependent on the availability of local staff. At the same time, it should be taken into account that even at the current level of development of information and communication technologies, telemedicine is unable to replace the traditional (face-to-face) presence of a neurologist at the patient's bedside, so it should be considered as a forced measure when the telepresence of a neurologist is better than its complete absence' [2, p. 116].

In the process of digitalization, various technical challenges can arise. For example, modern neural network technologies require more and more computer and energy resources to operate. This is compounded by the amount of information they have to process. For example, in medicine, some information is represented by images, which are more difficult to process than a text. Some information is collected in real-time – during patient observation. The digitalization of

[1] On Approval of the Rules of Granting, Confirmation, and Cancellation of Permission for the Production and Use of Biomedical Cellular Products Intended for the Individual Medical Purpose: Decree of the Government of the Russian Federation No. 385 of March 28, 2024. Access from the legal reference system 'Garant'.

[2] Analytical report 'System of State Incentives for the Use of Artificial Intelligence Services in Healthcare Based on the Analysis of Russian and Foreign Experience'. 2023. Available at: https://ai.gov.ru/knowledgebase/investitsionnaya-aktivnost/2023_analiticheskiy_otchet_sistema_gosudarstvennogo_stimulirovaniya_ispolyzovaniya_servisov_iskusstvennogo_intellekta_v_zdravoohranenii_na_osnove_analiza_rossiyskogo_i_zarubeghnogo_opyta_ncrii/.

healthcare on a national scale under such conditions will require huge computing power. At the same time, the efficiency of the latest systems is increasing, but not as fast as the amount of energy they consume. All this requires the search for suitable technical solutions [30].

Therefore, the introduction of AI in healthcare requires the development of new legal regulations and amendments to existing legislation. It is necessary to define the parties' rights and obligations when using AI, reliably protect personal data, etc.

Normative Legal Acts Regulating the Issues of Application of AI and Other Innovations in the Healthcare Sector

Throughout human history, activities in the field of healthcare have undoubtedly been among the most important activities for society. One of the main functions of the state is to ensure the health and well-being of its citizens. Thus, of great importance for society is the reform of legal regulation of healthcare taking into account the introduction of artificial intelligence technologies; this reform requires strict compliance with the basic principles and provisions of legal acts.

The basic principles governing healthcare activities are:

1) accessibility of medical care for all citizens, regardless of their social status and financial situation;

2) ensuring the quality and safety of medical care in order to treat patients effectively;

3) an integrated approach to healthcare, this involving not only treatment of diseases but also their prevention and rehabilitation measures.

The main regulatory legal acts governing healthcare activities in the Russian Federation are:

- Federal Law of the Russian Federation No. 323-FZ of November 21, 2011 ‘On the Fundamentals of Health Protection of Citizens in the Russian Federation’;

- Order of the Ministry of Health of the Russian Federation No. 66n of August 3, 2012 ‘On Approval of the Procedure and Terms of Improvement by Medical and Pharmaceutical Workers of Professional Knowledge and Skills Through Training in Additional Professional Educational Programs in Educational and Scientific Organizations’;

- Order of the Ministry of Health and Social Development of the Russian Federation No. 210n of April 23, 2009 ‘On the Nomenclature of Specialties of Specialists with Higher and Postgraduate Medical and Pharmaceutical Education in the Field of Healthcare of the Russian Federation’;

- Order of the Ministry of Health and Social Development of the Russian Federation No. 541n of July 23, 2010 ‘On Approval of the Unified Qualification Handbook of Positions of Managers, Specialists and Employees’, section ‘Qualification Characteristics of Positions of Healthcare Workers’, etc.

At the moment, there is no country in the world having full-fledged AI legislation. The first comprehensive AI law since 2023 was discussed in the European Parliament[1]. On March 13, 2024, the European Union, as amended, passed the world's first law regulating the development and application of AI[2]. Let us reveal the main provisions: a system of classification of risk levels that are created through the application of AI is introduced: from low to unacceptable; it is proposed to completely ban AI systems such as neural networks, which, for example, use ‘manipulation techniques’ and classify people on social grounds; mandatory labeling of texts, audio, video, photo materials and chat systems created with the help of such technologies is introduced; European deputies also demanded to guarantee that AI systems remain under human control.

Thus, European legislative practice has become the first in the world to enshrine a number of standards in the field of AI regulation at the official level. On the one hand, the development of many technologies falls under the ban. Developers will be forced to operate in other jurisdictions, which may provoke the EU’s technological lag. On the other hand, in its strategic documents, the EU has always emphasized anthropocentrism and commitment to human rights. The provisions of the law comprehensively protect the freedom, honor, and dignity of a person. It turns out that the legislators have achieved the goal of legal regulation.

However, researchers note that the European Union does not take into account all aspects of AI application [36; 23, pp. 1508-1509]. There is no separate law on the use of artificial intelligence in healthcare anywhere today. There is an interesting situation when the regulation of AI in medicine is necessary due to high risks but practically unfeasible due to the high rate of development of new research, drugs, treatment protocols, and software – using AI.

[1] EU AI Act: first regulation on artificial intelligence. 2023. *Official Website of European Parliament*. Available at: https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence.

[2] World's first major law for artificial intelligence gets final EU green light. *SNBC*. Available at: https://www.cnbc.com/2024/05/21/worlds-first-major-law-for-artificial-intelligence-gets-final-eu-green-light.html.

In this situation, the application of AI in medicine is actually regulated by pre-existing norms and principles, as well as local programs for the implementation of a particular technology. For example, AI capabilities in genetic engineering can be realized in accordance with the restrictions developed for human activities in this area. However, this situation is likely to change soon, as AI offers such significant tools that abandoning them may cause medical science and practice to lag behind those countries where physicians and scientists will not be so severely restricted in the development and implementation of the latest technologies.

For example, today there are discussions about pre-standardization in the field of AI when implementing it in medicine.

On January 1, 2024, new standardization documents came into force in Moscow for three years. If successfully tested, they will form the basis of national regulation. Here are some of them:

- GOST R 60.4.3.1-2023 'Robots and Robotic Devices. Industrial Transportation Robots. Method of Navigation Tests in a Given Area';

- GOST R 59921.0-2022 'Artificial Intelligence Systems in Clinical Medicine';

- GOST R 59525 'Health Informatization. Intelligent Methods of Medical Data Processing. Basic Provisions';

- GOST R 59921.1 'Artificial Intelligence Systems in Clinical Medicine. Part 1. Clinical Evaluation';

- GOST R 59921.2 'Artificial Intelligence Systems in Clinical Medicine. Part 2. Program and Methodology of Technical Tests';

- GOST R 59921.3 'Artificial Intelligence Systems in Clinical Medicine. Part 3. Change Management in Artificial Intelligence Systems with Continuous Learning';

- GOST R 60.0.0.10-2023 'Robots and Robotic Devices. Ontologies of Robotics. Concepts and Relations Describing Actions and Interaction in the Physical Environment'.

It should be noted that most of the current standards in the field of AI are devoted to the regulation of navigation systems, transportation, and civil aviation, but at the same time, aspects of medical activity are also touched upon. The introduction of new standards in medicine will improve the testing process of medical decision support systems, educational platforms, and ways of applying algorithms in radiology diagnostics. Such a system will make it possible to introduce reliable and proven solutions. At the moment, 11 national standards for testing AI systems in clinical medicine are in effect in the Russian Federation. Another 9 projects are undergoing public hearings in the professional community.

We believe that the next stage should involve improvement of legislation since standardization cannot take into account all the issues of AI application in healthcare, including the rights and obligations of doctors and patients, the responsibility of medical professionals using AI, operators of these technologies, etc.

Thus, the creation, regular updating and improvement of regulatory legal acts in accordance with the development of medical science and practice is the most important aspect of ensuring the effective operation of healthcare.

Bioethics and Biolaw

For centuries, law has been formed on the basis of moral norms. Ethics, combining the basic principles of the social structure of society, is a guideline for the construction of legal structures even in the conditions of digital transformation. Given the continuous development and introduction of new technologies, there is a constant need for legal regulation of certain processes and objects.

Legal relations at this stage are undergoing a number of transformations. In the 21st century, legal scholars talk about the emergence of a new, fourth generation of human rights, which includes somatic rights, information rights, spiritual and moral rights (due to the formation of secular states). A significant role was played by biomedicine, which has become part of everyday life. It became necessary for a person to conceptualize himself in the new reality and to secure his 'borders'. In this context, the interdisciplinary field of knowledge, 'bioethics', was born, and debates about its content and meaning are still ongoing.

S. N. Korsakov, D. S. Pridantseva, and M. I. Frolova point out that 'in our country, bioethics began to develop precisely as philosophical bioethics, a component of philosophical knowledge and, at the same time, a complex discipline that integrates the knowledge of several fields of specific sciences at once' [12 p. 25]. Modern bioethics is an interdisciplinary field of knowledge that studies the interaction between the humanities and life sciences, setting the vector of development of self-regulation of social relations in the field of biotechnology application. It helps to form an idea about the ethicality of the use of new technologies to stop unmotivated steps threatening unclear consequences.

Often, when speaking about the field of bioethics, the issues of legal regulation are touched upon. As rightly noted by E. R. Blokhina and E. S. Tretyakova 'bioethics is not directly a legal sphere and cannot claim it, from the point of view of the system of law it is advisable to use the category of 'biolaw', considering it as a system of norms aimed at ordering and protecting the corresponding block of relations. Bioethics and biolaw

are directly interrelated; biolaw is based on bioethics, translating social values and norms into a legal, generally binding format. Law is a tool for solving problems arising in the development and application of new biotechnologies' [6, p. 574]. Thus, it would be most correct to speak about biolaw when it comes to the normative-legal regulation of modern biotechnologies.

This field is young in our country, so there is no sufficiently large amount of practice that could be analyzed in order to identify patterns. There are problems in understanding the basic principles and essence of bioethics both among the population and among some medical professionals.

It should be noted that the following normative documents of the United Nations and its specialized agencies in the field of medicine are in force today, which in some respects involve bioethics: the Universal Declaration of Human Rights (1948); the Constitution of the World Health Organization (WHO) of 1948 (the organization is part of the United Nations system); the Principles of Medical Ethics relevant to the Role of Health Professionals (1982); the Convention on Biological Diversity (1992); the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993); the Universal Declaration on the Human Genome and Human Rights (1997); the International Declaration on Human Genetic Data (2003); the Universal Declaration on Bioethics and Human Rights (2005).

Most of the high-profile issues are regulated by the norms of these international normative legal acts. Unfortunately, such an important principle as ensuring the safety of biotechnology has not been directly reflected in international acts. This is important because today there are absolutely unimaginable ideas of AI application from the point of view of not only medical science but also ethics and law.

Here is one of them. Foreign scientists have developed a technology for head transplantation from one human body to another. In order to exclude medical errors and speed up the process, the operation is performed by an AI robot. The device accurately identifies the head and instantly transplants it to another mannequin body. The experiment has not yet been conducted with living people. According to the idea, the donor is a healthy young man with brain death (this is the most special case for standard transplantation). This procedure will allow people with severe diseases to have a fully functional body while retaining their memories and cognitive abilities. The main difficulty in completing the work on the technology now lies in creating a precise connection between the nervous system and spinal cord, as well as in ensuring the process of cell engraftment[1]. Similar ideas are becoming more and more common in the world.

Medical advances in transplantology, genetic engineering, and the development of innovative methods in the treatment of diseases have their negative side, stimulating organized criminal business, which is very profitable and dangerous, and the need to counteract it can hardly be overestimated. Therefore, the basis for combating this type of crime should lie in effective international and national legislation of both positive and prohibitive nature, including the norms of both criminal law and administrative law.

The development of genetic technologies creates a number of social risks related to human rights. The constitutional right to health protection, the right to protection of personal data (including information on health status), the right to protection of genetic information, the right to work, the principles of non-discrimination and social equality are under threat. Legal regulation and bioethics act as regulators and mechanisms to ensure equality in society and its harmonious development. Undoubtedly, bioethical prevention of dangers is the key to the successful development of genetic technologies. The most complex issues related to genetic technologies are definitely still to come. The development of bioethics and biolaw should at least keep pace with the times, and in the best case - by forecasting the most obvious risks to develop mechanisms of impact in case of the emergence of dangerous technologies in the future.

Recommendations on Improving the Regulation of Social Relations in the Field of Healthcare Given the Risks Associated with the Application of Artificial Intelligence

The healthcare sector is quite complex in terms of organization and financing. Unfortunately, the current trend of increasing medical service costs jeopardizes the accessibility and quality of healthcare. As was noted earlier, the application of AI-based technologies can help improve this situation. As a result, the cost of healthcare is theoretically expected to decrease if new technologies are provided to all healthcare institutions.

However, the existing legal regulation does not fully take into account the specific nature and peculiarities of using AI in medicine, which may lead to many undesirable consequences, including violation of

[1] Startup says it will begin transplanting heads within eight years. *Hightech*. Available at: https://hightech.fm/2024/05/23/head-transplantation.

the protection of patients' personal data, ethical problems, as well as limitation of access to new technologies.

Some patients are afraid of AI and do not want the program to 'treat' them: it is psychologically easier for them to trust a human being, regardless of statistics demonstrating the effectiveness of AI. In addition, access to medical care for many citizens is still limited despite the implementation of telemedicine development programs.

In Russia, the most developed AI technologies in medicine are found in Moscow, with high indicators also traditionally demonstrated by St. Petersburg. Among other regions, the leaders in terms of the number of consultations with telemedicine doctors are the Krasnodar Territory, the Sverdlovsk Region and the Republic of Tatarstan[1]. At the same time, many territories are not provided with the relevant equipment. The constituent entities of the Russian Federation often lack not only the necessary high-tech medical equipment but also qualified specialists. At the moment, there is no single mechanism for improving the provision of medical services using the latest methods. Today, there is an objective need to develop and support regional research centers and diagnostic laboratories due to their small number. Support can be provided through co-financing from the federal and regional budgets, as well as extra-budgetary funding.

As noted by legal scholars, for example by, M. N. Shchelberkina: 'at present the process of realization of the second segment of the two-level system: 'doctor – patient' is difficult. There is no legal possibility of making a primary diagnosis using telecommunications. The sphere of healthcare is highly specific; its subject is the life and health of people. We believe that the unresolved issues of making diagnosis with the use of telemedicine technologies are associated with possible risks of establishing erroneous diagnoses (due to the lack of physical examination of the patient) and unpreparedness to launch the mechanism of digitalization of healthcare in Russia in full force' [21, p. 165].

As S. V. Nikitenko notes: 'The analysis of sources of international law and legal doctrine shows that the main purpose of legal regulation of intellectual technologies is to ensure the safety of their use, which is achieved, in our opinion, through proper implementation of the procedure for obtaining informed voluntary consent to medical intervention and processing of personal data, the creation of a system of quality control of algorithms within the circulation regime of medical devices and enshrining an effective mechanism of tort liability for harm caused by an intellectual system. [14, p. 222].

We propose the following mechanisms to improve the quality of care while taking into account the risks of AI.

1. Developing new standards and security protocols for the use of AI to protect patients' personal data in all medical institutions regardless of their level and specialization. This mechanism implies data encryption, anonymization of information when it is uploaded to the system, establishment of strict rules for access to medical data. Only the attending physician should have access to the patient's medical history.

2. Conducting training in the form of retraining or advanced training for doctors and other healthcare professionals on working with technologies based on AI elements. When preparing such courses, special attention should be paid to the legal aspects of AI application, as well as ethical issues. For example, patients should be correctly explained that their treatment will be performed using AI, and accordingly, citizens should give their voluntary consent to treatment in this format. This is the only way to gain public trust in new technologies, but not to impose treatment in a peremptory manner.

3. Creating conditions for active implementation of AI in the subsidized constituent entities of the Russian Federation and municipalities. Many regions and municipalities may not be able to quickly create conditions for the implementation of telemedicine and technologies based on AI elements. The problem of lack of sufficient funding can be solved either by implementing new national projects or by increasing regional budgets, money from which will be redistributed to local budgets where modernization of medical equipment is required.

Improvement of the existing regulation of social relations in the field of healthcare, taking into account the use of artificial intelligence, is necessary and requires a comprehensive approach and efforts from the government, medical organizations, IT developers, and lawyers. Only the joint participation of all the abovementioned actors will allow the creation of conditions for the safe and effective use of AI in medicine in the future. As with many other modern problems, artificial intelligence can also be used to solve the problems outlined above, at least as a tool for analyzing available data.

[1] Experts have told which doctors' online consultations are most in demand in Russia. *TASS*. Available at: https://tass.ru/obschestvo/12038073.

Possible Areas for Improving Healthcare Through the Application of AI

One of the possible areas of prospective AI research in healthcare is the development of more accurate methods for diagnosing various diseases. Currently, as was described earlier, there are AI systems capable of analyzing X-rays and CT scan data. Further research may be focused on the creation of a detailed and comprehensive procedure for diagnostics of the entire body.

Another important area of future AI research in healthcare is the development of *systems for personalized treatment*. Discussing this topic, S. A. Khmelevskaya and E. S. Ocheredko conclude that: 'in personalized medicine, diagnostic testing (e.g., genetic, molecular, cellular) determines the choice of the optimal treatment methodology for the patient, which determines, in turn, the need for the emergence of pharmacogenomics, dealing with the study of the role of the genome in drug response' [19, p. 138]. Much attention is paid to the legal regulation of personalized medical care based on new technologies in the USA[1].

There is a clear correlation between the development of AI technologies and the growth of new drugs. In 2023, the FDA (Food and Drug Administration) approved 71 new drugs (a record number), including the first drug for Alzheimer's disease, new cancer drugs, the first oral drug for postpartum depression, and others. Most of all, more than 21% of approvals were for drugs related to oncology treatment. In the current year, it is expected that works on a drug for the treatment of hemophilia will be completed and the medicine will be approved [39, pp. 355-361].

Taking into account the individual characteristics of each patient (age, gender, weight, health indicators), AI systems can help select the optimal treatment methods and drug dosages, which will maximize the effectiveness of treatment and reduce side effects. However, AI itself should not yet be solely responsible for treating a person: all procedures and actions must be approved by the attending physician or a consilium of doctors.

The development of AI should be reflected in the field of *gene therapy*, a treatment method in which a patient's genetic material is altered, for example, to replace a missing or mutation-damaged gene using existing or new genetic engineering technologies.

Gene therapy has been shown to work well in treating some diseases, but to develop a drug, one needs to know which gene to target. For example, gene therapy is now available to treat vision loss caused by mutations in the RPE65 gene. The compilation of a complete atlas of genes working in different structures of the eye will help identify targets for the treatment of other types of eye disorders associated with mutations in other genes.

Today gene therapy makes it possible to cure severe hereditary diseases: cystic fibrosis, hemophilia, immunodeficiencies, and spinal muscular atrophy.

Biotechnology corporation AbSci and AstraZeneca company have struck a $250 million deal to develop immunotherapies for cancer treatment using AI technology. AbSci is one of the first companies to begin developing generative AI for healthcare. The technology compares millions of protein samples to discover new antibodies. AI can reduce costs and save time for drug trials. According to GlobalData analytics, oncology remains the industry most invested in AI-related deals.[2]

Genetic modification of plants. A team of Chinese researchers SynMoss modified the 18th chromosome of moss, removing 56% of unnecessary information. They then introduced the partially synthetic chromosome into moss cells and stimulated their growth. The outcome was impressive: the resulting plants had normal growth and produced spores. The project is planned to be completed within 10 years.

Replacing parts of the plant genome with synthetic fibers helps to determine which parts are more or less important and how their organization affects gene function. In the future, this will make it possible to endow organisms with new properties, benefiting agriculture, medicine, and industry.

Before that, scientists had developed the so-called 'yeast project', for example, by removing unnecessary DNA, adding a new chromosome to accommodate genes needed for protein synthesis, and making other changes. It turned out that yeast are eukaryotes (organisms with cell nuclei), so their genomes can tell us a lot about more complex, multicellular eukaryotes such as plants and animals.

At the moment, no legal issues are raised by such experiments. Meanwhile, it would not be surprising to

[1] Precision Medicine. *U.S. Food and Drug Administration* [website]. Available at: https://www.fda.gov/medical-devices/vitro-diagnostics/precision-medicine.

[2] GlobalData: Oncology is top therapy area for non-industry-sponsored clinical trials. *Medical News*. Available at: https://www.news-medical.net/news/20200221/GlobalData-Oncology-is-top-therapy-area-for-non-industry-sponsored-clinical-trials.aspx.

see partially synthetic plants being labeled in a few decades if they are found to be significantly different from their living natural counterparts.

Next, let us consider the prospects for transplantation of artificial organs and tissues. The development of 3D printing of organs and tissues as one of the key trends in modern medicine creates new legal challenges. To date, bioprinting issues are not regulated in most jurisdictions. The current version of Federal Law No. 180-FZ of June 23, 2016 'On Biomedical Cellular Products' cannot regulate the created legal gaps due to the lack of norms on transplantation (implantation)[1]. At the same time, Law No. 4180-I of December 22, 1992 'On Transplantation of Human Organs and Tissues'[2] cannot regulate 3D-printed organs due to their artificial nature.

Under the existing regulation, a 3D bioprinter, special software, printed organs, and tissues can be classified as medical devices (GOST 31508-2012 'Medical Devices. Classification According to the Potential Risk of Use'), while the conduct of tests is regulated by the Order of the Ministry of Health of the Russian Federation No. 2n of January 9, 2014 'On Approval of the Procedure for Conformity Assessment of Medical Devices in the Form of Technical Tests, Toxicological Studies, Clinical Trials for the Purposes of State Registration of Medical Devices'.

In any case, the current situation requires the creation of specialized legislation. It should define terminology, the legal status of bioprinting, the legal regime of turnover of bioprinted organs, the place of bioprinted organs in the system of objects of civil rights, the rights and obligations of manufacturers and recipients, etc.

It is also necessary to take into account the requirements of product safety and quality, clinical trials, equal access, and a special form of informed consent. A separate challenge is the creation of digital models of the human body when making bioprinted organs. In this regard, the issues of personal data protection and digital rights (not yet legally formalized) are becoming more relevant.

Legal regulation will have a significant impact on the development of AI technologies and the practice of their application. The state, possessing huge organizational and financial capabilities, can significantly accelerate the development of the most useful technologies and minimize the risks of dangerous ones. Artificial Intelligence legislation is still in its infancy worldwide, and significant changes in the law should be expected in the coming years, which will affect virtually all spheres of society, including healthcare.

Conclusions

The application of artificial intelligence in medicine has great potential to improve the quality of healthcare delivery and make healthcare more accessible to one and all. An important way to apply AI in medicine is to process and analyze large volumes of medical data. AI will enable the identification of new patterns across the entire healthcare industry when it comes to the integrated processing of data from all medical facilities in the country. AI technologies that can analyze large volumes of parameters and test hypotheses in a short period of time will also intensify discoveries in natural sciences and technical industry.

Artificial intelligence can already today play the role of a doctor's 'advisor', quickly analyzing information and suggesting a diagnosis and individual treatment program based on the patient's personal data [41].

The development of AI opens up prospects for discoveries and technologies that seemed fantastic just a few years ago. Artificial intelligence, armed with all the knowledge accumulated by mankind, including the latest advances, is already capable of creating new drugs and identifying implicit patterns, which will help explain the nature of many diseases and other biological processes.

The commercial nature of many research organizations is a significant detriment to the development of medicine. Large companies, such as pharmaceutical companies, once they have made a significant discovery, will seek to use it to maximize their own profits rather than to defeat disease and improve society. Unfortunately, many large companies developing AI technologies do not disclose the data used to train neural networks and other algorithms. However, some major tech companies have voluntarily joined the open data movement. Nevertheless, such decisions are reversible. The risks posed by tools as powerful as AI require responsibility on the part of technology developers and operators. Therefore, an important role in the development of AI, especially in such socially important areas as healthcare, is and will be played by the state. Of course, public control over these processes is also necessary.

[1] On Biomedical Cellular Products: Federal Law No. 180-FZ of June 23, 2016 (as of August 4, 2023 No. 466-FZ). *Collection of Legislative Acts of the Russian Federation*. 2016. No. 26 (Pt. 1). Art. 3849.

[2] On Transplantation of Human Organs and (or) Tissues: Law of the Russian Federation No. 4180-I of December 22, 1992 (as of May 1, 2022 No. 129-FZ). *Russian Gazette*. 1993. No. 4.

One of the most important mechanisms of influence on social processes by the state is the system of law. Legal formalization of AI application in society is an actual theoretical and applied task for modern lawyers. However, since AI technologies are very young and rapidly developing, the norms of law governing their application are only at the initial stage of development: only separate, often local, norms of law on AI exist and are applied, or the sphere of artificial intelligence technologies is covered by norms and principles that were in force earlier. This situation is typical for all developed countries of the world. In the next few years, we should expect the development of a new area of law related to the regulation of artificial intelligence. Undoubtedly, despite interstate contradictions, international principles of artificial intelligence security should be created in the coming years.

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Notarial Control over the Withdrawal of a Participant from a Limited Liability Company: Problems of Legal Regulation and Implementation

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Introduction: *the article explores problems in the implementation and legal regulation of notarial control over the withdrawal of a participant from a limited liability company. Such external control, introduced from January 1, 2016, was necessitated by numerous 'seizures' of corporate governance, including highly-publicized cases. Thus, the introduction of notarial control in this area of social relations was dictated by the need to combat abuse in situations where a participant leaves the company, on the one hand, and the need to protect the interests of third parties, primarily the company's counterparties and creditors, on the other hand. The* ***purpose*** *of the article is to identify the main legal problems of notarial control over the withdrawal of a participant from an LLC on the basis of the participant's membership cancellation letter and his claim for compelling the company to buy his share (in cases where the general meeting of participants has decided to make a large deal or to raise the authorized capital while the participant voted against such a decision or did not participate in the voting) as well as to propose ways to solve the identified problems.* ***Methods:*** *the study employed a set of general scientific and special legal methods, the latter primarily included legal-dogmatic and hermeneutic methods.* ***Results and conclusions****: it is necessary to standardize the procedure of notarial control over a participant's filing an LLC membership cancellation letter and over his claim for compelling the company to buy his share, by means of imposing on the notary the obligation to submit to the registration authority, in both cases, an application for making appropriate changes to the unified state register of legal entities as well as to send the company the notarized letter (claim) of the participant, together with a copy of the application submitted to the registration authority. The importance of introducing notarial control over the claim for compelling to buy the participant's share is substantiated in the paper for cases where the*

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company's charter prohibits the alienation of a share or part of a share possessed by a company participant to third parties and when other company participants refused to buy them, or where a consent has not been obtained to sell a share or part of a share to a company participant or a third party while obtaining such a consent is stipulated in the company's charter

Keywords: notarial control; notary's functions; withdrawal of a participant from a limited liability company; claim for compelling the company to buy the participant's share; membership cancellation letter

Information in Russian

Нотариальный контроль за выходом участника из общества с ограниченной ответственностью: проблемы правового регулирования и реализации

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Введение: *статья посвящена исследованию проблем осуществления и правового регулирования нотариального контроля за выходом участника из общества с ограниченной ответственностью (ООО), который был введен с 1 января 2016 г. Необходимость такого внешнего контроля была вызвана многочисленными захватами корпоративного управления, в том числе резонансными. Важность борьбы со злоупотреблениями при выходе участника из общества, с одной стороны, и потребность защиты интересов третьих лиц, прежде всего контрагентов и кредиторов общества, с другой стороны, обусловили появление нотариального контроля в этой сфере общественных отношений.* ***Цель:*** *выявление ключевых правовых проблем нотариального контроля за выходом участника из ООО на основании заявления участника и на основании предъявления им требования о приобретении доли (в случае принятия общим собранием участников решения о совершении крупной сделки или об увеличении уставного капитала, если участник голосовал против принятия такого решения или не принимал участие в голосовании) и предложение путей их решения.* ***Методы****: при проведении исследования применен комплекс общенаучных и специально-юридических методов познания, среди последних были использованы преимущественно юридико-догматический и герменевтический методы.* ***Результаты:*** *сделан вывод о необходимости унификации порядка нотариального контроля за подачей участником ООО заявления о выходе и за требованием о приобретении его доли обществом посредством возложения на нотариуса обязанности в обоих случаях подавать в регистрирующий орган заявление о внесении соответствующих изменений в единый государственный реестр юридических лиц и передавать обществу удостоверенное им заявление (требование) участника общества и копию заявления, поданного в регистрирующий орган. Обоснована важность введения нотариального контроля и за требованиями о приобретении доли участника в случаях, если уставом общества отчуждение доли или части доли, принадлежащих участнику общества, третьим лицам запрещено и другие участники общества отказались от их приобретения или если не получено согласие на отчуждение доли или части доли участнику общества либо третьему лицу при условии, что необходимость получить такое согласие предусмотрена уставом общества.*

Ключевые слова: нотариальный контроль; функции нотариата; выход участника из общества с ограниченной ответственностью; требование о приобретении доли участника обществом; заявление о выходе участника из общества

Introduction

The legal policy of the Russian Federation at the end of the 20th century was characterized by large-scale liberal reforms, including in the corporate sphere, these based on the idea of maximum freedom of activity of both corporations and their participants. Over time, it became obvious that the absence of any outside control over corporate behavior results in massive abuses, in the seizure of governance and illegal separation of business. Abuse of rights by participants leaving a corporation constituted quite a large part of corporate offenses.

As a result, the legislator took the path of consistently introducing outside control in the corporate sphere. The implementation of such control was entrusted to notaries, traditionally performing public functions associated with the exercising of both control powers (the legality of a transaction is confirmed by means of its notarization) and law enforcement powers aimed at the protection of the rights and legitimate interests of citizens and legal entities. This vision of the notarial system is typical for the majority of legal systems that have adopted the 'Latin notary' model [47; 48].

The first version of the Law 'On Limited Liability Companies'[1] (hereinafter also referred to as the LLC Law) established that a member of a company could leave it at any time, regardless of the consent of other participants (para. 6 of Item 1 of Article 8). In 2008, this paragraph was rephrased to say that a participant has the right to 'withdraw from the company by transferring his/her share to the company if such a possibility is provided for by the company's charter, or to compel the company to buy the share in cases provided for by this Federal Law'[2] [22; 38; 40]. It should be noted that the mentioned possibility of withdrawal *regardless of the consent of other participants or the company* has been preserved in Article 94 of the Civil Code of the Russian Federation (hereinafter also referred to as the RF Civil Code), which specifically covers this aspect, and in Item 1 of Article 26 of the LLC Law, which also specifically regulates the withdrawal of a participant from a company. This approach is also typical for foreign legal systems [46, p. 680; 42, p. 268].

The withdrawal from a company is aimed at the termination of corporate rights [41]. S. D. Mogilevsky classifies a participant's right to withdraw from an LLC as the one belonging to a group of fundamental rights 'implemented under conditions', since their occurrence is associated with the presence of certain conditions – the provisions of the charter that allow the company to alienate shares, or a legally prescribed list of cases where the participant has a right to compel the company to buy his/her share [26]. Yu. N. Andreev writes about the right to withdraw from an LLC as a universal method of the protection of civil rights, which is a type of such protection method as the termination and modification of a civil legal relationship implemented in a non-legal form of self-protection [2, p. 460]. In general, the right to leave a company is considered to be 'one of the key rights among the entire range of corporate rights of a participant' [3, p. 41]. A similar view is presented in foreign sources: 'Starting a new business can be an exciting accomplishment, but eventually one or more of the co-founders may decide to leave the business. Whatever the motivation – new opportunities, conflict with other business partners, or simply to free up some leisure time – if you want to leave a limited liability company, you should be careful and do it in the correct, legal way' [43]. In general, the freedom of a participant to leave a company corresponds to the basic principles of private law (principle of free disposition, principle of the free exercise of civil rights, principle of freedom of contract, etc.) [19; 20].

It is important to note that the RF Civil Code and the LLC Law define the concept of a participant's withdrawal differently.

Firstly, according to the LLC Law, withdrawal from a company is possible *by transferring one's share to the company*, if such a possibility is provided for by the company's charter. Article 94 of the RF Civil Code defines two independent ways for an LLC participant to *leave* a company. Meanwhile, Item 1 of Article 94 of the RF Civil Code formulates this in a different way: a participant in a limited liability company has the right to withdraw from the company by means of *filing a withdrawal-from-the-company application* (a membership cancellation letter), if such a possibility is provided for by the company's charter. In this article, the RF Civil Code does not use the concept of 'transferring the share to the company', but only indicates that the share passes to the company.

Secondly, withdrawal from a company is possible by means of submitting a claim for compelling the company to buy the share in cases stipulated by the LLC Law. The RF Civil Code defines this method of withdrawal as follows: by means of 'presenting a demand to the company for the company to acquire the share in the cases specified in Item 3 of Article 93 of the present Code and the law on limited liability companies'. In the scientific literature, the withdrawal of a participant from an LLC is even treated as a kind of claim for the acquisition of the share: 'A participant's letter notifying about his withdrawal from the corporation is a special case of exercising his/her unilateral right to demand acquisition of his/her share by the corporation' [8].

Both of these ways of leaving an LLC are voluntary, while termination of membership in a corporation may also be involuntary[3].

[1] 'On Limited Liability Companies': Federal Law No. 14-FZ of February 8, 1998. *Collection of Legislative Acts of the Russian Federation*. 1998. No. 7. Art. 785.

[2] On the Introduction of Amendments to Part One of the Civil Code of the Russian Federation and Certain Legislative Acts of the Russian Federation: Federal Law No. 312-FZ of December 30, 2008 (as of May 5, 2014) (Art. 3).

[3] How to remove someone from an LLC. Available at: https://kiermanlaw.com/how-to-remove-a-member-of-an-llc.

The LLC Law covers two independent procedures – the transfer of the share to the company through presenting a membership cancellation letter and filing a claim compelling the company to buy the share.

For notarial control, this inconsistency between the two federal laws is meaningful since the LLC Law establishes mandatory notarial control over *the withdrawal from a company* (Article 26) [29]. Judicial practice has known cases of disputes with the registration authorities on the issue of the obligatoriness /optionality of notarizing the demand presented to the company for the company to buy the share in the cases provided for in para. 1 of Item 2 of Article 23 of the LLC Law[1].

Notarial Control over the Withdrawal of a Participant from a Limited Liability Company by Submitting a Membership Cancellation Letter

Starting from January 1, 2016, notarization of the membership cancellation letter was introduced: the *membership cancellation letter* must be notarized according to the rules provided for by notary legislation regarding the certification of transactions[2]. As Yu. S. Povarov notes, 'thereby a potential circumvention of the long-standing general rule, according to which a transaction aimed at alienating a share or part of a share in the authorized capital requires notarial 'confirmation' (Item 11 of Article 21 of the LLC Law), through a fictitious use of a participant's withdrawal scheme is given no chance' [28; 32, p. 96].

When notarizing an LLC membership cancellation letter, the main task of notarial control is to verify the participant's possession of the right to withdraw from the limited liability company; this is checked by the notary on the basis of the company's charter. As correctly noted in the literature, 'the right of a voluntary cancellation of the LLC membership by an LLC participant has a legislative restriction in the form of a legal prescription to provide for the withdrawal of a participant in the company's charter' [1, p. 40]. The notary establishes the presence or absence of such a 'withdrawal provision' in the charter. For the purpose of notarial control, an LLC participant provides the notary with a copy of the company's charter certified by the sole executive body of the company, or a copy of the charter received by making a request to the Unified State Register of Legal Entities. The notary checks if the share is owned by the participant and determines its size by checking the presence of the record concerning the share in the authorized capital by sending a request to the Unified State Register of Legal Entities in the electronic document management system.

According to para. 2 of Item 1 of Article 23 of the LLC Law, the right of a company participant to withdraw from the company may be provided for by the company's charter when the company is established or when amendments are introduced to the charter by a decision of the general meeting of the company's participants adopted by all the company's participants unanimously, unless otherwise provided for by federal law. It should be emphasized that a participant may exercise his/her right to withdraw from the company only if this right is explicitly stipulated in the charter, while the decision to amend the charter is to be taken unanimously. For example, in one case the court invalidated the new version of the LLC's charter, which provided for the right to withdraw from the company for individual company members with a share in the authorized capital exceeding or not exceeding certain amounts, because the decision had been made not unanimously – by only 86% of the votes[3].

With regard to notarial verification of the right to withdraw being mentioned in the company's charter, it should be borne in mind that, according to Item 1 of Article 26 of the LLC Law that was in force before July 1, 2009, participants in a limited liability company could exercise the right to withdraw from the company at any time, regardless of the consent of its other participants or the company itself. Federal Law No. 312-FZ 'On the Introduction of Amendments to Part One of the Civil Code of the Russian Federation and Certain Legislative Acts of the Russian Federation' of December 30, 2008, which entered into force on July 1, 2009, rephrased para. 1 of Item 1 of Article 26 of the LLC Law as follows: 'A member of the company has the right to withdraw from the company by transferring shares to the company, regardless of the consent of its other participants or the company, if this is provided for by the company's charter'. Item 21 of Information Letter of the Presidium of the Supreme Commercial Court of the Russian Federation No. 135 of March 30, 2010 clarified: if the charter of the company established before July 1, 2009 contained a provision on the right of the company's participants to withdraw, then they retain this right after that date regardless of whether the charter of the company has been amended for bringing

[1] On the Forwarding of the 'Review of Judicial Practice on Disputes Involving Registration Authorities No. 4 (2018)': Letter of the Federal Tax Service of Russia No. GD-4-14/25946 of December 28, 2018. Access from the legal reference system 'ConsultantPlus'.

[2] On the Introduction of Amendments to Certain Legislative Acts of the Russian Federation in Terms of Ensuring the Reliability of Information Provided During State Registration of Legal Entities and Individual Entrepreneurs: Federal Law No. 67-FZ of March 30, 2015 (as of June 29, 2015) (Item 5 of Article 3).

[3] Resolution of the Commercial Court of the West Siberian District No. F04-7795/2021 of December 30, 2021 in case No. A75-19639/2020. Access from the legal reference system 'ConsultantPlus'.

it in compliance with the new legislation[1]. This clarification does not apply to cases where the charter of a limited liability company contains a provision on the prohibition for the participants to withdraw from this company introduced after July 1, 2009[2] [25]. Let us take a look at a case of a JSC that was a member of an LLC registered on November 29, 2001. At the time when the company was established, the company charter provided for the right of a participant to withdraw from the company regardless of the consent of other participants or the company. On December 4, 2009, the LLC charter was set out in a new version, which did not provide for the participant's right to cancel his membership in the company. The JSC's membership cancellation letter was notarized, but was subsequently invalidated upon the company's claim as it was proved that the company's charter did not provide for the right to withdraw from the company[3].

When carrying out notarial control, attention should also be paid to the fact that in a company's charter, the prohibition on withdrawal can be formulated both directly (as no permission for withdrawal) and indirectly (as no mention of the right to withdraw from the company): 'by a unanimous decision of the general meeting of the company's participants, the charter that does not provide for the right of participants to withdraw from the company may be supplemented with provisions introducing this right, and, on the contrary, the charter that provides for the right of participants to withdraw from the company may be amended by excluding the relevant right from it'[4].

Notarial control must also ensure that the withdrawal of a participant from the company complies with the following imperative rule: the withdrawal of the company's participants from the company in cases where no single participant remains in the company, as well as the withdrawal of the sole participant in the company from the company is not allowed (Item 2 of Article 26 of the LLC Law)[5]. The previous version of Article 26 of the LLC Law did not contain this prohibition, and this made it possible to start and run companies that did not have participants and property but were included in the register of legal entities as operating organizations. Such companies destabilized civil turnover and created legal uncertainty in civil, labor, and other legal relations. The regulatory prohibition on the withdrawal of the last participant implies that when terminating his/her membership in the LLC, the last participant must sell the share to another person or begin liquidation proceedings.

When verifying the right to withdraw from the company, the notary must take into account the relatively new Item 1.2 of Article 26 of the LLC Law, which establishes that the company's charter may stipulate the following conditions for the exercising of the right to withdraw by a company participant.

1. The right to withdraw from the company for certain members of the company who are explicitly named in the company's charter or have particular qualities such as possessing a share in the authorized capital exceeding or not exceeding certain amounts. Regarding such right to leave the company, it is important to pay attention to the fact that the right of withdrawal established in the charter only for participants possessing a small share eliminates the possibility of a situation where participants with large shares in the authorized capital leave the company, and this makes it possible to guarantee stable, long-term operation of the company; in its turn, the right of withdrawal enshrined in the charter only for participants with a large share prevents from corporate conflicts among the major participants by letting any of them terminate their corporate rights [27]. By controlling the conditions for exercising the right to leave the company, the notary contributes to the stability of the activities of business companies and civil turnover in general.

2. The right of a company participant to withdraw from the company is conditioned by the occurrence or non-occurrence of certain circumstances, by the expiration of a certain period, or by a combination of these. For example, a company's charter stipulated that 'a company participant has no right to withdraw from the company by transferring the share to the company before March 03, 2026, and starting from March 03, 2026 a company participant has the right to withdraw from the company by transferring the share to the company with the consent of the majority of its participants'[6].

3. Granting the right to withdraw from the company by a decision of the general meeting of the company's participants taken unanimously by all the participants of the company.

[1] Information Letter of the Presidium of the Supreme Commercial Court of the Russian Federation No. 135 of March 30, 2010 'On Some Issues Related to the Application of Article 5 of Federal Law No. 312-FZ of December 30, 2008 'On the Introduction of Amendments to Part One of the Civil Code of the Russian Federation and Certain Legislative Acts of the Russian Federation'. *Bulletin of the Supreme Commercial Court of the Russian Federation*. 2010. No. 5.

[2] Resolution of the Presidium of the Supreme Commercial Court of the Russian Federation No. 3277/13 of September 17, 2013. *Ibid*. 2013. No. 12.

[3] Resolution of the Commercial Court of the Volga-Vyatka District No. F01-6787/2021 of December 10, 2021 in case No. A38-69/2021. Access from the legal reference system 'ConsultantPlus'.

[4] Resolution of the Commercial Court of the Moscow District No. F05-8017/2023 of April 25, 2024 in case No. A40-213964/2022. Access from the legal reference system 'ConsultantPlus'.

[5] See, for example: Ruling No. 305-ES16-14771 of April 11, 2017; Resolution of the Commercial Court of the Volga District No. F06-21224/2017 of July 14, 2017; Decision of the Commercial Court of the Moscow Region of September 4, 2020 in case No. A41-90337/2019. Access from the legal reference system 'ConsultantPlus'.

[6] Resolution of the Commercial Court of the Moscow District No. F05-8017/2023 of April 25, 2024 in case No. A40-213964/2022. Access from the legal reference system 'ConsultantPlus'.

Such a decision shall specify: the participant of the company who is granted the right to withdraw from the company and the period during which this participant can exercise this right. The possibility of the exercise of this right may be conditioned by the circumstances specified in paragraphs one and two of Item 1.2 of Article 26 of the LLC Law[1]. It should be noted that in the latter case, the general rule runs that the implementation of the possibility to leave the company is related not only to a unilateral expression of the will of the LLC participant but also to a unanimous decision of the general meeting of the company, which also requires verification by a notary [15].

The possibility of granting the right to withdraw from the company in the event that a supervision procedure has been initiated for the company in bankruptcy is also of great interest. By virtue of Item 3 of Article 64 of the Bankruptcy Law, the debtor's management bodies are not entitled to make decisions on the withdrawal of the debtor's founders (participants) or on purchasing the outstanding share from the shareholders. In judicial practice, different approaches to solving this issue have been developed. One approach is as follows: after the introduction of the supervision procedure, it is unacceptable for the general meeting of participants to make decisions on the withdrawal of a participant from the company[2]. The other approach is opposite to the first one: 'Based on the fact that the provisions of the abovementioned article of the bankruptcy legislation are aimed at preventing a decrease in the bankruptcy estate, the measures prohibiting the debtor's management bodies to make decisions on the withdrawal of the debtor's participants (founders) from the company should consist only in forbidding to pay the actual value of the share to a former participant of the company in order to protect the interests of creditors. The restrictions established by para. 7 of Item 3 of Article 64 of the Bankruptcy Law relate to cases where, as a result of a decision by the debtor's body, the debtor is bound to pay money or transfer property (for example, as the actual value of the share in the authorized capital of the company paid to a participant who has left the limited liability company) <…> A different interpretation of this rule would lead to an unjustified restriction of the participant's rights to dispose of his/her property'[3].

In our opinion, such contradictory judicial practice is caused by the fact that para. 7 of Item 3 of Article of the Bankruptcy Law is not well formulated. General meetings of the founders of companies take two simultaneous decisions, which are unreasonably regarded by the courts as one single decision on the withdrawal of a participant; meanwhile, one of the decisions refers to the withdrawal of a participant, and the other – to paying the actual value of the share to him. A 'threat' to the creditors can only be seen in the execution of the latter decision, therefore, 'the specified provision of the Bankruptcy Law does not rule out the possibility of placing on the agenda the very issue of withdrawal'[4].

It is important to recognize the independence of the right to withdraw and the right to receive the actual value of the share. A former member of the company who has already implemented the right to withdraw continues to have the right to receive the actual value of the share: 'a person who has lost the status of a company member has the right to claim payment of the actual value of the share (the derivative corporate right)' [23, p. 8]. The participant who has cancelled his/her membership in the company does not acquire the right to be a bankruptcy creditor and may demand payment of his actual share only from the remaining bankruptcy estate after the claims of the bankruptcy creditors are satisfied (para. 8 of Article 2 of the Bankruptcy Law). Subsidiary liability of the leaving participant for the company's obligations is related to the time of committing the offense and is not excluded at the time of his withdrawal. Therefore, the bankruptcy law should prescribe that the debtor's management bodies must be deprived of the right to decide not on the withdrawal of the debtor's founders

[1] Introduced by Federal Law No. 252-FZ of July 31, 2020 'On the Introduction of Amendments to Federal Law 'On Limited Liability Companies' in Terms of Improving the Procedure for Entering Information into the Unified State Register of Legal Entities about the Withdrawal of a Member of a Limited Liability Company from the Company (Item 3)'. *Collection of Legislative Acts of the Russian Federation*. 2020. No. 31 (Pt.1). Art. 5011.

[2] Resolution of the Ninth Commercial Court of Appeal No. 09AP-63733/2019 of December 10, 2019 in case No. A40-146410/2019; Resolution of the Seventh Commercial Court of Appeal of March 17, 2014 in case No. A45-17736/2013 (this resolution was left unchanged by the Resolution of the Commercial Court of the West Siberian District of August 18, 2014 in case No. A45-17736/2013). Access from the legal reference system 'ConsultantPlus'.

[3] Resolution of the Commercial Court of the Ural District No. F09-8136/18 of December 24, 2018 in case No. A76-4422/2018. See also: Resolution of the Commercial Court of the West Siberian District No. F04-2202/2020 of July 17, 2020 in case No. A81-4039/2019; Resolution of the Eighteenth Commercial Court of Appeal No. 18AP-8889/2018 of August 20, 2018 in case No. A76-4422/2018 (this resolution was left unchanged by Resolution of the Commercial Court of the Ural District No. F09-8136/18 of December 24, 2018); Resolution of the Third Commercial Court of Appeal of February 22, 2017 in case No. A69-2787/2016; Resolution of the Eighth Commercial Court of Appeal No. 08AP-11737/2014 of January 15, 2015 in case No. A75-8781/2013. Access from the legal reference system 'ConsultantPlus'.

[4] Resolution of the Twelfth Commercial Court of Appeal No. 12AP-8774/2019 of August 16, 2019 in case No. A06-529/2019. Access from the legal reference system 'ConsultantPlus'.

(participants) but on the payment of the actual value of the share to the leaving participant.

With regard to notarial control, the following aspect of this discussion is important: a notary has no right to refuse to certify a membership cancellation letter if the right to withdraw has been granted by the decision of the general meeting of the company's participants taken unanimously by all the participants in the case provided for in para. 3 of Item 1.2 of Article 26 of the LLC Law, regardless of whether the supervision procedure has been introduced for the company or not.

When implementing notarial control, it should also be borne in mind that the prohibition on leaving the company may be established not only in the charter but also in a corporate agreement. According to Item 1 of Article 67.2 of the LLC Law, participants in a business company have the right to conclude a corporate agreement between them on exercising their corporate rights (an agreement on exercising the rights of participants in a limited liability company, a shareholders' agreement), according to which they undertake to exercise these rights in a certain way or to refrain from their implementation (waive the right), including to vote in a certain way at the company participants' general meeting, carry other management actions in a coordinated manner, acquire or alienate shares in the authorized capital at a certain price or upon the occurrence of certain circumstances, refrain from alienating shares until certain circumstances occur. Moreover, the creditors of the company and other third parties may conclude an agreement with the company's participants, according to which the latter, in order to ensure the legally protected interests of such third parties, undertake to exercise their corporate rights in a certain way or to refrain from their implementation (waive the right), including to vote in a certain way at the company participants' general meeting and carry out other management actions in a coordinated manner, acquire or alienate shares in the company's authorized capital at a certain price or upon the occurrence of certain circumstances, or refrain from alienating shares until certain circumstances occur. The corporate agreement rules apply accordingly to this agreement (Item 9 of Article 67.2 of the LLC Law).

An opinion was expressed in the scientific literature that 'in the case where the charter does not contain provisions on the possibility to cancel membership in the company, the participant does not have the right to leave. Meanwhile, a corporate agreement cannot provide for a new right for a participant, even if all the participants in the company are parties to this agreement' since, according to Item 1 of Article 26 of the LLC Law, a participant in a company has the right to withdraw from the company if this is provided for by the company's *charter* [24, p. 42]. However, in this case, Article 26 must be applied in conjunction with Article 67.2 of the LLC Law, otherwise the value and purpose of the corporate agreement are lost. In addition, the courts invalidate withdrawal from the company as contradicting the corporate agreement that prohibits withdrawal from the company[1]. In foreign countries, the limits of the right to withdraw from an LLC are also established both in charters and in corporate agreements (partnership agreement, operating agreement) [44; 45]

By virtue of Item 15 of the Notary Fundamental Principles, a notary has the right to demand from individuals and legal entities information and documents (including those containing personal data) necessary for performing notarial acts [35].

Notarial certification of a membership cancellation letter in cases where the participant's right to withdraw is not provided for in the charter or there is violation of the conditions for the implementation of this right results in recognizing the illegality and the cancellation of the notarial act related to certifying the participant's letter[2].

While certifying the membership cancellation letter during notarial control, a notary establishes the legal capacity of the participant that is a legal entity since it may, for example, have already been liquidated. The notary must also verify the civil capacity of the participant submitting a membership cancellation letter, verify the powers of the representative and of the person acting on behalf of the participant being a legal entity.

The notary certifies that the claimant has the status of the LLC participant applying, by analogy of law, the rules of Items 13 and 13.1 of Article 21 of the LLC Law, basing on the documents on purchasing the share and the extract from the Unified State Register of Legal Entities that contains information on the ownership of the transferred share in the authorized capital of the company; the extract is to be received by the notary in an electronic form on the day when the cancellation letter is certified.

It is important to consider the issue of notarial control over the family-law status of a participant claiming to leave a company. Taking into account the fact that withdrawal from a company is classified as a unilateral transaction, a reasonable question arises about the need to obtain a notarized consent of the spouse to such withdrawal and, accordingly, to transferring the share to the company. According to the legal position of the Presidium of the Supreme Commercial

[1] Resolution of the Commercial Court of the North-Western District No. F07-15100/2018 of December 17, 2018 in case No. A05-5165/2018. Access from the legal reference system 'ConsultantPlus'.

[2] Resolution of the Ninth Commercial Court of Appeal No. 09AP-9667/2024 of March 21, 2024 in case No. A40-251861/2023. Access from the legal reference system 'ConsultantPlus'.

Court of the Russian Federation formulated in 2014, a spouse's withdrawal from a company followed by the redistribution of the share received by the company to another participant or to a third party, is the disposal of the spouses' common property, and therefore it requires a notarized consent of the other spouse[1]. This approach was supported and is still supported in the doctrine: when a private participant leaves a company, his/her share is transferred to the company, so a notarized consent of the married participant's spouse shall be obtained in cases where the share is classified as common property [27; 34].

However, in 2021, this legal position was changed by the Supreme Court of the Russian Federation: without disputing the transactional nature of a participant's withdrawal from a company, the Court determined that the spouse's consent to a unilateral transaction of the other spouse's withdrawal from a company is not required, since in this case the participant disposes of his/her corporate rights but not of the spouses' common property[2]. It should be noted that this approach is more consistent with both the corporate nature of the right to withdraw from a corporation and constitutional legal principles. The right to leave a company is of a dual legal nature: on the one hand, it is a transaction[3], but on the other hand, it represents the right of a corporation member in his/her capacity as a participant in free economic relations. According to Part 1 of Article 34 of the Constitution of the Russian Federation, everyone shall have the right to freely use his/her abilities and property for entrepreneurial and other economic activities not prohibited by law; by virtue of Part 3 of Article 55 of the Constitution, human and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights, and lawful interests of other people, and for ensuring the defense of the country and the security of the state. If not obtained, a mandatory notarized consent of the spouse to withdrawal would completely block the participant's right to leave the company; meanwhile, due to its corporate nature, this right can only be limited by the company participants in the charter by their agreed decision. Regarding the guarantees of the other spouse's rights, M. N. Ilyushina was right to note that there are other jurisdictional ways to ;protect the property rights of the spouse who is not an LLC participant, even in cases where the spouse who has left the LLC and received the actual value of the share is not willing to transfer the due amount to the other spouse' [11; 12; 13, p. 30; 31].

A significant role in the commencement of this discussion belongs to the above contradiction between the formulations of the ways to leave a limited liability company contained in the LLC Law and in the Civil Code of the Russian Federation (hereinafter also referred to as the RF Civil Code). In Article 94 of the RF Civil Code it is formulated as follows: 'A participant in a limited liability company has the right to withdraw from the company irrespective of the consent of its other participants or of the company by means of filing a withdrawal application...', while Article 26 of the LLC Law runs that 'a participant in the company has the right to withdraw from the company by transferring the share to the company...'. The content of these articles must be harmonized: in both laws, this method should be designated as 'by filing an application for withdrawal from the company'.

A notary must also verify the applicant's explicit will to particularly leave the company but not to commit other legal acts instead. Judicial practice knows cases where applications have been submitted for dismissal and for payment of a valid share, for the return of a share in the authorized capital, for the repurchase of a share, for the allocation of a share, and others that were unreasonably classified as applications for withdrawal from the company[4].

Analyzing notarial control over the withdrawal of a participant from a company, it would be reasonable to draw attention to the limits of such control. In accordance with Item 1 of Article 163 of the RF Civil Code, the notary certifying a transaction is responsible for verifying the legality of this transaction. However, such verification does not apply to the legal consequences of the transaction and to the assessment of their legality. One of the main

[1] Resolution of the Presidium of the Supreme Commercial Court of the Russian Federation No. 9913/13 of January 21, 2014 in case No. A33-18938/2011. *Bulletin of the Supreme Commercial Court of the Russian Federation*. 2014. No. 5.

[2] Ruling No. 310-ES21-12927 of August 9, 2021 in case No. A68-4615/2020. Access from the legal reference system 'ConsultantPlus'.

[3] The Supreme Court of the Russian Federation classified the withdrawal from the company as a transaction: '...based on the provisions of Article 94 of the Civil Code of the Russian Federation and Articles 8, 9, 23, 26 of Federal Law No. 14-FZ of February 8, 1998 'On Limited Liability Companies', the legal consequences of a member's statement on withdrawal from a company occur exclusively in virtue of the member's will aimed at terminating the rights of participation in the company. Such an expression of will is a unilateral transaction since, according to the law, the will of one party is necessary and sufficient to complete this transaction (Item 2 of Article 154 of the Civil Code of the Russian Federation)'. (Ruling No. 305-ES16-2571 of the Supreme Court of the Russian Federation of April 18, 2016 in case No. A40-117162/2012). See also: Information Letter of the Presidium of the Supreme Commercial Court of the Russian Federation No. 162 of December 10, 2013 'Review of the Practice of Application of Articles 178 and 179 of the Civil Code of the Russian Federation by Commercial Courts' (Item 13) . *Bulletin of the Supreme Commercial Court of the Russian Federation*. 2014. No. 2.

[4] See, for example: Review of Judicial Practice on Some Issues of the Application of Legislation on Business Entities (approved by the Presidium of the Supreme Court of the Russian Federation on December 25, 2019) (Item 4). *Bulletin of the Supreme Court of the Russian Federation*. 2020. No. 5; Resolution of the Federal Antimonopoly Service of the Ural District of July 22, 2008 in case No. A76-9983/2007-11-623/65; Resolution of the Federal Antimonopoly Service of the North-Western District of June 08, 2007 in case No. A66-13276/2005; Resolution of the Federal Antimonopoly Service of the Volga Region District of April 21, 2010 in case No. A55-14427/2009. Access from the legal reference system 'ConsultantPlus'.

legal consequences of withdrawal is paying the actual value of the share or part of the share in the company's authorized capital to the leaving participant, or providing him in kind with property of the same value within three months from the date of commencement of the relevant obligation, unless another period or procedure for the payment of the actual value of the share or part of the share is provided for in the company's charter (Item 6.1 of Article 23 of the LLC Law). The right to receive the actual value of the share is related to the right to withdraw, but represents a separate participant's right, and the legality of its implementation is beyond the scope of notarial control. For example, by virtue of para. 5 of Item 1 of Article 63 of the Law 'On Insolvency (Bankruptcy)', after the introduction of the supervision procedure, it is not allowed for the debtor to satisfy the claims of the debtor's founder (participant) to allocate a share in the debtor's property in connection with the withdrawal of its founders (participants), to repurchase or purchase outstanding shares, or to pay the actual value of the share[1]. It has been suggested in the scientific literature that a notary does not have the right to certify a membership cancellation letter if a legal entity undergoes a supervision procedure so as to prevent a violation of the prohibition on paying the actual value of the share. A similar issue was discussed in connection with the moratorium aimed at strengthening the financial condition of companies and entrepreneurs, which was introduced by Decree of the Government of the Russian Federation No. 497 'On the Introduction of a Moratorium on the Initiation of Bankruptcy Proceedings Against Claims Submitted by Creditors' of March 28, 2022[2] [9; 18, p. 136].

There are other conditions for exercising the right to receive the actual value of the share. The company shall not pay the actual value of a share or part of a share in the authorized capital of the company or provide with property of the same value in kind in the event that at the time of making these payments or of providing property in kind the company meets the criteria of insolvency (bankruptcy) in accordance with the federal law on insolvency (bankruptcy) or if such payments or provision with property in kind will result in meeting such criteria by the company (Item 8 of Article 23 of the LLC Law).

Notarial control cannot be unlimited: it is the legality of the exercising of the right to leave the company that shall be controlled, but not the legal consequences of such withdrawal including the right to receive the actual value of a share in the authorized capital of the company. The courts also confirm that the LLC Law provides for different regulation and legal consequences of transactions involving the withdrawal of a participant from a company (Article 26 of the LLC Law) and transactions involving the transfer of a share in the company's authorized capital (Article 21 of the LLC Law)[3], 'the concept of the transfer of a share in the authorized capital as a result of a transaction and the concept of the participant's withdrawal are not identical by implication of Articles 21 and 26 of Federal Law No. 14-FZ 'On Limited Liability Companies' of February 8, 1998'[4]; 'in terms of the participant's right to receive the actual value of his share in the authorized capital of the company, the implementation of the participant's decision to withdraw from the company can be limited by ongoing bankruptcy proceedings, while such a restriction does not deprive the participant of the right to withdraw from the company'[5].

The practice of notarial control focusing exclusively on the legality of submitting a membership cancellation letter by the participant has shown insufficient effectiveness during the first four years of the implementation of this control. It turned out to be ineffective both for the company and the leaving participant and for third parties, since it created the opportunity for unfair behavior of the participant (in the process of filing the letter to the company) and of the company (if failing to submit relevant documents to the registration authority on the changes in the company membership).

The problems that arose were removed by placing notaries under an obligation to submit information about the participant's withdrawal from the company to the registration authority. Federal Laws No. 251[6] and

[1] On Insolvency (Bankruptcy): Federal Law No. 127-FZ of October 26, 2002 (as of April 29, 2024). *Collection of Legislative Acts of the Russian Federation*. 2002. No. 43. Art. 4190.

[2] On the Introduction of a Moratorium on the Initiation of Bankruptcy Proceedings Against Claims Submitted by Creditors: Decree of the Government of the Russian Federation No. 497 of March 28, 2022 (as of July 13, 2022). *Collection of Legislative Acts of the Russian Federation*. 2022. No. 14. Art. 2278. (ceased to be valid on September 30, 2022).

[3] Resolution of the Second Commercial Court of Appeal No. 02AP-4960/2016 of July 28, 2016 in case No. A28-14163/2014. Access from the legal reference system 'ConsultantPlus'.

[4] Resolution of the Third Commercial Court of Appeal of February 22, 2017 in case No. A69-2787/2016. Access from the legal reference system 'ConsultantPlus'.

[5] Resolution of the Seventh Commercial Court of Appeal No. 07AP-12198/2021 of February 2, 2022 in case No. A45-6224/2021 (this Resolution was left unchanged by Resolution of the Commercial Court of the West Siberian District No. F04-2132/2022 of March 19, 2022; Ruling of the Supreme Court of the Russian Federation No. 304-ES22-14770 of August 29, 2022 dismissed the transfer of case No. A45-6224/2021 to the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation for review in cassation proceedings). Access from the legal reference system 'ConsultantPlus'.

[6] On the Introduction of Amendments to Article 94 of Part One of the Civil Code of the Russian Federation: Federal Law No. 251-FZ of July 31, 2020. *Collection of Legislative Acts of the Russian Federation*. 2020. No. 31 (Pt. 1). Art. 5010.

No. 252-FZ[1] were adopted to introduce amendments to Law 'On Limited Liability Companies' and to Article 94 of the RF Civil Code in order to strengthen the role of the notary in controlling the activities of LLC's. According to these amendments, which entered into force on August 11, 2020, notaries are obliged not only to certify the participant's membership cancellation letter but also to send a request for making appropriate changes to the body carrying out state registration of legal entities within *two working days*, in the form of an electronic document signed with an enhanced qualified electronic signature of the notary (paras. 1, 2 of Item 1.1 of Article 26 of the LLC Law). It should be emphasized that earlier the notification of the registration authority about the withdrawal of a participant from an LLC and the submission of the relevant documents to the registration authority were supposed to be carried out by the company itself. It is also noteworthy that in notarial practice the setting of the specified time limit is assessed positively since it makes it possible to account for 'communication failures and other technical difficulties, force majeure circumstances in the work of the notary office', thus 'eliminating most problems with the timely submission of the applications'. 'And the practice proves that, for example, when certifying transactions on Friday evening and submitting a request for making changes in the records on the legal entity, one may find themselves in a situation where the service is unavailable due to the system maintenance, so a period of two working days is optimal in this case because it excludes delay on the part of the notary and interested parties' [21, p. 6]

In addition, a notary is obliged, no later than *one working day* from the date of filing the specified request to the body carrying out state registration of legal entities, to forward to the LLC the certified membership cancellation letter of the participant and a copy of the request filed to the body carrying out state registration of legal entities, which is to be done by sending these to the company's address indicated in the Unified State Register of Legal Entities and (or) to the company's e-mail address taken from the Unified State Register of Legal Entities (if there is stated any) (para. 3 of Item 1.1 of Article 26 of the LLC Law).

In accordance with Item 1 of Article 8 of Federal Law 'On State Registration of Legal Entities and Individual Entrepreneurs', state registration is carried out within no more than five working days from the date of submission of the documents to the registration authority, unless otherwise provided for by law[2].

Thus, changes to the Unified State Register of Legal Entities will be made no later than eight working days after the day of notarizing the membership cancellation letter, without any involvement of the company or the leaving participant in this process. As Yu. S. Povarov was right to note, 'this makes it impossible for the applicant to later arbitrarily refuse to commit legal actions associated with the withdrawal after the notarial 'service' is completed [33, p. 23]. For example, on March 29, 2021, a notary certified membership cancellation letters of the participants, sent these letters to the registering authority and to the company, and on April 6, 2021, the claimants' withdrawal from the company was registered in the Unified State Register of Legal Entities and the shares were transferred to the company[3].

An analysis of judicial practice has revealed cases where the notary has failed to send the letters to the body carrying out state registration of legal entities, which leads to subsequent recognition of the submitted membership cancellation letter as null and void. In one case, one of the founders of the company notarized the membership cancellation letter, but the notary did not perform further necessary actions with this letter[4].

Such mistakes of notaries result in the violation of the leaving participant's right to the calculation procedure and disrupt the deadline for the actual value of the share to the participant to be paid. For example, on August 27, 2020, a company's participant T.A.M. notarized his membership cancellation letter, and the notary sent the letter to the company on the same day. But no corresponding request was sent to the body responsible for the state registration of legal entities, although the notary was to send a request for changes to be made to the Unified State Register of Legal Entities as well as to send a copy of this request and the membership cancellation letter to the company after that. The relevant changes to the Unified State Register of Legal Entities were only made on January 15, 2021, i.e., almost six months later[5] [17]. Item 6.1. of Article 23 of the LLC Law runs that in the case of the participant's withdrawal

[1] On the Introduction of Amendments to Federal Law 'On Limited Liability Companies' in Terms of Improving the Procedure for Entering Information into the Unified State Register of Legal Entities about the Withdrawal of a Member of a Limited Liability Company from the Company: Federal Law No. 252-FZ of July 31, 2020. *Collection of Legislative Acts of the Russian Federation*. 2020. No. 31 (Pt.1). Art. 5011.

[2] On State Registration of Legal Entities and Individual Entrepreneurs: Federal Law No. 129-FZ of August 8, 2001 (as of December 25, 2023). *Collection of Legislative Acts of the Russian Federation*. 2001. No. 33 (Pt. 1). Art. 3431.

[3] Resolution of the Commercial Court of the Moscow District No. F05-9616/2022 of May 18, 2022 in case No. A40-151363/2021. Access from the legal reference system 'ConsultantPlus'.

[4] Resolution of the Tenth Commercial Court of Appeal No. 10AP-7393/2023 of May 31, 2023 in case No. A41-65576/2021. Access from the legal reference system 'ConsultantPlus'.

[5] Ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation No. 305-ES23-1741 of May 31, 2023 in case No. A40-931/2022.

from the company, his/her share passes to the company in accordance with Article 26 of the Law. The company is obliged to pay the actual value of the participant's share in the authorized capital of the company, which is determined on the basis of the company's accounting statements for the last reporting period preceding the date of transferring the participant's share to the company; or, with the consent of this participant, the company is obliged to give him property of the same value in kind; or, in the case where the share is not yet fully paid for by the participant, the actual value of the paid part of the share is to be compensated for. In the dispute under consideration, if the request for changes to be made to the Unified State Register of Legal Entities had been submitted on time in August 2020, then 2019 would have been considered the reporting period; but since that the changes were only made in January 2021, 2020 became the reporting period for calculating the actual share of the participant. As follows from the judicial acts on this dispute, the participant's guilt in late registration in the Unified State Register of Legal Entities was discussed in the court sessions, although in the specified period this duty was assigned to the notary. The reasons for the notary's non-performance of his duties could not be identified from the case papers.

It is also essential to note that a membership cancellation letter can be received by the company from a notary before a corresponding entry is made in the Unified State Register of Legal Entities on the transfer of a share to the company. A. R. Tigranyan believes that 'the members of the corporation may establish in the charter that in their relations a participant is considered to have left the company from the moment the company receives the membership cancellation letter, or from the date of making the corresponding entry in the Unified State Register of Legal Entities, depending on which of the specified events occurred earlier. The purpose of submitting a request to the Unified State Register of Legal Entities is to publicly announce the termination of this participant's right to a share, and this demonstrates the principle of publicity and reliability of the Unified State Register of Legal Entities…. If the information has already been communicated to the company's participants before a relevant entry was made in the Unified State Register of Legal Entities, the participants may not unfairly refer to the absence of the entry in the Unified State Register of Legal Entities…' [37, p. 60]. In any case, for all third parties, changes related to the withdrawal of a participant from company become effective from the moment of their state registration. It should also be emphasized that the share of the leaving participant passes to the company from the date of making the corresponding entry in the Unified State Register of Legal Entities about the withdrawal of the participant from the company if the participant's right to withdraw from the company is provided for in the company's charter (subitem 2 of Item 7 of Article 23 of the LLC Law). There are erroneous statements in the scientific literature that this date is the date when the membership cancellation letter is received by the company [10; 36, p. 187].

Notarial control is not carried out where a participant withdraws from a company that is a credit institution (Item 1.3 of Article 26 of the LLC Law). In credit institutions, the share or part of the share passes to the company from the moment the company receives a membership cancellation letter if the right of a participant to withdraw from the company is provided for by the charter. After the company being a credit institution receives a participant's membership cancellation letter, it is obliged to submit a request to the Unified State Register of Legal Entities for making changes not related to amendments to the founding document.

Notarial Control over the Withdrawal of a Participant from a Company by Submitting a Claim Compelling the Company to Buy His Share in the Authorized Capital of the Company

The LLC Law provides for the case of notarial control over the claim for the acquisition of the share by the company in the event that the general meeting of the company's participants decides to make a large-scale deal or to increase the authorized capital: at the request of a participant in the company who voted against such a decision or did not participate in the voting, the company is obliged to buy his share in the authorized capital of the company (para. 2 of Item 2 of Article 23). As researchers note, in this case, the member of the company 'has the right to vote with his feet and leave, not agreeing with such a fundamental change in the life of the corporation' [7, p. 105]. Here, the legislator explicitly establishes that such a claim is subject to mandatory notarization according to the rules provided for by the legislation on notarization concerning the certification of transactions, and can be submitted by a participant of the company within forty-five days from the date when he learned or should have learned about the decision, or within forty-five days from the date of taking the decision if the participant of the company participated in the general meeting of the company's participants that took this decision[1]. Mandatory notarization of such a claim was also introduced since January 1, 2016[2].

Thus, notaries are obliged to exercise control either over the membership cancellation letter of the LLC participant or over his/her claim compelling

[1] This term is restrictive. See: Ruling of the Supreme Court of the Russian Federation No. 305-ES15-2572 of December 7, 2016 in case No. A40-51637/2014. Access from the legal reference system 'ConsultantPlus'.

[2] On the Introduction of Amendments to Certain Legislative Acts of the Russian Federation in Terms of Ensuring the Reliability of Information Provided During State Registration of Legal Entities and Individual Entrepreneurs: Federal Law No. 67-FZ of March 30, 2015 (as of June 29, 2015) (Item 4 of Article 3).

the company to buy his/her share in the authorized capital of the company in the cases established by para. 2 of Item 2 of Article 23 of the LLC Law. It should be noted that, although these actions of the LLC participant in both cases succeed his/her actual withdrawal from the company, the LLC Law considers them as two independent ways to terminate corporate relations with the company, therefore there are special features of the implementation of notarial control in both cases.

Notarial control over a company participant's claim compelling the company to buy his/her share in the case provided for in para. 2 of Item 2 of Article 23 of the LLC Law is an independent type of notarial control, since such a claim can be submitted regardless of whether the membership cancellation letter has been filed or not. For example, in one of the cases, the court considered that the participant who had submitted a claim compelling the company to buy his share violated the share alienation procedure established by the LLC Law, since he had not sent the company an offer to buy the share and had not submitted a membership cancellation letter. However, the Supreme Court of the Russian Federation determined that 'when a company acquires a share in its authorized capital by means of the above-mentioned procedure, it is not required that the participant priorly approach the company with a proposal to conclude an agreement on transferring the share and with a membership cancellation letter'[1][14; 16].

It should be noted that, unlike the right to withdraw, the participant's right to demand the acquisition of the share may be not provided for in the company's charter.

It is not by chance that the right to demand the acquisition of the share in this case is referred to in the scientific literature as a 'certain compensatory mechanism' proposed to the participant who does not agree with the decision taken [5]. In the literature, this right is called the 'company's right of redemption' or the 'right to sell to the company', although the LLC Law does not use these terms at all [4; 6, p. 98; 39]. A notary certifies the participant's claim *compelling the company to buy the share*.

According to Item 27 of the 'Notary rules for performing notarial acts establishing the amount of information necessary for a notary to perform notarial acts and the method of recording the information', when certifying a membership cancellation letter of an LLC participant, the participant's claim compelling the company to buy his/her share in the authorized capital of the company, the formal offer, the notary finds out information on the status of the claimant based on the data contained in the Unified State Register of Legal Entities.

In addition to the information about the claimant's status obtained from the Unified State Register of Legal Entities, a notary must establish the presence of legitimate grounds for the participant's claim.

First of all, the notary must check whether the decision has been taken by the general meeting of participants, and not by any other body of the LLC, especially given that, by virtue of Article 46 of the LLC Law, such a decision may be viewed as the one falling within the competence of the board of directors (supervisory board).

It is also important for notarial control that the right to demand the acquisition of the share arises only if the decision that was not supported by the LLC participant claiming to buy the share had been actually taken. For example, Z.D.A., a participant in a LLC, filed a lawsuit to recover the actual value of the share in the authorized capital of LLC due to the fact that she had voted against approving a large-scale deal of the company. However, the court found that no decision had been made on this issue since the votes were distributed as follows: 'for' – 0 votes; 'against' – Z.D.A. (38.5 percent), 'abstained' – the rest of the participants (61.5 percent)[2]. The court came to a reasonable conclusion that in such a situation, the right to demand the acquisition of the share does not arise. Therefore, in exercising notarial control, the notary must check the existence of the resolution by the general meeting of the company's participants where the participants voted for approving a large-scale deal or for increasing the company's authorized capital.

In addition, the general meeting of participants may approve deals that are not large by virtue of law, in which case the participant also does not have the right to demand the acquisition of the share [3]. The decision containing a consent to a large-scale deal must specify the person(s) who is(are) a party(parties) to it, the beneficiary, the price, the subject of the deal, and its other essential terms or the procedure for determining them, while the party and the beneficiary may be not indicated if the deal is made at an auction, as well as in other cases if

[1] Ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation No. 305-ES15-2572 in case No. A40-51637/2014. See also: Ruling of the Supreme Court of the Russian Federation No. 305-ES15-2572 of April 30, 2015 in case No. A40-51637/14.

[2] Resolution of the Commercial Court of the Volga-Vyatka District No. F01-12932/2020 of September 29, 2020 in case No. A43-51538/2019. Access from the legal reference system 'ConsultantPlus'.

[3] Resolution of the Commercial Court of the Ural District No. F09-5044/19 of August 28, 2019 in case No. A76-15567/2018 (Ruling of the Supreme Court of the Russian Federation No. 309-ES19-23618 of December 18, 2019 dismissed the transfer of case No. A76-15567/2018 to the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation for review in cassation proceedings); Ruling of the Supreme Commercial Court of the Russian Federation No. VAS-6227/13 of June 3, 2013 in case No. A26-5917/2012. Access from the legal reference system 'ConsultantPlus'.

the party and the beneficiary of the deal cannot be determined by the time when the consent is obtained for such a deal (paras. 3 and 4 of Item 3 of Article 46 of the LLC Law).

It should be emphasized that for the right to demand the acquisition of the share in the company's authorized capital to arise, the decision of the general meeting of participants must be taken with regard to one of the two subjects – the approval of a large-scale deal or an increase in the company's authorized capital. If the decision was made on some other issues, on which the participant also voted against or did not participate in the voting, then the participant does not have the right to claim purchasing the share.

According to Item 1 of Article 19 of the LLC Law, the general meeting of the company's participants may decide to increase the company's authorized capital through additional contributions made by the participants provided that this decision has been taken by a majority of at least two-thirds of the total number of votes of the company's participants, unless the need for more votes to make such a decision is stipulated by the company's charter. Such a decision should determine the total cost of additional contributions as well as establish a uniform ratio for all members of the company between the cost of the additional contribution of the company participant and the amount by which the nominal value of his/her share increases. This ratio is established based on the principle that the nominal value of a company participant's share may increase by an amount equal to or less than the value of his additional contribution. The number of votes from the total number of the company's participants in taking such a decision and the content of such a decision prescribed by law are also subject to notarial control.

The notary also controls the size of the share claimed by the participant for being purchased. According to the LLC Law, the participant can compel the company to buy only his entire share in the authorized capital of the company, unlike what is prescribed by the Law on Joint Stock Companies[1].

The notary is also to check whether the claimant voted against the decision and participated in the voting: if the participant voted 'for' or 'abstained', then the notary does not have the right to certify the claim compelling to buy the share.

According to para. 2 of Item 2 of Article 23 of the LLC Law, this claim may be submitted by a company participant within forty-five days from the date when the company participant learned or should have learned about the decision. If a company participant took part in the general meeting of the company's participants that adopted such a decision, the claim may be submitted within forty-five days from the date of taking the decision. The legislation does not directly provide for the possibility of extending this period. Thus, the question arises about whether the compliance with the specified deadline is also subject to notarial control.

As corporate practice shows, a company can recognize and satisfy a participant's claim for the acquisition of the share, even if it was submitted outside the specified period. Therefore, if, having established a violation of the specified deadline, the notary refuses to certify such a claim, then the participant of the company will not be able to submit it at all, even if the company agrees to buy such a share. Obviously, such a solution does not correspond to the principle of freedom of entrepreneurial activity and restricts corporate rights. However, this period is established legally, it is legitimate and restrictive, the notary checks and confirms the legality of the claim, which is supposed to include verification of compliance with the deadline for its submission. In our opinion, the legislator should establish the possibility to restore this period at the discretion of the company. This would allow the notary to indisputably certify the participant's claim presented in violation of the established 45-day period. If, in this case, the company chooses not to extend the violated deadline, it gets the right to refuse to satisfy the notarized participant's claim for the acquisition of his/her share.

Unlike the procedure for a participant's withdrawal from a company, in the cases of notarizing a claim compelling the company to buy the share, a notary is not obliged to submit a request to the body carrying out state registration of legal entities and to send the certified claim to the company. The share passes to the company from the date when the company receives the participant's claim for the acquisition of the share (subitem 1 of Item 7 of Article 23 of the LLC Law). Accordingly, the claim must be forwarded to the company by the participant personally.

And here arise the same difficulties that were observed before 2016 in situations with a participant withdrawing from a company: the participant could postpone submitting the claim for a long time, while the company, after receiving the claim, could delay the submission of relevant documents to the registration authority.

On the one hand, a participant who notarized the membership cancellation letter with a notary did not need to submit this letter to the company, and therefore a reasonable question arose about 'what is a practical benefit of a notary only checking the ownership of the transferred share when signing the membership cancellation letter (with no rights being transferred) if the participant is not obliged to submit the letter to the company at all' [30, p. 50].

[1] On Joint Stock Companies: Federal Law No. 208-FZ of December 26, 1995 (as of December 25, 2023) (Item 1 of Article 75). *Collection of Legislative Acts of the Russian Federation*. 1996. No. 1. Art. 1.

On the other hand, the company itself, after receiving a notarized membership cancellation letter from a participant, could act in bad faith and evade taking measures to register the relevant changes in the Unified State Register of Legal Entities, as evidenced by judicial practice[1]. Having received a membership cancellation letter, the sole executive body of an LLC often unreasonably delayed the submission of the documents and the request for amendments to be made to the Unified State Register of Legal Entities. This situation was aggravated by the fact that the legislation does not establish any significant responsibility for violating the one-month deadline for submitting the request to the registration authority. Today a participant is considered to have left the company from the moment the relevant changes were made to the Unified State Register of Legal Entities, but until August 11, 2020, a participant was considered to have left the company from the moment his notarized letter was received by the LLC. Without timely amendments to the Unified State Register of Legal Entities third parties could not know about changes in the membership, this information was known only to the sole executive body of the LLC. As M. N. Ilyushina was right to note, 'this situation led to legal uncertainty in the information about an LLC's participants. Thus, no one except the director knew who was actually a member of the company, for example, at the time of the convocation of the general meeting. As a result, the previously existing procedure opened up unlimited possibilities for manipulating with the moment of termination of the participant's status and with the moment of transfer of rights to the share' [13, p. 30]. Company participants who filed a membership cancellation letter were forced to apply to the courts claiming to compel the company to register information on withdrawal in the Unified State Register of Legal Entities[2]. It should be emphasized that these problems were solved by charging the notary with the duty to provide the registration authority with the information on participants' withdrawal from companies.

Conclusion

Notarial control should be exercised over a participant's withdrawal from an LLC both on the basis of the participant's membership cancellation letter and on the basis of his/her claim for the acquisition of the share. Thus, subitem 1 of Item 1 of Article 94 of the Civil Code of the Russian Federation must be harmonized with Item 1 of Article 26 of the LLC Law in terms of naming the ways (methods) for a company participant to leave the company.

Notarial control over the participant's claim compelling the company to buy his/her share, in the event that the general meeting of participants decides to make a large-scale deal or to increase the authorized capital while the participant voted against such a decision or did not participate in the voting, is an independent type of notarial control, since such a claim can be submitted regardless of a membership cancellation letter being filed and irrespective of whether the company charter provides for the opportunity to make such a claim or not.

As is the case with filing a membership cancellation letter, it is necessary to charge notaries with a duty, when certifying a claim for the acquisition of the share, to submit to the registration authority a request for appropriate changes to be made in the Unified State Register of Legal Entities and to transfer to the company the certified claim of the participant compelling the company to buy the share and a copy of the request that has previously been sent to the registration authority.

It should be noted that notarial control over a participant's claim for the acquisition of the share is not a universal mechanism in the legislation. According to Item 3 of Article 93 of the RF Civil Code, which literally coincides with para. 1 of Item 2 of Article 23 of the LLC Law, there are the following cases where a company participant may also demand from the company to buy his/ her share or part of the share: if the company's charter prohibits the transfer of the share or part of the share owned by a company participant to third parties while other company participants have refused to buy this share or part of this share; b) if no consent has been obtained to transfer the share or part of the share to a company participant or to a third party, provided that the need to obtain such consent is prescribed by the company's charter. In these cases, notarial control is not required, and the share or part of the share passes to the company from the date when the company received the participant's claim for the acquisition of the share (subitem 1 of Item 7 of Article 23 of the LLC Law), while documents for state registration of the relevant changes must be submitted by the company to the body carrying out state registration of legal entities within one month from the date of transfer of the share or part of the share to the company[3]. The changes become effective for third parties from the moment of their state registration (Item 7.1 of Article 23 of the LLC Law).

It does not seem to be fully jusified that there is notarial control over the claim for the acquisition of the share in the case provided for in para. 2 of Item 2 of Article 23 of the LLC Law while there is not established

[1] Resolution of the Seventh Commercial Court of Appeal No. 07AP-1657/2021(1) of April 12, 2021 in case No. A03-15738/2019. Access from the legal reference system 'ConsultantPlus'.

[2] Resolution of the Commercial Court of the Ural District No. F09-8136/18 of December 24, 2018 in case No. A76-4422/2018. Access from the legal reference system 'ConsultantPlus'.

[3] Resolution of the Commercial Court of the Volga-Vyatka District No. F01-5148/2018 of November 28, 2018; Letter from the Federal Tax Service of Russia No. GD-4-14/25946 of December 28, 2018 'On the Forwarding of the 'Review of Judicial Practice on Disputes Involving Registration Authorities No. 4 (2018)'. Access from the legal reference system 'ConsultantPlus'.

such control over similar claims in cases specified in para. 1 of Item 2 of Article 23 of the law. In our opinion, *de lege ferenda* these claims for the acquisition of the participant's share should also be notarized since it is necessary to verify and establish a set of legal facts (a charter prohibiting the transfer of the share or a mandatory consent to such a transfer; the correctness of the participant's proposal to other participants to buy the share or of his/her request for obtaining their consent; the existence of the refusal to buy the share or refusal to give consent for transferring the share).

To increase the effectiveness of notarial control, it is necessary to charge notaries with the duty (by analogy with the situation of submitting a membership cancellation letter), when certifying a claim for the acquisition of the share in the cases provided for in paras. 1 and 2 of Item 2 of Article 23 of the LLC Law, to submit to the registration authority a request for appropriate changes to be made to the Unified State Register of Legal Entities and to forward to the company the certified claim of the participant compelling the company to buy the share and a copy of the request that has previously been sent to the registration authority, since filing a membership cancellation letter and submitting a claim for the acquisition of the share are two ways to withdraw from the company.

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Public-Law and Private-Law Nature of Family Legal Relations

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Introduction: *legal dualism, conditioned by the differentiation of the private and public law spheres, has been given a thorough attention in theoretical studies but was never considered with a focus on family legal relations. This paper attempts to comprehensively study scientific theories explaining the mechanism of separation of law into private and public (theories of the legal regulation subject and theories of the legal regulation method), as well as their relationship with the material and formal criteria for dividing law into private and public. The study pays special attention to clarifying the public-law and private-law nature of family legal relations in the context of discussing the independence of family law as one of the branches of law. It is proposed to transform the question of classifying family law under private or public law into solving the issue of the balance of private and public interests. The* ***purpose*** *of the study is to form a scientific understanding of family legal relations through the prism of the theory of dualism of law as well as the theory of interest as performing the function of a criterion within the framework of the proposed concept.* ***Methods:*** *traditional normativism served as the ontological component of this scientific study and predetermined the algorithm for the research object cognition. The author took as a premise the idea of a universal connection between phenomena and processes, thoroughly substantiated within the framework of materialistic dialectics. The study employed general scientific research methods, including induction, deduction, analogy, abstraction, comparison, etc. Special scientific methods were particularly helpful: the actual picture of public-law and private-law regulation of family relations was outlined using the dogmatic legal method; the meaning of legal regulations was clarified in the process of interpreting the legal norms of family legislation and legislation of other branches, which made it possible to substantiate the conclusions formulated in the work; the historical-legal method helped the author trace the evolution of scientific ideas about dualism in law, about the independence of family law as a branch of law, etc. In addition, the inter-branch method was of great importance for this study since it made it possible to take into account the inter-branch links between family law and the related branches of law.* ***Results:*** *the study has proved that revealing the public-law or private-law focus of the protected interest makes it possible to determine the legal nature of family legal relations that corresponds to this interest.* ***Conclusions:*** *the heuristic and methodological significance for modern family law doctrine of dividing law into private and public is clarified; the fundamental impossibility is proved of identifying family legal relations as those having unambiguously public-law or private-law nature; specific examples show the critical importance of interest in determining private-law or public-law effects on social relations; the paper*

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presents evidence of the independence of family law as an individual element of the Russian legal system; the need for a legal definition of the 'family' concept is substantiated.

Keywords: dualism in law; family legal relationship; legally protected interest; interest as a criterion; balance of private and public interests; family law terminology; 'family' concept

Information in Russian

Публично-правовая и частноправовая природа семейного правоотношения

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Введение: *дуализм в праве, обусловленный дифференциацией сфер частного и публичного права, получил обстоятельное теоретическое осмысление, однако не был рассмотрен ранее в фокусе семейных правоотношений. В рамках настоящего исследования предпринята попытка комплексного изучения научных теорий, объясняющих механизм разделения права на частное и публичное (теории предмета правового регулирования и теории метода правового регулирования), а также их взаимосвязи с материальными и формальными критериями деления права на частное и публичное. Особое внимание уделено выяснению публично-правовой и частноправовой природы семейного правоотношения в контексте дискуссии о самостоятельности семейного права как отрасли права. Предлагается вопрос о принадлежности семейного права к частному или публичному трансформировать в решение проблемы баланса в соотношении частных и публичных интересов.* ***Цель:*** *формирование научного представления о семейном правоотношении через призму теории дуализма права, а также теории интереса, выполняющего критериальное значение в рамках предлагаемого концепта.* ***Методы:*** *онтологической составляющей настоящего научного изыскания выступил традиционный нормативизм, предопределивший алгоритм познания объекта изучения. При подготовке исследования автор исходил из представления о всеобщей связи явлений и процессов, обстоятельно аргументированной в рамках материалистической диалектики. Широко применялись общенаучные методы, включая индукцию, дедукцию, аналогию, абстрагирование, сравнение и др. Акцентируя внимание на значении частноправовых методов, использованных в ходе исследования, необходимо отметить следующее: благодаря догматическому правовому методу была воссоздана действительная картина публично-правового и частноправового регулирования семейных отношений; в процессе толкования правовых норм семейного и иного отраслевого законодательства был уяснен смысл правовых предписаний, что позволило аргументировать сформулированные в работе выводы; в результате опоры на историко-правовой метод автору удалось проследить эволюцию научных представлений о дуализме в праве, о самостоятельности семейного права как отрасли права и т. п. Кроме того, большое значение для настоящего изыскания имел межотраслевой метод, позволивший учесть межотраслевые отношения семейного права и взаимосвязанных с ним отраслей права.* ***Результаты:*** *доказано, что выяснение публично-правовой или частноправовой направленности охраняемого интереса позволяет определить и соответствующую этому интересу правовую природу семейных правоотношений.* ***Выводы:*** *выяснено эвристическое и методологическое значение деления права на частное и публичное для современной семейно-правовой доктрины; доказана принципиальная невозможность однозначной констатации публично-правовой или частноправовой природы семейного правоотношения; на конкретных примерах показано критериальное значение интереса при определении частноправового или публично-правового воздействия на общественные отношения; в системном виде приведены доказательства самостоятельности семейного права как отдельного элемента российской правовой системы; аргументирована действительная потребность в легальной дефиниции понятия «семья».*

Ключевые слова: дуализм в праве; семейное правоотношение; охраняемый законом интерес; критериальное значение интереса; баланс частных и публичных интересов; легальный семейно-правовой терминологический аппарат; понятие «семья»

About Dualism in Law

Researching dualism in law has become a kind of civil law tradition: not a single fundamental private law study can do without referring to the division of law into private and public. We cannot but agree with O. A. Kuznetsova that 'the principle of combination (balance) of private and public interests is a general principle of law and the studied problem of balancing these phenomena cannot be regarded exclusively as a civil-law problem' [21, p. 88]. Meanwhile, the influence of this dichotomy on family legal relations remains beyond research focus. The only exception can be found in O. Yu. Ilyina's considerations specifically devoted to the combination of private and public principles in family law [14, pp. 80-108].

The interest in dualism in law was demonstrated by legal scholars as far back as the pre-revolutionary period. For example, I. A. Pokrovsky believed that dualism in law 'constitutes the basis of scientific and practical classification of legal phenomena' [29, p. 37]. While recognizing the generally accepted division of law into private and public, G. F. Shershenevich wondered 'where the boundary line between civil and public law is' [41, p. 9]. What has always been a 'weak point' in the theory of division of law into private and public is the criterion for this division. The vast majority of legal scholars support the theory of interest as performing the function of a criterion with regard to the dichotomy under study. Modern science provides two main theories explaining the mechanism of dividing law into private and public: the theory of the subject of legal regulation and the theory of the method of legal regulation. These theories are closely related to the material and formal criteria for dividing law into private and public.

Proponents of material theories deem it necessary to clarify the range of social relations regulated by law. The scientific literature suggests differentiating the representatives of these theories into two groups.

One group includes adherents to the scientific concept proposed by Roman jurist Ulpian, who was the first to make an attempt to conceptualize the division of law into private and public. When solving the issue of dividing law into public and private, G. F. Shershenevich, being a proponent of the theory of the subject of legal regulation, considered it necessary to be guided by both the range of social relations falling under legal regulation and the form of protection of violated rights [41]. Extending this viewpoint, V. F. Popondopulo added that of crucial significance is the nature of the interest: individual persons have a private interest, while representatives of public authorities implement a common interest [30, p. 24]. Regarding the differentiation of these interests, N. M. Korkunov cited interesting observations made by ancient Roman legal scholars. They saw a complex substantiation in dividing the interests into private and public, while, on the one hand, denying the existence of public interests as such and stating that only private interests are protected by law, and on the other hand, attaching special importance to common interests that were assumed to be implemented through private ones [17, p. 165-183]. When determining the relationship between legal and moral regulators of public life, V. Solovyov made very interesting remarks that are of great importance for the theory of dividing law into private and public. He emphasized that law is aimed at the common benefit, but the provision of this benefit makes sense only if the interests of all members of society are harmonized, which is difficult to achieve [34, p. 6].

The other group includes the representatives of the material theory, who believe that the criterion for dividing law into private and public should be seen in the property nature or personal (non-property) nature of relations regulated by law. This concept is based on the idea that property relations are the subject of private law regulation, while personal (non–property) relations are the subject of public law regulation.

Unlike the theories of the legal regulation subject, the theories of the legal regulation method are called 'formal' in science. 'Formal' theories rest on the basic idea that in public law, the initiative for protection comes from public authorities, while in private law, this initiative comes from the participants in private legal relations. The theories of the legal regulation method are mainly represented by the following three theories: the theory of the initiative for protection, the theory of the difference in the position of the participants in a legal relationship, the theory of the division of law into private and public depending on the nature of legal norms. Each of these theories has its own supporters and opponents and is characterized by its own 'strengths' and 'weaknesses'. According to the theory of the initiative for protection, public law is protected on the initiative of state authority, while private law is protected on the initiative of a private individual. The disadvantage of this theory is that it does not answer the question of why certain relationships are protected in different ways. The theory of the difference in the position of the participants in a legal relationship is based on the following differentiation: public relations are relations in which there is a subject endowed with authority, while private relations refer to relationship between equal participants. According to the theory of dividing law into private and public depending on the nature of legal norms, dispositive norms of private law provide participants in the relevant relations with freedom to choose a course of behavior, while public-law norms provide a more limited freedom of expression.

Private-Law and Public-Law Elements in Family Law

It should be emphasized that modern legal regulation of family relations is characterized by an objectively determined combination of private-law and public-law elements. The public-law and private-law nature of family legal relations is often explored within the context of discussion on the independence of family law as a branch of law, which has its roots in the pre-revolutionary period. According to G. F. Shershenevich, family law should be considered a part of civil law [41, p. 13], while in the opinion of D. I. Meyer, family law should be recognized as an independent branch of law due to the special personal nature of family legal relations [24, p. 33-34]. The latter point of view is supported by most scholars in the modern family law doctrine [44; 46; 48; 61; 74].

O. A. Serova was quite right to note the following: 'The framework of the branch-specific approach seems insufficient for drawing a dividing line between the private and the public. A new vision of the interaction of socio-economic and political processes with the inter-branch model of legal regulation of social relations is required' [33, p. 279]. It is true that the optimal combination of public and private fundamentals should be primarily determined by a specific historical framework, which is fully applicable to family law [45; 52; 69; 71].

A. N. Levushkin was right to draw attention to the steady trend of associating the imperative method of legal regulation with public law, and the dispositive method – with private law [23]. With regard to family law, I. F. Alexandrov noted the imperative nature of most norms of family legislation, which he explains by the predominantly public-law regulation of family relations [1, p. 165]. V. A. Egupov agrees with him and recognizes the importance of the private-law segment of family law regulation with the simultaneous recognition of the primacy of public-law principles in it [11]. A similar point of view is shared by G. V. Bogdanova, who made a conclusion about the public nature of family law as one of the branches of law [5, p. 8].

O. Yu. Deryusheva holds an interesting position on this issue by noting the following: 'Individual legal (contractual, private) regulation is not the dominant factor (tool) in family law and occupies a relatively small share in the family law regulation; at the same time, public law regulation in the family sphere does not prevail over private (contractual) regulation and over the permissible types (means, techniques) of the family law regulation method' [8, p. 67]. According to A. A. Isaenkov, private interest takes precedence in family law, and inter-branch institutions should be viewed from the perspective of this interest [15, p. 27]. A similar view on the nature of family relations is expressed in foreign research literature on family law [63; 67]. B. A. Dzhandarbek's opinion is that 'currently, the norms of family law prevalently play the role of the regulator of private relations' [9, p. 30].

In the family law doctrine, along with the recognition of the public-law or private-law nature of family law, there is a concept of qualifying this branch of law as a complex one. This concept 'removes' many difficulties and appears to be quite appropriate. The idea of the existence of complex branches of law was extensively investigated in the works of Yu. K. Tolstoy, who believed that a single subject and a specific method of legal regulation are uncharacteristic of such branches of law [36, p. 45].

Thus, the public-law or private-law nature of a family legal relationship can be established based on various criteria, including formal and material; however, only such a material criterion as interest is of fundamental importance. Clarifying the public-law or private-law focus of the protected interest makes it possible to determine the legal nature of family legal relations corresponding to this interest.

An analysis of most norms of family law clearly demonstrates a harmonious combination therein of private and public interests, of dispositive and imperative methods of influence. For example, marriage and the dissolution of marriage involve certain documenting procedures with the participation of civil registry bodies. However, it is not possible to recognize legal relations on marriage and on its dissolution as exclusively public-law relations, since both of these acts of civil state are a manifestation of individual and freely expressed will of the participants in family legal relations.

In our opinion, the question of referring family law to private or public law should be transformed into resolving the issue of the balance of private and public interests. This makes it necessary to clarify the role of interest in the distinction between private and public law. Such a methodological approach to clarifying the public-law and private-law nature of family relations is conditioned by the fact that public and private interests are the basis for, respectively, public and private legal regulation in a particular area of family relations. One should agree with O. Yu. Ilyina that family law is characterized by a unique

combination of private and public interests, which distinguishes this branch of law from all the others [14, p. 104]. In this regard, A. N. Levushkin writes that 'some areas of modernization of the legal regulation of family law institutions are conditioned by the public activities of the state and other public legal entities, and by their role in the field of private and public law' [22, p. 39]. At the same time, the family as a social institution is influenced in both a deterrent and a stimulating manner: with the help of public-law means, the legislator, on the one hand, sets certain boundaries for family legal relations (for example, proclaiming marriage as a union of a man and a woman) and, on the other hand, stimulates participants in family legal relations to behave in a certain way (for example, by providing social guarantees to families with children).

Focusing on the term 'procedure', used in Article 2 of the Family Code of the Russian Federation, A. Yu. Kosyakov concludes that there are public principles in family law that serve primarily for the organizational functional purpose [20, p. 18]. What is meant here is the organizational-procedural segment of family legal relations that differ in administrative nature. For example, this refers to the activities of civil registry bodies within their authorities on registering marriages and divorces, as well as other acts of civil state. Seemingly, despite the fact that these activities are of a public nature, they are carried out in order to protect both the private interest of the participants in family legal relations and the public interest of the state.

On the Interests Protected by Family Law

In our opinion, the public-law and private-law nature of a family legal relationship should be clarified through establishing relevant interests protected by family law. Yu. G. Dolgov suggested considering a legally protected interest as a way of satisfying the needs of participants in family legal relations [10, p. 11]. According to the interpretation proposed by this researcher, private-law principles are predominant in family law as compared to public-law ones. V. V. Ganaga holds the opposite point of view: she believes that the civil tradition of classifying family law as a branch of private law, where prevails dispositive legal impact, is erroneous [7].

An analysis of the scientific literature shows that public interest in family law is most often associated with the implementation of functions assigned to the family and significant to the state. While describing the mechanism of the state's implementation of social functions in family law, V. V. Ganaga reflects on the so-called social security imperatives [7, p. 81]. For example, these are the requirements of reaching a certain age imposed on persons entering into marriage (Article 13 of the Family Code of the Russian Federation, hereinafter also referred to as the RF Family Code). The Constitutional Court of the Russian Federation has explained why the marriageable age is established as eighteen years in the Russian Federation as follows: the reaching of biological and psychological maturity is presumed[1]. It is noteworthy that the following rights are interpreted by the Constitutional Court of the Russian Federation in the light of interests – 'judging from the constitutionally meaningful interests of protection of the family and the child': the right of local self-government bodies at the place of residence of persons wishing to enter into marriage to permit entering into marriage to persons who have reached the age of sixteen, at their request and in the presence of valid reasons (Items 1 and 2), as well as the right of the constituent entities of the Russian Federation to determine by their laws the procedure and conditions in the presence of which, by way of exception, given specific circumstances, marriage can be entered into before reaching the age of sixteen. It should be added that the problems of respecting 'the best interests of the child' are widely studied in foreign research literature [47; 53; 64; 76; 82].

The social security imperatives include all circumstances that prevent from entering into marriage, since their presence inevitably puts the normal functioning of the family into question. Consequently, entering into marriage in the presence of circumstances preventing from marrying affects public interest. The *Review of Judicial Practice in Cases of the Annulment of Marriage,* approved by the Presidium of the Supreme Court of the Russian Federation on December 14, 2022, states that 'if a marriage is effected in violation of the requirements of Article 14 of the Family Code of the Russian Federation, that is, contrary to the obstacles indicated therein, the right to claim for the annulment of this marriage is granted to heirs who believe that their rights have been violated by effecting this marriage'[2]. Thus, despite the public nature of the rules governing the conditions and procedure for the conclusion and dissolution of marriages, they are intended to protect the private interests of participants in family relations and, in some cases, in hereditary legal relations. We must add

[1] On the Refusal to Accept for Consideration the Complaint of the Citizen Ivan Vasil'evich Pavlov about the Violation of His Constitutional Rights by Article 134 of the Criminal Code of the Russian Federation: Ruling of the Constitutional Court of the Russian Federation No. 568-O-O of October 21, 2008. The document has not been published. Access from the legal reference system 'ConsultantPlus'.

[2] Review of Judicial Practice in Cases of the Annulment of Marriage: approved by the Presidium of the Supreme Court of the Russian Federation on December 14, 2022. *Bulletin of the Supreme Court of the Russian Federation*. 2023. No. 3 (March).

that state registration of marriage, as well as state registration of divorce, is based on voluntary expression of the will of the participants in family legal relations who are guided by private interest in their decision-making.

According to O.Y. Ilyina, in family legislation the combination of private and public law principles is found in the norms defining the procedure for establishing paternity, changing the surname and the first name, as well as in the norms prescribing the notarization of deals made by participants in family legal relations [14, p. 107]. A. M. Rabets drew attention to the fact that family law is characterized by a combination of private and public interests. In particular, she writes the following: '... among private interests, the priority is given to ensuring the safety of the child, i.e., to implementing the right to protection from abuse by persons replacing parents during the placement of children left without parental care, as is guaranteed by Article 56 of the Family Code of the Russian Federation. The public interest in these relations is expressed in the existing need of society and the state for healthy, educated children who are brought up in a family and are protected by the family' [32, p. 102].

On the Interests of the Weaker Parties in a Family Legal Relationship

Seemingly, there are many specific examples in family law that clearly demonstrate the combination of private and public interests. In the context of the presented arguments, consideration should be given to the problem of the weaker parties to family legal relations. The following is reasonably emphasized in the scientific literature: 'the public interest in family law is implemented by attaching the priority to the private interest of the weaker party to the family legal relationship' [7, p. 77]. The attention of foreign civil science is also focused on these issues [49; 58; 66; 79]. For example, one of the studies notes that the state plays a vital role in protecting vulnerable participants in family legal relations [43]. Foreign researchers of private law often rely on the concept of state recognition as the ability to trace connections and define regulatory frameworks, which allows maintaining the filtering role of the state [81].

S. O. Karibyan is right saying the following: 'despite the private-public legal regulation of relations arising from marriage and family membership, we believe that the state can interfere in the 'sensitive matter' of family relations only in special cases – when protecting the 'weaker' party' [16, p. 17]. For example, family legislation takes as a premise the idea of equality of men and women, which, as M. V. Ulyanova notes, 'would make it possible to speak about the absence of a weaker party in marital or parental relations' [38, p. 23]; however, the presence of a weaker party in family legal relations is conditioned by the actual inequality of the participants in these relations. First of all, weaker participants in family legal relations include minors. That is why Russian family legislation is based on the principle of ensuring priority protection of the rights and interests of minors and disabled family members (Item 3 of Article 1 of the RF Family Code). At the time, the ECHR drew attention to the need to maintain a balance between the interests of minors and their parents, emphasizing that 'in the process of striking a fair balance between the interest of the child and those of the parents, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents'[1].

L. Yu. Mikheeva emphasizes that '...the interests of the 'weaker' party in a family legal relationship should remain paramount for everyone who would like to develop the science of family law and family legislation' [26]. Let us add that recent changes in family legislation have also affected the weaker party. In particular, with the adoption of Federal Law No. 403-FZ of July 31, 2023 'On the Introduction of Amendments to Articles 89 and 90 of the Family Code of the Russian Federation' (hereinafter also referred to as Law No. 403-FZ)[2], the legislator clarified the list of persons entitled to receive alimony[3]. In the family law doctrine, such persons are classified as weaker parties in family legal relations. The explanatory note to the relevant draft

[1] Judgment of the European Court of Human Rights of January 20, 2011 in the case of Rytchenko v. Russia (complaint No. 22266/04). *Bulletin of the European Court of Human Rights*. 2012. No. 2.

[2] On the Introduction of Amendments to Articles 89 and 90 of the Family Code of the Russian Federation: Federal Law No. 403-FZ of July 31, 2023. Available at: http://pravo.gov.ru.

[3] The following participants in family legal relations are named among them: a needy disabled spouse; the wife in the period of pregnancy; a spouse looking after the common child in the course of three years after his birth; a needy spouse looking after the common invalid child until the child reaches the age of eighteen, or looking after the common child being the 1st group invalid from childhood; as well as: the ex-wife in the period of pregnancy that occurred during marriage; the ex-spouse who actually takes care of a common child in the course of three years after his birth; a needy ex-spouse looking after the common invalid child until the child reaches the age of eighteen, or looking after the common child being the 1st group invalid from childhood; a disabled needy ex-spouse who has become disabled before the dissolution of the marriage or in the course of one year from the moment of the dissolution of the marriage; a needy ex-spouse who has reached pensionable age no later than five years since the dissolution of the marriage, if the spouses were married for a long time.

law stated that it had been prepared 'in order to ensure the living conditions necessary for the development, upbringing, and education of minors, and is also aimed at providing maintenance to other family members in need of financial support'[1]. The adoption of Law No. 403-FZ was largely conditioned by the emerging trend in law enforcement practice to determine the place of residence of a child with his father[2].

It should be emphasized that the focus on protecting the interests of the weaker parties in a family legal relationship is not limited to Articles 89-90 of the RF Family Code. R. S. Bevzenko stressed that the legal regime of the spouses' property is 'adapted to protect the weaker party in marital property relations' [3]. Despite the indicated importance of the legal regime of the spouses' property, some legal scholars question the expediency of preserving it. The scientific literature often draws attention to the preventive nature of the norm set up in Item 3 of Article 44 of the RF Family Code, which protects the interests of the weaker party to a marriage contract. This refers to the prohibition imposed on the parties to a marriage contract to include the 'conditions that put one of the spouses in an extremely unfavorable position or contradict the basic principles of family law' in this contract. The non-specificity of the list of such conditions became the subject of consideration by the Constitutional Court of the Russian Federation, which concluded that 'the variety of circumstances affecting the property status of spouses makes it impossible to establish an exhaustive list of them in the law'[3]. For example, the provisions of a marriage contract that deprive a spouse of the ownership of property acquired by spouses during the marriage were qualified by the Supreme Court of the Russian Federation as conditions that put one of the spouses in an extremely unfavorable position[4].

The restriction of contractual freedom inherent in family law is subject to reasonable criticism. Talking about the prospects of contractual regulation of family legal relations, E. A. Chefranova is right to emphasize the following: 'at the time when the Family Code was adopted, the legislator had reasonable concerns about the observance of the rights and legitimate interests of citizens in the application of dispositive regulation of property relations between spouses, which was previously unknown to domestic legislation (the intention was to provide an increased protection for the weaker party in the legal relationship); meanwhile, the domestic legal order has accumulated considerable experience in the contractual regulation of such relations over the past time' [40, p. 48]. Supporting E. A. Chefranova in her desire to expand the scope of contractual regulation of family legal relations, we shall note that the need to protect the interests of the weaker party in a family legal relationship remains relevant. By protecting weaker participants in family legal relations and striving to ensure social balance, the legislator creates legal prerequisites for the implementation of the private interests of the weaker party.

The Fundamental Significance of Interest as a Feature of a Family Legal Relationship

The fundamental importance of interest as a feature of a family legal relationship can also be shown by the example of such legal categories as privacy, personal and family secrets. These categories refer to personal data, which are covered by a separate federal law[5]. In accordance with Article 2 of the Law on Personal Data, it was adopted in order to 'ensure the protection of human and civil rights and freedoms when processing personal data, including the protection of the rights to privacy, personal and family secrets'. The analysis of the legal definition of 'personal data'[6] allows for a conclusion about a fairly broad approach of the legislator to their interpretation. In the context of this study, individual attention should be given to the 'special categories of personal data'[7], the processing of which, as a general rule, is not allowed. It should be added that the issue of privacy

[1] Explanatory Note to Draft Federal Law No. 76938-8 'On the Introduction of Amendments to Articles 89 and 90 of the Family Code of the Russian Federation (submitted for consideration in the State Duma of the Federal Assembly of the Russian Federation as of February 24, 2022). Access from the legal reference system 'ConsultantPlus'.

[2] See: Review of Court Practice in Settling Disputes Related to the Upbringing of Children: approved by the Presidium of the Supreme Court of the Russian Federation on July 20, 2011. *Bulletin of the Supreme Court of the Russian Federation*. 2012. No. 7 (July).

[3] On the Refusal to Accept for Consideration the Complaint of the Citizen Valentina Pavlovna Arbuzova about the Violation of Her Constitutional Rights by Item 2 of Article 44 of the Family Code of the Russian Federation: Ruling of the Constitutional Court of the Russian Federation No. 779-O-O of June 21, 2011. Access from the legal reference system 'ConsultantPlus'.

[4] Ruling of the Judicial Chamber for Civil Cases of the Supreme Court of the Russian Federation No. 5-KG16-174 of December 20, 2016. Access from the legal reference system 'ConsultantPlus'.

[5] On Personal Data: Federal Law No. 152-FZ of July 27, 2006 (as of August 8, 2024). Available at: http://pravo.gov.ru (hereinafter also referred to as the Law on Personal Data).

[6] In accordance with Item 1 of Article 3 of the Law 'On Personal Data', 'personal data is any information relating directly or indirectly to a specific or identifiable natural person (personal data subject)'.

[7] The legislator refers the following to this data: personal data concerning race, nationality, political views, religious or philosophical beliefs, health status, intimate life (Item 1 of Article 10 of the Law 'On Personal Data').

protection in family legislation is also being actively studied by foreign legal scholars, which is confirmed by a large number of scientific developments on this topic [56; 62; 65; 77].

According to O. Yu. Ilyina, in conditions of widespread automated processing of personal data, 'our lives become so 'transparent' that no personal and family secrets actually bear an 'elementary secrecy label'' [13, p. 350]. We cannot but agree with this remark: in the context of digitalization, the private life of a citizen has become much more vulnerable, and this determines the importance of studying the relations arising from the use and processing of personal data through the prism of private and public interests.

It should be emphasized that Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[1] and Article 23 of the Constitution of the Russian Federation use different terms related to the private life of a citizen. This explains the differences in approaches to the interpretation of some related categories ('privacy', 'personal secret', 'family secret'). The ECHR proceeds from fairly broad ideas about private life in general and family life in particular, which presupposes an open list of data related to private and family life. The practice of the ECHR demonstrates many court decisions that protect the right to respect for the family life of persons who are not officially married to each other. A different approach to the circle of participants in relations protected by the concept of family life is presented in Russian legislation and implemented in the law enforcement practice of the Russian courts: family life covers only relatives, spouses, and their children.

According to Item 1 of Article 150 of the Civil Code of the Russian Federation, privacy, personal and family secret are non-material values. Moreover, new special Article 152 entitled 'Protection of the private life of a citizen' was introduced into the Civil Code of the Russian Federation as a result of work on the improvement of civil legislation covering the legal regulation of non-material values[2]. In accordance with the general rule of this article, the collection, storage, dissemination, and use of information about a person's private life, including his personal and family life, is prohibited. It is noteworthy that the exceptions to this general rule and the admissibility of collecting, storing, distributing, and using information about a person's private life are associated with the public interests. The Plenum of the Supreme Court of the Russian Federation provided the following explanation: 'in the absence of a citizen's consent, the publication and use of his/her image is permissible by virtue of sub-item 1 of Item 1 of Article 152.1 of the Civil Code of the Russian Federation, that is, when there is a public interest, in particular if such a citizen is a public figure (holds a state or municipal position, plays a significant role in public life in the sphere of politics, economics, art, sports, or any other field), and the publication and use of the image is carried out in connection with a political or public discussion, or if the interest in this person is socially significant'[3]. Let us add that personal and family life, despite various views on their interpretation, are perceived as a sphere of private interests of a person and are protected by the state. The example of these legal categories quite clearly demonstrates the dominance of private interest.

The absence of legal definitions of such categories as 'personal secret' and 'family secret' determines the scientific interest in defining these concepts. O. Yu. Ilyina provides the following understanding of personal secrets: 'a personal secret is any information about facts, events, and the life of a citizen the disclosure of which is considered by him to be undesirable so he takes measures to ensure that this information does not become known to other persons' [13, p. 353]. As to the concept of a family secret, in O. Yu. Ilyina's interpretation, a family secret includes the same information as a personal secret, but relations associated with a family secret fundamentally differ in a special circle of participants that includes spouses, parents, and children, as well as other relatives and family members. Legal doctrine also provides other definitions of the 'family secret', but there is no substantial discussion regarding the generic characteristics of this concept. There are other issues related to family secrets that remain unresolved, including the following: about the relationship between personal and family secrets; whether information related to a personal secret can, under certain conditions, become the object of a family secret; what the criterion is for attributing data to the interests of only one person or to the interests of the family as a whole; whether a family secrecy is to be preserved when family relations are terminated, for example, in the case of divorce, etc. There are no legal norms in the legislation that make it possible to answer these questions unambiguously.

[1] Convention for the Protection of Human Rights and Fundamental Freedoms: concluded in Rome on November 4, 1950 (as amended on June 24, 2013). Access from the legal reference system 'ConsultantPlus'.

[2] On the Introduction of Amendments to subsection 3 of Section I of Part One of the Civil Code of the Russian Federation: Federal Law No. 142-FZ of July 2, 2013. Available at: http://www.pravo.gov.ru.

[3] On the Application by Courts of Certain Provisions of Section I of Part One of the Civil Code of the Russian Federation: Resolution of the Plenum of the Supreme Court of the Russian Federation No. 25 of June 23, 2015. *Bulletin of the Supreme Court of the Russian Federation*. 2015. No. 8 (August).

The legal guarantees of family secrecy include the secret of adoption, provided for in Article 139 of the Family Code of the Russian Federation. However, there arise questions similar to those described above: whether one of the adoptive parents is obliged not to disclose information about the adoption in the event of divorce; what the responsibility is for disclosing such information in this case; whether the regime of secrecy of adoption applies to the spouse who did not participate in the adoption, etc.

As to the transformation of information constituting a personal secret into information representing a family secret, it is possible to give an example of the announcement by one person entering into marriage to the other person entering into this marriage of the results of his/her health examination, these constituting a medical secret. The failure of these persons to enter into marriage, for one reason or another, will mean that the person who has provided such information has no legal guarantees that his/her privacy rights will be secured. It is also fair to emphasize the imperfection of family and civil legislation in terms of ensuring the secrecy of information that is related to the use of assisted reproductive technologies.

Discussion on the Relationship Between Civil and Family Law

There are ongoing discussions in the scientific literature about the relationship between civil and family law, as well as about the distinction between their subjects. A. M. Rabets was right to note that 'the issue of the branch independence of family law is still debatable' [32, p. 9]. For drawing a clear line between family and civil legal relations, L. M. Pchelintseva gave specific criteria for such differentiation, noting that family legal relations differ in the specifics of legal facts affecting their dynamics, in the personal-law nature of the relevant relationship, in the inalienability of family rights and duties, and in the stability of participants in a family legal relationship [31, p. 28]. E. A. Chefranova writes that the essential difference between the subject of family law and that of civil law has been convincingly proven in numerous scientific studies [40]. Such studies are available in large numbers [49; 54; 55]. O. I. Deryusheva calls family law 'an independent branch of Russian law that has recently spun off from civil law' [8, p. 70]. The idea of the branch independence of family law is supported by the majority of legal scholars. Interestingly, this view is often substantiated by the existence of a separate act of family law codification. Foreign researchers of private law also demonstrate interest in the discussed issues [73]. For example, one of their studies challenges the widespread view that family law is a secondary branch of private law [68].

M. V. Antokolskaya stands for the idea of the absence of criteria making it possible to distinguish family law from other branches of law [2]. Adhering to a similar point of view, T. M. Khaletskaya explains the desire of some scientists to substantiate the uniqueness of family legal relations not so much by the specifics of these relations as by their desire to prove the independence of family law as a branch of law [39, p. 87]. It should be noted that many scholars in the science of family law support the idea of recognizing family law as the leading sub-branch of civil law. Being an adherent to this approach, M. I. Braginsky noted a tendency to merge family law with civil law [6, p. 75].

Foreign legal scholars focus on the fact that family law differs significantly from other branches of law due to the specifics of the regulated relations [72].

From our point of view, family law has its own subject and method of legal regulation, as well as some other distinctive features that characterize the uniqueness of this branch (for example, the specific legal procedures traditionally associated with the registration of acts of civil state), and thus is an independent complex branch holding a special place in the Russian legislative system. To substantiate this thesis, it appears appropriate to turn to an analysis of the concept and essence of the family.

On the Concept and Essence of the Family

As M. L. Duncan was right to emphasize, modern family law is an interdisciplinary sphere that encompasses legal, sociological, psychological, and economic aspects [50]. While recognizing that the family is a subject being examined in various human sciences that have their own specific ideas on the family formed within their framework, in this article we suggest focusing only on those concepts that are presented in the science of civil law.

Despite the fact that legal studies typically percept the family through the prism of rights and duties of persons belonging to it, the family law science is replete with doctrinal definitions of the family which explain its essence in different ways.

It is worth noting that there is a significant transformation of family relations that is taking place in modern society. For example, traditional ideas about the distribution of gender functions among family members have undergone significant adjustments,

which is often pointed out by foreign researchers of private law [51; 57; 60; 70; 75; 78; 80]. Foreign scholars emphasize that the changing family principles are an objective prerequisite for future transformations of family legislation. However, despite this circumstance, legislators from around the world still see marriage as the basis for the legal regulation of family relations [59].

N. N. Tarusina was right to note that 'the legislator by no means avoids defining 'well-known concepts'', which is confirmed by the inclusion of such legal definitions as child (Article 54 of the RF Family Code), marriage, fictitious marriage (Article 27 of the RF Family Code) in family legislation, although the legal definition of the 'family' is not given [35]. Meanwhile, this particular argument – the existence of a legal definition of fictitious marriage, with the concept of family used in its content, and the simultaneous absence of a legal definition of family itself – is used by the supporters of the idea of enshrining the definition of this concept in family legislation.

The need for a legal definition of the 'family' concept is also dictated by the presence of this term in some other norms of family legislation. For example, Item 1 of Article 1 of the RF Family Code states that the family is protected by the state, family legislation takes as a premise the need to strengthen the family. Thus, an effective mechanism for the legal protection of the family can only be created if the content of the 'family' concept is clear. V. A. Mikryukov is right to emphasize that family-law unambiguity in this issue is possible to achieve in those cases where the establishment of a legal connection between a citizen and his family determines his legal status in other branches [25]. T. V. Shershen expressly says that 'it seems logical to settle the legal definition of the family concept in the Family Code of the Russian Federation' [42, p. 17]. According to A. N. Levushkin, 'if the social function of family law is viewed as the main function, it is advisable to legally settle the concept of family' [23, p. 57]. From the point of view of N. N. Tarusina, the introduction of the 'family' construct as opening a relevant list of related concepts should be sped up [35, p. 32]. In science there are also many supporters of other views on the definition of the 'family' concept.

At the same time, most representatives of the family law science deem it not necessary to legally define 'family' justifying their position with various arguments. For example, M. V. Antokolskaya considers this concept to be sociological and empty of legal content [2, p. 8]; I. A. Kosareva believes that it is not possible to define family 'due to the versatility of this public institution' [19, p. 25]. According to I. A. Trofimets, despite the importance of the conceptual and categorical framework of family law, there is no objective need for a legal definition of the 'family' concept since it is only the status of a 'family member' that has legal significance and thus needs to be defined [37]. It is true that the problem of clarifying the circle of family members is among the most essential. This is primarily due to the uncertain content of the 'family' concept and the differentiation of approaches to understanding the family in regulatory legal acts belonging to various branches of Russian legislation: for the purpose of legal regulation within a certain branch, some normative legal acts of different legal force provide lists of persons classified as family members[1].

One of the most common approaches to defining the 'family' concept involves indication of the reasons for its creation and the inherent generic characteristics. This approach was consistently presented in the works of pre-revolutionary and Soviet legal scholars. According to Kh. V. Belasheva and Yu. G. Leskova, 'the key feature of a family is an institutional commonality recognized by the state and formed on the basis of marriage and partnership between a man and a woman responsible for the health and upbringing of children' [4, p. 34]. Seemingly, this approach to understanding the 'family' is not universal, although some of the features contained in this definition do characterize the family. For example, A. A. Eliseeva is right to emphasize that 'modern Russian families are, in essence, no longer multi-child families and often do not even include traditional family members (parents-spouses and children)' [12, p. 67]

Since the previously existing axiom of running a joint household has lost its crucial importance in modern realities for classifying the union of a man and a woman as a family, A. A. Mokhov and Yu. A. Svirina consider it possible to view the institution of the family through a set of its basic functions [27].

[1] These include, for example, the following normative legal acts: the Housing Code of the Russian Federation (Item 1 of Article 31); the Civil Code of the Russian Federation (Item 1 of Article 292); Federal Law No. 400-FZ 'On Insurance Pensions' of December 28, 2013 (Article 10); Federal Law No. 76-FZ 'On the Status of Military Personnel' of July 27, 1998 (as of May 29, 2024); Federal Law No. 166-FZ 'On the Provision of State Pension in the Russian Federation' of December 15, 2001 (as of July 13, 2024); Federal Law No. 117-FZ 'On the Accumulative Mortgage System of Housing Provision for Military Personnel' of August 20, 2004 (as of April 28, 2023); Federal Law No. 136-FZ 'On Medical Assistance to Citizens of the Russian Federation from among the Civilian Personnel of Military Formations of the Russian Federation Stationed in the Territories of Certain Foreign Countries, Their Family Members and Family Members of Military Personnel Serving under Contract in These Military Formations, and on the Introduction of Amendments to Article 11 of the Federal Law 'On Compulsory Medical Insurance in the Russian Federation' of June 14, 2011 (as of July 2, 2013), etc.

The science of family law contains numerous doctrinal definitions of 'family' proposed by various scientists. In general, all these can be grouped into two categories: those treating the family as a subject at law and those treating the family as an object of law. The idea of attributing the quality of a subject to the family was first pronounced in Soviet scientific research. This view is also supported by modern legal scholars. For example, Yu. A. Korolev emphasized that 'the family and its members can be influenced by law as a single organism (in certain specified cases)' [18]. A. M. Nechaeva expressed the opinion that the family is an object of legal protection [28, p. 104]. It seems that determining the status of the family in family relations forms the basis for defining the subject of family law regulation.

While generally supporting all the above points of view that explain the concept and content of the family and family legal relations in different ways, we propose a fundamentally different approach. In our opinion, in the strict sense of the word, the concept of the 'family' is empty of legal content since legal regulation covers only social relations through which the legally protected interests of family members are implemented. It follows from this that the family can be interpreted in two main senses: the family as a continuing legal relationship and the family and as a union with the participation of certain persons the circle of which is determined by the goals and the subject of the family law regulation.

Conclusion

The paper has substantiated that the division of law into private and public has heuristic and methodological significance for modern family law doctrine and should be applied while taking into account the following recommendations: (1) the dualism of law is not the confrontation between private and public sectors and it does not indicate their conflict; (2) the recognition of a complex combination of private and public principles in any legal relationship determines the importance of finding their balance as well as of clarifying the features of convergence; (3) the legal essence of a particular legal rule should be determined through clarifying the interest protected by it.

It has been proven in the paper that taking into account the dualism of law is crucial for: 1) the legislator, able to ensure effective legal regulation where the legal essence of the legal rule being developed has been properly determined; 2) the law enforcer, able to make a decision in accordance with the will of the legislator and the purpose of the relevant legal rule, provided that the public-law or private-law focus of the legal rule has been correctly established and the interest protected by this legal rule has been clarified; 3) the representatives of the legal doctrine, who are to continue to form the theory of family legal relations taking into account the current historical and political events and circumstances.

The study has found that despite numerous scientific attempts made in this direction, it is impossible to unambiguously classify family legal relations as those of public-law nature or private-law nature, which is due to the following circumstances: 1) family law is a complex branch of law and it harmoniously combines public-law and private-law elements; 2) the complex nature of family legal relations, alongside their special social value, determines the simultaneous protection of private and public interests.

An analysis of specific examples that clearly demonstrate the combination of private and public principles in family law leads to a conclusion that it is an interest that plays the role of a criterion in determining the private-law or public-law impact on social relations. The fundamental conclusion from this is that the public-law and private-law nature of a family legal relationship is determined by public or private interest that is reflected in certain norms of family law. Therefore, interest is fundamental (system-forming) feature of a family legal relationship.

The combination of private and public interests observed in family law regulation provides the basis for qualifying family law as an independent branch of law. In addition, the following facts should be recognized as evidence of the independence of family law as a separate element of the Russian legal system: (1) the subject of family law is family legal relations, which are unique in their essence; (2) the subject of family law regulation includes specific organizational relations that have no analogues (state registration of acts of civil state).

An analysis of some norms of family legislation leads to a conclusion that the concepts 'family' and 'marriage' are equated, which is incorrect due to different orientation of the public-law interests of the family and the private-law interests of the spouses. In view of the proposed definition of 'family legal relations', presented through the prism of the 'family' concept, we consider it necessary to legally define the concept of 'family'. The family is a single, lasting legal relationship that arises between spouses, parents, and children (adoptive parents and adopted children) with regard to intangible assets that satisfy their private interest.

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Introduction: *reflecting the discussion on the position of nuclear/atomic law within the system of international law, this article argues that international nuclear law has developed into an independent branch of public international law, being a set of principles and norms acknowledged by the international community of States. The article also discusses certain aspects of mutual relationships between nuclear law and other legal disciplines, such as international security law, international environmental law, law of international relations.* ***Purpose****: the author seeks to analyze various aspects of international nuclear law.* ***Methods:*** *the author uses a comparative analysis to study legal documents in order to discover the origin, nature, potentials, and complexities of international nuclear law.* ***Results:*** *the paper examines how distinct principles and frameworks of nuclear law evolved to govern the peaceful use of nuclear energy, while also addressing the complex interactions of nuclear law with other legal domains that have some intersections with nuclear activities.* ***Conclusion:*** *the author highlights the growing significance of nuclear law as a specialized field of research and practice, driven by the expanding global reliance on nuclear power and the need for comprehensive legal oversight in this critical energy sector.*

Keywords: international law; international nuclear law; international environmental law, ICJ; nuclear security; nuclear safety; nuclear liability; state responsibility; transboundary harms

Международное ядерное право: природа и сложности

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Введение: *в статье анализируется положение ядерного/атомного права в системе международного права. Утверждается, что международное ядерное право прошло путь развития до оформления в самостоятельную отрасль публичного международного права, представляя собой совокупность принципов и норм, признанных международным сообществом государств. Также обсуждаются некоторые аспекты взаимоотношений между ядерным правом и другими правовыми дисциплинами, такими как право международной безопасности, международное экологическое право, право международных отношений.* ***Цель:*** *проанализировать различные аспекты международного ядерного права.* ***Методы:*** *автор использует метод сравнительного анализа применительно к содержанию правовых документов, чтобы выявить происхождение, природу, потенциал и сложности международного ядерного права.* ***Результаты:*** *в статье проанализировано, как развивались отдельные принципы и основы ядерного права, чтобы в итоге обеспечить регулирование мирного использования ядерной энергии; рассмотрены сложные взаимосвязи ядерного права с другими областями права, которые имеют те или иные пересечения с вопросами деятельности в области ядерной энергетики.* ***Вывод:*** *автор подчеркивает возрастающую значимость ядерного права как специализированной области исследований и практической деятельности, обусловленную растущей зависимостью от ядерной энергетики в общемировом масштабе и необходимостью всеобъемлющего правового надзора в этом критически важном энергетическом секторе.*

Ключевые слова: международное право; международное ядерное право; международное экологическое право, Международный Суд; ядерная безопасность; ядерная ответственность; ответственность государства; трансграничный вред

Introduction

The 21st century commenced with scientific advancements and innovations in the field of nuclear energy, which pull the trigger of global concerns over the regulation of nuclear activities within international legal frameworks. These introduce a set of rules for all types of nuclear activities conducted by international entities that are subject to international law. Nuclear innovation and expansion have faced the world community with serious challenges resulting from nuclear incidents, clandestine nuclear programs, and international terrorist attacks.

To address such challenges, the International Atomic Energy Agency (IAEA) was founded, whose objective is to introduce standards, guidelines, and initiatives to keep the nuclear activity peaceful and avoid the proliferation of nuclear weapons by means of international legal framework on nuclear safety, security, safeguards, and civil liability for nuclear damage. International nuclear legal framework plays a key role in establishing and improving legal instruments on nuclear energy. This study starts with examining the origin, scope, and definition of the term 'international nuclear law', then focuses on the principles and sources of international nuclear law, and finally explores the potentials and complexities in its main domains, these comprising nuclear safety, security, and safeguards in relation to nuclear weapon proliferation and nuclear liability in the form of state responsibility for nuclear damage. Through a historical comparison the research strives to analyze the development of international nuclear law in doctrine and legal practice as well as to reveal the complexities, barriers, and lacunas it has encountered so far and to address these problems.

1. The Origin and Scope of the 'International Nuclear Law' Concept

The formation of international regulations on the use of nuclear energy is a complicated process, and this modern phenomenon is yet to be clearly and precisely defined in international law.

'On the issue of terminology. In the legal literature, the terms 'atomic' law or 'nuclear' law, 'atomic' energy or 'nuclear' energy, or a mixture of both are used indiscriminately. So, which term is correct from a legal point of view?' [56] To respond to this question, it is necessary to remark that in early scientific works devoted to the normalization and regulation of the use of nuclear energy, there were hardly any disputes over the name of this new branch of international law – 'international atomic law'.

'As a matter of fact, both the terms 'atomic law' and 'nuclear law' lack any definition in the binding instruments of international law. Consequently, these terms have to a large extent been the result of legal scholarship that developed since the late 1950s when referring to a certain body of the corresponding legal norms. At the same time, this terminology has only rarely become subject to a detailed academic scrutiny and proper clarification' [36, p. 138]. Apparently, to antecedent legal experts and lawmakers the terms 'international nuclear law' and 'international atomic law' were often interchangeable. They utilized these two terms depending on their relevance to the context and specific usage.

In the early days of legal research on these issues, legal authors aimed to elucidate nuanced distinctions. The recognition of the term 'international nuclear law'

has been endorsed with the scientific fact that 'the energy in question is generated either as a result of a fission reaction of nuclei (nuclear reaction) or from their fusion (thermonuclear reaction)' [76].

Alongside the scientific implication, from the point of view of legal doctrine, 'international nuclear law' is an area of expertise on subjects of international law, particularly states and intergovernmental organizations, aimed at defining their rights, duties, and responsibilities in the field of 'nuclear arms limitation' [4] and 'peaceful use of nuclear energy' [95]. Thus, the term 'nuclear' primarily emphasizes the energy generation and weapons aspects of nuclear technology. It often involves discussions about nuclear weapons, arms control treaties (e.g. Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Comprehensive Nuclear-Test-Ban Treaty (CTBT)), and the regulation of nuclear materials used in military contexts.

The NPT is crucial in establishing legal norms governing nuclear activities internationally. It prevents the spread of nuclear weapons and promotes peaceful nuclear cooperation. According to Western legal scholars like Daniel Joyner, the NPT creates a framework within which nuclear contracts must be negotiated, adherence to its obligations shapes national legislation [41].

The CTBT represents a significant effort to create a legal framework around nuclear testing, affecting the atmosphere for negotiating nuclear contracts. BRICS Cooperation, representing Brazil, Russia, India, China, and South Africa, emphasizes that regional frameworks may align with international norms established by treaties like the CTBT[1].

Of the authors in the field of international nuclear law, Ch. J. Moxley, Jr., shows that the deterrent approach is unlawful as the development of nuclear weapons would be unlawful. 'When the United States goes to apply international law to potential nuclear weapons uses, it distorts the law as it has itself articulated it, overlooks law in such areas as causation, risk analysis, *mens rea*, and *per se* rules, and disregards known risks as to nuclear weapons effects, including radioactive fallout, nuclear winter, electromagnetic pulses, and potential escalation' [20]. A prominent figure in the field of Russian international law, particularly that concerning nuclear law, is G. I. Tunkin. He has contributed significantly to the understanding of international legal frameworks, including those related to nuclear energy and weapons. In Tunkin's view, international nuclear law comprises 'the set of international legal norms that govern the creation, use, and control of nuclear energy and weapons, focusing on issues such as non-proliferation, disarmament, and the peaceful use of nuclear technology' [92].

While both terms 'nuclear law' and 'atomic law' used to intersect significantly and often referred to similar legal principles and standards, at present 'international nuclear law' tends to focus more on issues related to nuclear weapons, non-proliferation, and peaceful use of nuclear technology.

In practice, the choice between the terms may depend on the specific context of the discussion or the focus of the legal frameworks being considered. 'As to legal practice and theory, in the recent years the terms 'nuclear law', 'nuclear weapons', and 'nuclear energy' have begun to dominate. According to Professor R. M. Valeev and a group of his associates, if we proceed from the legal regulation of modern high technologies for energy production and their use, then it would be more logical and fairer to call this industry international nuclear law' [56].

Fundamental principles of international nuclear law were formulated in the Statute of the International Atomic Energy Agency, which entered into force in 1957. The IAEA defines international nuclear law as 'the body of special legal norms created to regulate the conduct of legal or natural persons engaged in activities related to fissionable materials, ionizing radiation and exposure to natural sources of radiation'[2].

The formation of the international organization specializing in monitoring and controlling nuclear activities as well as authorized to directly appeal to the UN Security Council in the event of a threat to peace shows the significance of nuclear industry in the field of international law.

International nuclear law as a contemporary branch of international law plays an essential role in safeguarding humanitarian values, international security, and world peace. In his work *Nuclear Ethics*, J. Nye discusses 'the ethical implications of nuclear proliferation' and emphasizes the importance of treaties like the NPT 'in preventing the spread of nuclear weapons' [70]. Russian author A. V. Kukushkina highlights the significance of international treaties in reinforcing non-proliferation norms in her research on Russian nuclear policy [44].

Another key aspect of international nuclear law is the emphasis on disarmament efforts. L. Scheinman notes that international nuclear law creates a legal framework that is essential for disarmament initiatives, highlighting their role in global security [86]. S. M. Belozertsev argues that 'legal frameworks are fundamental for international cooperation on disarmament and arms reduction' [10].

As regards nuclear safety and security, a Western author David Fischer emphasizes in his work *Nuclear*

[1] Problematika nerasprostraneniya oruzhiya massovogo unichtozheniya v deyatel'nosti BRIKS. Obzor dokumentov BRIKS 2009 – 2023 gg. i rekomendatsii na blizhayshuyu perspektivu [The issues of non-proliferation of weapons of mass destruction in the activities of BRICS. Review of BRICS documents 2009 – 2023 and recommendations for the near future]. Moscow, 2024. 39 p. (In Russ.). Available at: https://pircenter.org/editions/39-2024-problematika-nerasprostranenija-oruzhija-massovogo-unichtozhenija-v-dejatelnosti-briks-obzor-dokumentov-briks-2009-2023-gg-i-rekomendacii-na-blizhajshuju-perspektivu-izdanie-pervoe/.

[2] *IAEA AT A GLANCE: atoms for peace & development*. 2023. Available at: https://www.iaea.org/sites/default/files/23/09/iaea-at-a-glance.pdf.

Governance the necessity of international regulatory frameworks to 'enhance safety, reduce costs and discourage nuclear proliferation' [27, p. 226]. Among Russian legal authors, N. N. Lyakh discusses the risks associated with nuclear energy and the need for stringent international legal standards to ensure safety [54].

Environmental protection is also a cruciality of international nuclear law. C. Raetzke, a representative of the Western school of thought, undertakes an analysis at the intersection of nuclear law and environmental protection [83]. A group of Russian legal researchers explores how international nuclear regulations ought to take into account environmental considerations in the context of nuclear waste management [9].

The last aspect of international nuclear law worth mentioning is conflict resolution. S. Chemmalar notes the role of international law in providing a framework for peacefully resolving disputes related to nuclear issues. 'International law recognizes self-defense and the same is acknowledged by International Court of Justice (ICJ)… Hence it is clear that international law allows only preemptive self-defense and not preventive self-defense' [19]. Parallelly it is noted that 'the regulation of international conflicts and the management of international relations rests upon an intricate network of legal frameworks, diplomatic endeavors, and coercive mechanisms, each playing a pivotal role in the resolution of global disputes. A fundamental component of this system is the body of international law, comprising treaties, conventions, and customary laws that delineate the boundaries for state behavior and conflict resolution. Nevertheless, the efficacy of these mechanisms frequently raises concerns about the efficiency of global politics, the sovereignty of nation-states, and the diverse interests of international actors' [62].

Comparing the Russian and Western perspectives, the present study sheds light on the multifaceted importance of international nuclear law, underlining its contribution to promoting security, safety, and cooperation in the nuclear realm.

At the same time, international nuclear law has its own weaknesses, lacunas, obscures, and challenges that prompt further investigation.

The most important issue is the proliferation of nuclear weapons. The availability of nuclear materials, such as highly enriched uranium and plutonium, can lead to their acquisition by states or non-state actors seeking to develop nuclear weapons. This poses a risk of nuclear proliferation and can increase the threat of nuclear conflict.

That is why G. I. Tunkin emphasized the significance of international cooperation in the realm of disarmament and non-proliferation, asserting that 'the effectiveness of international law in managing nuclear proliferation depends on the collective will of states to comply with the treaties' [93]. M. N. Lysenko argues that 'the Non-Proliferation Treaty (NPT) represents a cornerstone of international legal efforts to prevent the spread of nuclear weapons and promotes peaceful uses of nuclear energy' [57].

For comparison, discussing the challenges faced by international law, M. J. Glennon states that 'practical moral intuitions have been reified through accepted lawmaking processes into authoritative legalist norms, their uncertainty, manipulability, and adaptability to incompatible claims render those impulses deficient as a basis for decision-making on use of force. Such intuitions do not provide a stable decisional framework adequate for resolving the question whether force may be used against Iran's or North Korea's nuclear programmes' [33]. Some Western legal authors wonder whether 'negative security assurances' 'constitute legally binding commitments or mere political declarations', suggesting a spectrum: 'at one end there are states that have made comprehensive commitments; in the middle are those that have made a range of qualified commitments; and at the other end, there are those states who have not made any commitments to refrain from threatening to use nuclear weapons' [38]. R. Thakur remarks that the NPT faces challenges such as 'failure of nuclear disarmament by the five NPT-licit nuclear powers; possible cheating by non-nuclear signatories like North Korea and Iran; India, Israel, and Pakistan remaining outside the NPT; terrorists' interest in acquiring and using nuclear weapons; and the safety, security and proliferation risks of the increased interest in nuclear energy to offset the financial and environmental costs of fossil fuel' [94].

Nuclear materials can be targeted by terrorist groups seeking to construct modern weapons of mass destruction, including nuclear weapons. The theft of or unauthorized access to nuclear technology can lead to catastrophic outcomes if it falls into the wrong hands. This has long been noted in Western literature on contemporary international law. M. O'Connell notes overlaps between the concepts of self-defense and security, stating that 'armed attacks, did occur on September 11th, however, so the United States had the right to take self-defensive measures following that day. It certainly has no right of self-defense to attack a state to eliminate persons who might be planning to possess weapons of mass destruction' [73]. In discussing the complexities of international legal frameworks surrounding terrorism, it is important to note: 'While it remains sensitive, as seen from the fact that negotiations toward a nuclear terrorism convention have been stymied by differences of view on this critical point – differences that have also manifested themselves in the Draft Comprehensive Convention – the majority of provisions regarding 'international terrorism' do not address state terrorism as such' [23].

The issue of terrorism and security risks has also long been the focus of Russian legal authors. As experts continue to analyze the intersection of terrorism and national security, it is noteworthy that: 'Currently, the internal affairs bodies and troops of the Ministry of Internal Affairs of Russia are guided by the provisions of over ten international normative legal acts concluded within the framework of the United Nations, the Council of Europe, and the Shanghai Cooperation Organization, these

defining the main directions and procedures for cooperation between the competent authorities of states in the field of prevention, detection, and suppression of terrorist crimes' [1]. Another Russian legal researcher discusses the challenges of international law in addressing terrorism, stating: 'In particular, the questions of creating an international organizational mechanism for counter-terrorism efforts, of developing a unified global strategy to combat terrorism that would appropriately combine political and legal aspects, as well as of clarifying the subjects involved in terrorist activities, have remained relevant for a long time' [17].

Demonstrating the intersection of proliferation of nuclear weapons, terrorism, security, and international law, the Russian and Western perspectives pay attention to environment protection against radioactive hazards caused by accidental releases, nuclear wastes, and so on. Accidental releases occur in the handling and storage of nuclear materials due to human error, system failures, or natural disasters (e.g., earthquakes, floods), which can result in significant environmental contamination and health risks for human population and living beings in general. From the international law angle, this issue pertains to legal implications of accidental releases, covering preventive measures, regulatory gaps, and the need for international cooperation.

M. A. Ermolina emphasizes that 'It is essential that environmental human rights and international cooperation in the field of environmental protection, which were legally enshrined at the international level in the past century, are considered in the modern period as the legal basis for the concept of sustainable development, and the international legal responsibility of states for the state of the environment – as a necessary condition for its practical implementation' [25]. In light of ongoing challenges in the field of international law, it is important to recognize that: 'The underdevelopment of the legal regulatory framework, the lack of a unified methodological basis for assessing the harm caused, and the imperfection of methods for restoring offenses undermine the effectiveness of international law in protecting public safety' [68]. Western experts are also concerned about environmental contamination. The Transportation Research Board (TRB) warn that 'a mutual aid responder if found to be negligent in some way can be held liable for the assistance lent during a hazardous materials incident. The participants in the agreement should also agree on the communications system and procedures to be employed in notifying one another. Although mutual aid agreements can temporarily expand emergency response capabilities, their limitations should be known'[1]. Highlighting the limitations of current frameworks, it is asserted that: 'Although international environmental law provides some tools for addressing accidental releases, there is an urgent need for more cohesive and effective mechanisms for response and prevention' [39]. A decade before, M. Robinson emphasized the role of international relations with 'considerations of major nuclear powers who comprise the core of the membership' [80].

Concerns about environmental hazards such as habitat destruction, air and water pollution, and other ecological impacts resulting from the various steps of nuclear manufacture, including extraction, enrichment, transporting, and application, have detrimental effects on the international environmental law.

Nuclear waste management is the other dimension of environment protection in the sphere of international law. The generation of nuclear waste poses a long-term management challenge. High-level radioactive waste remains hazardous for thousands of years, and inadequate disposal methods can lead to contamination of land and water resources.

U. V. Lebedeva argues for the importance of international cooperation in nuclear waste management, stating: 'Effective management of nuclear waste requires not only national legislation but also a robust international legal framework that facilitates cooperation and ensures safety' [59]. Russia's National Operator for Radioactive Waste Management 'NO RAO' discusses the threats posed by improper nuclear waste management, asserting that the lack of a unified global strategy for nuclear waste management undermines environmental protection, necessitating stronger international legal commitments[2].

A number of authors emphasize the need for effective regulatory frameworks, stating: 'Nuclear forensics is iterative, following the requirements of law enforcement, and accomplishes only the agreed-upon analytical plan to provide the necessary data aiming to answer a defined question. All results are produced by using methods verified and approved within a legally recognized quality framework' [74]. M. Johnson notes that 'the challenges of managing nuclear waste transcend national borders, highlighting the necessity of international treaties and collaborations to ensure safety and responsibility' [42]. Hence, a number of legal researchers remark the role of the IAEA in nuclear waste management, stemming from 'a joint effort of the IAEA's Nuclear Energy and Nuclear Safety departments done in a wide consultation with the international community via IAEA Member State representatives' [24].

As nuclear technology is dual-use technology, which means it has both civilian and military applications, there is always a possibility of its being diverted for military purposes, i.e., its being used for nuclear weapons production. Thus, there is a need for a preventive and prohibitive

[1] Transportation of Hazardous Materials: Planning and Accident Analysis. *Transportation Research Record 977.* Transportation Research Board (TRB). 1984. 43 p. Available at: https://onlinepubs.trb.org/Onlinepubs/trr/1984/977/977.pdf

[2] *Obzor zarubezhnykh praktik obrashcheniya s OYaT i RAO* [Overview of foreign practices in the management of spent nuclear fuel and radioactive waste]. Federal State Unitary Enterprise 'National Operator for Radioactive Waste Management'. Moscow, 2022. 140 p. Available at: norao.ru/upload/Свод обзора практик ОЯТ и РАО_2022.pdf.

framework in international nuclear law to control and monitor nuclear activities. This is quite evident from both Western and Russian legal literature. I. Khripunov warns that 'without an effective, enforceable legal framework and relevant measures at the state level, international efforts to prevent nuclear terrorism and ensure the security of nuclear materials and facilities will be well-intentioned, but largely ineffective. The existing legal framework in its entirety has provisions whereby state parties should identify actions threatening nuclear security and establish them as criminal offenses in national law, with appropriate criminal or civil penalties commensurate with the serious nature of these offenses' [47]. G. Berdennikov discusses the role of international law in curbing nuclear proliferation, stating that non-proliferation regimes 'can effectively counter proliferation risks on a non-discriminatory basis and without prejudice to international cooperation in the peaceful uses of atomic energy' [11].

As far as Western legal literature concerns, P. Witherspoon and G. Bodvarsson emphasize the importance of transparency and cooperation 'including active public involvement:

• Phase 1: Development of a site-selection procedure and corresponding criteria.

• Phase 2: Political/legal obligatory establishment of a site-selection procedure.

• Phase 3: Implementation of the site-selection procedure' [98].

W. Wan notes that 'nuclear risk reduction must be recast in a more systematic manner… identifying four risk of use scenarios: doctrinal, escalatory, unauthorized, and accidental… to reduce the risk of each, establishing general objectives and offering illustrative measures' [97]. E. Moniz argues for a collective approach, asserting that 'countries must put forward ambitious climate commitments. Safe, secure, and peaceful nuclear technology will be an important part of addressing this challenge. The Agency's financial resources, political support, and legal authorities must be commensurate with the task at hand' [63].

Regulatory and compliance challenges can be examined from both Russian and Western viewpoints regarding international nuclear law. The complex landscape of international nuclear law and varying national regulations can hinder effective oversight and compliance. Weak enforcement mechanisms may allow illicit trade or inadequate safety practices. While nuclear material and technology can offer significant benefits, especially in energy production and medical applications, they also pose serious risks that require robust international cooperation, stringent regulations, and effective safety measures to mitigate. In international legal research, the advent of nuclear industry is considered in connection with the emergence of interstate relations on the use of atomic energy, a new dual-use source of energy, this leading to the possible application for military purposes and for peaceful uses.

The contingent risks in the use of nuclear technology are associated with radioactive contamination, resulting from violations of standards applicable to shipping, enrichment process, construction of nuclear power plants and other facilities. Such hazards have raised the urgent question of specific and clear-cut legal regulation of relations on the use of nuclear energy.

International nuclear law as a new branch of contemporary international law makes efforts to address such problems and resolve them. Essentially, at the end of the 20th century, there emerged a set of international legal frameworks and protocols intended to regulate relations between states in connection with nuclear energy, which embodied new prospects for the development of mankind.

The main goal of legal regulation of the states' relations in the domestic sphere as well as at the international level was the peaceful development of nuclear energy, ensuring the safety of nuclear materials, installations and facilities, radiation protection and nuclear safety for citizens, environmental protection, etc.

E. B. Mikhailenko emphasizes that 'one of the primary objectives of international nuclear law is to promote the peaceful use of nuclear energy while ensuring the highest standards of safety and security to protect human health and the environment' [65]. A. Aramyan also states that 'Security solutions in the peaceful use of nuclear energy are possible only through the joint efforts of all members of the international community. The issue of nuclear safety arises during any nuclear activity that in any way uses nuclear materials, and strict adherence to all of the rules under international standards and treaties is a basic condition for safe use of nuclear material for peaceful purposes' [2].

Russian and Western authors see the goal of international nuclear law in promoting the peaceful development of nuclear energy while ensuring safety and security.

'Since its beginnings, international nuclear law has slowly diversified, first to support and promote the use of nuclear energy, and second, to prevent and mitigate the risks of nuclear power in order to counterbalance increasingly sceptical attitudes'[1]. The primary objective of international nuclear law is to ensure that 'the global nuclear safety regime provides a framework for the peaceful uses of nuclear energy and ionizing radiation. Nuclear safety measures ensure that activities are conducted to achieve the highest standards of safety'[2]. As is highlighted by B. G. Gordon, 'the international legal regime governing nuclear energy fundamentally seeks to achieve a balance between advancing peaceful nuclear

[1] Nuclear Law Bulletin. No. 108/109. Volume 2022/1&2. Nuclear Energy Agency (NEA). 151 p. Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/nuclear-law-bulletin_46cd2ea2/7454f143-en.pdf

[2] International Legal Framework for Nuclear Safety. IAEA. January 2022. 4 p. Available at: https://www.iaea.org/sites/default/files/22/04/international-legal-framework-for-nuclear-safety.pdf.

technology and ensuring stringent safety and security protocols' [30].

All these points of view reflect a shared understanding among scholars that one of the fundamental goals of international nuclear law is to promote the peaceful development of nuclear energy while ensuring that the associated safety and security measures are enhanced.

As the 21st century unfolded upon international law, the articulation of international nuclear law as an autonomous branch of legal science triggered debates among legal academics. Different schools of thought have developed their own ideas concerning the legal nature and status of international nuclear law within the broader bodies of public and private international law.

When raising the question of singling out atomic legislation, A. I. Ioyrysh, one of the first to study the legal aspects of nuclear energy uses, noted that 'relations associated with the use of atomic energy are of comprehensive character. Legal norms governing these relations are divided into internal (national) law and norms included in international (public and private) law' [40, p. 31]. In his view, nuclear law has emerged as an independent specific area of legal regulation due to the relationships formed concerning the use of atomic energy.

While this view defends the formation of Soviet atomic law, legal scholars put forward a point of view about the formation of a new branch in international law – international atomic law, the subject of regulation of which is the relations that develop through international cooperation in the field of nuclear disarmament and the practical use of atomic energy for peaceful purposes.

Hence Russian and Western legal schools of thought assert that 'international atomic law as an independent branch of international law is in its infancy' [56]. A. Chekov notes that 'the system of arms control treaties, whose foundation was laid by Gorbachev and Reagan, has been practically dismantled, giving way to escalation. The Ukraine crisis drew attention away from the consequences of the INF Treaty's termination, but they are now resurfacing and will be of primary importance not only for Russia and the U.S., but also for China' [21].

A. Malyshev and B. Gordon explore the intricacies of nuclear legislation, emphasizing that 'international nuclear law has evolved into a distinct legal domain reflecting specific norms and principles dedicated to nuclear safety and non-proliferation' [66]. They identify and analyze various international treaties and agreements that contribute to the distinctive principles of nuclear law, reinforcing the idea that this area merits distinct legal recognition within international law.

In Western overview, A. Schmid outlines changes of meaning reflected in various typologies of terrorism, including 'nuclear terrorism', posing the question of 'what would be considered 'war crimes' under international humanitarian law if they were committed during conventional armed conflicts or during guerrilla warfare'. He discusses the unique challenges deriving from various ideas of 'what terrorism should be meant to mean in international legal terms' [87].

K. Fyhr provides an analysis of international legal regulations concerning nuclear weapons and energy, positing that 'generally, nuclear law has its objectives and principles, and it can be regarded as falling somewhere between public and private law with a major degree of interaction between national and international levels'. He argues that 'the notion of the distinctiveness of nuclear law from other sectors of law has been increasingly abandoned' [28].

R. M. Grossi examines the emerging field of international nuclear law and its legal distinctions from general international law, particularly regarding the implications of treaties such as the NPT and the Comprehensive Nuclear-Test-Ban Treaty (CTBT). The author argues that 'a basic feature of nuclear law is its focus on weighing the benefits of nuclear technology while minimizing risks. Its objective is to furnish a legal framework for conducting activities related to nuclear energy and ionizing radiation in a manner that adequately protects individuals, property and the environment in order that the public may obtain the benefits of this technology. This is done through complementary regimes dealing with safety, security, safeguards and liability' [32, p. 4.].

The need for international legal regulations on nuclear industry arose when the manufacture, development, and application of nuclear technology started to pose problems for global security, peace, and also environment. In doing so, the establishment of international framework and the adoption of international agreements and protocols for regulating the activities of states in the nuclear sphere become legally vital.

In his work on modern challenges facing international nuclear law, legal scholar V. P. Parkhitko put forward a compelling argument for recognizing this field as a distinct discipline. He noted that even in the realm of 'the peaceful use of nuclear energy' [76], beyond military applications, there are numerous complex issues that require substantial effort and expertise from international lawyers specializing in this domain.

Parkhitko also ventured into the realm of predictions, envisioning the potential emergence of a new type of interstate agreement, which he likened to a nuclear-focused 'Lend-Lease' [76] arrangement, reminiscent of the collaborative models employed during World War II. As it turned out, Parkhitko's foresight proved to be prescient, as by the start of the 21st century, a significant number of multilateral and bilateral agreements had been adopted, significantly impacting the activities of states and international organizations in the management of nuclear energy. These agreements, to a considerable extent, constitute a semi-autonomous system of international legal norms governing this specialized domain.

Furthermore, international nuclear law, as a subdivision of public international law, is inherently intertwined with the concept of security. However, as was noted by legal scholar S. A. Malinin, the doctrinal underpinnings of 'international security' [67] remain neither

well-defined nor legally clear, even within the framework of the United Nations Charter. Malinin regarded 'humanitarian area of cooperation, …, as a factor in strengthening international security' [67, p. 41]. For him, 'the human dimension is an obligatory component of a comprehensive approach to international security' [67, p. 41].

The complex and evolving nature of international nuclear law, along with the ambiguities surrounding the core concept of international security, underscores the ongoing need for rigorous scholarly investigation and the development of a robust and coherent legal framework to govern the use and regulation of nuclear energy in the global arena.

By the present moment, international nuclear law has emerged as a distinct domain in 'the system of international law' [58], with the purpose of establishing a set of commonly agreed legal norms aimed at governing the relations between states and international organizations in the possession, development, and utilization of nuclear technology and materials.

This specialized branch of international law aims to provide a cohesive system of rules that regulate interstate relations in the areas of nuclear disarmament, as well as the peaceful application of nuclear energy. These domains are intrinsically linked to various other spheres of international law, including environmental protection, international security, the use of outer space, and the governance of the world's seas and oceans.

The complexity of international nuclear law stems from its multifaceted nature, as it encompasses the subjects, resources, and norms that are inherent in numerous other branches of international law. As argued by legal scholar M. A. Likhachev, the international relations underlying this field are inherently complicated, necessitating a comprehensive and well-defined regulatory framework. Likhachev notes that: 'The current state of international relations undoubtedly indicates the trends, these gaining momentum, consisting in the expansion of the circle of subjects of international law as a result of not only international law regulation covering new areas of international cooperation and interstate relations by but also an increasingly confident spread of non-regulative influence of international law standards' [61].

Legal expert V. P. Parkhitko characterized international nuclear law as a set of rules that facilitate international cooperation among states and international organizations in two key areas: the reduction of the threat or use of nuclear weapons and the regulation of collaborative efforts in the peaceful utilization of nuclear energy [76].

In essence, international nuclear law represents a distinct and evolving system of legal norms within the contemporary international legal order, designed to govern the relations between states and international organizations with respect to the military and civil applications of nuclear technology, in accordance with the generally recognized principles of international law.

The continued development and refinement of this specialized branch of international law remain an area of ongoing investigation and scholarly discourse, as the international community seeks to navigate the complex and multifaceted challenges posed by the use and regulation of nuclear energy.

2. The Principles and Sources of International Nuclear Law

The scholarly debate surrounding the doctrinal status of international nuclear law is multifaceted. One school of thought argues that it should be considered a complex legal institution, characterized by the diverse array of norms and the multiplicity of sources from which they are derived, ranging from international treaties and customary law to the resolutions of international organizations[1]. This view emphasizes the sui generis and multidisciplinary nature of the legal frameworks governing nuclear activities, which intersect with various fields of law, including energy, environment, maritime law, and the law of the sea.

In contrast, another group of scholars contends that international nuclear law should be treated as a stand-alone field of law, parallel to other fundamental branches [18]. Proponents of this position describe international nuclear law as a distinct system of principles and norms that govern a wide spectrum of relations between states and other subjects of international law, from the introduction and implementation of nuclear technology to the delineation of rights, protection, and guarantees, as well as dispute settlement procedures [18]. As they argue, the primary objective of this specialized legal domain is to 'accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world' [18].

Yet, a third perspective approaches international nuclear law as a subfield of international environmental law. Adherents to this view consider international nuclear law as 'an indispensable tool for achieving the global sustainable development agenda. It has a key role to play in decarbonizing the energy sector but also supports the attainment of all the Sustainable Development Goals (SDGs) – including the elimination of poverty, zero hunger, clean water, affordable energy, economic growth, and industry innovation. Innovation as well as improved government policy and public perception will enable nuclear energy to overcome traditional barriers to growth and expand into new markets. Fully integrating uranium-as-a-service into the UNFC[2] and UNRMS[3] framework highlights the important role of

[1] IAEA. First International Conference on Nuclear Law: The Global Debate (ICNL 2022). Vienna, Austria, 2022.
[2] United Nations Framework Classification for Resources.
[3] United Nations Resource Management System.

nuclear energy as a resource contributing to sustainable development'[1] in virtue of the facts that the demand for nuclear technology to be used in solving climate crisis as a tool for the attainment of the global sustainable development goals has grown and 'the choice to develop nuclear energy rests with sovereign countries, together with the responsibility to use it safely and securely'[2].

Underlying these divergent viewpoints is a broader debate concerning the position of international nuclear law within the expansive realm of public international law. Scholars continue to grapple with the question of where this specialized legal domain is situated within the overall structure of international law: 'Which is the position of nuclear law in the wide realm of law?' [49]

The nuclear industry occupies a unique space where international law and domestic legislation intersect. Nuclear law operates at both the global and national levels, with international treaties and conventions being implemented through domestic legal frameworks.

As W. Boulanger answers the question, nuclear law 'is, and has been right from its beginning, national law, and international law' [14]. It encompasses various domains, including public law aspects such as 'constitutional, administrative, criminal, and public health'[3] considerations, as well as private law elements that regulate liability for nuclear damages. Moreover, nuclear law can transcend the traditional boundaries between public and private spheres, 'by reserving certain kinds of source or other radioactive materials to public property' [49]. At the international level, nuclear law also manifests itself in the creation of intergovernmental organizations and the establishment of authorities to oversee the peaceful use of nuclear materials and installations. Additionally, international nuclear law regulates the civil liability for nuclear accidents across different conventions. This multifaceted nature of nuclear law, spanning numerous fields, has led to it being recognized as a distinct legal domain worthy of specialized consideration, even if it remains a relatively niche area within the broader realm of jurisprudence.

The international nuclear legal framework is continuously evolving to address emerging issues, such as the increasing role of private actors, technological advancements, and new security threats. This dynamic nature requires ongoing coordination and adaptation within the broader system of international law. At the same time, national nuclear laws and regulations ought to be harmonized with the overarching international legal framework.

2.1. Nuclear Contract Law and International Legal Framework

The connection between nuclear contract law and the international legal framework is well-documented in both Russian and Western legal literature. This relationship involves a comprehensive interplay of treaties, national regulations, liability frameworks, and regulatory oversight, all aimed at promoting the safe and peaceful use of nuclear energy.

International legal systems establish procedures for settling disputes that emerge from nuclear agreements typically utilizing arbitration methods detailed in treaties or domestic laws. Russian authors R. Gottemoeller and D. Zhukov argue that there are 'three key areas for advancing risk reduction efforts: building confidence and predictability through dialogue; increasing clarity, communication, and understanding; and effective crisis prevention and crisis management tools'[35].

The interplay of nuclear law and international agreements is becoming increasingly important as there grow concerns regarding climate change and energy security. B. A. Alexandrovich discusses how this evolving dialogue impacts nuclear legislation in both Russia and the West [3].

'The largest volume of legal work in the civil nuclear industry relates to private law relationships, including negotiating and managing contracts' [71, p. 496]. Nuclear contract law is a specialized subfield within the broader domain of nuclear law, dealing specifically with the commercial and business aspects of the nuclear sector. It encompasses all the traditional areas of nuclear law, including nuclear safety, regulation and licensing, security and transport, safeguards and nonproliferation, environmental and radiological protection, and nuclear liability and compensation.

However, nuclear contracts differ from 'conventional' [71] contracts for other types of power generation or large infrastructure projects in several ways, likely stemming from the heightened safety, security, and environmental concerns associated with nuclear technology, as well as the intricate international frameworks governing nuclear activities.

Nuclear contract law is inextricably linked to the international legal framework governing nuclear activities, particularly the principles and requirements established by the 1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy. This convention is a key component of the broader system of global governance mechanisms that involve cooperation between states, international organizations, and other stakeholders to address the unique challenges posed by nuclear technology. By adopting nuclear contracts in accordance with

[1] Application of the United Nations Framework Classification for Resources and the United Nations Resource Management System: The Role of Nuclear Energy in Sustainable Development – Entry Pathways. 2023. Available at: https://unece.org/fileadmin/DAM/energy/se/pdfs/UNFC/UNFC_The_Role_of_Nuclear_Energy_in_Sustainable_Development_Public_Comment/The_Role_of_Nuclear_Energy_in_Sustainable_Development.pdf.

[2] Ibid.

[3] Ibid.

the Paris Convention, the legal system can ensure harmony and facilitate the effective implementation of the international nuclear liability regime. 'A nuclear operator should not be held liable for damage caused by a nuclear incident to nuclear substances in course of carriage belonging to other operators, unless he has assumed third party liability pursuant to a contract in writing or of which he has taken charge' [81].

The 1960 Paris Convention on Third Party Liability aims to provide 'adequate and equitable compensation for persons who suffer damage caused by nuclear incidents whilst taking the necessary steps to ensure that the development of the production and uses of nuclear energy for peaceful purposes is not thereby hindered'[1]. As one of the first international conventions to address liability issues in the nuclear field, it has established the nuclear liability regime for the majority of Western European countries under the auspices of the Organization for Economic Co-operation and Development (OECD).

In addition, national laws related to nuclear energy often reflect commitments made under international treaties. A. Yu. Kurashvili points out 'how Russian nuclear law incorporates obligations from international treaties, thus demonstrating the reciprocal influence between international and national legal frameworks' [46]. In discussing the importance of efficient contract management, it is essential to recognize that: 'While good contract administration practices in linear contracts can lead to collaboration, they may not be sufficient. To this end, standardization will be necessary to ensure predictability in tender documents and contract conditions, acceptability of the tender process and contract conditions by the industry, red tape reduction by developing the appropriate contract form, and reduction of tendering cost by using agile contract management processes' [82].

Oversighting the role of IAEA is critical. V. I. Osanov and L. P. Punko highlight that within the IAEA framework, 'Russia proposed implementing, with the participation of the IAEA, an international project that would facilitate the implementation of a long-term supply of energy to humanity in a safe and environmentally acceptable manner based on nuclear technologies and the prevention of the use of these technologies for the purpose of creating nuclear weapons' [72].

The global legal landscape surrounding the nuclear industry continues to evolve, with individual nations adapting their domestic frameworks to align with international conventions. 'In 2005, Russia ratified the Vienna Convention on Civil Liability for Nuclear Damage' [60]. The ratification of this convention establishes a legal framework for the compensation for nuclear damage in the event that it occurs in the territory of the Russian Federation. The convention imposes strict liability on the nuclear operator for any nuclear damage caused, regardless of fault. This means 'the inability to provide compensation for such damages from the federal budget' [42]. The operator is liable even if an accident occurs without negligence. The convention also assigns liability exclusively to the nuclear operator, establishes compensation amounts as well as determines jurisdiction for nuclear incident inside the state territory and nuclear damages suffered in other countries. However, the convention does not grant any special privileges or exemptions to ratifying countries. The key benefits are the standardized legal framework for nuclear liability and compensation, which helps ensure victims can access prompt and adequate compensation. Russia's ratification simply binds it to these international legal obligations, rather than grants any unique privileges. The convention aims to create a harmonized global system, and not to provide advantages to individual states.

International legal frameworks provide for the resolution of disputes arising from nuclear contracts, often through arbitration mechanisms outlined in treaties or national laws. R. Gottemoeller and D. Zhukov note 'the flexibility with which both the United States and Russia have expanded the centers' role to facilitate exchanges with new partners'. The scholars also remark: 'Other states could adopt the model in order to implement their existing agreements and pave the way toward new diplomatic arrangements, whether focused on mitigating strategic risks or preventing regional crises' [35].

Additionally, the Russian Federation has taken into account the relevant provisions of other international agreements, such as the Brussels Convention on the Liability of Operators of Nuclear Ships of 1962 and the Brussels Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Materials of 1971. Russian nuclear legislation aligns closely with these conventions to initiate 'the development and adoption of amendments to national legislation and international conventions regarding a lower minimum limit of operator liability for nuclear damage' [22].

Beyond the international conventions, national legislations and civil laws have also played a significant role in shaping the legal landscape for the nuclear industry. Examples include 'the US Price-Anderson Act (part of the US Atomic Energy Act of 1954), the Swiss Act on Nuclear Third-Party Liability of 18 March 1983, the Japanese Law on Compensation for Nuclear Damage (No. 147, 17 June 1961, as amended), and the Canadian Nuclear Liability Act of 1970' [42]. This collective experience has contributed to the development of a legally powerful and highly interconnected system of international nuclear law.

As can be seen, a legally powerful, highly ramified conventional system of international nuclear law has been created across the world. 'There are several hundred bilateral intergovernmental agreements in force. Overall, this system provides an adequate response to the main problems and trends in the development of global nuclear energy' [56]. Addressing these evolving needs and eliminating potential gaps in the current treaty system will be crucial for ensuring the continued safe and responsible use of nuclear technology.

[1] Convention on Third Party Liability in the Field of Nuclear Energy, 1960. No. 13706. United Nations, *Treaty Series*, vol. 956, p. 251.

'Initially, each nation had to decide whether public or private institutions would develop nonmilitary atomic energy. The resolution of this question determined the outcome of the two principal issues of atomic energy law – ownership and liability. Permissible limits to private ownership of nuclear materials, facilities, and technology had to be defined. Property law was affected because any individual rights in nuclear property were now subject to modification by special nuclear legislation' [50].

The emergence of a distinct legal framework for the peaceful applications of nuclear energy has attracted the attention of legal academia since the 1960s. During this period, some scholars have argued that nuclear law should be recognized as a new and distinctive branch of law, given the considerable economic, strategic, and political importance of the nuclear industry, as well as the unique principles and mechanisms established by the international conventions in this field.

Speaking of the principles, pioneering Russian and Western legal experts in international nuclear law emphasize their connections to the fundamental principles of contemporary international law.

V. P. Parkhitko analyzes how international nuclear law is intrinsically linked to principles such as state sovereignty, non-interference, and the right to peaceful use of resources. He argues that 'the legal frameworks governing nuclear energy must align with the greater objectives of contemporary international law, including nonproliferation and environmental sustainability' [77].

Z. V. Khanalieva addresses the challenges faced by international law in regulating nuclear energy and highlights the necessity of establishing a legal regime that would reflect the fundamental principles of international cooperation and mutual trust; at the same time, she underscores features of the regulatory and national regulation of the nuclear industry, namely that adopted in the Russian Federation [45].

On Western narrative side, K. Astner and M. Kutt approach the problem 'by differentiating between arguments based on the two main colliding narratives: humanitarian disarmament vs. security-based approaches' [6].

M. N. Schmitt examines the legal obligations of states under international humanitarian law in the context of nuclear weapons, asserting that these obligations require adherence to the principles of distinction and discrimination. His work reveals the inherent tensions between state security interests and international humanitarian principles, advocating for a cohesive approach that integrates nuclear law with humanitarian concerns [89].

D. Koplow provides an example of seismic monitoring of possible clandestine nuclear weapon tests, noting that 'the United States jealously maintains its own Atomic Energy Detection System'. He predicts that 'nuclear command and control messages, the most important national security functions imaginable, may be carried on future commercial networks' [48].

The scholars collectively underscore that international nuclear law is deeply rooted in the fundamental principles of contemporary international law, including state sovereignty, humanitarian law, and cooperative security. Each author contributes to a greater understanding of how these principles shape the legal frameworks governing nuclear energy and weapons, reflecting the ongoing evolution of international legal norms.

The relationship between nuclear contract law and the international legal framework is essential for ensuring that nuclear energy is used safely and responsibly. Both Russian and Western legal scholars provide valuable insights into how treaties influence national laws, how liability frameworks are aligned, and into the regulatory mechanisms that ensure oversight. Understanding these connections fosters international cooperation and helps mitigate the risks associated with nuclear energy use.

Nonetheless, international nuclear law has its own specific principles emerged from the unique nature of nuclear energy and technology and endorsed by contemporary international law. The key principles of nuclear law are as follows: the principle of safety that ensures nuclear safety on Earth; the principle of security that codifies rules for the nuclear peace and the development of non-proliferation of nuclear weapons; the principle of responsibility and compensation that addresses the liability for damage caused through the use of nuclear energy; the principle of sustainable development that ensures environmentally friendly use of nuclear energy. Let us take a closer look at each of the principles.

2.2. The Key Principles

- *Principle of safety that ensures nuclear safety on Earth*

O. G. Paramuzova emphasizes the importance of establishing a robust legal framework for nuclear safety that aligns with international standards. She argues that the principle of safety is not only a technical necessity but also a legal obligation that states must uphold to protect both human life and the environment [75].

M. N. Lysenko discusses the role of international treaties, such as the Convention on Nuclear Safety, in establishing safety standards for nuclear facilities. He underscores that nuclear safety is a fundamental principle that protects not only state interests but also the global community [55].

Western legal literature also demonstrates the significance of this principle. R. Ptasekaite analyzes the regulatory frameworks established by international organizations, highlighting the significance of the principle of safety in ensuring the secure operation of nuclear facilities. He argues that 'effective regulation is crucial for preventing accidents and safeguarding public health and safety' [100].

M. Schmitt advocates safety and security standards for humanitarian interests: 'Legitimate states are equally obligated to ensure the well-being of their citizenry, for the provision of 'public goods', such as physical safety, underpins the social contract between a state

and its people. In light of these often-contradictory interests, states must make policy choices, in the form of treaties or practice, as to their most efficient accommodation' [89].

R. Karim and E. Lee explore the evolving nature of nuclear safety laws and the challenges faced in their implementation: 'To craft a comprehensive legal and regulatory framework, it is essential to revisit the fundamental theories and objectives of nuclear energy law' [51].

- *Principle of security that codifies rules for the nuclear peace and the development of non-proliferation of nuclear weapons*

E. Karnaukhova argues that 'the principle of security is fundamental to the nuclear non-proliferation framework' [52], highlighting how international treaties like the NPT create a legal foundation for the peaceful use of nuclear energy while preventing the spread of nuclear weapons. She emphasizes that 'security guarantees are essential for fostering trust among states' [52].

D. Stepanovich analyzes how international legal instruments codify the security principle related to nuclear weapons non-proliferation. He discusses the balance between the right to security and the obligations to disarmament under the NPT, asserting that such frameworks are crucial for maintaining «peace throughout the world' [84].

The House of Lords of the UK Parliament examine the role of international treaties in reinforcing the security principle associated with nuclear non-proliferation. They argue that 'effective treaty mechanisms are essential for establishing a secure environment, deterring nuclear proliferation, and facilitating disarmament discussions'[1].

J. L. Black-Branch and D. Fleck discuss the interrelation between international security and non-proliferation legal frameworks, emphasizing the necessity of legal instruments like the NPT to maintain nuclear peace. They highlight that 'the legal frameworks both for the peaceful use of nuclear energy as well as for the prohibition of its use for military purposes are far from comprehensive or universally accepted' [16].

Although A. Graham primarily focuses on the threat of nuclear terrorism, he also emphasizes the importance of the non-proliferation regime in enhancing global security. He posits that 'cooperation among nations through legal agreements is crucial for preventing the spread of nuclear weapons and ensuring a safer world' [34].

This illustrates the vital role of the principle of security in codifying rules for nuclear peace and promoting the non-proliferation of nuclear weapons. Both Russian and Western authors emphasize the need for established legal frameworks and international cooperation to maintain peace and prevent the potential threats associated with nuclear proliferation.

- *Principle of responsibility and compensation that addresses the liability for damage caused through the use of nuclear energy*

This principle is enshrined in the Safety Standards of the International Atomic Energy Agency. The principle of state responsibility is a fundamental tenet of international nuclear law. It holds 'states accountable for breaches of their international obligations related to nuclear activities'[2]. This, accordingly, includes responsibilities regarding safety, security, and environmental protection. Of Russian legal researchers, Biryukov admits that 'this responsibility extends to both state-operated nuclear facilities and private entities under the state's jurisdiction' [8]. Referring to the Caribbean (Cuban) Crisis of 1961 and the concept of mutually assured destruction (MAD), A.V. Chaevich highlights the need for a robust international legal framework to govern state responsibility for 'limiting the nuclear arms race and strengthening the role of society in making political decisions' [96].

G. Handl provides an example of the Chernobyl accident remarking that 'states can be held responsible for nuclear incidents originating from private entities operating within their territory if the state failed to exercise adequate control or oversight. This has been a significant development in establishing the scope of state responsibility in international nuclear law' [37]. Another Western legal scholar notes that 'the principle of state responsibility requires states to take due diligence in preventing transboundary harm from their nuclear activities, even if the harm is not the result of an unlawful act. This places an onus on states to ensure robust safety and security measures at nuclear facilities under their jurisdiction or control' [15].

The 1963 Vienna Convention on Civil Liability for Nuclear Damage established the principle of strict liability for nuclear operators. This means they are 'liable for damages regardless of fault, providing victims with faster compensation'[3]. As M. Ampovska asserts: 'The development of principles of state liability and the duty to provide prompt notification and assistance have been critical in establishing clear obligations for states engaged in nuclear activities' [5].

The 1997 Convention on Supplementary Compensation for Nuclear Damage aims 'to ensure adequate compensation is available to victims by establishing an international fund to supplement national compensation schemes'[4]. M. Ampovska believes that this international regime helps deal with challenges of limited funds and jurisdictional barriers that can hinder timely and sufficient compensation 'by the creation of the nuclear insurance pools worldwide as a mechanism that has the leading role in insuring nuclear third-party liability. But,

[1] *Rising nuclear risk, disarmament and the Nuclear Non-Proliferation Treaty*. Published by the authority of the House of Lords. 2019. 121 p.
[2] Fundamental Safety Principles. Safety Fundamentals No. SF-1. IAEA, 2006.
[3] Vienna Convention on Civil Liability for Nuclear Damage. IAEA, 1963.
[4] Convention on Supplementary Compensation for Nuclear Damage. IAEA, 1997.

the revising process in the international third-party liability regime has brought new challenges for nuclear insurance pools for many reasons. A higher liability limits are being set and although they can generally be insured, other difficulties are still unsolved' [5].

The 1988 Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention requires 'contracting parties to treat damages as if the two conventions were a single instrument, facilitating compensation across borders'[1].

The Paris Convention on Third Party Liability in the Field of Nuclear Energy (1960) and the Vienna Convention on Civil Liability for Nuclear Damage (1963) are the two main international instruments establishing 'the nuclear operator's strict liability for nuclear incidents'[2]. When examining the complexities of civil liability in the context of nuclear damage, it is important to consider the following points: 'Moving on to the issue of civil liability for nuclear damage, it is worth noting that these include the 'concentration' of liability on the operator of the nuclear installation, liability in the absence of fault on the part of the injurer, limitation of liability in terms of amount and time, as well as the jurisdiction of the court that hears disputes over compensation for damage caused by a nuclear disaster. The Vienna Convention places liability for nuclear damage on the operator of the nuclear installation. It introduces strict liability for the operator of the nuclear installation as the owner of a source of increased danger' [53].

The Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage (1997) increased the minimum liability for nuclear operators and expanded the definition of nuclear damage to include environmental restoration[3].

- *Principle of sustainable development that ensures environmentally friendly use of nuclear energy*

The principle of sustainable development is an important consideration in the use of nuclear energy under international nuclear law. It can be found in both Russian and Western legal literature.

'The principle of sustainable development implies that countries using nuclear energy must implement the best available technologies and practices to prevent accidents and protect the environment from radioactive contamination' [44]. In this regard, some legal researchers suggest that 'only a combination of green and nuclear energy can ensure both the sustainable development of the economy and energy for a long time in the future, as well as a truly effective solution to the environmental problems facing civilization' [85].

Emphasizing the need to use nuclear power in an environmentally responsible manner, Westerns legal authors explain how the principle of sustainable development has become an important guiding principle in the regulation of nuclear energy under international law. 'The principle of sustainable development requires that the use of nuclear energy be environmentally responsible and protective of natural resources for present and future generations. This includes mitigating radioactive waste, ensuring nuclear safety, and preventing transboundary environmental damage' [69]. In the realm of international nuclear law, the imperative for sustainable development in the utilization of nuclear power is increasingly emphasized. It is noted that: 'The sustainable development of nuclear power has been a key concern in international nuclear law. Treaties like the Convention on Nuclear Safety and the Joint Convention on the Safety of Spent Fuel Management have sought to enshrine environmental protection and responsible resource use as integral to the peaceful use of nuclear energy' [88]. As the discourse on nuclear energy continues to evolve, the significance of sustainable development emerges as a critical focal point. It is observed that: 'The principle of sustainable development requires states to strike a balance between the economic and energy benefits of nuclear power, and the environmental risks and long-term stewardship obligations. This has led to increased emphasis on nuclear safety, waste management, and environmental impact assessment in international nuclear law and policy' [49].

Russian legal authors also underscore the necessity of robust legal frameworks and international cooperation to ensure the safe use of nuclear technology and to protect human health and the environment from potential nuclear hazards.

Some Russian authors draw 'attention of authorities and influential categories of the population to the need of solving the main problems of sustainable development of Russia. It is noted that one of the main factors in achieving the Sustainable Development Goals is the provision of energy. Only nuclear energy with fast neutron reactors and a closed nuclear fuel cycle, which are expected to become more widespread in the world in the near future, can be such a source' [31]. N. A. Besetskaya also notes that 'within the framework of Eurasian integration… the formation of unified norms for the peaceful use of nuclear energy… has been suspended at the stage of developing draft international agreements. Consequently, it is necessary to review existing approaches and move from the implementation of a 'coordinated' policy to the implementation of a 'harmonized' or 'unified' policy' [12].

[1] Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention. IAEA, 1988.
[2] Paris Convention on Third Party Liability in the Field of Nuclear Energy. OECD, 1960.
[3] Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage. IAEA, 1997.

2.3. Extensive Intersections and Codification

International nuclear law governs the relations between states and international organizations in various domains related to the use of nuclear energy. Its norms have far-reaching implications, encompassing environmental protection, the use of outer space and the world's oceans, the operation of marine and river vessels, and the regulation of international and national territories and sovereignty. Consequently, the norms of international nuclear law are inherently complex, intersecting with multiple branches of international law, including maritime law, space law, international security law, and environmental law.

In the late 20th century, a significant number of international legal norms were developed and codified within the framework of international nuclear law. This ongoing process of codification and legalization is driven by the rapid advancements in nuclear technologies and materials, which have created a pressing need for comprehensive and well-defined regulation.

This process can be exemplified by a substantial number of resolutions drafted and adopted by the United Nations General Assembly that are directly and indirectly connected to the development and reinforcement of the international legal framework governing nuclear activities, including nonproliferation, safety, and security. 'Regardless whether one supports progress 'towards' or 'in' disarmament, both stances would benefit from the development of a 'strategic plan' to achieve their concrete objectives. There is no sign that any such plan exists in either camp, as the possessors proceed with their own plans for indefinite retention and modernization, and the non-nuclear-weapon states proceed to itemize actions that must be taken without addressing the political circumstances necessary to achieve them' [79].

One of the latest initiatives is a package of resolutions before the Assembly concerning nuclear and other mass destruction weapons, the disarmament aspects of outer space, conventional weapons, other disarmament measures and international security, regional disarmament and security, and the United Nations disarmament machinery which are directly and indirectly linked to international nuclear law. 'The UN General Assembly has adopted a package of annual resolutions on nuclear disarmament and other weapons of mass destruction. These resolutions directly address issues such as the Comprehensive Nuclear-Test-Ban Treaty, fissile material, and nuclear-weapon-free zones, which are core components of the international nuclear legal framework' [82].

Among those, General Assembly included a new resolution titled 'Prohibiting the use of radiological weapons'[1], urging the Conference on Disarmament to adopt, in 2024, a comprehensive and balanced program of work that comprises negotiations to conclude, as an initial step on this issue, a legally binding multilateral ban on radiological weapons use by states.

The nuclear technology continues to escalate in both civilian and military applications. This has led to a paradoxical perception, where 'peaceful applications of nuclear energy — and all the promise they entail for humanity — are paradoxically often perceived in juxtaposition with the prospects of nuclear weapons' proliferation and nuclear war. The mixed perception is understandable: the materials, knowledge, and expertise required to produce nuclear weapons are often indistinguishable from those needed to generate nuclear power and conduct nuclear research' [26]. This requires a well-defined and strict compliance with existing norms and frameworks in the sphere of international nuclear law. 'As a result, the focus of the international community has always been to ensure that nuclear energy is used peacefully and safely. The approach is defined by a complex network of national and international measures' [26].

The corpus of international nuclear law is a multifaceted 'tapestry' made up by an intricate array of treaties, conventions, and agreements. When examining the normative foundations and frameworks that underpin this specialized field of international law, it is possible to thematically group them into categories, these including safety and security, environment protection against contamination, and liability and compensation for nuclear incident.

The first domain encompasses the safety and security considerations surrounding the development, testing, and deployment of nuclear weapons. It includes landmark agreements such as:

- Treaty Banning Tests of Nuclear Weapons in the Atmosphere, Outer Space and Underwater of August 5, 1963;
- Comprehensive Nuclear Test Ban Treaty of September 24, 1996;
- Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968;
- Treaty on the Prohibition of the Placement of Nuclear Weapons and Other Weapons of Mass Destruction on the Bottom of the Seas and Oceans and in Their Subsoil of February 11, 1971;
- Treaty for the Prohibition of Nuclear Weapons in Latin America of January 14, 1967 (Treaty of Tlatelolco);
- International Convention for the Suppression of Acts of Nuclear Terrorism, developed within the UN (was opened for signature in 2005; entered into force in July 2007);
- Treaty on a nuclear-free zone in the South Pacific of August 6, 1985 (Treaty of Rarotonga) and other agreements on areas free of nuclear weapons (Pelindaba, Bangkok treaties, Semipalatinsk Treaty of Central Asian countries of September 8, 2006).

[1] Prohibiting the use of radiological weapons, A/C.1/78/L.51. UN General Assembly, 2023.

There are nuclear weapons agreements under development, including the Convention on the Prohibition of Radiological Weapons and the Convention on the Prohibition of the Use of Nuclear Weapons. In addition to multilateral ones, there are many bilateral treaties between states regarding nuclear weapons.

The second thematic area focuses on the protection of the environment and the planet from the hazards associated with nuclear technology. Key agreements in this domain include:

- International Convention for the Prevention of Marine Pollution by Dumping of Wastes and Other Materials, 1972 (as amended in 1994);
- Convention on the Physical Protection of Nuclear Material, 1980;
- Convention on Early Notification of a Nuclear Accident and on Assistance in the Case of a Nuclear Accident or Radioactive Emergency, 1986;
- Convention on Nuclear Safety, 1994;
- Convention on Assistance in the Case of a Nuclear Accident or Emergency, 1986;
- Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997.

The third category encompasses standards and conventions governing liability and compensation for nuclear-related incidents and accidents. Noteworthy examples include:

- Convention for the Protection of Workers from Ionizing Radiation, 1960;
- Convention on Third Party Liability in the Field of Nuclear Energy, 1960 (as amended in 1964, 1982);
- International Convention on Civil Liability for Nuclear Damage, 1963 (as amended in 1997);
- Convention on the Liability of Operators of Nuclear Ships, 1962 (not in force);
- Convention on Civil Liability in the Field of Maritime Transport of Nuclear Materials, 1971.

These agreements aim to create a harmonized system of legal accountability and financial compensation in the event of a nuclear disaster.

Importantly, the sources of international nuclear law do not exist in isolation but rather intersect with other branches of public international law, such as the law of the sea, outer space law, and international environmental law. This interconnectedness reflects the complexity and multidimensional nature of the legal frameworks governing the peaceful and responsible use of nuclear technology on a global scale. As an example, Treaty on the principles governing the activities of states in the exploration and use of outer space, including the Moon and other celestial bodies, dated January 20, 1967, prohibits the launching into Earth orbit of any objects with nuclear weapons, etc.

3. The Potentials and Complexities of International Nuclear Law

The field of international nuclear law encompasses a broad range of legal frameworks and principles governing the various aspects of nuclear energy, with a particular focus on four key areas: safety, security, safeguards, and liability. Legal doctrines recognize the inherent tension within the nature of international nuclear law. On the one hand, the regulation of nuclear activities is firmly established as the exclusive responsibility of sovereign states. On the other hand, the unique risks and global implications of nuclear energy make it challenging to precisely define a comprehensive set of legally binding rules and obligations. As noted in the judgement *SS 'Wimbledon', United Kingdom and ors v Germany* (1923), by undertaking the obligations of a treaty, a state 'places an important limitation on the exercise by [itself] of sovereign rights'[1].

These restrictions on state sovereignty are fundamental to the development of international nuclear law. A state's participation in a treaty is not considered an abandonment of its sovereignty; rather, 'the right of entering into international engagements is an attribute of State sovereignty'[2], as affirmed in the *SS 'Wimbledon'* case.

International nuclear law is based on such voluntary limitations of sovereignty. By voluntarily participating in these cooperative frameworks, states essentially surrender the degree of their independence in exchange for the collective benefits and risk-mitigation mechanisms provided by the international legal regime.

However, it would be an oversimplification to assert that international nuclear law simply imposes constraints on state sovereignty. Its instrument is not capable of compelling exclusive responsibility on the state in various aspects of nuclear energy, whereas it 'rather reinforces the state sovereignty' [88]. In reality, the legal instruments in this domain also serve to reinforce and reaffirm the fundamental role of the nation-state as the primary actor responsible for the governance of nuclear activities within its own jurisdiction. This tension between limiting and reinforcing state sovereignty is a defining characteristic of the international nuclear legal framework.

It is important to recognize that the evolution of international nuclear law did not occur in a vacuum. Prior to the establishment of this specialized legal regime, nuclear technology had already been developed and utilized by states as a means of demonstrating territorial defense capabilities, extraterritorial power, and authority, as well as mechanisms for peaceful containment. The contemporary international nuclear legal framework encompasses a diverse array of obligations, ranging from well-defined 'hard law' provisions to more ambiguous 'soft law' principles that lack precise legal

[1] The SS 'Wimbledon', United Kingdom and ors v Germany, Judgment, (1923) PCIJ Series A no 1, ICGJ 235 (PCIJ 1923).
[2] Ibid.

enforceability. This inherent duality, with both legally binding and non-binding elements, contributes to the flaws and shortcomings that permeate various aspects of international nuclear law.

3.1. Nuclear Weapon Proliferation and Nuclear Security

The issue of nuclear security and non-proliferation of nuclear weapons is widely regarded as the primary concern underpinning the development of international nuclear law. Nuclear weapons have been a central consideration in the foundational principles of international law governing the use of force and the conduct of hostilities.

The United Nations Charter, in its preamble, expresses the primary aim of the organization as 'to save succeeding generations from the scourge of war' [1]. Accordingly, the UN Charter restricts the use of armed force by states, limiting it to instances of 'self-defense'[2] or actions authorized by the Security Council[3]. This prohibition on the use of force applies to all forms of weaponry, including nuclear armaments.

In its Advisory Opinion 'Legality of the Threat or Use of Nuclear Weapons'[4], the International Court of Justice (ICJ) grappled with the unique challenges posed by nuclear weapons in the context of international humanitarian law. While the Court acknowledged the difficulty in reconciling the use of nuclear weapons with the principles of the law of armed conflict, it ultimately refrained from making a definitive ruling on the legality or illegality of nuclear weapons, particularly in extreme circumstances of self-defense where a state's survival may be at stake. The Court noted that 'in view of the current state of international law and of the elements of fact at its disposal, [it] cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake'[5].

In other words, the ICJ's reluctance to provide a clear-cut determination on the legality of nuclear weapons has been interpreted by some as potentially undermining the established principle of jus ad bellum, which governs the justification for the use of force, and jus in bello, which regulates the actual conduct of hostilities. As every armed conflict can potentially be perceived by states as an 'extreme circumstance of self-defense'[6], it is not crystal clear whether the Court inferred that the principle of *jus ad bellum,* justifying the use of armed force, might set aside the principle of *jus in bello,* governing the actual conduct of hostilities. The consequences of the ambiguity between the principles of jus ad bellum and jus in bello, including the erosion of humanitarian law, selective application of norms, escalation of conflicts, undermining of international stability, and weakening of accountability, have raised concerns that the exceptional nature of nuclear weapons may lead states to prioritize the principles of self-defense over the established laws of war.

N. Ronzitti states that the risk of a conflict between jus ad bellum and jus in bello is that states may be tempted to disregard the rules of jus in bello if they believe that their cause is just. He concludes that 'State practice is insufficient to establish the legality of such interventions', but that 'the number of precedents and the relatively limited protests they have raised, on the other hand, allow us to expect their legitimacy de lege ferenda. In other words, these actions constitute neither a violation of peremptory norms nor, strictly speaking, aggression' [81].

Similarly, M. G. Smirnov argues that the ambiguity between jus ad bellum and jus in bello creates a dangerous precedent where states might selectively apply the laws of war based on their perceived justification for the use of force. This could result in the erosion of fundamental humanitarian principles. 'If the justness of a war's cause is allowed to override the laws of war, it could lead to a more permissive environment for the use of force and the disregard of crucial humanitarian norms. This would undermine the overall stability and predictability of the international legal order' [29].

In a similar vein, J. G. Stewart, a Canadian legal scholar, writes in his article that 'the blurring of the lines between jus ad bellum and jus in bello can make it more difficult to hold parties accountable for violations of the laws of war, as they might claim their actions were justified by the legitimacy of their cause' [90].

Nonetheless, the ICJ did emphasize the obligation of states to pursue good-faith negotiations leading to the comprehensive disarmament of nuclear weapons under strict and effective international control. This reflects the broader recognition that the proliferation and potential use of nuclear weapons pose an existential threat to humanity and the global environment, necessitating a concerted international effort to eliminate these weapons of mass destruction.

Beyond the principles of the UN Charter and the Advisory Opinion of the ICJ, the regulation of the conduct

[1] Charter of the United Nations, 24 October 1945.

[2] Ibid. Article 51.

[3] Article 42 of the United Nations Charter gives the Security Council the authority to act by air, sea or land forces as may be necessary to maintain or restore international peace and security. The Security Council has authorized military force to reverse or repel aggression by one State against another. Since 1990, the Security Council has increasingly authorized the use of force under Chapter VII of the Charter — in different circumstances and to varying degrees.

[4] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996. *I.C.J. Reports 1996*. P. 226. International Court of Justice (ICJ).

[5] Ibid.

[6] Ibid.

of hostilities in armed conflicts is also governed by international humanitarian law, both treaty and customary law, particularly the 1977 Additional Protocol I to the Geneva Conventions. This protocol establishes the principle of distinction, which prohibits the use of weapons that cannot distinguish between civilian and military targets. According to Article 51(4)(c) of this Additional Protocol, states involved in a conflict 'employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction'[1].

The indiscriminate nature of nuclear weapons, with their devastating and long-lasting impacts on both human populations and the environment, has been widely regarded as inherently incompatible with this fundamental principle of international humanitarian law.

In addition to the principles of distinction and necessity, the law of armed conflict also emphasizes the crucial role of proportionality in regulating the conduct of hostilities. This principle, enshrined in articles 51(5)(b) and 57(2)(a)(iii) and (b) of the Additional Protocol I to the Geneva Conventions, as well as in numerous other provisions of the 1949 Geneva Conventions and their 1977 Additional Protocols, requires that any military action must not cause excessive civilian harm in relation to the anticipated military advantage.

In this regard, United Nations General Assembly Resolution 1653 (XVI) (1961) declares that the use of nuclear and thermonuclear weapons is contrary to the spirit, letter, and aims of the United Nations and, as such, is a direct violation of the Charter of the United Nations. The Advisory Opinion of the International Court of Justice (ICJ) on the Legality of the Threat or Use of Nuclear Weapons (1996) states that 'the destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilization and the entire ecosystem of the planet'[2]. Articles 51 and 55 of the Additional Protocol I to the Geneva Conventions (1977) prohibit 'the indiscriminate attack of civilian populations, which is a characteristic of the use of nuclear weapons'[3] and 'the use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term, and severe damage to the natural environment'[4]. The ICJ concludes that the use of nuclear weapons would generally be contrary to the principles and rules of international humanitarian law. Ultimately, the Customary International Humanitarian Law (ICRC study, 2005) infers that 'the use of weapons that are by nature indiscriminate is prohibited, and that the use of weapons that cause excessive or unjustified suffering is also prohibited'[5].

Applying the principle of proportionality to the use of nuclear weapons presents significant challenges. The indiscriminate nature of these weapons, with their potential for widespread and long-lasting impacts on civilian populations, environments, and infrastructure, makes it inherently difficult to ensure that their use would not result in disproportionate collateral damage. The sheer destructive power of nuclear weapons, even when employed against military targets, raises serious doubts about the feasibility of maintaining proportionality.

However, the International Court of Justice acknowledged in its 1996 Advisory Opinion that there may be exceptional circumstances where the use of nuclear weapons could potentially be considered proportionate. The court noted that 'the reality ... is that nuclear weapons might be used in a wide variety of circumstances with very different results in terms of likely civilian casualties'[6]. It suggested that in certain limited scenarios, such as the use of a low-yield nuclear weapon against military targets in sparsely populated areas, it might be possible to envisage a nuclear attack that would not inevitably cause catastrophic civilian harm.

While the ICJ's opinion leaves open the possibility of a proportionate use of nuclear weapons in some hypothetical scenarios, it is essential to recognize the inherent challenges in applying this principle in practice. The devastation caused by nuclear weapons, even at relatively low yields, and the unpredictable long-term consequences make it exceedingly difficult to ensure that any use of such weapons would be truly proportionate. Moreover, the court's acknowledgment of potential exceptions has been criticized by many as undermining the long-standing humanitarian principles that prohibit the indiscriminate use of weapons and the disproportionate infliction of civilian suffering.

Ultimately, the legal and ethical complexities surrounding the use of nuclear weapons continue to be a subject of intense debate and controversy within the international community. While the principle of proportionality provides a framework for assessing the legality of military actions, the unique characteristics of nuclear weapons raise profound questions about the ability to reconcile their use with the established laws of armed conflict.

The pivotal concern of both the 2030 Agenda for Sustainable Development and the Paris Agreement on

[1] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I). Available at: https://treaties.un.org/doc/Publication/UNTS/Volume%201125/v1125.pdf .

[2] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996. *I.C.J. Reports 1996*. P. 226. International Court of Justice (ICJ).

[3] Article 51 of the Additional Protocol I to the Geneva Conventions (1977).

[4] Article 55 of the Additional Protocol I to the Geneva Conventions (1977).

[5] Customary International Humanitarian Law (ICRC study, 2005).

[6] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996. *I.C.J. Reports 1996*. P. 226. International Court of Justice (ICJ).

Climate Change is energy, particularly the ensuring of access to cost-effective, environmentally friendly, and safe energy.

Nuclear energy is the most available option as the demand for energy has brought into focus the technology for low carbon electricity generation. Accordingly, the issue of safety in the use of nuclear energy has come forward. The most overwhelming portion of responsibility has fallen upon states. States also try to fulfill such a responsibility through international cooperation for the peaceful use of nuclear energy. To this end, the IAEA has been established.

Article II of the IAEA Statute provides the mandate for the IAEA in the peaceful application of nuclear energy. It states: 'the Agency shall seek to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity'[1]. However, under the terms of Article III of its Statute, the IAEA does not explicitly provide for environmental protection from radioactive contamination. The IAEA only mentions 'standards of safety for protection of health and minimization of danger to life and property'[2]. As the environment was not the center of negotiation of the IAEA founders, the Statute focused on potential risks of nuclear energy in weapon proliferations, rather than on environmental protection.

In accordance with Article III of the IAEA Statute, the Agency has the authority to apply health and safety standards to nuclear activities of any state by means of a special agreement with the IAEA with respect to radiation protection and nuclear safety. The observance of health and safety standards are automatically binding on the Agency's own activities. Nonetheless, in all other cases, these standards become binding when they are included in instruments that have a binding character, e.g., international treaties or agreements. This means that the IAEA safeguards are not self-executing and depend for implementation on an agreement between the Agency and the nation concerned.

3.2. State Responsibility and Nuclear Liability

The international legal framework governing nuclear liability was developed to serve two primary objectives: ensuring adequate compensation to individuals and communities affected by nuclear accidents and incentivizing the nuclear industry to assume responsibility for the risks inherent in its operations without facing the threat of ruinous liability.

This dual purpose is reflected in the structure of international nuclear liability regimes, which typically impose strict liability on the operators of nuclear facilities for any resulting damages, while also limiting the total amount of compensation that can be demanded. As B. Julio has observed: 'In international law, a number of specific (hazardous) activities are regulated by multilateral conventions where the liability for transboundary damages falls mainly on private persons or entities, and in some cases there may be a residual State liability. In one convention, there is exclusive State accountability' [43].

The Paris Convention on Third Party Liability in the Field of Nuclear Energy is a seminal example of this approach. By establishing that the operator of a nuclear installation is strictly liable for any harm caused by a nuclear incident, the convention aims to provide swift and certain compensation to affected parties. At the same time, it limits the operator's liability to a finite, pre-determined amount, thereby preserving the industry's capacity to develop and operate nuclear technology.

Specifically, the Paris Convention stipulates that the nuclear operator shall be liable for damage if it can be demonstrated that such harm was directly caused by a nuclear incident related to the installation, its fuel, or radioactive substances released from the facility. Furthermore, 'the operator shall be liable for damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or a grave natural disaster of an exceptional character'[3].

However, the prerequisite for the operator's liability depends upon 'proof that such damage was caused by a nuclear incident'[4]. In fact, the requirement to prove a direct causal link between the nuclear incident and the resulting harm can present significant evidentiary challenges, often necessitating extensive scientific investigation and field research. The exemplar evidence is the NATO bombing of Serbia in 1999: the NATO member states had differing views on whether the impact of the campaign was compatible with the principles of international humanitarian law. While in NATO's own statements, the organization acknowledges that some of the attacks resulted in unintended 'civilian casualties'[5,6] and damage to the environment, it maintains that it took 'extensive measures to avoid and minimize civilian harm'[7] and that the campaign was conducted 'in accordance with international law'[8].

[1] 1956 Statute of the International Atomic Energy Agency, 23 Oct. 1956, 276 UNTS 3, 8 UST 1093, TIAS 3873. Article III (A)(6). Available at : https://www.iaea.org/sites/default/files/statute.pdf.

[2] Ibid.

[3] OECD, Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention), OECD/LEGAL/0038Annex Art. 9.

[4] Ibid. Art. 3.

[5] Press Conference by Commander of the 315th Air Expeditionary Wing at Aviano Air Base. 1999. Available at: https://www.nato.int/docu/speech/1999/index.html.

[6] Press Conference by NATO Secretary General Javier Solana. 1999. Available at: www.nato.int/cps/en/natolive/opinions_27448.htm.

[7] NATO's Final Report to the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), 2000.

[8] Ibid.

Contrary to NATO's statements, legal scholars are of the opinion that the NATO bombing campaign in Serbia was incompatible with the principles of international humanitarian law. E. G. Ponomareva and A. V. Frolov argue that 'the widespread and indiscriminate nature of the NATO air strikes, including the targeting of dual-use civilian infrastructure, such as bridges, power plants, and media outlets, raises serious questions about the compliance with the principles of distinction and proportionality under international humanitarian law. The long-term environmental and public health consequences of the use of depleted uranium munitions also seem to contradict the requirement to minimize unnecessary suffering' [78].

A. O. Burukina also notes that the NATO intervenetion in Yugoslavia, while potentially justified by humanitarian considerations, appears to have been conducted in a manner that disregarded key principles of international humanitarian law. The extensive damage to civilian objects and the environment as well as the use of controversial weapons suggest that the alliance failed to take all feasible precautions to avoid or minimize collateral damage [7].

Of Western legal scholars, M. Bothe comments that 'the bombing, …, was likely disproportionate and therefore a violation of international humanitarian law. The attack did not meet the requirement of distinguishing between military and civilian objects, nor did it seem to offer a concrete and direct military advantage that would justify the incidental civilian loss' [13].

M. Milanović notes that 'it is immediately apparent from even a cursory examination of the case law on the application of human rights treaties extraterritorially or in times of armed conflict that courts greatly fear overcomplexity and their own institutional incompetence, whether perceived or real' [64].

This can complicate the process of obtaining compensation, particularly in cases where the full extent of environmental or public health impacts may not be immediately apparent.

The development of this nuclear liability regime has been influenced by the broader evolution of international law governing state responsibility for environmental harm. Over the past half-century, the International Law Commission (ILC) has worked to codify the general principles of state responsibility, including the duty to prevent 'transboundary damage from hazardous activities' [1] and respond to 'loss from transboundary harm arising out of hazardous activities'[2].

According to the Responsibility of States for Internationally Wrongful Acts, adopted in 2001, the law of state responsibility is based on two elements. One is that an act or omission is 'attributable to the State under international law'[3], and the other is that an act or omission 'constitutes a breach of an international obligation of the State'[4]. However, the concept of state responsibility has played a relatively limited role in the context of nuclear environmental protection, as the latter primarily addresses the actions of states themselves, rather than the liability of private actors who dominate the nuclear industry.

Thus, while the international legal system has sought to balance the needs of nuclear technology development with the imperative of environmental protection and victim compensation, there remain significant challenges in effectively addressing the transboundary risks posed by nuclear activities. The complexity of establishing causation and the limitations of state responsibility in this domain underscore the ongoing efforts to refine and strengthen the nuclear liability regime.

The concept of state responsibility in international law has its historical roots in instances where states have violated established norms of treaty and customary international law. These include cases of repeated violent or discriminatory acts against foreign nationals, as well as the transboundary transmission of hazards that have infringed upon the sovereignty and territory of other states. In such circumstances, the injured state was recognized as having a right to exercise 'its power of diplomatic protection to demand compensation or reparation' [91].

This general principle of state accountability for transboundary harms is also reflected in the objectives of international agreements like the Basel Protocol[5], which seeks to address 'the risk of damage to human health, property and the environment caused by the transboundary effects of industrial accidents'[6]. However, the practical implementation of state liability frameworks remains challenging, as international treaties and rules often lack clarity on the specific terms, conditions, and thresholds that govern the attribution of responsibility.

Yet, international agreements and rules on liability require clarification with regard to the terms and conditions as well as the limits, intervals, and thresholds for the states. They, in turn, necessitate the consensus of states concerning these hotspots. In practice, determining liability for damage is complicated, as it depends on

[1] UN General Assembly, Resolution 52/156 of 15 December 1997, A/RES/53/102, 26 January 1999. Available at: http://www.worldlii.org/int/other/UNGA/1998/189.pdf.

[2] Ibid.

[3] Responsibility of States for Internationally Wrongful Acts 2001. *International Law Commission*, 2001, vol. II (Part Two).

[4] Ibid.

[5] Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal, International Union for Conservation of Nature, Dec 10, 1999. IUCN (ID: TRE-001341). Available at: https://www.basel.int/Portals/4/Basel%20Convention/docs/meetings/cop/cop5/docs/prot-e.pdf.

[6] Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes and to the 1992 Convention on the Transboundary Effects of Industrial Accidents, IUCN (ID: TRE-001372).

the extent to which a state has contributed to the occurrence of that damage. Occasionally, not the whole state but only its part contributes to the event that causes harm. As the International Law Commission articulates, 'a State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State'[1]. This speaks to the complex web of state involvement and culpability that can underlie transboundary harms.

This is particularly salient in the context of nuclear energy, where the determination of liability is often highly contentious. The operator of a nuclear facility is typically held strictly liable for any damages resulting from a nuclear incident, regardless of the specific cause. Hence, challenges can arise when the harm occurs during the ostensibly lawful operation of the plant, making it difficult to establish a clear causal link between the state's conduct and the resulting damage. As the International Court of Justice has affirmed, 'no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence'[2]. Moreover, a problematic situation may arise if the damage emerges through the state's lawful conduct and the injured state faces difficulty enforcing liability claims due to lack of causal connection between the state's conduct that has led to the violation of the safeguards and the damage.

State liability should, therefore, be based upon the precautionary principle in case the state fails to take measures to prevent risks to safety as the United Nations stresses that 'the importance of the precautionary approach according to which lack of full scientific certainty should not be used for postponing cost-effective measures to prevent environmental degradation, where there are threats of serious or irreversible damage'[3]. This suggests that states may be obligated to take proactive steps to mitigate risks, even in the absence of a clear causal link between their actions and potential harms.

Ultimately, the challenges of establishing state responsibility for transboundary environmental and public health impacts, particularly in the nuclear sector, underscore the need for ongoing refinement and strengthening of the international legal frameworks governing liability. As the global community grapples with the complex risks posed by hazardous activities, the development of more robust and transparent accountability mechanisms will be crucial.

Conclusion

International nuclear law has emerged as a distinct specialized branch of contemporary public international law, addressing a wide range of legal issues associated with nuclear technology, materials, and activities. From nuclear enrichment and arms control to the broader environmental and public safety implications, this evolving legal domain occupies a critical position within the global governance framework for managing the complexities and risks of the nuclear age.

While both Western and Russian legal scholars have grappled with the nature and categorization of international nuclear law, a shared definitional consensus remains elusive. The absence of a universally accepted taxonomy has prompted Western academics to develop a rich array of conceptual approaches, even as Russian doctrines have brought their own unique perspectives to the table. This terminological diversity has added a layer of complexity to the fundamental question of whether international nuclear law should be classified as part of the private or public international law domain.

Delving deeper into the substantive scope of international nuclear law, one finds a multifaceted landscape encompassing the issues of safety, security, safeguards, and liability. These various components, each with their own distinct capacities and limitations, have presented significant challenges for international law. From environmental protection to the specter of nuclear terrorism, the limitations inherent in this emergent field have forced the global legal order to confront a range of interconnected complex issues. Underlying these challenges are the divergent legal philosophies espoused by Western and Russian doctrines.

While the Western approach has tended to emphasize the peaceful use of nuclear energy and the imperative of environmental safeguards, a different perspective has often placed a greater emphasis on concepts of state sovereignty, the inherent right to nuclear development, and other concepts such as 'general property and tort' [50]. This tension has manifested itself in ongoing debates over the appropriate balance between nuclear security, national interests, and global governance.

In this vein, there is assured growth in the number of international nuclear law doctrines placing consistently developing regional regimes in line with the universal framework of international nuclear law. As discussed before, every aspect of international nuclear law has certain limitations which require to be improved to facilitate the deployment and development of legal standards in safety, security, safeguards, and liability of nuclear energy. Nevertheless, Western legal doctrine highlights the importance of peaceful use of nuclear

[1] Responsibility of States for Internationally Wrongful Acts 2001. *International Law Commission*, 2001, vol. II (Part Two).

[2] Trail Smelter Arbitration (United States v. Canada) 16 April 1938 and 11 March 1941. *Reports of International Arbitral Awards*. Vol. III. Pp. 1905-1982.

[3] Resolution 1/6: Marine plastic debris and microplastics. Resolutions and decisions adopted by the United Nations Environment Assembly of the United Nations Environment Programme at its first session on 27 June 2014.

energy and environment protection against radioactive hazards. In line with this doctrine, many states around the world have been working to align their nuclear policies with Western standards. Yet, Russian legal doctrine proclaims that the issue of nuclear possession and development must be regarded as a part of the concept of sovereignty. In this regard, the state interests, local necessities, and sovereign rights directly addressing safeguarding sources of nuclear energy are the center of attention and debates.

While Russian legal doctrine on the nature and categorization of nuclear law puts more weight on nuclear law as private international law, there are other, less visible perspectives in this doctrine that more closely align with its Western counterpart, such as the approaches that treat international nuclear law as an area of public international law.

Despite these ideological differences, there are signs of an evolving convergence, as various regional regimes develop in alignment with the overarching framework of international nuclear law. Nonetheless, the persistent limitations and shortcomings of this field suggest the need for continued refinement and improvement of the legal standards governing nuclear safety, security, safeguards, and liability.

'Consequently, the regulation of nuclear energy necessitates the endowment of the international community with residual responsibility, or in certain instances co-responsibility, to ensure, among other things uniformity of standards, co-ordination, pooling of resources and services, as well as compliance' [26]. As the global nuclear landscape continues to evolve, it appears that the international community must be entrusted with residual responsibility, or in some cases – co-responsibility, to ensure the consistent application of standards, coordinate resources and services, and promote compliance – all in the service of a more secure and sustainable nuclear future.

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International Law Aspects of Space Traffic Management

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Introduction: *the increasing number of space objects in orbit and the absence of uniform international standards for space traffic management pose a threat to the safety of spaceflight and increase the risk of debris formation. In light of modern technical and economic developments, it is essential to develop a legal framework for the regulation of space traffic.* ***Purpose:*** *the article aims to analyze the legal aspects of international space traffic management, including relevant rules of current international space law; to identify key components of a potential legal regime; to assess current initiatives in this field and explore the prospects for their implementation based on ongoing discussions within the UN Committee on the Peaceful Uses of Outer Space.* ***Methods:*** *the comparative legal method and legal doctrinal analysis were applied in this work, along with the study of international treaties, national legislation, doctrinal sources, and initiatives from international organizations.* ***Results:*** *the study has shown that current international space law lacks a comprehensive mechanism for managing space traffic. Two potential models for its development are considered in the article: a 'bottom-up' approach (harmonization of national regulations) and a 'top-down' approach (creation of a universal international agreement). The proposals of the International Academy of Astronautics and the UN Committee on the Peaceful Uses of Outer Space were analyzed, including ideas related to enhancing situational awareness in space and utilizing the ICAO's experience in coordinating space flights.* ***Conclusions:*** *the development of an international legal framework for space traffic management necessitates the creation of unified international standards, including maneuvering rules, a data exchange system, and legal liability mechanisms. Further research should consider not only the interests of spacefaring nations but also those of developing states as well as technological developments intended to ensure the safety and sustainability of space activities.*

Keywords: outer space; space traffic management; international space law; space situational awareness; space navigation; space traffic coordination; space debris; international responsibility

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Information in Russian

Международно-правовые аспекты управления космическим движением

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Введение: *рост количества космических объектов и отсутствие единых международно-правовых норм управления космическим движением создают угрозу безопасности полетов и увеличивают риск образования космического мусора. Современные технические и экономические реалии требуют разработки правового механизма, регулирующего движение космических объектов.* ***Цель:*** *анализ международно-правовых аспектов управления космическим движением, в том числе уже существующих норм международного космического права, имеющих отношение к описываемому режиму; выявление ключевых элементов рассматриваемого потенциального правового режима; оценка существующих инициатив в данной сфере и определение перспектив их реализации с учетом ведущихся на площадке Комитета ООН по космосу обсуждений.* ***Методы:*** *применены сравнительно-правовой метод, юридико-догматический анализ, а также изучены международные договоры, национальные законодательные акты, доктринальные источники и инициативы международных организаций.* ***Результаты*****:** *установлено, что действующее международное космическое право не содержит полноценного механизма управления космическим движением. Рассмотрены две модели его возможного развития: восходящая (гармонизация национальных норм) и нисходящая (создание универсального международного соглашения). Проведен анализ предложений Международной академии астронавтики и Комитета ООН по космосу, включая концепции улучшения ситуационной космической осведомленности, использование опыта ИКАО в координации космических полетов.* ***Выводы:*** *развитие международно-правового режима управления космическим движением требует создания единых международных норм, включающих правила маневрирования, систему обмена данными и механизмы юридической ответственности. Дальнейшие исследования должны учитывать не столько национальные интересы отдельных космических держав, сколько позицию каждого, в том числе развивающегося, государства, а также технологические изменения в целях обеспечения безопасности и устойчивого развития космической деятельности.*

Ключевые слова: космос; управление космическим движением; международное космическое право; космическая ситуационная осведомленность; космическая навигация; координация космических полетов; космический мусор; международная ответственность

Introduction

On November 25, 2024, the International Space Station (hereinafter the ISS) performed its 40th space debris collision avoidance maneuver since its launch in 1998[1]. According to various estimates, the total number of pieces of space debris in orbit currently reaches approximately 40,500 objects larger than 10 cm, 1.1 million objects sized between 1 and 10 cm, and 130 million objects sized between 1 mm and 1 cm[2]. The growth of the private sector in space and the increasing size of satellite constellations, coupled with the desire to maximize the economic benefits of using small satellites and with other trends in contemporary space activities, have led to an increased risk of collisions between space objects in the absence of unified mandatory regulations for space navigation. This, in turn, has resulted in an increase in the amount of space debris, which poses a significant threat to future space missions.

The idea of establishing certain rules governing international cooperation in the field of space traffic management can be traced back to 1932, when the first monograph on space law, *Das Weltraum-Recht: Ein Problem der Raumfahrt* (Outer Space Law: A Problem of Astronautics), was published by Czechoslovak legal scholar V. Mandl. In this work, the author regards space as a domain in which human activities are subject to specific international legal rules that differ from those of international air law [2, p. 141]. As A. I. Travnikov points out, the issue of establishing a space traffic safety regime was

[1] International Space Station dodges 2nd piece of space junk in 6 days. Available at: https://www.space.com/space-exploration/international-space-station/international-space-station-dodges-2nd-piece-of-space-junk-in-6-days.
[2] Space Environment Statistics. *Space Debris User Portal, ESA*. Available at: https://sdup.esoc.esa.int/discosweb/statistics/.

raised on the agenda of the ad hoc Committee on the Peaceful Uses of Outer Space in 1959 under the title 'Avoidance of interference between space vehicles and aircraft' [3, p. 148]. Subsequently, the concept of space traffic management regulation was discussed and supported at the Second Colloquium on the Law of Outer Space. However, the exploration of this subject through scientific research did not commence until the early 1980s. The first comprehensive proposal for space traffic management rules was presented by Czech astronomer L. Perek at the 25th Colloquium on the Law of Outer Space in 1982 in his article *Traffic Rules for Outer Space*. Only in 1999 and 2001 did the American Institute for Aeronautics and Astronautics host two seminars on international space cooperation, one of which provided one of the first definitions[1] of space traffic management [2, p. 142].

One of the most commonly accepted definitions of the term 'space traffic management', presented as part of a significant study on general issues related to space traffic management conducted by the International Academy of Astronautics[2] (hereinafter the IAA) in 2006, is as follows: 'the set of technical and regulatory provisions for promoting safe access into outer space, operations in outer space and return from outer space to Earth free from physical or radio-frequency interference' [9, p. 10]. It should be noted that other definitions, typically offered by experts in the field, often focus on the technical and operational aspects of space traffic management and pay less attention to the regulatory and legal dimensions [4, p. 705][3].

Despite the fact that the concept of space traffic management at the international level remains largely theoretical, its individual components are already present in the political and legal practices of some countries, such as the United States. At the same time, a disruption in the operation of a space object can have serious consequences for ground-based infrastructure, including facilities not directly related to space activities. The physical characteristics of outer space, predominance of unmanned flights over manned ones, and active involvement of the private sector present unique challenges when it comes to creating the relevant regulatory framework. Meanwhile, current international space law fails to address all the challenges posed by space activities arising from the rapid advancement of technology [12, p. 405]. Consequently, it is essential to fill the existing legal gaps, which should be preceded by a preliminary analysis of current international legal initiatives.

Potential Elements of an International Legal Regime for Space Traffic Management

There is a lack of consensus with regard to not only the definition of space traffic management but also the components that constitute it. Most cited in scientific circles is the concept proposed within the IAA Cosmic Study on Space Traffic Management of 2006 and further developed in the work of one of its co-authors, Professor K.-U. Schrogl, President of the International Institute of Space Law. In accordance with this concept, space traffic management comprises the following elements: securing the information needs, creating a notification system, traffic management rules, and mechanisms for implementing these regulations and for monitoring compliance with them [10, p. 283–288].

In relation to the first element, the term 'space situational awareness' is most often used in foreign research. In the IAA *Space Traffic Management – Towards a Roadmap for Implementation* study of 2018, it is understood as 'the technical capacity to detect, track, identify, and catalogue objects in outer space, such as space debris and active or defunct satellites, as well as to observe space weather and monitor spacecraft and payloads for manoeuvres and other events' [30, p. 12]. The main purpose of space situational awareness is to

[1] According to it, 'space traffic encompasses all the phases of a space object's life, from launch to disposal. It consists of activities intended to prevent damage in the near term (such as collision avoidance and coordination of reentry) as well as actions that must be taken to reduce the long term potential for future damage (such as de-orbiting or moving satellites into disposal orbits)'. See: International Space Cooperation. Addressing challenges of the new millennium. Report of an AIAA, UN/OOSA, CEAS, CASI Workshop. March 2001.

[2] An independent non-governmental organization.

[3] Regarding various approaches to understanding the term 'space traffic management', including in international law, see: [2].

monitor artificial objects in outer space, both active and inactive, and calculate the likelihood of their potential collision in order to minimize the risk of additional space debris formation [27, p. 15]. Currently, the United States, Russia, and the European Space Agency have relatively complete space situational awareness systems, some databases are also being actively developed in China[1].

The second element of the space traffic management system proposed by the IAA is the notification system. The existing rules of registration of space objects, based on the Convention on Registration of Objects Launched into Outer Space of 1975 (hereinafter the Registration Convention), are not sufficient in modern realities [28, p. 274]. For instance, despite the fact that, in accordance with the provisions of the aforementioned Convention, a launching State is obliged to register a space object in its national registry and the UN Register of Objects Launched into Outer Space[2], international space law does not directly oblige states to notify each other about the launch, planned maneuvres, and end of service of space objects.

According to K.-U. Shrogl, the third element, namely the rules of movement in outer space includes the following provisions:

– safety provisions for launches;

– right-of-way rules for in-orbit phase(s) and prioritization with regard to maneuvers;

– safety provisions for human spaceflight (including space tourism);

– specific provisions for geostationary orbit (hereinafter the GEO);

– specific rules for satellite constellations;

– debris mitigation mechanisms;

– safety provisions for re-entries;

– environmental provisions (for example, these concerning prevention of pollution of the atmosphere and troposphere) and zoning provisions (selection of orbits). As an example of the latter, K.-U. Shrogl refers to the establishment of zones providing enhanced security for military space objects, however, raises a number of concerns regarding the compatibility of this approach with the principles of free access to all areas of celestial bodies (should such zones be established on them)[3] and the use of celestial bodies exclusively for peaceful purposes[4].

At the international level, the first official mention of the concept of 'safety zones' in relation to outer space was made within the framework of the Hague International Space Resources Governance Working Group (hereinafter the Hague Working Group) in 2019. Subsequently, this term was used in the Artemis Accords of 2020 [14, p. 105][5]. However, neither the documents of the Hague Working Group nor the Artemis Accords provide a clear definition of such areas. The term can be found in Section 11 of the Artemis Accords, entitled 'Deconfliction of Space Activities'. In accordance with this section, in order to fulfil their obligations under the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 1967 (hereinafter the Outer Space Treaty), the Signatories of the Artemis Accords intend to provide notifications regarding their space activities and coordinate them with relevant entities in order to avoid any harmful interference. The area in which these notifications and coordination should take place is referred to as a 'safety zone'[6]. The document also emphasizes that a safety zone is an area where standard operations conducted as part of space activities or any abnormal events could cause harmful interference.

With regard to safety zones, the Artemis Accords provide for the following principles underlying the establishment of such zones:

– 'the size and scope of the safety zone, as well as the notice and coordination should reflect the nature of the operations being conducted and the environment that such operations are conducted in';

[1] Space Situational Awareness Fact Sheet, July 2024. Available at: https://swfound.org/resource-library/space-situational-awareness-and-space-traffic-management/.

[2] Convention on Registration of Objects Launched into Outer Space (opened for signature on January 14, 1975 and entered into force on September 15, 1976). Art. II. Available at: https://www.unoosa.org/pdf/gares/ARES_29_3235E.pdf

[3] Article I of the Outer Space Treaty: 'Outer space, including the Moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies…'.

[4] Article IV of the Outer Space Treaty: 'The Moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes…'.

[5] A series of NASA agreements initiated by the United States with governments, space agencies, and relevant ministries of countries participating in the Artemis program for exploring the Moon, Mars, comets, and asteroids.

[6] Artemis Accords 2020. Section 11. Available at: https://www.nasa.gov/wp-content/uploads/2022/11/Artemis-Accords-signed-13Oct2020.pdf?emrc=67a9bb602eacc.

– 'the size and scope of the safety zone should be determined in a reasonable manner leveraging commonly accepted scientific and engineering principles';

– 'the nature and existence of safety zones is expected to change over time reflecting the status of the relevant operation'[1].

Noteworthy is the provision according to which 'the Signatories commit to use safety zones, which will be expected to change, evolve, or end based on the status of the specific activity, in a manner that encourages scientific discovery and technology demonstration, as well as the safe and efficient extraction and utilization of space resources in support of sustainable space exploration and other operations'[2]. There arise several questions regarding the establishment of such safety zones. What purposes will these zones serve and under what circumstances will they be utilized? On what basis will the necessity of such zones be assessed? What does the change and evolution of these zones imply? What are the reasons for these modifications and developments? How does the very establishment of a safety zone conform to the principle of free access of all nations to all areas of celestial bodies, which is also enshrined in the text of the Artemis Accords?

The Artemis Accords are largely focused on the interests of the country establishing a safety zone, as opposed to the position of the Hague Working Group, which places greater emphasis on balancing the rights and interests of both the state establishing the safety zone and other nations[3]. There is also concern that the Artemis Accords, including their provisions regarding the establishment of safety zones, threaten the secure exploration of outer space and contribute to the predominance of the United States and its partners in space exploration [6, pp. 174–175].

Over the past four decades, various concepts of 'safety zones' have been proposed with different names and content:

– a self-defense zone, the violation of which leads to timely warning before the use of the so-called 'preventive self-defense';

– a keep–out zone, which restricts movement in a specified area in order to prevent potential offenders from entering it;

– a safety zone, established to keep other spacecraft at a distance in order to prevent collisions;

– a warning zone, which serves to provide certain evidence of hostile intentions of a state violating it in order to justify the use of 'preventive self-defense' [8, p. 83].

It is also noted that the concept of establishing safety zones in outer space is not a novel idea, as the ISS is already protected by a 200-kilometer keep-out sphere, which requires a special permission to enter[4]. In this regard, some researchers propose using restricted or similar areas as a means of protecting satellites in orbit and ensuring a safe extraction of natural resources from celestial bodies. However, such areas may potentially undermine the principles of free access to all parts of celestial bodies and non-appropriation enshrined in Articles I and II of the Outer Space Treaty. As noted by the founder of the Space Treaty Institute[5], D. O'Brien, a pertinent question arises in this regard: will, for instance, the newly formed United States Space Force be utilized to safeguard these areas?[6] And if the answer to the above question is affirmative, how can we determine whether the use of military forces for scientific and peaceful purposes in outer space is permissible under international space law and whether it is not a means of consolidating the military superiority of one state over others? In accordance with Article IV of the Outer Space Treaty, the Moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations, and fortifications, testing of any type of weapons, and conduct of military manoeuvres on celestial bodies are strictly prohibited. Of particular interest is the fact that Western experts often justify the use of force in response to violations of these zones and also freely use the term 'preventive self-defense', which seems controversial when applied to activities in outer space and used in the context of international law in general.

As the fourth element of the space traffic management system, Professor K.-U. Schrogl and his colleagues propose the development of mechanisms for implementing the specified space traffic rules and

[1] Artemis Accords 2020. Section 11 (7).

[2] Ibid. Section 11 (11).

[3] NASA's Artemis Accords: the path to a united space law or a divided one? Available at: https://www.thespacereview.com/article/4009/1.

[4] Imagining safety zones: Implications and open question. Available at: https://www.thespacereview.com/article/3962/1.

[5] A scientific and educational non-profit organization located in California, USA.

[6] The Artemis Accords: repeating the mistakes of the Age of Exploration. Available at: https://www.thespacereview.com/article/3975/1.

for monitoring. In their opinion, these could be guided by experience of the International Telecommunication Union (hereinafter the ITU) and International Civil Aviation Organization (hereinafter the ICAO) [28, p. 274]. The vast majority of studies on international legal aspects of space traffic management put forward an idea of establishing such mechanisms through an international agreement, followed by elaboration of the rules in the form of guidelines[1]. Since 2016, the issue of space traffic management has been on the agenda of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space (hereinafter the COPUOS) as a separate topic for discussion under the name 'General exchange of views on the legal aspects of space traffic management'. However, to date, there have been no significant results in this regard [24, p. 89].

A similar structure for a space traffic management system has been proposed by G. Kyriakopoulos, Assistant Professor in the International Law Department at the School of Law of the National and Kapodistrian University of Athens. His system comprises elements such as space situational awareness, space traffic rules and their enforcement, as well as traffic control[2]. Experts from the Centre national d'etudes spatiales (CNES) of France take a similar approach but provide more detailed information on the components of the space traffic management system, which they see as follows:

– space traffic rules regarding collision avoidance, both during launch and while in orbit;

– special rules regarding the launch and operation of satellite constellations. The special aspect of launching a satellite constellation is that it is launched at relatively low altitudes (approximately 400-450 kilometers above sea level), then being sent to an altitude of approximately 1,200 kilometers. This process involves a continuous trajectory (both for ascent and descent) that intersects particularly congested areas of orbits. At the same time, the orbits of satellite constellations are not static and unchangeable, and current technical methods for preventing collisions have not yet been adapted to this activity, potentially necessitating the establishment of uniform regulations for coordinating and managing launch trajectories;

– regulation of new orbital operations: On-Orbit-Servicing (OOS), space tugs, refueling missions, transfer vehicles, etc.;

– development of so-called 'orbital environment indexes' as indicators that reflect the criticality of different orbital zones based on factors such as the occupancy, the resident overall mass, the number of maneuverable objects, i.e. those capable of performing collision avoidance maneuvers, the global orbital life time in case no maneuver is performed or in case of failure. These indexes will allow space operators to make more informed decisions about the choice of orbit when planning the launch of space objects, thus extending their service life;

– provisions on the international exchange of experience concerning improvement of end-of-life operations;

– preservation of orbital environment [7, pp. 300–301].

Professor Dr. Peter Stubbe, a former scientist at the Max Planck Institute for Solar System Research and Professor at the Georg August University of Göttingen, regarded the following as the elements of space traffic management: ensuring the safety of spacecraft missions, space situational awareness, space debris removal, a mechanism for the development of flexible legal norms, and special rules regarding the use of specific systems (for instance, satellite constellations), as well as a dispute resolution mechanism[3].

A Joint Communication to the European Parliament and the Council entitled 'An EU Approach for Space Traffic Management: an EU contribution addressing a global challenge' lists the following as elements of space traffic management: space situational awareness (including space object monitoring, space weather observation and prediction, and near-Earth object identification), debris management and mitigation, as well as control of orbits and the radio frequency spectrum[4].

The report of the 61st session of the Legal Subcommittee of the COPUOS provides a list of

[1] [1]The Artemis Accords: repeating the mistakes of the Age of Exploration…

[2] Space Traffic Management as a sine qua non prerequisite for the sustainability of outer space activities: Evaluating Regulatory Patterns. Available at: https://www.unoosa.org/documents/pdf/spacelaw/workshops/2017/ICAOUNOOSA2017/0403_Kriyakopoulos_Athen_Univ.pdf.

[3] Space Traffic Management as an International Legal Regime. 3rd ICAO / UNOOSA Aerospace Symposium. Panel 4: Perspectives on Air Traffic Management and Future Potential Space Traffic Management. Available at: https://www.unoosa.org/oosa/en/ourwork/spacelaw/workshops/2017/icao-unoosa-presentations.html.

[4] Joint Communication to the European Parliament and the Council 'An EU Approach for Space Traffic Management: an EU contribution addressing a global challenge'. European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 15 Feb. 2022. JOIN/2022/4 final. P. 2.

actions taken or planned to be taken at the national, regional, and international levels to enhance the safety and sustainability of spaceflight, including: 'bolstering space situational awareness and sharing space traffic coordination information; developing and implementing open and transparent standards, policies and practices as the foundation for space traffic coordination among nations; registering space objects; providing pre-launch notifications; providing spacecraft collision avoidance, re-entry and fragmentation services through the development and operation of space surveillance and tracking capabilities; producing guidelines for on-orbit servicing and the issuance of conjunction warnings; reporting annual launch plans; developing space debris removal techniques; and undertaking international coordination efforts through ITU to manage radio frequencies and geostationary orbits'[1]. It is worth noting that several delegations emphasized the integrated nature of space traffic management. In this context, a proposal was made to address relevant issues through both the Scientific and Technical Subcommittee and the Legal Subcommittee of the COPUOS.

It is widely accepted that space traffic management should incorporate, among other aspects, measures to prevent the generation of new space debris and mitigate the existing ones. At the 62nd session of the Legal Subcommittee of the COPUOS, it was acknowledged that the issue of space debris mitigation is closely linked with space traffic management[2]. In the scientific literature, these terms often appear in similar contexts and, as noted by W. Munters, are 'simply two sides to the same coin, and they are inseparable insofar as they aim to prevent the cardinal risk posed by collisions between space objects and thereby to prevent irreparable harm to the space environment' [25, p. 154]. Obviously, the space traffic management system cannot exist without considering environmental factors, as it is largely aimed at, among other things, preventing the formation of space debris to the greatest extent possible. However, it would not be advisable to include regulations aimed at preventing the Kessler Syndrome[3] as a structural element of the space traffic management system on a par with, for example, regulations on notification or on space traffic. The idea of minimizing the creation of space debris permeates all aspects of space traffic management and does not constitute a separate category. The issue of defining 'space debris' still remains unresolved and is, in many respects, the foundation for consensus on an international legal mechanism for combating its creation and active removal. From the author's perspective, international legal frameworks for space traffic management and space debris mitigation should be developed concurrently and in close collaboration with relevant experts. However, the mere incorporation of one into the other is unlikely to help resolve both issues simultaneously.

Thus, the most viable concept at present seems to be that outlined in the research and scientific publications of the IAA and K.-U. Schrogl. This concept implies establishing a space traffic management system which would comprise regulations for the exchange of information on space-related activities and outer space, a notification system, specific rules for space traffic, as well as mechanisms for implementing and monitoring compliance with these rules. This proposal was made in the context of research conducted in 2006 and 2018, and its structural elements aim to ensure the safety and long-term viability of space activities, while taking into account both organizational and environmental factors and not duplicating existing regulations.

Modern International Space Law as a Basis for the Development of a Legal Regime for Space Traffic Management

The legal framework for international space law comprises five agreements on space-related activities that were adopted under the aegis of the UN. These include the Outer Space Treaty of 1967, the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space of 1968, the Convention on International Liability for Damage Caused by Space Objects

[1] Committee on the Peaceful Uses of Outer Space, sixty-fifth session, Vienna, 1–10 June 2022. Report of the Legal Subcommittee on its sixty-first session, held in Vienna from 28 March to 8 April 2022. Para. 168. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/V22/022/49/PDF/V2202249.pdf?OpenElement.

[2] Committee on the Peaceful Uses of Outer Space Legal Subcommittee, sixty-second session, Vienna, 20–31 March 2023. Draft report, Addendum. Available at: https://www.unoosa.org/res/oosadoc/data/documents/2023/aac_105c_2l/aac_105c_2l_324add_8_0_html/AC105_C2_L324Add08E.pdf.

[3] The concept of Kessler Syndrome is based on the idea that if there is a large number of satellites orbiting the Earth, a collision between any two of them could result in the creation of so much orbital debris that it would eventually lead to an unavoidable chain reaction of further collisions. *GLONASS Herald*. Available at: http://vestnik-glonass.ru/news/tech/kak-izbezhat-koshmarnogo-stsenariya-sindroma-kesslera/.

of 1972, the Convention on Registration of Objects Launched into Outer Space of 1975, and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies of 1979 (hereinafter the Moon Agreement) [1, p. 6]. However, there is still no internationally agreed-upon set of rules or regulations that could form a comprehensive legal framework for space traffic management. At the same time, modern international space law encompasses all the essential principles that would be necessary for the development of an adequate regulatory regime in accord with modern technological and political developments.

The fundamental principles of space exploration and use, as enshrined in the Outer Space Treaty, form the basis for a future space traffic management system, establishing the most fundamental values and guidelines that require further development. Specifically, Article I of this treaty declares outer space, including the Moon and other celestial bodies, to be free for exploration and use on an equal basis, for the benefit and in the interests of all states, with free access to all areas of celestial bodies. Of particular relevance to space traffic management is the latter principle as it, when broadly interpreted, prohibits the creation of any restricted areas, both in outer space itself and on celestial bodies.

Article II of the Outer Space Treaty contains one of the fundamental principles of space activities, namely the principle of the non-appropriation. In practice this principle also applies to certain areas of orbits and celestial bodies. It is noteworthy that some efforts to claim sovereignty over specific areas of the GEO date back to 1976, when a number of equatorial countries claimed their sovereign rights over specific parts of the GEO above their territories. Such claims were based on the lack of a clearly defined boundary between airspace and outer space under international law [17, p. 250]. Despite the fact that the issue of establishing state sovereignty over an area of not only the GEO but also any other orbital slot seems to be absurd at present, the impact of this principle on the future regulation of space management may not be so obvious. For example, zoning of outer space, which is more likely to be practically realized on celestial bodies, could imply a certain level of control by a particular state over the corresponding area in order to safeguard it. As previously mentioned, the Artemis Accords explicitly provide for the establishment of such zones while not specifying their exact status, criteria for establishing and modifying the boundaries, duration, and so on. The actual implementation of this concept, which, at first sight, seems to be quite appropriate in the context of space mining and protection of landing sites with the aim of preserving the cultural heritage of humanity in space, may, however, violate the principles of free access and non-appropriation.

Article III establishes the obligation of states to conduct activities in outer space in strict accordance with international law, in the interests of preserving international peace and security and promoting international cooperation and transparency. The authors of the *Cologne Commentary on Space Law* note that 'already in the 1960s there was general consensus that 'activities' in the meaning of the Outer Space Treaty are not confined to activities that are 'carried on' in outer space only. Activities on Earth are also included when these activities are connected to the launching, the operation, or the return of space objects' [17, p. 277]. Therefore, all phases of the launch, operation, and reentry of a spacecraft into the dense atmosphere must be conducted in accordance with international space law and in the interest of maintaining international peace and security and promoting international cooperation and transparency.

Article IV declares partial disarmament of outer space and total disarmament of the Moon and other celestial bodies. While celestial bodies are to be used exclusively for peaceful purposes, outer space itself is subject only to the prohibition of nuclear weapons and other weapons of mass destruction [1, p. 54]. As noted by P. Lála, a co-author of the IAA study on space traffic management, at the time of conclusion of the Outer Space Treaty, this provision represented a significant step toward limiting the arms race in outer space. The primary objective of the treaty was to ensure safety in space activities but not to address certain commercial aspects [21, p. 24].

The provisions of Article V, specifically the obligation of states to immediately notify each other or the UN Secretary-General of phenomena they discover in outer space, including the Moon and other celestial bodies, which could constitute a danger to the life or health of astronauts, are particularly relevant for the development of a comprehensive notification system as an element of international space traffic management system. This provision establishes the foundation for the creation of a unified space situational

awareness system. However, given current political and technical challenges, the establishment of such a system may be complicated. Nonetheless, as Professor K.-U. Schrogl has stated, 'only on the basis of shared knowledge of what is going on in the Earth orbits, can traffic rules become meaningful' [29, p. 135].

Article VI of the Outer Space Treaty stipulates that states assume international responsibility for national activities in outer space regardless of whether the entities involved are governmental or nongovernmental. It also establishes an authoritative procedure for such activities carried out by nongovernmental legal entities. This article forms the basis for national legislation that defines the conditions under which a state authorizes its private individuals to engage in certain activities in outer space [23, p. 62]. As a general rule, permission for space-related activities is granted through a licensing process. This can be accomplished by implementing a comprehensive universal licensing system regardless of the nature of the space-related activity, or, alternatively, through issuing various forms of licences based on the specific nature of such activity, which appears to be more appropriate. For instance, the Australian Space (Launches and Returns) Act of 2018 defines a range of different licences depending on a particular type of space-related operations[1].

At the same time, there arise several questions regarding the criteria for issuing licenses: What safety standards should a state consider sufficient? What are the conditions and the procedure under which a license can be revoked? etc. These issues are significant in ensuring not only the national but also the international safety of space activities. An example of the challenges associated with licensing and issuing permissions for space activities is the incident involving the four Swarm Space Bee satellites. In 2018, the U.S. Federal Communications Commission[2] banned their launch, but the satellites were nevertheless launched into space the following month, marking the first unauthorized commercial satellite launch in the history of the USA [16, p. 858]. This case also raises questions regarding the degree of responsibility of a state in the event of an unauthorized launch of space objects by its national entities (from its territory, or by private entities of that state on a foreign territory) causing damage to another space asset. In accordance with Article VI of the Outer Space Treaty, states assume international responsibility for activities conducted in outer space by their nationals or legal entities, regardless of whether these activities are performed by governmental agencies or non-governmental entities. This, however, places a significant risk on a state with a well-developed private space industry.

According to Article VII, each state party to the Outer Space Treaty that launches or procures the launching of an object into outer space, including the Moon and other celestial bodies, and each state party from whose territory or facility an object is launched, is internationally liable for damage to another state party to the Treaty or to its natural or juridical persons by such object or its component parts on the Earth, in air or in outer space. The state remains to be regarded as the launching one and therefore remains liable even if ownership of the spacecraft in orbit is subsequently transferred [23, p. 62].

The provisions of Article VII of the Outer Space Treaty were further elaborated in the Convention on International Liability for Damage Caused by Space Objects of 1972. In accordance with Article II of the Convention, a launching state is absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft flight. Article III provides for liability only in the case of fault on the part of the state or individuals under its control, if damage occurs elsewhere than on the surface of the Earth. However, the Convention does not provide a definition of fault or principles for proving it, making this a challenging task. T. Masson-Zwaan, President Emerita of the International Institute of Space Law and Vice President of the International Astronautical Federation, suggests that the implementation of a space traffic management system may be a step toward clarifying the provisions of the Convention, claiming that non-compliance with this system could be considered a factor in determining fault [23, p. 62].

The provisions of Article VIII retain jurisdiction and control over a spacecraft while in outer space with the state of registry. Article II of the Registration Convention imposes the obligation to register a space object in the national registry and the UN Register of Objects Launched into Outer Space. When a space object is placed in orbit

[1] Australia. Space (Launches and Returns) Act (2018), div. 2. Available at: https://www.legislation.gov.au/Details/C2021C00394.
[2] The U.S. government agency governing satellite launches.

around Earth or further out into outer space, the launching state is responsible for registering it. If there are multiple launching states, they will jointly determine which one will perform the registration. The authors of the *Cologne Commentary on Space Law* note that the phrase about a space object 'launched into earth orbit or beyond', used in the Convention in relation to objects to be registered, means that spacecraft engaged in suborbital flights do not fall under the mandatory registration requirement [18, p. 403]. The Convention also fails to provide registration deadlines and a requirement to register changes to orbital parameters of space objects. These aspects could also be addressed as part of establishing an international legal framework for space traffic management.

Article IX of the Outer Space Treaty stipulates that states should be guided by the principles of cooperation and mutual assistance in carrying out activities in outer space, taking due regard for the relevant interests of other states. It also requires that states avoid harmful interference, adverse changes to the environment of the Earth, and harmful contamination. If a state has a reason to believe that its proposed activities or experiments in space could interfere with the activities of another state, it is required to engage in appropriate international consultations before beginning such activities. In addition to these cooperative principles and environmental considerations, the article emphasizes the importance of due regard for the interests of other states, which is crucial in establishing a legal framework for space traffic management. Although international space law does not explicitly specify criteria for compliance with the principle in question, it is generally accepted that 'the state must prove beyond a reasonable doubt that everything possible was undertaken to prevent a harmful act from occurring' [17, p. 507]. This principle should be applied in a comprehensive manner, taking into consideration the unique facts and circumstances surrounding each case.

Finally, Article XI establishes the obligation of states to inform the UN Secretary-General as well as the public and international scientific community about the nature, conduct, locations, and results of their space activities to the greatest extent feasible and practicable. The issue of transparency in space activities is not solely a legal matter but also a political one. The extent of disclosure of specific data depends on the nature of the project, the purpose of the spacecraft, and the success of the mission. In many cases, this information may remain confidential to varying degrees. This is particularly true in instances where a particular space object may be used for intelligence or other military purposes. However, it is precisely through the maximum transparency in space missions that it becomes possible not only to ensure but also to effectively monitor compliance with space traffic rules. The use of the phrase 'to the greatest extent feasible and practicable' in the Outer Space Treaty does not provide a clear understanding of what may be interpreted as withholding information regarding space activities.

Another international treaty that contains certain provisions regarding information exchange on space activities is the Moon Agreement of 1979[1]. This agreement 'shares with the Antarctic Treaty the institution of a mutual control mechanism[2], which implies transparency and communication of relevant information' [17, p. 625]. A number of provisions that constitute the basis of the notification system, which might be one of the components of the space traffic management regime, can also be found in the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space of 1968[3]. The Agreement stipulates the obligation of states to immediately notify the launching state and the UN Secretary-General of an accident, emergency or unintended landing, and any state of distress experienced by a spacecraft[4], as well as immediately take all possible steps to rescue the personnel of a spacecraft and render them all necessary assistance[5].

Despite the fact that some principles of the international space law necessary for the establishment of a space traffic management regime are reflected in the aforementioned UN treaties on outer space, there are still a number of unresolved issues in the development of space activity at this stage. Firstly, the registration system only requires that specific data regarding a space object at the time of its launch be provided, but

[1]Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (opened for signature on December 18, 1979, entered into force on July 11, 1984). Available at: https://www.unoosa.org/pdf/gares/ARES_34_68E.pdf.

[2] Ibid. Art. 15.

[3] Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (opened for signature on April 22, 1968; entered into force on December 3, 1968). Available at: https://www.un.org/ru/documents/decl_conv/conventions/astronauts_rescue.shtml.

[4] Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects… Art. 1.

[5] Ibid. Art. 2.

it does not require mandatory notification of any subsequent changes in the object's orbital parameters. Secondly, there is neither a uniform system for ensuring a standardized process for spacecraft maneuvering, nor are there any general guidelines for communication and information sharing when crossing especially congested orbits. Thirdly, there is no clear legal distinction between active spacecraft and space debris [9, p. 40].

One of the significant aspects of space traffic management, namely the use of the radio frequency spectrum and orbital slots, is addressed in the documents of the ITU[1]. According to its Constitution, ITU shall 'effect allocation of bands of the radio-frequency spectrum, the allotment of radio frequencies and registration of radio-frequency assignments and any associated orbital positions in the geostationary-satellite orbit in order to avoid harmful interference between radio stations of different countries'[2], as well as 'coordinate efforts to eliminate harmful interference between radio stations of different countries and to improve the use made of the radio-frequency spectrum and of the geostationary-satellite orbit for radiocommunication services'[3]. Article 44 of the Constitution states that radio frequencies and the geostationary-satellite orbit are limited natural resources that should be used rationally, efficiently, and economically in order to ensure equitable access to them. Therefore, all space objects should be registered with ITU in order to allocate orbital slots and protect space activities from harmful interference [22, p. 373].

In practice, the ITU contributes to space traffic management by providing spacecraft with an allocated orbital slot and a suitable radio frequency in order to 'navigate, enter into orbit, avoid collisions while in orbit, and to deorbit or be placed in a graveyard orbit' [22, p. 374]. Associate Professor P. B. Larsen from Georgetown University stresses that the ITU's right to revoke orbital slots allocated to spacecraft in case their operators do not comply with the Union's regulations is a clear demonstration of the organization's specialized authority in the field of international space traffic management under international law [22, p. 374].

The provisions of the Radio Regulations, which are an integral part of the ITU Constitution and establish general principles for the effective use of the radio frequency spectrum and the orbit and frequency resource for satellites launched into the GEO, have been incorporated into national legislation by a number of states, including the Russian Federation[4]. However, the scope of the ITU's activities does not fully encompass the creation of specific regulations for space traffic management. In fact, it focuses on addressing 'static' aspects of satellite positioning within a specific orbit. ITU regulations only apply to the GEO, not any other orbits [10, p. 45].

Among the norms of the so-called 'soft law' in the international legal context of space traffic management, a significant role belongs to the Space Debris Mitigation Guidelines of 2007[5] and the Guidelines for the Long-Term Sustainability of Outer Space Activities of 2019[6], which were created under the aegis of the COPUOS.

Within the context of space traffic management, of particular interest are several principles provided in the Space Debris Mitigation Guidelines. These principles (Guidelines 3, 4, 5 and 6) address the following aspects: assessment of the risk of accidental collisions between spacecraft and identifiable objects during the launch and operational phases of a space object; deliberate destruction of space objects in orbit only when necessary and at sufficiently low altitudes; depletion of all forms of energy stored in spacecraft and launch vehicle stages at the end of their missions. Additionally, the Guidelines address

[1] An international intergovernmental organization, a specialized agency of the UN since 1947.

[2] Constitution of the International Telecommunication Union. Art. 1(2)a. Available at: https://www.itu.int/en/council/2019/Documents/basic-texts/Constitution-R.pdf. Article 1(2)a.

[3] Ibid. Art. 1(2)b.

[4] On Approval of the Radio Regulations of the International Telecommunication Union by the Russian Federation: Decree of the Government of the Russian Federation No. 685-p of April 17, 2018. Available at: http://government.ru/docs/32338/.

[5] Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space. A/62/20. Available at: https://www.unoosa.org/pdf/publications/st_space_49E.pdf.

[6] Guidelines for the Long-Term Sustainability of Outer Space Activities of the Committee on the Peaceful Uses of Outer Space. A/74/20. Available at: https://www.unoosa.org/res/oosadoc/data/documents/2021/stspace/stspace79_0_html/st_space79R.pdf.

the removal of disposed spacecraft and spent rocket stages from orbit at the end of their operational lifetimes.

In accordance with the Guidelines for the Long-Term Sustainability of Outer Space Activities, states should:

– 'ensure that their space activities are conducted in such a manner as not to cause harmful interference'[1];

– 'ensure the development and/or implementation of effective and comprehensive registration practices'[2];

– 'exchange, on a voluntary basis and as mutually agreed, relevant information on space objects and information related to actual or potential situations in near-Earth space that may affect the safety of outer space operations'[3];

– 'promote the development and use of techniques and methods to improve the accuracy of orbital data for spaceflight safety and the use of common, internationally recognized standards when sharing orbital information on space objects'[4];

– perform conjunction assessment 'for all spacecraft capable of adjusting trajectories during orbital phases of controlled flight for current and planned spacecraft trajectories'[5];

– 'support and promote the collection, archiving, sharing, intercalibration, long-term continuity and dissemination of critical space weather data'[6];

– 'promote design approaches that increase the trackability of space objects'[7];

– 'have in place procedures for furnishing to other States and/or the Secretary-General of the UN, via designated entities, as soon as practicable and with updates if necessary, information on the forecasted uncontrolled re-entry of potentially hazardous space objects that are under their jurisdiction and control, and communicating and coordinating the mitigation of risks associated with such events'[8], etc.

A number of provisions, such as those regarding disposal of spacecraft at the end of their operational lives and spent rocket stages in orbit, are similar to the provisions of the Space Debris Mitigation Guidelines.

To sum up, contemporary international space law comprises only general principles for space traffic management that obligate space operators to conduct their activities in the interest of international security and multilateral cooperation. Existing 'soft law' confirms adherence to these principles but is not sufficient for the future development of an international legal framework for space traffic management. None of the current instruments, whether obligatory or advisory in nature, appears to constitute even an initial draft of a comprehensive international agreement on space management, which has yet to be developed in the future.

The 2006 and 2018 Studies of the International Academy of Astronautics as an Invitation for the States to Discuss the International Legal Aspects of Space Traffic Management

One of the earliest and most significant studies on space traffic management is the 2006 *Space Traffic Management* report by the IAA, which analyzes the norms of international law directly or indirectly related to the issue in question and also provides recommendations and observations regarding potential elements of an international legal framework for space traffic management.

As previously mentioned, the authors of this study define space traffic management as 'the set of technical and regulatory provisions for promoting safe access into outer space, operations in outer space and return from outer space to Earth free from physical or radio-frequency interference' [9, p. 10]. The study analyzes both the technical and regulatory aspects in relation to the three stages of space object operations: launch, orbit, and re-entry into the dense layers of the atmosphere.

The report reiterates the significance of the principles of international space law as the basis for the future development of the international legal framework for space traffic management, and also highlights the role of the ITU in establishing a number of regulations for the use of radio frequency spectrum in the GEO. However, as is noted by the authors of the study, existing regulations of both a legally binding and an advisory nature are neither comprehensive nor balanced [9, p. 11]. For instance, while the ITU has well-developed regulations on the prevention of radio requency interference,

[1] Guidelines for the Long-Term Sustainability of Outer Space Activities… A.4(3).
[2] Ibid. A.5(1).
[3] Ibid. B.1(3).
[4] Ibid. B.2(1).
[5] Ibid. B.4(1).
[6] Ibid. B.6(1).
[7] Ibid. B.8(1).
[8] Ibid. B.9(1).

there are not so many measures for preventing physical interference. This is a growing concern as such interference not only disrupts the normal operation of spacecraft involved in collisions but also leads to the creation of space debris that can cause significant harm in the future.

Due to the annual increase in the likelihood of the Kessler Syndrome developing, the authors of the 2006 study emphasize the need for a legal distinction between space objects that are considered valuable assets and space debris [9, p. 54]. In case of a possible collision with space debris, an active satellite with sufficient maneuverability may be able to change its trajectory. In the event that both satellites are operational, uncoordinated actions by one or both parties may increase rather than decrease the probability of a collision. Therefore, coordination between the operators of space objects involved in the launch process is essential to ensure safety [9, p. 66]. The authors of the study propose two possible solutions to this issue: either by recognizing space debris as space objects within the terms of the UN Outer Space Treaties, or by clearly distinguishing between these two concepts. In the first scenario, it would be necessary to draft an additional protocol to the Outer Space Treaty that would specify which provisions of outer space agreements are applicable to space objects and which – to space debris. This would involve developing a specific set of guidelines for handling space debris in accordance with international law. In the second scenario, the clarifycation could also be formalized through a protocol that outlines the conditions and procedures for directly removing space debris, as well as any relevant rules pertaining to this matter.

As an example of the establishment of rules regarding the notification of the launch of a space object, the authors of the study refer to the International Code of Conduct Against Ballistic Missile Proliferation of 2002 (hereinafter the Hague Code of Conduct). Specifically, they cite the provision concerning the exchange of notifications regarding upcoming launches of space launch vehicles, which 'should include such information as the generic class of the […] Space Launch Vehicle, the planned launch notification window, the launch area and the planned direction'[1]. The Hague Code, however, is not binding, but it is an act of a recommendatory nature. As of January 2024, 145 states had signed the Code, with this number remaining virtually unchanged since the beginning of 2020[2]. It is noteworthy that in June 2003, as part of the Conference on Disarmament, the Russian Federation tried to initiate the process of providing preliminary notifications regarding upcoming launches of space objects with the indication of information on the purpose and main characteristics of the respective launches[3].

Another significant challenge on the way of implementing space traffic management rules is determining a clear timeline for the launch phase of a spacecraft, as it is not specified in the Outer Space Treaty or other relevant international agreements. However, certain considerations do exist at the national level.

For instance, in accordance with the Commercial Space Regulations of the Federal Aviation Administration of the United States, 'under a license, launch begins with the arrival of a launch vehicle or payload at a U.S. launch site' and it ends:

– for launch of an orbital expendable launch vehicle – after the licensee's last exercise of control over its launch vehicle;

– for launch of an orbital reusable launch vehicle with a payload – after deployment of the payload; for any other orbital reusable launch vehicle – upon completion of the first sustained, steady-state orbit of a reusable launch vehicle at its intended location;

– for a suborbital expendable launch vehicle or reusable launch vehicle – after reaching apogee if the flight includes a reentry, or otherwise after vehicle landing or impact on Earth, and after activities necessary to return the vehicle to a safe condition on the ground[4].

Thus, these Regulations regard pre-launch activities until the payload has been placed in orbit as part of the launch phase [9, p. 61].

As noted by the authors of the *Cologne Commentary on Space Law*, there are particular difficulties relating to the term 'procure', used in the Outer Space Treaty in relation to the concept of a 'launching State'. They explain that the difficulties are rooted in the financial or funding implications associated with the English sense of the word 'purchasing'. The Russian

[1] International Code of Conduct Against Ballistic Missile Proliferation (entered into force on November 25, 2002). Item 4(a)(iii). Available at: https://digitallibrary.un.org/record/3895296?ln=en&v=pdf.

[2] HCOC List of Subscribing States. Available at: https://www.hcoc.at/subscribing-states/list-of-hcoc-subscribing-states.html.

[3] Letter dated 11 June 2003 from the Permanent Representative of the Russian Federation to the Conference on Disarmament addressed to the Secretary-General of the Conference notifying on the development of an initiative to promote openness and to build confidence in the domain of outer space activities. CD/1710. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/624/65/PDF/G0362465.pdf?OpenElement.

[4] U.S. Code of Federal Regulations. Title 14, Chapter III, Subchapter A, § 401.5. Available at: https://www.ecfr.gov/current/title-14/chapter-III/subchapter-A/part-401.

language version of procuring implies 'organizing' rather than funding. The authors of the commentary attribute potential problems arising from such discrepancies to the significant increase in the number of agreements related to the sale of satellites currently in orbit [17, p. 466].

Of particular interest is the proposal put forward within the framework of the 2006 IAA study concerning a potential international intergovernmental agreement on the status and use of outer space that would be based on the fundamental tenets established in existing international space treaties, without aiming to replace them. The authors of the study suggest that this agreement should encompass the following domains, each with the corresponding structural components:

– securing the information needs: defining necessary data on trajectories as well as radio frequencies and setting relevant provision for the data (sources, governmental as well as private, including financing); establishing a database and distribution mechanisms for data; establishing an information service on space weather;

– a notification system: setting pre-launch notification with better parameters than the Registration Convention as well as other provisions; providing information on the end of active/operational lifetime of space objects; providing pre-notification of orbital maneuvers and active de-orbiting;

– space traffic management: establishing safety provisions for launches and human spaceflight (including space tourism), zoning, specific provisions for the GEO and satellite constellations; formation of debris mitigation mechanisms; clarification of the 'space object' term, including legal distinction between valuable space objects and valueless space debris; setting delimitation for the launch phase and clarification of the concept of the 'launching State'; providing an international legal framework for national licensing regimes, etc. [9, p. 14]

The authors of the study further suggest that creation of such an agreement could be overseen by the COPUOS, and after the year 2020 a comprehensive outer space convention could be finalized, superseding existing international agreements. However, at the COPUOS level, the concept of space traffic management was fully acknowledged only in 2015, when its Legal Subcommittee incorporated this matter into the agenda for subsequent years, thereby elevating the previously theoretical concept to the realm of intergovernmental deliberations.

In this connection, in 2018 the IAA published an updated version of its study named *Space Traffic Management – Towards a Roadmap for Implementation*. The paper emphasizes the significant role of both mandatory regulations and 'soft law' in the development of international space law, as well as the need for an international system of space situational awareness in order to create a unified legal framework for international space traffic management. For the purposes of achieving a common understanding of terminology, the revised study adopts the same definition for 'space traffic management' as that used in the 2006 version of the report [30, p. 22]. The primary focus of the study is on preventing physical interference rather than radio frequency interference. Such a shift can be explained by the existence of the ITU regulations for the coordination and administration of radio frequencies, which have already demonstrated their effectiveness and universality.

The study replicates a number of findings identified by its authors in 2006 regarding the lack of clarity in terminology related to the definition of space objects and the safety standards that such objects must meet, as well as the insufficient provisions concerning the registration of spacecraft. It also highlights the need for a regulatory framework to delimitate airspace and outer space. Unlike the more extensive and experimental study conducted in 2006, the updated version of the study proposes two models for further development of space traffic management within the international legal framework: a bottom-up and a top-down approaches [30, p. 28].

The bottom-up approach is based on the existing space traffic management components in international space law and national legislation of individual states as building blocks for a future comprehensive system formed on the basis of successful experience in the legal regulation of certain types of space activities. This approach can only be pursued if there is effective multilateral cooperation among all states, not just the spacefaring nations. However, the rapid development of national space legislation makes this task challenging and may lead to a fragmented international space legal framework in the future. The diverse approaches of states to the licensing and regulation of space activities, as reflected in their national laws, are not universally applicable as they largely reflect versatile national space programs and serve the interests of each state.

Thus, in 2013 the UN General Assembly adopted Resolution 68/74, entitled 'Recommendations on national legislation relevant to the peaceful exploration and use of outer space'[1]. This document calls upon states to harmonize their respective national legislation on space activities in accordance with the specific recommendations outlined in the resolution.

Thus, the bottom-up approach to establishing an international legal framework for space traffic management necessitates a shared understanding of which aspects of space activity are directly subject to international regulation and which are governed by national laws. Another obstacle to implementing this approach is institutional fragmentation. Despite the existence of dialogue between the COPUOS, ICAO, and ITU, these organizations perform functions that are distinct by nature and do not always consider each other's experience when addressing emerging issues related to space regulation. Furthermore, there are also differences in their membership, legal status, and the nature of regulations they adopt. However, given the increasing reluctance of some states to enter into legally binding international agreements regarding space activities, the authors of the 2018 IAA study note that the bottom-up approach is likely to be the most feasible in the near term, although it may only result in the development of non-binding standards for certain aspects of space traffic management [30, p. 131].

The top-down approach involves the formation of a comprehensive international legal regime for space traffic management consisting of the following possible elements:

– a universal legally-binding set of fundamental principles concerning the exploration and use of outer space, which should be established in the form of a multilateral Convention on Outer Space;

– mandatory regulations that directly govern space traffic management and provide for the possibility of their regular review;

– technical standards for space traffic management, developed jointly by states and specialized international non-governmental organizations [30, p. 133].

Next, the main points of the concepts presented by the authors for consideration in the scientific and practical communities will be overviewed. Within the context of the aforementioned Convention on Outer Space, the following is suggested:

– defining terms such as 'space activity', 'space object' or 'spacecraft', 'outer space';

– establishing the obligation of states not to create physical (both in outer space and from Earth) and radio frequency interference;

– stating the intention of states to include in their national laws provisions regarding the need to adhere to safety requirements, regulations on debris reduction, environmental protection, and financial guarantees for the issuance of licenses to private actors to conduct space-related activities; establishing legislative mechanisms for inspecting and monitoring compliance with these requirements;

– expanding the concept of the launching state in order to ensure that as many actors involved in the launch are held accountable as possible;

– establishing an obligation to notify other states about the launch of a spacecraft and its orbital maneuvers, changes in the ownership, as well as a change in its operator;

– creating the regulatory foundations for a unified system of situational space awareness so that all states could have access to information necessary for their space activities;

– providing for the creation of a unified space flight coordination system, including the planning and scheduling of launches;

– establishing an international intergovernmental organization for the uniform and centralized management of space traffic (with the intended name International Space Organization);

– establishing a mechanism for resolving disputes arising in connection with the interpretation and application of the Convention (consultations or arbitration dispute resolution).

The authors of the study note that they are not advocating for a simultaneous substitution of existing international treaties on outer space with a unified comprehensive instrument, but rather seek to address the gaps that exist within these treaties.

As P. Larsen remarks, in its current form, the Outer Space Treaty does not provide the possibility of delegating the function of managing space traffic to

[1] Recommendations on National Legislation Relevant to the Peaceful Exploration and Use of Outer Space. Resolution adopted by the General Assembly on December 11, 2013. Available at: https://www.unoosa.org/pdf/gares/A_RES_68_074R.pdf.

any newly established international body or organization. Therefore, he sees two potential solutions: either amending the Outer Space Treaty in order to create a permanent international body responsible for space traffic management, similar to how the ICAO was established to regulate international air traffic, or adopting a protocol on space traffic management as an annex to the Outer Space Treaty, analogous to the Space Protocol adopted under the Cape Town Convention on International Interests in Mobile Equipment of 2001 [22, p. 367].

The second element of the international legal framework for space traffic management within the top-down approach is the set of regulations governing the movement of space objects. These regulations could be developed by analogy with the ITU Administrative Regulations, which are based on technical standards and have the status of a multilateral treaty. Additionally, the authors propose that technical standards of a non-binding nature could serve as the third component of the space traffic management system, providing a basis for future improvements and revisions to the legal frameworks governing space object movement.

Thus, the IAA studies conducted in 2006 and 2018 provide an analysis of the technical feasibility of establishing a unified space traffic management system, as well as proposals concerning its regulatory framework. In contrast to the 2006 study, which at the time of its publication became the first major study on this topic but did not provide a specific solution to the issue of how to establish an international legal framework for space traffic management, the 2018 study presents two models for further implementation of ideas that were previously only discussed in academic circles and has not yet been embodied in international law. Despite the fact that these models are a result of scientific speculation rather than a practical plan of action, each of them aims to address significant gaps in current space law with the primary purpose of aligning legal frameworks with technical realities.

Initiatives to Develop an International Legal Regime for Space Traffic Management within the COPUOS

Back in 2007, Gérard Brachet, then Chairman of the COPUOS, referring to the results of the 2006 IAA study, proposed including space traffic management on the agenda[1]. As a result, in 2009 this item appeared on the agenda, although not of the Legal, but of the Scientific and Technical Subcommittee. In 2010, under Mr. Brachet's leadership, a Working Group on Long-Term Sustainability of Outer Space Activities was established. In 2019, based on the recommendations of this Working Group, the Guidelines for the Long-term Sustainability of Outer Space Activities were adopted by the COPUOS.

It is worth noting that space traffic management was first recognized as a complex issue within the context of the Legal Subcommittee of COPUOS in 2015. This recognition came after a symposium on the topic, jointly organized by the International Institute of Space Law and the European Centre for Space Law, when Germany claimed that the issue should be discussed as a separate agenda item at the 55th session of the Legal Subcommittee[2]. The initiative was immediately supported by Austria, Luxembourg, the Netherlands and, subsequently, the Legal Subcommittee. Since 2016, a separate item entitled 'General Exchange of Views on Legal Aspects of Space Traffic Management' has been on its agenda. Until 2015, space traffic management was considered only as an integral part of other challenges and initiatives. For example, it was discussed in conjunctтion with the draft Code of Conduct for Outer Space, which was submitted by the European Union in 2008[3].

In 2016, at the 55th session of the Legal Subcommittee, representatives of Austria, Germany, the Netherlands, the Russian Federation, the United States, and Japan presented reports on space traffic management matters as part of the Subcommittee's agenda[4]. Among other things, it was noted that the absence of a clear definition of space traffic management, different from that provided in the IAA study of 2006, necessitated an analysis of similar

[1] Future role and activities of the COPUOS. Working paper submitted by the Chairman. UN Doc.A/AC.105/L.268 of 10 May 2007. Para. 28. Available at: https://digitallibrary.un.org/record/607211?v=pdf.

[2] Report of the Legal Subcommittee on its fifty-fourth session, held in Vienna from 13 to 24 April 2015. Para. 219d. Available at: https://www.unoosa.org/res/oosadoc/data/documents/2015/aac_105/aac_1051090_0_html/AC105_1090R.pdf.

[3] Report of the Committee on the Peaceful Uses of Outer Space, Sixty-third session Supplement No. 20 (A/63/20). Para. 297. Available at: https://www.unoosa.org/pdf/gadocs/A_63_20E.pdf.

[4] Report of the Legal Subcommittee on its fifty-fifth session, held in Vienna from 4 to 15 April 2016. Para. 204. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/V16/024/86/PDF/V1602486.pdf?OpenElement.

concepts in maritime and air navigation law, as well as the possibilities of their application in relation to outer space. The states also emphasized that when shaping the international legal framework for space traffic management, it is essential to take into account the 'the principles contained in the five UN treaties on outer space; the corresponding General Assembly resolutions; additional instruments for keeping outer space clean; space debris mitigation; real-time collision avoidance; notifications and confidence-building measures; orbit management and the passage through airspace; and traffic rules in a narrow sense'[1]. It was acknowledged that the current international space law already included a number of provisions that formed the basis for the future legal framework for space traffic management. However, it did not cover certain aspects necessary to create a coherent framework, such as the launch of small and nano-satellites, as well as their constellations. It was also noted that in order to ensure the safety of space operations, it was necessary to coordinate national licensing and enforcement measures. It is worth noting that even during the initial consideration of this agenda, several states emphasized the urgent need to establish a mechanism for information sharing, including space situation awareness, prior to directly establishing an international legal framework for space traffic management.

In the report of its 59th session in 2016, the COPUOS approved the thematic priorities of UNISPACE+50, including *Legal regime of outer space and global space governance: current and future perspectives*[2], but it was stated that the review of the space management topic 'would not commence […] until there has been further progress in the Scientific and Technical Subcommittee, accordingly'[3].

Of particular interest is the position taken by the Russian Federation in its working paper presented to the aforementioned Scientific and Technical Subcommittee of the COPUOS, entitled 'Further ideas on a set of goals of achieving the Vienna Consensus on Space Security and the need for thorough reflection on the modalities of addressing the tangled issues associated with space traffic management and the justifiability of intense expectations of early decisions in this area'[4]. The Russian delegation emphasized that it would be premature to include the topic of space traffic management on the permanent agenda of the Legal Subcommittee since there was 'insufficient understanding of space security issues or attempts to fetishize fast and easy solutions to make part of the international community coalesce around an ill-advised and flawed approach to the development of new arrangements for space conduct'[5].

At the 56th session of the Legal Subcommittee, discussions on space traffic management were more in-depth. Firstly, a view was expressed regarding the use of mechanisms for radio frequency allocations and the GEO management existing within the ITU as one of the elements of the future international legal framework. It was also observed that the Hague Code of Conduct, though not legally binding, did provide a specific model for advanced notification of space object launches.

Secondly, a proposal was made to draft 'soft law' documents on certain aspects of space traffic management (such as preventing real-time collisions between spacecraft and orbit control. Alternatively, a comprehensive regulation on space traffic management similar to the ITU Radio Regulations was suggested. Noteworthy is that during the 56th session there were made even more definitive statements, including those concerning the initiation of discussions on adopting a new comprehensive agreement on outer space that could supersede all existing agreements and address existing 'grey areas'.

[1] Report of the Legal Subcommittee on its fifty-fifth session, held in Vienna from 4 to 15 April 2016... Para.209.

[2] Report of the Committee on the Peaceful Uses of Outer Space. Fifty-ninth session (8-17 June 2016). Available at: https://documents.un.org/doc/undoc/gen/v16/039/13/pdf/v1603913.pdf.

[3] Thematic priority 2. Legal regime of outer space and global governance: current and future perspectives of November 13, 2017. Note by the Secretariat. Committee on the Peaceful Uses of Outer Space. Para. 6b. Available at: https://documents.un.org/doc/undoc/gen/v17/079/86/pdf/v1707986.pdf.

[4] Further ideas on a set of goals of achieving the Vienna Consensus on Space Security and the need for thorough reflection on the modalities of addressing the tangled issues associated with space traffic management and the justifiability of intense expectations of early decisions in this area. Working paper submitted by the Russian Federation. A/AC.105/2016/CRP.13. Committee on the Peaceful Uses of Outer, Space, fifty-ninth session, Vienna, 8-17 June 2016. Available at: https://www.unoosa.org/res/oosadoc/data/documents/2016/aac_1052016crp/aac_1052016crp_13_0_html/AC105_2016_CRP13E.pdf.

[5] Ibid. Para. 9.

Thirdly, several states supported the idea that establishing rules for space traffic management could 'facilitate the practical application of a fault-based liability regime by defining a standard of care and due diligence for activities in outer space, against which behaviours of space actors could be assessed to establish fault'[1].

In 2018, a revised study on space traffic management was presented by the IAA to the Legal Subcommittee during its 57th session. Following the presentation, several states expressed the view that the regulatory aspect of space traffic management should be addressed primarily at the international level. Noteworthy is that that since 2018there has been a significant divergence of views within the COPUOS framework. A number of states, led by the United States and European Union countries, have advocated for the commencement of work on establishing soft law standards for space traffic, whereas the Russian Federation and China, among others, have expressed caution regarding such proposals. They have suggested that 'the agenda item on space traffic management had come before the Legal Subcommittee prior to any discussion having been held in the Scientific and Technical Subcommittee and that, as a result, in terms of analytical work on the topic, there was neither an understanding of the point of departure, nor an understanding of the destination'[2]. Several states also emphasized the critical need to establish a mechanism for information sharing within the UN system, including the creation of a database on space objects and events, as well as the provision of assistance by spacefaring nations to states seeking to develop their space industries in order to enhance their capacity to assess the probability of collision of such objects.

During the 58th Session of the Legal Subcommittee in 2019, some states noted that internationally recognized technical standards had demonstrated the greatest effectiveness in addressing transport-related matters. The experience of the ICAO Air Navigation Commission and the Maritime Safety Committee of the International Maritime Organization was cited as an example supporting this viewpoint. Furthermore, during the same session, a new perspective was expressed regarding the illegality of providing inaccurate information about space objects and events that could interfere with the activities of other space actors or even lead to negative consequences. The Russian Federation, as previously, emphasized that extensive discussions on establishing an international legal framework for space traffic management would be premature, given that there were more urgent issues in international space law such as demilitarization and limiting the arms race.

At the 60th session of the COPUOS, held in 2021, there was a renewed emphasis on the importance of joint efforts between the Legal Subcommittee and the Scientific and Technical Subcommittee due to the rapid technological advancements and the need to ensure a coherent legal framework, particularly in terms of terminology. For similar reasons, several states supported a pragmatic approach involving a gradual and phased development of regulatory frameworks for space traffic management and indicating the prematurity of concluding binding agreements on space traffic regulations.

Among the issues to be addressed in the near future, the following were identified: the development of a clear and consistent definition of space traffic management; the creation of favorable conditions for cooperation and trust between states; the need to classify space infrastructure as essential or critical within the framework of national laws; consideration of the impact of satellite constellations on astronomical observations; the establishment of an international system for coordinating practices and approaches in the matters of ensuring space situational awareness and traffic management[3].

In 2022, the 61st session of the Legal Subcommittee actively discussed the necessity of establishing a legally defined boundary between outer space and airspace in order to create an efficient space traffic control system. It should be noted that there is a division of views among the states on this matter. With regard to suborbital flights, one of the delegations stated that in order to determine the applicable legal regime for such activities, it is necessary to take into account the purpose of the mission and the nature of the object involved, since the very distinction between airspace

[1] Report of the Legal Subcommittee on its fifty-sixth session, held in Vienna from 27 March to 7 April 2017. Committee on the Peaceful Uses of Outer Space, 60th session, Vienna, 7-16 June 2017. Para. 203. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/V17/023/56/PDF/V1702356.pdf?OpenElement.

[2] Report of the Legal Subcommittee on its fifty-seventh session, held in Vienna from 9 to 20 April 2018. Committee on the Peaceful Uses of Outer Space, 61th session, Vienna, 20-29 June 2018. Para. 204. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/028/18/PDF/V1802818.pdf?OpenElement.

[3] Report of the Legal Subcommittee on its sixtieth session, held in Vienna from 31 May to 11 June 2021. Committee on the Peaceful Uses of Outer Space, 60th session, Vienna, 31 May - 11 June 2021. Para. 214. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/V21/047/19/PDF/V2104719.pdf?OpenElement.

and outer space is not a prerequisite for effectively regulating overall space traffic.

It was claimed that 'space traffic management required access to information and capabilities; States and international intergovernmental organizations should therefore engage in a dedicated consultative process, preferably under the auspices of the Committee'[1]. An idea was also put forward of establishing a UN-based information platform that would allow states, international intergovernmental organizations, space agencies, and relevant national and international nongovernmental organizations to combine efforts to 'manage and monitor the process of sharing data on the position of space objects'[2]. At the same time, it was repeatedly emphasized that the provision of a solid technical foundation is essential in addressing regulatory issues related to space traffic management; only after this has been achieved will it be possible to develop appropriate standards and guidelines for space traffic management.

At the 62nd session of the Legal Subcommittee, the delegation from the European Union presented a document titled 'Space traffic management: the European Union perspective', which was seen as a continuation of the United States' initiative to adopt national legislation in this area. It was noted that uncontrolled re-entry of spacecraft had already led to temporary closures of airspace over European countries, and the possibility of collisions between active space objects and space debris, which could cause significant economic damage to all states involved, is becoming a more realistic possibility with each passing year.

Proposals have been made to develop zoning regulations for low- and medium-Earth orbits and the GEO as well as to follow the Guidelines for the Long-Term Sustainability of Outer Space Activities until a comprehensive international legal framework for space traffic management is established, that capable of addressing all legal gaps and primarily consisting of mandatory standards.

Based on the review of the *Compendium of space debris mitigation standards adopted by States and international organizations*[3], prepared by the Scientific and Technical Subcommittee, the Legal Subcommittee concluded that it was desirable to implement measures to prevent space debris formation in conjunction with measures for space traffic management. Furthermore, the Legal Subcommittee highlighted the need for consultation with the Scientific and Technical Subcommittee on the adequacy of the Space Debris Mitigation Guidelines and Guidelines for the Long-term Sustainability of Outer Space Activities for effective and safe space traffic management from the technical perspective.

Finally, it was argued that it would not be appropriate to impose strict restrictions and high standards on space traffic management, given the need to consider the different levels of technological development and potential among states, for which these regulations could become crucial in determining the future trajectory of their space programmes.

As part of the 63rd session of the Legal Subcommittee, Germany presented the *Proposal for a Study Group on Perspectives for Space Traffic Management*[4], which became the first documented call for particular action on the site of the COPUOS. As is emphasized in the Proposal, the fact that the Scientific and Technical Subcommittee approved the Guidelines for the Long-Term Sustainability of Outer Space Activities in 2019 gives the Legal Subcommittee the right to begin studying the regulatory prospects for space traffic management[5], and the work of the Legal Subcommittee itself within the regulatory dimension of this issue will not duplicate the authority and tasks of the Scientific and Technical Subcommittee. The document lists the following characteristics and grounds for the creation of a study group to explore the regulatory prospects for space traffic management:

– the study group should comprise approximately 30 government professionals with relevant expertise in legal, technical, and political sciences;

– the Chairman of the Legal Subcommittee shall, upon the recommendation of Member States, in close coordination with regional groups, appoint experts on the basis of equitable geographic representation and gender balance. It is expected that the study group will

[1] Report of the Legal Subcommittee on its sixty-first session, held in Vienna from 28 March to 8 April 2022. Committee on the Peaceful Uses of Outer Space, 61th session, Vienna, 28 March - 8 April 2022. Para. 175. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/V22/022/51/PDF/V2202251.pdf?OpenElement.

[2] Ibid.

[3] Compendium of space debris mitigation standards adopted by States and international organizations. A/AC.105/C.2/ 2023/CRP.39. Available at: https://www.unoosa.org/oosa/en/oosadoc/data/documents/2023/aac.105c.22023crp/aac.105c.22023crp.39_0.html.

[4] Proposal for a Study Group on Perspectives for Space Traffic Management. Paper submitted by Germany, A/AC.105/2024/CRP.21. Available at: https://www.unoosa.org/oosa/oosadoc/data/documents/2024/aac.1052024crp/aac.1052024crp.21_0.html.

[5] Ibid. Para. 4.

– include experts from both major spacefaring nations and countries with emerging space capabilities;

– the objectives of the study group are to summarize and assess relevant legal practises and challenges related to the sustainable use of outer space and the coordination and/or management of space traffic;

– the study group's reporting process involves providing the Legal Subcommittee with a report that outlines the facts, current approaches, and ideas of significant importance in discussing the coordination and management of space traffic, as well as potential prospects for managing international space activity;

– it is assumed that the study group will not be intended to make any decisions or prescribe the results of possible further discussions in the COPUOS and its subcommittees, as its sole purpose is to discuss and develop possible ways to further improve space traffic management for submission to the Legal Subcommittee.

It should be noted that during the 63rd session of the Legal Subcommittee, other states also presented their observations and ideas regarding certain aspects of space traffic management. For example, the United Kingdom presented the results of a project it held together with the UN Office for Outer Space Affairs on the registration of space objects[1]. The project aimed to analyze best practices in registration policies implemented by different states. Another document submitted by the UK listed approaches toward implementing Article XI of the Outer Space Treaty regarding notifying other space actors about their activities[2]. Angola, Morocco, and the Russian Federation responded to a survey on the application of international law to small satellite activities conducted by the COPUOS in 2023, providing information on their national practices in this area[3].

Despite the apparent reluctance of states to enter into a new international agreement on space activities, there is a clear trend toward the sharing of practical experiences among them. In 2016, the main topic of discussion on space traffic management within the Legal Subcommittee of the COPUOS was general theoretical issues regarding the establishment of an appropriate regime. Recent years have shown not only the willingness but also the initiative of several countries in identifying their national approaches to addressing registration of space objects and the notification of their space-related projects. Most experts in the field of international space law agree that the COPUOS should continue to be a universal and, at present, the most appropriate platform for discussing matters related to space traffic management at the international level. It is suggested that a possible step toward further developing the relevant discussion would be the establishment of a dedicated forum on space traffic management, under the auspices of the COPUOS and in close collaboration with the ICAO [20, p. 324]. At present, discussions within the COPUOS are progressing rather slowly. This is due to problems not only technical or legal in nature but also political. However, the resolution of contentious issues related to space traffic management can only be achieved at the multilateral level, taking into account the positions of each state since the rules adopted through consensus have a better chance of being observed and effectively implemented.

Considering the Experience of the ICAO in the Development of an International Legal Framework for Space Traffic Management

The first traffic regulations concerning aircraft at the national level were established in 1927 by the United States Department of Commerce [13, p. 233]. Approximately two decades later, in 1944 at the Chicago Conference, the international legal framework for air navigation was established. During this conference, 52 countries signed the Convention on International Civil Aviation (hereinafter the Chicago Convention), which established the ICAO as a universal organization. The Convention is supported by 19 Annexes, which contain international standards and best practices related to the safety, efficiency, and security of air transport.

According to the ICAO documents, air traffic management is defined as 'the dynamic, integrated management of air traffic and airspace including air traffic services, airspace management and air traffic flow management – safely, economically and efficiently – through the provision of facilities and seamless services in collaboration with all parties and involving airborne and ground-based functions'[4]. In accordance with Decree No. 138 of the Government of the Russian Federation of March 11, 2010 'On Approval of the Federal Rules for the Use of the Airspace of the Russian Federation', air traffic services comprise air traffic control, flight information and emergency notification services[5].

[1] United Nations Office for Outer Space Affairs Stakeholder Study Report on Registration of Objects Launched into Outer Space. Submitted by the United Kingdom of Great Britain and Northern Ireland, A/AC.105/C.2/2024/CRP.22. Available at: https://www.unoosa.org/res/oosadoc/data/documents/2024/aac_105c_22024crp/aac_105c_22024crp_22_0_html/AC105_C2_2024_CRP22E.pdf.

[2] Sharing approaches of the United Kingdom to Article XI implementation and notifications. Submitted by the United Kingdom, A/AC.105/C.2/2024/CRP.21. Available at: https://www.unoosa.org/res/oosadoc/data/documents/2024/aac_105c_22024crp/aac_105c_22024crp_21_0_html/AC105_C2_2024_CRP21E.pdf.

[3] Questionnaire on the application of international law to small satellite activities. Note by the Secretariat, A/AC.105/C.2/2024/CRP.20. Available at: https://www.unoosa.org/res/oosadoc/data/documents/2024/aac_105c_22024crp/aac_105c_22024crp_20_0_html/AC105_C2_2024_CRP20E.pdf.

[4] Air Traffic Management. Procedures for Air Navigation Services. Doc 4444, 16th ed. International Civil Aviation Organization, 2016. Available at: https://recursosdeaviacion.com/wp-content/uploads/2021/01/icao-doc-4444-air-traffic-management.pdf.

[5] On Approval of the Federal Rules for the Use of the Airspace of the Russian Federation: Decree of the Government of the Russian Federation No. 138 of March 11, 2010 (as of December 2, 2020) (with amendments and additions, entered into force on June 9, 2021). Item 130. Access from the legal reference system 'ConsultantPlus'.

During its existence, the ICAO has developed a comprehensive regulatory framework for air traffic management, with the capacity for its continuous updating in light of technological developments and changes within the aviation industry. The ICAO's Procedures for Air Navigation Services, when implemented into domestic legislation, are legally binding only for civil aircraft, but in practice they are also followed by state-owned (including military) aircraft in order to maintain the safety of air travel [15, pp. 426–431].

With regard to air traffic control, of particular interest are Annex 2 'Rules of the Air' and Annex 11 'Air Traffic Services – Air Traffic Control Service, Flight Information Service and Alerting Service' since their provisions apply without exception to flights over the high seas, i.e., in international airspace that is not subject to the sovereignty of any state. Annex 2 contains provisions on aircraft collision avoidance, while Annex 11 deals with air traffic services, flight information provision, and notification. It is noteworthy that a number of provisions of Annex 2 relate to unmanned uncontrolled balloons: these are to be operated in such a way that they do not pose a danger to persons or property unrelated to the flight; it is necessary to immediately notify the relevant air traffic management services of their launch and end of flight[1].

The effectiveness of the ICAO regulatory framework can be attributed to the organization's unique approach to reviewing and updating its regulations. For example, following a major incident in air transportation, such as the disappearance of Malaysia Airlines flight MH370 over the South China Sea in 2014[2], the ICAO promptly reviews and amends existing standards to prevent similar incidents in the future [22, p. 384].

Outer space is beyond sovereignty of any state and, as such, its international legal status is somewhat analogous to that of airspace above the high seas. While the Chicago Convention provided an effective framework for regulating, governing, and organizing air traffic above the high seas through a system of international agreements and institutions, the Outer Space Treaty lacks comparable provisions regarding the authority of the COPUOS or any other organization in this domain. Due to the existence of various, often opposing, viewpoints in the field of international law, there is currently no consensus regarding the establishment of a space traffic management system. This situation is further complicated by the growing number of suborbital flights, which have led to a significant number of disputes over whether they should be governed by space or air regulations. As noted by P. Dempsey and M. Mineiro, four possible solutions have been proposed: (1) suborbital flights could remain unaddressed at the international level; (2) they are regulated on a case-by-case basis through bilateral or regional agreements; (3) a new international body could be established to regulate them; (4) the ICAO could initiate amendments to the Annexes to the Chicago Convention to increase its authority [26, p. 252].

Proponents of the latter approach, including P. Dempsey, M. Mineiro, Professor R. Jakhu, and the former Director of the UN Office for Outer Space Affairs N. Jasentuliyana, argue that the several-decades failure of the COPUOS to agree on a single international space treaty addressing existing gaps in space law and the extensive experience of the ICAO in air traffic safety provide compelling evidence of the necessity to extend the authority of the latter to space activities [26, p. 252].

T. Masson-Zwaan and Y. Zhao note that the ICAO could act as an operating body for a neutral platform, within which states should cooperate to establish an international legal framework for space traffic management [24, p. 91]. P. Larsen suggests the creation of an international intergovernmental organization for the management of space traffic, similar to the ICAO, and the establishment of standards on its platform, similar to those outlined in Article 37 of the Chicago Convention, namely:

– minimum standards and procedures for data exchange and navigation;
– standards for spaceports;
– space traffic management standards;
– licensing standards for space activities;
– standards of spacecraft suitability for flight;
– registration and identification standards;
– procedures for collecting and sharing information on space weather;

[1] Annex 2 to the 1994 Convention on International Civil Aviation. Add. 5. Para. 2.5. Available at: https://elibrary.icao.int/explore;searchText=%D0%BF%D1%80%D0%B8%D0%BB%D0%BE%D0%B6%D0%B5%D0%BD%D0%B8%D0%B5%202.%20%D0%BF%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%B0%20%D0%BF%D0%BE%D0%BB%D0%B5%D1%82%D0%BE%D0%B2;phraseMatch=0;themeName=Blue-Theme/product-details/271512.

[2] In 2015, the Montréal Declaration on Planning for Aviation Safety Improvement was adopted. The drafters of the Declaration took into account shortcomings in the current air traffic management system that had been identified, among other things, through the example of the disaster.

– requirements for maintaining flight logs;

– navigation maps and tables standards;

– customs and immigration regulations;

– standards for investigating accidents and spacecraft collisions, etc. [22, p. 385].

There is also a more restrained position regarding the expansion of the ICAO's authority: what should be applied by analogy is the organizational dimension of this model, rather than specific traffic rules. At the same time, it is noted that a number of such rules could theoretically be applicable to space traffic, including right-of-way, safe distance, zoning rules, etc. [13, p. 233]. G. Kyriakopoulos highlights the following positive aspects of the ICAO's air traffic management system that should also be considered in the process of establishing a global legal framework for space traffic control: a well-established mechanism for advanced international collaboration; centralized supervision by the ICAO over a decentralized air traffic management system implemented through national flight information providers; institutionalized information exchange between users (aircraft) and the competent authorities; classification of airspaces for the purposes of the safe flow of air traffic; constant monitoring of civil flights worldwide; increased civil/military coordination[1].

However, one of the Directors of the International Institute of Space Law, Professor F. von der Dunk, has expressed criticism regarding the idea of extending the mandate of the ICAO to space traffic. He argues that 'simply providing ICAO with an extension of its authority to address aircraft so as to encompass also spacecraft not only would require considerable expertise with space flight (generally available much more in specialized space agencies than at ICAO) and profound adaptation of the system of the Chicago Convention (such as overhauling the current definition of 'aircraft' […]), but also would ignore a few fundamental aspects of current space activities and space law which would make the exercise of such authority by ICAO a rather different paradigm as compared to its longstanding role in international aviation' [11, p. 390]. Professor F. von der Dunk explains his position by stating that the air traffic management system primarily relies on interaction with pilots to coordinate aircraft maneuvers, whereas the vast majority of spaceflights are unmanned and controlled remotely.

Professor R. Abeyratne, a specialist in the area of international air navigation law, holds a similar viewpoint. He notes that integrating air and space transportation by amending the Chicago Convention and its Annexes, as well as establishing a novel annex on commercial space transport, is not an appropriate solution to the issue of space traffic management [5, p. 157]. From the perspective of the ICAO, the aim is to ensure the safety of civil aviation, rather than space traffic. Otherwise, it would mean establishing an international legal framework that would require the involvement of relevant technical experts and consideration of several aspects of the space environment.

Obviously, outer space and its physical properties differ significantly from atmospheric space. Furthermore, there is a significant difference in the nature of aircraft and space missions: while the majority of aircraft operations are manned, most space missions are still conducted remotely, and this situation is unlikely to change significantly in the foreseeable future. For instance, in accordance with Annex 2 of the Chicago Convention, 'when two aircraft are approaching head-on or approximately so and there is danger of collision, each shall alter its heading to the right'[2]. It is hardly possible to envisage the application, by analogy, of such a regulation to space operations for several reasons: the technically-determined inaccuracy in measuring the distance between space objects, predominance of unmanned space missions, lack of maneuvrability in a substantial number of spacecraft, and existence of uncontrolled space debris. Consequently, far not all ICAO regulations and recommended practices can be applied to spaceflight.

The idea of extending the mandate of the ICAO to outer space has also been met with controversy. The original purpose of the Chicago Convention was to ensure the safety of civil aviation, and the document did not aim to govern any other modes of transportation. Transferring such broad powers to the ICAO would require the presence of highly qualified experts, this with expertise not only in international space law but also

[1] Space Traffic Management as a sine qua non prerequisite for the sustainability of outer space activities: Evaluating Regulatory Patterns. Available at: https://www.unoosa.org/documents/pdf/spacelaw/workshops/2017/ICAOUNOOSA2017/0403_Kriyakopoulos_Athen_Univ.pdf.

[2] Annex 2 to the 1994 Convention on International Civil Aviation. Para. 3.2.2.2. Available at: https://elibrary.icao.int/explore;searchText=%D0%BF%D1%80%D0%B8%D0%BB%D0%BE%D0%B6%D0%B5%D0%BD%D0%B8%D0%B5%202.%20%D0%BF%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%B0%20%D0%BF%D0%BE%D0%BB%D0%B5%D1%82%D0%BE%D0%B2;phraseMatch=0;themeName=Blue-Theme/product-details/271512.

in the field of cosmonautics. Moreover, today amending the Chicago Convention or its Annexes does not seem to be a legally justifiable step due to the lack of thorough discussion on the issue both within the ICAO and between this and other international organizations. It is important to note that the organization that was initially focused on air traffic management should not have the authority to manage traffic of a completely different nature, as this could lead to a weak scientific basis for relevant regulations and potentially cause fragmentation in international law.

It is undeniable that the experience of the ICAO should be considered when developing regulations concerning space traffic management. It also seems indisputable that, among the existing mechanisms, the one functioning within the framework of the ICAO comes closest to what needs to be implemented in outer space. However, it is the COPUOS that currently appears to be the most effective forum for discussing such issues. As noted earlier in this article, the studies conducted by the IAA in 2006 and 2018 indicate the possibility of delegating control powers in space traffic management to this Committee for a certain period, until a consensus on a fundamentally new institutional component of space traffic management is reached. At the same time, it is most likely that either the COPUOS will retain these powers and follow the path of its further development or an entirely new international intergovernmental organization will be created within the framework of the UN with a relevant mandate.

Conclusions

Space traffic management is a relatively new concept in the field of international space law. It was only recently, in 2015, that this concept gained recognition at the level of the Legal Subcommittee of the COPUOS. Despite this, the practical nature of space operations and the rapid growth of both governmental and commercial launches of space vehicles make it impossible to dismiss the significance of this issue. The increasing number of active satellites in low Earth orbit increases the risk of collisions between satellites and space debris, potentially leading to the formation of the Kessler Syndrome. This could have severe consequences for future space exploration and operations. Therefore, it is essential to develop effective space traffic management strategies to mitigate these risks and ensure the safety and sustainability of space activities.

One of the most significant challenges in establishing a future international legal framework for space traffic management concerns the lack of a formally defined set of terms such as ‘space activity’, ‘space operation’, ‘space object’, and ‘outer space’, as well as the term ‘space traffic management’ itself. Despite the existence of various approaches to space traffic management, it seems that in defining these terms it is essential to start with minimizing the risk of radio and physical interference in space. This goal should be the primary consideration when defining the terminology, as it will help to ensure the effectiveness of future space traffic regulations. Among the definitions proposed in the scientific literature, we consider the one used in the IAA studies of 2006 and 2018 to be the most appropriate. This definition states that space traffic management is ‘the set of technical and regulatory provisions for promoting safe access into outer space, operations in outer space and return from outer space to Earth free from physical or radio-frequency interference’ [9, p. 10]. Given the presence of this definition in the scientific works of leading experts in the field of international space law, as well as due to its completeness and clarity, we find the corresponding structural framework for space traffic management proposed within these studies to be rational. The framework consists of four main elements: securing the information needs, creating a notification system, traffic management rules, and mechanisms for implementing and monitoring compliance with these regulations. The components of the proposed space traffic management regime as part of the IAA 2006 and 2018 studies aim to ensure the safety and long-term viability of space operations, while taking into account both organizational and environmental factors and not overlapping each other.

Current international space law comprises only general principles for space traffic management that obligate space actors to conduct their activities in the interest of security and multilateral cooperation. Existing norms of soft law affirm the commitment to these principles but do not specify them to the degree necessary for the future development of an international legal framework for space traffic management. In this regard, in academic literature it is suggested to establish an international regulatory regime for space traffic under one of the two approaches: a bottom-up approach, promoting the construction of the regime on the basis of existing disparate norms of international law and national legislation, or a top-down approach, involving the adoption of several universal international instruments for space traffic governance. Despite the fact that the proposed

models represent the results of scientific forecasts rather than constitute a specific course of action, a number of spacefaring nations are already utilizing them in determining their international legal policies in this area. For instance, the Russian Federation and China appear to be more inclined toward the top-down approach, while the United States and the European Union seem to align themselves with the bottom-up approach.

Finally, it is worth noting that despite the relatively recent emergence of the concept of space traffic management within scientific and practical communities, it continues to attract increasing attention each year. The resolution of issues related to space security cannot be achieved unilaterally or through regional or transregional approaches, as any collision of space objects, their destruction or impairment can have a significant impact on the terrestrial infrastructure of each state, including those not actively engaged in the exploration and use of outer space. In light of the above, it appears necessary to ensure equitable access for states to the dialogue regarding the establishment of an international legal framework for space traffic management and their participation in relevant discussions within the COPUOS, ICAO, and ITU.

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Creative Interpretation of International Law and the Status of Kosovo in International Relations

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Introduction*: the case of Kosovo's unilateral declaration of independence in 2008 is specific in many ways. Although some Western politicians and theorists claim that it is sui generis, the only thing that appears unique in this process is the creative interpretations of international law emanating from the U.S. and the EU. These interpretations created a new political reality, and thanks to this, the case of Kosovo has become more complex than before.* ***Purpose****: the paper attempts to explain the key events that determined the resolution of the status of Kosovo. This explanation proves how necessary it is to scrupulously insist on the provisions of international law and respect for signed agreements in order to resolve complex political conflicts. Creative interpretations have not contributed to the resolution of the conflict, but have created patterns and the potential for new confrontations.* ***Methods****: theoretical methods of analysis, synthesis, modeling, analogy; empirical methods of description, interpretation; special scientific methods: historical method, method of legal norms interpretation.* ***Results:*** *the analyzed events indicate that legal norms were interpreted and contextualized in a way that suited the geopolitical goals of the U.S. and the EU. Such interpretations and contextualizations were necessary for the U.S. and the EU to portray the process of declaring Kosovo's independence as legal and so that they could lobby for Kosovo's recognition in international relations.* ***Conclusion****: creative interpretations of international law, relying on political pressure and threats of force (or on actual use of armed forces), have not contributed to resolving the Kosovo case in the way the U.S. and the EU wanted. More than half of the UN member states still do not recognize Kosovo, and the question of legitimizing the status of this entity remains open. At the same time, the U.S. and the EU have created an unpleasant precedent that can now be (mis)used elsewhere in the world. Their actions have also significantly undermined the authority of international organizations such as the UN and the International Court of Justice, which may negatively affect international relations in general.*

Keywords: Kosovo; secession; unilateral proclamation; Serbia; FR Yugoslavia; international law; USA; EU

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Избирательная интерпретация международного права и статус Косово в международных отношениях

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Введение: *ситуация одностороннего провозглашения независимости Косово в 2008 году является специфической во многих отношениях. Хотя некоторые западные политики и теоретики утверждают, что это уникальный процесс, единственное, что представляется в нем уникальным, – это избирательная интерпретация международного права со стороны США и ЕС. Такая интерпретация создала новую политическую реальность, вследствие чего ситуация в Косово стала еще более сложной, чем ранее.* ***Цель:*** *в статье предпринята попытка объяснить ключевые события, которые определили решение вопроса о статусе Косово. Данное объяснение доказывает, насколько важно неукоснительно придерживаться положений международного права и соблюдать подписанные соглашения для разрешения сложных политических конфликтов. Избирательные интерпретации не способствовали разрешению конфликта, но создали модель и потенциал для новых конфронтаций.* ***Методы:*** *теоретические методы анализа, синтеза, моделирования, аналогии; эмпирические методы описания, интерпретации; специальные научные методы: исторический метод, метод толкования правовых норм.* ***Результаты:*** *проанализированные события свидетельствуют о том, что правовые нормы интерпретировались и контекстуализировались таким образом, чтобы соответствовать геополитическим целям США и ЕС. Это было им необходимо для того, чтобы представить процесс провозглашения независимости Косово как легитимный и иметь возможность лоббировать признание Косово в международных отношениях.* ***Вывод:*** *избирательное толкование международного права, основанное на политическом давлении и угрозах применения силы (либо на фактическом применении силы), не способствовало разрешению ситуации в Косово так, как того хотели США и ЕС. Более половины государств – членов ООН по-прежнему не признают Косово, и вопрос о легитимизации статуса этого образования остается открытым. В то же время США и ЕС создали негативный прецедент, который теперь может быть использован в других странах. Их действия также существенно подорвали авторитет таких международных организаций, как ООН и Международный Суд ООН, что может иметь негативное влияние на международные отношения в целом.*

Ключевые слова: Косово; выход из состава; одностороннее провозглашение; Сербия; Союзная Республика Югославия; международное право; США; ЕС

Introduction

One of the examples of separatism, probably best known in the first decade of the 21st century, is Kosovo. Many politicians have tried to explain in what way Kosovo is a unique case. There were also theorists with similar views [5; 10]. The secession of Kosovo from Serbia is 'a textbook case of how countries, through an illegal use of force, aim to create a new legal reality, according to the maxim *ex injuria jus oritur*' [6, p. 132]. In this context, the attempt undertaken by Kosovo Albanians is no special case. What makes it special is that the United States, Great Britain, France, and Germany have supported this separatism, primarily because of their geopolitical goals, and hence the attempts to legalize it. And what is particularly interesting – they did so using creative interpretation of international law coupled with political pressure and harsh military threats. In this particular case, the sequence of events that led to the secession of Kosovo from the Republic of Serbia was triggered by an illegal international use of force in violation of Article 4(2) of the United Nations Charter. We have seen, and we can see even now, something similar in different parts of the world. Just as we see that some entities that have proclaimed independence are gaining partial legitimization of their status in international relations. Kosovo is not a unique case. We will prove this thesis by analyzing the key legal acts that have decisively influenced the status of Kosovo and by demonstrating how it became possible for Kosovo Albanians to unilaterally declare independence. This unilateral decision cannot be analyzed without the wider context. Therefore, a historical review of events from 1998 to 2008 will be provided.

Negotiations in Rambouillet and NATO Aggression Against the FR Yugoslavia

A quarter of a century after NATO's aggression against the Federal Republic of Yugoslavia, Russian Foreign Minister Sergei Lavrov noted: 'I think that, starting in 1991, the disintegration of Yugoslavia and the separation of Kosovo from Serbia were in the plans of the West. The NATO aggression has its roots in 1998, when the Belgrade authorities controlled this Serbian region. Terrorist attacks began there and the Kosovo Liberation Army was formed. There is evidence that it was financed and armed by Americans and Germans' [7].

Was the separation of Kosovo from Serbia really planned back in 1991? There are certainly some indications that this is true, but until the historical archives are opened, such a thing cannot be confidently asserted. In this paper, we will explain the phenomenon of creative interpretation of international agreements/resolutions. Creative interpretation served to contextualize certain political events or political processes. This is how, in fact, the appearance of legality was given to political decisions. Including the one with the most far-reaching consequences: the acceptance and recognition of the unilaterally declared independence of Kosovo Albanians.

In order to examine the unilateral decision of Kosovo Albanians to proclaim independence in 2008, it is necessary to return a decade back, in 1998. An armed conflict between the Kosovo Albanians paramilitary formation (Kosovo Liberation Army – KLA) and the police and military forces of Yugoslavia escalated in mid-1998. However, it was already in early autumn (September) that Albanian formations suffered a complete defeat. At that time, the U.S. and NATO directly intervened in this process, demanding that the Yugoslav authorities withdraw military and police forces from Kosovo and stop using force. Political pressure became unbearable. In October 1998, NATO started to threaten with bombing, and despite the military victory on the ground, the president of the FR Yugoslavia was forced to begin negotiations with the special envoy of US President, Richard Holbrooke. The result was the Milošević – Holbrooke Agreement, the content of which became part of Resolution 1203 (1998) of the UN Security Council. This Agreement and the Resolution that followed establish: the need to pursue the peaceful resolution of the conflict in Kosovo by further political negotiations; that violence and terrorism 'have to stop immediately'; that any political solution 'must respect the territorial integrity, sovereignty and internationally recognized borders of the Federal Republic of Yugoslavia' in accordance with the basic principles of the OSCE; that the future must be sought in 'peace, equality, integration, economic prosperity and free common life'; that, having this in mind, 'it is necessary to harmonize the legal solutions that establish Kosovo self-government with the legal frameworks of the Republic of Serbia and the FRY' in accordance with 'international norms'; to organize within nine months 'free and fair elections for the Kosovo authorities', including local communities, with the supervision of the international community'; to guarantee the rights of national communities in Kosovo to 'preserve and manifest their national, cultural, religious and linguistic identity', while respecting international standards; to guarantee 'establishment of police under the local administration' in order to respect the security of all citizens and national communities; as well as that there will be amnestied participants in the conflict, that is, they will not be 'prosecuted' before state courts for criminal offenses related to the conflict in Kosovo[1].

The agreement also approved partial withdrawal of the forces of the Yugoslav Army and the Special Forces of the Police of Serbia from the territory of Kosovo, or their return to their previous posts in the territory of Kosovo, disarming of the members of the so-called KLA, as well as the establishment of the OSCE Kosovo Verification Mission, having 2,000 members, with the authority to monitor the implementation of the agreed. The OSCE mission was also supported by NATO, whose aircrafts had the right to monitor the activities of the Yugoslav Army in the territory of Kosovo. That is why the FRY authorities signed two additional agreements – with NATO on October 15 and with the OSCE one day later. 'The NATO Mission Agreement stipulates that NATO surveillance airplanes have the right to fly over the territory of Kosovo and Metohija and for this purpose: 1) a security zone along the borders of Kosovo and Metohija, at a depth of 25 kilometers, is established, on which the aviation and air defense of the Yugoslav Army will not have any activities during the surveillance flights of NATO aircraft; 2) missions above Kosovo and Metohija will be conducted by pilot and non-pilot aircrafts, introducing a safety margin of 30 minutes before and after a flight for low-flying airplanes with pilots, during which there will be no activities of Yugoslav air forces and anti-aircraft defense; 3) NATO will deliver weekly plans of its flights to Kosovo and Metohija to the Yugoslavian Flight Control; 4) civilian aircraft flights will be provided without any restrictions during NATO missions throughout the airspace of the FRY; 5) Yugoslav war planes can fly over Kosovo and Metohija and the security zone, except during NATO surveillance missions; 6) NATO and Yugoslav air forces will not interrupt each other during their missions; 7) unless otherwise determined, NATO aircrafts will enter and exit Kosovo and Metohija through the airspace of Albania and FYR of Macedonia' [4, pp. 783–785].

It turned out, however, like in a number of other situations, that the Yugoslav authorities expressly fulfilled their most important obligation – withdrawing more than 6,000 soldiers and removing checkpoints from important traffic nodes (26 October), military and police officers from Kosovo and Metohija, while the so-called KLA only

[1] United Nations Security Council. Resolution 1203 (1998). 24 October 1998.

regrouped and started a new round of mobilization among Albanians, returning to the positions they had lost in September [14]. There was no demilitarization of the KLA. Because of this, the armed conflict, after relatively peaceful October and November, started raging again in December. The USA and NATO concluded that the Milošević – Holbrooke Agreement was insufficient to secure peace and forced a new round of political pressure, with threats of bombardment, to compel the authorities of the FR Yugoslavia to start political negotiations with Kosovo Albanians. This represented the first creative interpretation by the collective West of the provisions of the signed agreements. Simply put, in practice, what was valid was not what was written on paper, but what they interpreted from what was written.

Negotiations were conducted from February 6 to March 19, 1999, and Eric Herring described them as 'the politics of Rambo(uillet)' [3, p. 225]. Ratko Marković, one of the members of the Yugoslav delegation, states: 'It was just a play for the outside world, with third-rate actors. The only true truth about Rambouillet is just the geographical fact – the show was really held in the city of Rambouillet, near Paris, in France. /.../ Although the gathering in Rambouillet was called negotiations, there were no negotiations there during the two delegations' stay. Negotiations exist when their participants are in the same room, sitting at a table and looking face to face, and when they have a white paper in front of them that they will fill with the text of the agreed content. In Rambouillet there was none of this. /.../ The participants could only meet randomly in the corridors, passing by each other without a word, and the text from which the 'agreement' was made was given to the participants only in 'pieces', while the two most important pieces, which make up its core content, were handed over four hours before the end of the Rambouillet conference. According to a witness, B. Maiorski, who was a Russian representative within the 'Troika', did not sign these parts on the grounds that they were not subject to joint preliminary deliberations. This mess of the so-called agreement was merely an apparition of an agreement. In all likelihood, this was the real intent because the 'agreement' served as a good camouflage for the decision taken before and outside of Rambouillet' [8].

Analyzing everything that was happening in the famous castle not far from Paris, from a time distance and with a series of new data and testimonies, it can be concluded that everything related to the Rambouillet process was problematic. Although the negotiations formally lasted from February 6 to March 19, it turned out that the two sides – Yugoslav and Albanian – had the opportunity to meet in the same room only once.

In addition to the 'strange' negotiation process, the document, which contained as many as 87 pages in the final version in the English language with the accompanying annexes, can also be described as controversial. According to Ian Bancroft, Henry Kissinger said about the text offered in Rambouillet: 'It was a provocation, an excuse to start bombing. It was a terrible diplomatic document that should never have been presented in such way' [1].

What was that 'terrible? The document was apparently prepared earlier, a few months before the Rambouillet talks. Negotiations were supposed to serve to just agree on details. This Interim Agreement for Peace and Self-Government in Kosovo consisted of an introduction (it talks about the equality of all citizens of Kosovo and Metohija, human rights and freedoms, self-government, confidence-building measures, etc.) and eight chapters. The first chapter concerns the future 'Constitution of Kosovo', the political structure of the province, the mixed electoral system (a total of 120 deputies, of whom 80 are elected directly and 40 are elected by national communities), the functions of the 'president of Kosovo' (elected by the Assembly for a term of three years), including the authority to represent the province in front of the republic and federal bodies, the formation of the Constitutional Court, the Supreme Court, and other judicial bodies in the vertical. It is easy to see that in this part the proposed text of the agreeement had very much in common with the later 'Ahtisaari Plan'.

The second chapter deals with public security, proposing the establishment of 'local police', but also stresses that the security of the the FR Yugoslavia's 'international borders' (with FYR Macedonia and Albania) would be ensured by federal authorities. It also underlines the inevitable role of the OSCE in the processes related to public security and in the organization of the electoral process for provincial institutions and local self-government bodies, which is described in the third chapter.

The fourth chapter of the agreement, dedicated to humanitarian aid, infrastructure renovation, and economic development, also provoked almost no disputes, nor did the sixth chapter, which defines the role and powers of the ombudsman[1]. In the middle of the second week of negotiations, the negotiating parties agreed on most of the positions in these five chapters, as well as on the principles of the agreement outlined in the introductory part. The key controversies arose around the seventh and eighth chapters, while there was also a lively debate about the content of the fifth chapter (this chapter was interpreted by interested parties depending on how it was contextualized by each of them). The fifth chapter discusses the implementtation of the agreement, which would be carried out by a special Implementation Mission, established in coordination between the EU and the OSCE. 'All the powers that, according to the Milošević – Holbrooke Agreement of 13 October 1998, were vested in the Verification Mission for Kosovo and Metohija and its head are transferred to the

[1] United Nations. Interim Agreement for Peace and Self-Government in Kosovo.

Implementation Mission and its head. In order to implement the agreement, it was stipulated that a Joint Commission should be set up comprising the head of the Implementation Mission, one representative of the FRY and one of Serbia, one representative of each national community in Kosovo and Metohija, the President of the Assembly and a representative of the President of Kosovo and Metohija. /.../ The Head of the Implementation Mission was perceived the person in charge of the implementation of the entire agreement, including relations with the national communities in the province, the republic and federal authorities, as well as with the international community. The Implementation Mission would operate in accordance with the laws of Kosovo and Metohija, Serbia and the Federal Republic of Yugoslavia, but would also enjoy diplomatic status in accordance with the Vienna Convention on Diplomatic Relations' [13].

The seventh chapter further elaborates the implementation process and suggests several more solutions that were problematic for the Yugoslav side. As Predrag Simić notes with regard to paragraph a. of Item 1 of this chapter, 'On the bases of Chapter VII of the UN Charter, the United Nations Security Council is called upon to adopt a resolution that will accept and apply the solutions contained in this chapter, including the establishment of multinational military forces in Kosovo. The Parties invite NATO to establish and direct international forces in accordance with the provisions of this chapter. They also confirm the sovereignty and territorial integrity of the Federal Republic of Yugoslavia' [13].

According to paragraph b, 'The parties agree that NATO will establish and deploy a force (hereinafter 'KFOR') that can be composed of ground, air and maritime units from a NATO and non-NATO nations, operating under the authority and subject to the direction and political control of the North Atlantic Council (NAC) through NATO chain of command. The Parties agree to facilitate the deployment and operations of this force and agree also to comply fully with all the obligations of this Chapter'[1]. As an apparent concession to Russia, the last paragraph says: 'It is agreed that other States may assist in implementing this Chapter. The Parties agree that the modalities of those States' participation will be the subject of agreement between such participating States and NATO'[2]. The remainder of this chapter provides exhaustive military details of the cessation of hostilities in Kosovo and Metohija, of the demilitarization and withdrawal of forces, including provisions on the deployment of units of the Yugoslav Army (1,500 + 1,000 support troops) and Serbian police (2,500 policemen) who will remain on the international borders of the FRY.

An integral part of the document are also two annexes to the seventh chapter. Annex B (paragraph 8) provides clarifications on the status of NATO members in Kosovo and Metohija: 'NATO personnel, with vehicles, ships, planes and equipment, will have the right to free and unconditional movement throughout the territory of the FR Yugoslavia, its airspace and territorial waters, it will have the right to set up camps and barracks, the right to use all areas or services necessary for support, training or operations. NATO personnel will enjoy the immunity from any form of arrest, investigation and detention by the authorities of the FR Yugoslavia, and the arrested or detained NATO members must immediately be handed over to the competent NATO bodies'[3]. Paragraph 9 explicitly says that NATO members on the territory of the FRY will not be submitted to any inspections and customs regulations and will not pay duties, taxes, or any other charges. Further on, paragraph 15 specifies that the FR Yugoslavia will enable free of charge and unrestricted use of the telecommunications network by NATO, including the broadcasting rights[4]. And that is not the end, since paragraph 21 says: ' NATO is authorized to detain individuals and, as quickly as possible, turn them over to appropriate officials'[5]. It is not even indicated whether the detained persons would be handed over to the judicial or investigative organs of the FR Yugoslavia, but only to 'appropriate officials', which is subject to all kinds of interpretations.

Paragraph 22 states that in the conduct of the operations, NATO forces are allowed to make alterations to the infrastructure network (roads, tunnels, bridges, buildings, and the energy network). This paragraph does not mention any request for any consent from the competent federal, republic, or local authorities. In the eighth chapter, which is the shortest one, with only five points divided into two articles and conceived as part of the transitional and final provisions, the following controversial formulation (Item 3 of Article I) was subsequently inserted: 'Three years after the entry into force of the Agreement, an international conference will be convened to determine the mechanism of Kosovo's final decision based on the will of the people, the opinions of the competent authorities, the commitment of both parties to implement this agreement and the Helsinki Final Act'[6]. The Albanians showed that this was unacceptable for them, insisting on the term 'referendum'. However, 'during a three-day break between the first and second parts of the conference, the head of the Albanian delegation and KLA leader Hashim Thaçi was summoned to the United States for consultations after which he announced that the Albanian side was ready to sign the agreement' [13].

[1] United Nations. Interim Agreement for Peace and Self-Government in Kosovo.
[2] Ibid.
[3] Ibid.
[4] Ibid.
[5] Ibid.
[6] Ibid.

'Madeleine Albright instructs the Albanian delegation to sign the Agreement and to open the way for the bombing of Yugoslavia. Her advice is publicly joined by her British colleague Robin Cook who advises Albanians – if you sign, we will be able to bomb the Serbs. But, at that time the only controversial provision for the Albanians is whether the exact term referendum will be used. They request that the term referendum be entered into the text of the Agreement. Their Western friends are persuading them that they will get a referendum even if that term is not used. A euphemism can be used, which will later be proclaimed by the Anglo-American interpretation as a referendum. Albanians seek this clarification in writing and in advance. And they got it, with the signature of Madeleine Albright' [9, p. 160].

It turned out that one signature of Madeleine Albright ultimately meant more than the UN Charter and the Helsinki Final Act. Albanians did not have any reason for dissatisfaction. The FR Yugoslavia was offered 'terrible conditions', humiliating solutions that would greatly suspend the constitutional order on the entire territory of the country, and in the end, after three years, a referendum on the 'final solution' would be organized in Kosovo and Metohija. The Yugoslav delegation refused to sign the offered agreement. The bombing followed. That is, the NATO aggression against the FR Yugoslavia.

United Nations Security Council Resolution 1244 and the Establishment of the UNMIK

The NATO aggression was terminated on June 12, 1999 by the withdrawal of all armed formations of Yugoslavia from the territory of Kosovo, which happened after UN Resolution 1244 was adopted on June 10. In the introductory part, explaining the principles under which its further text should be interpreted, Resolution 1244 states: 'Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2' and 'Reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo'. In paragraph 4, the document confirms that after the withdrawal, the agreed number of Yugoslav and Serbian military and police personnel will be allowed to return to Kosovo in order to carry out their duties in accordance with Annex 2'. In paragraph 11, which explains the main responsibilities of civilian presence, it is stated in section (a): **'**the promotion of the establishment, until the final solution, of essential autonomy and self-government in Kosovo, taking fully into account Annex 2 and Rambouillet agreements (S/1999/648)'; in section (e): 'Facilitating a political process aimed at defining the future status of Kosovo, taking into account the Rambouillet Agreements (S/1999/648)'[1].

In Annex 1 it is further clarified: 'The political process towards establishing an agreement on a provisional political framework that will provide essential self-government in Kosovo, taking fully into account Rambouillet agreements and the principles of the sovereignty and territorial integrity of the FR Yugoslavia and of other countries in the region'. Annex 2 further elaborates: 'After withdrawal, the agreed number of Yugoslav and Serbian personnel will be allowed to return and perform the following functions: the relationship with the international civil mission and the international security presence; marking/cleaning of minefields; maintaining presence in the places of Serbian cultural heritage; maintaining presence at the main border crossings'[2].

Bearing in mind that the Agreement of Rambouillet (S/1999/648) is mentioned in two places in paragraph 11 of Resolution 1244 (1999) of the UN Security Council, it is important to recall that this Agreement was never signed by the delegation of the FR Yugoslavia and the Republic of Serbia, nor by the Special Representative of the President of the Russian Federation – Ambassador Boris Maiorski, and thus could not enter into force and produce legal consequences. At the same time, it can be concluded that representatives of two delegations, with the mediation of the 'Troika' (Christopher Hill, Boris Maiorski, Wolfgang Petritsch), achieved a great level of consensus on the issues outlined in Chapters 1 to 6, but not in the controversial chapters 7-8 that posed an obstacle to the signing of the peace agreement. Thus, when the Rambouillet Agreement is mentioned in Resolution 1244 (1999), this can only apply to Chapters 1 to 6.

Resolution 1244 also establishes the UNMIK (United Nations Interim Administration Mission in Kosovo) tasked with providing conditions for a peaceful and normal life for all Kosovo residents and promoting regional stability in the Western Balkans. According to Resolution 1244, the UNMIK's duties are: reform of basic civil administrative functions; promoting the establishment of substantial autonomy and the rule of Kosovo; enabling a political process to determine the future status of Kosovo; coordinating the delivery of humanitarian aid to all international agencies; support for reconstruction of the main infrastructure; maintaining law and order; promotion of human rights; and ensuring the safe and undisturbed return of all refugees and displaced persons to their homes in Kosovo.

However, it turns out that all these processes are less important than the Issue of status. Although the UNMIK was doing its job relatively well, and the Kosovo Albanian self-governing institutions began to be established, the key aspiration of Albanian political representatives in Kosovo, as well as of the USA and the

[1] United Nations Security Council. Resolution 1244 (1999). 10 June 1999.
[2] Ibid.

EU, is reflected in the continuing insistence on urgent resolving of the Issue of status, that is, legalization of secession from Serbia. That is why, in the second half of 2006, negotiations were organized again between Belgrade and Prishtina, which became a widely accepted euphemism for meetings between representatives of the Republic of Serbia and Kosovo Albanians, now the authorities of self-government in Prishtina. Martti Ahtisaari was appointed as a Special Representative of the UN Secretary-General for Negotiations, so the later plan was named after him.

In his report on the negotiating process dated March 26, 2007, Ahtisaari informed the UN Secretary General that 'reintegration into Serbia is not a viable option'[1]. Therefore, he put forward a Comprehensive Proposal for the Kosovo Status Settlement (called the Ahtisaari Plan). Further in the paper it will be clarified why the leadership of the Republic of Serbia refused to sign the Ahtisaari Plan. Kosovo Albanians accepted this plan and it even represents the highest legal act of the so-called 'Republic of Kosovo'. Analyzing the internal structure of the complicated system of ovelapping authorities, it is difficult to precisely define what Kosovo is today. Perhaps the best description could be given using Brezhnev's 'limited sovereignty' formulation. Although the Constitution of the so-called Republic of Kosovo, in its Article 1, paragraph 1, defines that 'the Republic of Kosovo is an independent, sovereign, democratic, unified and indivisible state', essentially this does not mean anything, since whenever the decisions of the Constitution or any other legal acts of Kosovo are not in accordance with the Comprehensive Proposal, the latter has priority.

Annex IX – International Civilian Representative, in Article 2, lists the responsibilities of an international civilian representative: 'a) be the final authority in Kosovo regarding interpretation of the civilian aspects of this Settlement; b) ensure effective implementation of this Settlement through the execution of specific tasks accorded to the ICR in other parts of this Settlement; c) take corrective measures to remedy, as necessary, any actions taken by the Kosovo authorities /.../; d) in cases of serious or repeated failures to comply with the letter or spirit of this Settlement /.../ the ICR shall have the authority to sanction or remove from office any public official or take other measures, as necessary, to ensure full respect of this Settlement and its implementation'[2]. Annex XI explains the position of the International Military Presence (IMP), for which NATO is in charge. In paragraph 1.8. it is established that 'the IMP will operate under the authority and be subject to the direction and political control of the North Atlantic Council through the NATO Chain of Command', and in paragraph 2.1. it is explained that 'the Head of the IMP is the final authority in theatre regarding interpretation of those aspects of the Settlement that refer to the IMP'[3].

The IMP in Kosovo has the right 'to carry out its responsibilities as it deems appropriate, including the use of all necessary force', has the right to 'unimpeded freedom of movement throughout Kosovo, by any means', can 're-establish immediate and full military control of the airspace', has the right to 'conduct inspections of premises and facilities in connection with the fulfilment of its tasks', and has the right to 'take action as it deams appropriate in support of its mandate in accordance with this Settlement'[4]. According to all of this and in compliance with paragraph 2.3, Kosovo 'shall grant the IMP the status, privilegies and immunities curretly provided to KFOR'[5].

In the essence, the Ahtisaari plan was a road map for the transition of Kosovo from the territory under the UNMIK's administration to an independent state. The plan does not mention Resolution 1244 at all because the Comprehensive Proposal was intended to replace Resolution 1244. This was supposed to legalize the secession of Kosovo Albanians, though still leaving them 'supervised'.

However, the question that arises before all these explanations is related to Ahtisaari's assessment that reintegration into Serbia is not a *viable option*. Who authorized Ahtisaari to make this assessment? On what basis did he formulate such a conclusion? What methodology did he use to make such an assessment? Ahtisaari's arbitrary interpretation of the then-current circumstances became the basis for writing a new political framework that was supposed to replace the UN Security Council Resolution.

Declaration of Independence, Advisory Opinion from the International Court of Justice, and the Status of Kosovo in International Relations

Kosovo Albanians declared independence on February 17, 2008. They did so without organizing a referendum, even without a formal vote in the Kosovo Assembly. Simply, all Albanian members of the Kosovo Assembly signed below the text of the Declaration of Independence, which was proclaimed a sufficient legal basis. They did this because Resolution 1244 was still valid, and the UNMIK had executive powers, and it was obliged to prevent the referendum and annul the vote in the Assembly. The declaration of independence was immediately followed by recognition of the 'Republic of Kosovo' by numerous members of the UN, which 'created a new reality'.

[1] United Nations Security Council. Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council.

[2] Comprehensive Proposal for the Kosovo Status Settlement. 2007. 2 February. 58 p. Available at: http://old.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf

[3] Ibid.

[4] Ibid.

[5] Ibid.

The establishment of the 'new reality' was again based on creative interpretation. Two weeks before the formal declaration of independence by Albanians, the EU, focusing its efforts on the implementation of the Ahtisaari Plan, decided that instead of the UNMIK, a new international EU mission – EULEX – would take over most of the responsibilities in Kosovo in the areas of internal affairs and justice.

In its document titled Council joint action 2008/124/CFSP dated February 4, 2008, which concerned the establishment of the EULEX and its deployment in Kosovo, the EU Council referred in Item (1) to Article 19 of Resolution 1244, which 'decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise', and in Item (3) – to Article 17 of Resolution 1244, where the UN Security Council 'welcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region', which should have been a sufficient legal basis for the EU to unilaterally deploy its mission in Kosovo, without Serbia's consent and without seeking any interpretation of the Resolution by the UN Security Council[1]. In paragraph 5 of his Report to the Security Council on the situation in Kosovo, under the official number S/2008/211, dated March 28, 2008, the UN Secretary-General stated that he had received a letter from Javier Solana, the EU High Representative for Foreign Affairs and Security Policy, informing him 'that the EU has decided to establish a rule of law mission within the framework established by UN Security Council Resolution 1244', thereby tacitly accepting the new factual situation in Kosovo, according to which the responsibility for the work of the international civilian mission is assumed by the EU instead of the UN[2]. However, in paragraph (1), the EU Council also referred to Article 10 of Resolution 1244, quoting that the UN Security Council 'authorizes the Secretary-General to establish, with the assistance of appropriate international organizations, an international civilian presence in Kosovo...' – thus ending the quote. Meanwhile, Article 10 of the Resolution continues with the words '...in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic selfgoverning institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo'. The EU's activity (the formation of the EULEX mission) could only have been carried out to ensure substantial autonomy for the inhabitants of Kosovo (i.e., Kosovo Albanians) within the Federal Republic of Yugoslavia (i.e., Serbia) and the UN Secretary-General could have given his consent to this. In this case, the creative interpretation is based on a gross falsification, or rather, 'cutting out' of part of the Resolution.

However, 'the process of recognizing the so-called Republic of Kosovo and the establishment of bilateral diplomatic relations between the official Prishtina and the UN member states that have decided to take such a step, has drawn an interesting picture of influence on the geographical map of the world. It turned out that the diplomatic-political influence of Western countries led by the United States is reduced to a very limited number of UN member states and geographically concentrated in several regions of the world' [11, p. 309].

From the day of unilateral declaration of independence on February 17, 2008 until December 31, 2008, the so-called 'Republic of Kosovo' was recognized by a total of 54 members of the UN. 'Among these 54 UN members, there are 12 micro countries, small island states or states that have modest or no diplomatic capacities, which mainly make them objects of international relations: Monaco, Liechtenstein, Marshall Islands, Nauru, Burkina Faso, San Marino, Sierra Leone, Belize, Samoa, Liberia, Micronesia and Costa Rica (Costa Rica is classified in this category, although this is a debatable point; Luxembourg and Malta would certainly belong to this category, but due to Malta's membership in the EU, and Luxemourg's membership in the EU and NATO, their diplomatic capacity and political position are significantly different). Another country representing a specific example is Afghanistan, which was *de facto* under the complete military occupation of NATO. Of the remaining 40 countries, only 11 were not members of NATO or the EU at the time they made the decision to recognize Kosovo, although 4 of these 11 – Albania, FYR Macedonia, Montenegro, and Croatia – had a series of legal and formal arrangements with the EU and NATO and expressed a clear political aspiration for joining both. Thus, excluding countries that, in essence, represent predominantly or exclusively objects of international relations and states that are members of the EU and NATO or strive to become full members of these two international organizations, the Western bloc has succeeded in gaining support from only 8 countries in the world with significant political, economic, geopolitical or military capacity, namely: Australia, Peru, Korea, Colombia, UAE, Malaysia, Senegal, and Japan' [11, Pp. 309–310].

[1] European Union. Council Joint Action 2008/124/CFSP. *Official Journal of the European Union*, L42, 16 February 2008.

[2] United Nations Security Council. Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/211. 28 March 2008.

In order to better describe how modest this result is and to demonstrate that it represents a complete failure of the Western countries, it should be noted that the process of lobbying started in the summer of 2007, so that was the result of a one and a half year of joint work of: USA, Great Britain, France, Germany, and Turkey. 'The new wave of recognition of the so-called Republic of Kosovo comes only after Saudi Arabia recognized it and subsequently started to be actively involved in the process of lobbying among Muslim countries. This example has shown that Western countries are no longer diplomatically dominant, and that if they want support for their decisions from the majority of countries, they have to pact with other regional players in the world. The entry of Saudi Arabia into this diplomatic game was such a significant contribution that by 2011, the number of countries that recognized the unilaterally declared independence of Kosovo Albanians climbed to 76, although among the states that did so, there are two bizarre cases' – Somaliland and Puntland, which have declared their independence from Somalia in one-sided manner, like Kosovo Albanians [11, p. 311].

Up to 2012, the process of establishing diplomatic relations with Prishtina was continued by other states, but two things were visible. Firstly, the pressure of the United States and other interested actors to do so was decreasing. Worried about other, more important issues, official Washington started to pay less attention to the 'Kosovo case'. Secondly, Kosovo Albanians often 'celebrated' recognitions and duly recorded them in their 'list' although they were officially not coming. At one point, in 2015, on the internet page that shows record of countries that have recognized independence of Kosovo (*Kosovo Thanks You*), there was a list of 116 countries. The problem is that 'most often the number of states that have recognized Kosovo is stated in accordance with the announcements coming from Prishtina. But it is not a reliable source at all because, according to *Koha Ditore*, the government in Prishtina does not know how many states have recognized them. For example, in 2013, President of São Tomé and Príncipe 'annulled the recognition of Kosovo', but later it turned out that there was actually no recognition at all. The decision to recognize Kosovo was made by the previous government in 2011, but it was never confirmed in the assembly. Therefore, it was not valid. Or, President of Guinea Bissau sent a letter of 'acknowledging' to the then-president of Kosovo, but it is unclear on what basis this decision was made or whether any competent authority confirmed it. We heard the fact that Haiti had recognized independence of Kosovo at a joint press conference of foreign affairs ministers in 2012, but an official decision on this cannot be found. By December 2018, even the authorities in Prishtina began to produce more moderate assessments and 'data', claiming that they were 'surely acknowledged' by 102 countries. And this should be taken with great hesitations too, bearing in mind, for example, that the deputy foreign minister of Egypt, during his visit to Belgrade, stated that in Cairo they 'could not find a decision to establish bilateral relations with Pristina, and that is why it is questionable how can they annul it' [12, Pp. 151-152].

Hence 'Republic of Kosovo' was recognized by 90-100 UN members, thus changing political circumstances. Serbia turned to the UN General Assembly with a resolution asking advisory opinion from the International Court of Justice concerning the question: 'Is the unilateral declaration of independence of Kosovo's provisional institutions of self-government consistent with international law?'[1].

On 22 July 2010, the Court decided: 'As general international law does not contain an applicable ban on the declaration of independence, the Declaration of Independence of 17 February 2008 does not violate general international law' and 'this Declaration of Independence does not violate Security Council Resolution 1244 (1999) nor does it violate the Constitutional Framework prescribed by the Special Representative of the UN Secretary-General'[2] [2]. For Kosovo Albanians, this advisory opinion has become the most important argument that their decision is not contrary to international law, and that is why the case of Kosovo is *sui generis*. However, Hans Köchler gave a thorough analysis of the decision and reasoning provided by the International Court of Justice: 'Security Council resolution 1244, adopted in 1999 on the basis of Chapter VII of the UN Charter, was used by interested parties to 'legalize', *post festum,* the results of an intrinsically illegal act, namely an aggressive war against a sovereign member state of the United Nations. Similar to the Chapter VII resolution adopted after the illegal use of force against Iraq in 2003, the Council arrogated to itself the right to effectively create a new constitutional order – putting itself above the law and overstretching its coercive powers under the collective security provisions of Chapter VII. The setting up of the United Nations Interim Administration in Kosovo (UNMIK), provided for in this resolution, meant a kind of trusteeship régime by the UN that was intended to facilitate a

[1] United Nations General Assembly. 77-6-74 A/63/L.2 - Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law A/RES/63/2 Plen. 52 (b) A/63/PV.19 General AssemblyGA/10764. 08 October 2008; United Nations. Backing request by Serbia, General Assembly decides to seek International Court of Justice ruling on legality of Kosovo's independence. 10 August 2008. Available at: https://press.un.org/en/2008/ga10764.doc.htm.

[2] International Court of Justice. Accordance with international law of the unilateral declaration of independence in respect of Kosovo. Advisory opinion of 22 July 2010

domestic 'political process designed to determine Kosovo's future status' (Art. 11[e]). It is to be recalled that both, the so-called 'Rambouillet Accords' (never signed by the FRY) and resolution 1244 (1999), repeatedly affirmed a commitment to the 'sovereignty and territorial integrity of the Federal Republic of Yugoslavia', and that the 'interim administration', established by the Security Council, was meant to assist the people of Kosovo so that it 'can enjoy substantial autonomy [sic!] within the Federal Republic of Yugoslavia' [6, p. 130]. 'The Advisory Opinion of the International Court of Justice (ICJ) of 22 July 2010 does nothing to clarify the situation in legal terms. In essential points, it is evasive, and in some basic issues it borders on mere sophistry: Stating that the question whether the declaration of independence of Kosovo violates international law does not require it to take a position on whether international law 'generally confers an entitlement on entities situated within a State unilaterally to break away from it', the Court avoids to address the basic legal issue. It further declares that the 'authors' of the declaration were not the members of the 'Assembly of Kosovo' as part of the UN-established 'Constitutional Framework', but those very members acting in some other, undefined capacity, not bound by the constitutional provisions promulgated on the basis of the mandate of UNMIK. For that reason, so the ICJ argues, they could not, with their Declaration, violate the Constitutional Framework established by resolution 1244 – which included the principle of sovereignty and territorial integrity of the FRY/Serbia. This argument makes the Advisory Opinion *irrelevant* (in terms of the material question of international law) and amounts to plain sophistry – as, in actual fact, those 'authors' were the members of that very 'Assembly' (Parliament), acting in the framework established by and under the control of the United Nations. This is also evident in the fact that the Declaration was signed by the Speaker of the 'Assembly', Jakup Krasniqi, as well as by Prime Minister Hashim Thaci' [6, Pp. 131–132].

In addition, it should be recalled that the advisory opinion is of non-binding character, just as it should be remembered that, even after this opinion was published, Resolution 1244 remained valid, that the UNMIK still exists, and that about a half of the members of the UN did not establish bilateral relations with Prishtina, nor do they recognize 'Republic of Kosovo'. Thus, despite the conscious disregard of the UN Security Council Resolution, which can be assessed as its creative interpretation, despite the 'equilibristic act' of the International Court of Justice, which is another way to creatively interpret the legal heritage, despite strong political pressure from the US and the activities of the EU – the status of Kosovo remains unresolved, that is the unilaterally declared independence is not recognized by the overwhelming majority of non-Western actors in international relations.

Conclusion: Different History, the Same Story

The history of Kosovo is unique. Numerous events have affected the escalation of the Kosovo crisis, its internationalization, and finally the proclamation by Kosovo Albanians of the Declaration of Independence. It is in the interest of the United States and the Western countries to constantly repeat that Kosovo is 'a unique case'. It is also in their interest to repeat this in order to preserve the influence in the Balkan region.

But in practice, what seems to represent a unique case is the result of creative interpretation of international law precisely by the U.S. and the EU. Instead of abiding by the resolutions of the UN Security Council, based on the UN Charter, they constantly interpreted certain parts of various documents as they saw fit, exerted political pressure in order to implement some new solutions, or even grossly falsified certain provisions of the relevant documents. Such practice neither brought a solution for Kosovo, for the Balkans, nor did it prove successful for international relations in general.

The decision to recognize the right of Kosovo Albanians to self-determination led to the opening of the question, first in the regional context, and then in a much broader scope, extending to the international scale, whether such a right must also be recognized if some other people declare themselves in such a way. For if it is widely accepted that Kosovo Albanians have the right to self-determination, why is not the same right recognized, for example, for Serbs in Bosnia or Albanians in FYR Macedonia? If changing internationally recognized borders, in the way it has been done in the case of Serbia, is legitimate, why is this not the case with other countries in the region? This Issue is highly topical across the European continent: in Crimea, in Kurdistan, Catalonia; and the first situation after the 'Kosovo solution' where this Issue came to the foreground occurred only a few months from the Kosovo events – in South Ossetia and Abkhazia.

The inconsistent position of Western countries, led by the United States, in relation to the application of international law norms, as well as their inconsistency reflected in the periodic relying on the UN in the 'attempts' to resolve the Kosovo problem, confirm their intention of weakening and taking control over this international organization. And unfortunately, it opens the door for any case of separatism in the future to be considered a unique case if that suits the interests of the great powers. This is a challenge for international order and global security. However, as Hans Köchler underlines, in the era of the United Nations Organization, a set of illegal acts must never constitute a legal precedent. The right of self-determination – as a collective human right under Article 1 of the International Covenant on Civil and Political Rights, and as the Purpose of the United Nations – must be exercised in conformity with other basic norms of international law. In this context, the attempt undertaken by Kosovo Albanians is not a unique case, and creative interpretations of international law are not helpful since they do not solve existing problems, but make them more complicated.

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