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Lost in Broadcasting: League of Nations, International Broadcasting and Swiss Neutrality[1]

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Abstract. This article delves into the historical context of cross-border radio broadcasting during the 1930s by the League of Nations and the significant impact of Switzerland's neutrality as the host country on this international organization. Drawing from the recently digitized and accessible League of Nations archive in Geneva, this narrative unveils a minor conflict of interest that evolved into a notable political crisis, marking an international legal precedent by showcasing the influence wielded by a smaller host nation upon a global organization.

The architects of the League of Nations envisioned Geneva as an ideal hub for the organization's activities, complete with modern communication technologies for global outreach. However, Switzerland's neutral stance posed an obstacle to the establishment of the League's radio broadcasting infrastructure. Recognizing the absence of robust emergency communications, transport links, as well as a dedicated radio station in Geneva during the mid-1920s, the League of Nations sought an agreement with the Radio Swiss station. Consequently, the League of Nations own radio station, Radio-Nations, commenced broadcasting on February 2, 1932, coinciding with the start of the Conference for the Reduction and Limitation of Arms.

By May 1938, amidst mounting tensions in Europe, Switzerland chose to assert complete neutrality within the League. Discussions within the Federal Council revolved around the possibility of suspending the agreement made on May 21, 1930, along with the support for Radio Nations. Unexpectedly, on November 3, 1938, the League of Nations' leadership in Geneva expressed the desire to re-evaluate the 1930 convention. The outbreak of The First World War drastically reshaped the relationship between the League of Nations and Radio-Nations. Switzerland decided against entering into a new agreement with the League of Nations, leading to the closure of Radio-Nations on February 2, 1942.

Maintaining the nation's neutrality, the Swiss government vigilantly observed the events unfolding during the War. During the peak of Nazi Germany's advances, Bern adopted stringent measures against the League of Nations, upholding a resolute diplomatic stance. However, the Swiss stance towards the League of Nations and the division of ownership of Radio-Nations gradually shifted from 1943, culminating in the

[1] English translation from the Russian text: Khodnev A. S. Lost in Broadcasting: Liga Natsiy, mezhdunarodnoe radioveshchanie i shveytsarskiy neytralitet. *Vestnik MGIMO-Universiteta* [MGIMO Review of International Relations]. 16(5). P. 7–27. https://doi.org/10.24833/2071-8160-2023-5-92-7-27

resolution of several financial matters. Ultimately, in 1947, the League of Nations' liquidation commission transferred the remaining assets of Radio-Nations and its radio waves to the United Nations.

Keywords: international organization; League of Nations; Radio-Nations; international broadcasting; Switzerland; neutrality; international intellectual cooperation; The First World War

In 1919, the Treaty of Versailles founded the League of Nations. The new international body was intended to serve as a reliable guarantor of the peace established after the First World War. At its peak, over 60 countries were members of the League. Its effectiveness largely depended on the role of the great powers. In her overview of the history and historiography of the League, Susan Pedersen stressed that, despite all its flaws, the League of Nations was "a training ground […] where they learned skills, built alliances, and began to craft that fragile network of norms and agreements by which our world is regulated, if not quite governed" (Pedersen 2007: 1116). However, "the great powers, unwilling to commit themselves too deeply, gladly dropped some of these issues at the League's door" (Pedersen 2007: 1108). The conclusion concerning the great powers' reluctance "to commit deeply" and take specific action is generally correct. This observation, however, applies not only to large states, but also to Switzerland, the country that had undertaken to create comfortable conditions in Geneva for the League's work.

The purpose of this article is to explore the case of an international organization's host country failing to create the proper conditions to enable that organization to use the media available at the time to extensively inform the world about its activities. The League of Nations found itself in a difficult situation in Switzerland in the interwar period, a fact that frequently affected its ability to achieve its goals and impacted the overall development of international relations. Switzerland was concerned with preserving its neutral status enshrined in the Hague Convention of 1907, and as contradictions mounted in the Versailles world order in the 1930s, the country started to put pressure on the League on the matter of independent radio broadcasting. Documents from the League's recently digitized and opened archive in Geneva shed light on this story, in which a minor conflict of interests snowballed into a major political crisis and an international legal precedent, thereby demonstrating the kind of influence a small host country can have on an international organization.

The League's archive is kept at the UN Palace of Nations at the Library of the UN Office in Geneva. The entire collection spans 15 linear kilometres of archives and records. Its website says that one recent important project was "Total Digital Access to the League of Nations Archives" (2017–2022), which ensured free online access to documents.[2] This article uses files from this collection: documents of the League's

[2] Archives. URL: https://www.ungeneva.org/en/library-archives/archives

Secretariat; decisions of its Assembly and Council; correspondence with the Swiss authorities; originals of diplomatic treaties registered with the League; reports by G. F. van Dissel, the head of the Committee for Communications and Transit; correspondence of members of the League's Secretariat with listeners; and the personal archive of Seán Lester, the League's acting Secretary-General.

Prior to the 1990s, historiography of the League of Nations was fairly scanty. After the Second World War, scholars rarely turned to the history of the League. The only time they paid attention to it was when there was an anniversary of the establishment of the organization, in general works. The most well-known and detailed study of the history of the League was produced by Francis Paul Walters in 1952, which was reprinted on several occasions (Walters 1967). Since Walters had for many years worked in high-ranking positions in the League's Secretariat, the book contains much in terms of personal impressions and memoirs, but it is not based on archival documents and does not provide a complete analysis of the League's history. It also contains few references.

Ruzanna M. Ilyuhina's book, the first in Russian historiography to research the history of the League from its founding and until 1934, was an important historiographic landmark (Ilyuhina 1982). She showed Russian readers the history of the first years of the League's political activities and certain ideological doctrines that guided the actors in that international organization. The book offers a lot of interesting personal descriptions of the League's diplomats and its Secretariat's employees.

However, true interest in the history of the League blossomed after the end of the Cold War and the collapse of the bipolar world. Studying the experience of the League – with its discussions of multipolarity – became relevant when the new multipolar world order was emerging in the 1990s. There was also renewed interest in the way the League handled other political issues. It is no accident that Susan Pedersen titled her article quoted above "Back the League of Nations" (Pedersen 2007). Over the last 30 years, the number of books about the League has grown exponentially, and, in addition to multipolarity, they focus on other topics, such as sovereignty, the right to self-determination, the history of the mandate system and "failed" states, and other topics that are relevant today (Callahan 1999; Goto-Shibata 2020; Henig 2019; Ostrower 1996; Pedersen 2015; Yearwood 2009).

Several important books on the history of the League of Nations have been published in Russia recently as well. Irina A. Khormach studied archival documents on the history of the League's relations with the Soviet Union (Khormach 2011; 2017). Natalia Vasileva wrote a comprehensive study of new and old approaches of Russian historians to interpreting the history of the League (Vasileva 2017). And in another book, Vasileva studies the image of the League of Nations formed by Russian emigres in the early 1920s (Vasileva 2020). Alexander Khodnev has written essays on the history of the League (Khodnev 1995) and several articles on the League's action in colonial matters and the mandate system (Khodnev 2021a; 2021b). The renowned St. Petersburg historian Vladimir Fokin has researched individual aspects of the League's history and the published sources (Fokin 2010).

There is only one work on the history of the League's radio broadcasting. It was authored by Antoine Fleury, Professor Emeritus of the Faculty of Humanities at the University of Geneva, who participated in the symposium on the history of the League of Nations in November 1980 (Fleury 1983). This article considers in detail the evolution of Switzerland's policy towards the League and the stance assumed by Bern, while the history of the League's radio is pushed into the background. Therefore, the issue of the history of the League's international broadcasting and the way it was affected by Switzerland's neutrality remains under-researched.

The League of Nations and Radio Appeared at the Same Time

In December 1925, the League's Secretary-General Eric Drummond was asked to speak in Paris for his speech to be broadcast in the United States. American and European radio stations decided to test long-range broadcasting in January 1926. The task was to transmit the signal from Europe across the Atlantic, to the United States. The BBC's Director of Programmes and one of the first radio commentators, Arthur Richard Burrows, wrote to the American Arthur Sweetser, Chief of the Press Division of the League's Information Section, and explained, "During this week, the several stations in America will remain silent during specified periods to enable local listeners to 'reach out' for transmissions coming from […] Europe […] A general participation can hardly be expected seeing that the European transmissions in order to be really effective, must take place somewhere about 5 o'clock in the morning."[3] Eric Palmer, who was among those organizing this test, believed that Drummond's talk on the subject of "radio's potentialities" in furthering the work of the League was necessary "in the interests of world peace and general education."[4]

The idea of a long-range broadcasting trial was to test more than equipment. The United States did not accede to the League of Nations, as it refused to ratify the Treaty of Versailles, of which the League's Covenant was part. The broadcast of January 25, 1926 was meant to remind the audiences of the League's existence and to promote it in the USA.

Addressing the United States, Drummond said, "Radio and the League of Nations are both in their youth. They were born at approximately the same time, and are growing and developing on somewhat the same lines. Assuredly their fruitful cooperation will make for the peace of the world. How rapidly civilization has travelled! Only a few centuries ago Columbus took three months to reach America. A century ago it took weeks to send news to the Far East. To-day information can be put on the air in London, received in New York, re-transmitted and heard in London […] distance and time almost cease to have importance […] The full development of radio must render

[3] International Broadcasting Tests – January 25th, February 1st. *LON Archives*. File R1140/14/48542/28231. URL: https://archives.ungeneva.org/international-broadcasting-tests-january-25th-february-1st

[4] Ibid.

international cooperation, and therefore the task of the League, infinitely easier."[5] The long-range broadcasting experiment was generally a success, and the United States heard the voice of the League of Nations for the first time.

At the 1919 Paris Peace Conference, the Allies agreed that the League would be headquartered in Geneva. Initially, this suggestion was met with a less-than-enthusiastic response; moreover, Deputy Secretary-General Francis Paul Walters recorded that French and Belgian members of the League's founding Committee were displeased with the idea and insisted that Brussels be chosen to headquarter the League. They believed Belgium to have earned the right to be the seat of the international organization, having suffered in the "battle of right against might" in The First World War (Walters 1967: 36). Yet Woodrow Wilson, Robert Cecil, and Jan Christian Smuts spoke in favour of Geneva, claiming that Brussels would link the new organizations with the negative memories of the War (Walters 1967: 36). Ultimately, 12 out of 19 members of the Committee voted for Geneva, and the matter was settled (Walters 1967: 37).

Attempts to use radio for broadcasting had been made since 1920, when the League started its work. On December 13, 1920, "some hundreds waited intently for the first sounds which would come from the giant loud speaker which had been set up" in the League's hall in Geneva (Lommers 2012: 59). Guglielmo Marconi, the inventor of the radio and a diplomat, who attended the Paris Peace Conference with the Italian delegation, ran an experimental broadcast from London. Those present recalled that reception in Geneva was poor, with static noise and interference, but the people assembled in the League's hall in Geneva heard the words "Hello, Geneva!" and were amazed by what this new technology could do (Lommers 2012: 59).

Yet in 1920, and again in 1926, the League failed to launch regular broadcasts of news and other types of programmes, hindered by political circumstances that the League's "founding fathers" had not foreseen: Switzerland's neutrality got in the way of a close alliance between the League and radio.

Attendees of the Paris Peace Conference discussed the idea of radio communication with the League. In March, Colonel Edward M. House, a member of the U.S. delegation and an advisor to Woodrow Wilson, asked Swiss diplomat William Rappard whether it would be possible to build a radio station in Switzerland in the vicinity of the League's headquarters (Fleury 1983: 196). Then the Swiss Federal Council made the decision to grant extra-territorial status to the lands of the League of Nations and consented to the project of building a radio and telegraph station. In April 1919, Colonel House sent an American advertising and wireless telegraph specialist to see Rappard to set up a sufficiently powerful transmitter to communicate with the entire world (Fleury 1983: 197).

Yet the events in the United States were not conducive to implementing the project of building a radio station in Geneva. In 1920, when the U.S. Congress made the decision not to ratify the Treaty of Versailles and, consequently, the Covenant of the

[5] Ibid.

League of Nations, Washington forgot about building the radio station. Bern was very much relieved at the news as people in the Swiss government were worried that the project would be violation of the Hague Convention of 1907, which set forth the obligations of neutral states in the event of war. In particular, Article 3 of the Convention prohibited erecting wireless telegraphy stations in a neutral Power for the purposes of military communication.[6] Swiss politicians saw a possible threat of violating the country's neutral status by building a wireless telegraph station in the Swiss territory, which would not be controlled by the Swiss authorities. At the same time, the authorities of the Canton of Geneva and federal politicians were interested in the League of Nations being headquartered in Switzerland.

Communications, Transit, and Radio for the League of Nations

One of the main bodies of the League of Nations was the Permanent Secretariat, the first institution of its kind of an international organization. Eric Drummond, the future leader of the Secretariat, was also its principal architect. He rejected the proposed state-centric structure, whereby the Secretariat would be made up of representative missions of the great powers only, and their personnel would report back to their governments. Instead, Drummond proposed creating departments that would be in charge of individual functions: legal, economic and financial, mandates, etc., to support each principal area of the League's activities. Another bold decision taken by Drummond was to establish the institution of international officials compiled of employees hired specifically to work in the League of Nations and not transferred from national bureaucracies, whose loyalty would be exclusively to the League. Such a Secretariat primarily carried out the decisions of the Assembly and the Council of the League of Nations and had certain autonomy in promoting international projects, corresponding with governments and international organizations, and organizing the League's activities in Geneva.

In the League's first years, the Secretariat did not insist on building the radio station, as they were busy setting up uninterrupted telephone and telegraph communications and transportation. In November 1920, the talks between Bernardo Attolico, director of the newly created Communications and Transit Section, and Robert Haab, a member of the Swiss Federal Council and head of the Department of Posts and Railways, did not touch upon the subject of the radio station. Attolico was concerned with the issues of "a glut on telegraphic communications" and privileges for the League of Nations in using telephone lines at certain hours. He also asked for better rail transit between Paris and Geneva.[7] Communications with Paris were vital for virtually all

[6] Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The Hague, 18 October 1907. URL: https://www.refworld.org/legal/agreements/hague/1907/en/18888

[7] Priority of Telephone Calls for the Secretariat. *LON Archives*. File: R1365/26/8597/8597. URL: https://archives.ungeneva.org/priority-of-telephone-calls-for-the-secretariat-and-press-and-improvement-of-railway-communications-during-the-assembly-professor-attolico-reports-discussion-with-conseiller-federal-mr-haab-at-berne-of-questions-on-this-subject-submitt

members of the League. Many embassies in Paris expanded their staff with special personnel collecting information and preparing documents for their representatives in Geneva. For instance, there was a special Japanese Bureau for the Affairs of the League of Nations established in Paris in 1921 (Goto-Shibata 2020: 28).

However, within the very first months, the lack of stable radio communications led to difficulties in the global coordination of the League's activities. In 1921, the Information Section of the League's Secretariat raised the question of purchasing wireless telegraph equipment. In 1921, upon instructions from the Secretary-General, Adrianus Pelt, an employee at the Information Section, conducted talks with Great Britain's Marconi Wireless Telegraph Company Ltd. on purchasing wireless telegraph equipment. The League's Financial Section, however, refused to purchase the expensive equipment.[8]

In 1925–1926, the League's Secretariat came to understand that, in the event of an emergency or the need to respond to international crises, the Geneva headquarters did not have reliable means of communications or transit. France put this issue to the League's Council in December 1921. At that time, however, the Council did not discuss radio broadcasting. Rather, they discussed "measures to be taken in order that full use might be made of the existing means of communication by rail, air telegraph and radio-telegraph."[9] The League did not touch on the issue of independent radio broadcasting.

It took two more years of discussions until, on September 24, 1928, the League's Assembly passed the resolution on the need for "creation of a wireless station for the purpose of providing the League with independent communications in time of emergency."[10]

The League's Assembly returned to the issue of creating an independent wireless station on September 21, 1929. The problem of the League's independent contacts with the outside world required involving the influential French jurist and public figure René Cassin as a rapporteur.[11] He said that the spirit and provisions of the Covenant of the League of Nations call upon the members of the League "to facilitate by every means in their power the rapid meeting of the Council in times of emergency,"[12] which required that the League have its own radio station. Cassin claimed that the

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[8] Wireless Communication with Geneva – Dossier concerning. *LON Archives.* File: R1583/40/11641/11641. URL: https://archives.ungeneva.org/wireless-communication-with-geneva

[9] Communication of Importance to the League of Nations at Times of emergency. *LON Archives.* Reference Code: C-406-1927-VIII_EN. URL: https://archives.ungeneva.org/communications-of-importance-to-the-league-of-nations-at-times-of-emergency

[10] Wireless Station to be Created with a View to Providing the League of Nations with Independent Communication. *LON Archives.* Reference Code: C-514-1928-VIII_EN. URL: https://archives.ungeneva.org/wireless-station-to-be-created-with-a-view-to-providing-the-league-of-nations-with-independent-communications-in-time-of-emergency-report-by-the-polish-representative

[11] In 1948, René Cassin co-authored the UN Universal Declaration of Human Rights.

[12] Establishment of a Wireless Station. *LON Archives.* Reference Code: A-85-1929-IX_EN. URL: https://archives.ungeneva.org/establishment-of-a-wireless-station-destided-to-ersure-independent-communications-to-the-league-of-nations-in-times-of-emergency-report-of-the-third-committee-to-the-assembly-rapporteur-m-rene-cassin-france

main purpose of creating the station would be for the League of Nations to have at its disposal and under its direct management in case of an emergency independent wireless communication with as many League members as possible. The proposal was to use a European range station that would "remain under the management of the Swiss authorities."[13] Cassin proposed that "the Swiss Government will be able to be represented at the station […] by an observer."[14] Cassin's project, therefore, focused solely on the need to use radio for emergency communication, and not for public broadcasting.

The Agreement of May 21, 1930, and the Start of the League of Nations' Broadcasting

In 1929, the League's Assembly supported Cassin's plan, which formed the basis of the "Agreement between the Swiss Federal Council and the Secretary-General of the League of Nations Concerning the Establishment and Operation in the Neighbourhood of Geneva of a Wireless Station" of May 21, 1930. The Agreement was signed by the Secretary-General Eric Drummond and Giuseppe Motta,[15] Switzerland's foreign minister in 1920–1938, who was also elected several times to the office of the President of the Swiss Confederation.

Article 1 of the Agreement of May 21, 1930 states that, in order to meet the needs of the League of Nations, a wireless station known as "Radio-Nations" would be built in the neighbourhood of Geneva. In normal circumstances, the station would be managed by Radio-Suisse, while in emergencies, it would come under the direct management of the League.[16] Consequently, the League had succeeded in convincing the Bern authorities to accord the League's radio station significant independence. All disputes over the operations of Radio-Nations were to be submitted to the arbitration court appointed by the Permanent Court of International Justice in the Hague.[17] In that manner, Switzerland preserved its sovereignty and neutrality, even if in a curtailed manner: the League owned the Radio-Nations brand and essentially determined the contents of its general broadcasting, but in emergencies, the entire broadcasting and receiving equipment would come under the League's control.

The League's Radio-Nations was officially inaugurated on February 2, 1932, on the day the Conference for the Reduction and Limitation of Armaments began. G. F. van Dissel, head of the Committee for Communications and Transit, emphasized that

[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Accord entre. Accord entre le Conceil Federal Suisse et le Secretaire Genera de la Societe des Nations concernant l'etablissement et l'exploitation pres de Geneve d'une station radioelectrique. *LON Archives*. File CRID134/343/166(1-2). URL: https://archives.ungeneva.org/wireless-station-of-the-league-of-nations-convention-and-agreement-between-the-league-of-nations-and-the-swiss-government
[17] Ibid.

the first broadcasts demonstrated good transmission and reception.[18] For instance, van Dissel received a letter from Roberto Cardon in Brazil, who excitedly informed him that he had listened for a test Radio-Nations broadcast in Rio de Janeiro for three hours on February 10, 1932 and "the reception was perfect, clear, and full of tone."[19] Nevertheless, it should be admitted that the League clearly lagged behind advanced states in setting up radio broadcasts to other countries.

Radio-Nations broadcast official, political, and private programmes. The latter featured music, advertising, and speeches by politicians and cultural figures representing both the League and other countries. For instance, the list of private broadcasts for October 1932 included a speech by member of the Swiss Government Giuseppe Motta from Bern.

The League's Information Section used the radio station both for broadcasting as such, and for transmitting, using Morse code, news on the League's activities to agencies and the media of countries in Europe and beyond.[20]

Official programmes were mandatorily checked and edited in the League's Information Section. In the 1930, the League's Secretariat tried to confine the political content of the League's radio broadcasts to brief information about the activities and decisions of the League's Assembly and Council. In 1932, official programmes were still dominated by news on the crisis in Manchuria, which Japan had seized from China in 1931–1932, but later, such news items were fewer and fewer. The Manchuria conflict faced by the League was the first major breach of the Versailles-Washington system. However, acting in the spirit of conciliation policy, Radio-Nations broadcast speeches of the League's representative and all parties to the conflict: Lord Lytton (November 20, 1932), the Chinese diplomat Go Taizi (November 27, 1932), and Japan's representative in the League Yōsuke Matsuoka (December 4, 1932).[21] Broadcasts from Geneva refused to directly call Japan an aggressor.

Subsequent political challenges faced by the League were briefly mentioned in Radio-Nations information bulletins. The League responded to the Abyssinia Crisis, but its intervention was even less effective than its involvement in the Japanese invasion of Manchuria. The League's internal bulletins commented on Italy's aggression against Ethiopia in 1935–1936, the actions taken by the League in November 1935 in the form of a Council decision to impose sanctions on Italy, and on the Council's resolution of July 4, 1936 to lift the sanctions. Radio-Nations broadcast only short reports on the Council's decisions on the matter.

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[18] Operation of the League Wireless Station – Reports by M. van Dissel for the period 2 February 1932 to 31 December 1933. *LON Archives.* File: R4318/9G/6497/509. URL: https://archives.ungeneva.org/operation-of-the-league-wireless-station-reports-by-m-van-dissel-for-the-period-2-february-1932-to-31-december-1933

[19] League Wireless Station – Various Correspondence with Individuals and Associations. *LON Archives.* File: R2594/9G/32525/225. URL: https://archives.ungeneva.org/league-wireless-station-various-correspondence-with-individuals-and-associations

[20] Information Section. *LON Archives.* File S937/247/3. URL: https://archives.ungeneva.org/nwr4-nghe-48sp

[21] Ibid.

In 1936, the Information Section released many overviews of international media on the militarization of the Rhineland, but these documents were intended only to be distributed within the League and were not broadcast on the radio.[22]

The League's Secretariat discussed the Spanish Civil War (1936–1939), yet both the Assembly and the Council took a long time to come to a decision on specific steps (Naumov 2016: 47) and adopt any resolutions on the Spanish question, claiming that domestic conflicts did not come under the League's purview. The news reported only general information on the Spanish Civil War. Nevertheless, as the war was transforming into a major challenge to European and global security, the League's Information Section attempted to provide broader coverage of the matter. A Canadian listener, W. Wood wrote to Geneva that he had listened to several news broadcasts in English on Radio-Nations in October–November 1938 on the humanitarian problems of Spanish refugees, the rationing of bread and other foods, martial law in Madrid and Barcelona, the many victims of the war, and the maritime and air blockade.[23]

The League's political prestige was gravely undermined during the Spanish Civil War and other conflicts (Naumov 2016: 62), which had its effect on radio broadcasting. All the events and crises that proved fateful for international relations in 1938-1939 went virtually ignored on the radio, unless there were relevant decisions of the Assembly and the Council.

In the mid-1930s, the Information Section prepared many texts on the League's social and humanitarian achievements for broadcast. Radio-Nations went from mostly information and political programmes to educational broadcasts. The League had an influential International Committee on Intellectual Cooperation (ICIC), whose initiatives included coordinating the international management of intellectual projects on education. These goals of the projects were to educate people on the concept of peacefulness in the broad sense, promote the values of moral disarmament, and explain the goals and activities of the League in supporting peace and international cooperation. Radio-Nations actively engaged in these educational activities, carrying out the ICIC programme in educating the public on the League's goals and activities.

On May 18, 1935, Radio-Nations broadcast the address of the League's Secretary-General to the youth on the occasion of Goodwill Day in English, French, and Spanish. The text had some hints of concern: "People in all countries want peace, and in all countries, we see more weapons and soldiers," and the youth were called upon to "maintain peace in the world" based on "goodwill and mutual understanding" (Les Causeries Radiophoniques … 1935: 282). The League's broadcasting schedule also had a speech by the British classical scholar Professor Gilbert Murray, ICIC President, on

[22] Revue des Commentaires de la Presse sur la Societe des Nations. *LON Archives.* Item PC-2765-1936_BI. URL: https://archives.ungeneva.org/revue-des-commentaires-de-la-presse-sur-la-societe-des-nations-269

[23] Radio Nations – Correspondence with Listeners. *LON Archives.* File R5196/13/31318/19270/Jacket11. URL: https://archives.ungeneva.org/mkrz-wqn9-sh9s

the League's achievements in international intellectual cooperation.[24] Two 1936 Radio-Nations broadcasts were of particular interest for listeners. One was dedicated to nutrition, and the other to the status of women with respect to gender equality.[25] Both problems were related to people's everyday life. René Cassin is credited with being the first person to explain the League's focus on these subjects: "Everything that concerns mankind concerns the League of Nations."[26]

The broadcast on nutrition was not only intended to promote a healthy lifestyle. In the mid-1930s, the global economy was still experiencing the aftermath of the global depression of 1929–1933. Many countries had high levels of unemployment, and economic growth rates left much to be desired. In 1935, Australia's High Commissioner to the United Kingdom Stanley Bruce proposed at the League's Assembly that a general study should be made on nutrition, from the point of view of both health and all economic aspects (Walters 1967: 754). This was vital for giving a boost to agriculture and the global economy in general.[27]

In the broadcast on the status of women, the newscaster said that the League's Assembly decreed in 1935 that an international committee of experts should study women's legal status in different states. The first results showed that women had the right to vote in just 24 of the League's member, while only 14 countries had granted women the unrestricted right to work.[28]

In the meantime, the problem of international broadcasting attracted the attention of many governments. In 1931, the League's Assembly instructed the Institute of Intellectual Cooperation (IIC) in Paris to research issues arising from international broadcasting. In 1932, the League's International Committee of Intellectual Cooperation, together with the IIC, convened a committee of experts to draft an international convention on radio broadcasting. The Intergovernmental Conference on the International Convention Concerning the Use of Broadcasting in the Cause of Peace was held in Geneva on September 17–25, 1936 and was chaired by former Minister of Foreign Affairs of Norway, Arnold Christopher Ræstad (Use of Broadcasting 1936: 168–170). The Convention mandated that states ban any broadcast that could damage good international understanding by transmitting statements known in advance to be false, and that states take steps to rectify such information.[29] In a special provision, the contracting governments undertook to transmit only verified information that would

[24] Ce que fait la Cooperation Intellectuelle. *Bulletin l'Enseignement DE LA SOCIÉTÉ DES NATION,* 1935, 2. 285–288. LON Archives. Reference code: 767423. URL: https://archives.ungeneva.org/bulletin-de-lenseignement-de-la-societe-des- nations-n-2

[25] File 767420 – Bulletin of League of Nation Teaching – The Teaching of the Principles and Facts of international co-operation. N°4. *LON Archives.* Reference Code 0000767420_D0010. Filename0000767420_D0010.pdf. URL: https://archives.ungeneva.org/wqqb-65bx-f49e

[26] Ibid.

[27] Ibid.

[28] Ibid.

[29] Text of the Convention. *LON Archives.* File CRID70/272/30-1bis. URL: https://archives.ungeneva.org/text-of-the-convention-3

not cause harm to other peoples.[30] Switzerland, like many other states, took part in the conference and signed the Convention, thus undertaking to maintain and ensure uninterrupted Radio-Nations broadcasts.

On August 1, 1939, in order to comply with the 1936 Convention, the League's Secretariat introduced a new procedure for radio broadcasts: the Information Section was made responsible for setting up all broadcasts, and all texts, particularly the texts of private individuals, were to be approved by the Section's Director before going on the air.[31]

Even though the emphasis in the League's activities in the late 1930s shifted from political action to technical issues in social and humanitarian operations, the importance of League's broadcasts amid deteriorating political circumstances is hard to overestimate. The League promoted new ideas in international cooperation and informed listeners about new projects. Susan Pedersen stressed the changes the League introduced over this short history: "Their words were out in the world, a world now remade by literacy, print, air travel, and radio waves, and could not be recalled" (Pedersen 2015: 406).

Switzerland Goes Back to Full Neutrality

In the late 1930s, active broadcasting from Geneva was hampered by the change in the Swiss government's attitude to the League of Nations. A pre-war crisis was brewing in Europe, and several states were progressively leaning towards aggressive actions: Nazi Germany and Fascist Italy in Europe, and Japan in the Far East. The League of Nations failed to effectively contain those aggressive forces and prevent the collapse of the Versailles-Washington order. In this international situation, the Swiss government decided to bolster the country's neutral status. On April 20, 1938, the League's Secretary-General Joseph Avenol received a memorandum from the Federal Council, signed by Giuseppe Motta, on Switzerland's return to complete neutrality within the League.[32] After talks on this subject held in Geneva, Motta assured the League's leadership that Switzerland remained "faithful to the League and would "continue to collaborate" with it.[33] Subsequent events demonstrated that the "faithful" cooperation did not materialize.

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[30] Ibid.

[31] League of Nations Radio Station – Use of the Station for Broadcasting (discussion between private and official transmissions). *LON Archive.* File R4318/9G/19831/509. URL: https://archives.ungeneva.org/station-radioelectrique-de-la-societe-des-nations-utilisation-de-la-station-pour-la-radiodiffusion-discussion-entre-la-transmissions-prives-et-officielles

[32] Neutrality of the Swiss Confederation within the Framework of the League of Nations. *LON Archives.* Reference Code C-137-M-82-1938-V_EN. URL: https://archives.ungeneva.org/neutrality-of-the-swiss-confederation-within-the-framework-of-the-league-of-nations-2

[33] Switzerland and the League. File: R5799/50/33623/33588. LON Archives. URL: https://archives.ungeneva.org/switzerland-and-the-league-neutrality-of-switzerland-correspondence-with-the-government-of-switzerland

The Swiss government believed that, despite the balanced and diplomatic nature of Radio-Nations broadcasts, they could involve the country in conflicts with third parties. In the late 1930s, the Swiss Federal Council discussed the possibility of suspending the Agreement of May 21, 1930 and its support for Radio-Nations.

Quite unexpectedly, the leadership of the League's Secretariat in Geneva helped Bern find a reason to shut down the League's radio. On November 3, 1938, the League sent a letter to the Swiss Federal Council and Radio-Swiss proposing that the Agreement of May 21, 1930 between the League's Secretary-General and Radio-Suisse be revised.[34] The League was in the grips of a major financial crisis and wanted Radio-Swiss to increase the funding for Radio-Nations. On February 15, 1939, the Swiss Federal Council eagerly agreed to revise the Agreement.[35]

The League of Nations, Radio Nations, and the Start of the First World War

The situation around the League and Radio-Nations, which continued its regular operations for a while, changed with the outbreak of the First World War. The League's Secretariat significantly reduced the number of staff, either because the overall amount of work shrank, or because some members of the League refused to pay their dues, declaring neutrality amid the war.

Additionally, Germany and Italy constantly threatened Switzerland, pointing out that it ran contrary to the country's neutral status to host the League of Nations on Swiss territory. The Swiss authorities sought not to give any of its aggressive neighbours grounds to believe that Swiss neutrality was anything but unshakeable. Bern chose to maintain its neutrality to the detriment of the League's work. On September 6, 1939, Switzerland closed down its border with France,[36] making for greater isolation of the Secretariat and the League's leadership in Geneva.

Panic was beginning to spread among the League's staff. At the start of the First World War, the League's Secretary-General, Joseph Avenol, sought to avoid conflicts with the Swiss government. Walters recalled that Avenol did not want the Swiss government to face any difficulties. So, he was ready to quickly move the Secretariat to the French city of Vichy. As 1940 began, the name of the city "carried no political significance" (Walters 1967: 802). Walters's very generously veils Avenol's strange actions in late 1939 to August 1940. For instance, in a private conversation in 1940, Avenol said that "Hitler had said 'quite nice things' about the League," and "Mussolini […] was

[34] Radio-Nations – Revision of the 1930 agreement with Radio-Suisse and the 1930 agreement with the Swiss government. *LON Archives.* File: R4319/9G/35934/509/Jacket1. URL: https://archives.ungeneva.org/radio-nations-revision-de-la-convention-de-1930-avec-radio-suisse-de-laccord-de-1930-avec-le-gouvernement-suisse

[35] League of Nations Wireless Station. League of Nations Wireless Station. (RADIO-NATIONS). *LON Archives.* Reference code C-56-M-53-1941_EN. URL: https://archives.ungeneva.org/league-of-nations-wireless-station-radio-nations.

[36] Document Pp 274/1/323-324 – 6 September 1939. Sean Lester's Diary – Volume 1. *LON Private Archives.* Reference code: Pp 274/1/323-324. URL: https://archives.ungeneva.org/6-september-1939

also not really unfriendly to the League."[37] Avenol was rolling back the activities of the League's Secretariat on the grounds of it being difficult to organize meetings of the Council and the Assembly. After France capitulated in June 1940, Avenol was getting ready to resign, submit to the Vichy regime, and shut down the League. In June 1940, he agreed to Princeton University's proposal to move some of the League's Secretariat to Princeton (Walters 1967: 809). On August 31, Avenol left the League. The Irish diplomat Seán Lester became the new acting Secretary-General, and continued to lead the remaining part of the Secretariat until the League was dissolved in April 1946.

Lester's diary entry of July 7, 1941 described the atmosphere around the League and Radio-Nations. The Swiss federal authorities semi-officially informed Lester that they had changed their stance on the League's radio station. They did not want to "tolerate on Swiss territory the station, even though fully controlled by Swiss officials."[38] Another observation: per Germany's demand, the Swiss authorities removed from circulation postal stamps bearing the emblem of the International Labour Organization (ILO) and the Palace of Nations, the League's headquarters. Lester bemoaned the failure of the Swiss authorities to keep up their financial obligations to the League, although the Secretariat paid full salaries to its Swiss employees.[39]

On January 27, 1940, the Swiss government sent the League of Nations an official notification on a problem with revising the Agreement of May 21, 1930 on Radio-Nations. At its meeting of January 23, 1940, the Swiss Federal Council made the decision to denounce the Agreement without revising it or concluding a new one. Consequently, Radio-Nations was expected to cease broadcasting on February 2, 1942.[40] On June 14, 1941, Seán Lester appealed to the Swiss government with a request "that the Agreement of 1930 should be allowed to continue in force for a period that might be fixed at one or two years" and "the maintenance of the status quo" continue "for one or two years, as from February 2nd, 1942."[41] Lester hoped that the war would be over quickly and the League of Nations would resume its activities. On June 23, 1941, he conducted talks with M. Zurlinden of the Federal Political Department, who confirmed that "the very existence of League of Nations radio station on Swiss territory is contrary to Swiss neutrality."[42] Lester asked Zurlinden whether there had been outside pressure applied to the government concerning the League's radio station. The answer was that pressure had been applied "indirectly."[43]

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[37] S. Lester's Note on E. J. Phelan. *LON Private Archives.* About what J. Avenol told to E. J. Phelan in 1940 Regarding A. Hitler's view of the League of Nations and the ILO. URL: https://archives.ungeneva.org/s-lesters-note-on-e-j-phelan

[38] Document Pp 274/2/820-822 – 7 July 1941. *LON Private Archives.* Sean Lester's Diary – Volume 2. Reference code: Pp 274/2/820-822. URL: https://archives.ungeneva.org/7-july-1941

[39] Ibid.

[40] League of Nations Wireless Station. League of Nations Wireless Station. (Radio Nations). *LON Archives.* Reference code C-56-M-53-1941_EN. URL: https://archives.ungeneva.org/league-of-nations-wireless-station-radio-nations

[41] Ibid.

[42] Ibid.

[43] Radio Nations – Revision of the 1930 agreement with Radio-Suisse and the 1930 Agreement with the Swiss Government. *LON Archives.* File: R4319/9G/35934/509/Jacket1. URL: https://archives.ungeneva.org/radio-nations-revision-de-la-convention-de-1930-avec-radio-suisse-de-laccord-de-1930-avec-le-gouvernement-suisse

Bern's final official answer to Lester's request that the radio station's operations be extended was negative, stating that the proposal had been subjected to the most careful consideration, but that they were forced to respond that they were unable to accept it.[44] This meant shutting down Radio-Nation in Geneva.

The Swiss government diligently guarded Switzerland's neutrality and closely watched the course of the war. Amid German successes, the pressure of the Axis powers forced Bern to take the strictest measures and conduct unyielding diplomacy towards the League. Since 1943, Bern's attitude to the League's Radio-Nations began to change, and they managed to resolve several financial issues together.[45] The League desperately needed money to maintain the small staff remaining in Geneva and to pay for heating the Palace of Nations. To pay the bills, most of the equipment from the League-owned radio station was sold to Radio-Swiss. Lester explained the League's decision to shut down the radio station by the fact that it had no other option but to consent to the Swiss government's denouncing the 1930 Agreement, although he attempted to "have all action postponed until the end of the war."[46] Lester stressed that he "retained as the property of the League the special broadcasting studio in the League buildings with the declared object of facilitating at a later date the re-establishment of the League's station."[47] The League's Secretary-General also reserved the League's right to use the wavelengths assigned to Radio-Nations. Per these rights, in 1947 the League's liquidation commission transferred what remained of Radio-Nations and its wavelengths to the United Nations, as was confirmed in a letter to Seán Lester of April 17, 1947 from the UN Secretary-General Trygve Lie.[48]

Conclusion

The League and its Secretariat failed to make full use of the broadcasting and communications technologies of the time at a crucial moment amid mounting international military crises in Europe and Asia, which was spurred on by the aggressive policies of Germany, Italy, and Japan. The League's broadcasting was rolled back for an entire series of reasons: the League's dependence on its host country; the desire of Switzerland to transition from partial neutrality and cooperation with the League to complete neutrality; concessions to the Axis powers in the late 1930–early 1940s; and a clear lack of attention and non-interference on the part of great powers and

[44] League Wireless Station – Various Correspondence with Individuals and Associations. *LON Archives.* File: R2594/9G/32525/225. URL: https://archives.ungeneva.org/league-wireless-station-various-correspondence-with-individuals-and-associations

[45] Radio-Nations. Resumption of Installations by Radio-Suisse. *LON Archives*. File R4320/9G/41392/509/Jacket2.

[46] Transfer to the United Nations of League Rights in the Wavelengths Attributed to Radio Nations. *LON Archives.* File: R4321/9G/44114/509. URL: https://archives.ungeneva.org/transfer-to-the-united-nations-of-league-rights-in-the-wavelenghts-attributed-to-radio-nations

[47] Ibid.

[48] Ibid.

members of the League. The leaders of the League's Secretariat made a series of errors when launching international broadcasting: first, they underestimated its potential, and then they relied too much on the Swiss authorities. The content and topics of the League's broadcasts changed significantly over their short history. The League's Secretariat saw that unresolved political problems were snowballing and causing damage to the League's international reputation. Since the mid-1930s, the League's Information Section and other sections of its Secretariat began to offer more programmes on social and humanitarian topics.

The history of the League's broadcasting shows how difficult it was for the international organization to keep working towards its goals amid an international crisis when the League's Secretariat was forced to operate in complete isolation. Contradictions between Bern and Geneva in the 1930s–1940s showed that neutrality and international governance did not mix well in the operations of a universal organization.

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Historical Origins of the International Law Doctrines in Latin America (19th–20th Centuries)[1]

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Abstract. The expansion of the community of Latin American states that achieved independence from their European colonizers was a new historical fact that contributed to the evolution of international law. The principles enshrined today in universal international legal acts were proclaimed on the basis of Latin American doctrinal thought and international diplomatic practice. International law is often viewed from a Eurocentric point of view, which means that little attention is paid to the influence of Latin American doctrine on the development of international law at the universal level. Therefore, it seems appropriate to shine a light on the issue of the contribution of Latin American states to the formation of international law and international legal consciousness.

The materials used for the study were the international legal norms of universal and regional nature, as well as the works of Russian and Latin American scholars. When writing the article, general and particular scientific methods were used, namely, deduction, induction, analysis, synthesis, and the historical method.

The article reveals the origins of the doctrines of international law developed by influential Latin American lawyers, statesmen and political figures in the 19th–20th centuries. These doctrines had a significant impact on the formation and development of international law both in Latin America and in the world as a whole, and influenced the development of positions of Latin American states in the international arena.

The article substantiates the conclusion that modern international law must be considered with due account of the significant contribution of Latin American states to its evolution at the universal level. It also reveals the interconnection of the principles in the doctrines of Latin American lawyers and state figures that were included in the system of international law at the universal level.

Keywords: doctrine; international law; Latin America; treaties; institutions; principles; use of force; non-interference in the internal affairs of states; recognition of governments

[1] English translation from the Russian text: Golubeva M. M. 2023. Istoricheskie istoki doktrin mezhdunarodnogo prava v Latinskoy Amerike (XIX–XX vv.). *Moskovskiy Zhurnal Mezhdunarodnogo Prava* [Moscow Journal of International Law]. No. 2. P. 63–76. https://doi.org/10.24833/0869-0049-2023-2-63-76

Introduction

Throughout its history, international law has developed and experienced numerous evolutionary stages under the influence of objective reality and doctrinal concepts. One of the least studied areas in Russian legal science in this respect is the contribution of international legal doctrines developed in Latin America.

Latin America was long the colonial territory of Spain, Portugal and other European countries. However, as early as the late 18th and early 19th centuries, several countries on the continent had started to declare their status as independent subjects in the intercourse among states. The countries of Latin America, having become subjects of international law after securing their status as independent states following the collapse of the colonial system, were faced with the need to adapt to the existing international legal order, cognizant of their own international legal interests, and to develop unique approaches to this order. The need to develop foreign political and international legal steps would involve applying the doctrines formulated and put forward by Latin American lawyers, statesmen and politicians.

The first foreign policy doctrines were developed at a time when states were emerging and expanding, and they were subsequently used as the international legal basis for the relations of these states among themselves, and with third countries. The main ideas behind this were "independence and autonomy" (Menezes 2010: 24), non-interference in the internal affairs of other states, the non-use of force, the equality of all citizens (foreign and national), and so on. Many of these ideas appeared and were originally developed in Latin America – earlier than in Europe, and before they were enshrined in the UN Charter.[2] This confirms the primacy of Latin American countries in the formation and development of many of the principles and institutions of modern international law.

The earliest example of a group of Latin American states with a common civilization view on future relations coming together on multilateral basis was the first ever regional conference held in Latin America – the Congress of Panama (the Amphictyonic Congress) of 1826, which resulted in the "Treaty of Union, League, and Perpetual Confederation" that envisioned the unification of the Ibero-American peoples from Mexico to Chile and Argentina. The preamble to the Treaty states that the parties "desire to strengthen the intimate relations that currently exist, and to consolidate in a more formal and stable manner those relations that must exist henceforth between each and every State, as appropriate for Nations of a common origin…"[3]

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[2] See: United Nations Charter. URL: https://www.un.org/en/about-us/un-charter/full-text (accessed: 25.04. 2023).

[3] The only country to ratify the Treaty was Gran Colombia (1837), and it never entered into force. See: Tratado de Unión, Liga y Confederación Perpetua entre las Republicas de Colombia, Centro America, Perú y Estados Unidos Mexicanos, 15 de Julio de 1826 (Congreso de Panamá, 1826). URL: https://www.dipublico.org/12355/tratado-de-union-liga-y-confederacion-perpetua-entre-las-republicas-de-colombia-centro-america-peru-y-estados-unidos-mexicanos-15-de-julio-de-1826-congreso-de-panama-1826/ (accessed: 22.04.2023).

The Treaty was the first international legal act in South America to affirm sovereignty and independence, as well as human rights, in the legal understanding that was characteristic of that historical period: most notably, it proclaimed the abolition of slavery. This marked the beginning of the dynamic development of international legal institutions with a Latin American flavor. For example, there emerged norms and institutions regarding the peaceful resolution of disputes between states, and the principles of non-interference in the domestic affairs of states and the right of peoples to self-determination were developed. Scientific, legal and political doctrines and concepts were pivotal in the emergence of new norms and institutions of international law and in the development of regional treaties. These included the Calvo Doctrine, the Drago Doctrine, the Tobar doctrine, and others (Menezes 2010: 142). These doctrines, which originated from the foreign policy diplomacy of Latin American states, were in large part a protest against the aggressive actions of European states and a way to contain the rapid expansion of the Union States, which, having proclaimed its Monroe Doctrine (1823), declared its own claims of dominance over the Latin American continent (Villarroel Peña 2011: 114, 117).

International legal scholars in Latin America emphasize the contribution that legal developments on the continent made to the evolution of international law at the global level, not only through the most advanced concepts of international law, but also through resolutions adopted at international conferences of American states in the late 18th century – before the First Hague Peace Convention of 1899.[4] Provisions and norms at the regional level are reflected in acts at the universal level. According to Latin American legal scholars, advanced elements of various kinds of doctrines in Latin America were included in the Second Hague Peace Conference, and in the middle of the 20th century in the formulation of the fundamental principles of international law enshrined in the UN Charter,[5] which effectively acts as the constitution of the modern world community. The Convention on private international law was adopted in 1928 and included an annex entitled the Code of Private International Law – the Bustamante Code (Erpyleva, Getman-Pavlova, Kasatkina 2021: 206).[6] Thus, Latin American states were ahead of many European countries in the codification of private international law, having set these processes in motion back in the 1850s.

[4] See: Scott J. B., ed. 1915. *The Hague Peace Conventions and Declarations of 1899 and 1907 accompanied by Tables of Signatures, Ratifications and Adhesions of the Various Powers and Texts of Reservations.* New York: Oxford University Press. P. 303.

[5] Ibid.

[6] See: Convención–Derecho internacional privado (VI Conferencia Internacional Americana, La Habana – 1928). URL: https://www.dipublico.org/14283/convencion-derecho-internacional-privado-sexta-conferencia-internacional-americana-la-habana-1928/ (accessed: 25.04.2023).

The Calvo Doctrine and the Principle of Non-Interference

The principle of non-interference lays the foundation of many of the earliest Latin American doctrines that underlie international legal consciousness in Latin America. One of the first appeals to the principle of non-interference in Latin America came in the 19th century in the form of the doctrine developed by the Argentinian diplomat and international lawyer Carlos Calvo and put forward in his 1868 work *Derecho Internacional teórico y práctico de Europa y América*[7] (Calvo 1868: 134–188). The idea of non-interference in the internal affairs of states was considered on the context of the equality of rights among citizens and foreigners. In practice, the "foreigner problem" referred exclusively to "foreign investors," and the Calvo Doctrine proposed to prohibit, at the level of international treaties, diplomatic protection for citizens (investors) of partner states in order to prevent foreign countries from interfering in Argentina's domestic affairs under the pretext of diplomatic protection for foreign investors in the country. This meant that disputes arising in the country involving foreign investors were an internal matter of the host state. And such a dispute should not acquire an international character until all local remedies have been exhausted (Mamedov 2021: 68–69). Private claims and the corresponding decisions of domestic courts should not give rise to foreign intervention. The led to the conclusion that national law takes precedence when regulating relations between citizens and foreigners, and this extended to investment relations, judicial proceedings and the execution of court decisions.

Another important aspect of the Calvo doctrine that is also tied to the establishment of the principle of non-interference in the internal affairs of other countries was the position regarding private debts of citizens to foreigners, who were almost always from Europe: the collection of a debt cannot be a basis for armed intervention by a foreign state in order to protect the interests of creditors; the host state cannot, and should not, be held liable for losses incurred by foreign creditors, including in cases of civil war or revolution. Calvo saw a connection between the intervention/non-intervention and the idea of equality, which ultimately led to the principle of the sovereign equality of states, no matter how strong or weak they may be. The Calvo doctrine has become firmly entrenched in international legal consciousness, having been enshrined in the framework of Pan-American conferences and written into various legislative acts of Latin American States.

The prominent Mexican international legal scholar César Sepúlveda notes the need to distinguish between the concepts of the Calvo doctrine as an ideological basis for the formation of a foreign policy position and the so-called "Calvo Clause" – a legislative provision in the relevant internal acts of Latin American states. Sepúlveda identifies three types of Calvo clauses (Sepúlveda 2009: 247–255). The first is when the

[7] *International Law of Europe and America in Theory and Practice.*

law provides that the state does not impose on foreigners more duties and responsibilities than are provided for by the constitution and laws, particularly in cases of civil unrest. This includes provisions stipulating that foreigners filing civil complaints cannot have greater remedies than nationals, and that foreigners may only seek diplomatic assistance in the event that they are denied proper recourse to justice in the host state. It is important to note here that these provisions paved and expanded the way for the principle of legal equality of aliens in private international law

The second type of robust legal provision based on the Calvo Doctrine concerns the exhaustion of local remedies. At the core of these provisions is the concept that foreign citizens are required to exhaust all legal remedies provided for by the laws of the host country before applying for diplomatic protection. A similar rule is typically found in agreements between foreign individuals (investors) and the government of the host country.

The third type of "Calvo Clause" concerns the refusal of a foreign private person (typically an investor) to turn to his or her native country for protection. Provisions of this nature are usually included in the respective agreement with the foreign private person (Mendoza Bremauntz et al. 2010: 43–45). As we can see, all of these Calvo clauses ensure the priority of domestic law in relations of an international character. It is this aspect – the relationship between national legislation and the norms of international law regulating relations of an international character – that can be considered the quintessence of the Calvo Doctrine, and ultimately the contribution of Latin American legal consciousness to the scientific development of a number of institutions and principles of international law.

At the Second Hague Peace Convention in 1907, the Brazilian statesmen Rui Barbosa stressed the importance of the Calvo Doctrine (Cançado Trindade, Moreno 2003a: 40). According to Barbosa, the Doctrine contributed to the formation of a common vision based on mutual respect and the principle of non-interference in domestic and international affairs. He drew attention to the fact that it plays an important role in protecting the rights of the weakest (and we would add that this brings it closer to the idea of ensuring justice in international relations, a concept that is reflected in Russian legal consciousness).

The Calvo Doctrine "built a bridge" towards a broad understanding of equality – from the equality of rights of citizens and foreigners to the equality of rights of states. It also connected two principles: the principle of non-interference and the principle of the equality of national and foreign citizens, which anticipated the norm of the Declaration on Principles of International Law (1970)[8] establishing the interconnectedness of all modern principles of international law.

[8] See: Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations of October 24, 1970. URL: https://www.un.org/ru/documents/decl_conv/declarations/intlaw_principles.shtml (accessed: 20.04.2023).

The Drago Doctrine and the Principle of the Non-Use of Force

The principle of non-intervention was also associated with the doctrine of another respected Latin American lawyer and statesman, Minister of Foreign Affairs of Argentina Luis María Drago, who was a follower of Calvo. Drago condemned the bombing of the Venezuelan coast in 1902 by European states as a sanction for failing to repay its public debt, and thus supported the idea of the non-use of force on financial grounds, considering this a deviation from the principle of the equality of states. His note argued that public debt cannot serve as a reason for armed intervention, much less military occupation of the lands of the American peoples by European states. This position formed the basis for all subsequent foreign policy actions and international legal relations of Latin American countries (Drago 1906: 9–26).

The Drago Doctrine was in one way or another connected with the American Monroe Doctrine (1823), in which the United States declared that any attempt by Europe to restore its power over Latin American countries would be interpreted as a threat to U.S. security and a violation of its vital interests.[9] In this context, the Monroe Doctrine initially meant support for fledgling Latin American states that had recently gained independence from the European metropolises, and helped counter possible attacks by the Holy Alliance countries on former Spanish and English territories in the Caribbean. Over time, the policy and practice of implementing the Monroe Doctrine transformed into open expansion in Latin America: in 1904, U.S. President Theodore Roosevelt proclaimed the right of the United States to invade Latin American states to restore law and order and crack down on lawbreakers (Tah Ayala 2021: 181–183). The United States thus legalized its claim to dominance in Latin America. There was a clash of ideas and civilizational values between the nascent hegemon with its Pax Americana doctrine and a group of underdeveloped countries that had doctrinally enshrined the principle of non-interference of states in each other's internal affairs. In this context, the Drago Doctrine, based on the principle of non-intervention, directly opposed the Monroe Doctrine and U.S. expansion.

The Drago Doctrine was recognized by the vast majority of countries on the continent, and received further development at the Second Hague Peace Convention (1907). In terms of content, the doctrine dealt with the connection between the concepts of the non-use of force and non-interference in the affairs of states, on the one hand, and the issue of public debt – international debt collection law – on the other. The prohibition of the use of force as a means to collect public debt can be seen as the main norm in the international legal institution of international debt collection law. At the same time, American diplomacy attempted to weaken and soften the potential

[9] See: Monroe Doctrine. 1823. URL: https://www.archives.gov/milestone-documents/monroe-doctrine (accessed: 29.04.2023).

of the non-use of force doctrine in relation to the collection of public debt, proposing a convention that would allow the use of force in cases where the debtor state refuses to resolve the issue through arbitration or does not comply with the arbitral award.[10] The wording of the convention essentially boiled down to coercion, under the threat of force, to engage in arbitration and implement the decisions reached at such proceedings. In the broader context, this led to the legalization of the threat of force and non-military coercion, and, as a consequence to the neutralization of the original Drago Doctrine, which aimed to eliminate the possibility of the use of force under any circumstances.

Following heated discussions at the Fourth International Conference of American States in 1910, the participating states recognized international arbitration as a procedural mechanism for resolving disputes concerning compensation for material damage.[11] This marked the start of the active use of arbitration to resolve such disputes, and it remains a distinctive feature of the international relations practice of Latin American countries. In a certain sense, the Drago Doctrine involuntarily gave rise to a new international legal mechanism for resolving disputes – inter-state arbitration.

However, the idea of the non-use of force in its rigid doctrinal form was later discussed at the Inter-American Conference for the Maintenance of Peace in Buenos Aires (1936),[12] but it did not receive the necessary support, as it was considered a purely Latin American initiative. Only then did it make its way beyond the continent: first, it was enshrined in the Charter of the Organization of American States (Arts. 16–18);[13] and then the principle of the non-use of force was included in the UN Charter (Art. 2, para. 4) as the obligation to refrain from the threat or use of force against the territorial integrity of any state. It thus follows that one of the fundamental principles of modern international law can trace its origins to the Drago Doctrine (Lorences 2015: 3).

The history of international relations of Latin American states among themselves and with third countries reveals that there has always been a preoccupation with the international legal issues of the non-use of force, non-interference in internal affairs, and the equality of states, including in their interrelation. The principle of non-interference in inter-state affairs was consolidated in 1928 at the Sixth International Conference of American States in Havana, Cuba.[14] The Declaration of Principles adopted at the Eighth International Conference of American States in Lima, Peru, in 1938 proclaimed the illegality of the use of force as an instrument of national or international

[10] It was called the Porter Convention on the Limitation of the Employment of Force for the Recovery of Contract Debts.

[11] See: Fourth International Conference of American States. URL: https://books.google.td/books?id=gPLKoQEACAAJ&printsec=frontcover&hl=ru#v=onepage&q&f=false (accessed: 30.04.2023).

[12] See: Acta Final de Consolidación de la Paz – Buenos Aires. 1936. URL: https://www.dipublico.org/14960/acta-final-conferen-cia-interamericana-de-consolidacion-de-la-paz-buenos-aires-1936/ (accessed: 20.04.2023).

[13] See: Charter of the Organization of American States. URL: https://treaties.un.org/doc/Publication/UNTS/Volume%20119/volume-119-I-1609-English.pdf (accessed: 25.04.2023).

[14] See: VI Conferencia internacional americana Habana, 16 de Enero – 20 de Febrero de 1928. URL: https://www.dipublico.org/conferencias-diplomaticas-naciones-unidas/conferencias-inter-americanas/conf-inter-amer-1889-1938/sexta-conferencia-internacional-americana-habana-16-de-enero-20-de-febrero-de-1928/ (accessed 20.03.2023).

policy.[15] The Mexican Declaration adopted at the Inter-American Conference on Problems of War and Peace in 1945 reaffirmed the principle of the legal equality of states.[16] All this influenced the proclamation of the ban on war as an instrument of national policy.

It is just one step from the legal awareness of the non-use of force to the ideas of non-aggression, disarmament (Cançado Trindade, Moreno 2003b: 42) and the prevention of war in any form. It is no coincidence that Latin America was the first continent to declare itself a nuclear-weapons-free zone.[17] The Treaty of Tlatelolco set out the basic principles of a nuclear-free zone, which were later included in the corresponding wording of UN documents.

The Saavedra Lamas Treaty and the Condemnation of Aggression

There is an argument that it was Latin American statesmen and international lawyers who, from the very beginning, played the biggest role in the formation of the "legal awareness of non-aggression" and the opposition to war. At the very least, the contribution that the Latin American doctrine made to the development of the principles of the non-use of force and the prohibition of aggression cannot be denied. The multilateral Anti-War Treaty of Non-aggression and Conciliation, known as the Saavedra Lamas Treaty after the man who developed the treaty, Minister of Foreign Affairs of Argentina Carlos Saavedra Lamas, was signed in 1933.[18] The initiative was most likely influenced by events in Europe, where countries were eyeing Germany with suspension and anticipating the outbreak of war, signing non-aggression treaties of their own. The Saavedra Lamas Treaty became something of a Latin American version of the Pact of Paris,[19] condemning acts of military aggression, and establishing mechanisms for the diplomatic resolution of disputes, including disputes relating to the internal jurisdiction and constitutional foundations of the states involved, as well as of inter-state and even intra-state disputes in international courts (Menezes 2010:

[15] See: Declaración de los principios de la solidaridad de América (VIII Conferencia Internacional Americana, Lima – 1938). URL: https://www.dipublico.org/15744/declaracion-de-los-principios-de-la-solidaridad-de-america-octava-conferencia-internac-ional-americana-lima-1938/ (accessed: 20.03.2023).

[16] See: Declaración de México (Conferencia Interamericana sobre Problemas de la Guerra y de la Paz, Ciudad de México – 1945). URL: https://www.dipublico.org/106504/declaracion-de-mexico-conferencia-interamericana-sobre-problemas-de-la- guerra-y-de-la-paz-ciudad-de-mexico-1945/ (accessed: 20.03.2023).

[17] See: Treaty for the Prohibition of Nuclear Weapons in Latin America of 1968. URL: https://www.un.org/ru/documents/decl_conv/conventions/pdf/tlatelolko.pdf (accessed: 20.03.2023).

[18] See: Tratado antibélico de no agresión y conciliación (Pacto Saavedra Lamas). URL: http://www.oas.org/juridico/spanish/tratados/b-9.html (accessed: 24.04.2023). The Treaty was signed by Argentina, Brazil, Chile, Mexico, Paraguay and Uruguay, with Bolivia, Costa Rica, Honduras, Cuba, the Dominican Republic, Nicaragua, El Salvador, the United States, Venezuela, Peru, Colombia, Haiti, Guatemala, Panama, among other states not part of the continent, later acceding to it. The process of countries acceding to the Treaty concluded in 1936, and it was terminated in 1948.

[19] See: General Treaty for Renunciation of War as an Instrument of National Policy of 1928. URL: https://docs.cntd.ru/document/901786550?ysclid=li33ywekt4342903955 (accessed: 20.03.2023).

151–152). The reservations (exceptions) contained in the text negatively impacted the Treaty's significance, but this did not affect its status as one of the original sources of anti-war legal consciousness, despite the fact that it was not observed in practice.

Art. 1 of the Saavedra Lamas Treaty condemns wars of aggression and declares that the settlement of disputes or controversies of any kind must be carried out only by the peaceful means enshrined in international law. Art. 2 states that the parties do not recognize any territorial arrangement which is not obtained by pacific means, nor the validity of the occupation or acquisition of territories that may be brought about by force of arms. Under Art. 3, in cases of aggression, the parties involved must exercise the political, juridical, or economic means authorized by international law. States are required to make every effort for the maintenance of peace and adopt in their character, as neutral ones, a common and *solidary* attitude. Art. 4 contains the obligation of the parties to a dispute to submit to the conciliation procedure established by the Treaty, with certain exceptions related to the implementation of other treaties and constitutional norms of participating states. It is evident from the text of the Treaty that the law-makers developed its norms in accordance with those contained in the Pact of Paris (Ruda 1992: 31).

The condemnation, prevention and suppression of acts of aggression, in conjunction with the principle of the peaceful solution of disputes, which lie at the heart of the Saavedra Lamas Treaty, subsequently became a throughline of the UN Charter (Arts. 39, 41 and 42) and several other treaties at various levels. It also formed the basis of the London Convention Relating to the Definition of Aggression (1933),[20] and the UN General Assembly Resolution on the Definition of Aggression (1974).[21] The resolution emphasizes that "aggression is the most serious and dangerous form of the illegal use of force." Even so, no other norm in international law is violated more frequently than that on the non-use of force. And for decades the vast majority of international mechanisms for restoring peace remained indifferent to facts of aggression, primarily on the part of the United States and a number of European countries.

There is a certain contradiction in the modern international legal order between the institution of the non-use of force (including countering aggression) and the institution of ensuring the security of states (Farkhutdinov 2015: 34–38): ensuring national security (for example, in the case of self-defence) often entails the use of force; and the doctrines and real-life practice of states provide different jurisdictions for both the use of force in exceptional circumstances and the very principle of the use of force. This contradiction is similar to the contradiction between the principle of the right to self-

[20] See: London Convention Relating to the Definition of Aggression. URL: http://www.derechos.org/nizkor/aggression/doc/aggression89.html (accessed: 24.04.2023).

[21] See: UN General Assembly Resolution on the Definition of Aggression of December 14, 1974. URL: https://www.un.org/ru/documents/decl_conv/conventions/aggression.shtml (accessed: 25.03.2023).

determination of nations and the principle of the territorial integrity of states.[22] Both situations occurred with regularity in the history of Latin America, and the doctrines of Latin American scholars were formed as a protest to the aggressive practices of the United States on the continent – both with regard to the use of force (aggression), and with regard to issues of the self-determination of nations – while at the same time observing the principles of the equality of rights of states, non-interference in internal affairs, and the territorial integrity of the states of the continent. For this reason, the concepts of countering aggression enshrined in the Saavedra Lamas Treaty should be considered a valuable contribution of Latin American doctrines to international legal consciousness. The principles put forward by Carlos Saavedra Lamas are doctrinal in nature (Devés, Álvarez 2020: 229–230). His ideas echo, among other concepts, the doctrines of Luis María Drago and Carlos Calvo, which reflect the interconnectedness of the principles of the sovereign equality of states, non-interference, non-use of force, and maintaining international peace and security.

The Brum Doctrine and the Principle of Solidarity

Another idea connected with the international legal institution of countering aggression was born as a result of the history of the struggle of Latin American countries for independence and sovereignty as a consequence of the Bolivarian tenets. This was the idea of the solidarity of the peoples of Latin America in the face of external threats (which was understood primarily as threats from the United States and the European colonizers). In 1917, the Uruguayan Foreign Relations Minister, Baltasar Brum Rodríguez, faced with the consequences of the First World War, issued a ministerial note calling for ties of friendship among Latin American countries so that any external actions contrary to the principles and norms of international law perpetrated against an American country would be construed as an act of aggression against all of them, and would be met with an appropriate joint response. The provisions of this ministerial note were dubbed the "Brum Doctrine." According to Brum, the application of the principle of solidarity in foreign policy was to ensure that the ideals of justice and democracy were respected so that weaker states would not suffer from the unjust actions of stronger states.

Brum was a supporter of the Monroe Doctrine and the Pan-Americanism policy. He put forward the idea of creating an American League of Nations, which would be tasked with determining the illegality of external actions directed against Latin American countries and the United States, with appropriate joint response actions to be taken where necessary. The idea was for the American League of Nations, in which all member states would enjoy equal rights, to coexist with the League of Nations

[22] Aleksanian S. R. 2018. *The Principle of Equality and Self-Determination of Peoples in Modern International Law.* Doctoral dissertation, Moscow. P. 53 onwards.

by pursuing similar goals. Brum suggested that any kind of dispute arising between American states should be considered by a court of arbitration of the American League of Nations (Brum 1920: 31–32). However, the idea never came into being because the interests of the prospective organization did not align with those of the United States, which was not willing to give up its leadership as part of a unification project.

The significance of the Brum doctrine for Latin America was that it served as the starting point for the development of the principle of continent-wide protection, which would later be written into the Inter-American Treaty of Reciprocal Assistance (1947),[23] and the Charter of the Organization of American States (1948), as a fundamental principle for regulating inter-state relations. Interestingly, it would then be adopted in the NATO Charter (1949) in its oft-cited Art. 5.[24]

Thus, the principle of solidarity should be considered a locally and regionally significant principle of international law designed to safeguard the principle of the non-use of force and countering aggression in the understanding of countries affected by it. This principle has its roots in the doctrines and practices of Latin American states.

The Tobar Doctrine, Estrada Doctrine and the Recognition of Governments

The history of Latin America is the history of frequent changes of government, including violent coups. And each time the question that arose in inter-state relations concerned the status of the new government: Is it legitimate? How far do its powers extend? And so on… This led to the development of two related doctrines concerning the recognition of governments: the Tobar Doctrine (1907), devised by Minister of Foreign Affairs of Ecuador Carlos Rodolfo Tobar; and the Estrada Doctrine (1930), which was the brainchild of Genaro Estrada Félix, Secretary of Foreign Affairs of Mexico. Both doctrines remain relevant to this day.

The Tobar Doctrine deals with the issue of the legitimacy of governments and the prevention of upheavals in states. The Estrada Doctrine supplemented these ideas with the nuances of non-interference in internal affairs and the equal rights of states, and opposed the recognition of *de facto* governments that emerged as a result of constitutional coups. Carlos Tobar believed that a "revolutionary" government could not be officially recognized until a popular vote within the framework of the constitutional legal order was held. Change of government was thus associated with the notions of public order, human rights, and the constitutionality of foreign policy actions and events. The doctrine is also known as the "doctrine of democratic legitimacy" or the "doctrine of constitutional legitimacy." The tenets of the Tobar Doctrine are reflected in a letter

[23] See: Tratado Interamericano de Asistencia Recíproca. URL: https://www.iri.edu.ar/publicaciones_iri/manual/UltimaTanda/OEA/3.%20TIAR.pdf (accessed: 23.04.2023)

[24] See: The North Atlantic Treaty. URL: https://www.nato.int/cps/en/natolive/official_texts_17120.htm (accessed 23.04.2023).

sent by the stateman to the Bolivian Consul in Brussels in 1907 in which he argued that American states, in order to preserve their reputation and on the basis of humanitarian considerations, should indirectly intervene in the internal disputes of the states of the continent, at the very least through the non-recognition of governments that have come to power as a result of revolutions, which are inherently unconstitutional (Díaz de Zamora, Miró Colmenárez 2022: 129).

Tobar made a significant contribution to international legal consciousness, as is reflected in subsequent legal acts and norms, and was nominated for the Nobel Peace Prize for his efforts in 1909. The doctrine received institutional support following the signing of several agreements at the Central American Peace Conference in 1907 organized by the United States and Mexico, most notably through the creation of the first ever permanent Central American Court of Justice, which was to consider cases relating to human rights.

That same year, a number of Central American states (Costa Rica, Guatemala, Honduras, Nicaragua, and El Salvador) signed the Central American Treaty of Peace and Amity, which created a procedure for recognizing governments on the basis of constitutional legal orders and reforms. Art. 1 of the Additional Convention to the General Treaty directly states that the parties undertake "not to recognize a government that has come to power in one of the five republics as a result of a coup or revolution against a recognized government without the constitutional reform of a freely elected organ that is representative of the people.[25] The Agreement was replaced with a similar document at the Second Conference on Central American Affairs in 1923, with the above-quoted provision being repeated and expanded.[26] This confirmed the continuity of the principle and its firm entrenchment in international law. The Tobar Doctrine influenced the foreign policy and international legal position of the United States with regard to human rights (including the freedom of speech, religion, etc.) and the recognition of governments.

The Estrada Doctrine proclaimed in 1930 at a meeting of the League of Nations,[27] in turn, enshrined the idea that all peoples have the right to create and freely change their government, and thus does not require the recognition of other states to be considered legitimate. It is obvious that this idea was put forward as a response to the cases of external intervention that occurred in Latin American countries in response to changes of governments in critical situations (the 1910 revolution in Mexico was one such event). Estrada, for example, believed that the formal recognition of the new government in Mexico amounted to interference in the internal affairs of the country.

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[25] See: Tratado general de paz y amistad 1907. URL: http://legislacion.asamblea.gob.ni/Instrumentos.nsf/bde7f9f0e2863496062578b80075d822/c2b0cbf6813f6eb6062577c7005b89d5/$FILE/1907%20Tratado%20general%20de%20Paz%20y%20Amistad.pdf (accessed: 17.05.2023).

[26] See: Pactos de Washington 1923. Tratado general de paz y amistad. URL: https://www.sica.int/cdoc/publicaciones/union/pac_28051927.pdf (accessed: 17.05.2023).

[27] See: Natalicio Genaro Estrada. URL: https://www.gob.mx/epn/articulos/natalicio-genaro-estrada?idiom=es (accessed. 15.05.2023).

The Estrada Doctrine has two components: the emphasis on non-intervention and the rejection of the practice of recognizing governments that come to power through unconstitutional means. At the same time, Estrada elevates the issue of the self-determination of peoples – in this case, self-determination refers to the right to create governments and other public authorities.[28] Thus, in this respect, Latin American international legal thought and practice had a huge influence on the formation and development of many well-known norms and principles of international law.

The Larreta Doctrine and the Principle of Non-Intervention

Uruguayan Foreign Minister Eduardo Rodriguez Larreta would go on to expand upon the ideas of human rights protection, especially during periods when the constitutional order has been violated (1945). In a doctrinal note entitled "The Parallel between Democracy and Peace: The International Defence of Human Rights. Collective Actions in Defence of these Principles," which he sent to all the states of Latin America, Larreta argued that governments that have come to power through revolutionary means should not be recognized, and that collective intervention should take place in such states in order to restore constitutional order. Larreta proposed that the countries should discuss the possibility of multilateral action against any regime violating elementary human rights (Álvarez 2021: 249). In his opinion, the consequences and lessons of the Second World War revealed the relationship between democracy and peace, and the principle of non-intervention cannot serve as a cover for the violation of human rights and regional agreements developed earlier at inter-American conferences. With this in mind, multilateral collective action taken, after extensive consultations, against illegitimate regimes is an entirely acceptable and necessary course of action, even if these regimes do not pose a threat to peace and have not committed acts of aggression. Larreta proposed, in appropriate cases, to "exchange views" with the aim to implementing joint actions based on "fraternal prudence" to ensure democratic principles and freedoms in the countries in question. This approach made it possible to cover up interventionist actions with beautiful words about democracy. In essence, the Larreta doctrine proposed to limit the principle of non-intervention and was thus not accepted by the majority of states on the continent (Cerrano 2019: 2). What is more, it can be assumed that, behind-the-scenes, some aspects of the doctrine were put forward by the United States, as a number of them would later by used as part of the country's foreign policy practice and international legal argumentation – it is, of course, quite typical of Washington to hide its interests and violations of international law behind "noble causes." However, the Latin American countries have maintained doctrinal unity within their own civilizational framework for the benefit of the progressive development of international law and order.

[28] See: Palacios Trevino J. La doctrina Estrada y el principio de la no intervencion. URL: https://diplomaticosescritores.org/obrasADE/DOCTRINAESTRADA.pdf (accessed: 26.05.2023)

Conclusion

Our study of the doctrinal features of the international legal consciousness of Latin America allows us to conclude that the countries of the region represent, in a sense, an independent community of states bound by certain civilizational values, including common approaches to international law (Shumilov 2014: 46–48). The international legal consciousness of Latin American states is deeply rooted in their unique history, including the colonial past and post-colonial internal conflicts, coupled with the interference of European countries and the United States.

Our excursions into the doctrines in this paper have revealed that the greatest international legal values for this group of states are the ideological foundations of and the international legal positions on the strengthening of sovereignty; the constitutional foundations of the domestic legal order; the rights of states to independently form governments and other authorities; the general principles of inter-state coexistence – namely, the inadmissibility of interference in the internal and external affairs of the countries of the region, equal rights, the non-use of force, and the prohibition of aggression; solidarity in fighting aggression and interference; and human rights protection. All these ideas were considered and developed systematically and comprehensively, in an interconnected manner, and were subsequently codified in the Declaration on Principles of International Law, as well as in many regional and universal treaties. They also gave rise to the development of many institutions of international law. Thus, the Latin American continent, as a regional community of states, demonstrates its contribution to the progressive development of international law. It is also worth noting the ways in which doctrinal norms have been translated into practice: first announced through diplomatic notes, they were then established at regional conferences and enshrined in regional international treaties.

However, there is another aspect to the promotion of doctrines, and that is their academic evaluation and presentation through the lens of international law in scholarly works. The Latin American school of international legal scholarship is also known for its originality, and names such as Eduardo Jiménez de Aréchaga (Jiménez de Aréchaga 1983). However, a study of the scientific understanding of the Latin American school of international law would be better suited for another paper.

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Research Article

The Role of Treaty Bodies in Monitoring Compliance with International Environmental Obligations[1]

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Abstract. A large number of international treaties regulating various spheres of international relations have already entered into force. As current practice shows, the emphasis has shifted from the need to regulate an increasing number of relationships to the importance of improving the efficiency of existing international treaties. The present article analyzes the implementation of this process in international environmental law. The authors show that a number of global and regional environmental agreements have established quasi-judicial procedures (so-called "non-compliance procedures") in the form of implementation and compliance committees serving as international control mechanisms. The purpose of such mechanisms is to identify and resolve both local and systemic theoretical and practical issues of non-compliance arising from the provisions of international treaties.

The article is based on a large amount of material, including internationally binding legal acts, acts of an advisory nature, and modern doctrinal research of Russian and foreign scholars. The methodological basis of the research consists of general scientific methods (logical and systems analysis, the dialectical method, deduction and induction) and private scientific methods (historical and legal, comparative legal, formal-legal methods, the method of legal modelling and forecasting).

In their research, the authors analyze various international binding and non-binding instruments, summarize doctrinal positions made by Russian and Western legal scholars presented in domestic and foreign scientific literature, and identify the main issues of compliance committees of international environmental agreements.

The authors attempt to give answers to the following questions: Is it necessary to fix the provisions contained in the texts of existing international environmental agreements establishing the compliance committee, or can this be done later, at the annual meetings of the conferences of the parties? What should the composition and mandate of the compliance committee be? And how efficiently do these committees function? As a result of the research, the authors draw conclusions about the need for detailed monitoring of changes in the various international environmental agreements in order to improve the effectiveness of compliance committees in exercising their mandates and identify violations of the mandates of these committees.

[1] English translation from the Russian text: Otrashevskaya A. M., Solntsev A. M., Yusifova P. N. 2023. Rol' dogovornykh organov v kontrole za vypolneniem mezhdunarodnykh ekologicheskikh obyazatel'stv. *Moskovskiy Zhurnal Mezhdunarodnogo Prava* [Moscow Journal of International Law]. No. 1. P. 47–75. DOI: https://doi.org/10.24833/0869-0049-2023-1-47-75

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Introduction

Improving the effectiveness of international law, and international environmental law in particular, has become an increasingly acute issue in the 21st century. The effective enforcement of international environmental agreements (IEAs) could serve as a form of prevention of international disputes brought before international judicial institutions. A seminal work in this debate is Antonia and Abram Chayes' book *The New Sovereignty* (Chayes, Chayes 1998), which outlines a managerial approach to international relations governed by international treaties. According to these scholars, the most common sources of non-compliance with treaty provisions are: ambiguity and uncertainty in the wording of a treaty; limitations on the capacity of the parties to fulfil their obligations; temporal changes in the social, economic and political relations provided for by treaties (Chayes, Chayes 1998: 10,13,15). The main argument put forward in *The New Sovereignty* is that issues of non-compliance in international law are rarely the result of states deliberately choosing to not act in line with international obligations. On the contrary, non-compliance can in most cases be explained by ambiguity in the nature and extent of obligations, and the lack of sufficient capacity and emergence of unforeseen events that effect the ability to perform them. The compliance framework that is thus proposed in the book aims to promote transparency, resolve disputes, build capacity, and use persuasion to achieve compliance with international obligations. In our opinion, this system of "soft persuasion" works when the obligation in question represents only a slight or moderate deviation from what the state would have done if no agreement were in place. The further the state moves away from its normal mode of operation, this management approach fails and strong enforcement is required to ensure that obligations are fulfilled. It is perhaps important here to talk about the difference between the compliance procedure and the dispute resolution procedure.

It is a well-known fact that, first, it is not always possible to find sufficient jurisdictional grounds for filing a claim in international law, and second, there are no effective measures for monitoring the implementation of decisions of international judicial institutions. The classic example here is the first case of the International Court of Justice "On the Strait of Corfu," where the 1949 decision was not implemented until the 1990s (Albania agreed to pay compensation to the United Kingdom, while the United Kingdom agreed to return gold belonging to Albania that had been stored in the Bank of England vaults since the Second World War). Or the example of

Japan, which, having lost the case in the International Court of Justice "On Whaling in the Antarctic,"[2] withdrew from the International Convention for the Regulation of Whaling in 2019.[3] These are by no means isolated cases highlighting the absence of systemic control over the implementation of the decisions of international courts.

In her doctoral dissertation, Anait Smbatyan brought to light problems of international justice today, which include the limited jurisdiction of international judicial institutions, the lack of effectiveness of international justice, and the growing specialization of courts.[4] In this context, we believe that quasi-judicial bodies, which represent one of the forms on international control, can play a positive role in addressing these issues: in these instances, the consent of the respondent state is not required in order to file a complaint, and efficiency increases because there is a dialogue with the state and because there is a follow-up procedure in place.

Many international treaties today provide for the creation of special mechanisms that are designed to monitor the implementation by states of their international legal obligations. Examples of multilateral agreements that contain provisions on the creation of such bodies (Ulfstein 2007: 877–889) include human rights treaties, the Single Convention on Narcotic Drugs, IEAs, and international disarmament treaties. For the purposes of this study, it is not necessary to consider all the control bodies that have been created on the basis on IEAs. What is important is to understand the trend, to identify how effectively such instruments are implemented if they are not legally binding. Ultimately, the legal consequences of the adopted documents of a given treaty body depend primarily on the application of the international treaty itself. Their legal force is determined by how the rules are applied to the interpretation of contracts under Arts. 31–32 of the Vienna Convention on the Law of Treaties of 1969. The meaning of this term, which is used in contracts to designate a specific type of document, indicates that they are usually not legally binding. Examples include the use of the terms "views," "opinions" (typically found in international human rights treaties) and "recommendations" (Article 76(8) of the 1982 United Nations Convention on the Law of the Sea in relation to the Commission on the Limits of the Continental Shelf) in place of the weightier "solutions." Occasionally, international treaties use terms that make it unclear whether or not they are legally binding, and rely on the context of their use to determine the possible legal meaning (for example, the wording of the

[2] International Court of Justice: Whaling in the Antarctic. Australia v. Japan, New Zealand intervening. Judgement of 31 March 2014. URL: https://www.icj-cij.org/sites/default/files/case-related/148/148-20140331-JUD-01-00-EN.pdf (accessed: 01.04.2022).

[3] McCurry J. Japan to Resume Commercial Whaling One Day after Leaving the IWC // The Guardian. 25.01.2019. URL: https://www.theguardian.com/world/2019/jan/25/japan-to-resume-commercial-whaling-one-day-after-leaving-the-iwc (accessed: 02.02.2023).

[4] See: Smbatyan A. S. 2014. *Decisions of International Judicial Institutions and Their Role in Strengthening the International Legal Order.* Doctoral dissertation.

definition in Article 18 of the Kyoto Protocol and the text of decision 24/CP.7).[5] Thus, the terms used in the text of an international treaty to refer to declarations, as well as the context, lead us to the conclusion that the declarations of treaty bodies themselves are not legally binding.

The rules for the application of such decisions must be determined by applying the rules of treaty interpretation. These rules are sufficiently open-ended as guidelines for all treaties, as they provide for an interpretation process that takes multiple means of interpretation in a "single combined operation." However, there are no strict rules that might contradict the intentions of the parties. In this context, the purpose of our study is to identify certain situations that might provide guidance for similar cases and help reach an approximate conclusion regarding the possible consequences of statements by supervisory authorities in the interpretation of international treaties.

The Development of a Compliance Mechanism in International Environmental Law

Today, the use of a non-compliance procedure is commonplace in international environmental law. On the one hand, this is a procedure for monitoring compliance by states with international legal obligations. On the other hand, it is an important mechanism for preventing environmental disputes regarding non-compliance with the provisions of various IEAs. There is no universal non-compliance procedure, as they are specific to each individual IEA and differ from agreement to agreement. Special committees created within IEAs perform quasi-judicial functions.

It can be argued that it is common practice these days to establish a non-compliance procedure as part of an IEA (Kuokkanen 2003: 315). Over 30 IEAs either include such a procedure (for example, the 1997 Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change; the 1987 Montreal Protocol on Substances That Deplete the Ozone Layer to the 1985 Vienna Convention for the Protection of the Ozone Layer; the 1991 Convention on Environmental Impact Assessment in a Transboundary Context; the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); the 2003 Kyiv Protocol on Pollutant Release and Transfer Registers; the 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, and others), or are currently being developed (for example, the 2015 Conference of the Parties to the 1992 United Nations Framework Convention on Climate Change did not approve

[5] UN: Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol. *Report of the Conference of the Parties on its 7th session, held at Marrakesh from 29 October to 10 November 2001.* P. 89–107. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/602/38/PDF/G0260238.pdf?OpenElement (accessed: 20.04.2022).

of the Rules of Procedure of the Paris Agreement Implementation and Compliance Committee until December 2022,[6] while the Compliance Committee of the Stockholm Convention has been stuck at the development stage since 2006[7]).

Unlike judicial institutions, non-compliance procedures are conceived as a "friendly" means of resolving international disputes, since they are preventive in nature, involve both the parties directly implicated in the resolution of the dispute and all the participants in the respective multilateral treaty, and the final decision is typically made by a conference of the parties to the IEA (this is a significant difference from human rights treaty bodies, where the Conference of the Parties to the treaty does not have such powers). As part of the non-compliance procedure, mechanisms are widely used to provide the guilty state with technical and financial assistance to facilitate the fulfilment of its obligations under the IEA. Most often, this involves exerting diplomatic pressure on the state that is guilty of non-compliance – demanding that it submit reports or action plans on the implementation of the IEA and the measures taken. Only later are more stringent enforcement measures applied. This also involves creating an effective system for monitoring the implementation of international legal obligations (Medvedeva 2012: 78).

In general, the non-compliance procedure is applied in cases where a state party to the given IEA does not comply with its norms. The emergence of such a procedure suggests that the traditional rules of international law regarding the violation of treaty obligations and the responsibilities of states are not particularly effective when it comes to implementing IEAs. Martti Koskenniemi, a prominent expert on international legal theory, provides an in-depth analysis of the difference between compliance and responsibility, noting that the institution of responsibility in international law has as its ultimate goal compensation for damage (i.e. obtaining compensation for the damaged state), whereas the goal of the non-compliance procedure is to force a state to return to compliance with IEA provisions (Koskenniemi 1992: 123–162). This difference exposes the weakness of traditional dispute resolution procedures for international environmental law, since, *de facto,* environmental degradation had occurred before the relevant IEA was signed. As Professor Mikhail Kopylov notes, the history of international environmental law is a series of overdue (and sometimes unsuccessful) reactions to spiralling environmental crises (Kopylov 2007: 240). It is this phenomenon that reveals the true nature of environmental law, operating against the backdrop of ongoing climate change, ozone depletion, and the loss of biological diversity. In such cases, it is extremely difficult to hold a state accountable for violating international

[6] UNFCC: Rules of Procedure of the Paris Agreement Implementation and Compliance Committee (PAICC) adopted 21 December 2022. URL: https://unfccc.int/news/rules-of-procedure-of-the-paris-agreement-implementation-and-compliance-committee-paicc-adopted (accessed: 01.02.2023).

[7] See: Stockholm Convention. URL: https://chm.pops.int/theconvention/compliance/tabid/61/default.aspx (accessed: 01.02.2023).

norms on climate change, since there is no method for calculating the harm with one hundred percent accuracy, and the negative consequences will only become fully apparent many years (perhaps even decades) into the future. In this context, the non-compliance procedure acquires even greater significance because it is more important in international environmental law to prevent harm than to try to force a state to pay damages. International environmental law is somewhat unique because environmental problems are increasing and expanding at such a rapid pace, and their consequences are irreversible. The traditional institution of responsibility does not allow us to respond to environmental problems in an adequate manner. The main goal is to assist a state that is in violation of the norms to return to compliance with the IEA, and not necessarily to blame it for non-compliance. In this respect, according to Tim Stephens, in such areas of international relations as natural resource management and environmental protection, cooperation at the contractual level is preferable to confrontation in the form of the judicial resolution of contentious issues (Stephens 2009: 2).

According to Professor Jan Klabbers, the regular system of state responsibility is not particularly suitable for environmental protection (Klabbers 2007: 1001). She puts forward the following arguments to support this claim: on international environmental law, there is often no real wrongfulness at issue, since causality between behaviour and environmental degradation is frequently difficult to establish with the degree of precision that the law would insist on; responsibility comes after the fact of environmental damage and generally cannot restore the *status quo ante* (the previously existing state of affairs), which is the primary task of international environmental law; and key standards of environmental law, such as environmental safety, due diligence, significant harm, and so on, as often too indeterminate to be enforceable by international judicial institutions. Moreover, most international treaties require mutual consent for recourse to international judicial institutions, whereas the non-compliance procedure can be applied at the initiative of a state, legal entity, or individual.

We should also add that it is often not states themselves that are guilty of causing environmental harm; polluters tend to be legal entities, usually TNCs. On the other hand, when environmental damage does occur, it is often difficult to identify a specific state that has been affected by the wrongdoing: for example, ozone depletion and pollution of the World Ocean causes harm to all of humanity.

The non-compliance procedure is primarily used for the following purposes (Redgwell 2001: 44; Redgwell, Fitzmaurice 2000): to provide positive encouragement to contracting parties to comply with their treaty obligations; to provide a multilateral forum for dispute resolution/avoidance; in the event of non-compliance, to provide a "softer," less legalistic mechanism than offered by traditional dispute-settlement procedures under international law; to force the state to comply with the norms of an international treaty rather than impose a sanction for non-compliance or award

compensation to an injured party; to facilitate access to the dispute resolution procedure, since non-compliance procedures may typically be invoked by one party, and are therefore not dependent upon common agreement.

Monitoring is an important component of the non-compliance procedure. Experts rightly note that the lack of a regular detailed and impartial reporting system makes oversight of the implementation by states of the provisions of the IEA impossible (Szell 1999: 98). The ability to obtain information about the compliance or non-compliance of states through a non-compliance procedure can be called a form of compliance monitoring. If monitoring data indicates that a state is violating the provisions of an IEA, and that IEA does not provide for a non-compliance procedure, then the states parties to it may resort to traditional dispute resolution procedures.

Having summarized the non-compliance procedures written into various IEAs, we can highlight their most characteristic features (Klabbers 2007: 998). Most IEAs contain provisions on the creation of a special compliance committee made up of a limited number of representatives of the states that are parties to the agreement. This indicates that the procedure is diplomatic rather than judicial. After considering a complaint, such a committee will typically submit a report to the plenary body, often dubbed the Conference of the Parties (COP) or Meeting of the Parties (MOP). A non-compliance procedure can be initiated by a state party to an IEA, the secretariat of a given IEA, or the violating itself (by submitting an annual report). The Aarhus Convention allows access to non-compliance procedures for NGOs and individuals – Article 15 (Solntsev, Petrova 2020: 41–49). On the whole, the creation and operating mechanism of a non-compliance procedure is provided for either by the provisions of a given IEA, or by a protocol thereto, or by the COP or MOP.

The issue of the binding nature of the decision and possible sanctions for failure to comply with the instructions is important here. In principle, the non-compliance procedure is advisory in nature: it is designed to facilitate the implementation of the provisions of the IEA, the rendering of assistance (for example, technology transfer), and the exchange of information. Decisions made as a result of the non-compliance procedure may include the imposing obligation on the offending state to develop a compliance action plan. If the state subsequently fails to cooperate and does not implement the decision, then action may be taken against it.

The following reasons for the non-compliance of states with the provisions of an IEA can be identified: as Jutta Brunnée points out, it is typically developing countries whose financial and technical capabilities truly are limited that are accused of non-compliance with IEAs (Brunnee 2005:11). However, it sometimes happens that states, when failing to comply with the provisions of an IEA, seek to obtain benefits since the fulfilment of environmental obligations is always a heavy economic burden.

In this article, we will consider the activities of several of the most important committees.

The Executive Committee on the Montreal Protocol

The Montreal Protocol on Substances That Deplete the Ozone Layer to the 1985 Vienna Convention for the Protection of the Ozone Layer is one of the first international treaties to introduce a non-compliance procedure. As noted in the legal literature, the Montreal Protocol is the first international agreement to fill the gap between the procedure for the peaceful resolution of disputes and the reporting procedure with the emergence of a new significant procedure (Szell 1995: 99). The non-compliance procedure developed under the Montreal Protocol remains one of the most dynamically developing procedures to date, and an example for other IEAs to emulate (Klabbers 2007:997). The Committee's activities are largely responsible for the success of the international legal regime to preserve the ozone layer.

Article 8 of the Montreal Protocol reads: "The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance." The non-compliance procedure has been developed and modified since the 1990s. It currently operates on the basis of the Decision adopted at the MOP in Cairo in 1998.[8] The procedure can be invoked by a state or the Secretariat of Montreal Protocol.

The London Amendment to the Montreal Protocol was adopted in 1990,[9] adding Art. 5, para. 10: "The Parties shall establish an Executive Committee to develop and monitor the implementation of specific operational policies, guidelines and administrative arrangements…" One of the Executive Committee's functions is to consider complaints under the non-compliance procedure. After it has considered a complaint, the Committee makes a decision which is submitted for final adoption at the annual MOP. If a state behaves obediently and asks for leniency and assistance, then the decision of the MOP is typically limited to provisions on measures that the state in breach of the rules must take at the national level, as well as on the delivery of the necessary assistance (financial, technical, etc.). However, non-compliance with the measures prescribed by the MOP may entail serious punitive measures, including restricting exports. The Montreal Protocol also has a "potential non-compliance" procedure that serves as a preventive measure.

In general, the non-compliance procedure established by the Montreal Protocol is used quite frequently. It is worth noting that Russia was also found guilty under the non-compliance procedure and for a long time refused to cooperate and comply with

[8] UNEP: Report of the Tenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer of 3 December 1998. Annex II. URL: https://ozone.unep.org/system/files/documents/10mop-9.e.pdf (accessed: 20.04.2022).

[9] Adopted at the Second Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer of 29 June 1990.

the provisions of the Montreal Protocol, but eventually agreed to accept financial assistance to re-equip its seven remaining Freon production facilities.[10] Another problem for Russia is that it uses the CFC-113 refrigerant, an ozone-depleting substance whose production is banned under the Montreal Protocol on Substances That Deplete the Ozone Layer to the 1985 Vienna Convention for the Protection of the Ozone Layer, in its rocket and space industry (Zhukov, Solntsev 2010: 87–94). For this reason, Russia makes a formal request to the Secretariat of the Montreal Protocol for permission to produce the amount of CFC-113 it needs for the rocket industry.

The CITES Compliance Committee

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was signed on March 3, 1973 in Washington, D.C., and entered into force on July 1, 1975. A total of 182 countries and the European Union are signatories to the Convention. The Russian Federation is a party to CITES by virtue of its status as the successor state of the Soviet Union, which ratified the Convention on December 8, 1976.[11]

Strict compliance with CITES is essential for the successful achievement of its objectives. Compliance mechanisms were finalized through the adoption of documents at Conference of the Parties (COPs) of CITES members states (Article XI provides for calling meetings of Conference of the Parties). According to Peter Sand, despite the controversial legally binding nature of the provisions of COP resolutions, CITES implies a quasi-legal process that emerged as a result of the evolution of the Convention itself (Sand 2013: 5–27). The seeds for the later emergence of a compliance mechanism were planted at COP 8 (Kyoto, 1992), where Resolution 8.4 (Rev. CoP15),[12] aimed at identifying parties that had failed to adopt domestic measures related to the regulation of trade in species within the scope of CITES, was adopted. However, the biggest steps in the development of the compliance mechanism were made at COP 11 (Gigiri, Kenya, 2000), at which Special Resolution 11.3 (Rev. CoP18) was adopted,[13] setting out the measures that need to be taken at the national and international levels. With the amendments made at COP 18, an international compliance mechanism is detected through interaction with INTERPOL and the World Customs Organization (Art. 15). What is more, representatives of the Wildlife Crime Working Group call on INTERPOL to attend meetings of the Conference of the Parties (Art. 21). The resolution notes the key role of the International Consortium on Combating Wildlife Crime (ICCWC),

[10] See, for example: (Werksman 1996).
[11] List of Contracting Parties. URL: https://cites.org/eng/parties/country-profiles/ru (accessed: 12.01.2023).
[12] CITES: National Laws for Implementation of the Convention. URL: https://cites.org/sites/default/files/document/E-Res-08-04-R15_0.pdf (accessed: 14.01.2023).
[13] CITES: Compliance and Enforcement. URL: https://cites.org/sites/default/files/document/E-Res-11-03-R18.pdf (accessed: 25.11.2022).

created in 2010 (St. Petersburg, Russia) as a platform for interaction between five entities: the CITES Secretariat, INTERPOL, the United Nations Office on Drugs and Crime, the World Bank Group, and the World Customs Organization. The mission of the ICCWC is to provide technical, informational, and financial support to national authorities in the development of a legal framework to combat wildlife crime.[14]

Another example of an international mechanism is the Compliance Assistance Programme (CAP), established at COP 18 (Geneva, 2019) to provide targeted support to countries that have difficulty preventing violations of the Convention and following the recommendations of the CITES Standing Committee. The Standing Committee provides guidance to the Secretariat regarding the implementation of the Convention; monitors the use of the budget by the Secretariat; coordinates, where needed, the work of other committees and working groups; carries out tasks assigned to it by the Constitutional Court; and develops draft resolutions for consideration by the COP (Abaturova, Badretdinov, Solntsev 2021: 1–9).

The next document regulating compliance is the Annex to Resolution 14.3 (Rev. CoP18),[15] "Guide to CITES compliance procedures" (hereinafter referred to as the "Guide," adopted at COP 14 (The Hague, 2007). The compliance mechanisms take a supportive approach with the aim of creating an environment that prevents non-compliance, rather than dealing with the negative consequences of existing instances of non-compliance (Art. 4).

The Guide outlines the key compliance responsibilities of the CITES authorities, which can be divided into two groups – managing and executive. The managing authorities include the COP, which, according to Art. 10, provides general policy guidance on compliance issues; directs and oversees the handling of compliance matters; reviews decisions of the Standing Committee related to specific compliance matters; and delegates certain authority to the Standing Committee or other CITES bodies. Executive tasks are performed by the Standing Committee, which, according to Art. 12, monitors and assesses overall compliance with obligations under the Convention; advises and assists Parties in complying with obligations under the Convention; verifies information; and takes actions to remedy unreasonable measures taken by the parties to the Conference within the framework of the key compliance mechanism – national regulations. The Animals Committee, Plants Committee, and Secretariat provide assistance with the necessary reviews, consultations, assessment, reporting, and monitoring.

Art. 16 of the Guide states that the Secretariat is to provide a party concerned with information it receives about that party's non-compliance with the provisions of the CITES, and communicate with the party regarding the matter. If the party fails to take

[14] CITES: The International Consortium on Combating Wildlife Crime. URL: https://cites.org/eng/prog/iccwc_new.php (accessed: 14.01.2023).

[15] CITES: Compliance Procedures. URL: https://cites.org/sites/default/files/document/E-Res-14-03-R18.pdf (accessed: 25.11.2022).

sufficient measures to rectify the situation within a reasonable timeframe, the matter is, in accordance with Art. 21, brought to the attention of the Standing Committee, which has the authority to issue a written caution requesting special reporting or a compliance action plan from the party concerned, and to provide recommendations to resolve the existing problem of non-compliance (Art. 29). As a last resort, if the party shows no intention to achieve compliance, the Standing Committee has the right to recommend that the Constitutional Court suspend trade in specimens of one or more CITES-listed species (Art. 30).

Specific examples of compliance procedures include, in addition to the general reporting and regulations at the national level outlined above,[16] trade surveys on Significant Trade in Specimens of Appendix-II Species,[17] trade surveys of captive-bred organisms, and National Ivory Action Plans.[18]

The CITES Convention is a good example of just how effective applying economic sanctions, including trade embargoes, can be, as they almost aways lead parties that are in violation of agreements to comply with the requirements. This effectiveness was further confirmed by an independent external audit carried out in 2004 at the request of the Standing Committee (Koester 2000).

The legal basis for applying sanctions can be found in Art. XIV.1(a) of CITES, which "in no way affects the right of parties to adopt stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof." It follows from this that countries have the legal grounds to introduce unilateral trade embargoes in accordance with international legal norms.

Art. XIII of the Convention regulated cases of non-compliance with the treaty and determines the procedure for considering each specific case. If violations by any country of the mechanisms provided for by the Convention cannot be resolved through negotiations between the party concerned and the CITES Secretariat (in accordance with Art. XIII) or the Standing Committee, the Conference or the Standing Committee may, as a last resort, recommend an embargo in the form of the suspension of all trade in specimens of one or more CITES-listed species. This system make it possible to prohibit trade in the species mentioned in the Annex to the Convention, as well as trade in other species, which, in turn, entails economic damage due to the inability to carry out trade legally. As the Convention is universal, such methods of economic pressure have proven effective, and ensure that the parties comply with the provisions of the agreement in almost all cases.

[16] CITES: Compliance Procedures. URL: https://cites.org/sites/default/files/document/E-Res-14-03-R18.pdf (accessed: 25.11.2022).
[17] CITES: Review of Significant Trade in Specimens of Appendix-II Species. URL: https://cites.org/sites/default/files/document/E-Res-12-08-R18.pdf (accessed: 25.11.2022).
[18] Ibid.

In practice, however, some cases of applying sanctions have required intervention by the courts. France and the European Commission were locked in such legal proceedings between 1986 and 1990. In the Bolivian Furskins case, the Court of Justice of the European Union considered the import of ocelot fur from Bolivia into France following a trade embargo introduced by CITES Resolution 5.2 (1985) and its application under EU Regulation 3626/8266. The French government believed that the Regulation was only advisory in nature and did not contain any legal obligations. However, the Court of Justice of the European Union ruled that by allowing the goods to be imported, France had failed to fulfil its obligations under the article on the application of the Convention by failing to adopt stricter domestic measures (Sand 2017: 251– 263).

CITES is a very good example of the effectiveness of international environmental law, primarily due to the progressive development and practical application of innovative methods to force states to comply with its provisions. It is important to note the evolutionary nature of CITES: some mechanisms emerged during the discussion at the Conferences of the Parties to the Convention and were initially written, by consensus, into COP resolutions and later spelled out in detail in the codifying act Guide to CITES compliance procedures of 2007, which has been applied in practice over 40 times against states that have violated the provisions of CITES. Of course, challenges remain, not least of which the need to strengthen enforcement mechanisms, especially in developing countries.

Compliance Committee of the Kyoto Protocol

The reporting period for the Kyoto Protocol ended on December 31, 2012, but the protocol continues to operate in parallel with the 2015 Paris agreement, and 192 states are currently parties to it.

The Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) provides for various treaty expert bodies, the members of which act in their personal capacity. It is the most detailed non-compliance procedure to the 1992 UNFCCC (Redgwell 2001: 43–67). The procedure, which was fully fleshed at the Seventh session of the Conference of the Parties (COP 7) of the UNFCCC,[19] is closest to a judicial procedure and sets out the conditions in which a complaint can be filed, procedural guarantees, and the rules on the right of appeal.

The main tasks of the expert review groups are to review information on the established emission amounts in accordance with Art. 3, paras. 7–8 of the Kyoto Protocol and ensuring that the Conference of the Parties serving as the Meeting of the Parties and the Compliance Committee have adequate information.[20]

[19] UN: Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol. Report of the Conference of the Parties on its Seventh Session, Held at Marrakesh from 29 October to 10 November 2001. P. 89–107. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/602/38/PDF/G0260238.pdf?OpenElement (accessed: 20.04.2022).

[20] UN: Guidelines for Review under Article 8 of the Kyoto Protocol. Report of the Conference of the Parties on its Seventh Session, Held at Marrakesh from 29 October to 10 November 2001. P. 38–88. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/602/38/PDF/G0260238.pdf?OpenElement (accessed: 20.04.2022).

The Compliance Committee is made up of two branches: a *facilitative branch* and an *enforcement branch*. Each branch consists of ten members who act in their own personal capacity. They "shall have recognized competence relating to climate change and in relevant fields such as the scientific, technical, socio-economic or legal fields."[21]

The facilitative branch provides advice and assistance to individual participants, but does not deal with legally binding non-compliance issues. The enforcement branch is responsible for identifying cases of non-compliance with any obligation. It also resolves cases where the parties disagree with amendments or adjustments proposed by expert review groups to states parties.

The responsibility of the enforcement branch for "determining" cases of non-compliance is based on Art. 18 of the Kyoto Protocol. The term "determine" would suggest that decisions are final (unless overturned on appeal) and have binding force, but Art. 18 specifically states that this would require an amendment to the Protocol. The Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol may review the reports of expert review groups, provide general policy guidance, and consider and make rulings on appeals. It is also the prerogative of the COP to decide on the legal form of compliance procedures and mechanisms.

As with other expert bodies, the issue of the legal significance of the Compliance Committee's decisions for interpretative purposes has been raised in relation to the Kyoto Protocol's compliance mechanism. For example, in the case concerning Croatia and the calculation of its assigned amount of CO2 emissions (2009), the review panel held that the manner in which Croatia calculated its assigned amount did not comply with the procedure set out in Arts. 3(7), 3(8) and 7(4) of the Kyoto Protocol.[22] Croatia added 3.5 million tonnes of CO2 equivalent to its base year emissions, citing Art. 4 of the UN Framework Convention on Climate Change, which allows flexibility for parties undertaking the transition to a market economy, as well as decision 7/CP.12, which allows parties to add 3.5 million tonnes. The enforcement branch adopted the same position as the expert review group and stated that decision 7/CP.12 adopted under the Convention cannot be applied to the calculation under the Kyoto Protocol.[23] Croatia objected: "The error the EBCC [the enforcement branch of the Compliance Committee] committed is primarily caused by grammatical interpretation of the clause, contradicting the Convention and COP decisions, 9/CP.2 in particular. Instead of grammatical interpretation, EBCC should have used teleological interpretation focusing on the intention of the Parties of the Convention, respecting particular circumstances of each

[21] UN: Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol. Report of the Conference of the Parties on its Seventh Session, Held at Marrakesh from 29 October to 10 November 2001. P. 89–107. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/602/38/PDF/G0260238.pdf?OpenElement (accessed: 20.04.2022).

[22] UNFCCC: Report of the Review of the Initial Report of Croatia. August 26, 2009. Para. 157. URL: https://unfccc.int/documents/5800 (accessed: 25.11.2022).

[23] UNFCCC: Preliminary Finding. Party Concerned: Croatia. October 13, 2009. Para. 21. URL: https://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2009-1-6_croatia_eb_preliminary_finding.pdf (accessed: 25.11.2022).

party. Such interpretation would enable EBCC to adopt fair and equitable decision with respect to Croatia honouring the Convention, decision 7/CP.12, specific historical circumstances referring to Croatia, but also provisions of [the Kyoto Protocol]."[24]

The enforcement branch disagreed in its final decision of November 26, 2009: "After full consideration of the further written submission from Croatia, the enforcement branch concludes that there are not sufficient grounds provided in the submission to alter the preliminary finding of this branch. In this respect, the branch notes that: Pursuant to Article 31 of the 1969 Vienna Convention on the Law of Treaties and customary international law, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. In addressing the questions of implementation before it, the enforcement branch followed this general rule and was not persuaded that it is necessary to follow another method of interpretation."[25]

Croatia filed an appeal with the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol against the final decision of the enforcement branch,[26] although it withdrew the appeal before the Conference of the Parties considered the case.[27]

It is important to note that the Compliance Committee of the Kyoto Protocol has limited scope for interpretation. Section XV, para. 1 of decision 24/CP.7 provides a specific list of consequences that apply in various cases. The Committee may have certain discretionary powers when it comes to determining sanctions, but this generally does not involve relevant issues of interpretation. As the example of Croatia shows, there may be exceptional cases where the Compliance Committee, in fulfilling its functions, has to interpret a treaty in a way that could give rise to disagreement. However, in such cases, the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol has the final say and does not need to determine whether or not the decision of the Compliance Committee is based on a proper interpretation of the treaty. If this issue arises before a court or other body, then that body should consider whether and to what extent legal experts were involved in the decision of the Compliance Committee.

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[24] UNFCCC: Statement Position of Croatia in Relation to Preliminary Finding CC-2009-1-6/Croatia/EB. November 12, 2009. URL: https://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2009-1-7_croatia_eb_further_written_submission.pdf (accessed: 25.11.2022).

[25] UNFCCC: Final Decision. Party Concerned: Croatia. November 26, 2009. URL: https://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2009-1-8_croatia_eb_final_decision.pdf (accessed: 25.11.2022).

[26] UNFCCC: Comments from Croatia on the Final Decision. January 4, 2010. Para 2. URL: https://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2009-1-9_croatia_eb_comments_from_croatia_on_the_final_decision-website.pdf (accessed: 25.11.2022).

[27] UNFCCC: Withdrawal by Croatia of Its Appeal against a Final Decision of the Enforcement Branch of the Compliance Committee. Note by the Secretariat. August 16, 2011. URL: https://unfccc.int/resource/docs/2011/cmp7/eng/02.pdf (accessed: 25.11.2022).

To date, the Committee has accepted 12 cases for consideration (the most recent two against Kazakhstan in 2019 and 2020),[28] and decisions have already been made on 11 of them. In general, decisions of the Compliance Committee contribute to the practice of the application of international treaties. However, it would be a stretch to suggest that the decisions of the enforcement branch could have an impact on determining the applicable law in the context of the international climate regime similar to that of judicial decisions at the international level, which are one of the subsidiary sources of international law.

Paris Agreement Implementation and Compliance Committee

Article 15 of the 2015 Paris Agreement established a special mechanism to facilitate the implementation of and encourage compliance with the provisions of the treaty.[29] This mechanism consists of a committee whose activities are facilitative in nature and are not aimed at resolving disputes, applying penalties and establishing sanctions.

Following the Twenty-First Session of the Conference of the Parties to the Framework Convention of Climate Change in 2015, it was proposed that the Committee should consist of 12 members with competence in relevant fields such as the scientific, technical, socio-economic or legal fields, and who should be elected on the basis of equitable geographical representation, with two members each from the five regional groups of the United Nations and one member each from the small island developing states and least developed countries.[30] In addition, the Ad Hoc Working Group on the Paris Agreement was invited to develop the modalities and procedures for the effective operation of the committee and to present its work at the first meeting of the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (hereinafter referred to as the CMA).[31]

The proposals presented at the Twenty-First Session of the Conference of the Parties were adopted at the CMA 1–3 sessions in Katowice in December 2018,[32] as were the modalities and procedures to facilitate implementation and promote compliance. Thus:

a) The CMA elects members of the Committee as well as an alternate for each member for a period of three years and for a maximum of two consecutive terms.[33]

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[28] UNFCCC: Compliance under the Kyoto Protocol. URL: https://unfccc.int/process/the-kyoto-protocol/compliance-under-the-kyoto-protocol (accessed: 25.11.2022).

[29] Paris Agreement of April 22, 2016. Art. 15. URL: https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_russian_.pdf (accessed: 12.01.2023).

[30] UN: Report of the Conference of the Parties on its Twenty-First Session, Held in Paris from 30 November to 13 December 2015, para. 102. URL: https://unfccc.int/resource/docs/2015/cop21/rus/10a01r.pdf (accessed: 12.01.2023).

[31] Ibid. Para. 103.

[32] The first session of the CMA took place in three parts: part one (1) in Marrakesh in 2016; part two (1-2) in Bonn in 2017; and part 3 (1-3) in Katowice in 2018.

[33] UNFCCC: Modalities and Procedures for the Effective Operation of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement. *Report of the Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement on the Third Part of its First Session, held in Katowice from 2 to 15 December 2018.* URL: https://unfccc.int/sites/default/files/resource/cma2018_3_add2_new_advance.pdf (accessed: 25.11.2022).

b) The Committee shall elect co-chairs from among its members (one of which must be representative of a developed country, while the other must be from a developing country).[34]

c) The Committee shall meet at least twice a year.[35]

d) Decisions of the Committee are deemed to be adopted if at least three quarters of the members are present and take part in the voting, and the total number of members present at the vote is at least ten.[36]

The provisions adopted concerned the initiation of issues and the procedures for considering them, the adoption of appropriate measures, conclusions and recommendations, and the consideration by the Committee of systemic issues. These provisions were improved upon and supplemented following the fourth session of the CMA, and, as such, they will be discussed in greater detail below.

The Rules of Procedure of the Committee to Facilitate Implementation and Promote Compliance were adopted at the third session of the UNFCCC and concern the following: the role of alternate members; the duties and rules of conduct of members and alternate members; measures to prevent conflicts of interest; the rules regarding transmitting and approving the agenda of meetings; the decision-making and voting procedure; and the powers of observers and the Secretariat.[37]

The fourth session of the CMS approved the procedures to facilitate implementation and promote compliance, which complemented and developed the conditions and procedures established at the first CMA, and duplicated the rules adopted by decision 24/CMA.3 at the third session of the CMA.

In accordance with the accepted rules of procedure, any party may, through the national focal point, make a written submission with respect to its own implementation of and/or compliance with any provision of the Paris Agreement to the Committee through the Secretariat.[38] The submission must describe the problem in detail, indicate the reasons why the problem(s) occurred, the basis on which the party is filing the submission, and the relevant national capabilities of the state. The Committee carries out a preliminary examination of the submission within three months after the date it was initiated and then makes a decision on whether or not to initiate a consideration of the issues.

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[34] Ibid.

[35] Ibid.

[36] Ibid.

[37] UNFCCC: Rules of Procedure of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement. *Report of the Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement on its Third Session, Held in Glasgow from 31 October to 13 November 2021.* URL: https://unfccc.int/sites/default/files/resource/CMA2021_10_Add3_E.pdf (accessed: 25.11.2022).

[38] UNFCCC: Report of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement "Rules of Procedure of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement." November 14, 2022. Rule 17. URL: https://unfccc.int/sites/default/files/resource/cma2022_L01E.pdf (accessed: 13.01.2023).

In accordance with the provisions of the Convention, each party must provide: information on their nationally determined contributions to the global response to climate change; "a national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases";[39] information on the progress achieved at the national level; and information on financial and technology assistance. The parties must also participate in the initiation of a multilateral review of progress in the provision of financial support, technology transfer, and capacity-building. Developed countries, in turn, must additionally report the amount of financial support provided to developing countries to combat climate change.[40] If, four weeks in advance of the CMA meeting, a party has not provided such information or taken part in the consideration of the issue, or if it has been determined on the basis of previously adopted recommendations and guidelines that the information submitted contains significant and persistent inconsistencies, the Committee makes a decision on whether or not to consider the issues, after which it notifies the party about this with relevant justification of its position. The party concerned may take part in the deliberations of the Committee, but not at the decision-making stage. The Committee then adopts appropriate measures, taking into account the findings and recommendations presented by the party concerned, paying particular attention to its national capabilities and circumstances. Appropriate measures adopted by the Committee may include: engaging in a dialogue with the party concerned; providing assistance on issues of accessing finance, technology and capacity-building support; making recommendations to the Party concerned and communicating such recommendations to the relevant bodies or arrangements; and developing an action plan.[41]

The Committee may also identify issues of a systemic nature with respect to the implementation of and compliance with the provisions of the Paris Agreement faced by a number of Parties and bring such issues to the attention of the CMA for its consideration.[42] The Committee then prepares and submits a recommendation.

The Paris Agreement Implementation and Compliance Committee held eight sessions during the course of its work (2020–2022), considering various issues, most notably organizational, technical, procedural, financing, and other issues. The eighth and currently last session of the Committee was held in Bonn in August 2022.[43] The final

[39] Paris Agreement of April 22, 2016. Art. 7, para. 3. URL: https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_russian_.pdf (accessed: 13.01.2023).

[40] UNFCCC: Report of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement "Rules of Procedure of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement." November 14, 2022. Rules 18–20. URL: https://unfccc.int/sites/default/files/resource/cma2022_L01E.pdf (accessed: 13.01.2023).

[41] UNFCCC: Report of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement "Rules of Procedure of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement." November 14, 2022 Rule 22. URL: https://unfccc.int/sites/default/files/resource/cma2022_L01E.pdf (accessed: 13.01.2023).

[42] Ibid. Rule 32.

[43] UNFCCC: Report of the 8th meeting of the Paris Agreement Implementation and Compliance Committee (9-12 August 2022). URL: https://unfccc.int/sites/default/files/resource/PAICC%208%20meeting%20report.pdf (accessed: 02.02.2023).

document contains information relevant to the Third Annual Report to the CMA. The report covers activities carried out between August 19, 2021 and August 12, 2022 and contains information on communications and awareness activities, the budget, and recommendations for consideration by the COP.

The Committee developed and adopted draft rules of procedure. Its sessions were mostly dedicated to highlighting the work of the Secretariat, which focused on the provision by the parties of information on implementation, expert technical reviews, knowledge-building activities, and increasing transparency. Particular attention was paid to gender issues and empowerment action on climate change in accordance with the Enhanced Lima work programme on gender and its gender action plan.[44]

Further, in line with the Glasgow work programme on Action for Climate Empowerment, the Committee identified the need to increase empowerment and improve access to information for members of society in the context of combating climate change. The means and methods for achieving this include education, raising public awareness, access to information, participation in decision-making, and increasing international cooperation.[45]

A separate section in the report is dedicated to the work of the Committee in the field of communication and the dissemination of information: information is regularly updated on the Committee's web page, which also contains up-to-date news and event announcements connected with issues under consideration. Issues of financing and the Committee's budget for implementing its assigned functions and tasks were also raised separately. The complaints have not been considered yet.

Aarhus Convention Compliance Committee

One of the most successful committees is the one established on the basis of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. The Convention, developed by the United Nations Economic Commission for Europe (UNECE) and signed on June 25, 1998 in the Danish town of Aarhus,[46] requires parties to guarantee the right of access to information, the right to participate in decision-making, and the right of access to justice in environmental matters in order to protect the right of every person now and in the future to live in a healthy environment conducive to his or her well-being. The Aarhus Convention is the first international treaty on environmental protection whose main focus is on the obligations of states to the international community and NGOs.

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[44] UNFCCC: Enhanced Lima Work Programme on Gender and its Gender Action Plan. URL: https://unfccc.int/sites/default/files/resource/cp2019_13a01E.pdf#page=6 (accessed: 13.01.2023).

[45] NFCCC: Glasgow Work Programme on Action for Climate Empowerment. November 13, 2021. URL: https://unfccc.int/documents/310896 (accessed: 02.02.2023).

[46] To date, 46 states and the European Union have joined the Convention. Russia and Uzbekistan are the only CIS countries who are not parties to the Convention.

Art. 15 of the Aarhus Convention provides for the adoption of measures of a "non-confrontational, non-judicial and consultative nature" for reviewing compliance with the provisions of the Convention. These measures must allow for appropriate public involvement. To implement this provision, Decision I/7 on the establishment of the Aarhus Convention Compliance Committee (hereinafter referred to as the Committee) was adopted at the first Meeting of the Parties in the Italian city of Lucca in 2002. The Decision established the Committee as the main body for reviewing complaints, set out the structure and functions of the Committee, and outlined the procedures for considering issues of compliance with the requirements of the Convention (Solntsev, Petrova 2010: 41–49).

Art. 1 of the Decision stipulates that the Committee shall consist of eight members "who shall serve in their personal capacity" for a period of not more than four years.[47] Committee members must be nationals of the Parties and Signatories of the Convention of high moral character and recognized competence in the fields to which the Convention relates, as well as persons having legal experience (Art. 2 of the Decision). It is important to note here that candidates can be nominated not only by states parties to the Convention, but also by NGOs (Art. 4 of the Decision).

The Committee may consider submissions from member states, requests from the Secretariat, and communications from the public.[48] However, communications from the public are only considered on the condition that the state party to the Convention has not taken a deferment in relation to the compliance mechanism for considering applications from members of the public. Article 18 of Decision I/7 provides for the possibility of a state party to the Convention to take advantage of the deferment. On the expiry of twelve months from the date of the entry into force of the Convention with respect to a party, that party may notify the Secretary-General of the United Nations that it is unable to accept the consideration of complaints filed by a citizen or association of citizens by the Committee. If a state party has submitted such a notification, submissions cannot be made with respect to that party for the period specified in the notification, but not longer than four years.

Communications submitted by members of the public with respect to a state party for which the Convention has entered into force are addressed to the Committee through the secretariat in writing or electronically and must be supported by "corroborating information" (Art. 19 of the Decision). Pursuant to Art. 20, the Committee considers any communication unless it determines that the communication is anonymous, unreasonable, incompatible with the provisions of the Convention, or which constitute an abuse of the right to make such communications. The Committee takes

[47] Many of its experts are world-renowned scientists and authors of monographs on international environmental law.
[48] According to Art. 2, para. 4 of the Aarhus Convention, "The public" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups.

into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress. However, there is no requirement to exhaust all domestic means (Art. 21 of the Decision), which is a very progressive point for modern international law.

The Aarhus Convention compliance mechanism attached great importance to openness and transparency in its work. All the Committee's documents are freely available to the public (primarily through its website), and Committee meetings are held in the public domain. In keeping with Arts. 26–30 of Decision I/7, which deal with confidentiality, members of the public may participate in Committee meetings as observers. The Committee usually gives observers the right to submit comments and information, and takes them into account during its meetings.

As for measures taken by the Committee, they are not traditional for international judicial bodies. The Committee's experts proceed from the assumption that states parties ratify and sign treaties with the express intention of accepting and complying with their obligations. According to legal experts, in most cases, the failure of a state party to implement and comply with the provisions of the Convention is due to a lack of resources, flawed domestic remedies, or unforeseen circumstances, rather than to the lack of will. This is why experts believe that multi-stakeholder consultative processes, compliance assistance and capacity-building are the best methods in these cases (Kravchenko 2007: 28).

The standard procedure for rendering a decision under the Aarhus Convention compliance mechanism is for the Compliance Committee to consider a case and make findings and recommendations, which are included in a report submitted to the Meeting of the Parties. The Meeting of the Parties then makes the final decision at its biennial sessions. However, Arts. 36(a) and 37(a) of Decision I/7 state that it is within the Committee's competencies to advise the state party concerned and provide assistance to individual states parties on matters relating to the implementation of the Convention. Further, by agreement with the state party concerned, the Committee may take other measures (although the Meeting of the Parties still takes precedence), which may include:

- making recommendations to the party concerned;
- requesting the party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- In cases of communications from the public, making recommendations to the party concerned on specific measures to address the matter raised by the member of the public.

As regards the Meeting of the Parties, it may take the measures above in addition to any measures that are exclusively within its purview (Art. 37 of Decision I/37). For example, only the Meeting of the Parties can "issue declarations of non-compliance; issue cautions; suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges

accorded to the party concerned under the Convention [such a measure was taken against Belarus in 2021, a fact that prompted the country's withdrawal from the Aarhus Convention in 2022]; take such other non-confrontational, non-judicial and consultative measures as may be appropriate."

The choice of measures depends on the extent, type, cause and frequency of non-compliance, as well as on the political will and spirit of cooperation that the state party demonstrates in matters of compliance with the Convention.

Compared to the control mechanisms of other IEAs adopted to date,[49] the Aarhus Convention Compliance Committee is more progressive, both in terms of its structure and in terms of its complaints procedure. For instance, this control body consists of independent experts only. Plus, in terms of procedure, citizens and NGOs were given the formal right to file complaints and participate in the preparation of national reports.

The Committee began its work in 2002 with the election of the first members of the Committee following the adoption of Decision I/7. Since that time, the Committee has received a total of 197 complaints. Two of these concerned inter-state disputes: "Romania v. Ukraine" and "Lithuania v. Belarus."[50]

EU non-compliance case. At the same time, it should be noted that the Aarhus Convention Compliance Committee has repeatedly drawn attention to the fact that the European Union, as a party to the Aarhus Convention, does not comply with its provisions,[51] although the Constitutional Court has not confirmed this. The Committee established that the European Union had breached Art. 9(3) of the Aarhus Convention by preventing NGOs and members of the public from holding EU institutions to account for illegal decisions that affect public health and the environment, for example authorizing fossil fuel subsidies, approving harmful pesticides, and permitting overfishing. The Committee stated in its 2017 decision that the European Union had to expand the opportunities afforded to members of the public for environmental protection in EU courts in order to comply with the treaty.

The reluctance of the EU Commission to address this issue in a timely and effective manner prompted EU states in June 2018 to take the highly unorthodox step of adopting a Council decision invoking Art. 241 of the Treaty on the Functioning of the European Union (TFEU) in order to force the Commission to take action.[52] Specifically,

[49] Such mechanisms are provided for in a number of international environmental agreements. See, for example: the 1987 Montreal Protocol on Substances That Deplete the Ozone Layer; the Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change, and others.

[50] UNECE: Submissions by Parties of Aarhus convention. URL: https://unece.org/env/pp/cc/submissions-parties (accessed: 02.02.2023).

[51] UNECE: Aarhus Convention Compliance Committee in Case ACCC/C/2008/32. URL: https://unece.org/env/pp/cc/accc.c.2008.32_european-union (accessed: 02.02.2023).

[52] European Union: Council Decision (EU) 2018/881 of 18 June 2018 Requesting the Commission to Submit a Study on the Union's Options for Addressing the Findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 and, if Appropriate in View of the Outcomes of the Study, a Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No 1367/2006. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018D0881&from=EN (accessed: 02.02.2023).

the EU Council Decision called on the Commission to submit, by September 30, 2019, a study of options for addressing the findings of the Compliance Committee and, if appropriate in view of the outcomes of the study, to submit, by September 30, 2019, a proposal for the revision of EU Regulation No. 1367/2006 (the Aarhus Regulation[53]), implementing the provisions of the Aarhus Convention for EU institutions.

The Commission published a study in October 2019 confirming what was already clear to most experts and independent observers – that the most effective way to solve the problem would be to bring EU Regulation No. 1367/2006 into line with the Convention. Therefore, the Commission should start preparing proposals on the revision of this regulation as soon as possible.

On October 6, 2021, the European Union adopted an amendment to EU Regulation No. 1367/2006 that allows for stricter public scrutiny of EU acts that affect the environment.[54] The amendments make it possible to request a review of such acts by the EU institutions in order to better ensure environmental protection. The document entered into force on October 28, 2021, with the exception of Art. 1, para. 3(a), which applied from April 29, 2023.

Cases involving Belarus. Belarus closed NGO Ecohome for violating the legislation on the activities of public associations. However, the Compliance Committee considered this to be a violation of Art. 3(8) of the Aarhus Convention: "Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement." Belarus considered the Committee's recommendations "unfounded and excessive."[55] The Committee proposed "to suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to Belarus under the Aarhus Convention."

According to Art. 60 of the Vienna Convention on the Law of Treaties of 1969, a decision to suspend rights can only be made unanimously by all parties to an international treaty. The result of the voting on the issue of Belarus was not unanimous, yet this did not prevent decision VII/8c (clause 7(i)) from being approved. Belarus said that it had every intention of maintaining its membership in the Aarhus Convention

[53] European Union: Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the Application of the Provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters to Community Institutions and Bodies. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006R1367&from=en (accessed: 02.02.2023).

[54] European Union: Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 Amending Regulation (EC) No 1367/2006 on the Application of the Provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters to Community Institutions and Bodies. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1767 (accessed: 02.02.2023).

[55] See: United Nations Economic Commission for Europe: On the Comments of the Republic of Belarus to the Additional Report. URL: https://unece.org/sites/default/files/2021-11/frPartyVII.8c_08.11.2021_rus.pdf (accessed: 02.02.2023).

"subject to the cancellation before January 1, 2022 of the decision that contradicts the principles of international law and the provisions of the Aarhus Convention."[56] The decision was not repealed, and Belarus withdrew from the Aarhus Convention.

Almost a quarter of all countries (45 of the 193 UN members states) are parties to the Aarhus Convention, which confirms their commitment to protecting and respecting environmental human rights. These are countries from Europe, the Caucasus and Central Asia

On the one hand, it would seem that the Committee can be considered an independent supervisory body of a quasi-judicial nature, whose motions become part of "case law." The UK Supreme Court has ruled that "the decisions of the Committee deserve respect on issues relating to standards of public participation."[57] The England and Wales Court of Appeal has similarly ruled that "there is persuasive authority […] in decisions of the Aarhus Convention Compliance Committee."[58] The Advocate General of the Court of Justice of the European Union has repeatedly referred to the recommendations of the Committee when considering the provisions of the Aarhus Convention. The importance and universal recognition of the Convention's provisions are also confirmed by the fact that in the case of Taşkin and Others v. Turkey,[59] the judges of the European Court of Human Rights used the principles of the Aarhus Convention to build their arguments, ignoring the fact that the respondent state is not even a signatory of the treaty. On the other hand, the vote to limit the procedural rights of a member state in the case of Belarus was marked by a clear violation of the principle of impartiality and the Vienna Convention on the Law of Treaties.

It should be noted that the European Union was in violation of Art. 9(3) of the Aarhus Convention for over ten years, preventing NGOs and members of the public from holding EU institutions accountable for wrongful decisions that affect public health and the environment, authorizing fossil fuel subsidies, allowing overfishing, etc. Even after the amendments were introduced into the relevant EU laws, the Committee notes only partial compliance with the Aarhus Convention of the part of the European Union (all binding administrative decisions taken by EU institutions should be subject to review, including those that require "implementation measures" at the national level; and it is important to make state aid decisions that violate EU environmental law

[56] See: United Nations Economic Commission for Europe: Letter from Minister of the Republic of Belarus A. P. Khudyk. URL: https://unece.org/sites/default/files/2021-11/frPartyVII.8c_26.11.2021_letter_rus.pdf (accessed: 02.02.2023).

[57] The UK Supreme Court: Walton v. The Scottish Ministers (Scotland). Judgment of 17 October 2012. Para 100. URL: https://www.supremecourt.uk/cases/docs/uksc-2012-0098-judgment.pdf (accessed: 02.02.2023).

[58] England and Wales Court of Appeal: The Secretary of State for Communities and Local Government v. Venn. Judgment of 27 November 2014. Para 13. URL: https://www.casemine.com/judgement/uk/5b46f1f72c94e0775e7ef241 (accessed: 02.02.2023).

[59] European Court of Human Rights: Case of Taekin and Others v Turkey. Application No. 49517/99. Judgment of 10 November 2004. Paras. 99, 119. URL: https://hudoc.echr.coe.int/eng#{%22appno%22:[%2246117/99%22],%22item id%22:[%22001-67401%22]} (accessed: 02.02.2023).

subject to review). At the same time, neither the Committee nor the Constitutional Court imposed the kind of measures on the European Union as on Belarus in terms of their harshness. It has been pointed out that "cases of harassment and punishment of environmental defenders were recorded in 16 countries" between 2017 and 2022, "including detentions at airports and raids on homes, the use of excessive force by the police, and the failure to provide adequate medical care, none of which was followed by any sanctions decisions."[60] None of the offenders had their rights restricted under the Aarhus Convention.

On the whole, despite the advisory power of decisions taken within the framework of the IEA, experience shows the positive impact of this practice. What is more, national and international courts take the positions of treaty bodies, primarily the Aarhus Convention Compliance Committee, into account when making their decisions. The dual filter built into the treaty bodies of international agreements improves their effectiveness and ensures that decisions are more balanced.

We can thus state that the Aarhus Convention, its Compliance Committee, and the Meeting of the Parties as a supervisory body, make up a system with great potential to become a truly effective means of protecting environmental human rights at the international level. The Compliance Committee aims to resolve disputes arising in the process of implementing the norms of the Aarhus Convention. Compared to regional human rights courts, this procedure makes it possible to resolve or prevent international disputes at a minimum cost and in a maximally swift fashion, as well as to monitor the implementation of the relevant decisions effectively. This is not to say, however, that the body does not have certain political biases and is not selective in its decisions. Moreover, as we have repeatedly stressed throughout this paper, the non-compliance procedure is designed to resolve disputes amicably. Art. 15 of the Aarhus Convention reads: "The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention." The measures adopted by the Committee and approved by the Constitutional Court were clearly confrontational in nature and led to Belarus pulling out of the Aarhus Convention, even though it was one of the first countries to ratify it and was a party to it for over twenty years (starting in 2000).

It should be noted that a separate body has been set up to monitor compliance with obligations under the Kyiv Protocol to the Aarhus Convention. The Committee on Compliance with the Kyiv Protocol has only recently started to review complaints. On June 17, 2020, the NGO Ekologia-Chelovek-Pravo lodged a complaint against Ukraine for failing to comply with the requirements for implementing the decisions of the Protocol in domestic legislation. No decision has been made yet.

[60] See: United Nations Economic Commission for Europe: Letter from Minister of the Republic of Belarus A. P. Khudyk. URL: https://unece.org/sites/default/files/2021-11/frPartyVII.8c_26.11.2021_letter_rus.pdf (accessed: 02.02.2023).

Compliance Committee under the 2010 Nagoya Protocol

Emerging practices in the granting of access to genetic resources and the fair and equitable sharing of benefits arising from their utilization point to the need to systematize the legal framework and strengthen institutionalization at the international level. In this regard, the Compliance Committee (hereinafter referred to as the Committee) under the 2010 Nagoya Protocol on Access and Benefit-Sharing (hereinafter referred to as the Nagoya Protocol, or simply the Protocol)[61] to the to the 1992 Convention on Biological Diversity (hereinafter referred to as the CBD)[62] plays a major role. The issue of access to genetic resources and the fair and equitable sharing of benefits arising from their utilization is an extremely serious one that requires a permanent monitoring and reporting mechanism. This much is stated in Art. 30 of the Nagoya Protocol, entitled "Procedures and Mechanisms to Promote Compliance with this Protocol." According to this article, the first Meeting of the Parties was tasked with considering and approving cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance. "These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention." This task was duly carried out at the first COP-MOP (Conference of the Parties serving as the Meeting of the Parties to the Nagoya Protocol, Pyeongchang, South Korea, 2014) through the adoption of decision NP-1/4,[63] which established the Compliance Committee to promote compliance with the provisions of the Nagoya Protocol and to address cases of non-compliance. Pursuant to Decision NP-1/4, the Compliance Committee is made up of 15 members nominated by Parties, on the basis of three members endorsed by each of the five regional groups of the United Nations (Art. B2). In addition, the COP-MOP elects two representatives of indigenous and local communities as observers. Notably, this is the only case where the control mechanism specifically provides for the mandatory participation of representatives of indigenous peoples.

In accordance with the provision on Cooperative Procedures and Institutional Mechanisms (Annex to Decision NP-1/4), the Committee may receive any submissions relating to issues of compliance and non-compliance with the provisions of the Protocol from: any party with respect to itself; any party with respect to another party;

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[61] Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity of October 29, 2010. URL: https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf (accessed: 11.08.2022).

62 The United Nations Convention on Biological Diversity of June 5, 1992. URL: https://www.un.org/ru/documents/decl_conv/conventions/biodiv.shtml (accessed: 11.08.2022).

[63] Cooperative Procedures and Institutional Mechanisms to Promote Compliance with the Nagoya Protocol and to Address Cases of Non-Compliance. URL: https://www.cbd.int/doc/decisions/np-mop-01/np-mop-01-dec-04-en.pdf (accessed: 12.08.2022).

and the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (Art. D1). What is more, the Committee may examine a situation where a party fails to submit its national report pursuant to Art. 29 of the Protocol, or where information indicates that the Party concerned is faced with difficulties complying with its obligations[64] under the Protocol (Art. D9). Interestingly, such information can be obtained either from the national report or from the secretariat, and is based on information regarding the provisions of the Protocol provided by the representatives of indigenous and local communities that have been directly affected. In addition, the Committee may examine systemic issues of general non-compliance that come to its attention (Art. D10).

At its third meeting in April 2020, the Committee recognized the progress made in the submission of interim national reports, which stood at 91% of the total number of states as of March 2020.[65]

In accordance with the Protocol, the parties are required to take legislative, administrative or policy measures, create institutional mechanisms for their implementation, and disseminate mandatory information through the clearing-house mechanism.[66] To date, 95 member states (77%) have published or reported on legislative, administrative or policy measures on access and benefit-sharing under the clearing-house mechanism in their respective interim national reports.

The measures taken by states vary in terms of their specificity and comprehensiveness; a large portion of them were introduced before the Nagoya Protocol entered into force (for example, general environmental legislation or measures relating to livestock production and forest protection) and now need to be updated. Some 28 states have reported to the Committee that they have not established any such measures, although 16 of these are currently developing measures and a further seven are planning to. Thus, 120 parties to the Protocol (98%) have set up national focal points (NFPs). This number reflects significant progress and high levels of implementation of one of the requirements regarding institutional mechanisms. A total of 80 parties to the Protocol (65%) have competent national authorities (CNAs), while 12 have reported that internal work is progressing as intended, and seven indicated that such work is in the pipeline. These numbers are up significantly from February 2018, when the completion rate was 54%. Checkpoints were established by 40 parties to the Protocol (32%), while 18 parties reported that progress had been made in this area and 16 were planning on making such moves (these figures also represent an increase from February 2018,

[64] ABSCH: National Report Analyzer. URL: https://absch.cbd.int/en/reports (accessed: 13.08.2022).

[65] Report of the Compliance Committee Under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization on the Work of its Third Meeting Online, 21-23 April 2020. URL: https://www.cbd.int/doc/c/0b26/eaea/09a6039e40296b3fa873f941/np-cc-03-05-en.pdf (accessed: 02.02.2023). This is the latest data: the fourth session of the Committee has not yet taken place.

[66] Compliance Committee under the Nagoya Protocol: Review of General Issues of Compliance. Note by the Executive Secretary. February 24, 2020. URL: https://www.cbd.int/decision/cop/?id=7168 (accessed: 13.08.2022).

when only 27% of parties had designated checkpoints). Accordingly, incompleteness of information provided may serve as grounds for a case to be considered by the Committee.

Furthermore, the scope of reporting information is constantly being updated and expanded. For example, COP-MOP Decision 3/15[67] "Preparation for the Follow-Up to the Strategic Plan for Biodiversity 2011–2020 requested that the Compliance Committee at its next meeting consider how to support and promote compliance with the Nagoya Protocol within the post-2020 global biodiversity framework. The parties to the Protocol also welcomed the decision of the COP-MOP on the post-2020 global biodiversity framework (Decision 14/34).[68] It should be noted here that the Kunming-Montreal Global Biodiversity Framework – a strategic plan for the implementation of the Convention on Biological Diversity and its protocols in the period 2022–2030 – was approved in December 2022[69] (reporting under the Nagoya Protocol is discussed in Goal C and Objectives 13 and 15). The reporting format will thus need to be revised to take the Global Biodiversity Framework into account. The Compliance Committee also noted that some parties found a number of questions in the reporting format unclear or could be interpreted in different ways. The Committee proposed revising some reporting criteria for the next cycle (2023). The reporting format has been updated in order to collect information on the indicators adopted in Decision NP-3/1, and all questions must now be answered.[70] In addition to collecting information on problem areas and difficulties in the implementation of the protocol, a new section is now included at the end of each section that allows countries to reflect on lessons learned and what they think has worked well. The section is completed voluntarily.

As of 2023, the Committee has not yet considered any complaints with respect to non-compliance with the Nagoya Protocol.

Thus, we can state that, at the present stage, many issues in the practice that is emerging within the framework of the Compliance Committee under the 2010 Nagoya Protocol require technical refinement. However, as the reports suggest, state parties to the Protocol are prepared to actively submit information and report on measures taken at the national level, point to problems that exist in the system, and ask relevant questions. The Compliance Committee is an effective mechanism that allows it to

[67] Decision Adopted by the Parties to the Nagoya Protocol on Access and Benefit-Sharing of 30 November 2000. URL: https://www.cbd.int/doc/decisions/np-mop-03/np-mop-03-dec-15-en.pdf (accessed: 13.08.2022).

[68] CBD: Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity "Comprehensive and Participatory Process for the Preparation of the Post-2020 Global Biodiversity Framework". November 30, 2018. URL: https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-34-en.pdf (accessed: 13.08.2022).

[69] CBD: Decision 15/4 "Kunming-Montreal Global Biodiversity Framework". December 19, 2022. URL: https://www.cbd.int/conferences/2021-2022/cop-15/documents (accessed: 02.02.2023).

[70] CBD: Decision Adopted by the Parties to the Nagoya Protocol on Access and Benefit-Sharing "Assessment and Review of the Effectiveness of the Protocol (Article 31)." November 30, 2018. URL: https://www.cbd.int/doc/decisions/np-mop-03/np-mop-03-dec-01-en.pdf (accessed: 02.02.2023).

produce statistical reports, trace positive steps in the implementation of the Protocol's provisions, make recommendations to states, and gradually modernize the process of monitoring compliance.

Compliance Committees under International Agreements Governing the Management of Chemicals and Waste

In this section, we analyze the four compliance committees of the so-called chemical conventions (the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of 1998, the Stockholm Convention on Persistent Organic Pollutants of 2001, and the Minamata Convention on Mercury of 2013). We have grouped these conventions together due to the similar internal logic of their activities and the subject of regulation.

Art. 14 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989 only mentions the possibility of creating a funding mechanism on a voluntary basis, if needed, for the transfer of technology, to assist in case of emergency situations, etc.[71] At the same time, Art. 15(5e) of the Convention allows for the Conference of the Parties to establish such subsidiary bodies as are deemed necessary for the implementation of this Convention.[72] At the sixth meeting of the Conference of the Parties in 2002, the decision was made to establish a mechanism for promoting implementation and compliance with the Basel Convention,[73] and a committee of 15 members was established to administer the mechanism based on the geographical representation of five regions.[74] The purpose of the mechanism is to assist states in implementing and complying with obligations arising from the provisions of the Basel Convention. The Committee has the following mandate:

1) To consider submissions from the parties (when that party concludes that, despite its best efforts, it is or will be unable to fully implement or comply with its obligations under the Convention without assistance);

2) To consider party-to-party submissions (when one state has concerns regarding the implementation of the provisions of the Convention by another state with whom it is directly involved under the Convention, and the parties have been unable to resolve the problem themselves);

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[71] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of March 12, 1989. Art. 14. URL: https://www.un.org/ru/documents/decl_conv/conventions/pdf/basel.pdf (accessed: 13.09.2022).

[72] Ibid. Art. 5. Para. 5. Sub-para. e.

[73] The Conference of the Parties to the Basel Convention: Establishment of a Mechanism for Promoting Implementation and Compliance. URL: http://www.basel.int/Implementation/LegalMatters/Compliance/Decisions/tabid/3643/Default.aspx (accessed: 15.09.2022).

[74] The Conference of the Parties of the Basel Convention: Membership of the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention. URL: http://www.basel.int/Implementation/LegalMatters/Compliance/Decisions/tabid/3643/Default.aspx (accessed: 15.09.2022).

3) To consider submissions from the Secretariat of the Convention when it becomes aware of possible difficulties of any party in implementing the provisions of the Convention following, provided that the matter has not been resolved within three months by consultation with the party concerned.[75] The Committee's Facilitation Procedure may involve the provision of advisory services and recommendations, which may be taken into account or ignored at the discretion of the party, and, following the Facilitation Procedure, the Committee may submit recommendations to the Conference of the Parties in relation to certain provisions of the Convention.[76] Over the past three years, the Committee has received 18 submissions from the Secretariat (11 of which include recommendations), as well as four self-submissions from parties (two of which provide recommendatory measures), while not a single state has taken advantage of the party-to-party submission procedure.[77] In addition, the Committee also has the authority to consider general issues of implementation and compliance with the provisions of the Basel Convention relating to the environmentally sound management and disposal of hazardous wastes, establishing and developing means of detecting and eradicating illegal traffic, etc. This involves analyzing all available information and, if necessary, requesting additional information from the parties. This Committee may then produce a report for the Conference of the Parties, which can make certain recommendations and proposals at this point.[78]

The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of 1998 does not provide for a funding mechanism of any kind. During the discussions on the structure and content of the Convention, most countries did not see the need to enshrine financial provisions in the text of the Convention itself, believing that the absence of such provisions would not be an obstacle to its effective implementation. This proved key in the decision to create a subsidiary body to implement the compliance mechanism.[79] The text of the Rotterdam Convention establishes a provision whereby the Conference of the Parties shall at its first meeting develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Conven-

[75] The Basel Convention Mechanism for Promoting Implementation and Compliance. Para. 9. URL: http://www.basel.int/Implementation/LegalMatters/Compliance/Decisions/tabid/3643/Default.aspx (accessed: 15.09. 2022).
[76] Ibid. Para. 19.
[77] The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes. Compliance. Current submissions. URL: http://www.basel.int/Implementation/LegalMatters/Compliance/SpecificSubmissionsActivities/Currentsubmis- sions/tabid/2310/Default.aspx (accessed: 14.09.2022).
[78] The Basel Convention Mechanism for Promoting Implementation and Compliance. Para. 21. URL: http://www.basel.int/Implementation/LegalMatters/Compliance/Decisions/tabid/3643/Default.aspx (accessed: 15.09.2022).
[79] The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. 2019. URL: https://www.pic.int/TheConvention/Overview/TextoftheConvention/tabid/1048/language/en-US/Default.aspx (accessed: 15.09.2022).

tion.[80] However, this decision was made almost twenty years after the signing of the Rotterdam Convention, at the ninth meeting of the Conference of the Parties in 2019, which was formalized as a new Annex VII to the Convention.[81]

The Committee is very similar in composition, structure, and competence to the Basel Convention Compliance Committee, only the circle of persons who are permitted to make submissions to the Committee is slightly different. The first two groups are exactly the same (self-submissions and party-to-party submissions), while the third group differs. In accordance with the Rotterdam Convention, if a state fails to submit information under Art. 4 ("Designated national authorities"), Art. 5 ("Procedures for banned or severely restricted chemicals"), or Art. 10 ("Obligations in relation to imports of chemicals listed in Annex III") to the Secretariat, the Committee may provide advice and support for the implementation of the obligations imposed on it under these three articles of the Convention, but only if the issue has not been resolved with the Secretariat within 90 days.[82] The first meeting of the Rotterdam Convention Compliance Committee, held in November 2022, approved the work plan for 2022–2023.[83]

The Minamata Convention on Mercury was adopted on October 10, 2013 at a diplomatic conference in the Japanese city of Kumamoto held under the auspices of the United Nations, and entered into force on August 16, 2017 (Kodolova et al. 2021: 24–32). The primary objective of the Convention is "to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds."[84] Art. 15 of the Convention concerns the activities of the Implementation and Compliance Committee. The issue of establishing such a committee was a point of discussion throughout the negotiation process, along with the provision on financing (Art. 13). A number of states believed that there was an unspoken practical connection between these two elements – specifically, that a compliance mechanism could not exist or even be created without reliable guarantees of financial support (Templeton, Kohler 2014: 211–220). This idea has been reflected in other international environmental agreements too. For example, during the talks that led to the signing of the Stockholm Convention on Persistent Organic Pollutants of 2001, the frustration over the inability of the parties to agree on funding issues (Arts. 13 and 14) stalled the

[80] Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of September 10, 1998. Art. 17. URL: https://www.un.org/ru/documents/decl_conv/conventions/pdf/consent.pdf (accessed: 09.09.2022).

[81] The Conference of the Parties of the Rotterdam Convention: Procedures and mechanisms on compliance with the Rotterdam Convention. URL: http://www.pic.int/TheConvention/ComplianceCommittee/Decisions/tabid/3606/ctl/Download/mid/11427/language/en-US/Default.aspx?id=88&ObjID=47812 (accessed: 15.09.2022).

[82] The Compliance Committee of the Conference to the Parties of the Rotterdam Convention URL: http://www.pic.int/The-Convention/ComplianceCommittee/Overview/tabid/8446/language/en-US/Default.aspx (accessed: 15.09.2022).

[83] First Meeting of the Rotterdam Convention Compliance Committee (CC.1). 16-18 November 2022. URL: http://www.pic.int/TheConvention/ComplianceCommittee/Meetings/CC1/Overview/tabid/9272/language/en-US/Default.aspx (accessed: 08.11.2022).

[84] Minamata Convention on Mercury of October 10, 2013. Art. 1. URL: https://wedocs.unep.org/rest/bitstreams/14123/retrieve (accessed: 03.03.2022).

establishment of the Compliance Committee. Developing countries believed that they were not receiving adequate financial support from developed countries (as mandated in Art. 13) to fulfil the obligations imposed on them in accordance with the provisions of the Stockholm Convention (the effectiveness of the implementation by developing countries of the provisions of the Convention depends on the effectiveness of the implementation by developed countries of their obligations regarding the provision of financial and technical assistance and technology transfer[85]). Accordingly, the creation of a Compliance Committee would place additional burdens on developed countries that they are not prepared to take on (Eriksen, Perrez 2014: 195–210). Art. 19 (5(a)) of the Stockholm Convention states that the Conference of the Parties has the power to establish such subsidiary bodies as it considers necessary for the implementation of the Convention.[86] This issue has been repeatedly discussed at meetings of the Conference of the Parties since 2006, and various options have been tabled for resolving it, but, to date, the parties have been unable to reach a consensus.

The provision on the Implementation and Compliance Committee contained in the 2013 Minamata Convention on Mercury was immediately written into the document – although states were not able to agree on the issue to begin with – to ensure that it would not take approximately twenty years for such a committee to appear, as was the case with the Rotterdam Convention.

The Committee is established on the basis of an incentive compliance mechanism that pays special attention to the national, technical and financial capabilities of states in the implementation of their obligations arising from the provisions of the Convention.[87] It is made up of "15 members, nominated by Parties and elected by the Conference of the Parties, with due consideration to equitable geographical representation based on the five regions of the United Nations"[88] (the first 15 members were elected at the first meeting of the Conference of the Parties, and the second committee was elected at the third meeting of the Conference of the Parties; it was made up of ten of the original members serving a second term, and five new members who would serve two terms).[89]

[85] Stockholm Convention on Persistent Organic Pollutants of May 23, 2001. Art. 15. URL: https://www.un.org/ru/documents/decl_conv/conventions/pdf/pollutants.pdf (accessed: 08.11.2022).
[86] Ibid. Art. 19 (5(a)).
[87] ISD: 4th Session of the Intergovernmental Negotiating Committee on Mercury (INC 4). Summary Report, 27 June–2 July 2012. URL: https://enb.iisd.org/events/4th-session-intergovernmental-negotiating-committee-mercury-inc-4/summary-report-27-june-2 (accessed: 08.11.2022).
[88] Minamata Convention on Mercury of October 10, 2013. Art. 15. URL: https://www.mercuryconvention.org/sites/default/files/2021-06/Minamata-Convention-booklet-rus-full.pdf (accessed: 30.04.2022).
[89] Conference of the Parties to the Minamata Convention on Mercury First Meeting. Decision Adopted by the First Conference of the Parties to the Minamata Convention on Mercury MC-1/7: Membership of the Implementation and Compliance Committee as Referred to in paragraph 3 of Article 15. November 22, 2017. URL: https://www.mercuryconvention.org/sites/default/files/documents/decision/UNEP-MC-COP1-Dec7-MembershipICC.RU.pdf (accessed: 13.09.2022).

The Implementation and Compliance Committee started its work in 2018. It has held three meetings to date. At the first meeting, the Committee approved the rules of procedure for the meeting, which for the most part mirrored the rules of procedure for meetings of the Conference of the Parties.[90]

The second meeting of the Implementation and Compliance Committee approved the scope of the Committee's competencies. This subsidiary body of the Minamata Convention may consider any written submission from member states regarding their compliance with the provisions of the Convention. After reviewing these documents and consulting with the party in question, the Committee can provide recommendations in the form of mediation (technology transfer, technical support, and the development of compliance strategy). The Committee also has the right to review national reports and consider systemic issues pursuant to Art. 21 of the Convention. If necessary, the Committee can request additional information from states in order to prepare individual or summary recommendations. Further, the Committee may consider issues based on requests from the Conference of the Parties and present summary recommendations at meetings of the Conference of the Parties for resolving issues of a legal, technical, and expert nature.[91]

The third meeting of the Implementation and Compliance Committee (held online in June 2021) dealt with the issue of the implementation of and compliance with Art. 21 of the Convention based on a consideration of the first short national reports submitted in accordance with that article. The Committee noted the high reporting rate for the first short reports, but pointed to the fact that much of the information provided was incomplete, insufficient or missing, which it put down to the parties potentially having interpreted certain reporting requirements in varying ways.[92] During its work, the Committee stressed that it is the responsibility of the parties to submit national reports. On the basis of this, the Committee expressed the hope that the high rate of reporting would continue with the full reports, as more complete data would make it easier to ensure compliance with all the provisions of the Convention.[93]

We can thus see that three "chemical agreements" (the Basel, Rotterdam and Minamata conventions) have already established compliance committees. What sets the Minamata Convention on Mercury apart from the other agreements in terms of its

[90] Conference of the Parties to the Minamata Convention on Mercury Second Meeting. Report on the Work of the Implementation and Compliance Committee of the Minamata Convention on Mercury. August 29, 2018. URL: https://www.mercuryconvention.org/sites/default/files/documents/working_document/2_11_r_ICC.pdf (accessed: 13.09.2022).

[91] Conference of the Parties to the Minamata Convention on Mercury Third Meeting. Report on the Work of the Implementation and Compliance Committee of the Minamata Convention on Mercury. August 8, 2019. URL: https://www.mercuryconvention.org/sites/default/files/documents/working_document/UNEP-MC-COP-3-13-Report_ICC.Russian.pdf (accessed: 09.09.2022).

[92] Conference of the Parties to the Minamata Convention on Mercury Fourth Meeting. Report on the Work of the Implementation and Compliance Committee of the Minamata Convention on Mercury. January 31, 2022. URL: https://www.mercuryconvention.org/sites/default/files/documents/working_document/4_15_Rev1_ICCReport.Russian.pdf (accessed: 12.09.2022).

[93] Ibid.

success is the fact that it includes a specific provision on the establishment of an implementation and compliance committee, whereas the texts of the Basel, Rotterdam and Stockholm conventions merely stipulate the possibility of creating a subsidiary body to determine instances of non-compliance with their provisions. The lack of provisions in the texts of these conventions on the establishment of a compliance committee is the main reason why the process of setting up such committees stalled in all three cases. The Implementation and Compliance Committee established under the Minamata Convention is an example of a robust mechanism that is capable of identifying and addressing local and systemic problems in the implementation of, and compliance with, the provisions of the Convention. While the compliance mechanism cannot ensure the effective implementation of the provisions of the Convention by itself, it does make successful implementation a real possibility in the future.

Conclusion

The role of quasi-judicial bodies has been growing steadily since the beginning of the 21st century. Their decisions, while not legally binding, have acquired a certain legitimacy: states implement them; they are generally recognized in the doctrine of international law; and are cited in decisions of international courts. In addition, it is possible today for one and the same dispute to be considered by both a quasi-judicial body and an international court, either simultaneously or different points in time. A number of questions arise regarding the obligation of these judicial and quasi-judicial institutions to take each other's decisions into account, which of these should be the priority appeal body, how and to what extent the rule on the exhaustion of all legal remedies can be applied, the hierarchy of decisions in the event that they contradict each other, etc. Thus, conflicting jurisdictions between international judicial institutions and quasi-judicial bodies may become another symptom of institutional fragmentation. At the same time, the practice of quasi-judicial institutions in international environmental law has proven extremely effective.

The development of the non-compliance procedure effectively blurs the line between diplomatic and judicial procedures for the peaceful resolution of disputes. The non-compliance procedure has been used as an alternative to the traditional dispute resolution system since the late 1980s, evolving constantly since that time and becoming a mandatory element of all IEAs. On the one hand, it is a flexible procedure compared to traditional means of dispute resolution, allowing the parties to resolve and prevent disputes at a minimum cost and in a maximally swift fashion, and providing a mechanism for monitoring the implementation of resolutions. On the one hand, the very category of international law known as the "non-compliance procedure," while it helps resolve issues in the short term, may in the long term contribute to the relativization of the normativity of international law, the transformation of absolute prohibitions into relative prohibitions, and the blurring of the line between legal norms and political decisions. Moreover, as the experience of the Aarhus Compliance Committee

shows, excessive discriminatory pressure on a country (in this case Belarus) led to its withdrawal from the international treaty, which, of course, undermined the principle of impartiality.

On the whole, the practice of applying compliance procedures has proven highly effective. Perhaps the wealth of experience gained within the framework of these mechanisms of international control can be used in the creation of an international environmental court.

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Research Article

Ceasefires as a Part of the War and Peace Process, or a "No Peace, No War" Format[1]

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Abstract. Ceasefires are increasingly relevant for contemporary conflicts and conflict management. During the first two decades of the 21st century, ceasefires also became the most widespread form of outcome for conflicts with any conclusive outcome. Half of all ceasefires, however, were either not part of a politically negotiated process to address the key contradictions that caused the armed conflict, or had no relation to any peace process at all. A ceasefire in its traditional interpretation – as a technical stage on the way to peace – increasingly becomes a ceasefire in the absence of peace and a pragmatic alternative to a stalled peace process. What are the goals and functions of ceasefires at different conflict stages, including, but not limited to, a peace process? What are the main types of ceasefires based on their key function in conflict and on the underlying goals and motivations of their parties? This article explores these questions at the theoretical/conceptual and empirical levels, on the basis of an analysis of available statistical data and drawing upon specific examples in various contexts, with special attention paid to the conflicts in Syria and Donbass. It offers an original functional-motivational typology of ceasefires classified into three types: ceasefires as part of hostilities; ceasefires "for the sake of peace" that aim to support and prepare conditions for peace negotiations; and ceasefires as an intermediate state of "neither peace, nor war," including as a means of structuring this semi-frozen state to achieve a degree of stabilization. In practical terms, this typology helps clarify (a) the effectiveness (success or failure) of a ceasefire that should not be expected to advance or deliver one type of outcome if one or all of the parties deliberately seek to use it to achieve another type of outcome; and (b) the role of armed violence at the stage of a ceasefire that may achieve its main, underlying goals, even if it does not lead to a lasting cessation of hostilities.

Keywords: ceasefires; armed conflicts; peace processes; violence; functional-motivational typology

[1] English translation from the Russian text: Stepanova E. 2023. Peremirie kak komponent voyny, etap mirnogo protsessa ili format «ni mira, ni voyny». *Mezhdunarodnye protsessy* [International Trends]. 21(1). P. 43–74. https://doi.org/10.17994/IT.2023.21.1.72.6

Ceasefires are becoming increasingly relevant for today's armed conflicts and the ways of settling them. This fully applies to those few, but intense conflicts of the 2010s and early 2020s in which Russia was instrumental in settling, primarily the conflicts in Syria and Ukraine. Seventy-seven ceasefires had been declared in the internationalized civil war in Syria by 2023 (calculated from PA-X: Version 7), while a more detailed count of local ceasefires gives us over 140 ceasefires in 2011–2021 (Karakuş 2023). Ceasefires in Syria multiplied and spread not as part of a steady peace process involving the parties to the conflict, but amid the chronic failures of the Geneva peace talks under the auspices of the United Nations, a stable impasse in political settlement, and the increasing role that military stabilization methods and alternative negotiation formats played in decreasing the level of armed violence. Approximately fifteen ceasefires in Donbass declared between signing the Minsk Agreements of 2014–2015 and the new stage in the conflict in late February 2022 were formally part of the peace process. Yet, these ceasefires were regularly violated and in fact simply boiled down to temporarily downgrading the armed confrontation to the status of a "small conflict."

Ceasefires are a typical and widespread phenomenon in modern armed conflicts and in conflict resolution. A large number of ceasefires were declared in various confrontations between 1989–1990 and the early 2020s. These included special agreements or ceasefire declarations and sections on a ceasefire in larger peace agreements. Depending on the counting methodologies, the number of ceasefires varies between a little under 1000 to over 2000.[2] Ceasefires are declared at different stages of conflicts and the transition to peace. The parties try to temporarily observe them at least in some degree. They can last for years and even decades, and are regularly prolonged. Sometimes they collapse or are breached, and sometimes they are renewed. This format has been steadily growing in importance in the first three decades of the 21st century, despite the persistent problems of its effectiveness, its complicated relationship with peace process, or lack of such a relationship at all.

Despite the importance of quantitative indicators, the biggest shifts have taken place in terms of the conceptual understanding of the qualitative content and evolution of ceasefires. Few studies written on the subject (before foreign scholars began to take an increasing interest in the topic in the late 2010s)[3] have traditionally defined ceasefires as agreed-upon or unilateral steps to stop violence (Chounet-Cambas 2011)

[2] Ranging from 926 ceasefires between 1990 and January 2023 (calculated by the author from PA-X: Version 7) to 2202 ceasefires between 1989 and 2020 based on the ETH/PRIO CF data (Clayton et al. 2023: 1430–1431).

[3] For an overview of the current scholarship produced outside Russia see (Clayton et al. 2023]. In Russian political science, the subject of ceasefires has not been studied at the theoretical or specialized level. Russian-language studies mostly touch on ceasefires when discussing the settlement of specific armed conflicts and, with few exceptions (Davydov, Novichkova 2020; Dronova 2017), this issue is mostly broached by historians (for some recent studies see: Poliakova 2022; Bebeshko, Shipilin 2020; Ki Kvan So 2020).

and/or as a transitionary stage from war to a peace treaty concluded as part of a peace process (Forster 2019: 2; Åkebo 2016). Generally, ceasefires were seen as ceasing or interrupting military hostilities regardless of whether it means an end to the war (Fortna 2004). The influential Uppsala conflict data program also treats ceasefires as a possible conflict outcome on par with peace treaties, one party's military victory, etc. (Kreutz 2021). It is important that social sciences and civilian expert analytics define and evaluate ceasefires and their effectiveness almost exclusively in terms of their ability to put an end to or curtail armed violence *on the way to peace*.

At the same time, the interrelation and interconnection between ceasefires and political settlement of conflicts through peace talks are not as obvious as they appear to be and are gravely under-researched. It is still not entirely clear what effect an observed or breached ceasefire, its success or failure, its temporal and substantive connection with talks on political settlement (Bara, Clayton, Rustad 2021: 336) have on the talks on settling the key differences between the parties to a conflict (i.e. the peace process).[4] Until recently, political science studies have virtually ignored the fact that ceasefires are not necessarily part of the peace process, that they can perform different functions in the conflict, and may have no obvious connection (or no connection at all) with attempts at a peaceful conflict settlement. Generally, there is no systemic evaluation of the effect of ceasefires on conflicts and the peace process.

One of the objectives of this article is to dispel the still widespread illusion that ceasefires, as a rule, are only part of, forerunners to, or a stage in a larger peace process. This objective is particularly relevant amid current trends and changes in the nature of conflicts as such and in the methods and forms of their settlement. These trends include a steadily shrinking share of both comprehensive, final peace agreements and military victories in conflict outcomes (UCDP Conflict Termination Dataset: Version 3-2021) amid growing number ceasefires, partial and local agreements (Badanjak 2022). Ceasefires traditionally understood as a technical stage *on the way to peace* are increasingly transformed into *ceasefires in the absence of peace;* they are becoming a pragmatic alternative to a stalling peace process or else they simply set down or formalize the endless state of "neither peace, nor war," including so-called frozen conflicts. Ceasefires can also serve as a way of ordering a war itself and even as a process for exiting the war in the absence of any equivocal solution, either peaceful or military.

In a more applied sense, the traditional approach to ceasefires as technical steps towards ceasing fire is increasingly getting in the way of properly gauging the armed violence factor and working with it at the ceasefire stage. This interpretation, *first,* treats violence almost exclusively as a violation of ceasefire. *Second*, it implies that the cessation of violence as such is not merely the principal goal of a ceasefire, but the only goal of a ceasefire (without accounting for other goals it might pursue, including those that may lay deeper).

[4] The peace process is defined as "efforts to put an end to an armed conflict by a dialog (talks) between representatives of the principal parties to a conflict on key issues that are at the root of the armed confrontation" (Stepanova 2022).

What are the goals of ceasefires? What functions do they perform in conflict dynamics at different stages, including the peace process, but also beyond it? What effect do ceasefires have on these dynamics? What principal types of ceasefires can be identified based on their goals and functions in an armed conflict? What is the goal and meaning of the violence factor at the ceasefire stage and how does it depend on the functional and teleological type of ceasefire? This article searches for answers to these questions at the conceptual and theoretical levels, as well as at the empirical level based on an analysis of statistical data and specific examples from different contexts. The conflicts in Syria and the Donbass[5] were chosen because of the high incidence of ceasefires, because the conflicts represent the two macro-regions (the Middle East and Europe/Eurasia) where the most ceasefires have been declared since the 2010s, and because both cases are highly relevant for Russia.

Ceasefires: Definition and Main Trends

Perhaps the best place to start is with a definition of the term "ceasefire" and a brief analysis of the principal trends and parameters of ceasefires in the context of current conflicts and their settlement. It would be proper to illustrate this problem not only with theoretical discussions based at best on the practice of regulating specific conflicts or a small sample of conflicts, but also to use the information from academic databases on ceasefires. The sheer variety of ceasefire trends and their main parameters identified using different databases can be explained primarily by the different methodologies used to define ceasefires.

The largest database on peace treaties, designed by the University of Edinburgh (PA-X) exhibits a particularly strong tie between ceasefires and peace processes. The developers of this methodology define ceasefire as the "commitment by parties to end all acts of aggression on land, at sea, or in the air, as well as any other activities that undermine the spirit of a ceasefire or ongoing peace talks" (Forster 2019: 2). That is, the "peace process" concept is part of the very definition of a ceasefire. They treat as ceasefire agreements only those texts that largely contain the parties' commitment to cease violence, either temporarily, or for an unspecified period of time (Bell, Wise 2022: 389).

Corinne Bara, Govinda Clayton, and Siri Aas Rustad offer a broader and less formal approach that defines ceasefires as "arrangements in which conflict parties commit to temporary or permanent cessation of violence" (Bara et. Al. 2021: 332). This is a better definition since it: (a) is not directly tied to peace process; (b) covers not only

[5] The article uses data on ceasefires in Donbass between 2014 and February 2022, that is, before and during the Minsk peace process. This stage concluded with the launch of the Russian special military operation in February 2022, and with the conflict transitioning to an inter-country confrontation.

mutual (bilateral), but also unilateral and multilateral ceasefires; (c) does not require that a ceasefire be mandatorily set down in writing, i.e., this definition extends to oral agreements, and does not overrate written agreements.[6]

Malin Åkebo offers a more detailed definition of ceasefires as decisions to stop violence and the procedures related to these decisions: "the core premise of a ceasefire agreement is that the parties agree to stop fighting, but an agreement also defines the rules and modalities for such an endeavour" (Åkebo 2016: 3). These definitions are similar to the one used in the joint ceasefire database of ETH/PRIO CF (Federal Institute of Technology Zurich, ETH Zurich) and the Peace Research Institute Oslo (PRIO). This definition describes ceasefires as formats that include a declaration of a temporary or permanent ceasefire from a certain point in time by at least one party to the conflict (ETH/PRIO CF). This broad definition covers the full range of corresponding initiatives and agreements, from short unilateral oral statements to formal and detailed multilateral agreements. This article allows for any of these broader definitions to be used.

Definitions are important because they are projected onto ceasefire statistics and, therefore, influence the process of identifying existing trends. For instance, the figures in the three principal international databases vary greatly, sometimes severalfold, precisely because the they proceed from different definitions of ceasefire and, consequently, sometimes track, count, and encode different phenomena. For instance, PA-X Version 7 with data for 1990–January 2023 (PA-X: Version 7) contains 2003 agreements and identifies 926 ceasefires or agreements with sections on ceasefires (Fig. 1). Since PA-X uses a narrower definition (only official written agreements), the number of ceasefires identified is less than half of that identified in the ETH/PRIO CF database for a slightly shorter period (2202 ceasefires in 1989–2020) (Clayton et al. 2023: 1430–1431). The same applies to specific conflicts: for instance, PA-X records only nine ceasefire agreements or agreements with ceasefire provisions for the Donbass conflict in 2014 – late 2021, while the present article alone uses information on 16 ceasefires.[7]

[6] "On paper," an average ceasefire agreement is no more than three pages long (Bell, Wise 2022: 391). Sometimes, a ceasefire agreement or a section on a ceasefire in a larger agreement is limited to one or two paragraphs or even to a few lines.

[7] Calculated by the author. Some experts count up to 20 ceasefires in Donbass between 2014 and 2021 (Matveeva 2022: 98).

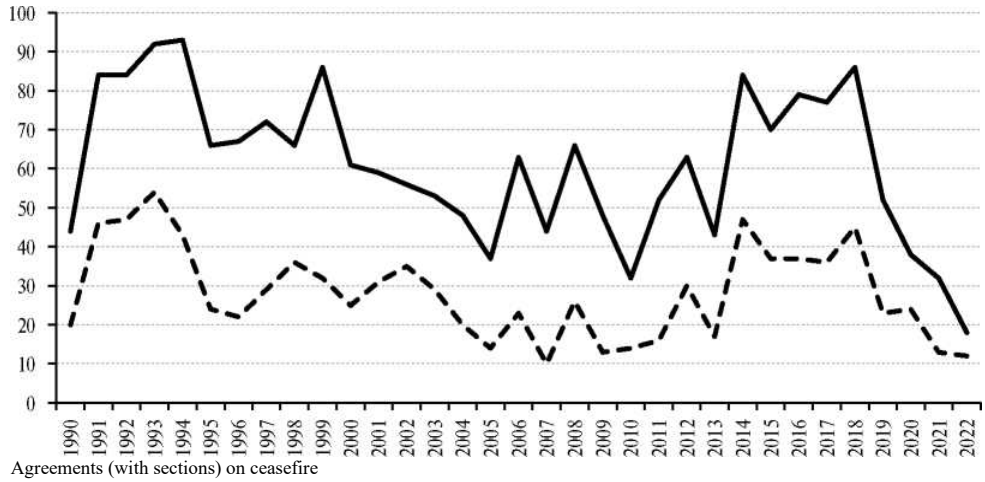

Figure 1. Peace agreements and agreements (with sections) on ceasefire, 1990–2022.
Peace agreements *Source: calculated by the author from PA-X: Version 7. 2023.*

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Even though it is preferable to adopt a broader definition of ceasefire in order to arrive at a better-quality analysis, the PA-X database is still our basic source for identifying quantitative trends in this area. The ETH/PRIO CF database is not open-access: all calculations based on it are done by its methodologists and ETH and PRIO analysts, while the data array itself is not accessible for outside researchers and thus cannot be subjected to independent analysis and verification. The database on peace agreements at Uppsala University (UCDP/PA) does not have a separate section on

[8] Calculated by the author. Some experts count up to 20 ceasefires in Donbass between 2014 and 2021 (Matveeva 2022: 98).

ceasefires and does not include "pure ceasefires," listing only sections on ceasefires in larger peace agreements instead (UCDP/PA: Version 22.1, on the methodology see: Hogbladh 2022).

Out of 926 ceasefires or agreements with sections on ceasefires identified in PA-X in 1990–January 2023, a total of 412, or nearly 45% (44.5%) focus specifically on ceasefires and are also classified in PA-X as a separate stage of *a peace deal* (different from the pre-talks stage, the phases of concluding and implementing partial or comprehensive peace agreements, and other stages of *the peace process* (calculated from PA-X: Version 7). These are the so-called *pure ceasefires,* agreements on the form of a ceasefire and its technical aspects, agreements unconnected with the substantive part of the peace process, i.e. with talks and agreements on political and other key issues of the armed confrontation. Therefore, even given the incompleteness of data in PA-X (the low number of ceasefires owing to the narrow definition thereof) and the subjective prejudices of PA-X experts towards peace processes, nearly half of all ceasefires are concluded without any direct connection to the peaceful settlement process. The remaining 514 agreements contain only individual provisions or sections on ceasefires, i.e. they are primarily focused on other issues and tied to a single substantive or procedural stage in the peace process: the pre-talks stage, including agreements to engage in talks (roadmaps); the stage where partial or comprehensive peace agreements are reached; the implementation stage; the finalization or revision of their terms and conditions; or the stage of resuming or prolonging peace agreements (Fig. 2).

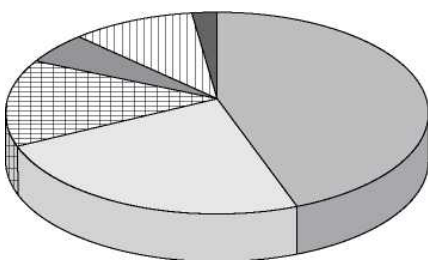


Figure 2. Ceasefires and peace process stages, 1990–2022
Source: calculated by the author from PA-X: Version 7. 2023.

For three decades after the end of the Cold War, ceasefires were concluded at a highly irregular pace (Fig. 3) that reflected the dynamics of armed conflicts as such, i.e. the surges, peaks, and drops in the numbers of agreements generally aligned with the dynamics of the number of global conflicts in a year. As for their regional distribution, most conflicts in the last 30 years were waged in Africa and Asia. If all ceasefires are taken into account (including those clearly tied to a particular stage in the peace process), Africa also is the leader in the number of ceasefires in 1990–2022, while the

Asia-Pacific is in Top 3 (following Europe/Eurasia).[9] At the same time, Europe/Eurasia leads in the number of "pure ceasefires" that are not directly tied to any peace process (114 ceasefires) followed by the Middle East and North Africa (107 ceasefires) (calculated from PA-X: Version 7). According to ETH/PRIO CF, these two macro-regions in the reverse order (the Middle East first and Europe second) are the leaders in terms of the total number of t ceasefires in the last full decade (the 2010s) (ETH/PRIO CF 2022: Fig. 2; Clayton et al. 2023: Fig. 3: 1440).

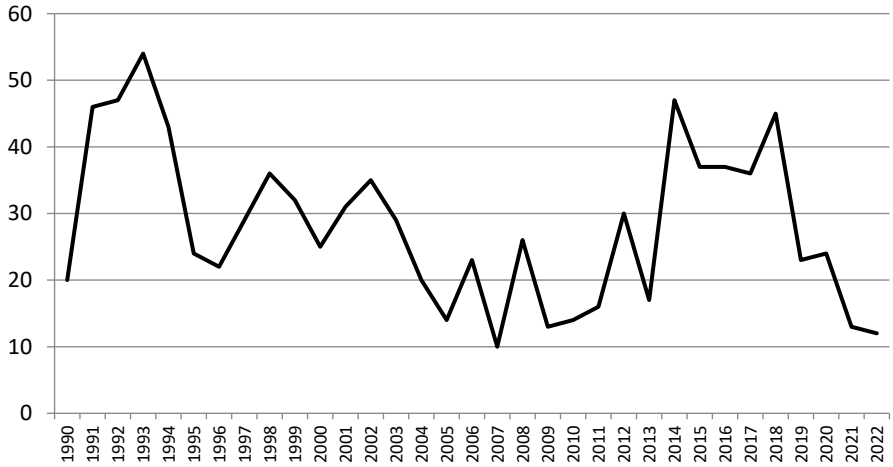


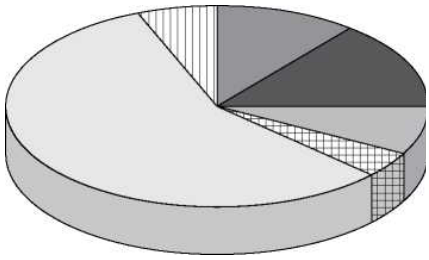
Figure 3. Ceasefire Agreements or with sections on ceasefires, 1990–2022
Source: calculated by the author from PA-X: Version 7. 2023.

As we noted earlier, one advantage of the ETH/PRIO CF is its broader ceasefire coverage: 2202 ceasefires in 109 conflicts in 66 countries in 1989–2020 (on methodology see: Clayton et al. 2023). This database is also compatible with the principal international research database on armed conflicts at Uppsala University and the Peace Research Institute Oslo (UCDP/PRIO Armed Conflict Dataset). However, its main flaw so far is still that ETH/PRIO CF is not an open-access database, i.e. other researchers cannot work with it independently.[10] Data published by ETH/PRIO CF experts shows that half of all the conflicts in the world have had at least one ceasefire, and on average, about one third of conflicts have at least one ceasefire annually (ETH/PRIO CF). Nonetheless, ETH/ PRIO CF experts are forced to admit that they have so far failed to

[9] In this case, PA-X treats Europe and post-Soviet Eurasia as a single macro-region.

[10] Another methodological flaw of the ETH/PRIO CF database is that it only includes information on those ceasefires where at least one party is a state, thereby ignoring a large number of local ceasefires (i.e. all those that are concluded between armed non-state actors). Local ceasefires are partially included in the appropriate specialized database that is part of PA-X (PA-Local 2023), while local ceasefires were one of the most widespread forms of ceasefire in Syria, for instance.

systemically evaluate the effect ceasefires have on the course of these conflicts. This is partly because 70–76% of ceasefires provide no mechanisms for verifying compliance with their terms (Bara et al. 2021: 330; Clayton et al. 2023: Table 1: 1441).



Peace agreements – 11%
Ceasefires – 14%
Government victory – 8%
Insurgent victory – 4%
Unclear outcome – 57%
Government victory – 8%
Collapse or transformation of one party to the conflict – 6%

Figure 4. Conflict outcomes, 2001–2020.
Calculated by the author from UCDP Conflict Termination Dataset Version 3–2020. 1946–2020.

Uppsala experts undertook the first, limited attempt to systemically compare armed conflicts and ceasefires using the UCDP Conflict Termination Dataset (Fig. 4), their database on conflict outcomes. For the first time ever, conflicts with unclear outcomes started to dominate in the 21st century. In 2001–2020, some 57% of conflict outcomes boiled down to very low-key violence of the "neither peace, nor war" type in the absence of a clear military or diplomatic/agreement-based solutions. Against this background, and amid other more or less clear conflict outcomes, ceasefires (14%), for the first time ever, came out ahead of all other outcomes: peace agreements (11%); military victories of governmental armies (8%); or military victories of insurgent forces (4%) (calculated by the author from UCDP Conflict Termination Dataset: Version 3–2021).

Thus, in the 2000s–2010s, ceasefires turned into the most widespread type of conflict termination for those conflicts that did have some kind of a definable outcome. And that is despite the fact that the number of written agreements on ceasefires (agreements with sections on ceasefires) in 2001–2022 was 2.2 times smaller than the number of peace agreements (calculated by the author from PA-X: Version 7).

This still does not give us reason to claim that ceasefires are at the very least just as effective as an outcome and a means of conflict management as peace agreements. *First*, the fact that most ceasefires are not properly monitored means that it is very difficult to provide an independent quantitative assessment of the scope of their violations and their effectiveness in achieving a cessation of fire, especially amid continuing violence. *Second*, amid frequent, chronic violations and protracted series of regularly broken and resumed ceasefires, researchers in many conflicts increasingly question the traditional paradigm that judges ceasefires and their effectiveness solely based on compliance with their only function: cessation of fire (Clayton et al. 2021: 356, 359–360).

Unfortunately, the first attempts to go beyond this framework and classify ceasefires by their nature and objectives have been methodologically unsatisfactory. For example, out of the two new ceasefire typologies, the one proposed by ETH/PRIO CF in 2022 suggests categorizing ceasefires into those pertaining to the peace process and those connected with the humanitarian agenda, or else (timed to coincide) with holidays, elections, or other landmark events (Clayton et al. 2023: 1441–1442). The problem here is not so much that all these categories are not mutually exclusive (a ceasefire timed to coincide with elections scheduled to be held on a holiday can be a full-fledged part of the peace process and simultaneously contain humanitarian sections). ETH/PRIO CF experts appear to be even more biased in favor of "peace processes" than those of PA-X and are clearly unwilling to call a spade and spade: if ceasefires are not directly subordinated to the objectives of peaceful settlement, the experts believe that it is acceptable (politically, ideologically, ethically) to account only for their humanitarian, electoral, and holiday-related aspects. And they are also clearly unwilling to recognize the fact that ceasefires can have purely *military objectives* and that even humanitarian ceasefires can be used for military purposes and advance the peace process.

Generally, even though quantitative methods are indispensable in evaluating the immediate objective of a ceasefire – putting an end to armed violence – they are of little use in analyzing the context, the underlying motivation of the parties to the conflict, and the entire complex of strategic and tactical, overt and covert, declared and real purposes involved in establishing a ceasefire. Identifying these motivations, goals, and conditions requires subjecting ceasefires and their participants to qualitative analysis, and this process determines whether a ceasefire is part of the peace process or not.

Ceasefires: Between War and What?

Ceasefire classifications and typologies have traditionally been purely technical: ceasefires were divided into formal (official) or unofficial, unilateral, bilateral, or multilateral, full or partial. The new ceasefire typology proposed by ETH/PRIO CF is similar. This is a utilitarian and technical typology clearly designed to aid (international) bodies sending observer missions to conflict zones. It proposes classifying ceasefires solely by the presence/absence of mechanisms for monitoring/verifying compliance therewith and steps for disarming/demobilization of the parties, even though they are completely absent in most cases (in 76% of ceasefires recorded by ETH/PRIO) (Clayton et al. 2023: Table 1: 1441).

Two more substantive traditional typologies which, due to their interconnectedness, are best considered together, classify ceasefires (a) by their spatial and geographical span (location), as well as their level, from local to international, and (b) by the type of the armed conflict itself, according to the essence and nature of the principal contradiction at the heart of the dispute.

In their scope and level, ceasefires can be international (in conflicts between states, for instance, between Ecuador and Peru, or between Ethiopia and Eritrea); nation-wide, i.e. apply to an entire country (the general ceasefires in the civil wars in Guatemala or Liberia); concluded with individual armed actors without being tied to a specific area (nation-wide, for instance, in Myanmar), or in a clearly defined area (Darfur/Sudan); or local (i.e. spanning a small territory and population, from individual blocks, suburbs, or even checkpoints to cities (in Bosnia Herzegovina, Syria, Lebanon) and areas (in Libya, on the island of Mindanao in the Philippines, in Sudan)).

Clearly, the geographical span and, to a lesser degree, duration of a ceasefire are connected with the nature of the contradiction at the heart of the dispute. For instance, purely separatist conflicts are waged in a relatively limited territory, and their participants (armed separatists and the central government) could be more willing to agree to a long-term cessation of fire and to freezing the conflict even when the key contradiction between them has not been settled. For instance, in over a third of separatist conflicts in 1989, ceasefires were long-term (Bara et al. 2021: 333). At the same time, long-term ceasefires are rare in full-scale civil wars that span a large or greater part of a country and involve disputes concerning nation-wide power issues.

At the same time, ceasefires are not a mechanical derivative of the nature of the conflict itself. The scale of the conflict and its key contradictions do not predetermine the functions, stability, and effectiveness of a ceasefire. This approach does not account for the *contextual specifics* of the armed actors in a given conflict, their *strategic goals,* and their tactical objectives at a certain stage of the confrontation. This approach also largely ignores the dynamics of a given conflict. If we take the above into account, substantive ceasefire typology should foreground (a) the underlying goals of the parties, and (b) the stage of the conflict to which ceasefires pertain and the way they are conceptualized by the parties – as a stage between the war and something else (between war and peace? between war and war? between war and some intermediary state of "neither war, nor peace"?).

Research on peace processes and ceasefires cannot really be said to have completely ignored the strategic goals of the parties to conflicts. Nonetheless, if such goals do merit some attention, it happens within a rigidly rationalist approach where every armed actor *must make and always does make* the most rational choice between different strategic options. Such "rational actors" adopt their strategic goals in a conflict to specific situations regardless of whether the goal is to achieve military superiority (victory), bolster their bargaining resource (position), or to move towards peaceful settlement; accordingly, such actors carefully weigh expected costs, gains, and their balance at a particular moment in time and can use ceasefires to achieve any of those goals, and change the main function of ceasefires as they change their goals. Such actors even can, as they attempt to better gauge the costs to gains ratio, use ceasefires simultaneously for military purposes and advancing the peace process (Sticher, Vuković 2021: 1284, 1286–1287).

Such a rigidly rationalist approach is less and less in alignment with the terms and types of conflict outcomes today. The concept of a rationalist actor always making an independent choice of goals between a military solution or peaceful settlement depending on the "costs/gains" balance runs contrary to the fact that both military solutions and solutions achieved via peace talks are generally an increasingly infrequent phenomenon: even taken together, they account for the smaller share of all conflict outcomes in the 21st century.

In order to be resolved by one of those two means (by military force or by peace talks), or even by a combination/sequence thereof, the conflict itself should at the very least be clearly enough structured, tied to a certain territory, have a certain (preferably limited) number of parties with a definite military and political structure and with a limited of relatively clear and realistic set of goals. Many of today's conflicts are complex and characterized by a high degree of fragmentation and by simultaneous trans(inter)nationalization and glocalization (intertwined trends both globalization and localization), and consequently, even those few of them that do have a clear international aspect are increasingly less aligned with these requirements.

In those rare cases where the nature and structure of a conflict generally allow for resolving it through military means, such a conflict, as a rule, is ultimately *resolved in that very way* (for instance, the separatist conflict in Sri Lanka). In other cases, it is frequently not so much a matter of the parties' consciously choosing to engage in talks, as it is a matter of it being fundamentally impossible to resolve the conflict by military means. It does not, however, mean better prospects for a peaceful settlement: in the 21st century, such conflict outcomes constitute a minority, while unclear outcomes of the "neither peace, nor war" sort, or frozen conflicts dominate. Generally, the orthodox theory of rational choice fails to completely account for empirical data on external circumstances and the nature of today's conflicts, not to mention that it entirely lacks cultural relativism.[11]

Between War and War: Ceasefires as Part of Warfare

Most civilian political scientists, conflictologists, and security experts for some reason staunchly ignore things that are obvious to military experts: the most natural, *standard*, as it were, function of ceasefires is their role as part of conflict dynamics, and this role is dictated by reasons of *military expediency.*

In other words, ceasefires are an integral part of war itself, and not only of preparing ways of exiting warfare via peace talks. As part of conflict dynamics, ceasefires can be used by parties to a given conflict to gain time, regroup, re-arm/re-stock their

[11] This theory denies the very possibility of alternative concepts of rationality, for instance, a religious concept. In particular, for armed Islamists, a ceasefire (hudna in Arabic) is fundamentally just a temporary break required to rebuild and consolidate capabilities to continue the armed confrontation.

weapons, and improve their military standing. Quite frequently, parties to a conflict (ceasefire participants) do not confine themselves merely to observing or periodically violating ceasefires, but find means of using ceasefires to advance their military and political goals and change the very nature of military hostilities (in Myanmar, Syria, Kashmir/India, etc.). Although some proponents of peaceful settlement at any cost admit that ceasefires can have "non-peaceful" goals and consequences, they label them as negative compared to the role of ceasefires as "a basic step to facilitate 'real' peace negotiations" (Karakuş, Svensson 2020).

It has already been indicated that the reasons prompting one or several parties to a conflict to declare a ceasefire can be military and tactical: these are primarily attempts to gain time to consolidate, regroup, manoeuvre, or re-arm and re-equip their forces, particularly when one party or other is under strong military, political, or other pressure (MacGinty 2006: 151; Haysom, Hottinger 2010; Sticher, Vuković 2021: 1284).

Another important function of ceasefires as a military expediency is using them to enshrine *the balance of forces at a particular stage of a given conflict*. In such cases, ceasefires serve as a means of consolidating warfare achievements, and ceasefire terms serve as the first chance to somehow formalize the right to a disputed territory (resources, population). Some agreements of this kind can *really* be mutually advantageous for both or all parties to a ceasefire, even if they do not intend to subsequently peacefully resolve the conflict. These are ceasefires that include provisions on exchanging swathes of territory and/or population (that supports a particular side or represents "their" ethnic or religious group in ethnopolitical or [ethno]denominational conflicts). Although swapping "one's own" and "the other's" population as part of a ceasefire could look like a purely humanitarian step, it is in fact frequently intended primarily to enshrine the outcomes of military hostilities and the current balance of forces. In complex, fragmented conflicts, particularly in civil wars involving many internal and external actors, ceasefires can serve and be viewed primarily as an instrument for establishing and/or consolidating control over particular areas and resources on the part of competing armed actors (for the example of the Syrian conflict see: Sosnowski 2020: 1396, 1398).

Tellingly, the larger part of standard terms and conditions of a ceasefire (including their humanitarian provisions and steps to build trust) could be subordinated to the development of the military hostilities and dictated by the logic of the conflict to the same degree as with ceasefires that are subordinated to searching for a peaceful solution: a temporary cessation or suspension of fire; establishing or employing communication channels between the rival parties, including "hotlines" at the level of military grouping (contingent) commanders; dividing or (partially) withdrawing troops, including beyond the reach of the artillery of a specific gauge; banning heavy armaments in populated locations and at civilian facilities; limited exchange of information on weapons systems and equipment, logistics, combatants, POWs, and civilians in the areas under control; and notifying each other in advance about moving

troops and equipment. "Dual purpose" provisions include ensuring humanitarian access, which is understood as security and movement guarantees for civilians, military personnel, humanitarian workers, and international observers; providing convoys and transportation for refugees and internally displaced persons; installing or removing checkpoints to regulate the movement of people and transportation (and taxation) of goods; evacuating civilians and the wounded; exchanging the bodies of those killed; and releasing prisoners, including with the mediation of the International Committee of the Red Cross. We can also include such steps as transferring to a particular side control over certain critical infrastructure facilities such as ports, airports, roads, and governmental buildings. All these measures provided for in ceasefire agreements or declarations may ultimately serve both to resolve a military conflict through military means and advance the objectives of its peaceful settlement depending on the conflict and the medium-term goals of its parties (ceasefire participants).

The same applies to partial and local ceasefires. For instance, the dynamics of widespread local ceasefires in Syria ("reconciliation agreements" in the Syrian interpretation)[12] primarily reflected the changing balance of forces between armed actors and were not precursors, pillars, or manifestations of the peace process. Even before the launch of the Astana Process in 2017 with Russia's participation, there had been over 100 such ceasefires, including mutual arrangements.[13] Local ceasefires in Syria involving governmental forces, their allies and loyalist units, on the one hand, and armed opposition groups, on the other, varied from arrangements where opposition units retained some local security and governance roles to what was essentially their official surrender. Such surrenders frequently included relocating (expelling or evacuating) militants, and sometimes the local population that supported them, to other areas. As the conflict developed, the government was becoming progressively short on manpower and was losing capabilities to regain the territories controlled by the opposition by force. In this situation, the Syrian regime transitioned to the tactic of partial local deals with individual opposition units, primarily in those territories that directly bordered areas controlled by the government and their allies, where the opposition had concentrated particularly large forces. Such arrangements have from the very outset been not so much steps towards subsequently dividing up power via peaceful talks with the opposition as an element and extension of the military strategy amid a protracted, bitter, and greatly fragmented conflict where expanding control zones via military means was slow and gradual, if possible at all, while retaining the liberated/gained territory exclusively through military means was difficult.

[12] Arabic itifaqaat al-musaalaha.

[13] Dogukan Karakuş (Turkey), for instance, calculated that 141 mutual local ceasefires were concluded in March 2011–October 2021 during the Syrian conflict, including both written agreements and oral arrangements (for expanded version see (Karakuş 2023), for the original database see (Karakuş, Svensson 2020)).

Despite their name, "reconciliation agreements" had little to do with reconciling the parties, and the obligations often contained in them to preserve or ensure the decentralization of the local government or special privileges for local leaders, elites, and older notables, were eventually disavowed. Such local agreements were rather temporary "ceasefires of convenience" or veiled surrenders to the central government. Western experts have regretfully noted that unless such local agreements are integrated into a comprehensive peace settlement process, they will be mere war tactics used to neutralize one area, so fighting is easier elsewhere. Several observers have realized that this would precisely be the case since having achieved the upper hand on the ground at great cost, Asad has no interest in the concessions needed for a negotiated political transition (Hinnebusch, Imady 2017: 1, 3, 5).

When the Astana process was launched in 2017, it was believed to have, for the first time in the Syrian conflict, instituted a relatively long ceasefire at the level of international guarantors (Russia, Turkey, and Iran)[14] primarily as part of the so-called de-escalation zones.[15] At the same time, local "reconciliation agreements" were concluded, both as part of the process and on parallel tracks. Although such agreements can hypothetically be divided into "hard" and "soft," both were forced arrangements whereby anti-government groups surrendered certain positions, rather than agreements achieved via talks. For the Syrian authorities, they primarily remained a way of gradually expanding their control over territories and the population. On the one hand, de-escalation zones enshrined a certain degree of decentralization (that was, as a rule, temporary)[16] and advanced the recognition of some local power centres. On the other hand, the dynamics of ceasefires and related de-escalation zones turned out to be merely a prelude to the Assad government and its allies regaining control over the larger part of Syria's territory. Several experts generally believed that those ceasefires were "used […] to successfully advance the aims of the wars' most powerful players" (Sosnowski 2020: 1403, 1406).

In addition to ceasefires between governmental and opposition forces, a large number of ceasefires (particularly those concluded in the course of complicated, greatly fragmented and multi-level conflicts with a large number of parties) are concluded

[14] The Astana Process is the name used to refer to the negotiations on the Syrian settlement (since January 2017 and until the present time), co-sponsored and mediated by Russia, Turkey, and Iran, acting as intermediaries between the government and the more moderate part of the armed opposition, including Islamists.

[15] On May 4, 2017, a memorandum on the creation of temporary "de-escalation zones" was signed as part of the Astana Process (Memorandum on the Creation of De-escalation zones in the Syrian Arab Republic // Official website of the Ministry of Foreign Affairs of the Russian Federation. 06.05.2017. URL: https://archive.mid.ru/ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2746041 (accessed: 10.01.2023); Memorandum on the Creation of De-Escalation Zones in the Syrian Arab Republic. May 4, 2017 (PA-X 2023)). In September 2017, the number of de-escalation zones increased to four (Joint Statement by Iran, Russia and Turkey on the International Meeting on Syria in Astana 14–15 September 2017 // Permanent Mission of the Russian Federation to the European Union. URL: https://russiaeu.ru/en/news/joint-statement-iran-russia-and-turkey-international-meeting-syria-astana-14-15-september-2017 (accessed: 20.02.2023)); they were created in some sections of Homs Province, in Eastern Ghouta (a suburb of Damascus), in the northwestern province of Idlib on the border with Turkey, and in border regions in Syria's southwest (creating this area took signing a special agreement on July 9, 2017 as part of talks involving Russia, Jordan, Israel, and the United States).

[16] Everywhere except the "Idlib" de-escalation zone.

not between the principal enemies (antagonists), but between different, often competing groups of the armed opposition in order to form coalitions fighting against the governmental forces; or such ceasefires can also be concluded between loyalist units in order to coordinate the anti-insurgent struggle. In Syria, such ceasefires between non-governmental actors pursuing military (military and political) goals were particularly widespread. Many such ceasefires were mostly concluded between opposition units fighting on the same side of a larger conflict. They included:

- ceasefires concluded between groups of the same or similar political, ideological, religious and political, or ethic and political persuasions (such as the ceasefires in Idlib between the radical Islamist group Ahrar al-Sham on the one hand, and the large umbrella jihadi group Hayat Tahrir al-Sham,[17] or its core and predecessor Jabhat Fatah al-Sham[18] [previously known as Jabhat al-Nusra],[19] or smaller groups like Jund al-Aqsa,[20] on the other; or ceasefires mediated by the Saudi religious leader Abdallah al-Muhaysini between ISIS[21] and several Syrian al-Qaeda-oriented jihadi groups,[22] or between different Kurdish factions in the north of Syria, including those concluded with the mediation of Masoud Barzini, the leader of Iraq's Kurds) (Karakuş, Svensson 2020);

- ceasefires between groups with (sometimes radically) different political(religious) and ideological views and goals that pooled their forces to fight the government, such as the local ceasefires around the city of Afrin[23] between Fatah Halab, a motley rebel coalition,[24] and the Kurdish Self-Defense Forces (YPG),[25] or between the jihadi Jaysh al-Muhajirin wal-Ansar that mostly included foreign militants, and several other groups, including the Shohada Badr, a faction of the Free Syrian Army, mediated by Sheik Abu Amir from Ahrar al-Sham.[26]

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[17] Dated July 19 and 23, 2017. All local agreements are cited from the following databases: PA-Local: Second Ceasefire between Ahrar al-Sham (AAS) and Hayat Tahrir al-Sham (HTS). 23.07.2017; Agreement between Hayat Tahrir al-Sham (HTS) and Ahrar al-Sham (AAS), Badia, Idlib. 19.07.2017 (PA-Local 2023). Hayat Tahrir al-Sham was declared a terrorist organization and banned in the Russian Federation by Ruling No. AKPI20-275S of the Supreme Court of the Russian Federation dated June 4, 2020, which entered into force on July 20, 2020.

[18] Dated October 10, 2016. PA-X: Agreement between Ahrar al-Sham (AAS) and Jabhat Fatah al-Sham (JFS) signed by al-Jawlani and al-Hamawi, 10.10.2016 (PA-Local 2023).

[19] Jabhat al-Nusra was declared a terrorist organization and banned in the Russian Federation by Ruling No. AKPI14-1424S of the Supreme Court of the Russian Federation dated December 29, 2014, which entered into force on February 13, 2015.

[20] Dated January 22, 2017, October 8, 2016. Agreement between Ahrar al-Sham (AAS) and Jund al-Aqsa, al-Fua'a, Idlib. 22.01.2017; Cessation of Hostilities between Jund al-Aqsa and Ahrar al-Sham (AAS) in Kansafra. 08.10.2016 (PA-Local 2023).

[21] The Islamic State or the Islamic State in Iraq and the Levant (IS/ISIL) was declared a terrorist organization and banned in the Russian Federation by Ruling No. AKPI14-1424S of the Supreme Court of the Russian Federation dated December 29, 2014, which entered into force on February 13, 2015.

[22] Al-Qaeda ("the Base") was declared a terrorist organization and banned in the Russian Federation by ruling No. GKPI 03-116 of the Supreme Court of the Russian Federation dated February 14, 2003, which entered into force on March 04, 2003.

[23] Dated December 15, 2015. Agreement between Fatah al-Halab and the People's Protection Units on the Sheikh Maqsoud area and roads to Afrin. 15.12.2015 (PA-Local 2023).

[24] The coalition operated in Aleppo and included up to 50 units ranging from radical Islamists to relatively secular pro-western forces.

[25] *YekTneyen Parastina Gel* (YPG) in Kurdish.

[26] Dated February 16, 2014. Hurritan and Malah Ceasefire (PA-Local 2023).

In other words, many ceasefires, particularly local ceasefires, were concluded not for the sake of peace, but, on the contrary, to step up the armed struggle and make it more effective by essentially forming long tactical and sometimes even longer strategic alliances, pooling and coordinating military efforts against the same enemy. These efforts could be confined to the joint control of strategic roads, settlements, trade and smuggling flows (for instance, the oil trade), and could include joint military operations against the main enemy.

Along with ceasefires between the main parties to a given conflict or between armed non-governmental actors fighting on the same side of a larger civil war, ceasefire agreements may be concluded with armed units that are not directly involved in the conflict with the central authorities, but constitute a separate military political force with its own agenda and goals. Moreover, judging by the experience of Syria, such ceasefires have proven particularly stable and lasting. These are, for instance, intra-Syrian ceasefires involving armed units of local Kurds that are not among the antagonists fighting in the Syrian civil war. Some of the most stable ceasefire agreements concluded in the course of the Syrian conflict were those concluded: (a) between the Kurdish Democratic Union Party (PYD)[27] and the oppositional Free Syrian Army (the first ceasefire of November 5, 2012);[28] (b) between different armed units of the Syrian Kurds themselves; and (c) between Syria's government and the PYD (the first ceasefire of August 23, 2016). Even though none of these ceasefires was part of the political settlement process, their greater stability is due precisely to the fact that the Kurdish military-political forces did not have antagonistic contradictions among themselves, nor with the Syrian central government (even though Syrian Kurds had many grievances against it, they largely were not separatists) or some of the non-jihadi armed opposition.[29]

The goals of a ceasefire that are not necessarily related to the peace process include the desire by a ceasefire party to demonstrate their military and political weight or potential to other parties to the conflict, rivals and/or outside actors. A party to a conflict may have different reasons for demonstrating its ability to comply with a ceasefire, including reasons that are not entirely peaceful. In particular, if one party intends to wage war until final victory, its ability to respect a ceasefire could unequivocally signal that its command and control system is effective, its leadership (command) can ensure

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[27] *Partiya YekTtiya Demokrat* (PYD) in Kurdish.

[28] Subsequently, up to 15 factions of the Free Syrian Army (FSA) fought alongside the PYD, although many other factions of the FSA, primarily the pro-Turkey ones, were actively fighting against Syrian Kurds.

[29] Syrian Kurdish units occasionally entered into ceasefire agreements with their main opponents (for example, the ceasefire with Turkish invaders, which looked more like a partial surrender and was concluded with the participation and mediation of the United States on October 17, 2019; Turkey even refused to call it a "ceasefire"; or the local month-long agreement between the YPG and ISIL of November 27, 2017. Several Kurdish leaders even deny the very fact that such a ceasefire was ever concluded). These ceasefires, however, were brief and were rather exceptions than the rule. See: Turkey Agrees to Suspend Syria Offensive while Kurds Withdraw // France 24. 17.10.2019. URL: https://www.france24.com/en/20191017-turkey-to-suspend-syria-offensive-after-talks-with-us (accessed: 26.02.2023); Agreement between Syrian Defense Forces (SDF) and the Islamic State (IS). 27.11.2017 (PA-Local 2023).

that decisions made are carried out, and this group or side has a high degree of internal consolidation. For example, amid all kinds of speculation in military, political, and expert circles as to the degree of fragmentation in the Taliban[30] at a time when it was the principal driving force of the armed Afghan opposition, nothing attested to the high level of control its leadership had over the entire Taliban as the unilateral three-day ceasefire the Taliban leaders declared in June 2018, with which the Taliban warlords and rank-and-file alike complied without question.

Between War and peace: Ceasefires as Part of the Peace Process

When it comes to ceasefires as precursors and part of the peace settlement process, we need to make an important qualification that narrows down all of the above-cited broad ceasefire definitions. In such cases, in addition to a party to a conflict unilaterally declaring a ceasefire with a view to subsequent peaceful settlement, the definition of a ceasefire covers only those talks and agreements that *really* did come out of *mutual arrangements* between the parties. If the ceasefire just looks like it is based on mutual or multilateral "arrangements," but in fact it merely enshrines the military defeat of one of the parties or has been in its entirety imposed through outside pressure, whatever such a ceasefire is called and however it is tied to the process of political talks, this ceasefire does not belong in this category and should be considered as a ceasefire of the first type (see the preceding section) or the third type (see the next section).

Ceasefires themselves *do not contain* arrangements on resolving basic key contradictions that are to be resolved through a peace process (for instance, issues of the status and borders of a particular territory, the nature of the state system, the division of power and/or resources, political representation, or problems with protecting the identity of a large stratum of the population). At the same time, the provisions of ceasefires, particularly at the peace process stage, are often set down as sections or annexes to larger peace agreements, and not as separate documents. Generally, the importance of ceasefires for the peace process, particularly for a successful peace process – and the interrelation between them – are hard to overestimate, although these matters have been under-researched.

For starters, a party can join military hostilities not so much because it intends to win the war and achieve a decisive military victory, but because it hopes to finally achieve by way of negotiations those results that could not be reached without turning to military means (Slantchev 2003: 622). To put it simply, some wars are already started with a view to the "ceasefire – peace talks" combo.

[30] The Taliban was declared a terrorist organization and banned in the Russian Federation by Ruling No. GKPI 03-116 of the Supreme Court of the Russian Federation dated February 14, 2003, which entered into force on March 4, 2003.

Practically speaking, ceasefires are frequently based on the basic needs and security exigencies of the warring parties who have decided to engage in face-to-face talks. For them, ceasefires also serve as military and political insurance against another party attempting to gain military superiority on the battlefield by taking advantage of the shift of attention to the talks and the breather they afford. Moreover, parties to a conflict frequently put forward ceasefires as a preliminary condition for peace talks, although in practice there is absolutely no need for it. At the same time, in those cases where a ceasefire is not a mandatory condition for peace talks, it may help defuse and stabilize the situation and make it easier to start and conduct such talks.

"Ceasefires for peace" have yet another function: they allow a party to a given conflict to demonstrate its goodwill. Ceasefires thus can contribute to establishing at least the minimal level of trust between the parties. And then there is no clearer signal of commitment to peaceful settlement than a unilateral ceasefire that a party has declared and observes, even if its opponent refuses to join the ceasefire.

Ceasefires can be dictated by the desire to seek political support in the course of political settlement from a particular group or a third interested party. Additionally, ceasefires can ensure broader popular support for the peace process and the parties involved. The population, especially in conflict zones, is forced on a daily basis to correlate peace talks, if they are underway, with the realities "on the ground" around them. If peace talks (particularly in a protracted peace process) are not buttressed by a ceasefire that is not a mere formality, but a reality, and if such talks cannot show people at least some changes for the better, then they rapidly lose popularity, trust, and support among the population (Sticher, Vuković 2021: 1289). One example is the sequence of ceasefires in Donbass after the second Minsk agreement of February 2015 (Minsk 2).[31] At the early stage (approximately before 2017–2018), they could somehow be classified as "ceasefires for peace." Back then, the peace process still had some prospects, the level of violence in the conflict zone visibly decreased compared to the military campaigns of 2014–2015, and the local population had not yet lost hope for stabilization. Nonetheless, a spike in ceasefire violations (up to several hundred thousand (!) incidents a year in 2016–2017),[32] and the fact that violence had gradually become routine were the most powerful factors discrediting the peace process in the eyes of the local population, primarily in the Donetsk and Lugansk People's Republics (Matveeva 2022: 93–94, 99). Kyiv's blockade of the republics and its failure to comply with the political and economic terms and conditions set forth in the Minsk Agreements made the peace process increasingly look like a dead-end. The same applies to the humanitarian situation. Although the humanitarian crisis in Donbass generally was not quite as acute as

[31] Package of Measures for the Implementation of the Minsk Agreements. 12.02.2015. See: Full Text of the Minsk Agreements // RIA Novosti. 12.02.2015. URL: https://ria.ru/20150212/1047311428.html (accessed: 10.01.2023); Package of Measures for the Implementation of the Minsk Agreements (Minsk II). 12.02.2015 (PA-X 2023). Two ceasefires were declared in 2015, and three ceasefires were declared each year in 2016–2018.

[32] OSCE Records over 400,000 ceasefire violations in Donbass in 2017 // TASS. 12.01.2018. URL: https://tass.ru/mezhdunarodnaya-panorama/4870226 (accessed: 20.02.2023).

during the first two military campaigns, the situation in 2016–2017 had deteriorated in some humanitarian aspects, for instance, with respect to the population's food security (primarily in the Donetsk and Lugansk People's Republics amid the financial, economic, and humanitarian blockade by Kyiv).[33]

In the meantime, improving the humanitarian situation for the civilian population and building trust between the parties through a series of de-escalation measures are the key objectives and results of successful "ceasefires for peace," as they create and expand the space for political talks. In addition, when it comes to a party to a given conflict being truly interested in achieving a peaceful settlement, its ability to ensure compliance with a ceasefire is also an effective way to gain or to bolster its international recognition, or legitimacy.

Another basic connection between ceasefires and peace process is that they regulate the military conduct of parties to the conflict during peace talks. Local ceasefires, for instance, not only help expand hostility-free areas, but, in the long-term, form the grass-roots, public and civil components of the peace process.

There are also a number of negative aspects to the relationship between ceasefires and peace processes. The main downside is linked with *the armed violence factor and the possibility of its resumption,* which can never be ruled out, and in most cases is highly likely or virtually guaranteed.

Ceasefires constitute one of those stages in the peace process where it is most frequently interrupted and can even collapse owing to the resumption of violence, particularly if violence is regular and massive. Violence in breach of a ceasefire that has not been repealed is one of the main types of armed violence that is characteristic of the peace process. Researchers and analysts have dubbed armed actors that violate ceasefires at the peace process stage "spoilers" (Stedman 1997; Stepanova 2006). Although not all ceasefire violations take the form of armed violence, the two main violence-related categories are: (a) military action; and (b) violations connected with ensuring the protection of peaceful population and non-combatants in general.

Violations of a ceasefire concluded to support peace talks do not merely result in war casualties, they can push back or significantly reduce the chances of the conflict being resolved peacefully.[34] Consequently, unlike the ceasefires of other types, "ceasefires for peace" are crucially focused on those objectives that reduce the risk of full-scale armed violence resuming. These objectives include raising the costs of offensives for one party (or all parties) to the conflict, reducing the level of uncertainty, and preventing armed incidents that can deliberately or unintentionally result in the escalation of violence.

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[33] The UN Office for the Coordination of Humanitarian Affairs estimates that the number of people in Donbass whose food security was endangered had doubled in 2016–2017. See: Ukraine Humanitarian Response Plan 2018. UN Country Team in Ukraine // UN Office for Coordination of Humanitarian Assistance Report. December 2017. P. 14.

[34] Ceasefires and the Dynamics of Violence in War Zones. Project Overview // Department of Peace and Conflict Research. Uppsala University. URL: https://www.pcr.uu.se/research/research-themes/conflict-dynamics/ceasefires-and-the-dynamics-of-violence-in-war-zones (accessed: 18.02.2023).

The larger part of specific terms and conditions or provisions of ceasefire agreements and (including all the provisions listed in the previous sections, along with humanitarian considerations) are equally applicable to ceasefires "for war" and ceasefires "for peace." Nonetheless, some provisions are specific to or particularly characteristic of those ceasefires that are concluded with the goal of subsequently stepping up political negotiations or supporting a peace process that is already underway. The main provisions in this respect concern complete or partial *demobilization, disarmament, and re-integration* of the armed units (forces) of the parties locked in conflict. These provisions can envision merging the forces of the conflicting parties (in Angola, the Central African Republic, and South Sudan); cantonizing the armed forces of both the state and non-state combatants (for instance, in Burundi and Mali); collecting and surrendering weapons, ammunitions, and explosives; placing heavy armaments of the parties under control and monitoring of a third party (in Bosnia and Herzegovina); withdrawing heavy armaments beyond the range capability, 25 km or more (in the conflict between Eritrea and Ethiopia); creating demilitarized zones, humanitarian corridors, and security areas (in Bosnia and Herzegovina, Burundi, the Democratic Republic of the Congo, and Guinea Bissau); demilitarizing political parties, movements, and associations (in Burundi and the Republic of the Congo); redeploying security forces or bringing them back to specific areas (South Ossetia/Georgia); or re-integrating former participants to military hostilities into peaceful life (the Republic of the Congo).[35] Generally, ceasefires with provisions on demobilization that are part of a larger peace process intended to resolve the basic contradictions between the sides produce longer periods of cessation of fire than ceasefires that do not meet these conditions (Clayton et al. 2023: 1445).

Theoretically, agreements on a "ceasefire for peace" should be more likely to have provisions on monitoring and verifying compliance therewith. Monitoring should help prevent, or at least reduce, the intensity of acts of violence. At the same time, there is so far no unequivocal empirical confirmation of this theory. On the one hand, there is data that suggests ceasefires with monitoring procedures are more stable than other ceasefires, both in civil wars and in international conflicts (Bara et al. 2021: 334–335; Clayton et al. 2023: 1445). On the other hand, these conclusions have been drawn either from individual cases of dubious representativeness, or by means of quantitative analysis of statistics that had been collected mostly automatically, i.e. without accounting for specific contexts.

For instance, neither the data on Syria, nor the data on Donbass confirm such conclusions. And let us not forget that these are not merely (a) the two most intense conflicts of the 2010s in the Middle East (including North Africa) and Europe, respectively, but also conflicts that (b) had the largest numbers of ceasefires in their respective

[35] For a more detailed list of all the kinds of ceasefire statutes on demobilization, disarmament, and integration registered in the PA-X database, see an overview by an expert affiliated with the database (Forster 2019: 4).

regions, and (c) made their regions global ceasefire leaders of the 2010s. Additionally, a large-scale long-term ceasefire monitoring international mission operated throughout the Minsk process in Donbass, although its operations did encounter certain hindrances and obstacles. This is not entirely typical even for those 17% of ceasefires that, according to ETH/PRIO CF, did have some kind of monitoring or verification of compliance (Clayton et al. 2023: Table 1: 1441). The Organization for Security and Cooperation in Europe (OSCE) had a Special Monitoring Mission (OSCE SMM) in Ukraine, the largest field mission run by the organization and the operative component of its involvement in the Minsk process.[36] The OSCE SMM's role in monitoring the ceasefire regime in Donbass was codified in the Minsk Agreements and repeatedly confirmed and ascertained in subsequent agreements and ceasefire declarations, and the number of international observers alone reached 700 people (not counting other personnel).[37] Although some experts did believe that the OSCE SMM "raised the threshold for resuming violence" (Zagorski 2022: 121), the OSCE SMM's monitoring only ensured that armed and other violations of the ceasefire were recorded (although, for a number of both objective and subjective reasons, in an incomplete manner), but it did not in any noticeable way reduce or influence (and could not influence) the unprecedentedly high level of such violations.[38] Available contextualized data on local and others ceasefires in Syria also do not confirm that monitoring had any effect on their effectiveness (Karakuş, Svensson 2020).

"Ceasefires for peace" also use so-called *trust-building measures* such as regular exchanges of information and prisoners and jointly controlled measures (the joint running of checkpoints and joint patrolling) more actively and regularly than other types of agreements on the cessation of fire. According to available data, trust-building measures in Syria included in the ceasefire agreements not only increased the chances for complying with the cessation of fire regime, but also proved to be the only factor that positively correlated with ceasefire compliance, particularly with respect to local ceasefires (Karakuş, Svensson 2020). This, however, shows that only specific conflict circumstances are conducive to the success of ceasefires. For instance, trust measures can be used and are more frequently employed by rivalling forces, but are far less likely

[36] It included the role of the OSCE chairman-in-office in the Trilateral Contact Group on Ukraine (alongside Ukraine and Russia) that served as the main venue for specific talks on stabilizing the situation, including those that involved members of the Donbass republics, and the OSCE's special monitoring mission at checkpoints on the Russian border along the territory controlled by the DPR and the LPR.

[37] The OSCE Special Monitoring Mission operated between March 14, 2014 and March 31, 2022 and included monitoring by ground patrols, specially installed cameras, short-, medium-, and long-range drones, and communications with members of different social groups (executive authorities of all levels, civil society, ethnic and religious groups, and local communities).

[38] The same applies to the Joint Centre for Control and Coordination on ceasefire and stabilization of the demarcation line (JCCC) established by the Trilateral Contact Group to support ceasefires and the OSCE Special Monitoring Mission. The Centre included Ukrainian and Russian military personnel and operated between September 2014 and December 2017; its operations ultimately boiled down to observer functions.

between rigid, complete antagonists (especially in high-intensity conflicts with ideological underpinnings and/or related to identity issues, such as, for instance, in the Russia–Ukraine armed conflict since 2022). In such conflicts, some trust measures, such as regular exchange of POWs and the periodic exchange of the war dead, including unilaterally giving the enemy's dead back to them, are most frequently part of ceasefires of the first type (ceasefires as warfare element).

"Ceasefires for peace" have another important characteristic: not all the violence that takes place in the course of the peace process breaches the ceasefire and is intended to undermine it. Some ceasefire agreements specifically provide for the kinds of armed activities that do not constitute a breach of ceasefire. They include, for instance peace-keeping operations carried out by designated forces (Mindanao in the Philippines); police actions including: preventative patrols; investigations; arrests; search and seizures to deter criminality, piracy, robbery, cattle rustling, kidnapping, smuggling, and terrorist attacks (in Liberia and Mindanao); steps intended to protect the civilian authorities, population, and critical infrastructure or a particular side; and self-defense using necessary and proportionate force (Forster 2019: 7).

Finally, we should emphasize that, with respect to "ceasefires for peace," we are talking about their *interconnection* with the peace process. In other words, not only do ceasefires serve the subsequent or ongoing peace process, but there is also an inverse connection between the peace process and the ceasefire regime. In some cases, concluding a ceasefire was not only not required to launch unofficial Track II consultations and then official peace talks under the auspices of the United Nations, but it only became possible *after* progress was achieved at peace talks, while the armed opposition was structured and united its forces (to engage in negotiations). As an example, we can cite the Gharm protocol signed by the war lords of Tajik governmental and opposition forces in September 1996 after several years of unofficial and official peace talks on the inter-Tajik settlement. Generally, more stable ceasefires are concluded not before peace talks, but at one of their later and more advanced stages.

Ceasefires as a State of "Neither Peace, Nor War"

Thus, ceasefires can play a purely military role and also can serve the goals of supporting and creating conditions for peace talks. Within a single conflict, the role and type of ceasefires can change depending on the evolution of the goals of the parties to it. As long as participants in an armed conflict are set to resolve it through military means, ceasefires remain part of its military dynamics. Yet if the goals of the combatants change for some reason (for instance, because of a military impasse that has lasted several years or because they mutually realize that they cannot defeat the opponent through military means), the role and meaning of ceasefires in such a conflict can change to support a solution through talks.

At the same time, depending on their goals, the functions and types of ceasefires cannot be reduced to these two traditional categories, i.e. stopping, suspending, or reducing violence (a) for military purposes, or (b) to support and lay the groundwork for peace talks. We can identify at least one more broad type of ceasefire using the context of their use, particularly in the 21st century, and the objectives they achieve, as criteria.

Within the framework of conflict dynamics (generally speaking, on the path from war to peace), ceasefires do not necessarily pursue only purely military or peaceful goals, and they should not necessarily be associated only with the stages of "war" or "peace process." In practice, ceasefires frequently get stuck at *the intermediary stage* that can be defined as a state of "*neither peace, nor war*," and become its hallmark and format. At this stage, ceasefires can serve as a stable framework for so-called *frozen conflicts* for years or even decades, including against the backdrop of endlessly protracted, prolonged, or unpromising peace processes (post-Soviet examples alone include the Georgia–Abkhazia, South Ossetia, and Nagorno-Karabakh conflicts in the South Caucasus, the Transnistria conflict, and the conflict in Donbass in the Minsk Process, at least at the stage lasting from the late 2010s to late February 2022). A ceasefire can also be a process and form of a specific *ordering* of the military and political situation and management system in the conflict, and even a means of *stabilizing* the situation up to putting an end to large-scale military hostilities in some areas or in almost an entire given country (for instance, in Syria), in the absence of both an unequivocal and complete military victory of one party and a full-fledged and effective peaceful settlement.

The two basic variants, or stages, of ceasefires of this type have specific features of their own, but they are not mutually exclusive, can develop simultaneously and in connection with each other within the same conflict.

In the first variant, ceasefires frequently become the main format of frozen (or, more frequently, "frostbitten" or low-grade) conflicts in the "neither peace, nor war" circumstances. In some current (post-)conflict areas, the state of "neither peace, nor war" can be seen even in the absence of any ceasefire or amid/following its failure; as we have noted above, such contexts account for over a half (!) of the unpronounced outcomes of today's conflicts. At the same time, many "frostbitten" conflicts (including those that remain such for years and decades) are still set down in some ceasefire or a series of ceasefires. These could be:

- Ceasefires concluded in the absence of a peace process or ceasefires that do not quite qualify as a peace process (they are not used as an opportunity to launch discussions on a peaceful political settlement; the parties declare and/or sign and then frequently extend and/or violate their obligation to stop the violence without seeking or attempting to resolve the key contradictions underlying the conflict between them).
- Ceasefires amid an ineffective, stalling, or imitative peace process. Such ceasefires can be connected with a process (such, as for instance, the many ceasefires in the course of the Minsk process in Donbass), or can take place on some parallel track, without a direct relation to the peace process, or without any relation to it at all, like many local and humanitarian ceasefires in Syria, Libya, and Yemen.

In both cases, ceasefires essentially become formalized mechanisms for *regulating* frozen or frostbitten conflicts. Moreover, given that ceasefires, even if not fully complied with, reduce the cost of waging a war for their participants, and can even *weaken* internal and external (international) stimuli for the parties to the conflict to engage in talks. In other words, the parties may be really interested in concluding and complying with a ceasefire and in enjoying the degree of stabilization it affords when there is no desire to move along the path of a full-fledged peace settlement of the conflict.

The starkest example of the transformation of the main role and function of ceasefires as the ceasefire regime gradually slips into the "neither peace, nor war" stage is the situation in Donbass in the nominally interbellum period (2015–2021). At the start of this period, despite ceasefires regularly failing and being violated, they could still be considered as an instrument subordinated to the attempts to launch a true peace process ("ceasefires for peace"), but starting in approximately 2017 (and until full-blown warfare was resumed in February 2022), the situation in Donbass was hard to describe in any other terms than "neither peace, nor war." On the one hand, with the peace process even more clearly stalling and getting stuck in an impasse when none of the basic provisions of the Minsk Agreements were complied with, the periodically resumed ceasefire remained the only part of the Minsk arrangements that formally continued to be in force and was regularly approved by the sides. On the other hand, in such circumstances, the main functions of the ceasefires now *de facto* consisted in preventing escalation of the non-stop armed violence and in achieving minimal stabilization of the situation into the "neither peace, nor war" kind. In February 2018, Ukraine officially declared Russia an "aggressor" in the Law on Integration, and in May 2018, Kyiv officially transitioned from the Anti-Terrorist Operation (ATO) regime to the joint command military operation regime. This development unequivocally reflected the essence of events: Ukraine was increasingly intending to resolve the Donbass problem via military means. Regardless of the periodic, yet increasingly meaningless, negotiations, these developments put paid to the Minsk Process as a path towards real peaceful settlement long before it finally collapsed in early 2022.

For six years before the start of the new stage in the conflict, security in Donbass had the four principal signs of the "neither peace, nor war" paradigm: (1) a lack of major offensive operations and campaigns; with (2) very short "regimes of silence" before they were majorly or repeatedly breached; (3) a number of annual ceasefire violations which went through the roof (unprecedented in this case); and (4) an unvaryingly grave humanitarian situation and non-compliance with the humanitarian provisions of the ceasefire. Even though the security situation in Donbass had improved compared to the intense military campaigns of 2014–2015, it remained shaky and balanced on the edge between war and peace. Given the military impasse, none of the sides expanded the areas of their territorial control and did not gain clear military superiority, even though the civilian and military damage for the DPR and the LPR was higher (Matveeva 2022: 94, 99, 103). The first ceasefire concluded after the revision of the Minsk Agreement of February 15, 2015 did not last even half an hour; the longest a ceasefire

between 2016 and August 2020 lasted three weeks (for example, the "regime of silence" declared on October 1, 2019 lasted for only 24 hours). Virtually all ceasefires (with the partial exception of the ceasefire of August 2020–February 2021) did not significantly reduce armed violence, which steadily remained low-grade through all the years.[39] At the same time, the number of ceasefire violations recorded by the OSCE SMM after 2016 sky-rocketed: the OSCE SMM's Principal Deputy Chief Monitor Alexander Hug said that over 320,000 (320,130) ceasefire violations were recorded in 2016, with the number surpassing 400,000 (401,336) in 2017. Violations were mostly connected with the use of weapons, but also included thousands of cases of deploying weapons systems in violation of the Minsk Agreements (over 3000 in 2016 and over 4000 in 2017), restricting the observers' freedom of movement (approximately 2000 incidents in 2016 and nearly 2500 in 2017), and so on.[40] Even though the armed violence dropped somewhat in the following years, the level of violations of the cessation of fire regime remained so high (from 153,000 to over 200,000 incidents in 2019–2020, including up to 50,000 explosions annually) that it would be reasonable to ask the question of what should be seen as the norm in such circumstances: ceasefire violations or compliance with the cessation of fire regime. If we apply the criterion of ceasefire failing over armed violence as proposed by the ETH/PRIO CF methodologists (Clayton et al. 2023: 1443) to the situation in Donbass, then all the ceasefires throughout the nominally interbellum period[41] easily exceeded the "average" admissible violence threshold (25 casualties a year), while most ceasefires also easily exceeded the "high" threshold (100 casualties), and some violations exceeded it manifold.

Amid such conditions, instead of a bridge between war and peace, ceasefires in practice become a means of enshrining the distribution of forces and power between armed actors and the means of influencing this distribution. This influence should be stable and affect the outcome of the conflict and the nature of the post-conflict peace. This brings us to the second variant: ceasefire as a process of ordering and stabilizing a conflict in the absence of a peace process or in the absence of peaceful settlement progress. This type of ceasefire can pursue the following objectives:

- shaping and establishing the outlines of a wartime order in the complex and frequently highly fragmented military and political circumstances;
- primary state-building and restoring or establishing minimal basic administrative functions (both for state and non-state actors with such ambitions);
- enshrining and further redistributing local power and influence.

[39] According to the criteria used by the Uppsala Conflict Database (between 25 and 1000 combat casualties within a calendar year; everything above that number is considered a large-scale conflict or war).

[40] TASS 2018. Although such a large number of violations partially reflects the OSCE findings according to which every single incident is regarded as a violation (an explosion, a mine going off, an attack, sometimes even a single shot), the SMM's monitoring was incomplete (that is, they did not record all violations), which, on the contrary, was a decreasing coefficient.

[41] With the exception of individual and seasonal ceasefires ("harvest," "school," "Christmas," etc.) that are short by definition.

In handling these objectives, ceasefires not only serve as derivatives of the nature, type, and dynamics of a given conflict, but themselves begin to form these dynamics. In the first quarter of the 21st century, the most notable example of handling all three objectives was the Astana process on Syria. It merits special attention in this connection even though this example is not the most typical, as the Syrian conflict is particularly complicated, highly fragmented, and combined with deep regionalization and expanded trans-nationalization and internationalization. It is also atypical because of the specific features of the ongoing process of exiting the Syrian war.

On the one hand, compared to most local ceasefires and the so-called safety areas in various conflicts and regions, the features of de-escalation zones and local ceasefire agreements concluded as part of the Astana process lay in the fact that measures intended to help advance the cessation of fire had absolute supremacy over all other specific ceasefire functions, including purely humanitarian considerations. On the other hand, the Astana process was from the outset conceived by its principal designers, primarily Russia and Turkey, as a format for coordinating and ensuring a long-term ceasefire in support of political settlement in Geneva under the auspices of the United Nations (that is, it was conceived as a "ceasefire for peace"). At the same time, with the Geneva peace talks stalling, and with the fragmented armed confrontation "on the ground" continuing, the Astana process went far beyond the standard ceasefire regime. In fact, it became both a key factor in the dynamics of the conflict, and a means of building the emerging (post-)conflict order both locally and throughout Syria. Since the late 2010s, the situation in Syria manifested a combination of: (a) many Syrian regions partially emerging from the state of armed conflict due to ceasefires and the government gradually retaking and extending its control (including the success of three out of four de-escalation zones); and (b) there still being armed enclaves that have not been brought under control by the central government in Idlib, some Kurdish areas, and in the areas occupied by Turkey and the United States, with some armed groups, including ISIL, continuing their activities. Given this, the absence of both an unequivocal and comprehensive military solution and a coherent peace process, has essentially turned the Astana process into a format and a tool for ordering the "neither peace, nor war" situation.

Generally, when considered in the intra-Syrian context, the Astana format advanced consolidation and expansion of the central government's control in areas formerly occupied by the armed opposition. The process also prompted some opposition leaders and groups to align with the government (although the Astana process simultaneously gave a boost to some local self-defence forces and other semi-autonomous pro-governmental militarized units and allowed for the preservation of the opposition enclave in the Idlib zone). At the same time, the Astana process bolstered the influence of those external actors who co-sponsored it, especially the role of Russia in diplomacy and security and Turkey's military territorial control in the north of Syria.

When a ceasefire essentially codifies, documents, and orders a long-term "neither peace, nor war" regime, a certain level of armed violence is, *first of all,* virtually inevitable, and *second*, determined by other factors and manifests the kind of dynamics that is different from acts of violence that breach (or support) an active peace process or an already concluded peace agreement. Accordingly, such formats in fact not so much prevent (to the greatest possible degree) armed incidents that breach the ceasefire and the peace process, as they routinely regulate violence at acceptable levels and attempt to prevent it from spiralling out of control and resulting in a large-scale escalation. In other words, regulating armed violence under a "neither peace, nor war" ceasefire requires *a different set of tools* than under ceasefires that constitute part of a full-fledged peace process.

The positive feature here is that "neither peace, nor war" ceasefires are generally *more resistant to being breached* in the form of armed violence. They are also more difficult to destabilize even through pre-determined, pointed acts of violence, including terrorist attacks, and the violations themselves do not automatically threaten to destabilize a larger peace process, since it is either absent or at an impasse (that is, politically speaking, there is nothing much to destabilize). Nonetheless, the negative effect of such ceasefires is that they are not subordinated to the interests and logic of conflict settlement through military or peaceful means. At most, such ceasefires can be expected to provide a temporary, even if lasting, suspension of, or decrease in, violence without resolving its principal, underlying contradictions and without achieving any clear, pronounced, or stable outcome.

* * *

When the Cold War ended, ceasefires began to play a progressively greater role in the course of armed conflicts and in the process of transitioning from war to peace. Although, the number of peace agreements proper from the period starting in 1990 was 2 or 2.5 greater than the number of ceasefire agreements (and sections on ceasefires in larger agreements), in the early 21st century, ceasefires as conflict outcomes far outstripped both peace agreements and military conflict resolutions. Thus, if a clear, pronounced, and relatively stable conflict termination was recorded in the 2000s–2010s, that outcome was most likely a ceasefire.

Although ceasefires are directly intended to put a temporary or more enduring end to military hostilities, this does not necessarily mean that they are automatically intended to achieve a peace settlement or are tied to a peace process. Our analysis has demonstrated that nearly half of all ceasefires concluded worldwide are either not yet part of a peace process (i.e. they do not set the goal of creating conditions for peace talks, even if such talks do begin sooner or later), or have no connection at all with the process of achieving the political settlement of the main substantive contradictions at the heart of the armed conflict. Moreover, some ceasefires could overtly or covertly set such main goals that are contrary to the objective of peaceful conflict settlement.

Hence the need to supplement the existing technical ceasefire typologies with a more substantive typology connected with ceasefire motivation and teleology (the underlying goals of the parties) and with the specific conflict stage at which a given ceasefire was concluded. This typology divides ceasefires into three principal kinds: (1) ceasefires as part of military hostilities (a tactical breather or a break taken to handle military objectives, or enshrine a balance of power in the course of an armed conflict); (2) ceasefires for peace (as a way of creating conditions for peace talks or advancing the peace process at the stage between war and peace); and (3) ceasefires as an intermediate condition of "neither peace, nor war," as, among other things, a means of ordering the conflict up to stabilizing it to some degree (amid a frostbitten, frozen, or gradually flagging conflict and in the absence of an unequivocal, pronounced solution, either military or peaceful).

At the same time, one conflict can have simultaneous or consecutive ceasefires of different categories, sometimes of all three categories at once. For instance, the Syrian conflict had several nation-wide ceasefires that were concluded with international mediation or by external actors (including ceasefires recorded in UN Security Council resolutions) and officially tied to the peace process under the auspices of the United Nations in Geneva. However, there were simultaneously many ceasefires of a more local nature "on the ground," particularly between different armed opposition groups that were purely military and aimed primarily to make the armed struggle more effective.

Moreover, these categories may partially crisscross and overlap. For instance, parties to one and the same ceasefire regime can in practice use it for different end goals, as was the case of the sequence of ceasefires under the Minsk Peace Process in Donbass or the approaches of Damascus (and Tehran to some degree) and Moscow to the Astana process, particularly at its earlier stages. The real goals and functions of a ceasefire regime can also gradually change. For instance, the Astana process was originally conceived by its principal co-sponsors, primarily Russia, as a regime of cessation of fire in support of a political peaceful settlement under the auspices of the United Nations. Nonetheless, as the Astana process was developing and strengthening amid the continuing stalling of the Geneva peace talks, the ceasefire regime in practice became a means of ordering a state of "neither peace, nor war" and of gradually stabilizing the situation in the larger part of the country in the absence of an unequivocal and final peaceful or military resolution of the conflict.

Thus, at different conflict stages and in different contexts, ceasefires may pursue *different* principal goals and objectives. Understanding that not all ceasefires can always be reduced to ensuring a cessation of fire in order to lay the groundwork for peace talks, and that not all of them even set themselves the goal of reducing or ending violence has *very specific practical significance.*

This significance lies, *first*, in clearing up somewhat the matter of whether a ceasefire is effective (whether it is a success or a failure) depending on its context and on the real goals of the parties at a specific stage of a conflict. There is no point in expecting a ceasefire to produce a certain result when one, two, or all of its parties are from

the outset deliberately, overtly or covertly, working to achieve another result. Wrongly classifying a ceasefire under one of the three types indicated can significantly distort the assessments of its effectiveness. For instance, tens and even hundreds of thousands of ceasefire regime violations, even when the ceasefire being tied to a certain peace process (as in the case of the ceasefires in Donbass under the Minsk process), could evidence not so much an inability to ensure the proper level of security for advancing the peace process, as the fact that this ceasefire regime has transformed into a relatively structured intermediate format of "neither peace, nor war" with one or several parties lacking (possibly temporarily as well) conditions and capabilities to work towards a military resolution of the conflict or a real peaceful settlement of it.

There should be no *a priori* expectations of "ceasefires for peace" to be more effective (compared to ceasefires of other types) in achieving a cessation of fire just because such ceasefires are tied to some peace process. Tying ceasefires in Donbass between 2014 and early 2022 to the Minsk peace process did nothing to change the fact that the ceasefire regime became one of the most frequently violated in the world (which rather speaks volumes of the flaws in the peace process itself than of ceasefires as such). All nation-wide ceasefires in Syria concluded internationally under the auspices of the United Nations or as declarations of non-regional powers (the United States and Russia) failed. Against this backdrop, ceasefires concluded as part of the Astana process (that staked no claims to comprehensive peaceful political settlement at the level of the United Nations) and several local ceasefires that had no connection with the process were more successful in advancing true cessation of fire on the ground.

Second, consequently, armed violence amid ceasefires of different motivational and teleological types at different stages of a given conflict is used *for different purposes,* and, therefore, requires *different approaches* that prompt further detailed research. On the one hand, armed violence rarely stops, much less completely, when a ceasefire is declared. Accordingly, one of the principal tasks of the parties and guarantors of ceasefires of any type is exercising control over violence when the cessation of fire regime is already in place. In particular, "ceasefires for peace" should envisage such built-in mechanisms and trust measures that would not allow accidental or deliberate acts of armed violence to interrupt or undermine the peace process for an extended length of time.

On the other hand, the opposite is true as well. If an armed conflict continues at the ceasefire stage, it does not necessarily mean that the ceasefire has failed or is on its way to failure. Even after peace talks start, the early stages of a peace-making process *typically* involve an alternation of ceasefires and resumed armed action or skirmishes. Moreover, a combination of a temporary ceasefire and spikes in armed violence is generally a *norm* for most conflicts today regardless of whether peace process is underway, and a ceasefire that can be described as "neither peace, nor war" fundamentally means only a drop in violence (compared to the active military hostilities stage) and a certain control over it, and not a cessation of it. On the whole, depending on the context and underlying goals of the parties, a ceasefire may achieve its objectives even if it does not result in a complete cessation of fire.

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Current Issues of Trade Cooperation Between the EAEU and China[1]

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Abstract. The EAEU, as a subject of international law, is engaged in a process of integration cooperation with states. Its interaction with countries is characterized by a variety of forms and, despite drawing on the legal experience of most international organizations, the EAEU chooses its own way. One example of a fruitful partnership, although not unambiguous on some issues, is the cooperation between the EAEU and China. The purpose of this article is to trace the realization of the economic potential of the EAEU and China to create the Silk Road Economic Belt as part of China's global Belt and Road Initiative. In addition, the article seeks to analyse the interplay of expectations and economic motivations of each of the EAEU member states.

The research uses various documents of an international legal nature, including international treaties, doctrinal sources and the national legislation of foreign countries. The research is carried out with the use of general and special scientific methods. Legal analysis and forecasting are performed using legal modelling methods.

The article provides a comprehensive analysis of the international legal framework of economic cooperation between the EAEU and China and formulates recommendations for improving this mechanism. The overland economic corridors and their correlation with the opportunities of EAEU member states within the framework of the Belt and Road initiative are analysed in detail, as are the results of the participation of each EAEU country in this project. Chinese initiatives, such as the so-called "Digital Silk Road," and the interests of EAEU member states in this area are also considered. In addition, the author conducts a legal examination of the basic agreements signed between the EAEU and China.

The study of the problems and prospects of cooperation between the EAEU and its member countries allows us to note the systematic nature of the EAEU's activities in the field of integration interaction with third countries. At the same time, the variety of forms of cooperation allows the EAEU to respond flexibly to the varying degrees to which the countries are ready to simplify trade procedures. The author concludes that, structurally, the process of coupling the EAEU and the Silk Road Economic Belt (SREB) is manifested both in the linkage between the development agendas of the integration initiatives and in cooperation with individual EAEU countries.

The article emphasizes the inefficiency of a bilateral format for the EAEU member states' accession to the SREB initiative. Considering the legal basis of cooperation between the EAEU and China, the author notes a consistent algorithm of joint actions at the current stage of integration. Nevertheless, for the future it is necessary to develop other

[1] English translation from the Russian text: Vorontsova N. A. 2023. Sovremennye pravovye voprosy torgovo-ekonomicheskogo sotrudnichestva EAES. *Moskovskiy Zhurnal Mezhdunarodnogo Prava* [Moscow Journal of International Law]. No. 1. P. 6–28. DOI: https://doi.org/10.24833/0869-0049-2023-1-6-28

formats of international cooperation, which would not be geographically contingent and would ensure effective coordination between different economic blocs of states, including those at different stages (forms) of integration. We should note that the digital agenda of mutually beneficial cooperation is highly relevant for both China and the EAEU countries in the long term.

Keywords: Eurasian Economic Union; international economic cooperation; China; Silk Road Economic Belt; Belt and Road; Digital Silk Road; integration development; economic corridors

Introduction

Especially in recent decades, international practice has shown that one of the most effective ways for states to achieve their goals is through regional economic integration.[2] The successful implementation of the Eurasian project serves Russia's strategic and geo-economic interests and improves its progress along national priorities. Eurasian integration is aimed not only at ensuring the efficient economic development and competitiveness of EAEU member states, but also at making the Eurasian part of the global trade and economic architecture as a competitive "centre of power" of the world economy (Meshkova 2019: 8–9).

The development of the EAEU's integration potential is closely scrutinized not only by the business communities of its member states, but also by international organizations and potential participants in various projects, such as network alliances (Vorontsova 2017: 136–143). Scholars have also given some consideration to this issue, including Sergey Glotov (Glotov 2017: 12–19), Evgeny Grachikov and Haiyan Xu (Grachikov, Xu 2022: 7–24), Dmitry Ivanov and Maria Levina (Ivanov, Levina 2020: 22–39), Anna Kashirkina (Kashirkina 2016: 160–171), Tatiana Neshataeva (Neshataeva 2017: 64–79), and others.

However, current cooperation between the EAEU and China has not been studied in terms of economic engagement and the utilization of the integration potential within the Belt and Road Initiative. Moreover, despite the relevance of the Digital Silk Road and its importance for China, this area has not been sufficiently studied either.

The relevance of this topic stems from the need to realize the foreign economic potential of the EAEU and shape its international image within the current system of international relations through the available mechanisms for cooperation with third countries and international organizations. Liberalization of regional trade clearly implies the creation of new rules for international trade. Such rules are often shaped by developed countries and reflect their interests and requirements. If such requirements eventually dominate the new order, then it "could lead to the emergence of new global political and economic development imbalances" (Cheng Guo et al. 2018: 81).

[2] Labin D. K. 2012. Regions of Economic Integration: International Legal Matters. In: A. Vylegzhanin, ed. *International Economic Law: A Study Guide.* Moscow: Knorus. P. 145–148.

The EAEU actively cooperates with third countries, international organizations and other regional integration entities. According to the Decision "On Strategic Directions for Developing the Eurasian Economic Integration until 2025" adopted by the Supreme Eurasian Economic Council in December 2020, strengthening the international legal personality of the EAEU and its authority in the world is one of the key goals of the Union.[3] It should be noted that the EAEU's legal personality is expressly stipulated in its founding treaty, which, as noted by Prof. Evans (Evans 2006: 272) and Prof. Shaw (Shaw 2017: 991), only happens in a minority of cases.

Legal Aspects of the EAEU's International Cooperation

The procedure for the EAEU's engagement in international cooperation in enshrined in the decision of the Supreme Eurasian Economic Council dated December 23, 2014.4 International cooperation includes contacts between the Union's officials with official representatives of third states, international organizations and associations, as well as their participation in international events (presentations, workshops, conferences). The powers of EAEU officials can be seen as limited. First, such powers are only executed in coordination with EAEU countries and require informing them of the results of such cooperation. Second, negotiating and signing draft international treaties with third parties is only possible based on a decision of the Supreme Eurasian Economic Council and after the participating countries complete the relevant procedures on the national level (Turlanov, Turlanova 2021: 72).

Expansion of the EAEU's potential certainly relies on its international legal personality as enshrined in the EAEU Treaty. Not only did the EAEU Treaty legally establish the Union as a fully-fledged subject of international law, but it also laid the legal foundation for the EAEU's relations with other subjects of international law (Ivanov, Levina 2020 :27).

The adoption of the Agreement on International Treaties of the Eurasian Economic Union played a major role in exercising this legal personality, as "contractual capacity is one of the main indicators of an international organization's international legal personality and a direct characteristic of its power and potential on the international stage" (Kashirkina 2016: 170).

According to Article 6 of the EAEU Treaty, international treaties of the Union with third parties, as well as the Treaty itself, international agreements within the Union, and decisions and dispositions of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council and the Eurasian Economic Commission, constitute

[3] Eurasian Economic Union: Decision of the Supreme Economic Council No. 12 dated December 11, 2020. "On Strategic Directions for Developing the Eurasian Economic Integration until 2025." URL: https://docs.cntd.ru/document/573325884 (accessed: 01.03.2024).

[4] Eurasian Economic Union: Decision of the Supreme Economic Council No. 99 dated December 23, 2014. "On the Procedure for International Cooperation of the Eurasian Economic Union." URL: https://docs.cntd.ru/document/420242714/titles/13O4IB8 (accessed: 01.03.2024).

the law of the EAEU.[5] Without delving into details (as this article examines a different aspect of the EAEU's functioning), the author cannot but express support for certain opinions voiced in scholarly articles. Specifically, the author agrees with the statements that it is a "special legal system" regulating the relationships of the EAEU member states arising from the formation and functioning of the EAEU (Shulyatyev, Shkurchenko 2017: 4) and that there are perfectly rational reasons to justify the supremacy of Union law as an autonomous legal system (Savenkov et al. 2021: 74). Undoubtedly, it is worth supporting the position of Tatiana Neshataeva, who argues that "an oversimplified view of international law as a system consisting solely of statutory norms often leads to the denial of both the court's ability to create legal positions (rules), and the power of the court to influence the development of law. Replacing the concept of 'law' with 'norm' ultimately leads to the negation of the court's authoritative powers. In reality, the Court does not create a norm, but formulates a rule (position) which, through precedent practice, becomes a customary norm or, through regulatory practice, progressively evolves into a statutory norm" (Neshataeva 2017: 76).

It should be noted that the EAEU's activities in the field of international cooperation are systematic. This includes negotiating and signing various acts and agreements on trade and economic cooperation. Priority areas for developing international cooperation are set forth every year. This is reflected in regulatory and legal documents that define the forms of international cooperation practiced by the EAEU, each representing different levels of mutual obligations. Such forms include observer state status; memorandums of understanding or cooperation; and trade agreements (preferential or non-preferential) (Mozolev 2021: 229).

A very important aspect is the development of the EAEU's integration potential, seen as "the set of opportunities that arise as a result of integration processes and that can be used by the member states for additional economic effects."[6]

It should be noted that international activities are a key element of the strategic development planning system of the EAEU. In terms of the geography of this cooperation, it encompasses the CIS, Europe, the SCO, ASEAN, China, India, Africa, and Latin America. The tools and mechanisms of multilateral international cooperation include: the implementation of memorandums of cooperation, including intensification of dialogue with the business communities of third countries; coordinated work on linkages between different Eurasian integration processes; ensuring the representation of the EAEU in regional economic commissions and United Nations organizations and their working bodies; the development of cooperation with key international organizations in the relevant fields; the acquisition of observer status at the United Nations General

[5] Treaty on the Eurasian Economic Union dated May 29, 2014. ConsultantPlus Legal Reference System. URL: http://www.consultant.ru/document/cons_doc_LAW_163855/ (accessed: 01.03.2024).

[6] Eurasian Economic Union: Main Directions of Economic Development of the EAEU. Approved by Decision of the Supreme Eurasian Economic Council No. 28 dated October 16, 2015. Available at: https://eec.eaeunion.org/comission/department/dep_makroec_pol/oner2030.php (accessed March 1, 2024) (in Russian).

Assembly; membership at the World Trade Organization, etc. Access to external markets may be improved by implementing existing trade agreements with third countries (Vietnam, China, Singapore, Serbia, Iran); concluding new trade agreements with third countries and regional associations (Egypt, Israel, India, etc.); harmonizing trade regimes with third countries; and creating tools for joint export support. All of these activities will lay the foundation for the "Greater Eurasian Partnership."

The Eurasian Economic Commission (EEC), the executive body of the EAEU, has signed many memorandums of cooperation with international organizations: CIS, UNECE, UNCTAD, etc. Despite the lack of standardization in the scope and content of such memorandums, it is worth noting the similarity of their structure. A memorandum usually specifies the goal, forms and areas of cooperation between the EEC and the international organization; defines implementation mechanisms; outlines information exchange procedures, financial arrangements and modes of coordination; and features concluding clauses on the applicability, termination, extension, amendment and legal status of the memorandum, as well as on dispute resolution.

Another apparent similarity concerns the legal status of the memorandums. A memorandum is not an international treaty, it does not create rights or obligations regulated by international law, and it does not impose financial obligations on its signatories.

This article examines one of the areas of strategic development of international economic cooperation, namely the linkage between EAEU and Chinese interests.

EAEU–Silk Road Economic Belt

The concept of integrating the EAEU with China's initiative to create a Silk Road Economic Belt (as part of the broader Belt and Road project) and the idea of a "Greater Eurasian Partnership" proposed by Russian President Vladimir Putin during the 2016 St. Petersburg International Economic Forum undoubtedly arouse special interest. As part of the Belt and Road programme, Beijing intends to create connections between the infrastructure of participating countries and encourages them to open their markets to China, facilitate trade, link their financial markets to China's, and strengthen people-to-people ties.[7] According to Evgeny Grachikov and Xiu Haiyan, such initiatives fall under "innovative international institutions," which include the SCO, the BRICS Bank, the China – Central and Eastern European Countries (CEEC) (16+1) Summit, the Asian Infrastructure Investment Bank (AIIB), the strategic Belt and Road Initiative, and others. They fundamentally differ from institutions of the old world order, as they are created by leading developing countries to protect their own interests in addressing global issues of peace and development. Based on principles of

[7] Mapping the Belt and Road Initiative: This Is Where We Stand. Mercator Institute for China Studies (MERICS). June 7, 2018. Available at: https://merics.org/en/tracker/mapping-belt-and-road-initiative-where-we-stand (accessed March 1, 2024).

equality and mutual benefit for all members, these institutions operate in areas that have been outside the scope of traditional international institutions. Essentially, "innovative" means that they are alternative or parallel structures within the international system (Grachikov, Xiu 2022: 16–17). According to another scholar, recent developments in international relations prove that the changes in the world order are not yet complete and that current processes are leading to the formation of new relationships in the world (Tsvyk 2018: 262).

The Belt and Road Initiative, and some aspects of its integration with the EAEU, have been studied by Evgeny Avdokushin and Lyu Yi (Lyu, Avdokushin 2019: 62–71), Wu Bo (Wu Bo 2018: 134–142), and Daniil Turlanov and Irina Turlanova (Turlanov, Turlanova 2021: 63–77). The issue has also been taken up by a group of researchers: Chenxing Wang, Yuri Kulintsev, Alevtina Larionova, Vladimir Petrovsky, Chai Yu and Jiang Jing (Petrovsky et al. 2020), and also Darya Peratinskaya, Alexei Kharlanov and Andrei Boboshko (Peratinskaya, Kharlanov, Boboshko 2021: 34–37).

Some scholars have analyzed trade and economic cooperation agreements between the EAEU and China. These include Timur Aliev and Tatiana Flegontova (Aliev, Flegontova 2018: 16–19), Alexander Makarov and Elena Makarova (Makarov, Makarova 2021: 84–94), Ekaterina Mikhalevich (Mikhalevich 2022: 254–264), Oleg Renzin (Renzin 2019: 8–13), Natalya Yurova and Yao Jiahui (Yurova, Yao 2019: 5–16), and others. However, little attention has been accorded to the legal foundations for the envisaged cooperation mechanisms (Svetlicinii 2018: 9).

As of today, 146 countries have signed agreements with China to join the Belt and Road Initiative (Nedopil 2022: 29). EAEU member states have also responded positively to the idea of developing the Silk Road Economic Belt (SREB) on the Union's territory. Among the positive effects expected from the participation of the EAEU countries in the initiative are the strengthening of connectivity among landlocked states and regions (Central Asia, Siberia, the Urals, the Caucasus countries); the potential for the accelerated development of the logistics and transport infrastructure; and the transfer of part of cargo transit from sea to land routes, taking advantage of the transit potential of Union countries.[8] The main trans-Eurasian transport corridors pass through Russia, Kazakhstan, and Belarus, and these countries are the main beneficiaries of SREB membership.

The sectoral structure of projects with Chinese involvement within the Belt and Road Initiative is as follows: transportation (43%); electricity and water supply (22%); commercial real estate (21%); manufacturing (8%); oil and gas (4%); communications development (1%); and mining (1%) (Panteleev et al. 2020).

[8] Barriers to Eurasian Integration into the Silk Road Economic Belt. RZD-Partner.ru Information Agency. February 15, 2018. URL: https://www.rzd-partner.ru/logistics/interview/barery-na-puti-evraziyskoy-integratsii-v-ekonomicheskiy-poyas-shyelkovogo-puti/ (accessed: 01.03.2024).

In October 2015, the Supreme Eurasian Economic Council issued Disposition No. 3 "On the Cooperation of the Eurasian Economic Union Member States Regarding the Convergence of the EAEU and the Silk Road Economic Belt," which set out goals including: facilitating cooperation by signing bilateral memorandums with China and negotiating a trade and economic cooperation agreement between the EAEU and China (signed in 2018); organizing work to identify priority projects and areas for interaction as part of the EAEU–SREB linkage; preparing a roadmap for the convergence of the EAEU and SREB; and launching the corresponding dialogue mechanism.

Structurally, the joining of the EAEU and SREB is both an alignment of agendas for the development of integration initiatives and a collaboration with individual Union countries. Coordinated work is carried out at the level of the EEC. The Commission has formulated a list of priority projects to be implemented by the EAEU countries to support the SREB. A significant portion (39) of these projects is concerned with the construction of new and the modernization of existing roads, the creation of transport and logistics centres, and the development of key transport nodes.[9] In 2021, a new Action Plan for Implementation of the Main Directions and Stages of the Coordinated Transport Policy for 2021–2023 was approved.[10]

This idea was most fully developed in the Strategic Directions for Developing the Eurasian Economic Integration until 2025 ("Strategic Directions"),[11] which set out the key measures and mechanisms needed to achieve the goals and targets of the EAEU Treaty of May 29, 2014 (the "Treaty") and which build on the implementation activities of the Declaration on Further Development of Integration Processes within the Eurasian Economic Union dated December 6, 2018.

The Strategic Directions are focused on fulfilling the potential of a number of key spheres of the Eurasian economic integration, including the following:

- creation and development of transport infrastructure in the territories of the member states in the East–West and North–South directions, including as part of coupling with the Chinese Belt and Road Initiative;
- coordinated work on coupling integration processes in the Eurasian space, including the liberalization of trade relations between participants, the joint development of transport and logistics infrastructure, and other issues related to economic cooperation as part of the idea of the Greater Eurasian Partnership; coupling of the Union with the Chinese Belt and Road Initiative with a focus on implementing joint projects.

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[9] The EAEU–SREB Linkage Is Taking Real Shape: A List of Infrastructure Projects Has Been Agreed Upon. Official website of the Eurasian Economic Commission. March 1, 2017. URL: http://www.eurasiancommission.org/ru/nae/news/Pages/2-03-2017-1.aspx (accessed: 01.03.2024).

[10] Disposition No. 15 of the Eurasian Economic Commission dated August 20, 2021 "On the Action Plan (Roadmap) for the Implementation of the Main Directions and Stages of Implementation of Coordinated (Agreed) Transport Policy of the Member States of the Eurasian Economic Union for 2021–2023." URL: http://www.eurasiancommission.org/ru/act/energetikaiinfr/transport/transportnaya_politika/Documents/Распоряжение%2015.pdf (accessed: 01.03.2024).

[11] Eurasian Economic Union: Strategic Directions for Developing the Eurasian Economic Integration until 2025. Approved by Decision No. 12 of the Supreme Eurasian Economic Council dated December 11, 2020. URL: https://eec.eaeunion.org/en/comission/department/dep_razv_integr/strategicheskie-napravleniya-razvitiya.php (accessed: 01.03.2024).

One of the directions identified in the "List of measures and mechanisms to implement the Strategic Directions" is "Establishing an efficient management and financing system for joint cooperative projects; creating and developing high-performance economic sectors, specifically export-oriented ones," which includes the development and implementation of significant infrastructure projects. This covers the creation and development of transport infrastructure in the territories of the Member States in the East–West and North–South directions, including as part of coupling with the Chinese Belt and Road Initiative. And the direction "Shaping the Union as one of the most significant centers for today's world development" includes further establishment of the contractual and legal framework of the Union and its Member States with third countries and their integration associations on the formation of preferential trade regimes, as well as the development and comprehensive deepening of trade and economic cooperation.

Economic Corridors of the Silk Road Economic Belt

The creation of the SREB envisions developing a number of land economic corridors, including China–Mongolia–Russia, the New Eurasian Land Bridge, China–Central Asia–West Asia, China–Myanmar–Bangladesh–India, and China–Indochina Peninsula.

If we consider the interactions along individual economic corridors, there is a clear indication that this process will involve not only all the EAEU countries, but also the CIS countries.

For example, the corridor known as the New Eurasian Land Bridge includes two routes:

1. China (spanning the entirety of China to Ürümqi and the Alashankou-Dostyk (Druzhba) railway border crossing) – Kazakhstan (from the border crossing in Dostyk through Moiynty, Nur-Sultan and Petropavlovsk) – Russia (via Yekaterinburg and Moscow) – Belarus (Brest) – Poland (railway station Malaszewicze) – Germany (Duisburg) – other European countries. This is a railway transport route.
2. The Trans-Caspian Transport Corridor: China (across the territory of China to Ürümqi and the Khorgos-Altynkol border crossing) – Kazakhstan (via Altynkol, Almaty, Shu, Zharuk, Zhezkazgan, Saksaulskaya, Shalkar, Beyneu, Aktau) – Azerbaijan (through Baku, Ganja, Böyük Kəsik) – Georgia (via Gardabani, Tbilisi, Akhalkalaki) – Turkey (via Kars, Istanbul) – European countries. This is a railway transport corridor, except for the segment from Aktau to Baku, which crosses the waters of the Caspian Sea.[12]

[12] The World Bank. 2020. South Caucasus and Central Asia: The Belt and Road Initiative Kazakhstan Country Case Study, 5. URL: https://openknowledge.worldbank.org/bitstream/handle/10986/34117/South-Caucasus-and-Central-Asia-The-Belt-and-Road-Initiative-Kazakhstan-Country-Case-Study.pdf?sequence=4&isAllowed=y (accessed: 01.03.2024).

The China–Central Asia–West Asia economic corridor includes three routes:

1. China (across the territory of China to Ürümqi and the Khorgos-Altynkol border crossing) – Kazakhstan (via Altynkol, Almaty) – Uzbekistan (via Tashkent, Samarkand, Navoi) – Turkmenistan (via Farab, Mary, Sarahs) – Iran (via Sarahs, Mashhad) and on to West Asian countries (including India and the Iranian city of Bandar Abbas). This is a railway transport route.
2. China (across the territory of China to Kashgar) – Kyrgyzstan (via Irkeshtam and Osh) – Uzbekistan (via Andijan, Pap, Tashkent, Samarkand, Navoi) – Turkmenistan (via Farab, Mary, Sarahs) – Iran (via Sarahs, Mashhad) and on to West Asian countries (including India and the Iranian city of Bandar Abbas). This is a railway transport route, except for the road segment Kashgar – Irkeshtam – Osh.
3. China (across the territory of China to Kashgar) – Kyrgyzstan (via Irkeshtam, Sary-Tash) – Tajikistan (via Karamyk, Dushanbe, Vahdat, Yovon, Panji Poyon) – Afghanistan (via Sher Khan, Kunduz, Mazar-i-Sharif, Herat, Ghurian) – Iran (via Torbat-e Heydarieh and Tehran) and on to West Asian countries (including India and the Iranian city of Bandar Abbas). Part of the route is rail, with two significant road segments: Kashgar–Kyrgyzstan–Irkeshtam–Sary-Tash–Karamyk–Dushanbe; and Panj–Sher Khan–Bandar–Kunduz–Mazar-i-Sharif– Gerat.

Let us analyse how each of the EAEU states cooperates with China under these initiatives.

During the visit by President of the People's Republic of China Xi Jinping to Moscow in May 2015, Russia and China signed a joint statement on cooperation regarding the coupling of the EAEU and SREB. Bilateral and multilateral (primarily SCO-based) talks were chosen as the priority formats. The joint statement identified the main areas for regional cooperation. In particular, the parties agreed to "make steps to grow regional cooperation in the following priority areas: expansion of trade and investment cooperation, optimization of trade structure, cultivation of new factors of economic growth and employment; promotion of mutual investment facilitation and development of production cooperation, implementation of major joint investment projects, joint establishment of industrial parks and cross-border economic cooperation zones; strengthening of interconnectivity in the areas of logistics, transport infrastructure and intermodal transport; implementation of infrastructure development projects to expand and optimize regional production networks; creation of mechanisms for trade facilitation in those areas where conditions are ripe for it, development of joint steps to harmonize and ensure mutual compatibility of rules and regulations, trade, economic and other policies in areas of mutual interest; consideration of the long-term goal of moving towards a free trade zone between the EAEU and China […] promotion of cooperation in multilateral regional and global formats for harmonious development, expansion of world trade, formation and dissemination of modern effective rules and

practices for regulating world trade and investment."[13] As an institutional framework for cooperation, the leaders of the two states agreed to create a working group to coordinate their engagement in the above areas, led by the ministries of foreign affairs of Russia and China. In addition, the parties expressed interest in launching a dialogue on linking the Eurasian economic integration and development projects between the EAEU and China.

In a joint statement of the Russian Federation and the People's Republic of China on the development of comprehensive partnership and strategic engagement entering a new era, signed as a result of a meeting between President Putin and President Xi in June 2019, it was noted that the Belt and Road Initiative and the concept of a Greater Eurasian Partnership can be developed in parallel and in coordination, and will promote the development of regional associations and bilateral and multilateral integration processes for the benefit of the peoples of the Eurasian continent.[14] This means that the Belt and Road Initiative and the Greater Eurasian Space will be implemented jointly and in parallel, aiming to build a new unified Eurasian economic framework (Petrovsky et al. 2020: 4).

This makes Russia's approach different from that of other EAEU countries in that it wants to discuss the initiative in conjunction with Eurasian integration processes at the EAEU, and not just its own accession to the initiative, i.e. it considers the possibilities of an integration between two equal initiatives.[15] Armenia, Belarus, Kazakhstan and Kyrgyzstan prefer a bilateral approach to working with China and have all signed Belt and Road accession agreements (Nedopil 2022:25). A concentration of efforts at the EAEU could help achieve a better distribution of resources.

Economic Positioning of EAEU Member States with Regard to China's Initiatives

Trade turnover between the EAEU countries and China continues to grow rapidly. In FY 2021, it increased by 32.2% to $166.2 billion compared to 2020, with exports accounting for $79.2 billion (an increase of 32.8%) and imports accounting for $87.3 billion (an increase of 31.6%).[16] Future trade dynamics will largely depend on the growth rate of the Chinese economy, the possible escalation of tensions in U.S.–Chinese trade, and energy price dynamics.

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[13] Joint Statement of the Russian Federation and the People's Republic of China on Cooperation in Linking the Development of the Eurasian Economic Union and the Silk Road Economic Belt dated May 8, 2015. URL: http://www.kremlin.ru/supplement/4971 (accessed: 01.03.2024).

[14] Joint Statement of the Russian Federation and the People's Republic of China on the Development of Comprehensive Partnership and Strategic Cooperation Entering a New Era dated June 5, 2019. URL: http://www.kremlin.ru/supplement/5413 (accessed: 01.03.2024).

[15] Petrovsky V. Russia–China: Prospects for Cooperation within the Framework of the EEC. Foundation for Development and Support of the Valdai International Discussion Club. 06.02.2018. URL: https://ru.valdaiclub.com/a/highlights/rossiya-kitay-eek/ (accessed: 01.03.2024).

[16] Eurasian Economic Union: EAEU Foreign Trade with China in 2021. URL: https://eec.eaeunion.org/upload/medialibrary/718/EAES_Kitay.pdf (accessed: 01.03.2024).

More than half of the EAEU's exports to China are oil and oil products, which amounted to $40.7 billion as of year-end 2021. Export has grown steadily since 2016, and the Chinese economy has grown at a rapid pace in that same time. However, Russia may increase its share in foreign supplies of oil and oil products to China due to the escalation of the trade conflict between the United States and China. As for imports of goods from China to the EAEU, the weakening of the yuan may lead to an increase in the volume of goods supplied from China to the EAEU countries. In addition, this will give an advantage to Chinese exporters of, for example, steel, over their Russian competitors.

Kazakhstan has a 1783km border with China, and also borders Mongolia, Russia, Kyrgyzstan, Uzbekistan and Iran. In the west, Kazakhstan has access to the Caspian Sea. Kazakhstan's favorable location makes it a key part of its Belt and Road Initiative. Joining the initiative provides Kazakhstan with many benefits, such as access to the sea ports of participating countries, reduced delivery times and costs for Kazakh goods, the development of trade relations with countries involved in the integration initiative and third countries, and the modernization of Kazakhstan's economy and infrastructure.

Kazakhstan's national development concept includes promoting the "Country of Great Transit Potential" idea and the development of the exports of Kazakhstan's goods and services to external markets. Projects for developing transit transport infrastructure are planned with consideration of regional integration initiatives that involve the Republic of Kazakhstan, including the Belt and Road Initiative.[17]

Trade with China is a priority consideration in the current concept for developing the network of international transport corridors that cross the territory of Kazakhstan. The latter is currently developing and implementing a number of projects in various areas jointly with China, and is also expanding its transport and logistics infrastructure. Launched in 2015, the "Nurly Zhol" the government infrastructure development programme aims to create effective infrastructure to enable integration between the country's macroregions. A relevant programme is currently in place for 2020–2025. In 2016, Kazakhstan and China signed a plan of cooperation to link the "Nurly Zhol" national programme with the Chinese Belt and Road Initiative.[18]

The implementation of this programme in 2015–2019 yielded significant results, such as the construction of high-quality roads, which led to an increase in transit cargo flows, the creation of new jobs, and the improvement of social infrastructure. In the sea transport sector, three new dry bulk terminals were built in the port of Aktau,

[17] State Programme of Infrastructural Development of the Republic of Kazakhstan "Nurly Zhol" for 2020–2025. P. 72. URL: https://primeminister.kz/ru/gosprogrammy/gosudarstvennaya-programma-infrastrukturnogo-razvitiya-rk-nurly-zhol-na-2020-2025-gg-9115141 (accessed: 10.08.2022).

[18] Draft Cooperation Plan on the Interface between the New Economic Policy "Nurly Zhol" and the Creation of the Silk Road Economic Belt between the Government of the Republic of Kazakhstan and the Government of the People's Republic of China (Hangzhou, September 2, 2016). URL: https://online.zakon.kz/Document/?doc_id=35015922 (accessed: 01.03.2024).

and a multipurpose ferry terminal was built in the port of Kuryk during this period. This state programme included two major projects: the Khorgos International Centre of Border Cooperation (ICBC); and the Khorgos – Eastern Gate ICBC. In 2015, a dry port was completed along with the related infrastructure at Khorgos – Eastern Gate ICBC. The dry port consists of a technological linkage with the road "Western Europe – Western China" route and two railway crossings on the Chinese border. Using this transport and logistics hub would ensure the distribution of cargo flows from China, Turkey, Gulf countries and Central Asia to Europe.

The **Republic of Belarus** finds itself at the intersection of major transport routes connecting Western Europe, Russia, Central Asia and China, the Black Sea region, and the Baltic countries. The country is striving to make good use of its transit potential and is actively pursuing involvement in the Silk Road Economic Belt. In 2014, the Ministry of Economy of the Republic of Belarus and the Ministry of Commerce of the People's Republic of China signed a protocol of cooperation on the joint implementation of the SREB, and in 2015, during President Xi Jinping's visit to Minsk, the Minister of Transport and Communications of Belarus and China Railway signed a memorandum of cooperation on transport infrastructure. In May 2017, China and Belarus signed an agreement on the development of international cargo transport and cooperation in the implementation of the SREB concept at the Belt and Road Forum for International Cooperation in Beijing. The agreement included cooperation across all modes of transport, the harmonization of logistics regulations and technical standards, and the creation of favourable conditions for international cargo transport between Europe and Asia. Moreover, it required Belarus and China to promote the organization and implementation of international multimodal transport to both states, as well as from those states to third countries.[19]

The official forwarding company and logistics operator of Belarusian railways, Belintertrans, is developing a container service along the China–Belarus–Europe route. The company has established cooperation with more than ten Chinese provinces and is ensuring the transport of products from Belarus to railway stations, as well as to any point in China via road. This allows Belarusian companies to achieve minimum delivery times when supplying their products to China, while at the same time streamlining cargo operations. However, many barriers exist for container transport, as detailed in a report by the Eurasian Development Bank in 2018 (Vinokurov et al. 2018).

Kyrgyzstan is also engaged in facilitating transport across its territory. In 2019, a protocol was signed in Tashkent to develop the international multimodal route "Asia Pacific countries – China – Kyrgyzstan – Uzbekistan – Turkmenistan – Azerbaijan – Georgia – Europe," namely the routes connecting China, Kyrgyzstan, Uzbekistan and Turkmenistan and extending onwards to Azerbaijan, Turkey and Europe or towards

[19] Belarus and China Sign Agreement on Development of International Cargo Transportation // BELTA. 17.05. 2017. URL: https://www.belta.by/economics/view/belarus-i-kitaj-podpisali-soglashenie-o-razvitii-mezhdunarodnyh-perevozok-gruzov-247721-2017/ (accessed: 01.03.2024).

Iran and the Gulf countries, and vice versa. The plan includes utilizing railway connections through Chinese territory to the city of Kashgar, followed by road transport to Osh in Kyrgyzstan. In Osh, cargo will be transferred to trains for onward travel to the Qorasuv station in Uzbekistan and further into Uzbekistan.[20]

Armenia. Transportation between the Republic of Armenia and Kazakhstan is carried out by road, from any point in China to the nearest railway station, where the cargo is reloaded onto trains. Then the cargo can be delivered to any container terminal in the North Caucasus and transported by road to Armenia.

Russia. A project to build a pipeline from Russia to China through Mongolia is being actively pursued. In February 2022, Gazoprovod Soyuz Vostok and Gazprom Proektirovanie signed a contract on survey and design works for the construction of a pipeline that will run from Russia to China through Mongolia, continuing the Power of Siberia 2 pipeline. Construction is expected to begin in 2024. The Mongolian section of the pipeline will be approximately 960km long with a diameter of 1400mm. The export capacity of Power of Siberia 2 is expected to exceed that of the first Power of Siberia by more than 1.3 times.[21]

In 2015, Russia and Mongolia signed an agreement on the modernization of the national energy, construction and power generation and distribution infrastructure. Cooperation in the electricity sector continued with the signing of a cooperation agreement between the governments of Russia and Mongolia in 2019, which confirmed the parties' readiness to develop mutually beneficial corporation.[22]

Key areas of the Programme that have seen some progress include the development of transport infrastructure and the construction of a Russian export pipeline to China through Mongolia. In the longer term, projects to export electricity from Russia and Mongolia to China and integrate the countries' national energy systems are possible (Makarov, Makarova 2021: 90).

In December 2016, Russia, China and Mongolia signed an intergovernmental agreement on international road transport using the Asian road network, which was a standard agreement without any progressive elements.[23] This agreement allows companies to transport goods in accordance with the legislation of the transit country. Carriers undertake to pay all the necessary tolls for using the country's highways (Peratinskaya, Kharlanov, Boboshko 2022: 35).

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[20] Eurasian Economic Union. 2021. Draft Analytical Report "Analysis of Container Transport within the Union with a View to Producing Proposals for its Development." P. 36–37. URL: https://eec.eaeunion.org/upload/iblock/5d9/6.1-Proekt-doklada-po-konteynernym-perevozkam.pdf (accessed: 01.03.2024).

[21] Gazprom and Mongolia Move to Design Stage of Soyuz Vostok Gas Pipeline // Vedomosti. 28.02.2022. URL: https://www.vedomosti.ru/business/news/2022/02/28/911280-gazprom-mongoliya-soyuz-vostok (accessed: 01.03.2024).

[22] Agreement between the Government of the Russian Federation and the Government of Mongolia on Cooperation in the Field of Electric Power dated December 3, 2019. URL: https://docs.cntd.ru/document/542657308 (accessed: 01.03.2024).

[23] Intergovernmental Agreement on International Road Transport on the Asian Highway Network dated November 18, 2003. URL: https://docs.cntd.ru/document/902015701 (accessed: 01.03.2024).

In October 2021, Russia and China signed the Agreement on Road Transport of Dangerous Goods. The document was signed pursuant to a bilateral Russian–Chinese agreement on international road transport dated June 8, 2018, and is based on the Agreement concerning the International Carriage of Dangerous Goods by Road (ADR, concluded in Geneva in 1957). The signing of this document is expected to galvanize the transport services markets in the two countries and promote bilateral international transport because it will greatly facilitate the delivery of natural gas, liquefied petroleum gases, liquid oxygen, and other goods between the two countries.[24] As mentioned earlier, the agreement removed the conditions that had tied the transport to the bordering regions, in particular, allowing Russian vehicles to move deeper into China.

EAEU – Silk Road Economic Belt – Digital Silk Road

In the context of the development of the Belt and Road Initiative and the linking of the EAEU and the SREB, it is important to mention the Digital Silk Road initiative proposed by the President of China in 2017. Although it is not an official part of the Belt and Road Initiative, the Chinese leadership considers it to be closely linked with the creation of a New Silk Road, which is to become a "road of innovation" and a "Digital Silk Road." Areas that are key for the development of the Digital Silk Road have been addressed in a number of concepts and state programmes. The basis for the Digital Silk Road is seen to be e-commerce, as well as a number of new technologies that are used along the new Silk Road routes, such as the internet, artificial intelligence, big data, cloud computing and blockchain (Lyu, Avdokushin 2019: 62). In particular:

- Made in China 2025 (MIC 2025) is a national initiative to develop China's manufacturing sectors. It includes three stages: the period until 2025; the period until 2035; and the period until 2049, when China is expected to become the global leader in the key industrial sectors.[25]
- The Internet Plus Initiative, which aims to integrate mobile and cloud technologies, the Internet of Things and big data in modern manufacturing.
- The Next Generation Artificial Intelligence Development Plan, which includes three strategic goals: to bring China's artificial intelligence sector on par with developed countries by 2020; to achieve leadership in individual areas of AI by 2025; and to make China the key global AI innovation center by 2030.
- "Digitalization of the global economy and the rapid development of applied fields such as machine learning based on big data capabilities has enabled China to make a technological leap in the field of AI and lay claim to global leadership in this strategic area in the near future. 2017 was a milestone year in this respect, as China issued the Next Generation Artificial Intelligence Development

[24] Russia and China Sign Agreement on Dangerous Goods Transport. October 19, 2021. URL: https://trans.ru/news/rossiya-i-kitai-podpisali-soglashenie-o-perevozke-opasnih-gruzov (accessed: 01.03.2024).

[25] Made in China 2025. URL: https://www.mta.org.uk/system/files/resource/downloads/Made%20in%20China%202025%20Booklet%20One.pdf (accessed: 10.08.2022).

Plan for the period until 2030. The ultimate goal of the programme is to make China a global leader in AI foundations and related fields. The Chinese government's strategies lay out a very specific vision for the achievement of these goals. For example, the Chinese State Council has identified four main factors of AI: hardware, data, algorithm development and implementation, and a commercial ecosystem for AI and related sectors."[26]

- A government strategy for big data, which views big data as a strategic resource that may be developed to improve public governance, increase the quality of the government's work and strengthen the economy. The strategy promotes open access and the sharing of data resources.
- The idea of cyber sovereignty: according to the Chinese state, the government has the prerogative to choose an internet development model for the state, and no other states may interfere with that model (Mikhalevich 2022: 259).

The Digital Silk Road is not just a technological vector encompassing the digitalization of routes included in the New Silk Road, but a modernization strategy and tactic for the Chinese economy based on the innovative premises of the Fourth Industrial Revolution. The digital modernization of the Chinese economy is essentially what constitutes the Digital Silk Road, a new stage in the overall national process of modernization (Lyu, Avdokushin 2019: 70).

In this context, the Agreement between the Government of the Russian Federation and the Government of the People's Republic of China on International Road Transport signed during President Putin's 2018 visit to China should be mentioned. The agreement provides that passenger and cargo transport vehicles should be equipped with onboard navigation devices that are part of the Russian GLONASS system and the Chinese BeiDou Navigation Satellite System, allowing the parties to track vehicles as they move across their territory. There are also plans to use the Russian Platon toll system. In order to test the feasibility of these technologies, the parties agreed to establish a pilot navigation and information support zone for Russian–Chinese transport, covering road routes that pass through the Kraskino-Hunchun and Poltavka-Dongning border crossing points in Primorsky Territory. The signing of the abovementioned agreement in 2018 set new rules for Russian–Chinese road transport, allowing door-to-door deliveries from any Russian city to any Chinese port and vice versa. The new system obviates the previous routing principle, when deliveries could only be made between pre-agreed points and only in the border zone. Experts say that the full rollout of the new rules with the use of Russian and Chinese navigation systems will increase cargo turnover manyfold and significantly reduce shipping times.[27]

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[26] Kovachich L. Chinese Experience in the Development of the Artificial Intelligence Industry: A Strategic Approach // Carnegie Endowment for International Peace. 07.07.2020. URL: https://carnegieendowment.org/2020/07/07/ru-pub-82172 (accessed: 01.03.2024). According to the Russian Ministry of Justice, the organization was declared as undesirable in Russia in July 2024.

[27] Trials Begin on Project to Monitor Transport between Russia and China Using Platon System Infrastructure. Virtual Customs, April 29, 2019. URL: http://vch.ru/event/view.html?alias=nachalis_ispytaniya_proekta_monitoringa_perevozok_meghdu_rossiei_i_kitaem_s_ispolzovaniem_infrastruktury_sistemy_platon (accessed: 01.03.2024).

Chinese–Russian cooperation is being expanded through work on Digital Silk Road routes. In November 2018, the Memorandum on the Improvement of E-Commerce Customs Regulation was signed. This enabled consistent sharing of more information about specific categories of high-risk goods (goods with false declarations, potential contraband goods, etc.), as well as goods which may violate intellectual property rights. E-commerce volumes between China and Russia are growing considerably each year. According to data from Russian Post, 95% of all incoming postage originates from China, and its volume grew by 24% in the first ten months of 2018 compared to the same period of 2017.[28] This makes the agreement on the regulation of the growing flow of Chinese goods through e-commerce very important. It envisages concrete steps for coordinating efforts to create a favourable and civilized atmosphere in the e-commerce sector.

Successful engagement in the Digital Silk Road will only be possible once the EAEU countries have developed a digital economy. Steps in this direction include both multilateral initiatives and individual actions by states. At the EAEU level, in 2017, the Supreme Eurasian Economic Council adopted the decision "On the Main Directions for the Implementation of the EAEU Digital Agenda until 2025," which identified priority development tasks in this area.[29] To complement this document, in 2018, the Board of the EEC adopted the recommendation "On the Concept for Enabling Digital Transformation of Industrial Cooperation within the Framework of the Eurasian Economic Union and Digital Transformation of the Member States' Industries."[30] In February 2019, the ministers of digital development of the EAEU countries who took part in the "Digital Agenda in the Era of Globalization 2.0. Innovation Ecosystem of Eurasia" forum announced the transition to a project-based implementation format that will ensure the transparency of integration between EAEU member states in the field of digital economy [Meshkova … 2019: 83]. Thus, aiming to keep abreast of the global economy's demands, the EAEU has been preparing a legal framework to address digital economy issues for years.

As the digital agenda is highly relevant for both China and the EAEU countries, common goals and the desire to combine efforts on the path towards a digital economy create opportunities for long-term, mutually beneficial cooperation. There are some differences in implementation speeds across national digital projects in China and the EAEU countries, but this cannot be an insurmountable barrier for cooperation.

[28] Russian Customs to Receive Information About Parcels // Vedomosti. 24.12.2018. URL: https://www.vedomosti.ru/business/articles/2018/12/24/790076-rossiiskaya-tamozhnya (accessed: 01.03.2024).

[29] Eurasian Economic Union. Decision No. 12 of the Supreme Eurasian Economic Council dated December 11, 2017. "On the Main Directions for the Implementation of the EAEU Digital Agenda until 2025." URL: https://docs.cntd.ru/document/555625953 (accessed: 01.03.2024).

[30] Eurasian Economic Union. Recommendation No. 1 of the Council of the Eurasian Economic Commission dated January 5, 2018. "On the Concept for Enabling Digital Transformation of Industrial Cooperation within the Framework of the Eurasian Economic Union and Digital Transformation of the Member States' Industries." URL: https://docs.cntd.ru/document/551911031 (accessed: 01.03.2024).

Cooperation in the field of digital economy is primarily aimed at realizing the national interests of each country and building a trans-Eurasian ecosystem of digital transport routes within the framework of the Belt and Road Initiative [Yurova, Yao 2019: 13].

Unlike Russia, which wants the EAEU countries to connect with the SREB collectively as part of the EAEU, other EAEU countries prefer to make agreements on linking their strategic initiatives with China on a bilateral basis. However, some researchers (whom the author supports), posit that the bilateral engagement format is ineffective. For example, J. A. P. Lorenzo notes that the conclusion of bilateral agreements, such as memorandums of understanding about the initiative, are unacceptable as a mode of cooperation because they usually fail to ensure the level of international cooperation needed to achieve multilateral environmental and human rights goals (Lorenzo 2021: 601). A similar conclusion was made by a group of Russian and Chinese researchers in their joint policy brief for the Russian International Affairs Council entitled "Linking the EAEU and Belt and Road: Problems and Perspectives." The experts argue that linking the EAEU and SREB requires a roadmap that would take the specific interests of each participating country, as well as the Union's long-term development goals, into account (Petrovsky et al. 2020: 4). A roadmap, i.e. a specific programme of action, would define the main goals and stages of the process of linking the two projects and remove some uncertainties. This document can be based on the priority cooperation areas set out in the joint statement by Russia and China on cooperation regarding the coupling of the EAEU and SREB.

Summing up the above, we should note that EAEU–China engagement concerning the coupling of the EAEU and SREB is multifaceted and includes trade, economic, investment, and currency issues, as well as transport, logistics, and the digital sector. Russia is actively promoting the link between the EAEU and Belt and Road, while Armenia, Belarus, Kazakhstan and Kyrgyzstan prefer to make bilateral agreements on linking strategic initiatives with China. The parties are taking active steps to link the Union and SREB. Agreements have been signed on trade, economic cooperation, and the exchange of information about goods and vehicles crossing the customs borders of the EAEU and China. However, there is a need for comprehensive strategic planning in this area. Coordinating a roadmap for linking the EAEU and SREB, which would be based on priority cooperation areas outlined in the trade and economic cooperation agreement, appears to be the most relevant objective at this stage.

The Legal Framework of EAEU–China cooperation

An analysis of international agreements between EAEU countries and China allows us to assess the effectiveness of the existing cooperation mechanism and the potential for developing partnerships.

Many documents have been signed at the international level which are not agreements, although they are quite important for understanding current processes and the goal of integration cooperation between an individual country (China) and an

international organization (the EAEU). These documents include the Memorandum on Cooperation in the Use of Anti-Dumping, Compensatory and Special Protective Measures between the EEC and the Ministry of Commerce of China dated December 6, 2012; the Memorandum on Trade Cooperation between the EEC and the Ministry of Commerce of China dated December 6, 2015; the Memorandum of Understanding on Cooperation in Anti-Monopoly Policy and Anti-monopoly Regulation between the EEC and the National Development and Reform Commission of China dated June 16, 2016; and the Joint Statement on the Entry into Force of Agreement between the EAEU and China dated October 25, 2019.

When analyzing the international legal framework concerning the linkage between the EAEU and SREB, it should be noted that the signing of the Agreement on Trade and Economic Cooperation between the EAEU and China dated May 17, 2018 (hereinafter, the Agreement) was certainly an important step in implementing this idea. It was the Agreement that shaped the practical transition to the coupling between regional cooperation initiatives – the Eurasian integration project and the SREB. A successful implementation of this megaproject will, of course, provide a stable and safe environment for the development of the Eurasian continent and unleash the economic potential of the region to the full extent.

This Agreement was ratified, and it entered into force on October 25, 2019, as announced in the joint statement of the heads of state of EAEU countries, who are members of the Eurasian Intergovernmental Council, and the head of the Chinese government.

However, this agreement cannot be called "standard," even though it represents a format that has become best suited for interaction with China at the current stage. The Agreement brings into order the trade and economic cooperation between member states and China, covering many spheres related to trade, such as technical regulation, sanitary and phytosanitary measures, trade protection, customs formalities, and competition. A strong emphasis is placed on the protection of intellectual property rights and the creation of non-discriminatory conditions for mutual trade and market competition (Shilina 2018: 24). In e-commerce, the protection of the rights and interests of consumers and their personal data will be improved, and a framework for the promotion of paperless trade will be developed. The Agreement is essentially a basis for the creation of a set of substantive agreements on the development of trade and economic cooperation between the EAEU and China. It is assumed that the establishment of industrial cooperation between the EAEU and China may not only facilitate mutual trade in finished products, but also become a major source of economic growth in the Eurasian space. The creation of a modern treaty framework for the engagement between the EAEU and China is a serious step in linking the development of the EAEU with the implementation of the Belt and Road Initiative. The linkage project creates a fundamentally new basis for multilateral cooperation and opens up avenues for dynamic development on the entire Eurasian continent.

At the same time, this agreement format is explained by the following considerations.

Despite all the positive assessments of cooperation outlined above, it is essential to weigh the potential benefits and risks of the new partnership format, to consider whether infrastructure investments are synchronized with investments in real value-added projects, and whether reasonable, mutually beneficial, and effective rules of cooperation are adopted from the outset. In trade negotiations, parties usually "trade concessions" in a given area of cooperation (Knobel et al. 2019). This was not the case with the EAEU–China agreement. It is not preferential, that is, it does not reduce tariffs on mutual trade, which is usually the key issue in such agreements. The agreement is aimed at increasing the transparency of regulatory systems and frameworks, simplifying trade procedures and developing cooperation ties. And there is an explanation for this. Assessments of the mutual impact of the creation of a free trade zone between the EAEU and China indicate that the large economies of Russia, Kazakhstan, and China stand to gain, while the economies of Belarus, Kyrgyzstan, and Armenia may lose if trade with China is liberalized. In terms of industrial sectors, transport engineering, textiles, and clothing manufacturing in Kazakhstan, and machine engineering in Belarus, are most at risk (Aliev, Flegontova 2018: 16).

In customs procedures, the parties have agreed to ensure the release of goods without undue delays, including expedited customs processing for perishable items. The Agreement also offers significant intellectual property protection for EAEU exporters.

Furthermore, a specific arrangement between the EAEU, the Republic of Belarus (which is not a member of the World Trade Organization), and China establishes legal safeguards for implementing key WTO principles, such as the most-favoured-nation treatment and the national treatment obligation.

For the first time in the history of the EAEU, the agreement incorporates a new set of provisions designed to foster industry-specific cooperation with China across all major economic sectors. The plan includes industrial dialogues and the formulation of detailed action plans to identify and execute joint investment projects.

A comparative legal analysis reveals that the EAEU primarily engages in analytical and consultative activities at this stage of its relations with international partners, and memorandums of understanding and cooperation serve as the foundation for such engagement. Despite the global diversity of international organizations and integration efforts, the EEC primarily partners with regional entities. This suggests a need for diversifying the range of international partners, particularly among integration groups. The traditional bilateral interaction mode is becoming less effective due to the vast number of organizations and their interconnectivity. Hence the need to develop alternative, promising international cooperation formats that are not limited by geography and are capable of ensuring effective coordination among different economic blocs at various stages or forms of integration.

The 2019 Agreement on the Exchange of Information regarding Goods and International Transport Vehicles Crossing the Customs Borders of EAEU and China, which became effective in 2020, marks another significant step in enhancing trade and economic relations. This agreement lays the groundwork for the phased implementation of information exchange to streamline customs procedures, improve the efficiency of customs control, and bolster security. The specifics of this cooperation will be outlined in subsequent protocols made available to the participants of the information exchange.

Excluding the European Union as a single foreign trade entity, China is currently the EAEU's largest foreign trade partner. China's share in the EAEU's total foreign trade volume increased from 2015 to 2020. In 2021, despite a notable rise in overall trade, China's share decreased slightly, from 20.17% to 19.73%.

Let us start by examining Russian–Chinese trade. In 2021, Russia accounted for 85.8% of the EAEU's exports to China and received 83.2% of China's exports to the EAEU. China is also Russia's top trade partner, accounting for 18.3% of Russian foreign trade in 2021.

Between 2017 and 2021, trade turnover between Russia and China saw a notable increase, rising from $87 billion to $146.9 billion annually. Additionally, over the first seven months of 2022, trade between Russia and China surged by 29% year-on-year, reaching $97.7 billion. During this period, Chinese exports to Russia increased by 5.2% to $36.3 billion, while Russian exports to China jumped by 48.8% to $61.45 billion.

Experts believe this rapid expansion in mutual trade can be attributed to a rebound in demand following the 2020 downturn in supply, transportation, and consumption caused by the COVID-19 pandemic. Official spokesperson for the Chinese Ministry of Commerce Shu Jueting stated that China aimed to enhance economic cooperation with Russia by promoting e-commerce. She also mentioned that both governments planned to increase their mutual trade turnover to $200 billion in the future, supported by existing favourable trends.[31]

As of 2021, Russia's exports to China were predominantly mineral resources, accounting for 67.5% of the total, with crude oil and oil products making up 50.8%. Other significant exports included non-ferrous metals (7.22%), processed wood (7.17%), ores, slag and ash (5.4%), agricultural and food products (5.39%), gems and precious metals (1.94%), chemicals and related products (1.66%), ferrous metals (1.54%), and machinery and equipment (0.74%).

[31] China's imports and exports. TAdviser Technology and Supplier Selection Portal. URL: https://www.tadviser.ru/index.php/%D0%A1%D1%82%D0%B0%D1%82%D1%8C%D1%8F:%D0%A2%D0%BE%D1%80%D0%B3%D0%BE%D0%B2%D0%BB%D1%8F_%D0%A0%D0%BE%D1%81%D1%81%D0%B8%D0%B8_%D0%B8_%D0%9A%D0%B8%D1%82%D0%B0%D1%8F (accessed: 01.03.2024).

Meanwhile, the structure of goods imported to Russia from China in 2021 consisted mainly of machinery and equipment (52.89%), chemicals and related products (10.66%), textile materials and products (7%), various industrial goods (6.16%), ferrous metals and their products (4.99%), items such as footwear, headwear, umbrellas and canes (3.92%), unprocessed hides, leather, natural fur and their products (3.06%), other non-precious metals, ceramic metals and their products (2.46%), agricultural products and food items (2.32%) and products made from stone, gypsum, cement, asbestos, mica, ceramics and glass (1.61%). This demonstrates that Russia's exports are predominantly composed of energy-rich primary goods, whereas imports from China to Russia primarily consist of labour-intensive, high-technology products.

"There has been a significant shift in the development and implementation of special institutional regimes in Russia's Far East. Preferential spaces, such as 'advanced development territories' and free trade zones, have been established, creating new momentum for cooperation between Russia's Far East and China in the bordering areas. It makes sense that Chinese investors account for a significant share of the investment […] The forward-looking Programme for the Development of Russian–Chinese Cooperation in the Trade, Economic, and Investment spheres in Russia's Far East for 2018–2024 aims to resolve many of the accumulated problems, promising to become an effective tool for interregional cooperation" (Renzin 2019: 11–12).

For Belarus, China is the second-largest importer after Russia, making up 23.1% of Belarusian imports in 2021,[32] which is 9.8% more than in 2020. In 2021, mutual trade turnover between Belarus and China reached an all-time high of $5.115 billion.

Belarus exports mainly low-added-value goods produced from raw materials and almost no energy products. Importantly, Belarus is China's main supplier of products that are key Belarusian exports. At the same time, China is an important supplier of machinery products to Belarus, despite the fact that Belarus has a well-developed machine engineering sector.

In 2021, China became Kazakhstan's second-largest trade partner after Russia, with mutual trade growing each year. Kazakhstan is the only EAEU country with a consistently positive and stable trade balance.

Kyrgyzstan's trade with China was strongly affected by the COVID-19 crisis, with a tangible reduction in mutual trade turnover in 2020. However, it rebounded in January to February 2022, reaching $452.779 million, which represents a 448.2% growth compared to 2021.

Armenia considers China its second-largest trade partner after Russia, with imports from China dominating the trade balance. In 2021, Armenia exported $393.2 million and imported $551.5 million, resulting in a trade turnover of $448.7 million.

[32] National Statistical Committee of the Republic of Belarus: Distribution of Imports of Goods by Major Trading Partner Countries in 2021. URL: https://www.belstat.gov.by/ofitsialnaya-statistika/realny-sectorekonomiki/vneshnyaya-torgovlya/vneshnyaya-torgovlya-tovarami/graficheskiy-material-grafiki-diagrammy/raspredelenieimporta-tovarov-po-stranam-osnovnym-torgovym-partneram-v-2020-godu/ (accessed: 01.03.2024).

The EAEU has been exploring ways to realize the potential of its trade with China, particularly in terms of increasing its exports. A report by the EEC suggested two approaches. First, the Union should focus on trading goods that are consistently exported to third countries and which China actively sources from third countries. These include high-value-added products like some passenger cars, bicycles, tractors and their component parts; some pharmaceuticals, contact lenses, orthopaedic devices; dishwashers; rectification and distillation machines; turbines; grain elevators; and carpets and polyurethane-soaked materials. Medium-value-added products include iron goods (wire, sheets, rolled products); certain kinds of meat, by-products, animal fats, smoking tobacco; and natural fibre fabrics and yarn. Low-value-added products that can be exported to China include organic chemicals, fruit and vegetables and some kinds of fertilizer.

There are also some goods that are supplied to China in small quantities but account for a very large and consistent volume of exports to third countries. Export of such goods to China could be increased. These include high-value-added products: cheese, pharmaceuticals, textiles, some agricultural machinery and equipment; engines and parts of reciprocating engines. Medium value-added products in this category include cement, milk and cream, some iron and steel products, and chemicals. There are virtually no low-value-added products that could help boost trade (Petrovsky et al. 2020).

Active political efforts are being made to facilitate this process. An institutional environment to promote the SREB is being created within the framework of EAEU–China agreements. It can be said that the EAEU is creating an institutional sphere to strengthen trade and economic relations in the greater Eurasian space, while China is filling it with real investments and projects. Politically, the EAEU countries maintain excellent relations with China, which supports further cooperation.

Conclusions

The following conclusions can be drawn. Cooperation between the EAEU and China aimed at linking the EAEU and the SREB is multidimensional and includes trade, economic, investment, monetary and financial aspects, as well as transport and logistics and digital activities. While Russia promotes the linkage between the EAEU and the Belt and Road Initiative, Armenia, Belarus and Kazakhstan prefer to integrate their strategic initiatives with Chinese ones on a bilateral basis. The parties are taking active steps to link the EAEU and the SREB: agreements on trade and economic cooperation and the Agreement on the Exchange of Information regarding Goods and International Transport Vehicles Crossing the Customs Borders of the EAEU and China are in place, but comprehensive strategic planning is still needed. Coordinating a roadmap for the EAEU–SREB linkage, which could be based on the priority areas of cooperation identified in the Agreement on Trade and Economic Cooperation, seems to be the most important task at this stage.

China is the EAEU's largest trading partner, with Russia accounting for the largest share of trade turnover, followed by Kazakhstan and Belarus. The competitive advantage of the EAEU in the Chinese market lies in goods that do not require significant processing, such as raw materials, mineral resources and agricultural products.

Despite the growing volume of mutual trade, the full potential for trade cooperation has yet to be realized. Increasing exports to China could involve focusing on goods that the EAEU consistently exports in large quantities to third countries and that China actively purchases from third countries. It could also involve increasing exports of goods that are already exported to China in limited quantities, but that are consistently exported to third countries in significant quantities.

The competitive advantages currently enjoyed by the Union make the economies of its member states highly attractive to foreign and domestic investors in view of the potential integration projects.

The EAEU is keen to improve the flow of Chinese goods through its territory, and its member states are actively developing their transport and logistics infrastructures. However, logistics efficiency is still insufficient. Investment from China, which could increase its transit through the EAEU to diversify its supply routes to the EU, could significantly accelerate infrastructure upgrades.

Although still at an early stage, the digital transformation of the economies of the EAEU countries has great potential. Cooperation with China, a global leader in digitalization, including through the development of the SREB, could accelerate this process. Moreover, realizing the full potential of EAEU–China trade and economic cooperation depends on the ability of the Union's members to achieve a similar level of digitalization as China.

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The author declares the absence of any conflicts of interest.

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Modernization of the Investor-State Dispute Settlement System: Reform or Revolution?[1]

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Abstract. The UN Commission on International Trade Law established Working Group III in 2017. Within the framework of this Working Group, States' delegations and representatives of international governmental and non-governmental organizations seek to work out solutions problems identified in the investor-State dispute settlement system. Such problems include: the lack of consistency and predictability of arbitral awards; the lack of independence and impartiality of arbitrators; and the cost and duration of proceedings. These problems can be remedied, as the UNCITRAL Secretariat and States have suggested, through reforms to the system. However, the sheer number of proposals make this look more like a revolution.

The authors researched the provisions of bilateral investment treaties, case law of tribunals demonstrating the problems of the ISDS system, as well as the works of Russian and foreign scholars. The methodological basis of the research contains general scientific and special methods.

The authors analyze several options for reforming the ISDS system outlined by Working Group III. First, they consider the Draft Code of Conduct for Arbitrators, the provisions on third-party funding and the establishment of an advisory centre in the ISDS system. Each of these initiatives is able to solve certain problems of the system. Second, the authors analyze documents relating to the creation of an appellate mechanism and a standing multilateral mechanism for the settlement of investment disputes. The authors conclude that initiatives may bring the fundamental changes to the system.

The authors conclude that the only way to remedy the identified shortcomings of the ISDS system is through reform. All the problem can and should be rectified through consistent work, and not by radical changes. Not only will the revolutionary options considered, such as the appellate instance and the court, fail to solve existing problems, but they will actually add new ones. For example, a "revolution" of the system may result in the establishment of the two parallel regimes of investor-state dispute resolution.

Keywords: reform of the investor-State dispute settlement system; ISDS; code of conduct for arbitrators; third-party funding; Advisory Centre; appeal in the ISDS system; standing multilateral mechanism

[1] English translation from the Russian text: Lifshits I. M., Shatalova A. V. 2023. Obnovlenie sistemy uregulirovaniya sporov mezhdu investorami i gosudarstvami: reforma ili revolyutsiya? *Moskovskiy Zhurnal Mezhdunarodnogo Prava* [Moscow Journal of International Law]. No. 1. P. 29–46. https://doi.org/10.24833/0869-0049-2023-1-29-46

Introduction

Working Group III of the United Nations Commission on International Trade Law (hereinafter referred to as the Commission, or UNCITRAL) was created in 2017. It was given a broad mandate to develop proposals on the possible reform of the Investor-State Dispute Settlement (ISDS) system. UNCITRAL Working Group III (hereinafter referred to as the Working Group) performs the following tasks: identifying and considering concerns regarding ISDS; considering whether reform is desirable in light of any identified concerns; and developing relevant solutions. Any decisions made by the Working Group should be designed in such a way that each State is able to choose whether and to what extent it wishes to adopt the relevant solution.[2] Problems identified in the ISDS system cover three broad categories: lack of coherence, consistency, predictability, and correctness of arbitral awards; the activities of arbitrators and decision-makers; and ISDS-related costs and the duration of proceedings.

Both the working documents of the UNCITRAL Secretariat and the organization's website state that the purpose of the Working Group is to reform the ISDS system. That said, certain areas of reform are aimed more at creating what is effectively an entirely new system. In this paper, we will look at the history of the creation of the ISDS system (Section 2); consider its advantages and limitations (Section 3); illustrate through examples of several areas of reform (for example, the Arbitration Rules, the provisions on third-party funding, and the advisory centre) what a potential reform of the system would consist of and what problems such a reform could solve (Section 4); analyze the idea of creating an appellate mechanism and a judicial body, which would effectively represent a new system, a revolution of the ISDS system (Section 5); and, finally, draw conclusions about the preferred areas of reform of the ISDS system (Section 6).

The Emergence of the ISDS system

As early as the middle of the 20th century, it had become obvious that the resolution of disputes between foreign investors and states in receipt of investments in the national courts of the latter did not provide effective protection for such investors due to the distrust towards them on the part of the courts. Diplomatic protection of the state of origin of investments is also an unattractive means of resolving disputes, for several reasons:1) the mechanism of diplomatic protection is based solely on international custom;[3] 2) the effectiveness of such protection is not necessarily clear; and

[2] UN: Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fourth session (27 November – 1 December 2017). Part I. Para 6. URL: https://documents.un.org/doc/undoc/gen/v18/029/83/pdf/v1802983.pdf?token=LNthVuyQ48IyjIAjZr&fe=true (accessed: 25.11.2022).

[3] UN International Law Commission: Draft articles on Diplomatic Protection 2006. URL: https://legal.un.org/ilc/texts/instru- ments/english/draft_articles/9_8_2006.pdf (accessed: 25.11.2022).

3) the will of the state and that of the investor do not always coincide if it is necessary to enter into a dispute with the government of the country in receipt of the investment. Realizing the special nature of investment disputes, states and international organizations set about developing a special procedure for their resolution.

The ISDS system was designed to be a *neutral forum* that would give investors a fair hearing in arbitration, unencumbered by political considerations, and focusing on the legal aspects of disputes. The ISDS system was first introduced in the 1959 Treaty between the Federal Republic of Germany and Pakistan for the Promotion and Protection of Investments (Salacuse, 1990: 655).[4] This was followed in 1965 by multilateral treaty – the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (hereinafter referred to as the ICSID Convention).[5] The Convention established the International Centre for Settlement of Investment Disputes (ICSID). Bilateral international investment agreements often include ICSID arbitration as an option for resolving investment disputes. Additionally, such agreements may provide for disputes to be resolved through *ad hoc* arbitration procedures, at other arbitration institutions, or in accordance with alternative arbitration rules.[6] Thus, by the late 1960s, the ISDS system had become a permanent fixture of investments treaties and was considered by many countries as a *"cornerstone" of investment protection*.[7]

Features of the Existing ISDS system

The ISDS system, created to ensure the depoliticization of disputes between investors and states, has a number of advantages. First, disputes are reviewed by a qualified body that makes neutral and independent decisions. Second, the parties to a given dispute are given the opportunity to elect arbitrators to consider the dispute, the arbitration rules to be used, and the language in which the proceedings will take place. In other words, the parties to the dispute have a measure of control over the review procedure. Further, the decisions made by the arbitrators are binding on the parties

[4] Pakistan and Federal Republic of Germany: Treaty for the Promotion and Protection of Investments. Signed at Bonn, on November 25 1959. URL: https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280132bef (accessed: 25.11.2022).

[5] Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (Washington, 18 March 1965). URL: https://icsid.worldbank.org/sites/default/files/ICSID_Convention_EN.pdf (accessed: 25.11.2022).

[6] Approximately 56% of bilateral investment agreements offer investors the choice of at least two arbitration forums. Most agreements explicity specify ISCID Arbitration and ad hoc arbitration under UNCITRALRules as the acceptable forums (Pohl, Mashigo, Nohen 2012: 8, 21). The Global Arbitration Review, a leading resource for international arbitration news and analysis, provides statistical data for all countries on its website, including information on arbitration forums provided for in the bilateral investment treaties (BITs) of states. See: Investment Treaty Arbitration. URL: https://globalarbitrationreview.com/insight/know-how/investment-treaty-arbitration (accessed: 25.11.2022). By way of an example, here are the figures for Dutch agreements: ICSID arbitration is provided for in 67 BITs; ad hoc arbitration under UNCITRALRules is allowed in 27 BITs; and arbitration under the ICSID Additional Facility Rules or the rules of the Court of Arbitration of the International Chamber of Commerce is provided for in 16 BITs. See: Investment Treaty Arbitration: Netherlands (Section 11). URL: https://globalarbitrationreview.com/insight/know-how/investment-treaty-arbitration/report/netherlands (accessed: 25.11.2022).

[7] Investor-State Dispute Settlement – UNCTAD Series on Issues in International Investment Agreements II. 2014, p. 20. URL: https://unctad.org/system/files/official-document/diaeia2013d2_en.pdf (accessed: 25.11.2022).

and are enforced in accordance with the ICSID Convention and the 1959 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).[8] The wide range of states parties to these conventions guarantees that the decisions will be enforced in a significant number of jurisdictions.

These advantages have led to the widespread acceptance and effectiveness of the ISDS system. According to the United Nations Conference on Trade and Development data, the total number of known ISDS cases reached 1190 at the end of 2021.[9] Investor confidence in the ISDS system is typically linked to foreign investment growth rates. For example, in 2022, global foreign direct investment flows recovered to pre-COVID levels, reaching $1.6 trillion.[10]

At the same time, over the half-century history of dispute resolution, the ISDS system has acquired a number of *deficiencies*. Researchers note that, from 2002 to August 1, 2017, the success ratio for investors in finally resolved cases was 44% (Langford, Behn, 2018: 567). A study by the British Institute of International and Comparative Law notes that the amounts recovered from states regularly range from hundreds of millions to billions of dollars.[11] As of June 2021, the average amount of compensation sought by investors was $1.16 billion, with average arbitrator-mandated pay-outs being $437.5 million.[12] The award amounts are so significant that they have placed considerable pressure on public finances and created obstacles to the sustainable economic development of countries. However, the sizable sums paid out in compensation to investors from state budgets are not the only reason why countries are concerned about the effectiveness and appropriateness of the ISDS system.

First, foreign investors often use the ISDS system to challenge measures taken by governments in the public interest, for example, policies aimed at protecting the environment or public health. Consequently, the issue of the legitimacy of arbitration decisions relating to the domestic policies of states is often raised. Another concern is the confidentiality of arbitration proceedings. While the transparency of the ISDS system has improved since the early 2000s (for example, with the publication of the UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration in

[8] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. URL: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf (accessed: 25.11.2022).

[9] At least 68 ISDS cases were initiated under international investment agreements in 2021. See: UNCTAD: Facts on Investor–State Arbitrations in 2021: With a Special Focus on Tax-Related ISDS Cases, p. 1. URL: https://unctad.org/system/files/official-document/diaepcbinf2022d4_en.pdf (accessed: 25.11.2022).

[10] UNCTAD: World Investment Report 2022: International Tax Reforms and Sustainable Investment. P. 3. URL: https://unctad.org/system/files/official-document/wir2022_en.pdf (accessed: 25.11.2022).

[11] Empirical Study 2021: Costs, Damages and Duration in Investor-State Arbitration. Prepared by British Institute of International and Comparative Law and Allen & Overy LLP. P. 28. URL: https://www.biicl.org/documents/136_isds-costs-damages-duration_june_2021.pdf (accessed: 25.11.2022).

[12] If we do not include particularly large claims against Russia, the average is $817.3 million. Ignoring an arbitration decision that ordered the Russian Federation to pay $50 billion to the claimant/investor, the average award in ISDS cases was $169.5 million.

2014[13]), most ISDS proceedings remain entirely confidential. The confidentiality of proceedings depends on whether the parties agree to make information regarding the arbitral award publicly available or not.[14] As an extension of these concerns, states point to the practice of investors structuring their activities through intermediary countries with the sole purpose of benefitting from international investment agreements, including the dispute resolution mechanisms enshrined in them.

Second, an analysis of publicly available arbitration decisions reveals that arbitrators often come to conflicting conclusions in various cases, despite the fact that they refer to international treaties on investment protection with identical/similar provisions, or whose circumstances are almost exactly the same. The inconsistency in the interpretation of investor protection standards by arbitrators means that the disputing parties cannot predict how the standards will be applied to their dispute. Incorrect decisions are another problem: arbitrators make awards imposing large amounts of compensation on states without the possibility of effective review. Existing review mechanisms, for example the ICSID annulment mechanism or reviews before the national courts in the place of arbitration, are limited in the sense that appeals can only be filed on certain grounds.[15]

Third, the growing number of challenges to arbitrators may indicate that the disputing parties believe that they are biased. Particular concerns have arisen due to the perceived tendency of the disputing parties to nominate individuals who are more likely to take their side in disputes. States and investors have also reconsidered their positions on so-called *double hatting,* or the practice of individual simultaneously playing the role of counsel and arbitrator in similar matters. In many disputes, the parties try, often unsuccessfully, to have such individuals removed from the case.[16]

Fourth, ISDS dispute resolution practices challenge the notion that arbitration is a faster and less costly method of resolving disputes. Arbitration proceedings take an average of two to three years, and the associated fees are signficant. In addition, the inconsistency of arbitral awards prompts parties to invest huge resources to develop a robust legal position through the careful study of previous decisions. This is another reason why arbitration proceedings take so long.

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[13] For more on confidentiality and transparency in the consideration of ICSID disputes, see: ICSID: Confidentiality and Transparency. URL: https://icsid.worldbank.org/procedures/arbitration/convention/process/confidentiality-transparency/2006 (accessed: 25.11.2022); UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration (effective date: April 1, 2014). URL: https://uncitral.un.org/en/texts/arbitration/contractualtexts/transparency (accessed 25.11.2022).

[14] In accordance with Art. 48, para. 4 of the ICSID Convention, the Centre does not publish information on awards *without the consent of the parties.* Rule 62, para. 1 of the ICSID Arbitration Rules states that the Centre publishes every arbitration award with the consent of the parties. However, in the absence of consent of the parties to publish the arbitration decision in its entirety, the Centre is obliged to publish excerpts from it. See: ICSID Arbitration Rules. URL: https://icsid.worldbank.org/sites/default/files/Arbitration_Rules.pdf (accessed: 25.11.2022).

[15] For example, the grounds for convening an ICSID ad hoc committee for the purposes of annulling an arbitral award are: the Tribunal was not properly constituted; the Tribunal manifestly exceeded its powers; there was corruption on the part of a member of the Tribunal; there was a serious departure from a fundamental rule of procedure; or the award failed to state the reasons on which it was based (Art. 52, para. 1 of the ICSID Convention).

[16] ICSID: Double-Hatting. Code of CONDUCT – Background Papers. URL: https://icsid.worldbank.org/sites/default/files/Background_Papers_Double-Hatting_(final)_2021.02.25.pdf (accessed: 25.11.2022)

The UNCITRAL Working Group was established in 2017 to develop ways and means to overcome these shortcomings. Some states note the positives of the current dispute resolution system and seek only to improve certain aspects of it. Others believe that the only way to solve the problems we have outlined is through fundamental structural changes. Accordingly, the Working Group resolved to develop both structural solutions and solutions that involve reforms within the current system.[17] What we are effectively talking about is the scale of changes to the system. With this in mind, let us look at existing proposals to answer the question posed in the title of this article: What is the best way to modernize the ISDS system – *through reform or revolution?*

Issues Aimed at Improving the Current ISDS System

Looking at the list of areas of activity of the Working Group posted on the official UNCITRAL website,[18] we can posit that implementing some of them may solve the problems identified within the current system. The concerns of states and investors about the lack of independence and impartiality of arbitrators can be eliminated if two documents are adopted and put into practice: *a code of conduct for arbitrators and provisions on third-party funding of disputes.*

A Code of Conduct for Arbitrators

The Working Group's first deliverable will be the Code of Conduct for Arbitrators in International Investment Dispute Resolution. The document, prepared by the UNCITRAL Secretariat, includes the best standards of conduct for arbitrators and establishes the obligation to comply with the provisions of the code.[19] The fact that special significance is attached to ethical standards implies the need to establish mandatory application of the code (Giorgetti, Dunoff 2019: 313–314). To this end, the Secretariat has developed a declaration as an annex to the code that the arbitrator must sign, thereby confirming their compliance with the requirements set out in the code (in particular, the provision on the duty of diligence), and indicating the absence of information that could raise doubts about their independence and impartiality. While the Code does not provide for the imposition of sanctions for violations of the provisions contained therein, it does state that arbitrators may be subject to penalties established in the applicable procedural rules or international investment agreements.

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[17] UN: Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-seventh session (New York, 1–5 April 2019). Paras. 80–81. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/V19/024/06/PDF/V1902406.pdf?OpenElement; UN: Possible reform of investor-State dispute settlement (ISDS). Note by the Secretariat. URL: https://documents-dds-ny.un.org/doc/UNDOC/LTD/V19/081/97/PDF/V1908197.pdf?OpenElement (accessed: 25.11.2022).

[18] Working Group III: Investor-State Dispute Settlement Reform. URL: https://uncitral.un.org/ru/working_groups/3/investor-state (accessed: 25.11.2022).

[19] UNCITRAL: Draft Code of Conduct. Note by the Secretariat. URL: https://documents-dds-ny.un.org/doc/UNDOC/LTD/221/033/8E/PDF/2210338E.pdf?OpenElement (accessed: 25.11.2022).

The Code also contains other important provisions relating to the activities of arbitrators. For example, with regard to the problem of "multiple roles," Article 4 of the Draft Code states that an arbitrator shall not act concurrently as a legal representative or an expert witness in any other proceeding involving:

(a) The same measure(s);

(b) The same or related party (parties); or

(c) The same provision(s) of the same instrument of consent.

This provision will make it possible to avoid the negative consequences of *déformation professionnelle* and eliminate instances where the parties to a dispute can influence arbitrators. In its current version, Article 4 also proposes restricting the ability of arbitrators to perform other functions if the disputes involve legal issues that are so similar that the simultaneous performance of another function would be in violation of the arbitrator's general duty to be independent and impartial in accordance with Article 3 of the Draft Code. This provision has not yet received the unanimous support of states, as some states fear that arbitration may be turned into an international judicial body that will restrict the ability of judges to carry out other activities.

In our opinion, arbitrators should not be able to perform different functions simultaneously in two disputes involving similar legal issues. Arbitrators who have reached an opinion in the legal assessment of the actions of a state or investor will find it difficult to devitate from this opinion in another dispute. What is more, the consideration of similar legal issues by different arbitrators in cases with the same factual circumstances allows us to identify gaps in the legal regulation of international relations.

One of the best examples of the consideration of similar legal issues by different arbitration tribunals is the investment disputes involving Argentina.[20] The numerous lawsuits filed against Argentina had to do with measures taken by the government to deal with the economic crisis that hit the country in 2001–2002. These measures included a ban on sending remittances in excess of an certain amount and the establishment of a higher ARS–USD exchange rate. The investors who filed the lawsuit argued that they had invested on the basis of the fixed exchange rate between the Argentine peso and the U.S. dollar. In the case of *Gas Natural SDG, S.A. v. The Argentine Republic*, the claimant alleged several violations of the guarantees it had been given.[21]

In their consideration of the disputes between investors and the Argentine government, the arbitrators analyzed whether the measures taken by the state were the only recourse available to it to protect an essential interest, that is, whether the state could invoke necessity as a ground for precluding the wrongfulness of an act under Article 25 of the Responsibility of States for Internationally Wrongful Acts developed

[20] ICSID: Sempra Energy International v Argentine Republic. Case No ARB/02/16. Award. September 28, 2007. URL: https://www.italaw.com/cases/1002 (accessed: 25.11.2022); ICSID: Impregilo v Argentina Impregilo SpA v Argentine Republic. Case No ARB/07/17. Award. June 21, 2011. URL: https://www.italaw.com/cases/554 (accessed: 25.11.2022).

[21] ICSID: Gas Natural SDG, S.A. v. The Argentine Republic. Case No ARB/03/10. Decision of the Tribunal on Preliminary Questions on Jurisdiction. June 17, 2005. URL: https://www.italaw.com/cases/476 (accessed: 25.11.2022).

by the International Law Commission.[22] In the case of *Sempra Energy International v Argentine Republic,* the tribunal, despite recognizing the existence of a serious crisis, equated the essential interests of the state with the very existence of that state, which in this particular instance was not under threat.[23] However, in the case of *Impregilo v Argentine Republic,* the arbitral tribunal held that essential interests should not be limited to the threat to the existence of the state and should also encompass "subsidiary […] interests, such as the preservation of the State's broader social, economic and environmental stability, and its ability to provide for the fundamental needs of its population."[24]

On the one hand, these cases are an indicator of the inconsistency of arbitration awards as a flaw of the ISDS system. On the other hand, such arbitration practice allows us to identify a gap in the regulation of the issue of the responsibility of states for the measures they take in emergency situations. In 2020, a number of states, including Russia, put forward a proposal at UNCITRAL to consider the issue of state responsibility when adopting various measures to combat the COVID-19 pandemic.[25] The issue was first discussed at the 41st session of the Working Group on November 15, 2021.[26] Two concepts were considered at the meeting, which was organized by the Secretariat: a clause in international agreements to protect the essential security interests of states; and the state of necessity under Article 25 of the Responsibility of States for Internationally Wrongful Acts (Kabra 2019: 727–730). During the discussions, state delegations came to the conclusion that these concepts are not an acceptable solution due to the high standards in place for their application and the ambiguous interpretations of these provisions by tribunals. However, the delegations agreed that a unified approach in relation to the powers of states to introduce protective measures in emergency situations similar to the situation caused by COVID-19 needs to be developed (Lifshits, Shatalova 2022:116).

Let us note another important provision of the code: arbitrators are not allowed to delegate their decision-making function. Many states, the Russian Federation included, have expressed concerns about arbitrators transferring this responsibility to their assistants. For example, when considering disputes over the demands of YUKOS

[22] UN International Law Commission: Responsibility of States for Internationally Wrongful Acts. 2001. URL: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf (accessed: 25.11.2022). For an analysis of the invocation by states of necessity, see: (Katsikis 2021: 46–69).

[23] ICSID: Sempra Energy International v Argentine Republic. Case No ARB/02/16, Award of 28 September 2007. Para. 348. URL: https://www.italaw.com/cases/1002 (accessed: 25.11.2022). In the case of *AWG Group Ltd v Argentine Republic,* the tribunal noted that "the severity of a crisis, no matter the degree, is not sufficient to allow a plea of necessity to relieve a state of its treaty obligations." See: ICSID: AWG Group Ltd v Argentine Republic. Case No ARB/03/19. Decision on Liability of 30 July 2010. Para. 258. URL: https://www.italaw.com/cases/1057 (accessed: 25.11.2022).

[24] ICSID: Impregilo v Argentina Impregilo SpA v Argentine Republic. Case No ARB/07/17. Award of 21 June 2011. Para 346. URL: https://www.italaw.com/cases/554 (accessed: 25.11.2022).

[25] UNCITRAL: Submission by the Governments of Armenia, the Russian Federation and Viet Nam. August 19. 2020. URL: https://undocs.org/en/A/CN.9/1039/Rev.1 (accessed: 25.11.2022).

[26] UN: Exploratory work on the impact of COVID-19 on international trade law of May 6, 2022. P. 4–5. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/V22/026/18/PDF/V2202618.pdf?OpenElement (accessed: 25.11.2022).

shareholders, representatives of the Russian Federation (the defendant) repeatedly pointed to the fact that 76–80% of the arbitration award was drawn up by assistant arbitrators, rather than by the arbitrators themselves.[27] The new Draft Code should eliminate such abuses. Furthermore, assistants must now sign a declaration confirming that they are familiar with the rules of conduct described in the Code and that they agree to comply with them. In turn, arbitrators must ensure that their assistants comply with the principles laid down in the code.

The provisions of the Code that is currently being developed will only affect the ISDS system if they are applied in practice. Consequently, the implementation of the Code becomes a crucial issue. States are looking into various implementation options, having rules written into international investment agreements, the rules of arbitration institutions, or a multilateral document on the reform of the ISDS system.[28] Implementation of the Code into procedural rules can, in our opinion, be effective. By choosing, for example, the UNCITRAL Arbitration Rules[29] as the procedural basis for the consideration of a dispute, the parties to that dispute agree that the arbitrators they select will comply with the provisions of the Code, which is an integral part of the rules. However, significant time will be required to bring the provisions of the regulations and Code into line with one another. Another option is to implement the code into international investment treaties, but this will also require considerable time for changes to the wording of clauses to be passed at the government level.

The code may become part of a multilateral treaty (document) on the reform of the ISDS system through the inclusion in this document of a general provision on the applicability of the Code or its contents.[30] By signing this treaty, states agree to the application of the Code to investment disputes arising from investment agreements they have entered into. What is more, this instrument can include all the documents approved by the Commission on issues of reform and thus give it a certain degree of flexibility, allowing states to choose individual areas of reform that are acceptable to them when signing such an agreement. The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI, or BEPS Convention)[31] developed under the auspices of the Organisation for Economic

[27] Supreme Court of the Netherlands: Judgment of 5 November 2021 No. ECLI:NL:HR:2021:1645. Para. 3.3.1 URL: https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2021:1645&showbutton=true&keyword=ECLI%3aNL%3aHR%3a2021%3a1645 (accessed: 25.11.2022).

[28] UN: Draft code of conduct: Means of implementation and enforcement. Note by the Secretariat. URL: https://documents-dds-ny.un.org/doc/UNDOC/LTD/V21/064/63/PDF/V2106463.pdf?OpenElement (accessed: 25.11.2022).

[29] UNCITRAL Arbitration Rules 1976 (as adopted in 2021). URL: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/21-07996_expedited-arbitration-e-ebook.pdf (accessed: 25.11.2022).

[30] UN: Multilateral instrument on ISDS reform. Note by the Secretariat. URL: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/wp221_multilateral_instrument.pdf (accessed: 25.11.2022).

[31] Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS dated June 7, 2017. URL: https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm (accessed: 25.11.2022). The Russian Federation has signed and ratified the document. See: Federal Law No. 79-FZ of the Russian Federation dated May 1, 2019. *Collection of Legislation of the Russian Federation,* 18, May 6, 2019. P. 2203.

Co-Operation and Development (OECD) is an example of such a flexible multilateral treaty. On the other hand, it is unlikely that this multilateral instrument will be widely accepted since some states are extremely wary of multilateral conventions.[32]

In our opinion, the approval of the text of the Code by the Commission and its further use in the consideration of disputes will help to alleviate the concerns of states and investors regarding the independence and impartiality of arbitrators. More importantly, establishing ethical standards for arbitrators will solve one of the problems of the current ISDS that we have identified, without the need to make fundamental changes to the system as a whole.

Third-Party Funding

The ISDS system protects investors from the wrongful actions of states receiving investments. This protection comes in the form of compensation. At the same time, lengthy proceedings in the ISDS system require significant financial investments, which not all investors can afford. In response, various companies have emerged that are prepared to bear these costs in return for a significant portion of the compensation awarded by arbitrators. Different financing models exist: through corporate debt or equity; as risk avoidance vehicles; or through special purpose vehicles (Brekoulakis, Rogers 2019: 6).

The established practice of this kind of financing has a negative impact on the ISDS system: the process of protecting a violated right turns into a mechanism for earning income for parties that have no interest in protecting investments, with the number of frivolous claims growing as a result (Güven 2020: 290).[33] Furthermore, in the same way that the presence or absence of a conflict of interest between arbitrators and the parties to a dispute needs to be determined, a similar vetting process must be carried out in relation to between arbitrators and third parties financing the dispute. These risks, as well as the impact of third-party funding (TPF) on the ISDS system, have prompted many states and arbitral institutions to start including provisions on third-party funding in bilateral agreements[34] and in the rules of arbitration institutions.[35]

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[32] For example, Russia has not ratified the Washington Convention of 1965 or the Energy Charter Treaty of 2004. And there is little reason to expect Moscow's policy to change with regard to the proposed multilateral document.

[33] The issue of frivolous claims is noted both in UNCITRAL documents and in studies carried out by NGOs. See: UN: Security for cost and frivolous claims. Note by the Secretariat. January 16, 2020. URL: https://documents-dds-ny.un.org/doc/UNDOC/LTD/V20/003/87/PDF/V2000387.pdf?OpenElement (accessed: 25.11.2022); Third-party funding – Possible solutions. Note by the Secretariat. August 2, 2019. Para 5. URL: https://documents-dds-ny.un.org/doc/UNDOC/LTD/V19/083/90/PDF/V1908390.pdf?OpenElement (accessed: 25.11.2022); Report of the ICCA – Queen Mary Task Force on Third-Party Funding in International Arbitration. The ICCA Reports. 2018. No. 4. P. 203. URL: https:// www.arbitration-icca.org/icca-reports-no-4-icca-queen-mary-task-force-report-third-party-funding (accessed: 25.11.2022).

[34] European Union-Canada Comprehensive Economic and Trade Agreement (CETA). Art. 8.1; European Union-Vietnam Investment Protection Agreement. Art. 3.28, 3.37.

[35] Investment Arbitration Rules of 2017 issued by the Singapore International Arbitration Centre (SIAC). Art. 24; International Investment Arbitration Rules issued by the China International Economic and Trade Arbitration Commission (CIETAC). Art. 27.

The provisions on third-party funding are handled by the Working Group within the framework of the document entitled "Draft Provisions on Procedural Reform."[36] Draft regulations are being discussed by state delegations. However, no decision has been made thus far on the most important issue, namely, the *regulatory model for third-party funding*. Proposals made by the Secretariat include: a prohibitive model; a restrictive model; a permitting model; and the establishment of an obligation to disclose information about the TPF of a proceeding (as a separate model or in addition to the other models). Each of these models would reduce the risks associated with appointing an arbitrator whose independence or impartiality may be in doubt. Moreover, disclosing the provisions of a financing agreement is important as the party may effectively supplant the investor/claimant by dictating their behaviour during the hearing (Chaisse, Eken 2020: 119).

The authors of the present paper have proposed an alternative method for regulating TPF, namely, prohibiting it altogether, with the exception of financing for SMEs and non-commercial financing (Lifshits, Shatalova, 2022: 123–124). Non-commercial financing means any financing where the investor repays only the amount provided by the financing party without any additional fees, such as interest or contingency fees. Such a model would eliminate speculative demands and interventions by third parties, which would have a vested interest in the investor winning the claim.

It is also important to consider the consequences for investors who are in receipt of prohibited financing. According to the entitled "Draft Provisions on Procedural Reform," the tribunal may order the disputing party to terminate the funding agreement and/or return any funding received; suspend or terminate the proceeding; take non-compliance into account when allocating costs for the proceeding.

In addition to the provisions on TPF, the "Draft Provisions on Procedural Reform" propose the following issues for consideration by delegations: the early dismissal of claims without legal merit; security for costs; counterclaims; allocation of costs (according to the Working Group, this could help reduce legal costs overall and avoid inconsistency). The adoption of provisions on these issues will solve one of the problems of the system that we have identified – significant costs and lengthy proceedings. TPF provisions can be implemented through the same mechanisms as the Code of Conduct.

The provisions on third-party funding, as well as other provisions on procedural reform, will reduce the costs incurred by the parties to disputes, allow for unreasonable claims to be identified and rejected at an early stage, and establish the presence or absence of doubts regarding the independence and impartiality of arbitrators. At the same time, these reform options are aimed at developing the current system and do not devest it of its main features and advantages.

[36] UN: Draft provisions on procedural reform. Note by the Secretariat. URL: https://documents-dds-ny.un.org/doc/UNDOC/LTD/221/043/2E/PDF/2210432E.pdf?OpenElement (accessed: 25.11.2022).

Advisory Centre

In addition to the current ISDS system, state delegations are considering the possibility of establishing a new structure in the form of an advisory centre (hereinafter referred to as the Centre). The Advisory Centre is conceived as an international intergovernmental body that would provide a range of services for beneficiaries of the Centre. The UNCITRAL Secretariat has developed draft regulations that envision the establishment of two units within the Centre: an assistance mechanism and a forum.[37] The assistance mechanism is expected to provide legal advice and support with regard to international investment dispute proceedings. Meanwhile, the forum will give states the opportunity to obtain information about available mediation centres or other alternative methods of dispute resolution, exchange experience with other states, and take part in capacity-building activities. The Advisory Centre will be created through contributions of member states in accordance with their level of development. The creation of the Advisory Centre is aimed both at ensuring access to justice for least-developed countries (LDCs) and at harmonizing the ISDS system as a whole. Its establishment will rectify the following problems of the system: the high costs of ISDS procedures, the inconsistency of decisions, and limited access to justice. In addition, the Centre is an example of interstate cooperation towards the achievement of a common goal – to improve the ISDS system.

A similar body already exists today, operating within the framework of the World Trade Organization. The Advisory Centre on World Trade Organization Law was established to provide legal advice on WTO law, support in WTO dispute settlement procedures, and training in WTO law. The beneficiaries of the Advisory Centre on WTO Law are LDCs and developing countries. Developed countries (members of the WTO Advisory Centre and the centre's main donors) are not eligible for the services (Van der Borght 1999: 726). The experience of the WTO may be useful in establishing an advisory centre within the ISDS system; and the Centre under consideration by the Working Group will offer services in some capacity to all member states.

We believe that the most effective way to get the Centre up and running is to consistently increase the range of services provided. Because setting up the Centre will require significant financial investments from states, we agree with the proposal to establish, at least in the early stages, a forum to provide informational and educational services. The Centre will serve as a platform for exchanging best practices and coordinating the parties to a dispute on the issue of resolving the dispute through alternative methods. The range of services offered by the Centre can be expanded, assuming sufficient financial resources are earmarked for this purpose. At the forty-third session of the Working Group, the delegations agreed that only states should be able to benefit

[37] UN: Advisory Centre. Note by the Secretariat. December 3, 2021. URL: https://documents-dds-ny.un.org/doc/UNDOC/LTD/V21/090/93/PDF/V2109093.pdf?OpenElement (accessed: 25.11.2022).

from the Centre's services. The exclusion of investors from the circle of beneficiaries is justified, first of all, because other sources of financing are available to investors (via third-party financing or ombudsmen), and, secondly, because providing services to both potential parties in a dispute would create a conflict of interests.

It is important for the Centre to be independent both from international organizations and states, and from individuals. To this end, some researchers have suggested that it should be established as a separate intergovernmental organization (Sauvant 2021: 362). Others believe that creating it as part of an existing organization is workable, provided that issues of conflicts of interest and budget are resolved (Joubin-Bret 2015: 11). In our opinion, while establishing the Centre as part of an existing organization will require fewer resources, it will nevertheless not allow it to work independently, and this will additionally create distrust on the part of its beneficiaries.

As we have already noted, the Centre will remedy many of the problems inherent in the ISDS system. What is more, such a structure will fit organically into the current set-up, and the services it offers will not contradict the current basic principles of the system.

Reform Options for Creating a New System

Insofar as some states view the problems of the ISDS system as indicative of its failure as a whole, the Working Group is examining other reform proposals. However, as we will show later, these proposals are aimed not at reform, but rather the creation of an entirely new regime for resolving disputes between investors and states.

Appeals in the ISDS System

The problem of the inconsistency and lack of predictability of arbitral awards can, according to some states, be solved by establishing an appellate review stage. Under the current system, only two mechanisms exist for the limited review of awards: a procedure for annulling an arbitral award by the national court of the place of arbitration; and a procedure for recognizing and enforcing arbitral awards. An appeal that includes a review of a decision on the merits runs counter to the fundamental principle of international commercial arbitration in general, and investment arbitration in particular, namely, the *finality of the arbitral award* (Viktorova 2019: 102).[38]

When considering the appropriateness of appeals in the ISDS system, researchers and state delegations rely on the review mechanism in national courts, as well as in the WTO system. We hold that such a comparison is not correct. Appeals in national courts

[38] International treaties reflect this principle. Article 53 of the ICSID Convention states that "the award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention." According to Article 34 of the UNCITRAL Model Law on International Commercial Arbitration of 1985, recourse to a court against an arbitral award may be made only by an application for setting it aside on limited grounds. UNCITRAL Model Law on International Commercial Arbitration. URL: https://uncitral.un.org/ru/texts/arbitration/modellaw/commercial_arbitration (accessed: 25.11.2022).

are necessary because state judicial bodies of the first instance resolve disputes arising from various branches of national law. Accordingly, there is no guarantee that rulings of courts of first instance will be of the required quality. The ISDS system considers disputes under international law, and the parties select the most qualified arbitrators in the field of international investment law with the relevant experience. Furthermore, in most jurisdictions, a single judge considers cases brought before national courts of first instance, whereas three arbitrators are typically selected to consider cases in the ISDS system.[39] Collegiality is important when considering disputes since arbitrators can compare their respective points of view during the assessment of a given situation.

Comparisons with the Appellate Body of the World Trade Organization (WTO-AB) are not particularly productive here, for a number of reasons. First, the purpose of the WTO Dispute Settlement Body (DSB) is to adjudicate interstate disputes, while ISDS investment tribunals deal with disputes between states and individuals. What is more, the system for resolving investment disputes was deliberately established on an arbitration model, removed from the control of states, and depoliticized. Second, the WTO appeals mechanism is not the best example for ISDS to use, since the precedential value of its Appellate Body reports are often called into question (van den Berg 2019: 165–166). Third, we must not forget that complaints filed with the WTO DSB concern changes to, or the cancellation of, measures implemented by a member state that are not in compliance with the WTO agreements, and the payment of compensation is a temporary remedy applied only in the event that the defendant has not complied with the recommendations of the arbitration panel groups, and only for the duration of such non-compliance.[40] This is why it is said that this is future compensation since it aims to compensate for harm that will arise at some point in the future (Van den Bossche, Zdouc 2022: 216).[41] In investment disputes, the main goal of the investor is to recover compensation from the respondent (state) for the past expropriation of investments. Thus, two systems differ significantly in the subject matter of their requirements. Fourth, it is well known that the activities of the WTOAB have been blocked, and it is unlikely that it will return to its previous functioning.[42]

One of the main benefits of creating an appellate body is to contribute to the development of consistent and predictable arbitral tribunal practice. At the same time, some scholars believe that a "soft precedent" already exists in the ISDS system, and

[39] Garcia A. I. Is the Principle of Finality "Losing Its Appeal"? // Kluwer Arbitration Blog. 11.05.2011. URL: https://arbitrationblog.kluwerarbitration.com/2011/05/18/is-the-principle-of-finality-losing-its-appeal/ (accessed: 25.11.2022).

[40] WTO: Annex 2. Dispute Settlement Understanding. Art. 22. URL: https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (accessed: 25.11.2022).

[41] See also: Shumilova V. M., Lifshitsa I. M., eds. *World Trade Organization (WTO) Law: A Textbook*. 3rd ed. Moscow: KNORUS. P. 242.

[42] WTO: Statement by the United States at the Meeting of the WTO Dispute Settlement Body. May 23, 2016. URL: https://www.wto.org/english/news_e/news16_e/us_statment_dsbmay16_e.pdf (accessed: 25.11.2023); The WTO Annual Report 2022 (Chapter 7 – Dispute settlement). P. 143–144. URL: https://www.wto.org/english/res_e/publications_e/anrep22_e.htm (accessed: 25.11.2023).

that consistency is already developing in investor-state arbitration (Laird, Askew 2005: 298–299). However, the issue of predictability or consistency of practice is one that cannot be resolved completely. International investment law is based on a network of over 3000 investment treaties.[43] Since investment arbitration proceedings are typically established *ad hoc* on the basis of an individual treaty, the decisions of tribunals must be based on the substantive rules in each individual case (Alvarez et al. 2016: 8). Other scholars argue that consistency in the interpretation of investment treaty provisions does not guarantee a corresponding increase in the accuracy of interpretation; and the move to a more institutionalized ISDS regime would significantly affect the balance of power between states and arbitrators, creating the need for oversight mechanisms to address the issue of tribunals potentially overstepping their powers (Feldman 2017: 530).

The creation of an appellate body, in addition to providing no guarantees that it will solve the problems inherent in the ISDS system, entails a number of difficulties. The most obvious flaw of the appeals procedure is that it extends the length of proceedings. What is more, some of the grounds for filing an appeal provided for in the working paper produced by the UNCITRAL Secretariat are the same as those that apply to annulment or setting aside procedures in a national court.[44] On the one hand, maintaining such grounds of appeal is contrary to the established exclusive competence of national courts, the embodiment of the principle of state sovereignty. If these functions are transferred to the appellate authority, then states will no longer be protected at home against the wrongful decisions of arbitration bodies located in foreign jurisdictions. On the other hand, if these powers are taken away from the appellate instance, then it will not be able to terminate proceedings by confirming, for example, the arbitration tribunal of the first instance wrongly established that it had jurisdiction in a given case. Accordingly, the parties will incur significant costs only to find that the national court deems itself incompetent to consider the matter at hand.

Another problem exists in the correlation between the appeal mechanism and existing international treaties. For example, the ICSID Convention does not provide for an appeal mechanism under Article 53(1). Amendments to the Convention can only be made by the unanimous decision (Article 66(1)), something that is unlikely to be achieved in practice. Alternatively, a group of states parties to the ICSID Convention can modify the Convention *inter se*. Some scholars claim that this is not the case (Calamita 2017: 610), while others believe that there are no legal obstacles to applying the Convention in this manner (van den Berg 2019: 170).

[43] According to UNCTAD's *World Investment Report 2022,* a total of 3288 international investment agreements currently exist, with 2558 of those being in force. UNCTAD: World Investment Report 2022: International Tax Reforms and Sustainable Investment. P. 16. URL: https://unctad.org/system/files/official-document/wir2022_en.pdf (accessed: 25.11.2022).

[44] UNCITRAL: Appellate mechanism. Note by the Secretariat. URL: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral_wp_-_appeal_0.pdf (accessed: 25.11.2022).

If an appellate body is created in spite of the shortcomings of the system, states will have to decide how to ensure its independence while minimizing the financial expenditure involved in its establishment. The first option is to create an *ad hoc* appeals tribunal, similar to the current tribunals of first instance. Despite the obvious upside to this option (that it would preserve the foundations of the ISDS system), it would be almost impossible to ensure the consistency of *ad hoc* resolutions of such appeals. The second option is to create an appeals mechanism based on existing arbitration institutions. This route has a number of advantages: the autonomy of the parties in choosing arbitrators would be preserved; fewer financial resources would be needed; and decisions of the appellate court would be more consistent and predictable than in an *ad hoc* review. The third option is to establish a permanent appellate body. However, this would require significant financial investments. More than this, it would essentially mean creating an international court, that is, it would involve setting up an entirely new system of dispute resolution.

To sum up, the creation of an appellate body would affect the functional foundations of the ISDS system, which goes beyond the scope of the term "reform." Reform of any system must preserve the key principles of that system, in this case, the principle of the finality of arbitration decisions in investment disputes. Moreover, an appellate body does not appear to be a suitable mechanism for addressing the problems inherent in the ISDS system. On the contrary, it would likely create even more difficulties.

Multilateral Investment Court

Many states (primarily the EU member states) believe that the establishment of a standing multilateral mechanism in the form of a Multilateral Investment Court (MIC, Court) will eliminate many of the problems of the ISDS that have been identified: the lack of independence and impartiality among decision-makers; the limitations in existing challenge mechanisms; and the lack of adequate diversity of arbitrators.[45]

Many elements of the Secretariat's Working Paper on the standing multilateral mechanism are still being reviewed by delegations, and decisions on key issues regarding the future of the Court have not been made.[46] However, the essence of how this body will function is clear even now: the idea is to create a permanent institution with

[45] UN: Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-sixth session (Vienna, 29 October–2 November 2018). Paras. 83, 90, 98, 108. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/075/14/PDF/V1807514.pdf?OpenElement (accessed: 25.11.2022). The UNCITRAL Secretariat notes that reform through the creation of an MIC is also driven by the need to review the practice of parties to disputes in appointing arbitrators since this practice is the main cause of concern regarding the lack of indpendence and impartiality of decision makers. See: Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its resumed thirty-eighth session (Vienna, 20–24 January 2020). Paras. 104. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/V20/007/35/PDF/V2000735.pdf?OpenElement (accessed: 25.11.2022).

[46] UNCITRAL: Standing multilateral mechanism: Selection and appointment of ISDS tribunal members and related matters. Note by the Secretariat. URL: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/standing_mul-tilateral_mechanism_-_selection_and_appointment_of_isds_tribunal_members_and_related_matters__0.pdf (accessed: 25.11.2022).

chambers of three to five judges in each. A governing body consisting of representatives of member states will be set up. Judges will be selected by the court, rather than being appointed by the parties, to consider a specific dispute. The proposed selection process will involve appointing candidates from various regional groups, meeting requirements for gender, age, diversity, etc. Once a pool of candidates has been formed, a special selection committee will make the final decision.

The establishment of an MIC will, of course, necessitate the creation of a new procedure for resolving investment disputes, namely, that they will be considered by an international court. This can hardly be called reforming a unique system that was created over half a century ago. First, the autonomy of the parties to disputes will be completely levelled, including when it comes to determining the procedural rules for considering the dispute, resolving the issue of confidentiality, and choosing the jurisdiction in which the dispute will be heard. Second, the arbitrators will be judges who have a different status. Their independence is dubious, as is the "transparent" procedure (as the authors of the idea for this court claim) for selecting them. Granted, the initial stage of candidate selection (nomination by states) may be equitable and transparent to some extent. However, at the second stage of selection, where candidates are assessed by a selection committee, the Secretariat's Working Document states the committee's discussions remain confidential. In other words, the final selection of candidates is hidden from the public. Many scholars quite rightly believe that appointments under the MIC are likely to become politically motivated decisions (Lavranos 2021: 849).

The proposed mechanism for appointing judges deprives both the state and the investor of the right to elect decision-makers. In its comments on the Working Document, the Russian delegation noted the following: "The perception of an international investment court as an instrument depriving investors acting in good faith of the possibility to participate in the selection of the applicable procedure may have a negative impact on the implementation of investment projects in host countries."[47] One cannot but agree with this argument. In our opinion, the dispute resolution system is an integral part of the special relationship that arises between the investor and the host state. The establishment of such a court will lead to the destruction of the general understanding of the status of foreign investors and the procedure for protecting their capital investments.

What is more, there is no clear information on the extent to which individual states will be able to exercise their right to appoint judicial candidates since the working document has not yet established the number and ratio of judges from different regional groups. The European Union may propose a larger number of members in

[47] United Nations Commission on International Trade Law: Possible reform of Investor-State dispute settlement (ISDS). Submission from the Government of the Russian Federation. December 31, 2019. URL: https://documents-dds-ny.un.org/doc/UNDOC/LTD/V20/001/57/PDF/V2000157.pdf?OpenElement (accessed: 25.11.2022).

their particular regional group. One argument in favor of this could be that the European Union and its members are likely to make up the majority of states parties to the treaty on the establishment of the MIC during the initial stages of the Court's work (Bungenberg, Reinisch 2021: 2309). If this is the case, however, the MIC runs the risk of not being sufficiently diverse in its composition, and subject to high levels of political influence.

Another important issue is the term of office of judges and whether or not this term can be extended. There are advantages and disadvantages to short and long terms in office. The problem with non-extendable terms is that valuable experience may be lost, and this is one of the reasons for the inconsistency of decisions in the current ISDS system. On the other hand, fixed and non-renewable terms in office gives judges greater independence since it protects the members of the tribunal from possible conscious or subconscious pressure connected with their desire to be re-elected (Kaufmann-Kohler, Potestà 2017: 91–92).

Thus, the proposal by EU member states to create an international judicial body is actually a step backwards in the development of the ISDS system. While it would seem that such a body would be set up to protect the rights of investors, the main role in the functioning of the system for resolving investment disputes will nevertheless be given to states. The main drawback of the proposed revolution is that it will not solve the problems that have been identified by the UNICTRAL Working Group. The main risk of creating an MIC is that two different dispute resolution mechanisms may emerge due to the lack of universal support for the EU initiative. Accordingly, the new parallel regime would deepen the existing fragmentation of international investment law.

Conclusion

The Investor-State Dispute Settlement System has a number of issues, the solution of which requires the joint efforts of the entire global community. The majority of the solutions considered by Working Group III do indeed address ISDS *reform*. However, the initiatives to create an appeal mechanism and an investment court will lead to a fundamental change in the system, that is, to a *revolution* of that system. The introduction of an appeals function and an MIC would nullify the advantages of the current system: the finality of decisions; the apoliticality and neutrality of arbitrators; and the high degree of autonomy of the parties. In this respect, we believe that the only way to improve the system without destroying its unique properties is to implement gradual change in the individual institutions of the system. Thus, our answer to the question posed in the title of this paper is categorical – *reform*.

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