

# Moscow Journal of International Law №1 (93), January-March 2014

## 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 3 (p. 4-23)

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

**Summary:** In the regulation of domestic and cross-border public relations in the Russian Federation, international law can not only participate, but also have an advantage and in some sense supremacy over national law. But we are not talking about the hierarchical subordination of rules of law in a single legal framework in the form in which it exists in national law (the national legal system), but of the priority (supremacy) of rules of one (international) legal system over the rules of national legal system. The very establishment of such a priority (and in this sense of the supremacy) is possible only if these legal systems are regarded as independent legal phenomena. Together with the rules of Russian law, they constitute not the legal system of Russia, the only normative component of which is the law of our government, but the sum of a different order – a set of officially recognized and active in our country legal rules, the content of which is directly dependent on the will of our state. A third set of rules may also be distinguished – the whole of implemented in our state rules of law – which includes all the legal rules that can act as a regulator of social relations in Russia, including the relevant norms of foreign law.

**Keywords:** the relation of legal systems; the supremacy of international law; the whole of implemented in the state rules of law.

**Tatiana S. Kivalova, Timur R. Korotkii, Natalia V. Hendel** Current State of Research in International Law in Ukraine. Part I (p. 24-43)

*Tatiana S. Kivalova – Doctor of Laws, professor, head of the Chair of International and Comparative law of the International Humanitarian University (Odessa)*

*Timur R. Korotkii – Ph.D. in law, assistant professor, assistant professor of the Chair of International law and International Relations; doctoral student of the National University “Odessa Law Academy”.*

*Natalia V. Hendel – senior lecturer of the Chair of Humanitarian disciplines of the International Humanitarian University (Odessa).*

**Summary:** The article analyzes the development of the studies of International law in Ukraine from 1991 to 2012. Apart from considering the dissertations defended at home, the works of Ukrainian scientists defended abroad are also considered as well as the main publications in the field. The analysis follows the general lines of classic fields of International law.

**Keywords:** International law; scientific research; fields of international law; Ukraine.

### **Human Rights**

*Dmitriy V. Ivanov* International Protection of the Rights of Forced Migrants in Judgments of the European Court of Human Rights. Part II (p. 44-61)

*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). The present article continues the overall scientific research of aspects of international protection of forced migrants in the practice of the European Court of Human Rights.

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

*Alexander N. Vylegzhanin, Alisa V. Babina* Preferential Rights of Local Inhabitants of the North: International Legal Grounds and legislative Experience of Arctic States (p. 62 – 81)

*Alexander N. Vylegzhanin – Doctor of Law, Professor, Member of the Presidium of the Expert Board on Arctic and Antarctic of the Council of Federation (Upper Chamber of the Russian Parliament).*

*Alisa V. Babina – Master in Law, postgraduate student of the Chair of International Law, MGIMO-University MFA Russia. E-mail - ilc48@mail.ru.*

**Summary:** The article argues that, based on relevant international law, a balanced and promising legal policy of Russia and other Arctic states would be to specify such rights with regard to general status and social and economic situation of all local inhabitants of Arctic states. It is counterproductive to continue to elaborate isolated legislative provisions on exclusive preferential rights of only indigenous peoples of the North.

**Keywords:** indigenous peoples; aboriginal peoples; coastal communities; preferential rights; international legal protection; USA; Canada; Greenland; Norway; comparative law studies.

### **Law of International Treaties**

*Natalia S. Simonova* An International Verification Institute as an Element of the Mechanism of Ensuring for Meeting Commitments under International Treaties (p. 82-102)

*Natalia S. Simonova – Ph.D. in law, assistant professor, professor of the East-Siberian Institute of the Ministry of Interior (Irkutsk); Seeker of Doctoral degree in the Moscow University of the Ministry of Interior; Member of the International Law Association (Russian branch). E-mail - nns@mail.ru.*

**Summary:** The article deals with the explanation of an international verification's nature as a specific type of international legal relationship. An author critically analyses domestic and foreign doctrines as well as the international treaties' practice concerning the issues of international verification. An international verification institute is quite well-searched in the international law science. But the article author considers that traditional approaches to analysis of the international verification essence (investigation of subjects, matters and aims) are not sufficient. Practical value of this article flows from the new vision of the international verification as a specific international legal relationship. The legal matter, subjects and substance of the international verification are suggested to be searched in the article.

**Keywords:** international treaty; international verification; meeting commitments under international treaties; means to ensure for meeting commitments under international treaties; mechanism of ensuring for meeting commitments under international treaties.

### **International Environmental Law**

*Mikhail N. Kopylov, Stanislav M. Kopylov, Valeria A. Mishlanova* International Environmental Law is 175 Years Old (p. 103-121)

*Mikhail N. Kopylov – Doctor of Laws, professor, professor of the department of international law of the Russian Peoples’ Friendship University; academician of the Russian Academy of Natural Sciences, Russian Ecological Academy and International academy of sciences of ecology and life safety. E-mail - mikhail.kopylov11@gmail.com.*

*Stanislav M. Kopylov – Ph.D. in law, associate professor of the department of international law of the Russian Peoples’ Friendship University. E-mail - ksmfles@gmail.com.*

*Valeria A. Mishlanova – undergraduate student of the faculty of law, Russian Peoples’ Friendship University. E-mail - mishlanova.valeria@gmail.com.*

**Summary:** The article deals with the history and trends of development of the international environmental law in connection with its 175th anniversary, which is celebrated on August 2, 2014. It discusses the basic principles and approaches used by international lawyers to highlight in the history of the international environmental law, its main stages and eras. The major events and documents that shaped the development of the main ways of international environmental law at every stage of its development are analyzed in detail. The question is asked, whether “the era of Rio” is coming to its sunset at the end of XX century, and whether a new so called “energy/climate era” is emerging in its place. The basic disadvantages that accompany the process of progressive development and codification of the international environmental law, as well as its special principles, are identified and options and solutions are provided.

**Keywords:** international environmental law; periodization of history; “Stockholm era”; UNEP; “Energy/Climate Era”.

## International Space Law

*Yuri N. Maleev, Akhmat.V. Zakirov* Defense from the Asteroid-Comet Danger in the Short Term as the Object of International law Regulation (p. 122-133)

*Yuri N. Maleev – Doctor of Laws, professor, professor of the Chair of International law, MGIMO-University MFA Russia.*

*Akhmat V. Zakirov – post-graduate student of the international law department of the Diplomatic Academy MFA of Russia.*

**Summary:** Defense from the asteroid–comet danger has become more and more essential. In the technical aspect (among all and first of all – it is permanent sky monitoring and ensuring timely warning about of asteroid–comet danger) there have been some successes. As to the international law work, the necessity of which is already indisputable, it is just starting. And most active here are the specialists in the technical sphere who are proposing to conclude a due universal treaty and formulating principles to be included into it. International law specialists should urgently engage in this work.

**Keywords:** system of planetary defense; earth–space service of monitoring and warning; use of space vehicles; program of detecting of dangerous objects; international treaty conclusion; Organization for defense from the asteroid–comet danger.

*Olga A. Volynskaya* The Code of Conduct in Outer Space as a New Stage of Development of International Space Law (p. 134-140)

*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:** The dynamic development of modern space activities pursues a primary goal which unifies all spacefaring states – which is stability and long term sustainability of exploration and exploitation of outer space. In order to achieve the set goal the following conditions shall be met: general recognition and acceptability of and compliance by all space activity participants with international norms and principles pertaining to the conduct of space operations within the framework of current agreements, recommendations and initiatives. This approach, as well as the principles of its realization, could be reflected in the draft Code of

Conduct for Outer Space Activities (CoC), an ambitious European project which is positioned as a quintessence of the modern international legal regime of the activities on the exploration and exploitation of outer space.

**Keywords:** Code of Conduct for Outer Space Activities; long-term sustainability; space activities; international space law.

### **International Economic Law**

*Natalia A. Vorontsova* The State and Prospects of the Customs Union of the Republic of Belarus, Republic of Kazakhstan and Russian Federation (p. 141–152)

*Natalia A. Vorontsova – Doctor of Laws, professor of the Chair of International Law, MGIMO-University MFA Russia. E-mail - N.Vorontsova@mail.ru.*

**Summary:** The integration processes in the modern world develop continually: states associate in different economic organizations, they broaden or stay in stagnation. At present the process of new members' accession to the Customs Union and Single Economic Space of the Republic of Belarus, Republic of Kazakhstan and Russian Federation takes place. In this article the author analyzes the legal basis of the Customs Union, offers the model (structure) of a Program on the accession of candidate states to the Customs Union, describes the required measures and examines the conception of “the road map”.

**Keywords:** the Customs Union of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation; Single Economic Space; candidate states to the accession to the Customs Union; Kyrgyz Republic; Armenia; the roadmap; Program of measures on the accession to the Customs Union.

### **Private International and Civil Law**

*Andrei A. Danelyan* Indirect Expropriation in Private International Law (p. 152-167)

*Andrei A. Danelyan – Ph.D. in Law, associate professor, associate Professor of Private International Law of the Diplomatic Academy MFA Russia. E-mail - danell@mail.ru.*

**Summary:** In the modern theory and practice of international investment law on forced removal of foreign ownership, the issue of indirect expropriation remains topical. Despite the

fact that the term “indirect (“creeping”) expropriation” is not legally secured, it is actively used both in the doctrine and arbitration practice. Analysis of judicial practice shows that the courts tend to develop and specify the signs indirect expropriation of foreign property so that eventually they could be fixed in the international regulatory system. International arbitration courts are trying to establish a fair balance between the rights of investors and the rights of the state to regulate.

**Keywords:** nationalization; expropriation; foreign investment; property.

**Anna I. Ivanchak** The Principle of National Treatment as the Basis for the Legal Status of a Foreign Worker (p. 168-195)

*Anna I. Ivanchak – Doctor of Laws, professor; professor of the Chair of International Private and Civil Law, MGIMO-University MFA Russia. E-mail - ivanchak@mail.ru.*

**Summary:** This article investigates the genesis and peculiarities of the principle of national treatment that is used by the host state with respect to foreign citizens in general and foreign workers in particular. The author analyzes the essence of this principle, its role and importance for the assessment of legal status of the above-mentioned persons. The provisions of multilateral international treaties, bilateral agreements and the national legislation concerning the principle of national treatment are compared in the article.

The author draws attention to differences in terminology that is used for designation of this principle at both the national and international levels. It is emphasized that due to the lack of consistent terminology the principle of national treatment should be construed purposefully in order to be applied uniformly. The author proves the principle of national treatment to be systemically important as it guarantees a whole range of rights and duties of a participant of labour relations.

**Keywords:** Legal regime; national treatment; principle of national treatment; legal status; foreign citizen; foreign worker.

**Ilia V. Rachkov** Concept of “Legitimate Expectations” of Foreign Investors in the International Investment Arbitration Practice (p. 196-220)

*Ilia V. Rachkov – Ph.D. in Law, LL.M., lecturer at the Chair of International law, MGIMO-University MFA Russia; attorney at law. E-mail - irachkov@kslaw.com.*

**Summary:** Based on the practice of international investment arbitral tribunals this article outlines the notion of “legitimate expectations of investors”. This notion is not used in bi- and multilateral international investment treaties of Russia. However, as follows from the practice of international investment arbitral tribunals, legitimate expectations of investors constitute an integral part of the standard of fair and equitable treatment of foreign investor by the state hosting foreign investments. Only if a state gives specific representations and warranties to the investor, this creates legitimate expectations of the investor. If the state failed to perform such representations and warranties, it will not meet legitimate expectations of the foreign investor and, therefore, violated its obligation to treat such investor fairly and equitably. This may trigger liability of such state under international law towards the foreign investor, should he file a claim against such state with an international investment arbitral tribunal.

**Keywords:** foreign investments, fair and equitable treatment, international treaties of promotion and protection of foreign investments.

*Nikolai A. Potapov* “Golden parachute” is to Save the Top-Manager? (p. 221-229)

*Nikolai A. Potapov – Ph.D. in law, associate professor of the Chair of International Private and Civil law, MGIMO-University MFA Russia. E-mail - potapovulgu27@yandex.ru.*

**Summary:** “Golden parachute” is a prerogative of the top management of joint stock companies. Such tools are used in large companies; the “Golden parachute” has two functions: protection of the management and protection of the possible seizure of the company (absorption). The article carries out a comparative analysis of “Golden parachutes” abroad and in Russia, considers the question about the payment of these instruments from a practical point of view. The author attempts to consider the “Golden parachutes” as a negative phenomenon, which is used in practice as an instrument of abuse of the right and the way to deal with the redemption of shares under the mandatory offer.

**Keywords:** “Golden parachutes”; “Golden anchor”; hostile takeover; misuse; state corporation; top managers.

**Voices of the Young**

*Alexander A. Ladeyschikov* Regulation of Hazardous Waste Utilization in England and in the European Union (p. 230-240)

*Alexander A. Ladeyschikov – LLM King’s College London. E-mail - alexander.lad2000@gmail.com.*

**Summary:** Due to the constant growth of the number of industrial facilities endangering the environment and the increase in human population, the problem of efficient hazardous waste utilization becomes more and more important. In order to develop effective legal regulation of hazardous waste utilization in Russia it is necessary to pay attention to the experience of other countries that managed to solve the problems, similar to those this country is facing at the moment. This article analyzes current legal mechanisms regulating utilization of hazardous waste in England, as well as the key documents of the European Union controlling this activity.

**Keywords:** hazardous waste utilization; environmental law of the EU; English law; EU law.

### **Book Shell**

*Yuri N. Maleev, Amina A. Nagieva* Scientific Contribution to the Elaboration of the Status of the Arctic. (Review of the book “The Arctic Region: Problems of International Cooperation. Anthology in Three Volumes” (Moscow, 2013). Editor-in-chief – I.S. Ivanov, Editors – V.I.Bogoyavlensky, A.V. Vasiliev, A.N. Vylegzhanin, A. N. Chilingarov, etc.) (p. 241-248)

### **Anniversary**

Jubilee of Gennady P. Zhukov (p. 249 - 252)