

# Moscow Journal of International Law №4 (92), October - December 2013

## Theoretical issues

**Boris I. Nefedov** The Ratio of Legal Systems in the Theory and Practice of the Regulation of Social Relations in Modern Russia. Part 2 (p. 4-20)

*Boris I. Nefedov - Doctor of Law, assistant professor; Vice Provost for Research of the Omsk Academy of Law.*

**Summary:** The emergence in the late 50's and early 60's of the previous century of the new practice of the adoption by the USSR so-called "self-executing" treaties and of new definitions of the Soviet legislation about the superiority of the International treaties over national law, required critical rethinking of prevailing perceptions in our country of the "traditional" doctrine of the ratio of international and domestic law. Forms of interaction of legal systems in the regulation of social relations, in particular in our country, were much more diverse than previously thought to be. The realization of what had happened did not come immediately, and not to everyone. There was a group of Soviet scientists, who tried to "squeeze" a new situation within the framework of the Soviet concept of the relation of legal systems, and put forward a theory of "transformation" of international treaties into domestic law rules, unreasonably blaming those, who thought it possible the direct application of international law as a regulator of social relations in our country in monism. At the same time the number of "new" theories of the ratio of international and domestic law dramatically increases, both in Russia and abroad. In fact, almost all of them are not theories of relationships within the legal systems of law as such, but a reflection of an existing real or formally proclaimed by the private practice of different countries to implement the provisions of international law.

**Keywords:** forms of interaction of legal systems; the theory of "transformation"; the radical monism; the radical dualism; the moderate dualism; the moderate monism; the discreet dualism; the dialectical dualism; the consistent dualism; the realistic dualism; the objective dualism; the dialectical concept of the theory of "coordination".

## Human Rights

*Aslan Kh. Abashidze, Alexandra E. Koneva* Strengthening the Human Rights Treaty Body System (p. 21 - 37)

*Aslan H. Abashidze – Doctor of Law, professor, Vice-Chairperson of the United Nations Committee on Economic, Social and Cultural Rights, Head of the Department of International Law, Peoples' Friendship University of Russia.*

*Alexandra E. Koneva – Master Degree in Human Rights and Democratization, European Inter-University Centre for Human Rights and Democratization (EIUC) (Venice, Italy); Ph.D. student of the Chair of International Law, Peoples' Friendship University of Russia.*

**Summary:** The human rights treaty bodies are international organs controlling the implementation of core international human rights treaties by States. The human rights treaty bodies, which now number ten, have developed into a system. Various initiatives to enhance this system so that it can meet its objectives most effectively are considered in this article. Special attention is given to the process initiated by the UN High Commissioner for Human Rights in 2009 and the report on its results prepared in June 2012 as well as the open-ended intergovernmental process launched in frames of the UN General Assembly in February 2012 and extended until the first half of February 2014. The article provides a detailed analysis of the major aspects of the report on the intergovernmental process and the draft resolution presented by the co-facilitators of the process.

**Keywords:** human rights; UN; core international human rights treaties; strengthening the human rights treaty body system; intergovernmental process.

*Dmitriy V. Ivanov* International Protection of the Rights of Forced Migrants in Judgments of the European Court of Human Rights. Part I (p. 38-55)

*Dmitriy V. Ivanov - Ph.D. in Law, professor of the International law department, MGIMO-University MFA Russia. E-mail - prof.ivanovdv@gmail.com.*

**Summary:** The article highlights the role of the European Court of Human Rights in international protection of the rights of migrants and expands on the practice of the Court regarding various rights and freedoms granted by the European convention on human rights and its Protocols (1950). In the first part of the article a specific attention is drawn to the ECHR

practice of considering cases of deportation and extradition, including those concerning the Russian Federation.

**Keywords:** human rights; European Court of Human Rights; European convention on human rights; rights of migrants; deportation; extradition.

### **Law of International Security**

***Maria V. Keshner*** The Supremacy of Law and Application of International Sanctions (p. 56-69)

*Maria V. Keshner – Ph.D. in Law, associate professor of the Department of International and European Law at the Kazan (Volga region) Federal University. E-mail - mvkeshner@gmail.com.*

**Summary:** Compliance with the legitimacy is fundamental to ensure sustainable international legal order, which to a large extent dependent on the total understanding of when use of coercive measures is legitimate. The article examines the rule of law in the application of international sanctions. Analyzes the problem of the legitimacy of international sanctions, determines its relationship with compliance issues sanction authority. The sanctions competence of other international organizations shall strictly comply with the Charter of the United Nations, and in their implementation, they are not allowed to exceed the sanctions stemming from the charter authority. This provision is essential to the legitimacy of the use of sanctions by other international organizations. The article substantiates the basic criteria of legitimacy of international sanctions, which is necessary to take into account when making the UN Security Council decision to impose international sanctions.

**Keywords:** international sanctions; legitimacy of international sanctions; criteria of legitimacy; competence of sanctions; the UN Security Council.

### **International Humanitarian Law**

***Konstantin P. Savryga*** International Responsibility of Hiring State for Illegal Conduct of Private Military and Security Companies (p. 70-88)

*Konstantin P. Savryga – savryga.konstantin@gmail.com.*

**Summary:** States hire private military and security companies for in armed conflict and occupation to fulfill some function that used to be a core military. Like a military personnel, personnel of private military and security companies can violate or act incompatibly with international humanitarian and human rights law. Relying on the Draft articles on state responsibility and decision of international tribunals author consider the question of hiring state responsibility. Author chooses four articles as most potential troubleshooting position in question. It concludes that state cannot evade responsibility by using PMSC instead of its military or special forces. Even if action of PMSC falls outside of the ASR state may be held responsible due to fault to exercise its due diligence obligation.

**Keywords:** private military and security companies; state responsibility; articles on state responsibility; due diligence.

### **International Law of the Sea**

*Alexandr N. Nikolaev, Ekaterina L. Sokolova* Legal status of the Gulf of Fonseca (Analyzing the Documents of the International Court of Justice) (p. 89- 97)

*Alexandr N. Nikolaev – Doctor of Laws, professor, Russian academy of sciences. E-mail - sopspravo@mail.ru.*

*Ekaterina L. Sokolova – jurisconsult, post-graduate of the Chair of International law, MGIMO-University MFA Russia. E-mail -ekaterina.sokolowa@gmail.com.*

**Summary:** The article focuses on the legal status of the Gulf of Fonseca, which coasts are the territories of the three coastal states: Nicaragua, El Salvador and Honduras. The above-mentioned legal status is depicted in detail in the Judgment of International Court of Justice, 1992. The article examines how international law concerning historic waters is interpreted by the International Court of Justice.

**Keywords:** historic waters; historic bay; Gulf of Fonseca; International Court of Justice; Land, Island and Maritime Frontier Dispute, 1992.

### **International Space Law**

*Olga A. Volynskaya* Dispute Settlement in the Conditions of Space Commercialization (p. 98 - 109)

*Olga A. Volynskaya – Chief International Law Counsel of the International Cooperation and Contractual Department, Federal Space Agency (Roscosmos). E-mail - o.a.volynskaya@roscosmos.org.*

**Summary:** Commercialization of space activities is the main tendency of development of the world cosmonautics. With the growth of a global space market the interests of the private space sector come to the fore, which increases significantly a possibility of conflicts among all space actors: states, international organizations and commercial companies. Current nonbinding dispute resolution mechanisms, first of all diplomatic settlement, are not sufficient any longer to ensure safety, security and stability of space operations. This article analyses general and specific methods of settlement of disputes arising from the exploration and use of outer space, as well as prospects of enhancing the existing dispute resolution mechanisms in International Space Law.

**Keywords:** dispute settlement; space activities; commercialization; international space law.

### **International Economic Law**

*Amina A. Nagieva, Anastasia V. Kolesnikova* Regional Level of Legal Regulation of Relations of the Russian Federation in the Field of Telecommunications (p. 110-119)

*Amina A. Nagieva – Ph.D. in law, senior lecturer at the Chair of International Law, MGIMO-University MFA Russia. E-mail - ilc48@mail.ru.*

*Anastasia V. Kolesnikova – post-graduate student of the Chair of International Law, MGIMO-University MFA Russia. E-mail - asya28@list.ru.*

**Summary:** Regional instruments of the international law regulation of interstate relations in the field of communication are considered. The article shows the successful legal practice of the Regional Commonwealth in the field of communication within the framework of universal cooperation.

**Keywords:** International Telecommunication Union; Radio Regulations; Regional Commonwealth in the field of communication. Regional Agreements in the field of telecommunication.

**Roman A. Shepenko** International Regulation of Anti-dumping (p. 120 - 131)

*Roman A. Shepenko – Doctor of Laws, professor, professor of the Chair of Administrative and Finance Law, MGIMO-University MFA Russia. E-mail - kaifp@mgimo.ru*

**Summary:** The history of the anti-dumping regulation formed by two closely interrelated components: national and international. Antidumping regulation was born on a national basis. The uniform rules consist of article VI of GATT and special international agreements, commonly referred to anti-dumping

codes. Following the adoption and changes of the uniform rules new provisions and changes in anti-dumping laws are adopted. The law of the United States notably stands out by its influence on the uniform rules, and specific approaches to resolving many issues. In the given article an attempt to discover the issues of development of international component of the antidumping regulation is made.

**Keywords:** anti-dumping legislation; GATT; grandfather clause; plurilateral agreements; WTO.

### **Domestic and International Law**

**Ludmila S. Baleevskikh** Constitutional and Legal Fundamentals of International Commercial Arbitration in Foreign Countries (p. 132 - 151)

*Ludmila S. Baleevskikh – post-graduate of the Chair of private international and civil law, MGIMO-University MFA Russia. E-mail - ludmila.baleevskikh@gmail.com.*

**Summary:** In the present article the texts of constitutions of various states are analyzed in terms of references to international commercial arbitration therein. Such analysis allows us to see the legislator's attitude to the arbitration proceedings, which is in direct correlation with the tendencies of development of the international commercial arbitration institution in such country also allowing determining certain regular patterns in its overall development.

**Keywords:** International commercial arbitration; arbitral tribunal; arbitration proceeding; Constitution.

### **European Law**

**Tatyana A. Antsupova** Current Problems of Membership and Development of the Institutional Structure of the Council of Europe (p. 152 - 169)

*Tatyana A. Antsupova – Ph.D. in Law, assistant professor, leading researcher of the National University “Odessa Law Academy”. E-mail - antsupova.t@gmail.com.*

**Summary:** The article indicated by the problems of the International Procedural Law paradigm; provided the author’s concept of a broad understanding of the Council of Europe procedural law. The place of the constituent process as a kind of legal process of the Council of Europe was defined. It was identified the basic steps of the constituent process: 1) confer powers on the Council of Europe by States according to the constituent treaty 2) formation of the system of Statutory bodies and specialized agencies, preparation and distribution of the budget, and 3) the reform of the institutional system and maintain its viability and effectiveness.

**Keywords:** international procedural law; Council of Europe procedural law; the constituent process; membership in the Council of Europe; reform of the institutional system.

### **Voices of the Young**

**Artur S. Gulasarian** The Responsibility of International Organizations (p. 170 - 178)

*Artur S. Gulasarian – post-graduate student of the Chair of International Law, the Kutafin O.E. Moscow State Law Academy (MSAL).*

**Summary:** Due to the recognition of the possibility to impose international legal responsibility on international organizations, the issue of legal means of settling disputes involving international organizations as parties to them is of particular interest. In circumstances where the International Court of Justice (ICJ) has no contentious jurisdiction under its Statute over the cases involving international organizations the special emphasis should be placed on such an instrument of international dispute settlement as international arbitration. To that end the article seeks to illustrate the very important role that the Permanent Court of Arbitration (PCA) as a universal arbitral tribunal may play in matters relating to the implementation of the responsibility of international organizations.

**Keywords:** international organization; international legal responsibility; Permanent Court of Arbitration; implementation of responsibility.

***Mangal Bismillah*** The Concept of “Humanitarian Intervention” and the Sovereignty of the States (p. 179 – 191)

*Mangal Bismillah* – post-graduate student of the Chair of International Law, MGIMO-University MFA Russia. E-mail – [angalafg@yahoo.com](mailto:angalafg@yahoo.com).

**Summary:** The article is devoted to the concept of “humanitarian intervention” and the sovereignty of the states. The overall conclusion is that basic principles of international law must be respected. From this perspective, the use of humanitarian intervention in the western interpretation (intervention in Livia and Iraq) is not compatible with the purposes and principles of the UN Charter.

**Keywords:** the concept of “humanitarian intervention”; sovereignty of states; principles of international law.

### **Book Shell**

***Yuri N. Maleev*** Interdisciplinary research by Russian and Foreign Scientists (Review of the book “Environmental Security in the Arctic Ocean” / ed. by P.A. Berkman and A.N. Vylegzhanin) (p. 191 - 196)

***Alexander A. Ostroumov*** Review of the book: Y.S. Romashev “Anti-pirate campaign and struggle with armed robbery on the seas (legal basis and practice)” (p. 197 - 2001)

### **Anniversary**

Jubilee of Professor Alexander N. Vylegzhanin (p. 202- 2004)