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Dear Readers,

I would like to present for your attention the second regular issue of the Kazan University Law Review 2017.

The topics in this issue cover current questions of interest relating to the theory and practice of Russian law.

The opening article by William E. Butler, John Edward Fowler Distinguished Professor of Law, Pennsylvania State University, is dedicated to the tercentenary of the first Russian-language publication of Public International Law by P. Shafirov (St. Petersburg, 1717) on just cause for war between Russia and Sweden, and considered an important development both for international law and for Russian law. Professor Butler provides readers access into the diplomatic framework and legal basis of Russia's participation in the Northern War. His article has particular importance for measuring the extent to which European ideas and the practice of international law have been assimilated into Russian law, and at the same time one can see Russia's contribution to the development of the 'Western' system of international law.

The article by Adel Abdullin, Professor and Head of the Department of International and European Law at the Law Faculty of Kazan Federal University, continues the international legal focus of this issue. Quite naturally, his article is devoted to the development of Russian legal science in the field of private international law. He describes the characteristics of private international law in Russia and provides a scientific analysis of the views and writings of outstanding legal scientists in this field, noting that in Russia the twentieth century is recognized as a golden age and a period of enormous growth in the national legal science of private international law, when Russia entered into capitalist economic relations and experienced the development of international trade and the introduction of foreign capital into the domestic economy. All of these events had to be properly secured by law. As a result, terminology, the conceptual basis and methodology of Russian legal science of private international law were formed during this period, which also saw Russian legal science on private international law marked out as an independent branch of law.

It is important for Russian and foreign legal science to turn to the experience of sectorial studies of certain issues of economic activity. In this regard, the article by Professor Jürgen Säcker of the Free University of Berlin is devoted to the problems and prospects for the development of energy law in Europe. This is more important than ever, and especially for Russia, because vast energy resources and energy production remain the backbone of the Russia economy and the reason it is a great energy power. In his

article Professor Säcker rightly notes that the regulatory authorities have implemented special rules in the EU Directives and the domestic legislation of European countries, in accordance with agreed standards, to ensure effective competition in this vital field. Therefore, a correct understanding of the legal basis of this process is extremely important.

Traditionally in each issue of our journal we try to publish articles by young legal scientists. I am very pleased to introduce our new authors Arzu Abbasova, from the Russian Presidential Academy of National Economy and Public Administration, and Marat Suleymanov, from Kazan Federal University, who contribute practical-oriented articles on the legal nature of the right of superficies and the distinguishing features of transnational corporations, respectively.

'Conference Reviews' completes the practical section of this issue with the contributions by our colleagues from Kazan on the events that were held at Kazan Federal University in April 2017.

With the help of Professor Rosa Salieva of the Tatarstan Republic Academy of Sciences we get acquainted with the review of the international roundtable on power engineering issues. The roundtable was attended by legal scientists and representatives of the business communities of Russia and Germany, who discussed issues of state regulation of relations in the sphere of energetics in the present socio-economic circumstances and the future development of legal science in the field of power engineering.

The work of another important and traditional annual student event 'Student Moot Court Competitions: The Russian National Debates' is described in material prepared by Yuriy Lukin and Nikita Makolkin of Kazan Federal University. The review describes the history of the competition, presents the results of academic discussions held during the moot court debates and details the legal scientific, practical and educational benefits from this kind of student event.

I extend a warm welcome to each of you and wish you a stimulating and rewarding reading experience of this second issue of our journal.

With best regards,
Editor-in-Chief
Damir Valeev

ARTICLES

William E. Butler
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THE 300TH ANNIVERSARY OF THE FIRST ORIGINAL RUSSIAN WORK ON PUBLIC INTERNATIONAL LAW

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Abstract: The year 2017 marks the 300th anniversary of the publication of the first original Russian work on public international law, P. P. Shafirov's (1673–1739) Discourse on the Just Causes of the War between Russia and Sweden (St. Petersburg, 1717). This article addresses the diplomatic context of this work, the legal grounds in the Russian view for the Northern War against Sweden, the violations of international law allegedly committed by Sweden, the importance of the work for measuring the extent to which European ideas and practices of international law had been assimilated into the Russian language, the contributions of Russia to the development of "western" international law, the role of Shafirov as an international lawyer, and the importance of contemporary German and English language translations of Shafirov's work.

Keywords: P.P. Shafirov, Peter the Great, Northern War, international law, terminology of international law, F.C. Weber, J.J. Moser.

The year 2017 marks the three hundredth anniversary of the publication of the first original work on public international law published in Russia. In the absence of an indigenous community of "legists" to build upon the growing corpus of seventeenth-century international legal scholarship in Europe, it fell to diplomatic practitioners to produce early Russian literature on international law in the course of, or in supplementation of, their official duties. The first original work of an unofficial nature on

international law in the Russian language was P.P. Shafirov's *A Discourse Concerning the Just Causes of the War Between Russia and Sweden*, published at St. Petersburg in 1717. Writing at a critical moment in Russia's long, debilitating, but ultimately successful struggle for a permanent outlet on the Baltic Sea and a reduction of Swedish hegemony, Shafirov reviewed the diplomatic history of Russo-Swedish relations (still the best contemporary account and an invaluable original source on the Northern War) and set forth the Russian view as to the legal grounds for that War and the violations of the law of nations allegedly committed by Sweden. Peter the Great himself wrote the conclusion and contributed other passages.

Shafirov's book provides one of the earliest and best indicators of the extent to which Russia had assimilated, linguistically and conceptually, the principles and practices of international law generally accepted in western Europe of that day, an appraisal of which has been facilitated by the identification of a contemporary anonymous English translation published in London whose existence had been overlooked by western and Russian scholars alike for 250 years.

For modern international legal scholarship, however, Shafirov's work is much more than merely a comparatively unknown landmark in the history of international law. The book was one of the first examples of Russian pamphleteering, a practice indulged in extensively by European governments and political figures of the time. One historian described the book as "the first independent, completely original historico-publicist work published typographically in the new civil script".[1] Another said that the Tsar's methods of historical research suggested that he and his aides (including Shafirov) are the beginning of "the history of Russian archaeography".[2] The English translation may well be the first Russian literary work to have been published in the English language. And, as in the case of so many early eighteenth-century Russian imprints, bibliographical investigation has confirmed the existence of editions and printings previously unknown.

Our understanding of the origins and early development of modern international law leaves much to be desired, especially our knowledge of when and how patterns of international intercourse were transferred or communicated from one civilization, country, tribe, or people to another. Our ethnocentric preoccupation with the undeniably potent impact of nineteenth century European imperial expansion in bringing "European

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[1] S.L. Peshtich, *Русская историография XVIII века* [Russian Historiography of the XVIII Century] (1961–71), I, p. 138. A facsimile of the 1718 Moscow version and the 1722 English translation of the *Discourse* were published together with an introduction by the present writer. See P.P. Shafirov, *A Discourse Concerning the Just Causes of the War Between Sweden and Russia: 1700–1721* (1973). The present article is an expansion of the article introducing the 1973 facsimile edition and takes into account the Russian edition containing both the Russian and English texts issued by Zertsalo Publishing House (2007) and the remarkable facsimile edition published at Moscow in 2016 by the Pepelyaev Group in collaboration with The Kremlin Museums.

[2] T.S. Maikova, «Петр I и 'Гистория Свейской войны'» [Peter I and the "History of the Swedish War"], in *Россия в период реформ Петра I* [Russia in the Period of Reforms of Peter I] (1973), p. 116.

international law" to other regions of the world has begun to be redressed by comparative inquiries into the practices of China, India, Japan, the East Indies, and Central Asia. The contribution of Russia to this process remains to be investigated in much greater depth. The work of Russian international lawyers who in the late nineteenth and early twentieth centuries wrote on aspects of international legal history remains virtually unknown to western scholarship, and, until comparatively recently, Russian jurists have not been greatly interested in the subject. It would seem, though, that Russia's early and, in comparison with western Europe, prolonged contacts with Byzantium, Central Asia, Mongolia, China, Persia, and eastern and central Europe, not to mention western Europe itself, made Russia an important recipient of and conduit for a wide variety of customs and usages of interest to the history of the law of nations. And, of course, there is the question of Russia's own contribution to the development of so-called "western" international law.

THE DIPLOMATIC CONTEXT

Admiration for Peter the Great's herculean efforts to modernize Russia should not obscure the importance of Russia's international intercourse during the preceding eight centuries. Kievan Rus, a group of principalities covering much of what is now Ukraine and southern Russia, by the tenth century had a rich and distinctive culture of its own. It was known to medieval Europe. Kievan princesses married into the royal houses of Poland, Norway, France, and Hungary.[1] Kiev and Novgorod developed into commercial centers of some importance, trading with Germany, Scandinavia,[2] Byzantium, and other regions. In their inter-princely and commercial relationships Russian principalities observed customs and usages deemed obligatory in intercourse with other sovereigns. They contracted and ratified treaties, extradited criminals, granted privileges and protection to aliens, recognized the special status of ambassadors and envoys, and observed laws of warfare.

With the fall of Kievan Rus to the Golden Horde, much of Russia was cut off from contact with European international practice for more than two centuries. The after-effects of this dark period on the style of Russian diplomacy were said to be by some still visible in the early eighteenth century.[3] Novgorod, however, retained its independence, though tribute was paid to the Great Khan and its commercial

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[1] See V.T. Pashuto, *Внешняя политика древней Руси* [Foreign Policy of Ancient Rus] (1968); A. Eck, *Le moyen age russe* (1933).

[2] The earliest surviving trade treaty between Novgorod and Gotland is dated from 1191-92, but Scandinavian sagas speak of an earlier treaty, dating perhaps sixty years before. See G.V. Glazyrina, T.N. Dzhakson, and E.A. Mel'nikova, in E.A. Mel'nikova (ed.), *Древняя Русь в свете зарубежных источников* [Ancient Rus in the Light of Foreign Sources] (2001), p. 537.

[3] See N.I. Veselovskii, «Татарское влияние на посольской цпремониал в московском периоде русской истории» [Tatar Influence on Ambassadorial Ceremonial in the Muscovy Period of Russian History], in I.A. Ivanovskii (ed.), *Отчет о состоянии и деятельности императорского С.-Петербургского университета за 1910 года* (1911), pp. 1–19.

relationships with Germany, Scandinavia, and the Baltic even expanded somewhat in the form of trade agreements.[1]

As Tatar influence receded, the Grand Duchy of Muscovy asserted its independence and commenced the lengthy process of consolidating its authority over adjacent principalities. European craftsmen, artisans, and soldiers gradually returned to Russian service, importing some western ideas and practices. Embassies found their way to the Russian court to bargain for commercial privileges and to seek sundry political and military alliances against common foes. Even the Church of Rome cherished the hope of a reunion with Orthodox Christianity and despatched missions to promote that end. In 1493 the Grand Duke of Muscovy ventured to propose an alliance with Denmark. By the early sixteenth century Russia was modestly embroiled in the activities and calculations of European diplomats. The rapid and substantial development of Russian commerce with Holland and England during the late sixteenth century opened up another area of western contact and had immediate repercussions upon the balance of power in the Baltic regions that lasted, as Shafirov's *Discourse* testifies, through the reign of Peter the Great. Russian embassies also were sent to Europe. Though fewer in number than their European counterparts traveling to Muscovy, they returned with valuable information on western diplomatic practices.

By 1549, Muscovy's broadening diplomatic contacts required the formation of a special governmental department, the *Посольский приказ* (Ambassadorial Department), to deal with the reception and sending of embassies. The ambassadorial secretaries (*дьяки*), or diplomats, were, as Grabar points out, the first Russian "spokesmen for international legal views".[2] It was they who were charged with defending the sovereign's prerogatives in relations with other sovereigns and ensuring that established customs were not abused to the disadvantage of Russian interests. The documents recording Muscovy's diplomatic intercourse with States of East and West, the instructions issued to Russian envoys sent abroad, and the reports submitted by ambassadors upon their return await systematic investigation of their international legal content. Brief glimpses into the wealth of material reposing there are given by Leshkov's and Kapustin's works on Russian diplomacy[3] and by the various collections of early documents on Russian foreign affairs.[4]

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1 See L.K. Goetz, *Deutsch-Russische Handelsvertrage des Mittelalters* (1916).

2 V.E. Grabar, *The History of International Law in Russia, 1647–1917. A Bio-Bibliographical Study*, ed. & transl. W.E. Butler (1990), p. 5.

3 See V.N. Leshkov, *О древней русской дипломатии* [On Ancient Russian Diplomacy] (1847); M.N. Kapustin, *Дипломатические сношения России с Западною Европою во второй половине XVII века* [Diplomatic Relations of Russia with Western Europe in the Second Half of the XVII Century] (1852).

4 A useful bibliography was prepared by A. Narochnitskii, «Русские документальные публикации по вопросам внешней политике России и международных отношений нового времени, изданные до 1917 г.» [Russian Documentary Publications on Questions of the Foreign Policy of Russia and International Relations of the New Era Issued Before 1917], *Исторический журнал*, no. 1–2 (1945), pp. 62–73. Also see W.E. Butler (ed. & comp.), *Russia and the International Legal System: A Bibliography of Writings by Russian Jurists on Public and Private International Law to 1917 with References to Publications in Emigration* (2006).

Muscovite diplomats also were responsible for what can be regarded as the first attempts in the direction of developing an international legal literature. Russian interest in western military technology prompted the Muscovy Government to commission translations of manuals on the art of warfare. Fronsperger's *Kriegsbuch* inspired Tsar Mikhail Fedorovich to entrust the preparation of a "Military Statute" to an employee of the Ambassadorial Department.[1] The draft Statute, completed in 1621, contained a number of strictures on the conduct of war; it was not published, however, until 1777–81, when the manuscript was rediscovered in Petersburg.[2]

Works of a theological-philosophical character by Maxim Grek and Iu.K. Krizhanich touched upon questions of moral *conduct* relevant to foreign affairs. Both were clerics of foreign origin who had some knowledge of the terminology of the Civil Law. Grek (ca. 1480–1556) cautioned the sovereign against "useless" foreign conquests and pointed to the desirability of protecting aliens against infringements. Krizhanich (1618–83), who devoted his 15-year exile in Siberia to literary endeavor, was deeply suspicious of foreign influences in Russia, especially German. He urged the Tsar to restrict the rights of foreign merchants, to bar aliens from becoming Russian subjects or entering State service, to eliminate foreign consulates, and to reduce diplomatic contacts to an absolute minimum. His application of the concept of sovereignty to the Russian situation was an important contribution to Russian political theory; he was the first to use the expression *jus gentium* (*народная правда*) in Russian literature. A number of his opinions, such as the special affinity of the Slavic peoples and the desirability of reducing foreign influence, found a warm reception amongst some quarters of Muscovite society.[3]

Russian envoys sent abroad were specifically instructed to gather data on the culture, economy, and political life of their hosts. Information of this nature also was solicited from foreigners who visited Muscovy. Everything was carefully written down and stored away for future use together with copies of printed materials acquired from European sources. In 1672 A.S. Matveev (1625–82) was given the task of compiling a manual utilizing the data gathered over the years for the benefit of the Ambassadorial

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[1] L. Fronsperger, *Von Kaiserlichem Kriegszrechten, Malefitz und Schuldhandlen, Ordnung und Regiment* (Frankfurt a. M., 1565). J.J. de Wallhausen's *Kriegskunst zu Fusz, darinnen gelehrt und gewiesen werden, I: Die Handgriff der Musquet und des Spiessens; II: Das Exercitum oder Trillen mit einem Fahnlein nach praxi des Prinzen oder schlachtordnungen; III: Der Ungarischen Regimenter Disciplin zu Fuss, etc.* (1615–17), issued in three volumes, was published in Russian translation in 1647 and is regarded as the first printed Russian treatise on international law by reason of Wallhausen's treatment of the law of warfare in his opus.

[2] O.M. Radishevskii, *Устав ратных, пушкарских и иных дел, касающихся до военной науки, состоящи в 663 указах, или статьях, в государствование царей и великих князей, Василия Иоанновича Шуйскаго и Михайла Феодоровича, всея Руси и самодержцев, в 1607 и 1621 годах выбран из иностранных военных книг Онисимом Михайловым* [Statute of Infantry, Artillery, and Other Matters Affecting Military Science, Consisting of 663 Prescriptions, or Articles, in the Rule of Tsars and Grand Princes Vasilii Ioannovich Suiskii and Mikhail Fedorovich, Autocrats of All the Russias, in 1607 and 1621 Selected from Foreign Military Books by Onism Mikhailov] (1777–81). 2 vols.

[3] Grabar, note 7 above, pp. 19–26.

Department. A veritable diplomatic history of Russia, Matveev's manuscript was rediscovered and published in the late eighteenth century.[1] One of the best accounts of seventeenth-century ambassadorial ceremonial in Muscovy was written by G.K. Kotoshikhin (ca. 1630–67), an employee of the Ambassadorial Department who later sought political asylum in Sweden. He was executed for murder shortly after his account was completed. His manuscript lay unknown in Uppsala until 1838, when a Russian historian happened upon it.[2]

Peter the Great's reign sharply accelerated what theretofore had been a gradual reception of European ideas. His keen interest in tapping Russia's natural resources, securing its frontiers, strengthening its military power, and reforming its antiquated institutions meant that western technology and learning were sought actively rather than tolerated passively. Agents were despatched abroad to purchase libraries and recruit personnel. Facilitated by the introduction of a new civil script in 1708, the translation of European books into the Russian language increased, and young Russians were sent to study in European centers of learning.

Among the works on international law translated into Russian were Grotius' *De jure belli ac pacis*, Pufendorf's *Juris naturae et gentium*, and Wicquefort's *The Ambassador and his Functions*; all, however, were available only to diplomats and other State officials in manuscript form. The impact of European legal conceptions became more pronounced in Russian legislation and diplomatic correspondence. Peter's military and naval regulations, for example, drew heavily from European models, as did his establishment of consular agents. The assumption by Peter of the title "Emperor" caused endless acrimonious disputes with foreign courts. The diplomacy of the Northern War and the establishment of permanent embassies abroad involved Russia to an unprecedented degree in the intricacies of diplomatic rank and protocol.

It is against this background that Shafirov's *Discourse* must be viewed. Russia was evolving from a State that was gradually absorbing the terminology and conceptual framework of the law of nations in the form of an official, unpublished body of documentation to a State anxious to assume its place among the first ranks of European powers, concerned to justify Russia's policies to a foreign audience in the same manner as European monarchs defended their actions. Shafirov's undertaking was a logical further step in this direction.

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[1] Excerpts were published by T.S. Mal'gin, *Чиновник российских государей с разными в Европе и Азии христианских и махометанскими владельными и прочими высокими лицами о взаимных чрез грамоты сношениях издревле по 1672 год, как обоюдныя между собою титла употребляли и знаки дружества, почненния преимущества, и величия изъявляли* [Official of Russian Sovereigns on Mutual Treaty Relations with Various Christian and Mohammaden Possessions in Europe and Asia and Other High Personages] (1792). A fuller text appeared in *Древне российской вивлиофики* (2d ed.; 1791), XVI, pp. 86–251. On Matveev generally, see G.A. Novitskii, *Русско-польские культурные связи во 2-й половине XVII в.* [Russo-Polish Cultural Links in the Second Half of the XVII Century] (1973), p. 11.

[2] A definitive text was prepared by Ann Pennington (ed.), G. Kotoshikhin, *O Rossii v carstvovanie Alekseja Mixajlovica* (1980).

INVOCATION OF THE LAW OF NATIONS

Though the *Discourse* may be a work of history, a political pamphlet, or a piece of literature in its own right, it is Shafirov's substantive and philological contribution to the law of nations which concerns us here.

The book can not, of course, be compared to the seventeenth-century classics: Grotius, Pufendorf, Bynkershoek, and others. It does not profess to be a work of jurisprudence or a systematic comprehensive treatise on international law. It would be more accurate to describe the *Discourse* as a legal-historical brief officially inspired but unofficial in character, written by an individual well versed in the theory and practice of early eighteenth-century international law and diplomacy.

Among the questions of international law treated by the author were the following:

Sources of international law. Shafirov referred repeatedly to the "customs and maxims of the law of nations" and to specific international agreements contracted by Russian princes as sources of obligations which "Christian and polite nations" are bound to perform. Russia was conscious of being a member of the international system and felt no compunctions about calling upon other European powers to observe the rules of conduct prevailing in the international community.

Continuity of the realm. Although medieval Russia was far from a unified realm, consisting of disparate feudal princedoms which gradually were amalgamated into a centralized political community, Russian rulers were insistent upon their right to succeed to the rights and obligations of treaties contracted by their predecessors. "The Swedes themselves can not deny that the Provinces Carelia and Ingria, with all the territories, towns and places thereto belonging, did of old make part of the Russian Empire; an assertion that is evident from the treaties established, and the correspondence maintained time out of mind between the crowns of Russia and Sweden", with special reference to a Russo-Swedish agreement of 1556. This was said to be true even though the treaties were contracted between Sweden and the Governors of Novgorod. Indeed, it was customary for a new sovereign to formally declare his intention to observe the treaties concluded by his predecessors.

Acquisition of territory. Russian claims to territories in dispute with Sweden were predicated in Shafirov's treatment upon historical relationships, effective occupation, possession, and treaties. The rights to the Karelian and Ingrian Provinces, he said, rested not only upon treaties made with several Swedish Kings, but also upon the fact "that the greater part of the Provinces of Livonia and Estonia were under the jurisdiction and protection of the Russian crown". Evidence of the latter is that the "City of Dorpt" was, "according to the testimony of credible Russian chronicles", built in the year 1026 by a Russian grand prince and named after him. The city of Reval likewise was built by a grand prince "who lived in ancient times". The bishops and leaders of the Teutonic Order who governed these towns were said to have acknowledged their vassalage to

Russian monarchs and to have paid annual tribute, "concerning which affair many original writings and records are still extant to this day in the Russian chronicles…" Yet another symbol of Russian "property and possession" were the "Russian churches of the Grecian confession in the two cities..." which have been preserved for centuries. Even though both cities "departed from Russian obedience" on occasion, "they were reunited to Russia either by treaties or by force of arms". When pursuant to a Russo-Swedish treaty of 1594 "the Russian pretensions to Livonia and Estonia were... yielded up to the Crown of Sweden, Russia continued after the confirmation of the said perpetual peace in the undisturbed possession of Ingria and Carelia with all towns and places thereto belonging..." until 1608, when various machinations and deceptions were said to have caused Russia temporarily to give them up.

The Law of Embassies. The privileges and immunities of diplomatic agents were the subject of comment in several respects. The very failure of Sweden to treat Peter the Great's Grand Embassy with the honor and respect due a diplomatic mission was mentioned repeatedly by Shafirov as one of the principal grievances in Russia's decision to go to war. "The custom and the agreements formerly made between Russia and Sweden, required in some measure, that the ambassadors and envoys of both sides, though sent through their dominions to other powers, should be received on the frontiers with all possible marks of honor, and upon demand be furnished in the respective dominions with relays, as also on the passing over lakes and rivers with the necessary vessels without paying for them; that out of reciprocal activity their expenses should be defrayed in every particular; and that in the principal towns the governors and commanders should honor them with their compliments and visits".

The Governor-General of the city of Riga, according to Shafirov, sent a "gentleman of ordinary family" to greet the Embassy, kept the ambassadors and their retinue under virtual "civil arrest" while en route, obliged them to live in the "most miserable inns", made little effort to secure adequate horses and provisions, upon the Embassy's arrival in Riga did not receive them "with any extraordinary marks of honour"; they even were not treated with that regard which is due to envoys, being lodged outside the town in "poor wooden houses" at their own expense – "all of which was directly contrary to the ancient customs and conventions". The Governor-General further instructed that none of the Embassy retinue (including Peter, in a thinly disguised incognito) should be admitted to the town unless attended by a guard of two soldiers, prompting the Russian ambassadors to inquire "for what reason he used them in such a manner contrary to the laws of all nations…"

The practice of sending ambassadors to foreign courts for the purpose of announcing the accession of a new monarch to the throne was, in the sixteenth century if not earlier, known to Russia. Specifically mentioned in Shafirov's account are the mission of the Swedish ambassador in 1560, Tsar Mikhail Fedorovich's envoys to Sweden, France, and England in 1613–14, and the Swedish embassy of 1699. The importance of ambassadorial credentials is referred to in connection with a mission sent by the

Governors of Novgorod to Charles IX of Sweden in 1609. The rank of "ambassador extraordinary and plenipotentiary" for Russian envoys was said to have been used in 1615, when England and the Netherlands sent diplomats of this rank to mediate between Sweden and Russia.

Infringements upon the personal property of diplomatic agents were a particular source of concern to Shafirov. He cited the Tsar's assurance to the Swedish ambassador in 1699 that a Russian subject who should "presume to offer... affront and vexation to his Swedish majesty's person" would be punished and possibly executed. The action of the King of Poland in putting "the Russian ambassadors under confinement" in ca. 1609–10 was noted, as were the experiences in Riga when the Russian ambassadors suffered "the most intolerable affronts" and were "beaten, and contrary to the law of all nations, taken into custody…" Russia similarly protested that an Ambassador returning from Turkey via Riga was "greatly insulted and affronted, and some baggage wagons taken from him in a violent manner and almost in public", where after the Governor of Riga refused satisfaction and declined "to recover the goods that the Ambassador was robbed of, or even make enquiry after it..."

Law of treaties. The procedure for concluding, ratifying, and confirming treaties in the sixteenth century was described: "...the truce was signed by the said governor, and the instrument of it was delivered by the King of Sweden's ambassadors to his Czarist Majesty, who ratified it in their presence, and confirmed it according to the custom of those times with a reciprocal oath". So too was it expected in 1699 that the Tsar would confirm "pursuant to former conventions and the ancient custom" the perpetual treaties of peace "with the solemnity of taking an oath on the Holy Gospel, as it was usual at that time, and ought to be done by virtue of the treaties". The implication is clear that the confirmation of a treaty by oath had been dispensed with in Russian practice by 1717.

The notion of *pacta sunt servanda* was implicit in the allegations of repeated breaches of treaty obligations by Russia's treaty partners, especially during the Time of Troubles preceding the accession of the Romanov dynasty. More significant, however, was the strong implication that treaties obtained by coercing a State during a period of domestic distress were void. The Russo-Swedish treaty of February 1616, concluded with the aid of English mediation, was variously described as a "prejudicial and forced peace", an "extorted treaty", and contrary to "all equity and charity, and against so many pacifications and defensive alliances". In response to the argument that lands yielded to Sweden by treaty ought not to be seized again in violation of the treaty, Shafirov wrote: "...even supposing his Czarist Majesty had had no new causes weighty enough for beginning a war with Sweden", there were ancient reasons "sufficiently justifiable by the laws of nature and nations". As the "Father of his Country", the Tsar was obliged to recover hereditary lands wrested "in so unjust a manner and in violation of the perpetual pacifications and defensive alliance made out of free will and without any constraint". He was bound to restore a property "robbed by fraud and all sorts of unfair means, at a time when the Russian Empire was at a very low ebb and on the brink of

ruin...” Resorting to analogy, Shafirov asked whether the victim of robbers, threatened upon pain of death to promise to deliver his remaining wealth, who swears an oath to waive any future claim to his property, can be charged with injustice if he later has the opportunity to restore his property and demand punishment for the offenders: “...will any equitable judge or any law condemn the offended person for perjury or breach of his bond; will they not rather declare all that has been transacted on such account to be void and null...?”.

Peaceful settlement of disputes. There is no suggestion by the author that sovereigns are in any sense obliged to settle their disputes by peaceful means. Nonetheless, the Russian solicitation of mediation by England and France in 1614 was recorded in some detail, as was Peter the Great’s appeal to Holland and other powers, to employ their good offices with the King of Sweden both before and after the Northern War commenced in 1700.

Neutrality. The concept of an Act of Neutrality and the legal obligations concomitant therewith, clearly a European conception, was described in detail for the Russian reader.

Law of war.

(a) *The “just war” doctrine*. The theory of the just war was the *raison d’etre* of Shafirov’s work. There was no attempt to suggest that Sweden initiated armed hostilities in the Northern War or, in modern terms, committed aggression; merely that Swedish policies and actions “inevitably necessitated” Russia “to begin this war against the crown of Sweden as an inveterate, perpetual and implacable enemy of the Russian crown...” Part I of the *Discourse* consequently was devoted to recounting the “ancient and modern causes, for which his Czarist Majesty... was in justice obliged to make war against Sweden, and to recover the hereditary dominions, which had been unjustly wrested from the crown of Russia not only during the everlasting peace, but even during a defensive alliance actually subsisting”.

(b) *Declaration of war*. The issuance of a formal declaration of war before commencing hostilities was treated as though it were a normal requisite of Russian State practice.

(c) *Status of diplomatic agents of belligerent parties when war breaks out*. The Swedish resident at Moscow was given one month “to depart the city, and afterwards the Russian dominions, and to return to Sweden” with all his family and baggage. The Swedes, however, who “pretend to pass in the eyes of the world for a civilized people”, act otherwise: “as soon as the Swedish court had notice of the declaration of war...” the Russian Minister “was not only immediately put under close confinement, but also all his servants separated from him, and afterwards all his effects and household goods confiscated, and his plate carried to the mint, to coin money of it”. He was “used during the whole war worse than a prisoner, and at last ended his days in that confinement”, as did the secretary of the embassy and several servants. In reprisal against the Swedish action, the Swedish resident, “who had desired a respite of six months for regulating his affairs”, was seized. In 1709 the Swedish resident was released upon his written promise to return to Sweden and secure the liberty of the Russian resident. Later the Swedish

King's secretary was freed "in hopes the Russian resident would also be released", but without success.

(d) *Status of subjects of belligerent parties on enemy territory*. Swedish "commissaries, factors and other Swedish subjects of what condition so ever" then in Russia were given an opportunity to depart with their effects, "to which Russian subjects should not be allowed any manner of claim". All "Russian merchants, with their servants, commissaries, and workmen, of whom there were some hundreds at Stockholm and in other Swedish towns" were placed under arrest, their effects were confiscated, and they were forced to perform hard labor from which "most of them miserably perished".

(e) *Appeals to the populace*. "Contrary to the practice of all Christian and civilized nations", Sweden published manifestoes and universalia "filled with calumnies tending not only to the defaming, affronting and reviling" of the Tsar and the Russian nation "but also to stir up his majesty's subjects to rebellion". After war was declared in 1700, the King of Sweden sent letters to his diplomatic agents abroad which "contrary to the use observed among the Christian powers, were filled with the most calumnious reflections against his Czarist Majesty's high person..." Shortly thereafter, he issued "proclamations in his own name and under his hand and seal to his Czarist Majesty's subjects to stir them up against their natural sovereign. In those papers he used his Czarist Majesty with such injurious and virulent invectives, as my pen justly abhors to express…"

A copy of one of the Swedish tracts was translated and published as an appendix to the Russian and German editions of Shafirov's *Discourse* as evidence, the author says, of the unusual expressions seldom used even among "non-Christian peoples".[1] The Tsar gave "rigorous orders" to his troops entering Swedish territory that no one "should presume to make use of the least expressions either in writing or by word of mouth, prejudicial, or injurious to the Swedish nation..."

(f) *Military operations*.

(i) *Combatants*. In 1704 a detachment of Russian auxiliaries in retreat "retired into a cottage and begged quarter of the Swedes", but the latter "pursuant to their King's orders, would not grant it... surrounded the house, set fire to it, and burned the poor people in a most miserable manner". Many of those taken prisoner were "partly murdered in cold blood, partly had their fingers and toes cut off, a thing which even barbarians will judge to be abominable". A vessel sent with letters to prisoners of war "under his Czarist Majesty's white flag" was seized by the Swedes with all men on board and the flag "insulted and tore off..."

(ii) *Civilians*. Russian troops were ordered "as much as their regulations at that time would possibly allow, they for the most part consisting of an irregular militia, to keep good discipline, that no manner of harm whatsoever be done to the Swedish subjects... and those who transgressed that order were punished in the most exemplary manner". In 1706 the Swedes sent "incendiaries" to set "fire to many towns and boroughs... for

[1] Shafirov here had in view a Universal issued by Charles XII upon the outbreak of the Northern War.

which they had received a certain sum of money" and promises of more. Swedish forces on Russian territory in 1708–09 "most miserably murdered the poor country-people with their wives and children, though they offered not the least resistance". After the Swedish defeat at Poltava in 1709, the Russians found that icons "of our saviour, of the Holy Virgin, of the Apostles and other saints" had been removed from churches and used to construct doors and stalls for livestock or employed as "tables for draughts", thereby "despoiling the churches and profaning sacred things".

(g) *Breaches of armistice agreements and capitulations*. At the battle of Narva in 1700 a capitulation was agreed upon between the generals of both sides stipulating that the Russian command and army should march away free with their colors and arms, as well as part of their field artillery; that prisoners on both sides should be released; and that certain heavy artillery should be left to the Swedes. The capitulation was confirmed by the Swedish King himself, "engaging his Royal Word". However, the Swedes "set aside the capitulation..., forced the regiments... to lay down their arms, and to deliver up their colors, and after they had plundered all their baggage, they let them march off... They likewise seized all the artillery and ammunition, and under diverse frivolous pretexts first put all the generals and many other superior officers, military and civil, under arrest, and afterwards even kept them as prisoners of war". They were "kept by the Swedes in a very severe prison", some still being detained "on which account many representations and protestations were made at foreign courts on the part of his Czarist Majesty". In Stockholm those "seized contrary to the capitulation" and the King's royal word "were obliged to march on foot like other prisoners through the town after an extraordinary manner and as in triumph to their place of confinement". Russia, on the contrary, enlisted the aid of England, Prussia, and the Netherlands to form a "cartel for the exchanging and redeeming of prisoners, either during the whole war, or for a certain time, according to the custom observed between all Christian Powers when at war". Sweden refused until after the Battle of Poltava, whereupon the Tsar "for certain reasons of war and state" declined, though he showed "uncommon generosity" in releasing some "to regulate their private affairs, and to solicit ... the subsistence of the prisoners". Most who gave their word never returned and in some cases took up arms again.

(h) *Status of prisoners of war*. Shafirov complained bitterly about the treatment of Russian prisoners of war, many of whom were "obliged to be in dungeons underground among condemned malefactors, where they suffered great hardships, and were exposed to all sorts of brutality". Prisoners who had been maltreated in Swedish captivity on one occasion were shown "for curiosity" to the foreign ministers resident in Moscow. The Tsar declined to avenge such measures by maltreating Swedish prisoners: "Sometimes he implored God to prosper his arms in taking vengeance of the offences given him, sometimes he would even overlook them with a greatness of mind, which scorned to resent those injuries by exercising the like cruelty on the poor prisoners". Reports that Swedish prisoners had been "sent to very remote parts in the Russian dominions, and some of the common soldiers put to hard labor, as also that many of them were

sold to the infidels" are explained respectively as retaliation for Swedish practices, as "compassion" toward the common soldier, and as an objectionable practice indulged in solely by the Cossacks and subsequently terminated by order of the Tsar.

(i) *Reprisals*. In the face of repeated violations of capitulation agreements by the Swedes, the Tsar "was at length necessitated to use reprisals". The garrisons of Vyborg and Riga "were secured and treated as prisoners" in retaliation for the Swedish seizure of Russian generals and superior officers, the detention of Russian merchants in Sweden, and the seizure of a vessel sailing under a white flag. The slanderous manifestoes published in Poland and "lesser Russia" with the intention of stirring up rebellion among the Russian subjects caused the Tsar, "in his own defense and for the security of his dominions", to issue manifestoes in "refutation of the false imputations contained in those of the enemy".

Shafirov concluded the *Discourse* by declaring that many other examples of "how the Swedes proceeded contrary to the usage and customs of war, and the general law of all civilized nations" might be given, but he is persuaded that enough has been said to enable one to judge "which of the two parties behaved with the more discretion and moderation".

In support of his argumentation Shafirov appended to the *Discourse* the texts of the following documents: (i) the armistice treaty with Sweden of 1564; (2) the treaty with Sweden concluded at Vyborg in 1609; (3) the letter sent by Tsar Mikhail Fedorovich to France in 1615 setting forth the injustices inflicted upon Russia by the Swedes and Poles and requesting assistance; (4) the Universal of Charles XII of Sweden published in 1700 proclaiming war with Russia.

Shafirov's "Dedication" of the *Discourse*, a panegyric to the Tsar, contained nothing of international legal interest. He said that no ruler in history or then living had done so much for his country and people. The Tsar's talent, great intelligence, and diligence were praised, as were his successes in warfare, in creating a permanent army and navy, in building fortresses, ports, and canals, in developing industry and trade, in expanding education, and in reforming the State apparatus. Shafirov stressed that all of these reforms were effectuated during time of war. He concluded that Peter had brought many of his subjects to such a level that they could equate themselves with representatives of other European peoples in statecraft, military arts, and cultural activity.

THE LANGUAGE OF INTERNATIONAL LAW IN RUSSIA

The axiomatic belief that foreign terminology was received into the Russian language only with the commencement of the Petrine reforms has been challenged and largely discredited by modern philological research. Hüttl-Worth has pointed to the large number of common western administrative, scientific, and military concepts (excluding nautical terms) in the Russian language of the seventeenth century. The transplantation of terms such as *аудиенция* (of Latin origin introduced via Poland), *гегемония* (introduced

from Greek, possibly via Germany), or *посессия* (from the Latin, perhaps via Poland) enabled Russians in the sixteenth and seventeenth centuries to understand and express administrative, cultural, social, or scholarly conceptions that had originated either in the classical world or developed *de novo* in western Europe. The quantity of foreign words uncovered in a rather casual survey of Russian manuscripts and documents of that period, though it included few legal terms, was impressive indeed.[1]

Shafirov's *Discourse* was the basis for an inquiry by a Russian philologist, A. V. Voloskova, into what she called the "diplomatic lexicon" of the Petrine era, though jurists would regard most of the terms analyzed as appertaining to international law. Her materials not only supported Hüttl-Worth's general proposition; they cast fascinating light upon the gradual displacement of the ancient ambassadorial lexicon of medieval Russia by European terminology.

Shafirov himself clearly was aware of the terminological revolution underway. The *Discourse* shows that he found it necessary to explain several Petrine terms by placing their old-Russian equivalents in brackets or by offering a brief explanation. Of the 1549 words employed by Shafirov in the text of his *Discourse*, about one-third (543) can be classified as terminological, of which 225 are diplomatic-legal.[2] The latter group Voloskova divided into words of Russian (145) and foreign (80) origin. Of the 145 Russian diplomatic-legal terms, only 40 have not yet been traced to documents of the fifteenth to the mid-seventeenth century and thus are regarded as lexical neologisms of the Petrine period. Thirty-five of the 80 foreign words can be identified as pre-Petrine, and Voloskova is able to offer much earlier datings of these terms than Hüttl-Worth's investigations revealed for comparable words. The fact that nearly one-half of the foreign terminology is to be found in sixteenth and seventeenth-century diplomatic documents, in her view, refutes the thesis that these words emerged suddenly in early eighteenth-

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[1] See G. Hüttl-Worth, *Foreign Words in Russian: A Historical Sketch, 1550–1800* (1963). The author's extensive glossary contains few legal terms, however. Useful, but with little on law specifically, is O. Bond, *German Loanwords in the Russian Language of the Petrine Period* (1974).

[2] A.V. Voloskova, *Дипломатическая лексика начала XVIII века (По материалам трактата П.П. Шафирова «Рассуждение, какие законные причины Петр Великий к начатию войны против Карла XII имел»)* [Diplomatic Lexicon of the Early XVIII Century (According to Materials of the Treatise of P.P. Shafirov "Discourse on the Legal Reasons Which Peter the Great Had to Commence War Against Charles XII"] (diss. kandidat filologicheskikh nauk, 1966). 451 p. The dissertation is on deposit in the Russian State Library. Articles based on individual chapters can be found in Voloskova, «Русская дипломатическая лексика XVIII века...» [Russian Diplomatic Lexicon of the Early XVIII Century], *Вопросы фонетики, словообразования, лексики русского языка и методики его преподования; труды 4-й зональной конференции кафедра русского языка вузов Урала* (1964), I, pp. 149–161; id, «Синонимы в дипломатической терминологии начала XVIII в.» [Synonyms in Diplomatic Terminology of the Early XVIII Century], *Вопросы теории и методики преподавания русского языка; Ученые записки Ленинградского университета им. А.И. Герцена*, CCLVIII (1965), pp. 187–210; id, «Иноязычные слова в дипломатической терминологии начала XVIII века» [Foreign Language Words in Diplomatic Terminology of the Early XVIII Century], in Уральский университет, *Ученые записки*, LXXX, серия филология, вып. 8 (1969), pp. 31–44. The dissertation abstract contains materials not found in these articles.

century Russia. Voloskova's datings must be regarded as minimal projections, for it is highly probable that further research will reveal earlier usages of other expressions.

The eighty foreign words consist of 58 Latinisms, of 7 Hellenisms, and of 15 Gallicisms. The majority appear to have entered Russia via Polish (30) and German (23). A few show early Italian influence.

Early ambassadorial terminology developed from everyday terms and expressions which gradually acquired a special meaning, a process which continued to the end of the seventeenth century. The official language of the Ambassadorial Department was noteworthy for elements of spoken and traditional written speech which differed markedly from the stereotyped literary forms of Church Slavonic. In the Petrine era it is the former that was enriched by the addition of popular expressions and western European substitutes.

Among the early Russian terms, Voloskova points to the evolution of: *договариваться* (to conduct negotiations); *договор* (international treaty); *ссылаться* (to have relations); *ссылка* (international link); *обсылка* (notification of an embassy's arrival); *посылка* (diplomatic mission); and *присылка* (arrival of ambassadors). In ambassadorial reports of the sixteenth and seventeenth centuries, the following expressions appeared: *быть в ответе* (to be in negotiations); *быть на отпуске* (to be present at a leave-taking audience); *править посольство* (to perform the duties of an ambassador); *видеть царски очи* (to be at a tsar's audience). Some expressions changed meaning or were used in multiple senses. *Гонец*, for example, which first appeared in a manuscript of 993, has variously referred to a person urgently sent upon a diplomatic mission, to a lower ambassadorial official, and later to persons who merely delivered messages without entering into any diplomatic negotiations; in the eighteenth century the term was replaced by "courier".[1] Similarly, the word *грамота* in the Russo-Byzantine Treaty of 945 meant an official written document, whereas in the sixteenth and seventeenth centuries it often was used to describe an international treaty. Shafirov used the word to mean an official diplomatic document.

Fifteen of the terms of Russian origin are new formations probably inspired by European terminology but not borrowed therefrom. Shafirov's use of *всенародное право* (law of nations) and *гражданское право* (public law), here distinguishing between the "natural law" of nations and the "secular law" of States, were attempts to express in the Russian language legal conceptions originating in Romanist systems, in this case respectively *jus gentium* or *droit des gens*, or *jus publicum* or *droit public*.[2] Other expressions falling into this category include *естественное право* (natural law; *jus*

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[1] On the origins and evolution of *гонец* and other diplomatic denominations in the Russian language, see F.P. Sergeev, *Русская дипломатическая терминология XI–XVII вв.* [Russian Diplomatic Terminology of the XI–XVII Centuries] (1971).

[2] As noted above, Krizhanich used another expression to render *jus gentium* into Russian. The following also are to be found in Russian documents: *всенародный закон*; *право народа*; and *народное право*.

naturae, *droit de la nature*); *добрые оффиции* (good offices); *должность* (office); and *удовольствие* (satisfaction). Most of these originated in the late seventeenth century.

Shafirov's recourse to synonymous expressions in old Russian or Slavonic and "modern" eighteenth century Russian is especially striking. Often he felt the need to gloss the meaning of certain terms by interpolating bracketed explanations. Among the terms so explained were:

акт-записка
амбиция-честолюбие
гарантия-порука
министр-боярин
негоциация-переговор
перемирие-армистициум
посессия-владение
предложение-пропозиция
трибутарии-данники
претензия-запрос
ратификация-подтвержденные грамоты
кондиция-договорная статья
секвестр-залог
сикурс-помощные войска
союз-конгресс; конференция
субсидия-помощные деньги
трактат-договор
ходатайство-интерпозиция

Voloskova gave considerable attention to the derivation and meanings of the foreign diplomatic-legal words employed by Shafirov. Her glossary comprises hundreds of pages, from which the following terms are taken with excerpts from her observations on origin and usage:

агент: Latin; a general term for a diplomatic representative. A Germanism used in English affairs.

акорд: French; first appears in early eighteenth-century Russian materials. Sometimes used to denominate a treaty or agreement between States on a particular question, such as military assistance. Used most often to describe an agreement terminating military actions or a treaty on conditions of surrender.

аккредитованный: French; a diplomatic representative officially appointed to the government of another power.

асессор: Latin; personnel of an ambassadorial office. Probably came in via Germany.

аудитор: Latin; military jurist empowered to negotiate an armistice or an exchange of prisoners. Via Poland.

гарантия: Latin; *ca*. 1700. A means of securing international obligations. Synonym of *порука*. Via Polish, Italian, French, or German more or less simultaneously.

декларация: Latin; first used in early 1700s. A diplomatic announcement made by a foreign State appertaining to some event, such as war, peace, and so forth.

канцелярист: senior chancellery worker; via Germany.

канцлер: Latin; high official.

картель: French; treaty for ransoming or exchanging prisoners. Shafirov used the term at least eight times.

комиссар: Latin; official performing partly administrative and partly diplomatic functions, such as the settlement of frontier disputes and overseeing the execution of treaty commitments. Via Poland.

комиссия: Latin; diplomatic commission, replaced by *poruchenie* in the eighteenth century.

коммуникация: Latin; communication, tie, or link. *ca*. 1700.

кондиция: Latin; term or clause of an agreement or treaty. Shafirov used the expression no less than twenty-three times.

конъюнктура: Latin; international situation influencing the outcome of something. Shafirov employed the term seven times.

корреспонденция: Latin; diplomatic correspondence or exchange of letters. *ca*. 1700.

курьер: French; person delivering urgent diplomatic correspondence. Replaced *gonets*.

медиация: Latin; mediation between States. *ca*. 1700.

мемориал: Latin; governmental memorandum setting forth views on a particular question.

министр: Latin; diplomatic representative.

нейтральный: Latin; not taking part in war. *ca*. 1700.

пароль: French; oral agreement or promise, word or honor. *ca*. 1700. Shafirov used the word eight times.

патент: Latin; document certifying powers, conferring rank.

плакат: Latin; governmental edict or announcement in writing.

политика: Greek; general orientation of State activity.

потентат: Latin; sovereign, king, head of monarchical State.

протокол: Greek; several meanings, including: dossier in which memoranda of meetings, negotiations, and decisions are kept; *proces verbale* or official record of what transpired at a meeting or conference; diplomatic record replacing the *статейный список*; and the aggregate of rules traditionally observed in the international community.

ратификация: Latin; document establishing that an international treaty has finally been confirmed by a supreme authority. Origin unclear.

реверс: Latin; written obligation by which one side makes a mutual concession to another. Shafirov used the term to refer to a written obligation to release all imprisoned generals and officers.

резидент: French; diplomatic representative of lower rank visiting a foreign court. Shafirov used the term twenty times.

секвестр: Latin; to confiscate or take on pledge. During the seventeenth and eighteenth centuries, it was common to pledge cities and towns as a means of securing the performance of treaty obligations.

секретарь: Latin; person conducting diplomatic correspondence.

трактат: Latin; diverse meanings, including treaty between States concluded on especially solemn occasions, in the early eighteenth century particularly major political

treaties. Shafirov used the word thirty times, often with the Russian synonym *dogovor*. Sometimes the term meant negotiations, and Shafirov used it once in this sense.

характер: Greek; diplomatic rank.

The richness of the material in Shafirov's *Discourse* for characterizing and to some extent dating Russian diplomatic international legal terminology is but a sample of what is to be found in earlier Russian diplomatic documents, the great bulk of which have yet to be visited by jurists. The personnel of the Ambassadorial Department possessed a virtual monopoly in Russia of information on the world beyond. As Russia's first and primary spokesmen in matters touching upon the law of nations, they absorbed and sometimes passed on to more general usage the terminology used in western Europe to describe foreign events and juridical conceptions. Peter's reign unquestionably accelerated the internationalization of the Russian language, hastened the introduction of foreign words to express special concepts or to express traditional notions with greater precision, as Voloskova points out, but the linguistic base of the law of nations was laid much earlier, in the sixteenth and seventeenth centuries. Precisely how early remains to be thoroughly investigated.

SHAFIROV AS INTERNATIONAL LEGAL PRACTITIONER

Perhaps the best known of the Petrine diplomats, Petr Pavlovich Shafirov was by origin and accomplishment an unusual figure among his contemporaries.[1]

His father was a Jew, a native of the Smolensk *воеводство* who, together with many other western-Russian Jews, migrated to Moscow following the cession of Smolensk to Russia under the Andrussov Treaty with Poland.[2] There is some indication that he was a prisoner of war who may or may not in consequence have been a serf later liberated. He converted to the Russian Orthodox faith and was christened Pavel Filippovich (d. 18 July 1706). Russia's expanding relations with western Europe required men with a knowledge of foreign languages, and P.F. Shafirov quickly found employment in the

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[1] The best biography of Shafirov, to which this account is heavily indebted, is E. Likhach, «Шафиров, барон Петр Павлович», *Русский биографический словарь* [Russian Biographical Dictionary] (1905), Vol.: Чаадаев-Швитков, pp. 553–567. Likhach included a useful bibliography. Some additional material is drawn from Grabar, «Первая русская книга по международному праву» [First Russian Book on International Law], *Вестник московского университета* [Herald of Moscow University], no. 7 (1950), pp. 101–110, which is a fuller account than that given in his *History of International Law in Russia, 1647–1917*. Also see the entry under Shafirov in the *Большая энциклопедия* [Great Encyclopedia] (1909), XX, 189. A less reliable account, but containing more data on Shafirov's adventures in Turkey and a dramatic report of his last-minute reprieve from execution in 1723, is A.V. Tereshchenko, *Опыть обозрения жизни сановников, управляющих иностранными делами в России* [Attempt at a Survey of the Life of Officials Managing Foreign Affairs in Russia] (1837), III, pp. 1–48. Also see: D.O. Serov, *Строители империи: Очерки государственной и криминальной деятельности сподвизников Петра I* [Builders of Empire: Surveys of State and Criminal Activity of Companions of Peter I] (1996), pp. 30–35, 37–59, 63–69ff.

[2] Treaty between Poland and Russia, signed at Andrussow, 30 January 1667. C. Parry (ed.), *The Consolidated Treaty Series* (1969–83), IX, 399.

Ambassadorial Department as a translator of official documents, papers, and books into Russian. Some sources indicate that under Tsar Feodor Alekseevich, P.F. Shafirov was admitted to the ranks of the lower nobility, although this seems unlikely.[1]

Petr Pavlovich, born in 1673,[2] possessed his father's gift for language. His education, unusually excellent for that time, included the study of French, German, Latin, Polish, and Dutch, his knowledge being augmented by conversations with foreigners living in Moscow. Later, during his sojourn as a hostage in Turkey, he learned Italian.

After having embarked upon an unpromising commercial career, P.P. Shafirov was recruited as an interpreter from German, probably through his father's influence, by the Ambassadorial Department as from 30 August 1691.[3] His ability soon was recognized. Legend has it that Peter the Great discovered Shafirov in a marketplace arguing with the future Prince A.D. Menshikov over the theft of a piece of fabric. With his usual keen eye for talent, the Tsar is said to have promptly recruited them for State service on the spot.[4] Whatever the truth, in 1697 he was one of the first to be selected by the *думный дьяк*, E. Ukraintsev, to accompany Peter I on his celebrated Grand Embassy to western Europe as interpreter.[5] Ukraintsev was later to feel that Shafirov did not show commensurate gratitude for bringing him on and instead became close to Golovin,

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1 See S.S. Ilizarov, *Московская интеллигенция XVIII века* [The 18th Century Moscow Intelligentsia] (1999), p. 305; V. Bergman, *История Петра Великаго* [History of Peter the Great] (1841), V, p. 80. However, "it should be stressed that reports concerning the elevation to the dignity of nobility of a number of persons in the seventeenth century (or even earlier) are unreliable. At best they may be interpreted in the pre-Petrine practice of noble service. Thus, one should ignore the assertion of Shafirov 'that his father was not only a Christian, but elevated to the dignity of the nobility under Tsar Fedor Alekseevich'". See O.I. Khoruzhenko, *Дворянские дипломы XVIII века в России* [Nobility Diplomas of the XVIII Century in Russia] (1999), p. 5.

2 Although all sources have routinely dated Shafirov's year of birth as 1669, Serov has shown convincingly on the basis of St. Petersburg census data for 1718 that Shafirov himself indicated his year of birth as 1673. See D.O. Serov, *Администрация Петра I* [Administration of Peter I] (2007), p. 79.

3 Some examples of Shafirov's early activity as a translator survive. The Tsar included among his many interests astronomy and astrology. His personal library contained several manuscript "calendars" translated from German and Polish. Quite apart from Peter's own predilections, such calendars were of interest to diplomats for their predictions of celestial events and the compiler's prognostications as to what impact these events would have in foreign countries, the outbreak of wars, illness, and so forth. The manuscript division of the Library of the Russian Academy of Sciences (BAN) contains three pristine translations by Shafirov, bound in paper, and executed in late seventeenth-century cursive script. A fourth, attributed to Shafirov by the manuscript division, is, in my view, questionable. There is no external evidence to support such a definite conclusion, though an attribution to Shafirov certainly would be appropriate. The four items are described in V.P. Adrianova-Perets (ed.), *Исторический очерк и обзор фондов рукописного отдела библиотеки академии наук* (1956), I, p. 405. The three items which definitely are Shafirov's work were translated *ca*. 1695–96. The doubtful calendar was done sometime after 1691.

4 This and other fables of Shafirov's life have been recorded in Victor Alexandrov, *The Kremlin: Nerve-Centre of Russian History*, translated by R. Monkcom (1963), pp. 157–159, 175–179, 181–188. Useful materials are to be found in N.N. Bantysh-Kamenskii, *Обзор внешних сношений России (по 1800 год)* [Survey of Foreign Relations of Russia (as of 1800) (1894–1902).

5 M.M. Bogoslovskii, *Петр I: Материалы для биографии* [Peter I: Materials for a Biography] (1940–48), I, p. 378. On 10 February 1697 Shafirov co-signed a statement with three other interpreters to the

his rival. This was said to have become evident after Ukraintsev's return from Turkey in 1701, when he was de facto removed from active diplomatic service. Prior to his departure for Constantinople, Ukraintsev had been the actual head of the Ambassadorial Department.[1]

The European journey was a turning point in Shafirov's career. It exposed him to Germany, Holland, England, and Austria. He was present at an audience of the Tsar with the Elector of Brandenberg on 21 May 1697, where he was presented a gift, and again at an audience with the Ambassador of Poland, where issues of credentials were discussed. The Dutch presented a gold chain to Shafirov valued at 42 zolotniks on the occasion of his departure to Amsterdam on 20 October 1697, where he shared a flat with Peter Wolf and was, in appreciation of his services, granted a larger allowance by the Tsar.[2]

Shafirov's visit to London with the Tsar was partly underwritten by a gift of tobacco valued at 20 guineas, and another package of tobacco worth 120 guineas was left with Shafirov to remunerate those who served Peter's house in England. Shafirov departed England on 29 April 1698.[3]

More importantly, it brought him into a close and fruitful relationship with the influential Muscovite diplomat, F.A. Golovin, and with the Tsar himself. When domestic difficulties obliged Peter hurriedly to leave the Grand Embassy in Vienna and return home in 1698, Shafirov was one of the few selected to accompany him. It was Shafirov who translated to the Tsar a Memorial received from Karlovich in Poland while en route home. Moreover, Shafirov personally witnessed and probably suffered too the slights and insults by Dahlberg in Riga while returning to Russia, as described in the *Discourse*.[4]

By 1699 Shafirov was assisting Golovin in negotiations with Poland and Denmark as Russia sought to conclude alliances against Sweden.[5] Although the precise nature of his role is obscure, he was present with the Tsar at New Year celebrations to meet the Danish Ambassador and presumably acquitted himself well, for on 18 February 1700 he accompanied the Danish Ambassador to an audience with the Tsar and on 23 April 1700 was present at secret discussions between the two. In 1701 he was given diplomatic responsibility of great importance and played an active role in persuading Poland to join Russia in joint actions against Sweden. In 1703 Shafirov was appointed Golovin's

effect that information was insufficient for writing correctly to the Pope and to the rulers of England, Denmark, and Sweden. *Ibid*., I, p. 381.

1 See the collected edition of G F. Müller, *Сочинения по истории России. Избранные* [Works on the History of Russia. Selected] (1996), p. 429.

2 See Bogoslovskii, note 26 above, II, 77, 219, 237, 253.

3 Bogoslovskii, *ibid*., II, 379–380, 391.

4 Bogoslovskii, *ibid*., II, 547, 564, 566.

5 Tereshchenko credited Shafirov with drafting the Manifesto of 19 August 1700 declaring war against Sweden, observing that this was a departure from the usual Russian practice of sending ambassadors to announce the commencement of hostilities. See Tereshchenko, *Опыть обозрения жизни сановников*, note 20 above, III, p. 4. Other sources do not mention Shafirov in this connection.

privy secretary in the Ambassadorial Department, where, *inter alia*, he translated correspondence with foreign diplomats.[1]

Thereafter, however, advancement was slow. The war with Sweden dragged on inconclusively; Shafirov accompanied the Tsar on his travels, executed decisions, and endeavored to display his abilities to their best advantage. But the competition was intense, and Shafirov's post did not give him discretion for taking independent initiatives. After Golovin's death in 1706, Shafirov's responsibilities increased. He was involved in the treacherous negotiations over the Polish interregnum in 1707, and in 1708 he assisted Golovin's successor, G.I. Golovkin, in investigating certain aspects of Hetman Mazeppa's treason.[2] Recognition began to come following the Russian victory at Poltava. Shafirov was made a Baron of the Holy Roman Empire by Jozef I of Austria on 16 October 1709 upon the petition of the Russian Resident in Vienna, V. Sh. Urbikh.[3] Peter I conferred the title of Baron on 30 May 1710;[4] various other decorations were awarded by Prussia, Poland (Order of the White Eagle), and the Tsar.

Initially, at least, the Russian victory at Poltava enhanced Russia's prestige in Europe at Sweden's expense. Allies against Sweden were obtained more readily. Shafirov participated in the negotiations leading to a treaty of 29 May 1711, renewing the Russo-Polish alliance against Sweden.[5] Charles XII in the meantime had taken refuge in Turkey where, with the support of France and the Crimean Khanate, he was able to enlist Turkish aid against Russia. In the ensuing battle of Pruth – the most disastrous of Peter's reign – the Russian forces were surrounded and obliged to sue for peace. Shafirov was intimately involved in the lengthy and complex peace negotiations. Once agreement was reached, he was one of two hostages left behind in Turkey pending execution of the treaty

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1 Bogoslovskii, note 26 above, IV, pp. 319, 339, 369, 439.

2 Shafirov's involvement in domestic affairs and Peter's internal reforms seems to have been slight; political trials were the principal exception. In 1717 he also had a part in condemning the Tsarevich Alexis, reading aloud the Tsarevich Alexis' solemn oath on renunciation of the succession and recognition of Tsarsevich Peter Petrovich as heir to the throne. He also was present on the morning of the Tsarsevich's death in 1718.

3 The background of this event as revealed in materials discovered in the Vienna archives is told by M. Orbec, "Le baron Pierre Pavlovitch Schafirov (1669-1739), Vice Chancelier de Pierre le Grand (Descendance, Titre, et Blason)", *Versailles*, no. 12 (1962), pp. 49–53. Emperor Jozef I assented to conferring the Order on the same day. However, neither Shafirov nor the Russian Government were notified for some time. See O.I. Khoruzhenko, note 22 above, p. 27. Shafirov's elevation to Vice Chancellor on the first day after celebrating the victory at Poltava was communicated to England by Captain James Jefferyes in a letter from the Russian camp of 27 July 1709. At the time, Jefferyes was under Shafirov's patronage. See R. Hatton, *Captain James Jefferyes's Letters to the Secretary of State, Whitehall, From the Swedish Army, 1707–1709* (1954), pp. 77–78.

4 The Edict of the Tsar establishing this title for Shafirov is no longer preserved in the relevant Russian archives. See Khoruzhenko, note 22 above, p. 27. Shafirov was the first to be given the title of baron by Peter the Great.

5 Treaty between Russia, Poland, and Denmark, signed at Iaroslavl, 29 May (9 June) 1711. Parry (ed.), *Consolidated Treaty Series*, note 21 above, XXVII, 119.

provisions (especially that clause guaranteeing Charles XII safe conduct to Sweden).[1] For various reasons the treaty was not executed, and in consequence the Sultan declared war upon Russia. Shafirov negotiated desperately to gain time. The Tsar decided against war while England and Holland counseled the Porte to avoid a military solution. With the aid of some asute bribes, Shafirov was instrumental in securing a 25-year renewal of the Treaty of Pruth on 5 April 1712, but this document also remained unratified.[2] Turkish patience was now exhausted. Shafirov was imprisoned together with P.A. Tolstoi, the Russian Ambassador to Turkey. The Swedes fared little better, however. Charles XII soon was expelled, Shafirov was released,[3] and yet a third, final peace treaty was concluded on 5 July 1713, and ratified in October.[4] Shafirov returned to Moscow in January 1714, having creditably performed the most challenging assignment of his diplomatic career under conditions that could hardly have been more adverse.

The departure of Charles XII from Turkey meant that no one was left to insist upon execution of the Russo-Turkish treaty. Russian diplomacy sought to repair existing alliances in Europe and to seek new support in the continuing war against Sweden. A treaty of alliance was concluded with Prussia in 1714[5] and Poland in the spring of 1715,[6] followed in July of that year by a treaty with Denmark.[7] Shafirov had a prominent role in all of these.[8] With the death of Louis XIV, French policy became more favorably

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[1] Treaty of Peace between Russia and Turkey, signed at the Camp on the Pruth, 21 July 1711. *Ibid*., XXVII, 149.

[2] Treaty of Peace and Amity between Russia and Turkey, signed at Constantinople, 5(16) April 1712. *Ibid*., XXVII, 231.

[3] News of Shafirov's and Sheremetov's release through a "reliable correspondent" was recorded by F.A. Polikarpov in a manuscript «Книга стенная. Часть 2-я». Archive of the Ambassadorial Department in TsGADA, fond 181, no. 849, folio 579. See G.N. Moiseeva, «История России' федора Поликарпова как памятник литературы» ['History of Russia' of Fedor Polikarpov as a Monument of Literature], in *XVIII век; сборник*, IX (1974), p. 84.

[4] Renewal of the Pact of the Pruth between Russia and Turkey, signed at Adrianople, 5 July 1713. *Ibid*., XXVIII, 251. For appreciative assessments of Shafirov's diplomatic talents in negotiations with the Turks, see A.G. Brikner, *История Петра Великаго* [History of Peter the Great] (1882), II, 487–490. There are extensive accounts of Russo-Turkish relations at this time in I. Grey, *Peter the Great: Emperor of All Russia* (1962), pp. 322–325.

[5] Treaty of Alliance and Guarantee between Prussia and Russia, signed at St. Petersburg, 1(12) June 1714. See Parry, *Consolidated Treaty Series*, note 21 above, XXIX, 59.

[6] Likhach mentioned this "treaty" without giving a specific date. It was said to have eliminated any misunderstandings that may have arisen between Russia and Poland previously. Likhach, note 20 above, p. 559. I have been unable to locate the text of such a treaty.

[7] Treaty on Sending Russian Forces to Pomerania to attack specified points between Denmark and Russia, signed 9 July 1725. On the basis of this treaty, Denmark and Russia concluded a Convention on the Sending of Auxiliary Russian Forces to the King of Denmark in Pomerania, on 6 September 1715. See *Полное собрание законов Российской империи*, V (1st ser.), 161, 166, nos. 2919, 2930.

[8] Shafirov was instrumental in arranging the marriage of the Tsarevna Catherine Ivanovna to the Duke of Mecklenberg-Schwerin. The treaty, noteworthy for its inclusion of political clauses, was signed at St. Petersburg, 22 January (2 February) 1716. Parry, *Consolidated Treaty Series*, note 21 above, XXIX, 403.

disposed toward Russia. In 1717 Shafirov was among those who accompanied the Tsar to Paris and Amsterdam, where Russia's role as a European power was acknowledged formally by the conclusion of a Franco-Prussian-Russian agreement[1] guaranteeing the Treaties of Utrecht and Baden. Russia and Prussia also undertook to accept French mediation in the conflict with Sweden.

Diplomatically, Sweden had been virtually isolated. The final step on Shafirov's part was the Russo-Prussian treaty of August 1718 guaranteeing against the King of Sweden returning to Germany or Poland to renew his conquests.[2] When Charles XII fell in battle in 1718, Sweden sued for peace, finally attained in the Treaty of Nystadt of 1721.[3] Shafirov had some part in the intermittent negotiations carried on during those three years but no direct role in the peace treaty itself.

At this point, Shafirov's personal affairs took a dramatic and adverse turn. In the preceding decade (1710-20), Shafirov had been rewarded handsomely by the Tsar for his services. Decorations, titles, but more tangibly, property, money, and commercial concessions, the latter including the importation of a silk manufacturing plant (which failed) and interests in sealing and other marine trades.[4] In 1717 he had been appointed Vice-President of the College of Foreign Affairs, from 1718 a senator, and in 1722, with the establishment of the Table of Ranks, a full privy councillor, passing by the Vice-Chancellorship because of a long-festering enmity with Chancellor Golovkin.[5]

As one of the "newcomers" who had found favor with the Tsar, that is, one who owed his position almost exclusively to ability and not to lineage from the old Muscovite

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[1] Treaty between France, Prussia, and Russia, signed at Amsterdam, 4(15) August 1717. *Ibid*., XXX, 159. Shafirov's signature and seal, the latter of heraldic interest, are reproduced in Orbec, note 20 above, p. 53. The use of personal seals by Russian diplomats was in imitation of their European counterparts; Shafirov's probably was devised specially for this purpose. His seal also appears on the Russo-Danish treaty of 9 July 1715.

[2] Convention between Russia and Prussia, signed 7(18) August 1718. *Полное собрание законов Российской империи*, V (1st ser.), 582. No. 3222. The Convention guaranteed against a return of Charles XII to Germany and Poland and stipulated the number of forces to be maintained in readiness against that eventuality. It confirmed an earlier Agreement of 9 September 1715.

[3] Treaty of Perpetual Peace between Russia and Sweden, signed at Nystadt, 30 August 1721. Parry, *Consolidated Treaty Series*, note 21 above, XXXI, 339.

[4] Karnovich described Shafirov as "one of the notable Russian wealthy men of his time". See E.P. Karnovich, *Замечательная богатства частных лиц в России* [Remarkable Wealth of Private Persons in Russia] (2d ed.; 1885), p. 119. Investment in fish oil production was a joint venture with his arch rival, A.D. Menshikov, who ultimately accused his partner of corruption. See L. Hughes, *Peter the Great. A Biography* (2002), p. 183.

[5] At one stage the enmity became so intense that the College of Foreign Affairs was said to have been brought to a standstill. It has been suggested that one source of the problem was the legal terminology which determined the tasks of the College. See Grey, note 40 above, p. 364. On the relationship with Golovkin, see D.O. Serov, «Г.И. Головкин и П.П. Шафиров в их взаимоотношениях: (1706–1723)» [G.I. Golovkin and P.P. Shafirov in Their Mutual Relations: (1706–1723)], in *Труды Всероссийской научной конференции «Когда Россия молодая межала с гением Петра, посвященной 300-летнему юбилею отечественного флота, Переславль-Залесский, 30 июня – 2 июля 1992* (1992), I, pp. 122–131.

aristocracy, Shafirov perpetually was embroiled in constant intrigues between the old and new families, so prevalent in Russian domestic political life.[1]

Shafirov's hostility towards Golovkin was nonetheless severe at times. Both had turned to the Tsar with mutual recriminations. Widespread abuses, including embezzlement of State funds, were discovered in the postal system, which was under Shafirov's direction,[2] and also in Shafirov's northern business interests. These events, compounded by Shafirov's maladroit handling of his political rivals, led to his ultimately being convicted and sentenced to death on 13 February 1723 by the Ruling Senate, with deprivation of rank and decorations and confiscation of property (including his personal library).[3]

Peter commuted the death sentence, reportedly as Shafirov's head lay on the executioner's block, on 15 February 1723 to life exile in Siberia (Iakutsk). On 26 February 1723 the place of exile was changed to Novgorod, where Shafirov lived on a dole of thirty-three kopecks per diem until the Tsar's death in 1725.

Empress Catherine I returned Shafirov, restored his title on 19 May 1725, conferred the rank of privy councilor and appointed him President of the Commercial College from 14 July 1725. The latter appointment, however, aroused the apprehensions of his political enemies. Instead, Shafirov was given the task of writing a history of Peter the Great's reign, an undertaking for which he evidently had little enthusiasm and soon abandoned.[4] The accession of Peter II to the throne in 1727 resulted in the downfall of

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[1] Kamenskii argues that Shafirov and others of his generation close to Tsar Peter were swindlers and tricksters irrespective of whatever period of history they were in. See A.V. Kamenskii, *От Петра I до Павла I. Реформы в России XVIII века. Опыт целостного анализа* [From Peter I to Paul I. Reforms in Russia of the XVIII Century. Attempt at an Integral Analysis] (1999), p. 73; also see O.A. Omelchenko, reviewing N. I. Pavlenko, *Петр Великий* [Peter the Great], *Вопросы истории*, no. 12 (1991), p. 228. On the Tsar's comrades-in-arms contemporary to Shafirov, see N. Pavlenko, O. Drozdova, and I. Kolkina, *Соратники Петра* (Comrades-in-Arms of Peter] (2001). Bushkovitch suggests this image may be overdrawn: G.I. Golovkin and P.P. Shafirov "...carried out the planning and execution of much of Peter's foreign policy. Most observers believed that it was Shafirov who was the more able and knowledgeable and with a better command of foreign languages, and that Golovkin frequently simply followed his lead. Both of them remained largely independent of the court factions, cultivating Menshikov in the early years of his power, but by 1715 turning toward enmity without joining his opponents". See P. Bushkovitch, *Peter the Great* (2001), p. 166n.

[2] Over the years the Ambassadorial Department had been burdened with a host of petty responsibilities only tangentially related to foreign affairs. Among them were the postal service, the administration of certain territories acquired by treaty (Siberia, for example), the collection of monies to ransom prisoners of war, and many others.

[3] On Shafirov's investigation and trial, see P.I. Ivanov, «Судное дело над сенатором бароном Шафировым и обер-прокурором Сената Скорянковым-Писаревым» [Court Case Against Senator Baron Shafirov and Ober-Procurator of the Senate Skoriankov-Pisarev], *Журнал Министерства юстиции*, no. 3 (September 1859), pp. 3–62; Serov, «Фрагменты жизнеописания сенатора Петра Шафирова» [Fragments of the Life of Senator Peter Shafirov], in id, note 23 above, pp. 87–134. Lindsay Hughes says that Shafirov's Moscow house went to Petr Tolstoi, his wine was sent to the palace and redistributed to various officials, and money invested abroad was allocated to Russian students. See Hughes, note 48 above, p. 183.

[4] For the text of the Edict of 17 May 1725 instructing Shafirov to write a history of the reign of Peter the Great, see *Полное собрание законов Российской империи*, XI, no. 8695.

some of Shafirov's rivals, but it was the Empress Anna Ivanovna who in 1730 began to employ Shafirov's diplomatic talents again. He ably conducted peace negotiations in the Caucasus with Persia[1] and was involved in the conclusion of a trade agreement with England in 1734.[2] From March to December 1737 he served as a Plenipotentiary Minister at the Nemirov Congress. Again appointed (on 31 August 1733) to the Presidency of the Commercial College, a Senator, and a full privy councilor (in 1734), Shafirov survived renewed allegations of graft and died 1 March 1739, aged sixty.

Of Shafirov's personal life and character we know disappointingly little. He married twice. There were no children of the second marriage to Anna Danilovna, who survived Shafirov; of the first to Anna Stepanovna, who died before 1727, there were two sons and five daughters.[3] He apparently left no personal diaries, memoirs, or archives, although a proper biography doubtless could be constructed from official papers in the College of Foreign Affairs and other Petrine institutions in which Shafirov served or with which he corresponded.[4] His heavy involvement in allegedly corrupt practices should not color our image unduly; rare indeed was the Russian governmental official of that day who was not behaving similarly, as nearly all western accounts of Petrine Russia attest.[5] Weber spoke warmly of Shafirov in his observations of Russian society, noting that the Tsar "greatly rejoiced at the return" of Shafirov from Turkey "who has deserved so well of all the Russian Empire".[6]

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[1] Treaty of Peace between Russia and Persia, signed at Riascha, 21 January 1732. Parry, *Consolidated Treaty Series*, note 21 above, XXXIII, 445.

[2] Treaty of Commerce between Great Britain and Russia, signed at St. Petersburg, 2 December 1734. *Ibid*., XXXIV, 211. The manuscript text of the Treaty in the Public Record Office bears what appears to be Shafirov's seal, although deterioration is so advanced that a positive identification could not be made.

[3] Orbec, note 34 above, traced five generations of the Shafirov family. The son of Prince Matvei Petrovich Gagarin married one of Shafirov's daughters, an example of the family alliances so important to Russian political elites.

[4] Serov has undertaken exactly that in his Fragments. See note 52 above.

[5] Shafirov's return to favor in 1727 caused the secretary of the Austrian Embassy in Petersburg to recommend Shafirov to the attention of high officials in Vienna. He further suggested that Shafirov be given a "gift" of money. As the reports of Austrian diplomats from this period show, gifts to State officials was a major but necessary expenditure to learn what was happening in Russian administrative offices and at court. See A. Brikner, «Австрийские дипломаты в России» [Austrian Diplomats in Russia], *Вестник Европы*, XXVIII (1893), kn. 12, p. 525. F.C. Weber's correspondence with Jean de Robethon in London, in particular Letters of 27 and 31 May 1718, records authorization to present 30,000 "escus" to Shafirov for assistance in renewing the peace conference with Sweden and withdrawing Russians from Mecklenberg. It is not clear whether the gift was ever actually made. Much earlier Charles Whitworth had presented Shafirov with a "gift" of 400 pounds sterling, having obtained in advance the consent of his superiors to do so. See Iu.N. Bespiatykh, *Иностранные источники по истории России первой четверти XVIII в.* [Foreign Sources on the History of Russia of the First Quarter of the XVIII Century] (1998), p. 125.

[6] [F.C. Weber], *The Present State of Russia* (1723), I, p. 43. Another student of the period comments: "Contemporaries regarded Shafirov as a very able, if purchaseable, man and foreign representatives generally found it easier to deal with this amiable minister than with anyone else". D.K. Reading, *The Anglo-Russian Commercial Treaty of 1734* (1938), p. 147, citing A. de la Motraye, *Voyages and Travels* (1732), II, p. 151. The high regard in which Shafirov was held in English circles can be seen in diplomatic correspondence relating to the Anglo-Russian Commercial Agreement of 1734. A letter dated 27 April 1734 to Secretary of State Harrington from Lord Forbes and Claudius Rondeau in Petersburg states: "Your Lordship will see that I had no reason to hope for any conclusion of this Treaty till it got into Baron

Perhaps the best source available for insight into Shafirov's personality, at least prior to his disgrace, is the inventory of his personal library. This was a collection of some consequence in early eighteenth-century Russia, being one of several that formed the basis of the library of the Imperial Academy of Sciences.

The collection came to public attention in 1723 when, in consequence of Shafirov's conviction for misappropriation of funds, his property was confiscated.[1] His splendid home in Petersburg was placed at the disposition of the Academy of Sciences following its formation in 1724. "Splendid" is no exaggeration in this case. An inventory of the house mentions that the stucco ornamentation was executed by the Rastrellis. In the early years the Academy library, including Shafirov's own books, was apparently housed there, a source of complaint because the building was on the "Petrograd side" of the Neva River and far from the Academy itself.[2]

The historic first public meeting of that august institution was convened on the premises on 27 December 1725.[3] The books "in foreign tongues" and copies of the *Discourse* found in the house, however, posed some difficulty. The Chancery of the High Court invited the Petersburg Library to select what books it wished and to return the remainder, since the "Russian appraisers and foreigners do not know how to value them".[4] Shafirov's was the last collection to be acquired by the Petersburg Library during Peter's reign.[5]

Schaffiroff's hands..." A further communication from Harrington to Rondeau dated 22 October 1734 declared that he "...found his Majesty very well pleased that you have entered into Conference with Baron Schaffiroff upon the Treaty of Commerce, as not doubting but that you would find that Gentleman, as formerly, ready to hearken to everything that shall appear to be reasonable and just in point of Trade..." The correspondence is in The Public Record Office, S.P. 91/16 and 91/17; some of the items are reproduced in *Сборник императорского русскаго историческаго общества* (1891), LXXVI.

[1] A manuscript text of the Imperial Edict confiscating Shafirov's property is preserved in LOAAN, fond 3, Opis' 1, no. 701, folio 1.

[2] See N.V. Kaliazina, «Лепной декор в жилом интерьере Петербурга первой четверти XVIII в.» [Stucco Decor in the Housing Interior of Petersburg of the First Quarter of the XVIII Century], in T.V. Alekseevna, *Русское искусство первой четверти XVIII века; материалы и исследования* (1974), pp. 109–118. Also see S.P. Luppov, *Книга в России в послепетровское время* [The Book in Russia in the Post-Petrine Period] (1976), p. 328.

[3] See K.V. Ostrovitanov (ed.), *История академии наук СССР: 1724–1803* [History of the USSR Academy of Sciences: 1724–1803] (1958-), I, p. 58. Tereshchenko is quite incorrect when he mentions Shafirov as one who took part in the Academy's opening session. See Tereshchenko, *Опыть обозрения жизни сановников*, note 20 above, III, p. 46.

[4] The manuscript of the Edict ordering the removal and selection of books from Shafirov's library is found in LOAAN, fond 3, opis 1, no. 2330, folio 27. The summary report to the Chancery of those who prepared the inventory of Shafirov's holdings lists 531 volumes. *Ibid*., folios 28 and 29. Also see J. Bakmeister, *Опыть о библиотеке и кабинете редкостей и истории натуральной Санктпетербургской Императорской Академии наук* [Experience Concerning the Library and Cabinet of Rarities and Natural History of St. Petersburg Imperial Academy of Sciences] (1779), p. 34; P.A. Efremov, *Материалы для истории русской литературы* [Materials for the History of Russian Literature] (1867), p. 119; Mit. Evgenii, *Словарь русских светских писателей, соотечественников и чужестранцев писавших в России* [Dictionary of Russian Secular Writers, Compatriots, and Foreigners Who Wrote in Russia] (1845), II, p. 248.

[5] The original manuscript catalogue or inventory of Shafirov's collection is at LOAAN, fond 158, opis 1, no. 215. Consisting of eight folios, it has never been published. The books are grouped by size (folio,

Assessments of the quality of Shafirov's library vary. Pekarskii felt the selection of books had been done "unsystematically and haphazardly".[1] S.P. Luppov, who undertook an extensive comparison of private libraries of the Petrine period, pointed out that Shafirov's was not a working library of carefully selected books but that of a man who read largely for pleasure and relaxation.[2] My own view is that Shafirov was, in European terms, a gentleman-diplomat. His library was both a working collection and a source of diversion. The large number of lexicons and grammars is a reflection of his formidable linguistic skills and his career as a translator. There is no evidence that he was a particularly religious person, so the large number of European bibles in various editions and a Koran may well have been a collecting interest. History, philosophy, and travels were well represented. Both Pekarskii and Luppov tended to relegate works such as Grotius and Pufendorf to the category of "politics" rather than law, thereby understating what in modern terms at least would be regarded as legal holdings. Among the works on international law in Shafirov's library were Grotius (1684 ed.), Pufendorf (edition not specified), Shafirov's own *Discourse* in German translation (two copies), Callières (1716), and *La paix d'Utrecht* (1713). Also present were copies of Justinian's *Institutes* (1703 ed.) and a number of works on German public law. Belles lettres, particularly French and Italian, were strongly represented, and there was an assortment of titles on mathematics, the military arts, numismatics, and curiosa. It was, in short, an eclectic assemblage, that of a widely read diplomatic practitioner rather than a scholar. Shafirov obviously did most of his book purchasing during his trips to Europe with Peter, especially the journey to France and Holland in 1717. Of the 484 entries in the inventory of Shafirov's library, only 27 were published after 1717. Only one entry is of a book in the Russian language; one wonders whether the High Court officers confiscated Shafirov's books in the Russian language without offering them to the Petersburg Library or whether Shafirov collected European titles exclusively. If the latter is true, Shafirov's collection was indeed a singular one.

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quarto, octavo, duodecimo), there being no particular order within each category. A few entries are indecipherable, and nothing approaching a complete bibliographical description is given in any case. Usually there is merely an abbreviated title, sometimes an author, date of publication, and perhaps the place of publication. Some entries appear twice. The first published catalogue of the Imperial Academy of Sciences listed some 711 items as "libros iuridicos", but most of the works on international law were placed in the section on history. The catalogue gave no provenances for the items listed. See *Bibliothecae Imperialis Petropolitanae* (1742), III(2), pp. 1-61.

[1] P.P. Pekarskii, *Наука и литература в России при Петре Великом* [Science and Literature in Russia Under Peter the Great] (1862), I, p. 48.

[2] See S.P. Luppov, *Книга в России в XVII - первой четверти XVIII века (из истории культуры)* [The Book in Russia in the Seventeenth and First Quarter of the Eighteenth Centuries (From the History of Culture]. Dissertatsiia na soiskanie uchenoi stepeni doktora istoricheskikh nauk. (1972). 581 p. Dr. Luppov published his findings on seventeenth-century private libraries in a monograph entitled: *Книга в России в XVII веке* [The Book in Russia in the Seventeenth Century] (Leningrad, 1970). Also see: Luppov, *Книга в России в первой четверти XVIII веке* [The Book in Russia in the First Quarter of the Eighteenth Century] (1973), pp. 227–229.

After his rehabilitation, Shafirov presumably formed a second library, whose fate is unknown. In 1735 he was presented a number of religious books.[1]

PREPARATION OF THE DISCOURSE

Peter's long-felt desire to have books available in his own language about Russian history and Russia's military exploits during the Northern War had led him to commission preparatory undertakings for such works. As early as 1705 a literate Swedish prisoner of war serving as a translator in the Ambassadorial Department, V. Shilling, was charged with writing a history of the war. Later the same task was given at various times to F. Polikarpov, a Moscow typographer and translator, to Baron Heinrich Huyssen, to Feofan Prokopovich, and of course to Shafirov. In a plea for an increased allowance submitted to the Tsar on 24 December 1720, one Boris Volkov, an interpreter in the College of Foreign Affairs, declared in support of his petition that he had devoted half a year to writing a "history of His Majesty" with Baron Huyssen.[2] Preparations in 1711–13 for the publication of the *Книга Марсова*, a collection of remarkable engravings depicting military campaigns during the Northern War with brief descriptive "relations" accompanying each print, involved assembling accounts of the War which had been published individually in Moscow and Petersburg during the preceding decade in Cyrillic.[3] Some Russian historians go so far as to claim that the *Книга Марсова* was the first printed book in Russian on the history of the Northern War. A proper history of the War was undertaken by A.V. Makarov in 1718, but it remained in manuscript until half a century later, when M.M. Shcherbatov found and published it.[4]

Shafirov had been involved for a short time in these preparatory activities in 1712.[5] While compiling his *Discourse*, he certainly availed himself of the materials that had been collected. But the immediate inspiration for Shafirov's work would appear to be a draft "Declaration of Claims of the Russian Crown" prepared by the Russian envoy to London, F. S. Saltykov, and sent to Peter for consideration *ca*. 1713–14. Saltykov laid down twenty-six "propositions" outlining the historical basis of Russian claims to

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[1] Luppov, *Книга в России в послепетровское время* [The Book in Russia in the Post-Petrine Period] (1976), p. 87.

[2] For a detailed account, see Peshtich, note 1 above, p. 138 ff. Huyssen, who held a degree in law, acted as a diplomat and literary representative abroad and was successful in placing Russian documents for publication in foreign media or separately as pamphlets.

[3] *Книга марсова или воинских дел от войск царского величества российских* ... (1713). See T.A. Bykova, «Книга марсова», in T.A. Bykova and M.M. Gurevich (comps.), *Описание издании гражданской печати 1708 – январь 1725 g.* P.N. Berkov (ed.). (1955), pp. 515–523.

[4] *Журнал или Поденная записка, блаженная и вечнодостоиныя памяти государя имп. Петра Великаго с 1698 года, даже до заключения Нейштатского мира* (1770-72). 2 vols. Shafirov was one of those who took part in editing the original manuscript.

[5] Peshtich, note 1 above, p. 125.

territories in dispute with Sweden and recommended that a manifesto be drawn up explaining these to the Russian people. Proposition 26 declared: "And after compiling the manifesto, it should be translated into the Latin, French, and German languages and printed in those languages for the information of all European States".[1] Shafirov progressed considerably beyond Saltykov's proposal, however, for the latter made no reference to the conduct or course of the War nor to the principles of international law applicable to the territorial claims.

A working manuscript of the *Discourse* preserved in the Central State Archive of Ancient Documents (TsGADA) in Moscow gives some insight into the manner of its preparation.[2] Folios numbered 1-5 have been recopied in a beautiful eighteenth-century cursive script, probably belonging to one of the employees in the College of Foreign Affairs or an archivist. Thereafter, the folios are soiled and the text, though virtually a scribble, often indecipherable, is obviously Shafirov's hand. The numerous textual and marginal corrections and notations in at least two hands indicate that Shafirov's colleagues were invited to share in his labors, or that a clerk in the College was involved.

The manuscript does not contain the complete published text. Shafirov's panegyric dedication to the Tsar is not present, nor the "Conclusion to the Reader" written by Peter himself. Indeed, folios 58-91 appear to be rough notes and extracts from documents that were used to write the third section of the *Discourse*; folios 82-85 are a chronology of Russo-Swedish battles from 1620-38. On folios 95 and 96 there are a number of queries written out in Shafirov's hand intended for his "research assistants" (these are recopied in an archivist's hand on folios 92-94). Thus, he enquired: "Does the original treaty concerning the forty year armistice concluded with Sweden in 1556 exist?", or, referring to a particular document, "Nothing older than this?" To the first question his assistants were able to give an affirmative response, duly indicated on the manuscript. Some questions could not be answered. Shafirov asked whether the Swedish refusal to Tsar Mikhail Fedorovich's demand for the return of seized lands, "in a letter or orally", could be dated, but the answer could not be found. These queries reinforce the impression gained from the printed text that Shafirov relied extensively upon archival sources for his data on State practice.

Some of the marginalia and corrections on the manuscript are of interest. The author's decision to substitute the term *законные* for *правовые* when speaking of "just" or "lawful" reasons for going to war is recorded on folio 6. The headings of Sections II and III of the published *Discourse* are merged together as one on folio 4, further suggesting that the third section had not been completed at this time. The date of the Russo-Swedish treaty of 1616 was given incorrectly in the manuscript by one hundred

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[1] The text of Saltykov's draft is published in N. Pavlov-Sil'vanskii, *Проекты реформ в записках современников Петра Великого* [Draft Reforms in the Memoranda of Contemporaries of Peter the Great] (1897), II, p. 6.

[2] TsGADA, fond 96, opis' 1, delo 16, 97 folios. *Сношения России с Швецией*. The manuscript is entitled as follows: *1700 года. Разсуждение о причинах, котя Гдрь Петрь I имел объявить Шведам войны – Сочиненное и писанное П. Шафировым*.

years on folio 28; the error was not detected here, although the date is correct in the printed version. Also, the bracketed synonyms present in the printed editions for certain expressions are not present in the manuscript.

According to a notation that appears on folio 94, on 22 March 1718 – after the first printed edition was released – Secretary Mikhail Larionov was given a "promemorial" to continue to search for necessary documents and instructed to send those found to St. Petersburg. This would indicate that the materials continued to have value for forthcoming peace negotiations with Sweden.

It is generally acknowledged that the Tsar not only commissioned and encouraged Shafirov to prepare his *Discourse* but that he also had some direct hand in writing the text. Pekarskii was of the view that "many places of the book were written by the sovereign himself; the conclusion (from the words 'And thus gentle Reader...') all belongs to his pen up to the end".[1] Ustrialov was rather more cautious. He indicated that Peter wrote most, but not all, of the "Conclusion" and perhaps contributed very slight modifications to the text, although none are specifically mentioned.[2]

Of particular interest in Peter's contribution was his insistence upon Russia's changed status in the international community. He curtly dismissed the notion that Sweden might have a claim to territories so long in its possession: "…there is no comparison to be made between those times and conjunctures and the present". He quoted Pufendorf, Thuanus, and Loccenius to illustrate the hostile manner in which Swedish policy had endeavored to contain Russian ambitions. According to one Russian historian, these were the first examples in Russian historiography of citations to literary sources.[3]

Although Peter did not give complete citations to the editions which he consulted – an omission that caused, as we shall see, some difficulty to those who translated the *Discourse* – it has been possible to identify those he used. Pufendorf is referred to only in passing. Peter had commissioned G. Buzhinskii to prepare a Russian translation of *Introductio ad Historiam Europaeum* from the 1704 Frankfurt edition. Buzhinskii had deleted the chapter relating to Russia because some of Pufendorf's unflattering comments were considered offensive. Peter ordered the chapter restored in unexpurgated form and prescribed the entire book as compulsory reading for his son and heir. Buzhinskii's translation was published at St. Petersburg in 1718;[4] Peter must have had access either

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1 Pekarskii, *Наука и литература*, note 65 above, I, p. 393.

2 See N.G. Ustrialov, *История царствования Петра Великого* [History of the Reign of Peter the Great] (1858), I, pp. 325–328. Ustrialov reproduced the "conclusion" from the *Discourse* as Annex IV of his work under the heading: "Personal Writings of Peter Placed in Shafirov's Discourse". For archival evidence that Peter also edited other portions of the *Discourse* and on the role played by this book in Russian diplomacy, see S.A. Feigina, *Аландский конгресс* [The Aaland Congress] (1959), pp. 21, 85.

3 P.P. Epifanova, «'Разсуждение' П.П. Шафирова о войне со Швецией» [The 'Discourse' of P.P. Shafirov on the War with Sweden], in *Проблемы общественно-политической истории России и славянских стран; сборник статей к 70-летию академика М.Н. Тихомирова* (1963), pp. 296–303.

4 Bykova and Gurevich, *Описание изданий гражданской печати*, note 69 above, p. 246.

to the manuscript of the Russian translation or to a Latin edition when he penned the Conclusion for the *Discourse*.

The quotations and references to Loccenius are taken respectively from *Jure Maritimo & Navali*[1] and *Rerum Svecicarum Historia*[2] and to Thuanus (or de Thou) from the 1624 Frankfurt edition of his *Historiarum sui temporis*.[3]

There has been no little confusion over the number of Russian editions of Shafirov's *Discourse*. There are in fact three editions, though Pekarskii,[4] Sopikov,[5] Petrov,[6] and Bitovt[7] identified only two. Their information has continued to mislead both western[8] and Russian[9] scholars.

The first edition was a small folio published at St. Petersburg in 1717. Collations vary, but the most common appears to be: tp + 10 + [ii] + 128 pp. In some copies the "dedication" – Shafirov's panegyric to Peter - is bound in after the introduction.[10]

The second edition is a small volume, bibliographies differing as to whether it is quarto or sextodecimo, consisting of: [iv] (tp) + 34 + [viii] + 449 + [i] pp. The contents of the volume are identical to the 1717 edition, except that Shafirov's bracketed marginal annotations in the first edition are placed directly into the text of the second edition as a result of the smaller format. In attributing the second edition to 1717, the text of the title pages of the first and second editions being identical, the aforementioned bibliographers overlooked the colophon at the end of the text: "Printed at Moscow, 1719/summer, in the month of July".

The third edition, printed at St. Petersburg in 1722, is of yet another format: a sextodecimo (or quarto) volume consisting of: [iv] (tp) + 38 + 360 pp. Some 20,000

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1 J. Loccenius, *Jure Maritimo & Navali: Libri tres*. (2d rev. ed.; 1652), p. 16.

2 J. Loccenius, *Rerum Svecicarum Historia A Rege Berone tertio usque ad Ericum decimum quartum deducta, & pluribus locis, quam antehac, auctior edita*. (1654.) The material cited by Peter appears in Book V, pp. 333–334.

3 J.-A. de Thou, *Historiarum sui temporis* (1624). The materials mentioned by Peter appear respectively in Book XXXVI, p. 309, and Book LI, pp. 1009–1010.

4 Pekarskii, *Наука и литература*, note 65 above, II, p. 585.

5 V.S. Sopikov, *Опыть российской библиографии*, edited by V.N. Rogozhin. (2d ed.; 1904), IV, p. 188. No. 9582.

6 A.V. Petrov, *Собрание книг, изданных в царствование Петра Великого* (2d ed.; 1913).

7 Iu.Iu. Bitovt, *Редкие русские книги и летучие издания XVIII века* [Rare Russian Books and Ephemeral Publications of the XVIII Century] (1905).

8 T. Fessenko (comp.), *Eighteenth-Century Russian Publications in the Library of Congress: A Catalogue* (1961), p. 116.

9 See E. Tarle, *Северная война и шведское нашествие на Россию* [The Northern War and Swedish Attack on Russia] (1958), p. 472, who in calling attention to the importance of Shafirov's *Discourse* cites the 1722 edition as the second. Also Feigina, *Аландский конгресс*, p. 523.

10 Data on all three editions is based upon Bykova and Gurevich, *Описание изданий гражданской печати*, note 69 above, pp. 219–220, 265, 398–399.

copies were printed from different type-settings and sometimes even with different decorative ornament.[1] The unusual nature of this undertaking may be judged from the fact that a normal printing for a book published in Petrine Moscow or Petersburg was 200–300 copies.[2] Bykova and Gurevich identified three variants of the 1722 edition. Observing that all three sometimes appear in the same volume, they have concluded that all of the sheets were printed first and then mixed together during the binding process.[3] Their view would seem to be borne out by Pekarskii's finding that the 1722 edition was printed simultaneously on five presses and required eight months to complete.[4] According to Luppov, the cost of production per volume was 24 kopecks.

The decision to print such an extraordinary number of copies is certainly a curious one. The conclusion of the Nystadt Peace in 1721 ending the Northern War would seem to have terminated any need to justify the enterprise to the Russian people. Peter nonetheless was determined that every province of the Empire should own a copy. In 1721 the Tsar sent a copy of the *Discourse* and Pufendorf's history to Revel.[5]

In December 1722 he ordered the intended price of the book reduced nearly forty per cent, from 16 *altyn*, 4 *den'gi* to 10 *altyn*. Whether by reason of waning interest or otherwise, the mass distribution never took place. Sopikov recorded that only fifty copies were sold between 1722 and 1725.[6] From 1739 to 1741 twenty-five copies were sold; among the purchasers were a military officer, a copyist, a Synod official, and several merchants.[7] In 1756 the printing house still had 16,000 copies on hand. Pekarskii reported in the mid-nineteenth century that the book could be acquired readily for twenty kopecks.

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1 A.V. Gavrilov, *Очерки истории С.-Петербургской синодальной типографии* [Essays on the History of the St. Petersburg Synod Printing House] (1911), I. p. 147.

2 Bykova and Gurevich, *Описание изданий гражданской печати*, note 69 above, p. 529.

3 *Ibid*., p. 398.

4 Pekarskii, *Наука и литература*, note 65 above, II, p. 585.

5 Maikova, in note 2 above, p. 103, citing TsGADA, Kabinet Petra Velikogo, otd. II, kn. 61, folio 65; kn. 57, folio 921.

6 Sopikov, *Опыть российской библиографии*, note 82 above, IV, p. 188. Reports of a manuscript copy of Shafirov's *Discourse* dating from the mid-eighteenth century had led Pekarskii, among others, to speculate that printed copies were becoming difficult to obtain, a rather unlikely situation given the large warehouse inventories. It is probable that Pekarskii was referring to a manuscript which came to the Manuscript Division of the Library of the USSR Academy of Sciences (Leningrad) from the private collection of Academician A.A. Ukhtolskii about 1940. The manuscript contained the text of other Petrine works as well. The full text of the *Discourse* is reproduced, obviously copied from a printed edition, but the appendixes were omitted. Delicate marginal illustrations appeared on folios 73, 81, 96, and 98; that on folio 96 is accompanied by the words: "Picard; Aleksei Polozov". Minor notations explaining passages in the text are found on folios 84, 104 and 109. Bound in contemporary calf, the manuscript records on the inside front cover the births of Tatiana, Aleksei, Petr, Anna, and Ekaterina Genadevna. Without doubt, the manuscript was prepared especially for, or as part of, the education of these children and does not reflect in any way on the availability of printed versions. See Manuscript Division, Russian Academy of Sciences Library, T. p. 328, folios 73–109.

7 See Luppov, note 67 above, pp. 152, 155–156, 160, 168. The *Discourse* was recorded in the private libraries of A.P. Volynskii, Feofilakt Lapotinskii, G. Dashkov, and the Slavonic-Greek-Latin Academy Library. *Ibid*., pp. 272, 286, 319.

The New York Public Library owns a copy of the first and second editions;[1] the Library of Congress, the University of Wisconsin (Madison), and Harvard University, the third edition, though the latter's copy is imperfect. There is a copy of the third edition in The Butler Collection. One copy, from the Krasinski Collection, is held by the National Library in Warsaw.[2]

Although the *Discourse* was published abroad in German and English translations, very probably upon the express commission of the Russian Government, the conclusion that "the translation of Shafirov's book into German received fame in western Europe"[3] appears to be quite unwarranted. The German edition is of greater rarity than the Russian versions and of uncertain provenance, whereas the English translation lay unidentified and unnoticed by bibliographers and scholars for two and a half centuries after its initial publication as an appendix to Weber's *The Present State of Russia*. The Russian edition received passing notice in a *Ведомости* published in July 1719, but this can hardly be regarded as notoriety.[4]

The German translation must have been published abroad[5] sometime between 1718 and 1721. Contrary to Pekarskii's view, it is not "word for word according to the Russian edition", although the translation follows the original with great fidelity. Minor divergences that do occur appear to be deliberate rather than accidental or careless. The book was published in quarto, without an indication of either the place or date of printing, under the full title of the original.[6] It consists of: tp + [ii] + 3-40 (dedication) + 245 + [i] (errata) pp. The translator is unknown.

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[1] See E. Kasinec, "Eighteenth-Century Russian Publications in the New York Public Library: A Preliminary Catalogue", *Bulletin of the New York Public Library*, LXXIII (1969), 599–614. See items 125 and 126.

[2] See Ia. Dembskii, «Издания петровского времени в библиотеках Польши» [Publications of the Petrine Period in Libraries of Poland], in *XVIII век: проблемы литературного развития в России первой трети XVIII века* (1974), IX, pp. 317–321.

[3] L.V. Cherepnin, *Русская историография до XIX века* [Russian Historiography Up to the XIX Century] (1957), p. 247.

[4] *Ведомости*, no. 2 (1719), which referred to the *Discourse* without acknowledging authorship or date of publication. Some variants of this issue give a longer account than others, emphasizing Swedish atrocities during the war. See *Ведомости времени Петра Великого. Вып. II, 1708–1719 гг. в память двухстолетия первой русской газеты* (1906), p. 259, reprinted in 1970 by Brucken-Verlag.

[5] This conclusion is based upon an evaluation of the typeface, paper, and other external features of the copies which I examined at the Russian National Library and the Library of the Russian Academy of Sciences in St. Petersburg. I am much reassured by the fact that T. A. Bykova and A. L. Goldberg, leading specialists in Petrine books and Russica at the Russian National Library, shared this view. They believed that the German edition probably was printed in Holland or northern Germany. I have been unable to locate copies of the German translation either in European collections or in Moscow. Tereshchenko's statement that the German translation was printed in Petersburg is presumably in error. Tereshchenko, *Опыть обозрения жизни сановников*, note 20 above, III, p. 46.

[6] *Raisonnement, Was für Rechtmassige Ursachen Se. Czaarische Majest. Petrus der Erste... gehabt den Krieg wieder den Konig in Schweden Carolum den XIIten, Ao Christi 1700 anzufangen...* n.p., n.d. For a full text of the title page, see R. Minzloff, *Pierre le Grand dans la litterature étrangere* (1872), pp. 349–350; also Bibliotheque Imperiale Publique de St.-Petersbourg, *Catalogue de la Section des Russica* (1873), I, no. 459.

The year 1718 is the earliest probable date of publication for the German version, given the time-consuming tasks of preparing the translation, obviously done with great care, of sending it abroad for printing, and of arranging for a typographer. The fact that the English version appeared in 1722 and was translated from the German text would suggest the latter must have been available at least by 1721. Conceivably, the German edition might have been ready as early as 1717, when Peter journeyed to Paris and Amsterdam; its appearance most assuredly would have augmented his successful solicitation of continental support for his cause. But no hard evidence has been found to substantiate such speculation.

The decision to publish an English translation of Shafirov's *Discourse* in 1722, after the Northern War had ended, is as curious as Peter's determination that same year to disseminate 20,000 copies in Russia itself. The continuing need to assuage anti-Russian sentiment amongst the British public, which had become especially intense in 1716 following the quartering of a large Russian force in Mecklenberg and had produced a spate of anti-Russian pamphleteering, is perhaps the most logical explanation. Fear of Russian interference in England's peaceful enjoyment of Bremen and Verden ceded to George I under a Swedish-Hanoverian Treaty of 1719 was fanned by pro-Swedish elements in England. There also was doubt about Russian attitudes toward the Jacobites and concern over reports of growing Russian naval power: "...the official British attitude to Russia in the last years of Peter's life was one of consistent hostility".[1] These fears and suspicions were shared by a public opinion alarmed by news reports of Russian military successes against Sweden. Viewed in this context, Shafirov's explication of Russian policy in the Northern War could still have had a beneficent effect upon an English reading public.

THE ROLE OF FRIEDRICH CHRISTIAN WEBER

But the appearance of the *Discourse* in London occurred in the context of a larger and historically more important publishing event, a translation of F.C. Weber's *Das veranderte Russland*. Weber's diplomatic career as the Hanoverian Resident at the Russian Court and his subsequent literary endeavors are so closely linked to Shafirov at key junctures that we must pause to consider his influence upon, if not his actual role in, the English edition of the *Discourse*.

Though widely praised to this day as "...one of the most perceptive studies of Russia ever made...,"[2] its author remains an enigma. When and where he was born or died is unknown (16?-not later than 1781), and we know little of his activities preceding

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[1] M.S. Anderson, *Britain's Discovery of Russia 1553–1815* (1958), p. 72. For the most detailed and considered survey of British reactions to Peter the Great, see A. G. Cross, *Peter the Great Through British Eyes* (2000), pp. 40–59.

[2] Anderson, "English Views of Russia in the Age of Peter the Great", *American Slavic and East European Review*, XIII (1954), 211. Also see Cross, note 81 above: "...truly informative on a wide range of matters Russian which had previously been barely and always inadequately treated in English..." (pp. 57–58).

or following his Russian assignment. His achievements as a diplomat were in no way remarkable: he was not involved in concluding important international treaties nor was he close to the Tsar. He was, however, known to Shafirov and had close connections with the Hanoverian King of England, George I, to whom he reported directly through a privy councilor, Jean de Rothebon.

Weber arrived in Petersburg on 19 February (2 March) 1714.[1] Following the accession of the Elector of Hanover, George I, to the English throne in September of that year, Weber also assisted in representing the interests of the English Court in Russia. He remained there until early 1717, when he returned to Europe for further instructions, being present in London during part of August 1717.

Weber's ambiguous diplomatic status during his first Russian sojourn figured in a minor dispute with the Russian authorities. The dispute arose out of gambling debts incurred by Weber's brother, E.G. Weber, who had accompanied him to Petersburg. Weber first learned of the debts on the eve of his departure for home. Several creditors were paid promptly, but others accused Weber's brother of running away and were successful in having the latter arrested en route to Hanover. Protesting that the arrest was in derogation of the law of nations, Weber maintained that his brother was a member of an ambassadorial suite and that Weber, as a diplomat, had the right to invoke the rules relating in general to diplomats under similar circumstances. With regard to his own status, Weber said:

> Quoique je n'ai pas un caractere, je n'en dois pas moins jouir du droit des gens: inviolabilitatis et privilegiae a foro principis ad quem, etant alle aupres de S. M. Cz-ne avec lettres de creance.[2]

The ultimate outcome of the incident is unknown. It was unpleasant for Weber, who came away with a low opinion of Russia's regard for international law. E. G. Weber evidently returned, for in F.C. Weber's absence he wrote a letter on the latter's behalf dated 14 March 1718.

F.C. Weber had returned to Petersburg in late 1717 and remained there until October 1719. This time there was to be no confusion over his diplomatic rank. He was granted a daily maintenance allowance and the prospect, depending upon his reception, of being given the rank of "Resident".[3] This title was duly conferred early in 1718.

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1 On Weber's life and career, see A. Brikner, «Х.Р.-Фр. Вебер (Материалы для источниковедения истории Петра Великого», [Ch. R.-Fr. Weber (Materials for Sources of the History of Peter the Great], *Журнал Министерства народного просвещения*, CCXIII (1881), 45–78, 179–221; and the entries under Weber, F.C., by Andreevskii in *Энциклопедический словарь* (1891), V, p. 687; and in *Grosses Universisal Lexikon der Wissenschaften und Kunste* (1747), LIII, pp. 894–895.

2 E. Herrmann (ed.), *Zeitgenossische Berichte zur Geschichte Russlands* (1880), II, p. 87.

3 A "file on the arrival in Moscow of Friedrich Weber" was lent by a Russian institution to an historical exhibition at the Victoria and Albert Museum in the Spring of 1967. Unfortunately, the item was uncatalogued, and there is no indication of whether it appertained to his first or second trip to Russia. See *Solanus*, no. 2 (1967), p. 17.

He had some correspondence and frequent contact with Shafirov in 1718 over the possibility of a separate peace with Sweden and presumably became acquainted with the substance of Shafirov's *Discourse* at this time, if not earlier.[1] Weber's principal, if not exclusive correspondent, in London was Jean de Robethon (16?–1722), Secretary and Minister of State to George I of England in his capacity as Elector of Hanover.

Robethon is described as a Huguenot refugee of humble origin who came to England *ca*. 1689 and, after serving William III for several years, became attached to George I before his accession to the English throne. Robethon assisted Marlborough in sundry intrigues to neutralize Charles XII, which alone would have given him sufficient interest to follow events in St. Petersburg closely. He accompanied George I to England in 1715 as a "domestic secretary and privy counselor".[2] While Weber was in St. Petersburg from 1717 to 1719, they corresponded frequently. Weber actually gave George I a second perspective on Russian affairs, supplementing whatever English diplomats themselves wrote directly. A bound volume of Weber's correspondence was sold at Sotheby's on 4-5 June 1973 and acquired by the Bodleian Library, Oxford. In letters dated between 10 January and 15 July 1718 Weber refers to meetings, conversations, and gossip regarding Shafirov on a number of occasions, mostly with reference to Danish and Swedish affairs. Weber was instructed to gain the ear of Shafirov and authorized to make a gift of 30,000 "escus" to this end.

Upon returning home to Hanover, Weber devoted himself to literary pursuits. There is some speculation that he may have made a third trip to Russia, perhaps in the 1720s,[3] but no documentary evidence has been found.

Weber's account of Petrine Russia was published in three volumes which appeared respectively in 1721, 1739, and 1740. Volume one was issued anonymously in four German editions (1721 and 1729 in Hanover; 1738 and 1744 in Frankfurt and Leipzig). In addition to the English edition of 1723, French translations were printed at La Haye (two versions in 1725 and another in 1737), Paris (1725), and Amsterdam (1725).[4]

Without doubt the most penetrating and impartial account of Russia available at the time, Weber's book contained authoritative data upon the Petrine reforms, serfdom, religious life and politics, government administration, law reform, military affairs, and

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[1] Weber mentioned Shafirov's *Discourse* in connection with a Russian offensive of March 1719. It is interesting that he did not connect the book with Peter's earlier diplomatic initiatives in Europe. See [F.C. Weber], *The Present State of Russia*, pp. 256–257.

[2] *Dictionary of National Biography*, XLVIII, 432–433.

[3] See A.G. Cross, *Russia Under Western Eyes: 1517–1825* (1971), p. 384. Also see P.P. Barsov, «Записки Вебера о Петре Великом и его преобразованиях...» [Notes of Weber on Peter the Great and His Transformations], *Русский архив*, X (1872), 1058.

[4] For translations of Weber's work, see Minzloff, *Pierre le Grand dans la litterature étrangere*, pp. 349-350; A.L. Gol'dberg (comp.) *Дореволюционные издания по истории СССР в иностранном фонде государственной публичной библиотеке имени Салтыкова-Щедрина; систематическии указатель*. A.S. Mylnikov (ed.). (1964–66.) 2 vols; D.S. von Mohrenschlidt, *Russia in the Intellectual Life of Eighteenth-Century France* (1936), pp. 185–186. Reviews of Weber appeared in *Journal des savants*, LXXVII (September 1725) and *Memoires de Trevoux* (September 1725).

foreign relations up to 1720.[1] Volume two treated the last years of Peter's reign, and Volume three, the period 1725 to 1730, though neither possessed the freshness of the first.

Weber clearly drew upon Shafirov's *Discourse* in writing about Russo-Swedish relations, just as he did upon other relations of Russia available to him. What is remarkable, however, is the fact that only the English edition of Weber's book appended the text of the *Discourse* even though the French and Dutch editions contained the other appendices found in the London edition.

Indeed, the English edition is not without its mysteries. Weber is quoted as having ascertained that "English State people" had not been opposed to the appearance of his first volume in 1721,[2] implying that he had sought clearance to publish his memoirs. As for the English translator, we know only what he reveals of himself in the translator's preface to *The Present State of Russia*; to wit, that he had intended to write an introductory history of Russia and "...had made some Progress in it, when this book was published in Germany", that he was in close contact with Weber while translating it ("I undertook the translation of it with the author's knowledge and consulted him about several difficulties"), that he inserted materials into the text taken from "extracts of letters written by the author when in Russia, that were communicated to me by a Person of Honour", and that he did not know Russian ("...thinking it presumptuous to do anything by guess [e.g. orthography] in a language to which I am a stranger").

With regard to Shafirov's work the translator comments: "The Discourse, concerning the War between Russia and Sweden, was at first intended to be inserted by our Author [e.g. Weber], but as the translating of it from the Russian would have retarded the publishing of his book, he left it out. It has since been printed in High-Dutch, and I have joined it to the Swedish Deduction to which it refers, though I was obliged to retrench the long Preface and the Historical Documents belonging to it, for fear of swelling the Bulk of that Volume too much".[3] The German translation of Shafirov's *Discourse* very possibly was supplied to him by Weber.

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[1] But not, of course, wholly accurate. Russian bibliographers have pointed out recently that Weber's account of the Courland library being moved to Petersburg is in error, both as to the time of transfer and the quantity of books. The issue is of considerable importance for the proper identification of the provenance of the Academy of Sciences Library. See N.Iu. Bubnov, «К вопросу о первоначальных фондах библиотеки академии наук» [On the Question of the Initial Funds of the Library of the Academy of Sciences], in *Сборник статей и материалов библиотеки АН СССР по книговедению* (1970), II, pp. 132–133. Bubnov commented on discrepancies in statements of fact between the German and French versions of Weber's book. Are these liberties taken by translators, or is the author collaborating in and correcting the foreign translations of his work?

[2] See Brikner, note 103 above.

[3] See [Weber], *The Present State of Russia*, pp. A3-A4. It is not wholly clear that the *Discourse* was directed against a particular Swedish pamphlet. The Swedes had been active throughout the war in publicizing their views. Among the early ventures in Swedish pamphleteering were several by O. Hermelin: *Examen causarum, quas copiarum Saxonicarum, uti vocatur, dux improvisae et subdolae in Livoniam irruptioni praetoxere, litorisque suis divulgare voluit* (n.p. 1700). 80 p. (also published in German, Swedish, and Dutch translations); *Veritas a calumnis vindicata seu ex parte... Regiae Majestatis Sveciao... responsum, quo nefandae artis et calumniae Regis Poloniae... manifestentur* (n.p., 1700). 188 p. (also published in German); *Discussio criminationum quibus usus est Moscorum Czarus cum bello Suecio... quaererat* (1700). Two German editions appeared in 1701.

The English text is not, therefore, a direct translation from the Russian original, but from the German version commissioned by the Tsar and printed abroad. It nonetheless is a faithful rendering of the original Russian version. In those cases where there are textual discrepancies between the English and Russian versions, the change usually was made in the German version and followed by the English translator.

For example, whereas the Russian edition indicated that Pufendorf's history had been translated into the Russian language and that the city of Lubeck had proscribed trade with Russia in 1533, the German and English versions both respectively deleted the former reference and attributed the latter event to the year 1532. The major discrepancies amongst the three texts arise in respect of Peter's citations to literary sources. The page and volume numbers supplied by Peter enable us to identify with certainty the edition of the respective works which he used, but these were not available to the translators. Accordingly, the German translator used another "Frankfurt edition" of Thuanus, giving page numbers which differed from those in the Russian edition of the *Discourse*. Thereafter, the German translator referred to the aforesaid author and the relevant page number, a less detailed citation in each case than Peter had given. That the German translator verified the original text of Peter's references is further evidence of the great care he expended upon his commission. It also is additional circumstantial support for the theory that the German language edition of the *Discourse* was translated and printed abroad. The English translator merely referred to the chapter numbers of Thuanus, omitting page and edition; he in all probability was content to translate from the German and not the Latin.

The German translator confronted a similar problem with Loccenius' history of Sweden. He cited, as did the English version, a "first edition" published at Uppsala, which only can be the 1662 edition. Peter referred to the "second edition printed at Stockholm", which only can be the 1654 edition, the pagination also corresponding. Thus, the German translator used not the first edition of Loccenius, but the first to be published at Uppsala.

Certain errors of fact in the Russian edition were corrected by the German translator. The Russian edition declared that Muscovy did not deign to correspond directly with the Kings of Sweden before 1687, whereas in the German and English editions the date was given as 1564. Similarly, in the German and English versions the date of the Russo-Swedish treaty of 1609 was given precisely as 28 February 1609, whereas the Russian edition gave the date in traditional form as "summer 1609". The date of the battle of Narva also was modified from 1699 to 1700.

The most significant digression, however, was the transposition of several paragraphs of Peter's conclusion in the German version. In giving a chronology of Russo-Swedish relations in the sixteenth century, Peter mentioned events of the year 1558 before those of 1556. The German translator merely rearranged the appropriate paragraphs, and the English edition naturally followed suit.

The English version unaccountably omitted the name of the Governor of Novgorod, Prince Mikhail Glinsky, who was mentioned in the Russian and German editions.

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It is perhaps fitting, given the rudimentary state of our knowledge about Russian approaches to international law, that this study should raise so many new issues in its attempt to dispose of old ones with regard to Shafirov's *Discourse*. Answers doubtless will be forthcoming as scholars continue to sift through the rich archival stores of St. Petersburg and Moscow, and the identity of Weber's English correspondent-translator uncovered as investigations of Russo-European relations progress.

Although the *Discourse* must be regarded as a landmark in Russian international legal history, it was an isolated and lonely monument, not emulated by another Russian work of comparable scope or originality for many decades. With the founding of Moscow University in the mid-eighteenth century, adherents of natural law doctrines began to propagate views which touched incidentally upon the law of nations. But not until the early nineteenth century did unofficial, academic writing on international law in Russia commence in earnest.

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THE FORMATION AND DEVELOPMENT OF RUSSIAN LEGAL SCIENCE OF PRIVATE INTERNATIONAL LAW AT THE BEGINNING OF THE 20TH CENTURY

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Abstract: The article is devoted to the development of Russian legal science of private international law. The author describes the characteristic features of private international law in Russia and gives a summary of the views and works of the most outstanding scholars in this sphere: Petr Kazansky, Aleksandr Pilenko, Boris Nolde, Mikhail Brun, Andrei Mandelstam, Vladimir Grabar and others. The 20th century is recognized as the golden age and the period of tremendous growth of the national legal science of private international law, when Russia entered into capitalist economic relations and experienced the development of international trade and the introduction of foreign capital into the domestic economy. All these occurrences needed to be adequately fixed by law. As a result, the terminology, conceptual framework and methodology of Russian legal science of private international law were formed during this period; the nature of norms in this sphere of law was debated; and Russian legal science of private international law was finally distinguished as an independent branch of law.

Keywords: Russian legal science, private international law, conflict of laws, Kazansky, Pilenko, Nolde, Brun, Mandelstam, Grabar.

The beginning of the 20th century can be called the period of the rapid development of Russian national legal science of private international law. The realities and daily

living needs in Russia at that time included the country's accession to the epoch of the high development of capitalist relations with other countries, the intensive progress of Russian foreign trade and the active penetration of foreign capital into Russia – all requiring adequate reflection in Russian law and which, accordingly, moved Russian jurisprudence to the comprehension of the phenomena of the time.[1]

This motivated many famous Russian legal theorists to pay attention to researching and solving problems relating to private international law. There are many magazine and newspaper articles on private international law which appear in that period of time. These works were published in the pages of the *Herald of the Civil Law*, *Journal of Civil and Criminal Law*, *Journal of the Ministry of Justice*, *Journal of the Law Society* and in the newspapers *Law*, *Legal Vjesnik* and others.

Many works by Russian legal scientists on private international law were published in foreign languages abroad, including many individual monographs on the subject.

Disciples of Professor F.F. Martens had a great impact on the development of the Russian domestic legal science of private international law, among them A.A. Pilenko, L.A. Shalland, B.E. Nolde and A.N. Mandelstam, all active in this field at that time.

The works of M.Y. Pergament, M. Mysh, I. Gessen, T.M. Yablochkov, Barac and Gussakovsky also stand out.[2]

The chief characteristic of the legal science of private international law in Russia was to include the guidance and study of international common law and the writings on private international law by such Russian authors as M.N. Kapustin and O.O. Eyhelman,[3] the works of V.A. Ulyanickiy and the Russian edition of *International Law in Systematic Presentation* by the famous German legal scientist Franz List (1902, and subsequent reissues under the editorship of Professor V.Je. Grabar[4]).

As a result, Russian national legal science of private international law at the beginning of the 20th century dynamically involved the process of understanding Russian realities at both a sufficiently high theoretical level and an applied level. Legal theorist and public figure, international law professor at Novorossiysk University, P.E. Kazansky was one of the greatest researchers of private international law issues in Russia at the end of the 19th century and the beginning of the 20th century, and who offered his own, quite original vision of private international law issues.

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1 See more in detail Grabar V.Je. *Materialy k istorii literatury mezhdunarodnogo prava v Rossii* [Materials to the history of the literature of international law in Russia]. M.: Izd-vo AN SSSR, 1958. p. 463–472; Lunc L.A. *Mezhdunarodnoe chastnoe pravo* [Private international law]. M.: Jurid. literatura, 1970. p. 122; *Mezhdunarodnoe chastnoye pravo: sovremenniye problemy* [Private international law: contemporary problems] / Ed. M.M. Boguslavsky, M., 1994. p. 46–47.

2 See more in detail Grabar V.Je. *Materialy k istorii literatury mezhdunarodnogo prava v Rossii* [Materials to the history of the literature of international law in Russia]. M., 1958. p. 463–472.

3 Eyhelman O.O. *Vvedeniye v sistemu mezdunarodnogo prava* [Introduction to the system of international law]. Kiev., P.I.1887; P.II.1889.

4 See Grabar, Materials, p. 469.

Petr Evgenyevich Kazansky (1866–1947) was a graduate of Moscow University. From 1893 to 1896 he was a member of the International Law Department at Kazan University following which in 1896 he began teaching at Novorossiysk University (Odessa).[1] There, in 1901 his essay *Introduction to a Course on International Law* was published. In this work Kazansky presented his views on private international law.[2]

Kazansky's position consists of including private international law in international common law, and he gives the definition for the latter as, "International law is a set of legal principles, which determine mutual relations of states and international associations and international civil status of some individuals."[3]

Concerning the content of private international law (or international 'civil' law as Kazansky often writes), the scholar includes in his structure not only conflict of norms, but also substantive rules. He notes this at the beginning of his essay where he writes, "Contrary to popular opinion, international civil law is not limited to the resolution of conflicts between the laws of states, but also between individual private acts."[4]

The outstanding feature of Kazansky's conception of the nature and composition of private international law's legal rule is the omission of the international civil proceedings in the structure of private international law. Regarding this he notes, "It is impossible to unite institutes of a different legal nature – civil and public... It is of great dispute to point to the individual as a subject of proceedings."[5]

It is Kazansky's opinion that civil and criminal proceedings are "an integral part of public international law and international civil law is a special part of international law in general".[6]

Kazansky's pronouncements on the question of the sources of private international are very interesting. He did not include the laws of individual countries among the sources of private international law, but he did include international treaties and customs, and he came to the conclusion that on this basis private international law should be relegated to international law, and not to domestic law.[7]

Another of Kazansky's remarks that is worthy of attention is where he writes, "Still very little is known about the nature of private international law. While one may extend its definition too far, another may deny its independent existence."[8]

Kazansky allocates the two main tasks of private international law:

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1 Grabar, Materials, p. 340–342.

2 Kazansky P.E. *Vedeniye v kurs mezdunarodnogo prava* [Introduction to a course on international law], Odessa, 1901.

3 Ibid., p. 57.

4 Ibid., p. 69.

5 Ibid., p. 70.

6 Ibid., p. 72.

7 Ibid.

8 Ibid., p. 73.

First, "to create worldwide civil circulation and grant the protection of fundamental human rights";

Second, in Kazansky's opinion, "International law defines which states' laws should be applied to various relations between people."[1] Following that, he concludes, "It spreads legally binding civil laws from one state to other states."[2]

In this regard, Kazansky sees the main task of private international law in the decision (resolving) of conflict of laws. He thus notes, "Private international law is committed to resolving the issue of law enforcement's conditions by one or another country."[3]

Kazansky's point of view on a 'genetic' relationship between domestic law and private international law is highlighted. The scholar notes the following:

> Private international law obeys domestic [private] law, which is more ancient and developed. It's norms are based on the same basis and establishments, the same system, which were framed by dint of the universalization and adoption of legal acts of individual states by domestic law. Thus, international private, family, property, binding and inheritance civil rights have arisen.[4]

In his essay, Kazansky remarks on the great role of comparative law in the development of private international law and in the formation of the corresponding sense of justice.[5]

Kazansky's views are some of the more essential and important for understanding the story of Russian legal science of private international law, and which he included in *Introduction to a Course on International Law*. This work of his, undoubtedly, became a milestone in the development of Russian legal science of private international law and attracted everyone by its original interpretation of the nature of private international law, its structure, norms and tasks. At the same time this essay became a unique basis for Kazansky's own benefit. Afterwards, on this basis, he built an entire system of international law, developed and substantiated some provisions he had made, and found new ways of international law's progression, which also included the legal science of international law.

Kazansky did not rest on what he had already achieved, he continued his research work in the area of private international law in *Textbook of International Public and Civil Law*, which was the result of his further work, and which was published in 1902. In 1904 this textbook was reissued.[6]

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1 Kazansky, Introduction, p. 271.

2 Ibid.

3 Ibid.

4 Ibid., p. 272.

5 Ibid., p. 275.

6 Kazansky P.E. *Uchebnik mezdunarodnogo prava publichnogo i grazdanskogo* [Textbook of international public and civil law], Odessa, 1904.

In his new work Kazansky included private international law together with public international law in a special part.

In an essay on private international law, there are two chapters: Chapter I "General principles" (§ 96. Definition and legal nature of international civil law; § 98. Conflict of laws); Chapter II. "Separate establishment" (§ 99. Private law; § 100. Family law; § 101. Property law; § 102. Liability law; § 103. Inheritance law). Thus Kazansky offered a complete and integral system of private international law.

Kazansky gave his own definition of international common law. He wrote, "International law is a set of legal rules, which define the structure and governance of international communication and civil rights of foreigners ... International law is a public and civil order of a special part of life, which is international."[1]

In his textbook Kazansky considers in detail issues of international civil proceedings, and he derives it from the structure of private international law and gives it a separate chapter in the work (§ 93). In this chapter the author presents a set of interesting provisions, which is about the procedural status of individuals, legal entities and states, and he views questions of jurisdictional immunity, recognition and execution of foreign court decisions.[2]

Kazansky offered his own conception of understanding private international law. In his work, the scholar gives a definition of national civil relationships and considers that "such relationships should be defined by the side ... of the state".[3] Kazansky notes:

> Another relation of individuals, and exactly: relations about things, which is the same or different states between persons of different citizenship, who live in the same or different states and relationships between individuals of the same citizenship, who lived abroad or in the different states or about things found there – there are relations of international civil turnover.[4]

Thus, Kazansky describes in detail the content of private international law, highlights all kinds of relations with the so-called 'foreign element'.

From our point of view, Kazansky made an interesting remark when he considers, "General characteristic of all international civil turnover's events is entering into relations, which are complicated by the events of the legal life of a foreign state and which are implemented by a particular person."[5]

Kazansky defines private international law as "basic, which determines civil human rights in international relations or civil rights of a foreigner, which is the same

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1 Kazansky, Textbook.

2 Ibid., p. 476–480.

3 Ibid., p. 495.

4 Ibid., p. 496.

5 Ibid.

thing".[1] Therefore, he proceeded from a broad understanding of an international legal nature, and structure of the norms of private international law.

In his *Textbook of International Public and Civil Law* Kazansky repeats his thoughts about the two aims of private international law, speaking about the first one as a guarantee for each person of a certain complex of rights.

The author repeats his already mentioned thought that the main aim of private international law is resolving conflicts between the legislation of different countries.

At the same time, Kazansky does not restrict private international law within only interstate law, but also includes "private, particular *principium*". According to this state, one must pay particular attention to the following thoughts of this legal scientist.

Kazansky points out that there is a reason to presume that in the future private international law will define in detail the solution instead of pointing out which county's law must be used in any particular situation.[2]

Kazansky minutely contemplates the positions of theories concerning private international law and its place in a law system and delivers his opinion about this issue. He writes that international civil law and public international law are included as parts in a more spacious concept of international law, as Russian civil law and public law are comprised in the notion of law of the Russian empire.[3]

Kazansky notes that the origins, including international agreements and customs, of international civil law are of great importance for understanding its nature. Legal scientists think of international law as of undoubtedly a private nature, but at the same time as of an international nature as well.[4]

Kazansky recognizes a difference between private *international* law ('outer' civil law) and ('inner', i.e. *national*) civil law. He describes his original view of this difference where he writes that "those enactments, which are concerned particularly with international civil relations, are the closest ones to private international law. These rules form the 'outer civil law' of countries. It presents an illegal creation of judicial life, because it interferes in the sphere of international law. It is caused by the fact that private international law is not developed enough."[5]

In spite of this fact, Kazansky projects the codification and progressive development of international civil law in his work. He remarks about this: "Signing contracts of more or less common meaning and wide content, as it is possible nowadays, could have eliminated many various incertitudes in international relations concerning not only conflict of laws but also basic human rights."[6]

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1 Kazansky, Textbook, p. 498.

2 Ibid.

3 Ibid., p. 502.

4 Ibid., p. 503.

5 Ibid.

6 Ibid., p. 507.

Kazansky's thoughts on private international law expressed in his fundamental works met with mixed reactions in the legal scientific world. In particular, L.A. Kamarovsky, in his review, wrote that Kazansky's work is too brief, not sufficiently elaborated.[1] In private international law Kamarovsky proposes that Kazansky should include all the studies on human rights in all the international alliances.[2]

Kamarovsky's criticism notwithstanding, Kazansky's impact on the domestic legal science of private international law is immense. Kazansky is thought to be the founder of the concept of the broad international judicial understanding of the nature of private international law, including not only inter-state law, but also materialistic and judicial law. But, in spite of, for example, V.P. Danayevsky, he describes his position in detail and purposely developed it.

Moreover, Kazansky had precisely distinguished the main aims of private international law and had traced the ways of its subsequent development and improvement.

Kazansky's thoughts are bright and vivid, his eloquent language is beautiful and masterful. Without a doubt, in his fundamental works Kazansky defined the future course of development of Russian legal science of private international law.

As already mentioned, one characteristic mark of practically all Russian guidance on general international law is the fact that it includes sections about private international law as well.

In 1902, Professor V.Je. Grabar tried to reissue in Russia the course *International Law in Systematic Presentation* by the famous German international law jurist Franz List. This attempt was extraordinarily successful and was followed by many reissues in Russia.

Following Russian tradition, Professor Grabar had to include in List's course an article about private international law, so he first turned to A.A. Pilenko and then to B.E. Nolde. For the issue of 1917, M.I. Brun also promised to contribute, though he passed away with his work unfinished.[3]

The first essay on private international law was prepared for the issue of List's course by a private docent, and later professor, who headed the Department of International Law at Saint Petersburg State University A.A. Pilenko. This essay was written, as mentioned above, at the request of Professor Grabar for the first Russian issue of List's *International Law in Systematic Presentation*, where it was placed afterwards.[4]

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[1] Kamarovsky L.A. *Rezensiya na "Uchebnik mezdunarodnogo prava publichnogo i grazdanskogo P.E. Kazanskogo"* [Summary for "Textbook of international public and civil law by P.E. Kazansky"] // *Russkaya misl = Russian thought.* 1902. № 12. p. 72–80.

[2] Ibid., p. 79, 80.

[3] More in detail: Grabar V.Je. *Materiali k istorii literaturi mezdunarodnogo prava v Rossii* [Materials to the history of the literature of international law in Russia], M., 1958. p. 469.

[4] Pilenko A.A. *Ocherk mezdunarodnogo chastnogo prava* [Essay on private international law] // List F. *Mezdunarodnoye pravo v sistematicheskom izlozhenii* [International law in systematic presentation] / Ed. by prof. V.Je. Grabar, Yuriev, 1902. p. 371–404.

Aleksandr Alexandrovich Pilenko was one of the most talented students of Professor F.F. Martens. He had a great impact on the legal science of international law.[1]

In *Essay on Private International Law*, Pilenko gives his original understanding of the nature of private international law and examines various theoretical problems.

His *Essay* includes "Entrance", where questions about private international law, public order and judicial qualifications are analyzed, "Historical essay about the development of private international law", "Private authority", "Family law", "Commitment law" and "Real authority", including inheritance.

Pilenko understands private international law as a complex of judicial principles that define to the legislation of which country this particular law relation must be subjected.[2]

Thus, Pilenko includes only interstate norms in private international law, even though afterwards the legal scholar noted, "Distinct enactment of this law is repeatedly called conflict of interstate norms."[3]

"The competency of several national civil systems, so to say, collides", Pilenko noted; and, "Private international law must resolve this conflict by defining the boarders of each system."[4] Pilenko precisely separates collisions into international and inter-regional collisions. He believes that the use of foreign laws in particular cases is an international law duty of governments. The legal scientist proceeds from an international judicial understanding of the nature of the authorities of private international law. Developing his thought, he explains, "Private international law, as any other international law, acts in mutual relations of those states which are practically on the same level of cultural development."[5]

Pilenko is one of the first in Russian domestic legal science of private international law who examines in detail questions about public order and judicial qualifications. His estimations considering these questions feature originality and diversity.

> If, in the interest of international conversation, Russian trials sometimes use foreign laws, this does not mean that they must use any foreign law no matter what content it has. A foreign norm may be admissible *in abstracto,* but a concrete content can be too alien for Russian law-thinking, and so inadmissible for a compulsory implementation by acts of Russian judicial power.[6]

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1 About the scientific works of A.A. Pilenko, see more in detail: Zarubinski G.M., Stravinsky E.N. *K 125-letiyu rozdeniya rossijskogo pravoveda Alezandra Alexsandrovicha Pilenko* [To the 125th anniversary of Russian legist Aleksandr Pilenko] // *Pravovedeniye = Jurisprudence.* 1999. № 2. Starodubtsev G.S. *Mezdunarodno-pravovaya nauka rossijskoj emigratsii (1918–1939)* [International judicial science of Russian emigration]. M., 2000.

2 Pilenko A.A. *Ocherk chastnogo mezdunarodnogo prava* [Essay on private international law] *// List F. Mezdunarodnoye pravo v sistematicheskom izlozhenii* [International law in systematic presentation] / Ed. by prof. V.Je. Grabar, Yuriev, 1902. p. 371.

3 Ibid.

4 Ibid.

5 Ibid., p. 373.

6 Ibid., p. 374.

"It is thought", writes Pilenko further, "that court usage of too alien judicial institutes interrupts the social order of a particular country."[1]

Pilenko fairly notes that it would have been impossible to name all the cases of social order interruption, and that he puts the solution of this problem under the jurisdiction of the court, which proceeds from a concept of a foreign principle in every particular case

"Public order", concludes Pilenko, "is the understanding of those borders, within which between two states conflicting principles could have been thought of; only in the case where this definition cannot be exercised, cultural and judicial identity begins, and, as a result, a peaceful separation of conflicting norms."[2] Speaking about judicial qualifications, Pilenko writes, "In all cases, when the court has to search for a law, which can be used for this particular judicial occasion, it has to make a proper decision about: (1) What judicial relations are taken into consideration and (2) What law points out the proper qualifier."[3]

It is interesting that Pilenko does not consider the question about pursuance of the decisions of foreign courts as part of private international law, considering the fact that it does not have to deal with principles of conflict of laws.[4]

Characterizing the work of Pilenko in total, it is essential to note the originality of decision making in several private international law issues, the use of broad historical and factual materials, the alacrity and immediacy of the presentation.

Pilenko also wrote an expansive monograph about the basic theoretical problems of private international law called *Essays on Systematics of Private International Law*.[5] This work was his doctorate dissertation, approved in 1911; in 1915 the second issue of this book was published.

The work consists of four chapters: "Conflict of laws and *comitas*"; "Conflict of laws and public order"; "Conflict of laws and references"; and "Conflict of laws and the extent of norms".

Pilenko argues that "the systematics of private international law are not in a well-developed condition... At the same time, the system of private international law has to be built according to basic ideas, which are inherent only to conflict of laws."[6]

Elaborating on his idea, Pilenko stresses, "Discontent of nowadays with the private international law system is becoming even worse because of the fact that the science of

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1 Pilenko, Essay, p. 375.

2 Ibid.

3 Ibid., p. 376.

4 Ibid., p. 403.

5 Pilenko A.A. *Ocherki po sistematike chastnogo mezdunarodnogo prava* [Essays on systematics of private international law]. SPb., 1911.

6 Ibid., Entrance.

conflicts, consisting of a huge number of various cases, meets with the definitions that exist near this system, and independently of it these definitions are: reference, public order, *comitas*."[1] Pilenko analyzes the terms *comitas,* public order, extent of law and reference in detail, and considers them in historical evolution.

Concerning questions about *comitas*, Pilenko supposes that the "system of private international law cannot ignore the idea of *comitas.* This idea", in this legal scientist's opinion, "is one of the possible ways to resolve a conflict."[2]

Speaking about public order, Pilenko notes, "Public order is a term of law cognizance of violation which existed previously and had not been noticed at that moment. In all the cases, when a combination like that occurs, we will come sooner or later to the necessity to correct an assumed mistake by applying to public order. This thesis has a universal meaning."[3]

Thus, in Pilenko's opinion, reference is organically connected with territorial conflict norms.

> Only in that case [supposes Pilenko] if we think of our conflict norm as a norm acting positively, which means not only in case of our circumstance law, but in case of any other law, only in this case we will come to the juncture which is called reference... reference is a symptom, signifying that we have admitted absolutization of our conflict norm, absolutization, which does not coincide with the views of another involved in a particular case law.

Professor I. Ivanovsky's review on Pilenko's *Essays*, which was published in the *Ministry of Justice Journal*, is of great interest. Ivanovsky writes, "The research of Professor Pilenko did not give a new individual systematics and even did not show a way to it…"[4] Even though thereinafter the reviewer marks something else:

> There are undoubtedly strong sides. The books of Professor Pilenko signify elaborate research of origins ... High observancy and great dialectics of the author cannot stay unmentioned. One can argue with him, one can not agree with him, but we can not say that he can refresh the discussed question from different angles, he can deepen its research and provoke readers' thoughts... and in the projecting of questions a new fresh thought flow is brought.

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1 Pilenko, Essay.

2 Ibid., p. 57.

3 Ibid., p. 214.

4 Ivanovsky I. *Opyt novih postroyenij v oblasty chastnogo mezdunarodnogo prava* [Experience of new constructions in the sphere of private international law] // Ministry of Justice newspaper. 1911. № 9. p. 309.

One of the greatest researchers into the problematics of private international law at the beginning of the 20th century was a student of the F.F. Martens school, a professor at the Alexandrovsky Lyceum and Saint Petersburg Polytechnic Institute, Boris Emmanuilovich Nolde (1876–1948).[1]

B.E. Nolde is famous for many articles on the subject of private international law and his *Essay on Private International Law* was published in the International Law module of F. List and V.Je. Grabar and used to educate several generations of Russian lawyers.[2] The work was published a second (1909) and third (1912) time in the Russian module edition.[3] An advantage of this work is that Nolde tried to create a set of 'Russian conflict-of-laws rules' and did it at an extremely high level.[4]

The *Essay* by Nolde includes the following eight chapters: Basic concepts; General provisions; Persons; Rights in rem; Contract law; Family rights; Inheritance; Proceedings.

Nolde is one of the first in national legal science of private international law who addressed such issues as choice of forum and law, the structure of conflict-of-laws rules, bill reference, non-contractual obligations and many other pressing problems. In our view, Nolde may be called one of the terminology and methodological concept creators in national legal science of private international law.

Starting with a summary of the bases of private international law, Nolde highlights the complexity of the task in Russia. He writes, "The author… wished to experiment with the set of the Russian conflict-of-laws rules. This part of the issue had particular difficulties because of the extreme poverty of the Russian literature. You could say with some believability that not many people know which conflict-of-laws rules apply in Russia."[5]

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[1] About B.E. Nolde see: Zhil'cov A.N., Muranov A.I. *IN MEMORIAM*. A.N. Makarov, B.E. Nolde, V.N. Durdenevskij, G.E. Vilkov, D.F. Ramzajcev // *Mezhdunarodnoe chastnoe pravo: inostrannoe zakonodatel'stvo* [Private international law: foreign legislation]. M.: Statut, 2000. p. 54–57. O dejatel'nosti i nauchnyh rabotah B.E. Nol'de v jemigracii posle 1917 [On the activities and science works of B.E. Nolde on emigration after 1917]: Starodubcev G.S. *Mezhdunarodno-pravovaja nauka rossijskoj jemigracii (1918–1939)* [International-legal science of Russian emigration (1918–1939)]. M.: Kniga i biznes, 2000; Sadikov O.N. *Iz istorii juridicheskoj nauki v Rossii: baron B.Je.Nol'de (1876–1948 gg.)* [From the history of the science of law of Russia: Baron B.E. Nolde (1876–1948)] // *Gosudarstvo i pravo = State and Law*. 2002. № 1. p. 90–93.

[2] See e.g. Nolde B.E. *Ocherednye voprosy mezhdunarodnogo chastnogo prava* [Other questions of private international law] // *Vestnik grazhdanskogo prava = The Herald of Civil Law*. 1914. [1] 2.

[3] Nolde B.E. *Ocherk chastnogo mezhdunarodnogo prava* [Essay on private international law] // List F. *Mezhdunarodnoe pravo v sistematicheskom izlozhenii* [International law in systematic presentation] / Translation from the fifth issue by the edition of prof. V.Je. Grabar. Jur'ev, 1909; Nolde B.E *Ocherk chastnogo mezhdunarodnogo prava* [Essay on private international law] // List F. *Mezhdunarodnoe pravo v sistematicheskom izlozhenii* [International law in systematic presentation] / Ed. by prof. V.Je. Grabar. Jur'ev, 1912.

[4] See more: Grabar V.Je. *Materialy k istorii literatury mezhdunarodnogo prava v Rossii* [Materials to the history of the literature of international law in Russia]. M.: Izd-vo AN SSSR, 1958. S. 470; Lunc L.A. *Mezhdunarodnoe chastnoe pravo* [Private international law]. M.: Jurid. literatura, 1970. p. 122; *Mezhdunarodnoe chastnoe pravo: sovremennye problemy* [Private international law: contemporary problems]/Ed. by M.M. Boguslavskij. M.: TEIS, 1994. p. 47.

[5] Nolde B.E. *Ocherk chastnogo mezhdunarodnogo prava* [Essay on private international law] // List F. *Mezhdunarodnoe pravo v sistematicheskom izlozhenii* [International law in systematic presentation] / Translation from the fifth issue by the edition of prof. V.Je. Grabar. Jur'ev, 1909; p. 452.

Nolde writes, "As a result, we get a relation with international elements, subjected to some systems of law from the different territories…", providing many examples of collisions of the different countries' civil legislations.[1] That is to say that Nolde was the first in Russian legal science of private international law to introduce the term 'international element'. Nolde calls such a relation with an international element 'complicated'.[2]

In this regard, Nolde notes next, "Every law, which connects with a similar complicated relation, can claim to regulate this relation. This concerns a provision, which is colloquially described by the term 'collision', 'collision' of the different civil legislations…"[3]

Nolde assumes especially conflict-of-laws rules in understanding the nature and structure of private international law rules. He writes, "The rules of law which delete collision between legislations of the different areas by identifying the use to a particular relation with international elements of legislation they called 'conflict-of-laws rules' or 'the rules of private international law.'[4]

The legal scholar believes that the term 'private international law', in order to be quite appropriate, would require "firstly, to make collisions be under international law proper, which means international treaty and custom, but no way domestic laws of individual states". Actually, Nolde notices that, "[I]t is not so."[5]

As Nolde observes, "Along with international collisions, there are questions about the collision of the civil laws of the different areas within a state, to be examined by legal studies, solved by the same procedure."[6]

Nolde recognizes that 'the solution of the collisions can be mostly solved not by international law, but by the native laws of individual states".[7]

Therefore, talking about inter-institutional collisions, Nolde states, "Obviously the collisions in civil laws of one particular country may be resolved exclusively by the domestic law of the country. Thus that part of conflict of laws formally belongs to the domestic law of specific countries."[8] Nevertheless, the scholar notes the following in relation to international conflict of laws: "Even if we look at the collisions the roots of which are purely international, these collisions are relatively often based on the domestic law of particular states."[9] Consequently, Nolde concludes, "Therefore the same rule of

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1 Nolde, Essay, p. 452.

2 Ibid.

3 Ibid.

4 Ibid.

5 Ibid., p. 453.

6 Ibid.

7 Ibid.

8 Ibid., p. 455.

9 Ibid.

private international law may become obligatory by different ways, so different from the formal point of view, such as domestic law and international treaty."[1]

Nolde further finds, "A great number of private international law norms were based on the domestic legislation of individual countries." In this regard, this is said about the "existing private international law of Russia, Germany, etc.". Some inherent contradiction exists in such generally accepted terms, but they represent the correct idea that in many cases private international law exists nowadays as positive law only because it forms part of this or that state's domestic law.[2]

Nevertheless Nolde makes the following remark: "Just in recent times some collision norms have become the subject matter of international treaties and a part of international law in a formal sense. But it is not enough to state that collision law in general is private international law in the true sense of the word."[3]

Nolde supposes that "it is more correct to talk about collision law than about private international law".[4] He continues, "There is no doubt that the main goal of collision law – the elimination of different countries' civil law collisions – may be reached only by the creation of international norms in the formal sense."[5]

In this regard Nolde presumes that the term 'private international law' acts as an appeal to international collision law codification.[6]

B.E. Nolde was one of the first in Russian literature to analyze the question of law and court choice. He was the first legal scientist who analyzed the structure of collision norms, classifying and systemizing norms, introducing the term 'form of attachment', along with others, to the vocabulary of legal science.

"Every collision norm", states Nolde, "is an answer to the question of which law among all the differentiated civil substantive laws should be used for the specific category of legal relationships that include international or inter-regional elements; the answer is arrived at by giving binding effect to that one law to which this legal relation category is most closely tied."[7]

"In every collision norm", Nolde continues, "there is a known problem and a key to the solution; that key is that there necessarily should be a link between a specific legal relation and a substantive civil norm. The living basis of the collision norm is wholly in the formula that establishes such link. There are a few kinds of such formulas that can be called collision law attachment formulas…"[8] Nolde marks out four attachment formulas, dividing them into four groups.

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1 Nolde, Essay, p. 455.

2 Ibid.

3 Ibid.

4 Ibid., p. 455–456.

5 Ibid.

6 Ibid., p. 456.

7 Ibid., p. 470.

8 Ibid., p. 471.

Nolde was also one of the first in Russian private international law legal science to introduce a holistic doctrine about reference, marking out and circumstantially examining reverse reference and third law reference.[1]

Nolde's thoughts on public policy in private international law are also found to be interesting. In that regard, he expresses the following apprehension: "Even assuming the colossal illegibility of the rules of public policy, it should be admitted to be pretty dangerous from the point of collision solving. It is so vague that it gives legal power to a judge's highhandedness when firmness and stability are needed. The only way of elimination of public policy proviso's harmful consequences is by making it 'specific'."[2]

Essay on Private International Law was revised by Nolde for the third issue of F. List's course (1912) and was published in the new version in the Brockhauz and Yefron's *New Encyclopedic Dictionary* in 1915.[3]

Thus Nolde was one of the foremost legal scientists in the sphere of private international law in Russia at the beginning of the 20th century. He was the genuine creator of the vocabulary and methodology of the legal science of private international law, and an explorer of a number of private international law problems (reference, public policy, law and court choice, structure of collision norms, etc.).

B.E. Nolde's contributions to private international law legal science, to its shaping and development, are enormous. A full comprehension of his contributions extends across time, because many theses of this scholar, his splendid and interesting thought, are highly relevant today and future generations of scholars will continue to assess his work.

In 1911–1916 M.I. Brun, a lecturer at Moscow Commercial Institute, saw the publication of a number of his works devoted to the problems of private international law.

Mikhail Isaakiyevich Brun (1860–1916) was one of the leading historians and theorists of private international law in Russia. His numerous works in specific questions of private international law (form of transaction, public policy, nationality of legal bodies, etc.) were based on meticulous study of primary sources, comparative study of different countries' substantive civil law and critical analysis of Western doctrines.[4]

By 1896, Brun's essay on private international law had already been published in Brockhauz and Yefron's *Encyclopedic Dictionary.*[5] In this work the scholar outlined a number of private international law problems that he would study scrupulously in

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1 Nolde, Essay, p. 474–478.

2 Ibid., p. 481.

3 Nolde B.E. *Mezhdunarodnoe chastnoe pravo* [Private international law] // *Novyj jenciklopedicheskij slovar' Brokgauza i Efrona = Encyclopedic Dictionary of Brockhaus and Efron*. Petrograd, 1915. T. 26.

4 See for more: Lunts L.A. *Mezhdunarodnoe chastnoe pravo* [Private international law]. M.: Jurid. literatura, 1970. p. 122.

5 Brun M.I. *Mezhdunarodnoe chastnoe pravo* [Private international law] // *Jenciklopedicheskij slovar' Brokgauza i Efrona = Encyclopedic Dictionary of Brockhaus and Efron*. SPb., 1896. Volume XVIII A. Book 36.

his later works. For example, Brun defines private international law as "the aggregate of rules that establish what a country's law should be applicable to the legal relation in which foreigners take part or that happens abroad".[1] Thus in his 'early' definition Brun's ideas stem from the collision concept of private international law.

Brun supposes that "every civilized state has its own norms of private international law", and he includes "customary law, judgments, lawyers' works, individual, collective and international conventions on special issues (literature, clerical work, inheritance, etc.)"[2] among the main sources of private international law norms. But it should be noted that in his later works Brun would review his private international law sources theory, and will include only the collision norms of national legislations.

While studying the terminology problem in the explored areas of the law, Brun determines that "the term 'private international law' is better than the others".[3]

Two later works of Brun's – *Essays on the History of Conflict of Laws* and *Introduction to Private International Law* – were published in 1915 and became widely known.[4]

In *Essays* Brun studies: "Conflict of laws of postglossators (XIII–XV centuries)"; "Theory of statutes (XVI–XVIII centuries)".

But the main work by Brun undoubtedly is *Introduction to Private International Law*, which consisted of the scholar's lecture texts that he used for teaching at Moscow Commercial Institute in 1908–1916.

In this work, the author presents the position of strict collision and the domestic nature of private international law understanding. The work consists of four chapters: "Definition of an object"; "Science's goals and methods"; "Attitude to international law"; and "Attitude to private law and its place in the system of norms".

In the very beginning of his career Brun established his own position on the question of the nature of private international law. "Private international law", Brun says, "is neither private nor international law."[5]

M.I. Brun gives a fairly unorthodox and idiosyncratic definition of private international law. "For our time and our culture, it is a complex of rules dedicated to choosing from the variety of private law norms that act simultaneously – each one in its own territory – that one norm that has the legal power and is applicable for the legal regulation of a public relation."[6]

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1 Brun, Private, p. 922.

2 Ibid., p. 923.

3 Ibid.

4 Brun M.I. *Vvedenie v mezhdunarodnoe chastnoe pravo* [Introduction to private international law]. Petrograd, 1915; Brun M.I. *Ocherki istorii konfliktnogo prava* [Essays on the history of conflict of laws]. M., 1915.

5 Brun M.I. *Vvedenie v mezhdunarodnoe chastnoe pravo* [Introduction to private international law]. Petrograd, 1915. p. 3.

6 Ibid., p. 5.

In the future Brun will define private international law as a "set of conflict-of-laws rules".[1]

Brun also understands that private international law resolves conflicts between the rules of civil law and "does not pay attention whether these legal orders operate in a separate state, or several in one state, or one in several states".[2] Thus, Brun clearly identifies and delimits international and inter-regional collisions.

The position expressed by the scholar about the so-termed 'socio-historic basis' of private international law attracts interest. He writes that "the international civil society is more extensive than separate legally organized people, and in this is the socio-historical foundation of private international law".[3]

Brun thinks that "private international law provides rules for resolving conflicts between different civil law norms, regardless of the political relationship in which the territories on which these norms operate".[4] And he continues:

> The difference between the collisions of the laws of two politically separated territories and the laws of different regions of one state is that conflicts of the second kind can be resolved by a norm that is common to all legislative power, whereas the norm that resolves conflicts of the first kind may be obligatory only in the territory of the state that has issued or recognized this norm, but not in the territory of another state...[5]

Undoubtedly, Brun's following remarks are very interesting:

> As there is no single universal civil law, and there are separate civil law orders, so there is no single private international law. How many territories, as many conflict-of-laws systems, so many 'private international rights'; the clumsiness of the title of the subject in this paragraph is particularly bright, but it cannot be left from the fact that there is French private international law, Russian and even Baltic private international law.[6]

Concerning the term 'private international law', Brun initially notes that "the title of the subject 'private international law' does not correspond to its content".[7] In this

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1 Brun, Introduction, p. 6.

2 Ibid.

3 Ibid.

4 Ibid., p. 11.

5 Ibid.

6 Ibid., p. 12.

7 Ibid., p. 17.

regard, the legal scientist believes that "in any case, you can allow yourself to use the term 'conflict of laws' next to it".[1]

Speaking of the legal science of private international law, Brun prioritizes two of its tasks: "Firstly, it studies the conflict[-of-laws] rules that operate in separate territories; secondly, it examines what conflict of laws could be assimilated by all civil law orders so that in any territory the court always chose one and the same of the conflicting different laws. Each of these tasks corresponds to their own special methods of study or achievement."[2]

Brun is an active supporter of codification and unification of private international law. He writes:

> The unity of conflict[-of-laws] rules alone satisfies the highest goals of law, the realization of justice on Earth, however modest this is, which the science of private international law brings to the treasury of the human spirit, but its merit is that it always supports the pursuit of this goal of law, and supports it precisely by clarifying the importance of unified private international law.[3]

The main 'stumbling block' for a single private international law is public order.[4] Brun writes in this regard:

> The concept of public policy is the underwater stone upon which all efforts to create a single private international law are mainly broken. One has to make sure that it is necessary to limit, but at the same time, to complicate the task, and instead of a single private international law to build a group of systems of conflict [of] norms. Here enters the method of comparative law.[5]

Considering the issue of the methodological tools of private international law, Brun points out the great importance of comparative jurisprudence for private international law.

> Comparative law is that relative ideal, which results from a comparison of legislation; it tries to determine that relatively ideal type that is found out for a given institution from a comparison of legislations, from their functioning and their results; while it is considered with the economic and social state to which this type must correspond, but does not at all take the point of view of the

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1 Brun, Introduction, p. 19.

2 Ibid., p. 20.

3 Ibid., p. 22.

4 Ibid., p. 28.

5 Ibid.

> immediate possibilities of its application ... It gives that ideal direction in which rational and constructive-progressive lawmaking should go.[1]

Brun refers only to the national laws as the sources of the norms of private international law, and he sees the significance of international law for private international law in the fact that "it authorizes the implementation of those treaties that... individual states conclude among themselves about the introduction of monotonous collision norms".[2]

Brun describes the question of the nature of private international law in the following way: "Private international law is not private, but this is not only because its norms have a different content, but also because they are the norms of public law."[3] Rejecting the idea of the private law nature of private international law, Brun puts forth his imperative: "Private international law forms a special branch of public law."[4]

Clearly Brun was one of the greatest researchers of conflict of laws, one of the founders of the concept of conflict, the internal and public legal understanding of the nature of private international law.

The services Brun rendered to the legal science of private international law were noted by Professor Nolde in his work dedicated to the memory of Brun. "M.I. Brun was one of the... rare representatives of Russian free [legal] science... Everything that Brun poses is exactly and methodologically correct."[5] We would like to add to this the excellent language of Brun's presentation of the scientific material, the courage in nominating and substantiating his position, as well as the huge amount of the foreign and domestic factual material he analyzed in the field under investigation.

Of the other works of this period, it is necessary to mention, first of all, a two-volume study by the student of F.F. Martens, an employee of the Ministry of Foreign Affairs of Russia, Andrei Nikolayevich Mandelstam (1869–1949), *The Hague Conferences on the Codification of Private International Law*, published in 1900.[6]

This wonderful work includes a magnificent essay about the history of doctrines of private international law, questions about sources, methods, codification, public order, etc.

Mandelstam's position on the nature and purpose of private international law is of interest. "The idea of universal human civil law", he believes, "is utopian and

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[1] Brun, Introduction, 29.

[2] Ibid., p. 55.

[3] Ibid., p. 58.

[4] Ibid., p. 79.

[5] Nolde B.E. *M.I. Brun (1860–1916) i nauka mezhdunarodnogo chastnogo prava v Rossii* [M.I. Brun (1860–1916) and the science of private international law in Russia] // *Vestnik grazhdanskogo prava = The Herald of Civil Law*. 1917. [1] 3–5. p. 5.

[6] Mandelstam A.N. *Gaagskie konferencii o kodifikacii mezhdunarodnogo chastnogo prava* [Hague conferences on codification of private international law]. SPb., 1900. In two volumes.

moreover is an extremely unattractive character."[1] Private international law, according to Mandelstam, "does not destroy the laws of individual countries, but, on the contrary, provides them with completeness of action".[2] Without hindering the differentiation of civil laws, it, as Mandelstam believes, serves at the same time to integrate them.

On the principles of private international law, Mandelstam believes that they "should be obtained on the basis of a thorough study of its sources – international customs and treaties".[3] In this regard, Mandelstam expresses his position on the question of the sources of private international law. He writes, "We recognize its source of international treaties and customs, but resolutely we rise against the attribution to these sources of laws and judicial practice of individual states."[4]

Of great interest is the work by Vladimir Emmanuilovich Grabar (1865–1956) *Roman Law in International Law Studies* of 1901.[5] It presents a huge amount of factual material on the history of Roman law, the work of glossators and postglossators, on the issue of the birth of private international law.

In the field of international civil process, the work by Professor Tikhon Mikhailovich Yablochkov (1880–1926), of Demidov Lyceum, *Course of International Civil Procedural Law*, published in Yaroslavl in 1909, is of special interest.[6]

The following topics appear in the work: General doctrine about the application of foreign laws in Russia (p. 18–32); Procedural legal and legal capacity of foreigners in Russia and the competence of Russian courts (p. 32–58); Process progress with the participation of a foreigner (p. 59–147); Mutual assistance of courts (p. 148–168); Execution of judgments of foreign courts (p. 169–212).

The work of T.M. Yablochkov is full of very interesting and bright thoughts and utterances. The definition of international procedural law given by Yablochkov in *Course of International Civil Procedural Law* is "a set of norms and rules regulating the competence of the judiciary, the form and evaluation of evidence and the implementation of decisions in international legal life in the event that a conflict of procedural laws and customs of different states comes to pass".[7]

Attention should also be paid to Yablochkov's position on a clear delimitation of the material and procedural law.

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1 Mandelstam, Hague, p. II.

2 Ibid.

3 Ibid., C. IV.

4 Ibid., p. 212.

5 Grabar V.Je. *Rimskoe pravo v mezhdunarodno-pravovyh uchenijah* [Roman law in international law studies]. Jur'ev, 1901.

6 Yablochkov T.M. *Kurs mezhdunarodnogo grazhdanskogo processual'nogo prava* [Course in international civil procedural law]. Jaroslavl', 1909.

7 Ibid., p. 6.

> Under certain conditions, determined by law, by an international treaty and the science of law, the judge recognizes the supremacy of foreign procedural and substantive law in his native state. We must point out here the need for the strictest distinction between the concepts of procedural and substantive law. The confusion of these concepts in the science of international law leads to especially harmful misconceptions, because those norms of conflict that govern conflict of laws in international procedural law do not at all coincide with the norms of collision that regulate disputes in the material law.[1]

Yablochkov clearly points out that "procedural law has its roots in public law, and therefore it is under a particularly strong influence of the principle of state sovereignty". Continuing with this thought, Yablochkov notes, "This public nature of the procedural law explains the limitations of the freedom enjoyed by the litigants. If in private law the principle of autonomy of the will of contracting persons is valid, then in private international law this autonomy of the parties is fundamentally excluded."[2]

Undoubtedly, Yablochkov's remarks regarding the grounds for the application of foreign law is of interest. "The application of foreign law", writes the legal scientist, "follows, not by virtue of an exception, but by virtue of a general rule, as the application of positive civil norms, which are also mandatory for the native judge, as well as the norms of domestic law. Therefore, there is no presumption in favor of the exclusive operation of the national law."[3]

From this period it is also appropriate to distinguish the work by the privat-docent of the Moscow University, V.A. Krasnokutsky, *Private International Law*, which is a course of conflict of laws, read by the author on behalf of the faculty.[4]

In addition, mention should be made of the work on private international law by St. Petersburg University Professor L.A. Shalland (1870–1919), who also made a significant contribution to the development of the legal science of private international law in Russia.[5]

Summing up the research of the works and doctrines of Russian legal scientists at the beginning of the 20th century in the field of private international law, it is necessary to note the following points.

First of all, the beginning of the 20th century marks the flourishing of Russian legal science of private international law and the development of its most pressing issues.

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1 Yablochkov, Course, p. 2.

2 Ibid., p. 5.

3 Ibid., p. 19.

4 Krasnokutsky V.A. *Mezhdunarodnoe pravo chastnoe: Posobie k lekcijam* [Private international law: guidebook to lectures]. M., 1910.

5 Shalland L.A. *O sovremennyh techenijah v nauke chastnogo mezhdunarodnogo prava* [On contemporary trends in the science of private international law] // Pravo. 1901. [1] 45.

Second, in this period, the formulation and creation of the terminological, conceptual and methodological apparatus of the legal science of private international law takes place. Questions of public policy and referral, the scope of norms and the structure of conflict-of-laws norms, legal qualifications and many other issues are considered.

Third, disputes and discussions continue on the nature of the rules of private international law. A new impetus is also given to the international legal concept (P.E. Kazansky, A.A. Pilenko, A.N. Mandelstam), as well as the domestic concept of understanding private international law (B.E. Nolde), in addition, a domestic public legal concept (collision) is also being put forward (M.I. Brun).

Fourth, without exception, jurists are in favor of codification and progressive development of private international law, for the conclusion of international treaties in the field of private international law.

At the beginning of the 20th century, then, all this suggests that Russian legal science of private international law was finally formalized as an independent branch of jurisprudence, actively expressing itself and outlining further ways of its development.

After 1917 Russian national history made objective adjustments in the direction and prospects of the development of the legal science of private international law in Russia.

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PRINCIPLES AND PERSPECTIVES OF ENERGY LAW IN EUROPE*

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Abstract: The strategic energy policy of the European Union aims at ensuring the functioning of the European internal energy market and the energy supply, promoting energy efficiency and savings, and developing renewable non-fossil fuel forms of energy and electricity storage technologies. With that policy as backdrop, this article brings to center stage the main principles and perspectives of energy law in Europe by focusing on the development of renewable energies for competitiveness with conventional generation technologies. The author gives Germany the lead role in showing legal support for renewable energies and realising their economic costs and competition issues, as well as the need for a system of support for energy-intensive enterprises with state aid. But the question arises as to whether a state's aim of national support for renewable energies may run afoul of EU law in that it hinders its "Europeanisation" towards an EU internal market and frustrates the principle of the free movement of goods and services. The author examines this and related questions and, in doing so, introduces the U.S. regulatory law of public utilities as a model act of energy regulation and source of fundamental principles for Europe. The author concludes with his observations on competitiveness and efficiency in the European internal energy market, the principle of the cost of efficient service provision, fairness, non-discrimination and regulatory incentives in pursuit of economic success in a market economy.

Keywords: energy law, European law, energy policy, German Renewable Energy Sources Act, network regulation.

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Introduction

The current strategic energy policy of the European Union aims at four targets:

1. Ensure the functioning of the European **internal** energy market
2. Ensure the energy supply in the European Union
3. Promote energy efficiency and energy savings, e.g. with regard to technical equipment and buildings through energy-saving measures
4. Development of renewable non-fossil fuel forms of energy and development of electricity storage technologies.

In line with the title of my presentation, I will focus on the development of renewable energies for competitiveness with conventional generation technologies. Taking into account the high costs of the development of renewable energies, in particular, due to the offshore wind farms in the North Sea connected to the centers in the South of Germany in terms of the load, as well as due to the low efficiency of photovoltaic installations, it is the understanding at the EU level that an **energy mix**, including conventional – fossil energy and nuclear energy – and renewable energies, will be **necessary** in the future in order to compensate the volatility of wind and solar energy by the use of balancing energy.

Despite their high costs, renewable energies are promoted in Germany with more than 30 billion euros per year in order to limit the dependency on energy imports and – which is an even more important objective – to contribute to the reduction of CO2 emissions. To that end, Germany has implemented two instruments.

(1) The obligation to acquire CO2 allowances – that is to say pollution permits in the case of electricity generation from fossil energy that causes CO2 emissions – is aimed at reducing the use of conventional energy resources.

(2) The Act on the promotion of renewable energy sources ensures appropriate minimum tariffs for the generation of renewable energies and guarantees their sale by the means of a priority feed-in mechanism. The nearest grid operator is obliged to connect the wind and solar installations to the grid.

The parallel implementation of both instruments, however, has been criticised by leading experts. The Renewable Energy Sources Act did not contribute towards **additional** climate protection; the more renewable energy sources were used domestically, the lower the demand for CO2 allowances was. The CO2 allowances, which are partly allocated free of charge, would be sold to undertakings abroad which use more fossil energy. The German Renewable Energy Law, therefore, did not contribute additionally to the protection of the climate. This opinion, however, is fundamentally incorrect. The Federal Ministry of Environment, which establishes the National Allocation Plan for emission trading and determines the number of allowances, has taken into account this impact of the law and significantly reduced the number of CO2 allowances available for free. In the future, the increasing use of renewable energies, including the development of renewable energies, will be taken into account when determining the number of

allowances allocated to old industrial plants free of charge. Thus, negative interactions between the Renewable Energy Law and the Emission Trading System can in reality be widely avoided.

THE FUNCTIONING OF THE GERMAN RENEWABLE ENERGY SOURCES ACT (EEG)

Legal support for renewable electricity

The German Renewable Energy Sources Act (EEG) was adopted in 2000. The last reform was made in 2014. The Act grants operators of wind and solar installations the right to connect their installations generating electricity from renewable energy sources to the grid for general electricity supply, and it obliges energy companies to purchase the produced electricity, to transmit it and to pay appropriate tariffs for it. The tariff is provided for by law so that investors have a financial incentive to operate wind and solar installations. Due to the high degree of their promotion in Germany, considerably more wind generation and solar energy installations have been built on the mainland than planned by the legislator.

The level of tariffs is aligned to the energy generation costs; it is reviewed every four years. The tariffs are to be paid to the person who has built the installation by the grid operator in whose grid the electricity is fed into for a period of twenty years. Digressive tariffs for new installations ensure that installations which started to operate later will be subject to lower but still adequate tariffs than those installations which started to operate earlier. This should, on the one hand, incentivise technology development, which leads to more efficient installations and declining prices by a higher market penetration, and, on the other hand, bring the generation of electricity from renewable energies closer to the prices in the electricity markets. Whereas in 2000 the share of renewable energies in electricity consumption amounted to 6%, it reached 11% in 2006 and more than 18% in 2012, and is expected to reach 25% in 2019. Through the development of wind farms in the North Sea and the Baltic Sea, the share of "renewables" in electricity needed in Germany is now intended to be increased to 50% by 2030 and continuously thereafter to 80% by 2050. For many people, however, this objective seems to be unrealistic, because of the high volatility of wind and solar energy; a share of 60–70% is considered realistic, although unimaginably expensive.

The regime of the grid operator's statutory obligations to connect, to purchase and to pay is accompanied by a nationwide equalisation scheme which ensures that grid operators in areas with an abundance of renewable energy sources, e.g. along the seacoast, are not excessively burdened by increased payments. The local distribution grid operators deliver the purchased electricity to the upstream transmission system operators – there are four of them in Germany (Tennet, TransnetBW, 50Hertz and Amprion) – which are obliged to pay statutory tariffs for the electricity. The transmission

system operators equalise the quantities of electricity amongst themselves so that each transmission system operator receives the same amount of electricity from renewable energies at the same price in proportion to the electricity transmitted by the relevant operator. The equalised electricity is delivered with payment of tariffs (EEG surcharge) to electricity suppliers in a manner such that each electricity supplier delivers the same proportion of EEG electricity to its customers. For electricity suppliers, these costs are regarded as a part of their calculations. They pass on the costs caused by the EEG to their customers through the price of electricity.

The concept of EEG 2004 was technically revised in 2009 and 2014. On 1 January 2010, **the Equalisation Scheme Ordinance** came into force, which is aimed at improving the economic integration of the electricity in the grid. The energy sector thus faces the challenge to further develop the entire electricity system so that a large proportion of electricity from renewable energies can efficiently be integrated in spite of their high volatility without compromising system security.

The realignment of the equalisation scheme since 1 January 2010 is aimed at reducing additional costs. The key amendment is that the transmission system operators, who have to be legally and economically independent of the electricity supply companies due to the unbundling provisions of EU law, do not have to physically deliver the EEG electricity to the electricity suppliers; instead, they market it at the electricity exchange in a non-discriminatory and transparent manner (Sections 1 and 2 of the Equalisation Scheme Ordinance). Correspondingly, the electricity suppliers are not obliged any longer to purchase the EEG electricity from the transmission system operators and to pay for it. Rather, now they can purchase the energy required completely in the market. The electricity suppliers only have to pay the EEG surcharge which is the difference between sales revenues generated by the transmission system operators selling the EEG electricity at the electricity stock exchange and the tariffs they have paid to the installation operators (Section 8 EEG 2017).

The legal position of the operators of installations generating electricity from renewable energies has not been changed by the Equalisation Scheme Ordinance. The equalisation scheme has remained unchanged up to and including the level of horizontal equalisation. As in the past, grid operators are obliged to connect as a priority renewable energy installations to their grid, to purchase the electricity, to transmit and to distribute it, and to pay for it.

Pricing at the electricity exchange is based on supply and demand as in any other market. So-called marginal costs play a significant role in this process. Marginal costs are variable costs which are incurred due to the generation of electricity, such as fuel costs and opportunity costs. Marginal costs determine the price at which an operator of a power plant can offer his electricity. Baseload power stations have relatively low marginal costs and high fixed costs, whereas peak-load power plants entail high marginal costs and relatively low fixed costs. One day in advance, electricity generators have to bid for the amount and price of the electricity for each hour and since 2016 for each quarter

of an hour of the following day on an individual basis. Thereby, the signal on the price, which is regarded as the minimum price at which undertakings are willing to generate electricity, is sent to the market. The electricity exchange sorts the bids on the price level (merit-order) and lays this curve and the demand curve on top of each other. The point of intersection of the supply and demand curves expresses the price, which is the same for all market players. The power plant with the lowest marginal costs required in order to meet the demand thus determines the price (marginal power plant).

This promotion of electricity from renewable energies also applies if more electricity from renewable energies is generated than needed in Germany, such that wind and solar power plants have to be disconnected from the grid. The operators, however, receive a compensation of 90 per cent of the tariffs which they would have been paid if operating their installations at full capacity. This high expenditure is ecologically justified because of the avoidance of damage to the climate as a consequence of greenhouse gas emissions and because of the avoidance of air pollution, which causes damage to human health and materials.

ECONOMIC PROBLEMS

Consumers do not benefit from the fact that the feed-in of electricity from renewable energies leads to an expanding supply of electricity in the electricity market, and that the expanding supply leads – with static demand – to lower electricity prices in the electricity wholesale market (merit-order effect), because this advantage is compensated by the equalisation payments. Currently, Germany is therefore facing three challenges:

1. The construction of offshore wind power plants in the sea and in a harsh climate needs to be promoted in order to achieve the expansion targets. The costs for such is at least twice as high as the construction of an equally efficient gas- or coal-fired power plant on the mainland. An increase of the costs cannot be avoided considering the particularly difficult problems arising because of the construction of such power plants in the sea forty and more kilometres off the German coast and because of the fact that the possibilities of maintenance and repair of the plants are limited during the winter months.

2. Offshore wind power plants need to be connected to the onshore grid by submarine cables. In order to avoid too high power losses during the transmission process, the onshore grids need to be reinforced in order to be capable for direct current for the purpose of transmitting the wind energy from northern Germany to southern Germany, where the energy is required. There are 3,700 kilometres of extra-high voltage lines to be built in Germany. These lines need to be connected to the local distribution grids so that network stability is ensured. This situation is aggravated by the fact that photovoltaic plants, which also supply electricity, work on a decentralised basis and in many places generate more electricity than needed locally. This leads to a "bottom-up" feed-in from the local distribution grids into the upstream networks at the same time. The problems arising from the network reinforcement and conversion to smart grids are extremely

demanding in terms of electro-technology and information technology. The related costs are currently difficult to estimate. Germany therefore has to expect permanently increasing electricity prices.

3. Furthermore, considering the volatility of renewable energies – (wind and solar energy are not always available in Germany, even not on the sea) – new gas-fired power plants need to be built in order to ensure network stability by feeding in balancing energy if wind and solar electricity cannot be generated. These power plants will not become profitable on the basis of current market prices because of their short operating times. Having operating times of less than 2,000 hours, these power plants cannot remain in the black; they have to be shut down according to economic criteria. The government currently aims at ensuring the supply of electricity in case of the absence of wind or solar energy through a (temporary) prohibition on the closure of so-called system-maintaining old power plants which have become unprofitable and by promoting the construction of new gas-fired power plants. How this can be managed, e.g. by payments for the generating capacities, is heavily contested. It is, however, clear that national support schemes for capacities are prohibited in a European internal market for energy. Electricity-intensive companies and consumers will have to expect disconnections until such power plants are built on the basis of state aid. Not only the grids but also the generation and the consumption of electricity will be subject to a mandatory regime. The market-economic opening of energy supply again leads to a planned-economy system.

Adding up the costs, electricity prices in Germany will increase by at least 60 per cent over the next decade. The majority of Member States of the EU are not willing to follow Germany on its expensive path. Therefore, the EU Commission plans in its proposal "Clean Energy for all Europeans" (2017) the invalidity of the priority feed-in of renewable energy resources for new installations. Due to too high energy prices, there is a danger that Germany will become uncompetitive in the European market with regard to electricity-intensive products, because companies with electricity-intensive products, which are exposed to global competition, are *alone* burdened with high electricity costs. Therefore, we need a system of support for energy-intensive enterprises with state aid. Currently, questions of whether favouring electricity-intensive industries is in line with EU law and with the German Basic Law, whether it is arbitrary discrimination against *other* companies and whether the costs not caused by the consumer burden the consumer, are subject to proceedings before the courts.

EU LAW-RELATED PROBLEMS

There is fundamental criticism of the unconditional priority feed-in for renewable energies which is the heart of the EEG. The priority feed-in ensures that renewable energies can be fed into the grid and that other energy sources have to be shut down or restricted. This does not apply just to conventional power plants in Germany, but also to power plants abroad. They lose their sales opportunities in Germany. In case of a large proportion of electricity generation from renewable energies, the national

priority feed-in closes the German market and hinders its "Europeanisation" towards an EU internal market.

Considering their potential for discrimination against foreign electricity suppliers, the promotion acts, which aim at supporting the national generation of electricity from wind energy, are only compatible with EU law, as long as the common internal market for energy is not essentially restricted. The *Preußen-Elektra* judgment of the European Court of Justice (ECJ) by no means justifies the closure of a national market. The ECJ has expressly regarded such a national provision as an infringement of the principle of the free movement of goods and has only justified this on the grounds of environmental protection, because the principle of the free movement of goods had not been essentially restricted, taking into account the marginal quantities of nationally promoted wind energy (at that time).

Considering that the EU institutions are bound by the principle of the free movement of goods, the EU's secondary law does not allow a further restriction of the free movement of goods (Art. 34 Treaty on the Functioning of the European Union (TFEU)) for the purpose of climate policy objectives than justified by primary law. The secondary law thus cannot provide a legal basis for an unlimited "legalization of discriminatory promotion schemes" leading to a complete closure of the national electricity markets. Such a form of "harmonisation" in fact means the death of the internal market objective and the predominance of the national climate protection objective without – as stipulated by Art. 194 TFEU – creating a common energy policy that balances the internal market objective and the climate protection objective at the European level.

The promotion of renewable energies has to be in line with the internal market objective of the Third Energy Package and the upcoming European Clean Energy Package 2017. A unilateral national priority scheme for renewable energy sources also infringes the obligation to cooperate in solidarity at the EU level and to promote the interconnection of networks and transnational grids provided for by Art. 194 TFEU. This expansion, which was intended by the European Council, would be pointless if the Member States relied on national autarchy with regard to their environmental protection policy related to energy. Article 194, section 2, subsection 2 TFEU only grants the right to the Member States to determine the conditions for the use of their own energy resources, but it does not allow to restrict the freedom of the energy customers to conclude supply contracts with partners from other Member States in the European internal market. The provision in section 1 and section 2, subsection 1 TFEU on the completion and functioning of the internal market on the basis of solidarity between the Member States, considering the necessity of maintaining and improving the environment, indicates the primacy of the climate objective over the internal market objective, which is unilaterally determined by a Member State, is not compatible with the competence regime provided for by Art. 194 TFEU and the definition of this electricity provision by the Third Energy Package. National rules on consumer, environmental and health protection must not essentially restrict EU competition rules; the same applies to national state aid. The internal market objective does not tolerate a policy of complete

Renationalisation. The objective of the European energy policy has been defined by the EU Commission in its Energy Strategy 2020 as targeting the creation of a fully integrated internal market on energy in which electricity and gas can cross borders without any restrictions, irrespective of whether or not the electricity has been generated in fossil- or nuclear-fired power plants or from renewable energies.

The Third Energy Package does not provide a general priority feed-in for "renewables" as has been stipulated by the German EEG. The Package allows and guarantees electricity generation from different energy sources on the basis of free competition in order to ensure energy security under effective competition. This includes the promotion of renewable energies, but not at any price and not at the expense of other energy sources. In contrast, the German Energy Concept aims at electricity generation completely from renewable energy sources and national balancing energy. Opportunities for contracts on full service with foreign suppliers would have been minimised at cross-border interconnectors whose development is one of the priorities of the EU. Foreign power plants would then only be used as stand-by power plants for the supply of balancing energy in order to balance the volatility of wind and solar energy. The new cross-border interconnectors will become export routes in order to make our neighboring countries happy with wind and solar energy at negative prices in case of need on days with strong wind and low domestic load. If the foreign suppliers of electricity from fossil and nuclear sources import on days with weak wind, they will also have to bear the costs of the promotion of wind energy by paying charges for the transmission grid. This problem can be symbolically solved "en miniature", but not realistically by disconnecting power plants and the non feed-in of peak-wind energy which is planned and promoted by means of a premium payment for stand-by on days of low load.

The free movement principles and the competition regime of the Lisbon Treaty as well as the non-discrimination principles of the EU electricity directives take precedence over national provisions. The German Energy Concept 2050 cannot be realised in its current form. Germany has to cooperate with the other Member States to achieve a common European energy and environmental policy. Otherwise, one day we will have expensive smart grids and expensive offshore wind installations which are operated on stand-by on good wind days although being able to provide more than 100 per cent of the required electricity generation; for the unlimited national priority feed-in system is as ineffective as a national catalyser system, which has hurried ahead, that makes the intended internal market practically ineffective.

ENERGY LAW AS A PART OF THE NETWORK INFRASTRUCTURE LAW

The goal of the energy law is to better provide consumers with the *efficient establishment of competitively oriented and safe markets* for energy. The regulatory authorities have the task of enacting provisions for non-discrimination, effective

competition and efficient markets. Accordingly, the network operators have to maintain a secure, reliable and efficient network in their sector. "True competition" in efficient and secure networks requires that network operators cannot draw, or transfer, respectively, any monopoly income returns from the network's business.

The legal opening of networks was necessary because supplying the consumer is only possible through the "natural" monopoly of the transmission and distribution system and, therefore, access to these networks must be opened for every grid operator. One speaks of a "natural monopoly" when a single company, for reasons of economies of scale or economies of scope, respectively, can satisfy the demand for its services at a *lower* price than multiple companies could. The public electricity, gas, water, electronic networks and railway systems constitute such natural monopolies since duplication, not to mention multiplication, of the network infrastructure would be connected with economically unjustifiable costs.

In order to establish the security of electricity supply, the modern state in Europe is withdrawing more and more from the "responsibility of truly real implementation" (*Erfüllungsverantwortung*) which is characterised by a complex system of governmental policies for services on behalf of the general good. This is due to reasons pertaining to the improvement of efficiency, which in reality can only be expected of private individuals, and to the reduction in costs. The European states are increasingly only accepting a responsibility of supervision and support, which becomes relevant if an issue that is detrimental to the general good becomes threatening. In the precise implementation of this concept the modern state becomes an "enabling and guarantor state" (*Gewährleistungsstaat*). Its function becomes especially clear in the area of infrastructure security in which private individuals increasingly take on the concrete resolution of duties and responsibilities. "The qualified welfare and intervention state is overlapped and partly replaced by the *Gewährleistungsstaat* that has been made possible." The call for "Public Private Partnerships" (PPP) characterises this development in a significant way. The concept of the *Gewährleistungsstaat* obviously expresses this change in the roles of the modern social states in Europe, and acts as a "code for a changed state role, which involves a changed architecture of statehood". The national energy laws, based on the respective EU Directives, are an expression of this reduced role of the state.

Consequently, in the national energy laws it is a question of how the state can realise its responsibilities and at the same time sufficiently create an interest for private corporations to assume the task of fulfilling public duties in such a way as to unburden the state.

In the interest of success, on the one hand the regulation of the grid economy has to ensure the *competitive orientation* of private individuals fulfilling public duties; on the other hand it has to ensure the public benefit of services. This bi-polar function, of guaranteeing efficient as well as reliable and secure network infrastructure, is expressed in the European law with the term "regulatory law".

The governmental task of regulating the network infrastructure is not a transitory, short-term task accompanying the process of transformation of the energy sector into

a free competition system, but, instead, represents a long-term task of the state which is obligated to ensure an efficient infrastructure in order to satisfy "community interests of the highest priority". In this way, regulatory law becomes the opposing camp of the general good of the private network monopoly for essential goods that cannot be sufficiently duplicated. In the light of this fact, regulatory law and anti-monopoly law appear to be twin sisters that indeed pursue the same goal, namely, to provide for a fair, private, autonomous balance of interests which is also protected against misuse as between network operators and network users; however, they strive to achieve this goal in different ways – on the one hand, regulatory law: abuse-preventing, prophylactic ex ante method regulation, or single approval, respectively. On the other hand, anti-monopoly law: an ex post abuse-suppressive approach. Regulatory law is thus not a dying, specialised type of competition law on the way to a competitive design for the use of infrastructural networks, but rather an independent and fully valid part of modern economic law.

Therefore regulation is necessary in a social and in a socialist market economy when a certain economic sector, due to its factual organisational structure, avoids competition as the most efficient instrument for the fulfilment of demand and the realisation of technical advances. The goal of network economic regulation is the efficient formation of competitively oriented and reliable markets. The regulatory authorities have the task of guaranteeing non-discrimination, true competition and the efficient functioning of markets with the simultaneous assurance of an effective and reliable operation of the infrastructure network created for the long term. If this is not the case, for example, during bottleneck situations, an ex ante control of price increases is then appropriate. Consequently, in energy law it is a question of how the state can realise its responsibilities.

In a functioning market economy, only efficient corporations have the chance to steadily attain sufficient gains. Therefore, with respect to the politics of competition, it does not make sense to limit the governmental regulation of natural monopolies in such a way that they have only a minimal existence that acts to legitimise monopoly prices, and fewer and fewer corporations are able to pay the energy prices.

REGULATORY LAW OF PUBLIC UTILITIES IN THE UNITED STATES OF AMERICA AS A MODEL ACT OF ENERGY REGULATION

First of all I should make some remarks on the regulatory law of public utilities in the United States of America as a Model Act of energy regulation, because the US law is the oldest one from which Europe has learned fundamental principles. To a great extent the individual states in the USA have also set aside "responsibility of implementation" for efficient network infrastructures in the energy sector. They are satisfied with a general "guarantee and fallback responsibility" which is demonstrated by the strong, sector-specific regulation of supply networks owned by private persons.

PUBLIC UTILITIES AND PUBLIC INTEREST

In the USA, corporations are seen as *public utilities* when their services, by virtue of the "essential nature of the service", are very closely connected to the public interest. They are then subject to a special governmental regulation. This regulation infringes US constitutional law only when it is arbitrary and discriminatory. This "public interest concept" does not mean that every corporation that produces important goods that are vital for living (e.g. milk, bread, living space, pharmaceuticals) becomes a public utility. The determining factor is whether governmental regulation is essential for ensuring the supply of the general public with the good.

The theory of the natural monopoly also provides the answer to the question of when regulation is necessary. The operators of grid-bound transport networks are common carriers and, as such, public utilities which have to satisfy important community interests. In the USA, 250 investor-owned utilities supply approximately 70 per cent of electricity.

Public utilities are required to supply every customer within their supply area reliably and at affordable prices. Individual state authorities, i.e. Public Utilities Commissions, carry out the supervision of adherence to this obligation to the end customer. A uniform network infrastructure authority, which is endorsed in principle, therefore exists. The most important duty of this regulatory authority, which is equipped with comprehensive expertise in network control, is to provide for non-discriminating network access and effective competition in the network taking into account the security of supply. The visible hand of public regulation was to replace the invisible hand of Adam Smith in order to protect consumers against extortionate charges, restrictions of output, deterioration of service and unfair discrimination.

At the *federal level*, the Federal Energy Regulatory Commission (FERC) operates since 1977. The FERC is responsible for the transfer and wholesale levels of supply as far as these pertain to interstate commerce. The FERC has, in particular, the authority to regulate the expansion of production capacities, as well as the creation of "interconnections" to other electricity networks. A functional unbundling of the main operations from the remaining areas of operation is regarded by the FERC to be just as necessary as the separate internal rendering of accounts. Within the scope of its supervision, the FERC strives towards a positive incentive programme for Least Cost Planning (LCP). The goal is to obtain higher energy efficiency, resource protection and a better exhaustion of the economic potential of energy. Corporations that participate are permitted to add a higher equity return to energy prices. The *general* opening of wholesale markets was the result of two FERC regulations of 1996. The obligation of the equal treatment of third party requesting users and corporate, or respectively, captive users of a transfer network should exclude discrimination against third parties from the outset. The wholesale prices to be charged require the approval of the FERC; once approved, they are binding for the Public Utilities Commission in the individual states in the stipulation of retail charges (the so-called Filed Rate Doctrine).

The FERC has the task of establishing "just and reasonable rates" on the basis of a strict cost-oriented method under the recognition of an adequate equity return. Since 1990, the cost-based rates method has taken the place of the so-called market-based rates concept upon request in order to achieve low prices through competition. The preconditions for this are:

(1) There is no energy supply company that has a superior market position over the electricity customers which allows it to hold the prices at a higher-than-standard level analogous with a competitive market, and

(2) that there are no barriers to entry into the market.

Through this system the state fulfils the initially described "guarantee and fallback responsibility". Parallel to this, the FERC wants to achieve voluntary agreements of transfer network operators through which they transfer the operation of their network to Regional Transmission Organizations in order to organise the transfer network capacities in a way that is technically optimal, non-discriminatory and free from asymmetrical information. If such voluntary agreements cannot be achieved, the FERC wants to bring about a uniform national electricity market through the use of mandatory regulations.

With the approval of the courts, the previous tariff classification of point-to-point transmissions of a "network access service" has been replaced with a uniform tariff system. Since then the charges for network access have been established by using the "postage stamp approach": the supplied quantity alone determines the prices to be charged. All embedded costs, that is, all acquisition costs for the transfer facilities minus the consumption of fixed capital plus operational costs and taxes, as well as a proportionate equity return, are to form the basis for calculating network user fees. Every network user must bear the costs for the entire network proportionately.

As an alternative to the "embedded cost" method, an energy supply company can use the calculation of all of its wheeling fees, and also the individual costs (the so-called incremental costs), as a basis, which are necessary in order to provide for wheeling demanded by the requesting users. The incremental cost approach (as a side note) could be particularly appropriate in Germany in order to measure the specific costs for transfer facilities which arise due to the supply of renewable energy. The network operator can decide which method, either the embedded cost or the incremental cost approach, to use to calculate his access charge for all of his customers.

Within the scope of a cost-based procedure, it must be determined which revenues an electric power company needs *in the future* for the purpose of being able to fulfil its supply function. In order to make such a prognosis, the company's essential total revenue from the previous test period is determined. If an electric power company is successful in sinking its costs after the approval of the tariffs, the advantages from this rationalisation and cost reduction remain with the electric power company. Therein lies a practically significant incentive for the realisation of productivity improvements and economy measures.

A number of individual states in the USA are today utilising an output-oriented concept for tariff regulation that stimulates the competitive decision-making process,

the so-called Performance-based Ratemaking, which establishes benchmarks for prices and revenues in place of a cost-based regulation method. The reason for this change in methods is the experience that a cost-oriented regulation model is not sensitive towards the generation of internal business costs. If the reference indices are (over-)fulfilled, additional gains become possible. Consequently, the performance-based ratemaking is competitively oriented in its effect; however, the calculation of costs remains necessary in order to eliminate the danger of cross-subsidisation. The design of the procedure combines cost-oriented as well as incentive-oriented aspects and should be more closely examined in Germany. Considered together, it appears that the theoretical and practical problems of the competitive opening of energy markets in the USA and in Europe are the same. The method of incentive regulation is more efficient than the cost-plus regulation.

THE STANDARD OF NETWORK REGULATION

EU Directives and domestic laws in Europe have been implemented by regulatory authorities with the task of ensuring effective competition on a par with network economies and consistent standards. In this task the definition of regulatory law exceeds a competitively oriented supervision of abuse, the function of which is limited to preventing standards that restrict competition and eliminating anti-competitive barriers created by market-dominating corporations.

The indicative standards, applied concurrently with the regulatory intervention standards, therefore require – unlike mere minimum standards for preventing misuse – an adequate degree of constitutional certainty, so as to establish the essential fundamentals in law itself. For this reason, the basis for assessing the level of network usage fees must be directly standardised by law. The national regulatory laws satisfy these normative requirements.

Consequently, the scope of the regulatory authorities' tasks is not merely that of combating the abuse of a market-dominating position, but rather of permanently securing the obligations for the common good of the owner of a natural monopoly of paramount importance for the efficient functioning of the free enterprise system overall.

What is needed for the competitive regulation of network economies is the **concept of the cost of efficient service provision**. This serves to substantiate the general principle of the supervision of abuse underlying the principle of controlling the abuse of a dominating position of an enterprise in the competition law (Art. 102 TFEU). A purely cost-oriented control of charges without reference to competition, and without a benchmark approach, is incompatible with this principle. An orientation towards the respective status quo would ensure neither effective competition nor an "efficient functioning of the markets" in terms of the EU guidelines. It would be incompatible with the goal of EU law of providing for effective competition to eliminate the reference to competition in connection with the supervision of abuse, and to follow the cost standards customary in the industry regardless

of whether or not they are oriented towards competition. Therefore, a substantiation of standards in accordance with the directives cannot be attained through a comparison with impartial, "market structure blind" standards, but rather only through a comparison with standards that tie in with a normative behaviour valued as "fair" or "appropriate", as under Article 102 competition law does.

This standard implemented in the energy laws also corresponds to this idea, and the common objective is the prevention of abusive exploitation, obstruction or discrimination of or as between customers and competitors through measures concerning aggressive pricing taken by market-dominating corporations. With this common objective the laws are in complete accordance with the principle of EU anti-monopoly law. Due to the fact that the objectives are the same, it also becomes unnecessary to apply, in addition, the procedures under competition law in the area of monitoring network access charges; this is only the case, however, when the regulation functions to achieve its goal. The method for ascertaining abuse through exploitation is the concept of competitively analogous prices; this concept is substantiated in the national telecommunications and energy laws. This concept is methodical, with the help of the comparable market concept, as well as operationally feasible with the help of a cost-based but efficiency-controlling approach. Both methods are explicitly allowed in regulatory law; namely, the comparable market concept and the concept of the cost of efficient service provision are applicable in both the ex ante *and* the ex post control for the identification of competitively analogous prices.

The goal of the competitive control of fees is to establish prices that are based on efficiently incurred costs for secure networks. Therefore, the fees that the network operators charge for access to their networks must accommodate network reliability; on the other hand, the costs must "*correspond to those of an efficient and structurally comparable network operator*" (Art. 4 Cross-border Exchange Regulation). This standard complies with the principle of the cost of efficient service provision, which implements the vague legal terms of "effective, fair, non-discriminatory competition" and "efficient functioning of markets" in EU law. For this reason, the teleological uniformity of the standards for European energy law is guaranteed. With "true competition", without cross-subsidisation, the actual costs of a network operator, even with the addition of an appropriate equity return, cannot be higher than those of a network operator that is working efficiently and is structurally comparable.

This does not mean that *uniform* prices are inevitable. A cost-oriented calculation of prices can also lead to a difference in the amount of network fees under the current legal situation because the network operator's objective costs, which cannot be influenced, are variable. Objective structural differences in the network areas, as recognisable exculpatory circumstances for varying network fees, if necessary, are accepted in practice under competition laws. These structural differences are then always objective if they lead to cost factors that every other operator of a public infrastructure network in the respective network sector would also have. In this case, the network operator could not be accused of having higher prices, due to the inefficient operation of the network.

The situation of different network operators having varying network usage fees is then legitimately unavoidable.

If the legislature of a Member State were to design a national regulatory law in contradiction to European Union law, the courts, having their own decision-making authority, would have to thereby guarantee the complete effectiveness of EU law by not applying those regulations under national law which are inconsistent with EU law; this was the case in the European Court of Justice ruling in the *DRK* case of 5 October 2004 (the so-called horizontal effect of EU law). If a national legislature were to fail to achieve the EU law goal of non-discrimination, effective competition and efficient functioning of the markets, and allow corporations with market power to achieve unreasonable prices, this would be a violation of the Member State's duty to create a European *competitive* energy market in a quick and efficient manner. An approach focusing purely on costs would be the opposite of true competition and an expression of static, inefficiently organised markets. Infringement proceedings would be the legitimate sanction. The adoption of the concept of efficient service provision is completely in accordance with the principle of supervision of abuse under competition law. The monitoring of the fees charged by dominant undertakings, which is made possible by competition law, looks to a competitively analogous price that is derived from the market performance of an efficiently operating, structurally comparable corporation. In this conceptual design, the "as if competitive price" is not a *iustum pretium* (fair price) in terms of a *service public* doctrine, but rather, a price that is to be determined with the help of an existing *comparable market* and which can be acted upon by efficient competitors. In contrast, a market with "significant impediments to effective competition" (Art. 2 EC Merger Regulation) cannot be considered, or at best is limited in its consideration, as a comparable market. A monopolistic market does not provide a competitive price.

In Germany, the norms concerning the control of abuse were applied only with caution in respect of enterprises in a dominant position. For example, a price reduction ordinance was not classified as being discretionary, nor was it an abuse denied when the net cost price, despite corporate efforts to reduce costs, was only temporarily, or only negligibly (less than 10 per cent), above the cost-efficient competitively analogous prices. The jurisprudence, with respect to supervision of abuse, is in accordance with (as a side note) US developments which, in most of the individual states, combine a cost-based regulatory approach with a competition-oriented (output-based) concept.

The legislation still has to accommodate the condition that the regulation of network charges must also contain incentives. Therefore, it must be guaranteed that particularly efficient corporations can achieve a higher return on equity capital than less successfully managed corporations with delayed or inadequate cost-reduction programmes. A uniform return established by statutory ordinance is counterproductive for the expansion of effective competition desired by the EU Directives. Also, an investment in secure distribution networks has to be worth it in the future; in comparison to other capital investments, it can serve as an incentive for innovation and growth, if

one operates efficiently. This is the result of pursuing economic success, and it must be tolerated in a market economy.

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COMMENTS

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LEGAL REGULATION OF SUPERFICIES IN EUROPEAN COUNTRIES

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Abstract: This article analyzes the existing legislation of European countries regulating the procedure for granting plots of land for the construction of commercial and residential buildings. It examines the legal nature of the right of superficies, the essential signs of limited corporeal rights, allowing to distinguish it from related civil institutions. The author gives separate consideration to the prevailing practice of application of these provisions of law. The article then turns to Russia and considers the prospects of legal regulation, the development of new effective forms of land use with the purpose of building residential houses there and the necessary replacement of the existing Russian legal rules on construction on a plot of land belonging to another. The author challenges the understanding of civil design, the right of superficies as one of the types of limited real property rights and the proposed law on amendments to the Civil Code of the Russian Federation. The author's research leads to the conclusion that there is a need for theoretical refinement of the proposals in Russia as to building rights, in the light of the positive experience of European countries, with the aim of creating a complete model of the right of superficies.

Keywords: superficies, building leasehold, plot of land, limited law of estate, right of development, right *in rem*.

Superficies is an institution of civil law known in many countries. Conceptually, superficies makes it partially possible to find an answer to the urgent issue of housing

shortage that confronts both Europe and Russia. Russian scholars are interested in studying best practices in legal regulation of building leasehold as well as specific cases of the practical use of superficies in European countries and in Russia.

On the basis of historical relations between Russian and Romano-Germanic legal systems, the particularities of limited rights *in rem* regulating matters on the Continent are worth noticing by Russian researchers. It is particularly noteworthy that the maturity of the category of limited rights *in rem* to land plots in European countries has resulted from a centuries-long evolution of the legal system. On the other hand, acts on superficies were passed in Europe a long time ago, almost a century. It is widely thought in Europe that the current proprietary building agreements, including superficies, have become out of date and are subject to review. For this reason, Russian legislative practices are highly interesting for European countries.

In order to form juristic comprehension of the essence of superficies, the following questions will be answered in this paper: What is the role of superficies? In which countries did superficies develop? What are the particularities of legal regulation of superficies in certain countries, and what is similar between them?

The earlier stage in the establishment and development of superficies in Roman private law has been updated in contemporary legislation of certain countries including Germany, Austria, France, Bolivia, Peru, Cuba, Belgium, Italy, Spain, the Netherlands, Switzerland, Brazil, Portugal, Estonia and Japan.

Urban growth in the nineteenth century caused by acceleration of market relations in Europe resulted in the mass construction of buildings on lands. This social phenomenon caused the enactment of laws across the whole Continent aimed at solving the housing problem.

Superficies, or building leasehold (as it is referred to in certain countries), appeared to be one of the basic models of rights *in rem* in respect of plots of land. Despite its name, the term has nothing to do with legal relations regulating real estate development and structure plans in their European understanding. Building leasehold appeared to solve problems related to construction on a plot of land belonging to another as a means of overcoming the lack of housing. With building leasehold, people who did not have enough money to buy a plot of land for themselves received the possibility to have a house in their possession for a rather extended period of time. The landlord owned the plot of land in these cases, while the tenant builder had a particular autonomous right *in rem*.

Thus, plots of land that the landlord either did not want or failed to sell could be used for constructing private houses. The benefit for the landlord is that after the building leasehold expired he got his plot of land back with the increased value owing to the erected building. The benefit to the tenant builder is that he had the opportunity to save a large sum of money he otherwise would have to spend on buying the plot of land.

The objective of this institution in Germany, for example, was stipulated as follows in Justification of the draft Regulations on hereditary building lease from January 15, 1919:[1]

[1] Begrundungzur Verordnunguber das Erbbaurechtvom 15.01.1919/1. Beilage zum Deutschen Reichanzeiger und Preussischen Staatsanzeiger. 1919. Nr. 26.

to provide the possibility of building a detached house even for low-income citizens, as there is no need to buy an expensive suitable plot of land. According to the Regulations, hereditary building leasehold is the right susceptible of assignment and inherited right to have a building constructed either on or below the surface of a plot of land.

In this case, it is the plot of land that is considered a real thing and the structures built on it are only its constituent parts, but not the subjects of the right. Thus, essentially, a structure built by the tenant builder on a plot of land not owned by him is a constituent part of the building leasehold and as a consequence belongs to the tenant builder.

In England, such a widespread legal form as building lease is identical by definition to the German medieval *Erbleihe*. In the case of renting the land plot for 99 years, the charge would be nominal; however, the tenant was obliged to erect a building and maintain it in proper condition. The tenant thus spent his money on construction. He would recover his investment later on by means of letting on lease (at the market rate) the premises in the constructed building. The landlord who, in fact, turned away for a long time from actual use of the land, obtained the ownership of the building at common law after the rental period expired.

Austrian legislation, which also included a law on building leasehold from April 26, 1912, was accepted as a basis for the German model of building leasehold.

Building leasehold is also included in the Civil Code of Switzerland of 1907. Although German and Swiss institutions look alike, in Switzerland building leasehold is not an autonomous right *in rem*, but a sort of servitude. Apparently this happened historically, as such servitude originated due to the necessity of development of a nearby plot of land and the lack of space on one's own property that was suitable for construction, for example, for a garage, and this was regarded as an easement. Further evolution of the institution, however, formed a number of differences in the legal regulation of building leasehold that has made it possible to differentiate it from servitude.

At present, building leasehold (*droit de superficie*) is regulated by French legislation as well, in particular by the Housing and Utility Code. Here we see a key difference from the German model: a building erected under the force of building leasehold is considered an autonomous subject of the right but not a constituent part of the building leasehold. However, this was not always the case. Originally, the Civil Code of France considered building leasehold a power of the owner for the development of a plot of land.

Spanish law on plots of land provides the superficiary with a temporary power of ownership (*la propiedad temporal*) of buildings. The Dutch Civil Code contains articles devoted to building leasehold or right of superficies as written in the law. In this case, the lawmaker is committed to the classic pattern where the subject of property right to buildings constructed as per building leasehold is the landlord under the law. Rules referring to the lease and specifically to the institution of building leasehold are applied to building leasehold.

In Austria, Germany, Belgium, Spain, Portugal, Italy and Poland building leasehold can be established in respect of already existing buildings, and an authorized person is entitled to finish constructing, modernizing and modifying the existing buildings.

The legislation of a number of countries extends superficies not only to buildings but also to agricultural land. In Belgium, Portugal, Spain and the Netherlands, building leasehold permits planting on land or obtaining a planted plot of land and improving its agricultural characteristics.

Superficies has a diverse field of application. Originally, in a number of countries building leasehold was focused on securing state interests, including territorial development by means of real estate development and reconstruction out of existing housing funds. In Austria, for example, superficies could be established in the interests of the state or church until 1999. Eventually the legal regulation on building leasehold became more flexible, and it is currently applied to constructing commercial, industrial and sports buildings.[1] Building leasehold can be applied in particular to construction and (or) exploitation of bridges and track-side facilities, paved motorways, refueling stations, sewage facilities, suspension towers, electricity transmission towers, lanterns, sports and camping grounds, tennis courts and children's playgrounds, cellars, underground garages which are not constructed components of buildings, tombstones and other monuments.

Swedish building leasehold is an important tool of municipal land policy. More than half of Stockholm municipal land has been handed out to investors as building leasehold. The Italian Civil Code regulates superficies (*superficie*), which is occasionally given to football associations to develop football stadiums.

Underground parking lots are being constructed as superficies in Portugal; moreover, a corresponding field of application is explicitly provided by special Law № 257/91 from July 18, 1991.

In Germany, building leasehold makes it possible to attract investors: the landlord has the right to encumber the plot of land with building leasehold aimed at constructing a certain building in favour of a construction company which will lease the building out to entrepreneurs upon completion.

Thus, one and the same legal tool makes it possible to resolve various issues. The fact that building leasehold exists in countries with different legal and economic systems and remains relevant in different periods speaks for the flexibility and adaptability of this legal tool.

European public order regards building leasehold to a large extent as an autonomous limited right *in rem*, a special property right.

Here are some general points typical of the legal regulation of building leasehold in European countries: building leasehold as a right *in rem* has absolute character, direct relation to an object, adherence, publicity, protection by law of its types and content. As per contemporary public order, building leasehold can be inherited as it was under Roman private law.

Publicity consists in making governmental registration. As a rule, building leasehold as a right *in rem* arises at the moment of governmental registration in a state register of rights to real estate.

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[1] Cornelius Van Der Merwe, Alain-Laurent Verbeke. *Time Limited Interests in Land.* Cambridge University Press, 2012. p. 410.

The basis for the origin of building leasehold in Europe is governed in different ways, but agreement of the parties, will and legal judgment are generally accepted. Among the most typical causes for termination of building leasehold are the following: expiration of time, agreement of the parties and coincidence of the landlord with the tenant builder, payment period expiration, and leaving the plot of land undeveloped during the period fixed by law or specified by the contract.

Some of the tenant builder's rights are standard for almost all countries. For example, inheritance, right to renew the contract, right to encumber the building leasehold with other rights *in rem*, and the right to alienation of the building leasehold in some public orders may be exercised with the landlord's consent. The most important right of the tenant builder is his right to reimbursement for the constructed building or to acquisition of title to the building after expiration of the building leasehold.

The declaration of the tenant builder's property rights to the buildings is more an exception than the general rule. In practice, upon expiration of the period stipulated by the contract the landlord is obliged to reimburse the tenant builder for the constructed buildings. The amount and type of payment are specified in the contract. Erecting buildings as per the contract can be regarded as both the tenant's right and obligation; as was mentioned above, leaving the plot of land undeveloped during the period specified by the contract may be a reason for termination of the building leasehold.

Making payments and departing from the land after the contract expires are among the tenant builder's responsibilities. The rights and obligations of the owner of the encumbered plot of land include collecting the rent fee, claiming for fee increase, demanding enforcement of the tenant builder's assets or the object of construction when payment is delayed, alienation and pledge, and encumbering with other rights *in rem*. The obligations include reimbursement, either legal or contractual, for the building after the contract expires.

Thus, building leasehold in Continental law in its economic and legal value stands close to property right. During the period of validity of the right it can be alienated, inherited and encumbered with limited rights *in rem*.

Right *in rem* in European countries provides a broad selection of options for the legal basis applying to the use and enjoyment of plots of land in respect of constructing buildings on them and allows being receptive to social relations dynamics. The trend can be proved in Russia by the emerging reforms in the Civil and Land Codes of the Russian Federation. The reforms in the system of rights *in rem* suggested by the Conception of Civil Legislation Development and draft laws on amendments being made to the Russian Civil Code demonstrate that European proprietary constructions, previously unknown in the Russian Civil Code, can be applied on Russian legal terrain.

In the Czarist-era, Russian building leasehold was vested in 1912. Later, in 1948 the Soviet legislator abolished this limited right *in rem* as contradictory to the fundamentals of socialist statehood.

Currently, building leasehold has immense development prospects in Russia, which is reasonably determined by the present situation with regulatory control over rights *in rem* to land. The existing system of limited proprietary rights is primarily designed

to reserve proprietary rights to publicly owned plots of land for certain legal subjects. Legal tools for granting privately owned plots of land as a right of limited use to other persons reduce themselves to servitude or free use.

Thus, Russian legislation does not contain any acceptable types of limited proprietary rights to land, which inevitably forces economic entities to purchase plots of land or make lease contracts in order to construct buildings.

A clear-eyed lack of limited rights *in rem* to plots of land requires further scientific and legal investigation into the issue in question. The Russian legislator should not ignore any longer emerging relations outside the legal terrain.

The need to introduce additional rights *in rem* to plots of land was justified by the Russian Federation Presidential Council for Codification and Improvement of the Civil Legislation in 2001–2003 when the Conception of Civil Legislation on Real Property Development was being worked out.[1]

The main provisions of the Conception were criticized. Particularly, they claimed to develop traditional legal patterns and avoid implementing new very limited rights into the system of rights *in rem*.[2] The Conception was incomplete as it failed to suggest an integral system of rights *in rem* to real estate.

Today we are witnessing a new developmental stage of civilized thought on types of rights *in rem* to plots of land. The starting point in a more productive development of the contemporary civil legislation was the Decree of the President of Russia dated July 18, 2008, "On the Civil Code of the Russian Federation". According to the Decree, the Conception of Civil Legislation Development of the Russian Federation was elaborated,[3] and which was later incorporated into Draft Federal Law № 47538-6 "On amendments being made to Parts One, Two, Three and Four of the Civil Code of the Russian Federation and certain legislative acts of the Russian Federation"[4] (the Draft).

The Conception of Civil Legislation Development of the Russian Federation suggests fixing two major patterns of plots of land possession based on the right of limited use, i.e. emphyteusis and superficies, which was mentioned above.

As E.A. Leontieva notes, "[The] existence of efficient legal constructions to meet people's housing needs is the key indicator of civility of the modern public order."[5]

The designers of the Conception suggested bringing Russian domestic civil legislation in line with that of developed European nations inspired by Roman private law, but they faced criticism from the legal community.

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[1] Conception of Civil Legislation Development on Real Estate / Edited by V.V. Vitryansky, Î.Ì. Kozyr, À.À. Makovsky. Ì.: Statut, 2004. p. 47.

[2] Kopylov À.V. *Origin and Development of Limited Right in rem to Land* // State and Law. 2007. ¹ 4. p. 148.

[3] Conception of Civil Legislation Development, approved on October 7, 2009 by the Russian Federation Presidential Council for Codification and Improvement of the Civil Legislation [Digital resource]. Access mode: http://www.privlaw.ru/vs_info8.html.

[4] Draft Federal Law № 47538-6 "On amendments being made to Part One, Two, Three, and Four of the Civil Code of the Russian Federation and certain legislative acts of the Russian Federation" [Digital resource], accessed date April 10, 2015. Access mode: http://www.consultant.ru/law/hotdocs/17947.html.

[5] Leontieva Å.À. *Hereditary building leasehold: German practices* // Civil Law Bulletin. 2011. ¹ 6. p. 30–61.

It is worth mentioning that a number of questions regarding the reasonableness of the suggested developments have been asked both in professional legal and entrepreneurial communities, and in some public bodies.[1] For example, opponents of transferring to the Russian legal system a major part of rights *in rem* from West European civil legislation, including from that of France and Germany, argue that the particularities of Russian civil legislation should not be forgotten. They think that it is unacceptable to copy the entire system of rights *in rem*, as Russian pre-revolutionary right *in rem* was much different from the Western one in structure and notions. However, as we saw earlier, many European countries turned their attention to this issue more than one hundred years ago and have resolved it successfully.

We are sure that the suggested implementation of new titles for real estate units is an essential need of the turnover and one of the most complicated conceptual problems. We agree with the overwhelming majority of trustworthy civil law scholars and law enforcement practitioners who note the appropriateness of rights *in rem* in the Draft and their corresponding to the present social and economic situation in Russia. At the same time, building leasehold (superficies) as a right *in rem* to a plot of land belonging to another to a large extent is free from the disadvantages typical of tenancy contracts for construction mentioned above, which should become an attractive guarantee for crediting construction processes.

We expect positive social and economic effects from the legislative initiative that allows extending the list of forms of enforcement of rights in land through the system of limited rights *in rem* to land.

Building leasehold will help regulate not only the construction process but also the further existence of the buildings, make the legal status of the parties to the building leasehold agreement more stable, and reduce the risk of losing funds invested in construction in comparison to the tenant's legal status.

Thus, parties to the agreement on establishing building leasehold are the owner of the plot of land and the person who expresses the wish of obtaining a certain plot of land for use and further construction and operation of buildings. The Draft does not specify the body entitled to establish building leasehold. Apparently the landlord is intended to do this. Both natural and legal persons as well as public-law entities can serve as landlord.

Some European countries have chosen different paths: in Spain, the Civil Code of Catalonia admits establishing building leasehold not only by the landlord, but also by the holder of a limited right *in rem* to the plot of land in the event the right enables him to possess and dispose of the plot. In Germany, building leasehold is established for all persons who have right *in rem* to the plot, but only during the valid period of such right.

The Draft limits the number of objects for which building leasehold can be established. Most systems of justice admit establishing superficies for agricultural planting, for example the civil codes of Portugal, Japan, the Netherlands, Brazil, Quebec

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[1] Tolstoy Yu.Ê. *On Conception of Civil Legislation Development* // Journal of Russian Law 2010. ¹ 1. p. 31–38; Litovkin V.N. *Housing Code and Conception of Civil Legislation Development* // Journal of Russian Law. 2010. ¹ 1. p. 47–54.

and Catalonia. The last four are the newest codifications. In Argentina, superficies appeared in 2001 as forest superficies, which speaks for itself.

According to the Draft, the period for the building leasehold is set from 30 to 100 years. In the event the period in the building leasehold agreement exceeds the maximum, it will be considered 100 years.

However, "unlimited" superficies are widespread in world practice along with "limited" ones. The civil codes of Portugal (Article 1524) and Italy (Article 953), for example, provide that building leasehold can be both time limited and unlimited.

The legal and regulatory framework of building leasehold will allow performing the structure of the given type of limited right *in rem* in the near future. All its power and authority will be clearly expressed, and it will turn into an efficient tool of legal control over building on a plot of land belonging to another.

The international practices studied here have significant importance for further improvement of Russian legislation: increasing efficiency of the existing approaches and seeking new approaches to resolving complicated issues of interpretation and application of the legislative provisions in force, and making amendments to the Russian Civil Code concerning rights *in rem*.

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TRANSNATIONAL CORPORATIONS IN PRIVATE INTERNATIONAL LAW: HISTORY, FEATURES AND CLASSIFICATIONS

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Abstract: In this article the author analyzes the genesis and development of transnational corporations in the world and in Russia. The author investigates the nature of transnational corporations and the special features that distinguish this type of corporation from the other types of business entities. The author calls attention to the need for a proper definition of "transnational corporation" and offers his own definition of this term, in light of definitions put forward by various institutes and according to his discourse. He determines that the activities of transnational corporations have a number of negative aspects, many of which are not obvious, and that this is an urgent problem for the world community, which now faces the issue of creating a new mechanism to place controls on transnational corporations. The author concludes that this can be done only through the combined legislative efforts of different countries.

Keywords: transnational corporations, business entities, globalization, United Nations, multinational agreements.

The word "corporation" comes from the Latin *corpus*, *corpora*, which mean "a body", "a solid entity". These words were used by the Romans with the meaning of groups of people that acted as a single entity in public life.

Initially, this conception emerged in the philosophy of stoicism. According to this doctrine, separate objects form a single entity or body (corpus) when they share one spirit or one idea. Corpora could be one of three different types:

1) a homogeneous body (a person, a stone, a piece of wood);
2) a tangible composite body composed of homogeneous bodies, all inextricably linked (a house, a chariot);

3) an intangible composite body which consists of homogeneous bodies, united by one spirit (a legion of soldiers, a flock of sheep, a crowd in a marketplace).

The Roman corporations were called *collegia* and they aggregated craftsmen's guilds, religious communities, etc.[1]

Some scholars think that large business associations existed in the early Roman Republic. The assets and liabilities in these entities were distributed among the shareholders as in large, modern joint-stock companies. However, there is no reliable evidence of the existence of such associations. Citizens associations in ancient Rome were divided into three types:

1) *societas* (partnerships);
2) *societas publicanorum* or *publicani* (public partnerships);
3) *peculium* (special companies).

Societas were the associations of citizens that aimed to provide society with useful services, such us financial, shipping and trade services. *Societas publicanorum* were involved in public contracts: tax collection, mining, infrastructure projects (such as the building of temples or water pipe systems), outfitting the army and weapons manufacture. *Peculium* were established mostly by the slaves and they were also involved in providing public services. Thus, most ancient Roman corporations served the public needs. It is curious that this role was usually played by the state.[2]

Eventually, the Roman corporations became known as *publicani* (from the Latin *public cani* – tax, public property). *Publicani* transformed into large, permanently active legal entities.[3]

The Justinian Code reckoned on two groups of legal entities: *universitates personarum* and *universitates rerum*. The former defined the organizations that performed public functions, and the latter indicated the legal entities with no formal membership.[4]

The beginning of the Middle Ages saw the further development of the Christian church along with medieval free cities and merchant guilds (e.g. the Hanseatic League), and charity organizations. An innovation of those times was the division of capital in stocks and shares. The English East India Company and the Dutch East India Company were the first joint-stock companies with divided capital. These companies had a great impact on politics and the top echelons of power. For example, the great resources of the British treasury were invested in the English East India Company.

The division of capital in stocks and shares led to riches for some adventurous men. In 1717 in France, the public debt was formally transferred to corporations and then divided

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[1] Adolf A. Berle and Gardiner C. Means (1932), *The Modern Corporation and Private Property*, New York: MacMillan.

[2] Ulpian, Dig. 50, 2, 2, 1. C. I. L. XIV, 196, n. 2112, v. 11. C. I. L. III, 2, 924, v. 20. Cicero, Phil. VI, 12.

[3] M. Bartoshek, *Roman Law: the concepts, terms, definitions*. Moscow, 1989, p. 44–45.

[4] V.N. Yakovlev, *Ancient Rome civil law and modern Russian civil law*. Moscow: Wolters Kluver, 2010. p. 125–126.

into shares. Strong demand for these shares was provided through the use of certain political instruments, after which the shares were sold at a price ten times their nominal value. When the price of the shares reached their upper limit, "the speculative bubble" burst and caused high inflation. The English Parliament responded with the so-called "Bubble Act", which significantly restricted the power of the corporations of that time.[1]

Worthy of mention is that the division between the owners of the corporation and the people who managed it happened relatively early, and the social group of the professional managers emerged first in the United States and only later in Europe.

After the Revolution of 1688 in England, the conception of the "incorporation by registration" was developed. From that moment on entrepreneurs could establish a firm by filing certain documents. If earlier the corporations served as associations, and obtained some privileges or exclusive rights from the government, and in exchange the corporations performed certain public services, after the Glorious Revolution corporations became the standard form of business activity alongside joint-stock companies and individual entrepreneurship.

The companies of Europe and the United States became more and more complicated, and more and more capital concentrated in their hands. Joint-stock companies expanded their influence to unprecedented scales and individual stockholders lost their ability to manage their company. This tendency was called *democracy of capitalism* or *managerial capitalism.* Around the same time the "contract theory of the firm" emerged according to which the corporation is not a single entity, but an ensemble of different elements, namely, a variety of contracts. These contracts refer to shareholders, members of the stakeholder's council, managers, suppliers, buyers, etc. According to the contract theory of the firm, the shareholders do not actually own the company because its assets are dispersed.

The twentieth century saw the expansion of managerial capitalism, where the seats in the collective corporate administrative bodies became occupied by managers, such that the board essentially turned into the corpus of managers. Later, the problem known as "the conflict between managers and owners of the business" came into being. The essence of this problem is that the managers usually look to short-term positive effects, to immediate revenues, whereas the owners are interested in long-term positive results.

In Russia, the development of the corporation and corporate law was delayed in comparison to Western Europe and the United States. The prototypes of the corporations were craft unions and the guilds of merchants, which had their own internal hierarchy, methods of production and sales.

The collection of the laws "Russkaya Pravda" contained the institute of the partnership agreement, known as *skladnichestvo*. This agreement was concluded between merchants.

The city of Veliky Novgorod played a special role in the process of the development of the first Russian companies. It is commonly known that in Novgorod a special form of government developed, for the power of the monarch did not extend to the city. In

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[1] W.S. Holdsworth, *A History of English Law*, p. 219–220.

this respect, among Russian cities Veliky Novgorod was similar to European free cities. The biggest association in Novgorod was the wax-selling guild called "Ivanovo sto|". It was not until the year 1484 that Novgorod was conquered and annexed by Moscow.[1]

In 1722, Peter I (the Great) established the guild system of craft production in the Russian Empire. It should be noted that whereas in Europe guilds were established as the result of the weakening of centralized power, in Russia guilds completely crystallized under absolutism.

In the eighteenth century in the Russian Empire joint-stock companies and trading houses were two of the main forms of collective enterprises. In the Code of Laws of the Russian Empire, four main forms of business entities were named: there were full partnerships, limited partnerships, joint-stock companies and cartels. Full and limited partnerships were the main forms of capital consolidation until the October Revolution of 1917. G.F. Shershenevich defined the full partnership as "a business association of persons on the basis of an agreement and unlimited, solid responsibility of participants". The scholar also provided a definition for the other from of partnership: "In a limited partnership, among the full partners (the persons who control the partnership and have full responsibility for its actions) there are partners who do not participate in managing the company. The role of this type of partner is reduced to the role of capitalist, one who entrusts his assets to the company and withdraws from the corporate governance."[2]

The trend in the Russian Empire of the nineteenth century was the development of the cooperative movement. This movement came into being as a response to the exploitation on the part of large manufacturers. Germans living in the western counties of Russia exported the ideas of the cooperative movement to Russia and opened their companies in the large cities. Interestingly, the history of the Russian cooperative movement is closely connected with the Decembrists, because after their failed uprising in 1825 the nobles-revolutionaries established a large autonomous cartel in Siberia during their exile.

Mention should be made that the fast development of manufacturing, consumer, credit and marketing cooperatives started only after the abolition of serfdom by Tsar Alexander II in 1861.

The foundation of private law and the approach towards legal entities drastically changed after the October Revolution of 1917. The appearance of the first socialist state caused the neglect of the free market economy and the nationalization of economic recourses. Thus, on December 14, 1917, the All Russian Central Executive Committee issued a decree according to which all Russian banks were nationalized under the centralized authority of the National Bank, and on June 28, 1918, the Soviet government began the process of the nationalization of major industries.

The first Civil Code of the Russian Soviet Federative Socialist Republic was adopted in 1922 when the Soviet government established the New Economic Policy. This policy included four types of associations, namely full partnerships, limited partnerships, joint-

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[1] O.V. Martyshin, *The Free City of Novgorod: socio-political formation and law*. – Moscow, 1992.

[2] G.F. Shershenevich, *Commercial law textbook*. – Moscow, 1994, p. 110.

stock companies and trust partnerships. But the main reason the Soviet government legalized the joint-stock companies in the second decade of the twentieth century was that it wanted to consolidate the assets and capital under the supervision of the state in order to use them in the project of creating a new society. Thus, as provided for in Article 364 of the Civil Code, the Soviet government was able to close any joint-stock company "if its activity contradicted the interests of the state".

According to the Act of the Central Executive Committee from May 28, 1926, state-owned enterprises in the form of joint-stock companies could be created, but their shareholders could only be the "state and cooperative institutions and enterprises".

Thus, the legal form of shareholder in the USSR turned to the form of state industry and private capital's submission. By the third decade of the twentieth century almost all joint-stock companies had ceased to exist in the USSR and were replaced by state enterprises. The Basis of Civil Legislation of the USSR and the Union Republics of 1961 did not contain any rules pertaining to joint-stock companies, and such companies would be completely excluded from Soviet civil law by the Civil Code of 1964.

The next milestone in the development of the corporation happened in the period of perestroika. In 1987, it became possible to establish in the territory of the USSR mutual corporations with capitalist countries. The law of the USSR "On cooperation in the USSR" adopted on May 26, 1988, allowed Soviet citizens to establish cooperatives to be engaged in non-proscribed activities, including foreign trade. In 1990, the laws concerning joint-stock companies were passed.

In the years that followed, the Civil Code of the Russian Federation identified a list and concept of economic partnerships and business entities, and specified the following forms of commercial corporate organizations in Russia: full and limited partnerships, farm enterprises, limited liability companies and production cooperatives. Although the Code has corrected many legal uncertainties, it does not give a definition of "corporation".

Summing up, it was a long road for corporate entities to become transnational corporations (TNCs), even though in the Middle Ages there were commercial enterprises that operated branches in other countries (for example, the abovementioned Hanseatic League had offices in several cities in Europe, including Novgorod). However, only in the twentieth century did corporate activity gain an unprecedented scale, and this fact transformed the TNCs into the object that is so difficult to regulate.

The "legal personality" institute is a fuzzy and ambiguous subject in international law. Although it is generally accepted that states are no longer the exclusive subjects of contemporary international law, legal doctrine is not always coherent in proposing a uniform and general definition of international personality. It is tempting to say that there are as many definitions as authors. This is probably due to two main reasons. First, the question of who the subjects of international law are is closely connected with the conception of international law itself. Second, "international personality ... will always involve a test of judgment and perception of the situation at hand and the overall context of the current nature and requirement of the international community at large".[1] This

[1] M. Shaw, *International Law*, 3rd edn., Cambridge, Cambridge University Press, 1991, 137.

raises in turn the issue of the political nature of such an exercise: "[S]ubjects doctrine forms the clearing house between sources and substance: it is through subjects doctrine that the international allocation of values takes place, and as any political scientist knows, the authoritative allocation of values is one of the main political functions."[1]

Despite the great diversity of opinion on who can be a subject of international law, one can schematically distinguish three main conceptions of international personality. The first conception is a rather restrictive one, according to which international personality is defined by reference to a set of clear-cut attributes that are implicitly based on an analogy with the state as the primary subject of international law. According to this position, an entity is a subject of international law if and only if the following three cumulative conditions are met:

1) it has the capacity to conclude international agreements;
2) it has the capacity to establish diplomatic relations;
3) it has the capacity to bring international claims.[2]

Although such a generalization of the capacities possessed by states may be transposed to international organizations, this particularly restrictive conception of international personality appears to be in contradiction with the sociological evolution of contemporary international society, which is more and more characterized by a plurality of actors. Moreover, such an analogy with states is inappropriate given their very specific status in international law. Indeed, states are both subjects of and creators of international law and as such these two characteristics are unable to establish a general definition of international personality applicable to non-state entities.

In reaction to the state-analogy conception of international personality, a second and more extensive conception has been proposed in doctrine, which relies on a single criterion: the capacity to be invested of rights and obligations by international law.[3]

However, this approach has been criticized as blurring the traditional distinction between "objects" and "subjects" of international law since the capacity to bring claims would be a distinguishing characteristic of legal personality.

Between the two different conceptions, an intermediate (third) position was promoted by the International Court of Justice (ICJ) in the *Reparation* case. According to the Court, an entity is a subject of international law only if two cumulative conditions are fulfilled: it "is capable of possessing international rights and duties, and… it has capacity to maintain its rights by bringing international claims".[4] Although this definition

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[1] J. Klabbers, *"(I Can't Get No) Recognition: Subjects Doctrine and the Emergence of Non-State Actors"*, in J. Petman & J. Klabbers (eds.), Nordic Cosmopolitanism: Essays in International Law for Martti Koskenniemi, Leiden, Brill, 2003, 369.

[2] I. Brownlie, *Principles of Public International Law*, 6th ed., Oxford, Oxford University Press, 2003, 57.

[3] H. Lauterpacht, *"The Subjects of International Law"*, in E. Lauterpacht (ed.), International Law. Being the Collected Papers of Hersch Lauterpacht, Volume 1: The General Works, Cambridge, Cambridge University Press, 1970, 147.

[4] ICJ, Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Reports 1949, 174, at 179.

has been frequently quoted in legal literature, it has also been criticized as being circular, since the two criteria presuppose and depend on the existence of a legal person.

The very concept of international personality is thus neither static nor uniform. There are different degrees of personality, which depend on the extent of the capacities attributed by international law. Besides the great diversity of subjects, one should distinguish between two different types of personality: on the one hand, original and plenary personality which belongs to states as the primary subjects of international law and, on the other hand, derived and limited personality which states confer on other entities.[1]

The discussion about TNCs is characterized by a lot of different terminology. In the United Nations framework, the term "multinational corporations" was originally used and defined as "enterprises which own or control production or service facilities outside the country in which they are based".[2] UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights define the "transnational corporation" as an "economic entity operating in more than one country or a cluster of economic entities operating in two or more countries – whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively".[3]

Organisation for Economic Co-operation and Development (OECD) and International Labour Organization instruments, on the other hand, employ the term "multinational enterprises".[4] The OECD Guidelines for multinational enterprises – rejecting the need for a precise definition – describe them as follows:

> [T]hese enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed.[5]

The terminological confusion is perpetuated in international legal scholarship. Even though scholars have attributed different meanings to the adjectives "transnational"

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1 Legality of the Use by a State of Nuclear Weapons in Armed Conflict (WHO Case), Advisory Opinion, ICJ Reports 1996, 66, at 78, para. 25.

2 Report of the Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and on International Relations (1974) UN Doc E/5500/Rev.1, ST/ESA/6, 25.

3 UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UNCHR, Sub-Commission on the Promotion and Protection of Human Rights (26 August 2003) UN Doc E/CN.4/Sub.2/2003/12/Rev.2 (Draft Norms).

4 OECD, Guidelines for Multinational Enterprises (2011), www.oecd.org/daf/inv/mne/48004323.pdf (accessed 3 October 2015).

5 OECD, Guidelines for Multinational Enterprises, part I, ch I, at 4 (2011), www.oecd.org/daf/inv/mne/48004323.pdf (accessed 5 October 2015).

and "multinational" and even though "corporation" can be understood more narrowly, designating a legal entity characterized by "legal personality, transferable shares, limited liability, centralized management and investor ownership", the terms are generally used synonymously.

Transnational corporations are spread widely around the world, but it would be too simple to identify a company as transnational merely because it has a presence in several countries or conducts transactions in several currencies. The essential feature of a TNC is presumably the ability to pursue an effective blend of local responsiveness through customization, cost reduction through standardization and optimum value chain arrangement. For example, a company with a complicated manufacturing network in different countries that is currency neutral would be more transnational than one that exports from its home country and uses hedging tools such as forward contracts to eliminate foreign exchange risk. Similarly, a company that develops a network of operations that makes it less vulnerable to political risks in individual overseas markets would be more transnational than one that does not have such a network. Transnational corporations combine various attributes that are well beyond the reach of companies, which predominantly compete in their domestic markets. We now examine these attributes.

Capabilities. A truly global firm always continues to create new capabilities in response to changes in the environment. Global companies strike a balance between capability leverage and capacity building. Capability leverage involves making full use of existing capabilities in the marketplace. These capabilities may exist anywhere in the system, not necessarily at headquarters or in the home country. But a global firm cannot live only on its existing capabilities. It must also build new capabilities. According to Stephen Tallman and Karin Fladmoe Lindquist, there are broadly two kinds of capabilities – Business Level Component and Corporate Level Architectural. Business Level Component capabilities help a firm to produce better products, develop better processes and make marketing more effective. Honda, for example, has strong capabilities in producing internal combustion engines. Corporate Level Architectural capabilities are "organization-wide routines for integrating the components of the organization to productive purposes".[1] Toyota's "just-in-time" production system is a good example.

Distinctive and parasitic competencies lie at opposite ends of the spectrum. While distinctive competencies must be carefully developed in-house, parasitic competencies must be outsourced. Essential competencies and protective competencies can be outsourced if mechanisms/relationships are established to ensure the continuous availability of the service and minimization of risks. A high degree of trust and mutual understanding between the company and its partners are important. Spillover competencies can be outsourced, provided the company finds a way of capturing the value created.

Multidimesnionality. In the past, companies could compete by being good at only one thing – reaping global-scale efficiencies or maximizing responsiveness to the needs

[1] Internationalization, globalization and capability – Based Strategy, "California Management Review", http://faculty.poly.edu/~brao/tallman.pdf, Fall 2002 (accessed 13 December 2015).

of local markets. The old paradigm was either to tightly coordinate from the center and achieve global standardization or to leave subsidiaries free to come up with suitable strategies to serve local markets efficiently. In the case of the first choice, knowledge was developed at the center and exploited worldwide. In the case of the second, the knowledge developed locally, remained with each subsidiary and for all practical purposes was not available to other subsidiaries. In a complex business environment, a more sophisticated approach is needed. This is when the development of the TNC began.

Transnational corporations have the capability to combine global efficiencies, local responsiveness and the ability to leverage knowledge across the worldwide system. They go well beyond a unidimensional approach that focuses exclusively on global efficiencies or local responsiveness or which considers all businesses to be alike. A flexible, multidimensional approach is the essence of a transnational corporation. Such a capability is typically built up over a period of time as the company evolves and learns to deal with various types of business problems common in different overseas locations.

Why is a multidimensional approach so critical in today's global business environment? As markets become more competitive and customers become more demanding, efficiency becomes even more important. Without efficiency, costs may spiral out of control, products can easily become overpriced and rise beyond the reach of intended customers. Global companies, even when serving diverse markets, watch for opportunities to standardize products to the greatest extent possible. Standardization yields obvious benefits in the form of economies of scale, and in activities such as product development, manufacturing and procurement. But standardization and scale efficiencies alone cannot generate a sustainable competitive advantage. Indeed, standardization, if carried too far, can mean loss of responsiveness to local markets. The trick is to standardize those aspects that customers do not perceive differently across the world and customize those that they do.

Value chain configuration. A transnational corporation configures its value chain across different countries to ensure that activities are located in those countries where they can be performed most efficiently and effectively. For instance, a clothing company can design and develop its products in Hong Kong, but manufacture them in Mainland China. Many of the leading Indian software companies, having successfully established themselves in markets such as the United States and Europe, are now attempting to make China an integral part of their delivery value chain.

Contestability. A global company needs to have the capability to compete in any overseas market. While it can be selective about the markets it wants to enter (based on their structural attractiveness), it should have the ability to compete in any market if global considerations demand this.

Market spread. A global company earns a significant portion of its revenues in overseas markets. Yet, as mentioned earlier, this is not a sufficient condition for a company to be called global. Some Indian software companies, for example, typically generate a sizeable chunk of their revenues in the United States, but cannot be considered global, because they have an insignificant presence in other overseas markets. For a truly global company, geographic spread is important.

Diversity. For transnational corporations, mobilizing and nurturing a diverse talent pool is a critical success factor. They must be good at managing diversity across various dimensions – language, culture, education, race, gender, age and religion. A diverse workforce is necessary to help the company cope effectively with different environments. Diversity implies inclusion of people with different worldviews and experiences. By pooling diverse ideas and insights, innovation can be enhanced. Commitment to diversity implies a commitment to tapping the best talent across the world.

Finally, having considered the abovementioned features, we can give our own definition of a transnational corporation: *a transnational corporation is a legal entity that has business units and subsidiaries across the world and has the capabilities to consolidate its resources, experiences and knowledge on a worldwide scale.*

There are different classifications of corporations in the legal literature. Distinction may be based on the nature of the relationships between the parent company and its subsidiaries:

1) *ethnocentric corporations* – in this type of corporation a parent company controls all of its subsidiaries and has an absolute advantage; regulatory decisions taken by the parent company in a centralized manner spread outward to the subsidiaries; the organizational structure of the parent company is much more complicated than the structure of its branches; foreign markets are considered an extension of the home country's internal market; representatives of the home country are appointed to the highest posts; acquiring cheap raw materials and access to new markets are the main purposes of the activities of the foreign branches;

2) *polycentric corporations* – in this type of corporation large and diverse subsidiary companies have the greatest independence and autonomy, the subsidiary companies produce goods for the needs of local markets, and their management positions are occupied by managers hired from the local population; the principle of decentralization prevails;

3) *regiocentric corporations* – are those corporations whose focus is to work with a particular region, instead of with countries; the large subsidiaries have many functions; the development of foreign markets is one of the most important targets of their activities;

4) *geocentric corporations* – are the most advanced type of corporations; many of the modern, developed TNCs belong to this type; the parent company is "first among equals" and it is one of the constituent parts of a single organism; the degree of production diversification is very high; the dominating concept here is the principle of decentralization.

The scholars S. Goshal and K. Batlett distinguish between *multinational, global* and *international companies.* In their view, multinational companies come under strain after decentralization with the focus on local production. Global companies, by contrast, tend to centralize and to achieve high productivity. International companies pay much attention to the improvement in the efficiency of their subsidiaries and, in particular, through the transfer of knowledge and know-how.

But transnational corporations absorb all the features of the three abovementioned types of companies. The principles of centralization and decentralization, standardization

and exclusive production are optimally combined at the heart of their organization and their activities.

Goshal and Batlett also distinguish between the following two corporation models:

1) *the decentralized federation* or *the Anglo-American model* – this model is a union of largely independent components. The corporation has the flexibility to respond to the challenges of the external environment, but it is less effective in activities requiring the mobilization of global resources;

2) *the centralized network* or *the Japanese model* – as opposed to the previous model, the centralization of most of the operations in the mother-company is typical here. This type of corporation responds effectively to global challenges, but is less sensitive to changes in local markets.

The Russian scholars M.M. Boguslavskij and L.A. Lunc differentiate the following types of corporations:

1) national business companies, trusts and companies that have branches and subsidiaries abroad. They are the national monopolies in respect of their capital, but their activities have an international nature (for example, General Motors, Ford Motor Company, International Business Machines, Siemens and others);

2) trusts and concerns, which are international both by their activities and by their capital. They belong to the "multiple states capital" (for example, the Royal Dutch Shell Anglo-Dutch concern);

3) cartels and syndicates; industrial or scientific and technical associations, which are not legal entities.

The corporations of the first two groups are established as legal entities of a single state, and they have a number of subsidiaries and branches in other countries.

The criterion of another TNC classification is the character of their integration:

1) horizontal integration – with this character of integration all enterprises across the world produce the same products (e.g. McDonalds);

2) vertical integration – with this character of integration the various parts of an enterprise belong to the same owner. The products of these enterprises are manufactured in stages; as an example, an oil company extracts the oil in one country, refines it in another and sells the final product in a third country;

3) diversified corporation – this character of integration actually includes horizontally and vertically integrated corporations located worldwide; for instance, Nestlé and Microsoft.

Depending on the method of foreign investment, some commentators differentiate:

1) "mature" corporations, which can afford justifying the financial risk and allocate investments in a foreign economy on a long-term basis; and

2) "young" corporations, which can afford making only short-term investments.

The past five decades have witnessed a dramatic rise in globalized business. Today, an estimated 100,000 transnational corporations account for about a quarter of the global gross domestic product and generate a turnover that exceeds the public budget

of many states.[1] The private sector wields considerable economic and social power and even increasingly expands into traditionally state-run sectors, fulfilling (quasi-) governmental functions by providing infrastructure, housing and health services or organizing elections.

TNCs can thereby contribute to the economic and technological development of societies, but also harm human rights, damage the environment and even commit crimes. National legislation is often unable to create a stable regulatory environment in which TNCs can operate, nor to exercise control over the harmful acts of entities that fragment their activities globally, operate in decentralized network structures, and flexibly relocate operations and profits. In addition, economically weaker states depend on the investments of TNCs and may be unwilling to enact and enforce demanding human rights and environmental standards in order to enhance their attractiveness to foreign investors.

Thus, to create an effective mechanism that will offer the possibility to control the activities of TNCs and adapt their essential features to the needs of modern society, it is necessary to have deeper insight into the nature of these corporations, into the processes of their behavior, namely, further study of the phenomenon of TNCs, which is the recommendation of this article

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CONFERENCE REVIEWS

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REVIEW OF MATERIALS OF THE INTERNATIONAL ROUNDTABLE ON THE TOPIC "STATE REGULATION OF SOCIAL RELATIONS IN THE SPHERE OF POWER ENGINEERING IN RUSSIA, GERMANY AND THE EU"

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Abstract: The review is devoted to the international roundtable in the sphere of energetics, which was held on the grounds of the Law Faculty of the Kazan Federal University in April 2017. The roundtable was organized by the Department of Environmental, Labor Law and Civil Procedure and the Institute for Energy Law of the Law Faculty. The roundtable was attended by scholars from Kazan universities, the Institute for Energy and Regulatory Law Berlin and the Tatarstan Republic Academy of Sciences, in addition to representatives from energetics organizations of Tatarstan. Discussions were held on issues of legal regulation in the sphere of energetics and important panel sessions convened on the future development of the practical applications and science of the sphere.

Keywords: power engineering, state regulation, energy law, roundtable, Kazan Federal University, Russia, Germany, the European Union.

On April 20, 2017, Kazan Federal University (KFU) hosted the roundtable "State regulation of social relations in the sphere of power engineering in Russia, Germany and the EU". Representatives from scientific and educational institutions, energy companies

and also researchers from the Institute for Energy and Regulatory Law Berlin took part in the event. The following issues were discussed:

– Tariff regulation in power engineering
– State regulation of access to electric networks (electrical grid)
– Legal regulation in particular industries of energetics
– Contracts in energetics.

The roundtable was organized by the Department of Environmental, Labor Law and Civil Procedure, by the Institute for Energy Law of the Law Faculty of KFU, with the participation of researchers from the Institute for Legal Issues of Subsoil Use, the Environment and Fuel, and the Energy Complex of Environmental and Subsoil Use Issues of the Tatarstan Republic Academy of Sciences. The moderators for the roundtable were Roza Salieva, Doctor of Legal Sciences, Professor, Head of the Institute for Legal Issues of Subsoil Use, the Environment and Fuel and the Energy Complex of Environmental and Subsoil Use Issues of the Tatarstan Republic Academy of Sciences, and Andrey Mikhaylov, Doctor of Legal Sciences, docent, Head of the Department of Business and Energy Law of the Law Faculty of KFU.

The vice-president of the Tatarstan Republic Academy of Sciences Vadim Khomenko gave a welcoming address and highlighted the importance of discussing the questions of state regulation of relations in the sphere of energetics in the present socio-economic circumstances and wished successful work to all the participants.

The opening remarks were followed by the presentation of reports and discussion.

Professor Salieva in her report "Issues of legislative support of state regulation in the sphere of energetics" noted that the issues of the state regulation of economic relations in general and power engineering in particular are still relevant to all states regardless of different legal systems. At the same time, in different states two approaches towards monopoly and competition can be marked. The main tendencies of state regulation are: (1) company operation control and (2) market concentration-level control. For example, the Treaty of Eurasian Economic Union establishing the Member States determined that the spheres of state regulation are price and tariff regulation, in particular in the sphere of natural monopolies, investment and also the aims and principles of government (municipal) procurement. In the sphere of electricity, the signatory parties are permitted to establish and use the state regulation of tariffs on particular types of electricity supply services. The establishing of tariffs for electricity supply services should be based on the legal requirements of the Member States. While regulating the prices and tariffs the national agencies are allowed to use the following methods of tariff (price) regulation and their combination according to the legislation of the Member State: (1) method of feasibility study on costs; (2) indexation method; (3) method of investment capital yield; (4) method of natural monopolies effectiveness comparison. In addition, Professor Salieva reviewed Russian legislation in the area of anti-monopoly regulation, and state prices and tariffs regulation in the sphere of energetics, and she noted needed improvements in legislative support and the direction of development, specifically, the following: (1) harmonization and unification of Eurasian Economic Union legislation; (2) systemization and incorporation of legislation; (3) development of state regulation in the

sphere of energetics, including the principles of reasonable costs compensation and accounting economically feasible standard quotas for profit in the wholesale value; (4) approbation of a financial result taxation mechanism within the framework of pilot projects with the long-run conversion to the soil-usage regime that implies usage of a financial result tax for stimulation without exemption of oil-recovery increase on the producing fields and of the resources the extraction of which is linked with great complications.

In the review given by Executive Director of the Institute for Energy and Regulatory Law Berlin Professor Franz Jürgen Säcker "On principles and perspectives of energy law in Europe. Tariff and anti-monopoly regulation in the sphere of power engineering. New package of 'clean energy' of the European Commission on February 23, 2017", the topic of the direction of development of energy law in the European Union and the issue of pricing and energy fees policy were covered. In particular, it was noted that the EU has the goal of adopting an Energy Code of the Union that is supposed to include both private law and public law regulation methods. The Paris Agreement established the main principles and action network for the period beginning in 2020. The main aim is the improvement of energy efficiency and the measures that should support energy efficiency. Thirty percent of energy in Germany is gained from the use of renewable sources of energy. At the same time, there are many challenges: the construction of infrastructure for energy transition from the Baltic Sea to the western part of the country; organizational issues of energy transition from the small producers of energy and control of energy received from such producers. Additionally, there are challenges associated with the spheres of traditional non-renewable sources of energy, such as coal. The pricing policy in power engineering has changed. Before 1998 monopolies were dominant, then the competition supporting policy was established. Since 1998 the consumer has received the choice of which company to turn to. Consumers' supply is being conducted through energy networks that are natural monopolies. The power supply companies pay for using the networks, and the regulation in this sphere is being performed by a federal agency. Tariffs for electricity are increasing. At the same time, the principle of justice is being further developed in Germany, which is to ensure the rights of certain social groups of citizens. Furthermore, there are EU rules that take into account citizens who face financial issues. The preferences that are to resolve these issues are provided by the government. Moreover, price formation questions have arisen. Different network companies can set different prices for using their networks. The control is performed by the federal network organization. The formation criteria are: (a) investment measures; and (b) competition between network organizations. The adhesion fee is almost never a question. If a branch is being opened, then the company discusses the adhesion fee with the network owner.

In the review presented by Marat Minibayev, Director of "Agropromyshlennaya kompaniya" LTD, "Promotion of competition on the retail electricity market", it was remarked that for the past ten years that reform in this area has been aimed at the promotion of competition on the wholesale and retail markets. A full-scale competitive environment has developed on the wholesale market. The result of analysis of the electricity market shows that it is successfully facing the set obstacles. Market prices are based on the demand for electricity, thus creating the stimulation for consumer activity and providing the optimal

level of the utilization of a plant's capacity. Taking into consideration the existing surplus in the electricity market today, it shows a relatively high level of competition lowering prices. Thus in recent years the price of electricity displays a lower growth rate than the price of natural gas. The establishment of the competitive capacity market has also produced results. For example, the wholesale market of electricity and capacity established by the market reform provides the interaction of the electricity power engineering subjects – wholesale market participants in the circumstances of full-scale competition and market relations.

At the same time, despite the competitive prices demonstrated on the wholesale market, we cannot admit the same competition on the retail market. The current legislation does not allow competition to develop on the retail market in electric energy.

The vast majority of consumers can purchase electricity only on the retail market, making the current provider de facto a monopolist in electricity supply in a particular territory.

At the initiative of the Ministry of Energy of the Russian Federation, a plan on the simplification of consumer access to the wholesale market and retail market liberalization is being developed.

The unrestricted possibility to choose the provider will lead to competition between providers and will lower the prices for electricity and capacity. Taking into account that today in some cases payment misconduct on the wholesale market is caused by the unjust acts of sellers, the simplification of consumer access to the wholesale market will lead to greater payment discipline.

The Deputy Chief of the Division of Legal Services of the stock company "Tatenergosbyt" Dmirtiy Tarasov in his review "On the basic principles of price formation for electric energy for the consumers of the Tatarstan Republic" noted that the regulation in electricity power engineering as the main aspect of the price policy on the electricity market implies the equilibrium between the interests of the providers and the consumers of electricity. Thus, the approaches towards price formation were examined in detail. In the price zones, on the territory of the bigger part of the country, where the generating and network capacity development forces the providers to compete for the buyers, the regulation of the relations between providers and consumers is performed mainly by the electricity and capacity market. The unregulated part is the price of purchasing the electricity on the wholesale market; it makes up approximately a little less than half of the price for the consumer. The regulated part is the fee for the service of the organization the activity and price formation of which is an object of state regulation, and in particular the network organizations service fees for electricity transition, the size of sale surcharges, is relevant for the capacity market where the regulated part of the price can be 25 percent of the final price of the electricity and capacity. For the unregulated part, which mainly consists of the unregulated price of the electricity purchased on the wholesale market, the main factor is the price for the fuel, primarily for the natural gas. The demand for the electricity, the competition of providers for being present in the capacity schedule for the following day, and the condition of the transition networks also have significant impact. In the regulated part of the price the main component is the transition tariff, thus the

whole regulated part of price behavior depends on this tariff. The impact of the tariffs set for guaranteed supplier and the infrastructural organizations is not of major importance. At the same time, cross-subsidization, regional and corporate development programs have great impact. In the non-price zones where the technical conditions for the time being cannot allow to organize the competitive markets of electricity all the components of the price are regulated by the state. According to these approaches, the electricity price formation mechanism for the consumers of the Tatarstan Republic, in the case of the guaranteed supplier, the stock company "Tatenergosbyt", were presented.

There was a full and lively discussion of the issues covered in the reviews. The following attendees took part in the discussions: Emil Shamsutdinov, the pro-rector in scientific work of the Kazan State Power Engineering University; Pavel Ivanishin, docent of business and energy law department of the Law Faculty of KFU; Vladimir Kholodnov, the head of the civil law disciplines department of the Academy of Social Education of KSLI; Olga Savinova, the head of the law office of SC "Tatenergo"; Roman Bulatov, Deputy Director General on corporate policy of SC "Tatenergo"; Rashit Garapshin, the head of the law office of legal regulation of SC "Tatenergo"; Ilnar Gilfanov, the director of the autonomous, non-commercial organization "Law and power-engineering"; Artyom Yanborisov, the head of the legal department of OJSC "Setavaya kompaniya"; Kseniya Zwanziger, research fellow of the Institute for Energy and Regulatory Law Berlin; Margarita Grishina, assistant professor at the Free University of Berlin, research fellow at the Institute for Energy and Regulatory Law Berlin; Tansylu Sabirova, assistant professor of environmental, labor law and civil procedure department of the Law Faculty of KFU; Dina Gabaydullina, research assistant at the Institute of Environmental and Subsoil Use Issues of the Tatarstan Republic Academy of Sciences.

At the conclusion of the event, the participants expressed their satisfaction and agreement as to the appropriateness of organizing discussions on mutually relevant topics, where representatives from scientific and educational organizations, energy companies and state agencies can take part together.

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XII ANNUAL STUDENT MOOT COURT COMPETITIONS: THE RUSSIAN NATIONAL DEBATES – 2017

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Abstract: The article is devoted to the XII Annual Student Moot Court Competitions: The Russian National Debates – 2017 which took place at the Law Faculty of Kazan (Volga region) Federal University from 21–22 April 2017. The authors describe the story behind the Competitions, the development of the idea of creating the event and the actual issues of legal realities which were discussed in the framework of the Competitions held in 2017. The article also presents the results of the academic discussions and debates. In addition, the authors raise issues of the legal scientific-practical and educational effects of this kind of student event. Not only the debates at the Law Faculty of Kazan Federal University but also the experiences of moot court debate clubs of other Russian universities are mentioned, as well as the different methods of preparing for the Competitions and the meaning of the event for the professional legal life and future careers of young lawyers. Moreover, the article credits the scholars and representatives of the legal community and the judicial system who took part in the Competitions as judges, as well as the sponsors of the event, all of whom are longstanding partners in the project.

Keywords: moot court, debate, law faculty, Kazan (Volga region) Federal University, Russia.

Non scholae, sed vitae discimus

THE HISTORY OF LEGAL SCIENTIFIC-PRACTICAL AND EDUCATIONAL EVENTS AT THE FACULTY OF LAW OF KAZAN (VOLGA REGION) FEDERAL UNIVERSITY

Recognition of the Faculty of Law of the Kazan (Volga region) Federal University as a center of classical legal education, the cradle of many talented legal scientists and trends of modern jurisprudence is largely due to the preservation of legal science traditions laid down at its foundation and carefully tested through two centuries of trials and upheavals. The spirit of freedom, creativity and democratic teaching of the Kazan Imperial University, the influence of the best achievements of the cultures of the East and West still retain a special atmosphere within the Faculty. It is no accident that the foundation of the Kazan Law School was originally formed at the intersection of theory and practice, a harmonious combination of the educational process, the research work of teachers and students, and practice-oriented activities.

Today, the Law Faculty actively promotes the idea of improving the quality of student education through early initiation into the practical application of the skills of the profession of a lawyer. It is argued that only that knowledge of the student, which will be deeply and critically conceptualized, through the prism of its implementation in practice, can be effective. The ability for deep and comprehensive legal analysis, in the breadth of the professional horizon, brought about through legal scientific-practical and extracurricular work, is recognized as a powerful competitive advantage for a young legal specialist in the labor market.

The practice-oriented activity and research work of the students of the Faculty is the forge of young professionals in their field. It is this in all the diversity of its forms that reveals, and subsequently educates, the most talented and promising students.

One such form is the Student Moot Court Competitions. In 2005, the Law Faculty conceived the idea of creating a new extracurricular form of raising the level of education of law students, increasing the level of competitiveness of graduates and enlarging the level of involvement in the legal profession and the formation of legal thinking. It was then that regular moot court debates began – the most promising form of practical research for students, akin to a game, an educational model of a real litigation.

BACKGROUND OF THE XII ANNUAL STUDENT MOOT COURT COMPETITIONS: THE RUSSIAN NATIONAL DEBATES

The Student Moot Court Competitions: Russian National Debates is a unique project that was created for young aspiring lawyers in Russia with a view to developing their professional legal skills. Its story began in 2005, at the Law Faculty of Kazan (Volga region) Federal University (KFU) (formerly Ulyanov-Lenin State University).

The first moot court debates were held on the campus of the Law Faculty of KFU and were limited to the students of the Faculty only, but at the same time there were great prospects for this event. The first winners of the moot court debates were Alexander Ignatov and Yuna Rusinova.

Beginning in 2006, the moot court debates acquired the status of The Russian National Debates, bringing together that April, and each April thereafter, the best student teams from across the country. In its inaugural year, teams from Mari State University, Chuvash State University, Kutafin Moscow State Law University (MSAL) and a joint team representing the law faculties of St. Petersburg State University and Kaliningrad State University competed in what had become the First Annual Student Moot Court Competitions.

In 2006 the KFU team won first place in the Competitions, an achievement the KFU team of Pavel Astafiev and Damir Nizamov repeated in 2009. KFU teams again had bragging rights when they were chosen best in the Competitions in 2010 and 2011. This was followed in 2013, 2014 and 2016 with the judges of the Competitions awarding first place honors on winners Arthur Fakhreev and Iskander Asatullin, Maria Shutovskaya, Kristina Elynina and Ekaterina Malyarova, who represented the disciplined character and exemplary comportment of the students of the Law Faculty of KFU, but also displayed a high level of preparation and legal knowledge. These results were made possible thanks to the work of the Moot Court Debate Club founding father, leader and ideological inspirer, Candidate in law, Assistant Professor at the Department of Environmental, Labor Law and Civil Procedure Marat Fetyukhin, who for many years has been making great efforts to prepare the teams for moot court competitions and, as you can see, has brought about remarkable results. Also, we should note the fact that thanks to Marat Fetyukhin not only the Moot Court Debate Club was established, but also the project Student Moot Court Competitions: The Russian National Debates was created, which gathered together the cream of the Russian legal community, as represented by the judges and the coaches of the participating teams.

Representatives of leading universities from all over the country – from Kaliningrad to Sakhalin – took part in the Student Moot Court Competitions: Russian National Debates. Participating students arrived from Moscow, St. Petersburg, Tver, Kazan, Saratov, Tambov, Ufa, Orenburg, Ekaterinburg, Surgut and Sakhalin.

Leading experts in jurisprudence were invited to act as judges for the Competitions: legal scholars, teachers, judges, prosecutors, lawyers, legal advisers, among others. For the Competitions in the traditional area of law of civil proceedings, the panel of judges consisted of leading experts in the field: Candidate in law, Associate Professor at Ural State Law University D.B. Abushenko, Doctor of Legal Sciences, Professor at Ural State Law University S.L. Degtyarev, Ph.D., Senior lecturer at Samara State University, retired Judge V.Yu. Gusyakov, Doctor of Legal Sciences, Professor at Ural State Law University S.K. Zagainova, Doctor of Legal Sciences, Professor I.M. Zaitsev, Doctor of Legal Sciences, Professor A.N. Kuzbagarov, Associate Professor at Lomonosov State

University, S.V. Moiseyev, Candidate in law, Attorney-at-law, A.A. Pavlov, Judge of the Supreme Court of the Republic of Tatarstan, R.V. Shakiryanov, Doctor of Legal Sciences, Professor at Samara State University, A.V. Udin, E.I. Abdullin, Judge of the Supreme Court of the Republic of Tatarstan, R.Sh. Adiyatullin, R.G. Bikmiev, S.V. Gorb, Head of the Military Prosecutor's Office of Kazan Garrison, S.N. Kuranov, A.Kh. Sabirov, Judge of the Supreme Court of the Republic of Tatarstan, E.E. Safonov, Chairman of the Kazan Garrison Military Court.

In addition, representatives from the business community were invited guests, who might mark talented young lawyers (students) participating in the Competitions as prospects for future employment.

The annual participation of students from leading Russian universities, a professional panel of judges, the excellent organization of the event with an exciting finale make the Student Moot Court Competitions: Russian National Debates a unique project.

In addition to moot court debates in civil proceedings, in 2006 criminal proceedings were included in the structure of the Competitions. The inclusion of this new area of law in the project required suitable coaches and judges, and of course students interested in criminal law. Thus, the Department of Criminal Procedure and Criminalistics of the Faculty of Law commissioned the training of Kazan Federal University teams in this direction. Under the direction of Head of the Department Igor Antonov, and with the support of the teachers of the department – Marina Klukova, Marat Shamsutdinov and Nadezhda Muratova – many outstanding debaters were trained who would not only defend the honor of the department and university in Competitions with other universities, but also successfully realize their personal career potentials in their chosen professional lives in Law.

In 2016, constitutional legal proceedings and civil proceedings in courts of general jurisdiction were added to the structure of the Student Moot Court Competitions: The Russian National Debates.

The addition to the project of the area of law of "civil proceedings in courts of general jurisdiction" was motivated by the need to keep abreast of the challenges of modern life. The introduction of the Bologna Education System and the transition to a four-year program of instruction revealed the need to begin practical instruction right at the start of the educational programs, that is to say, to dive headlong into the legal profession. Realizing this, Yuri Lukin founded the Moot Court Debate Club: Junior League, which is a launching pad for future moot court debaters, future lawyers. The preparation and participation of new students of the Law Faculty in the Competitions has become not merely a matter of maintaining the prestige of the university, but acts as a genuine component of the educational process and the objective need for practical work experience for students.

Speaking of the coaches of the civil law teams of the Law Faculty of KFU, it should be noted that both Marat Fetyukhin and Yuri Lukin, each one a practicing lawyer, not only prepare students for participation in the debates and future careers in law, but also, drawing

on their huge experience, share knowledge and professional tips, tactics in negotiation, and strategies for presenting and defending their position in moot court. It is impossible to consider the masters and the contributions they make to the success of the apprentices without mentioning who their charges are. Former members of the Moot Court Debate Club occupy leading positions in the largest law firms in Russia, some of them are managing partners, and others are representatives of the judiciary, and the executive and legislative branches of government. It is also worth mentioning that graduation from the university does not mean the interruption of academic contacts and professional relationships. Many coaches and moot court debaters remain in touch, each ready to give advice if called upon, share new experiences and offer support to the others.

The XII Annual Student Moot Court Competitions: The Russian National Debates received extensive coverage by the media including, for example, *Rossiyskaya Gazeta* [Russian Gazette] and the official portal of the Supreme Arbitration (Commercial) Court of the Russian Federation (http://www.arbitr.ru/eng/sac).

The Chairman of the Supreme Arbitration (Commercial) Court of the Russian Federation A.A. Ivanov presented awards to the winners of the Competitions in 2009, and in his welcoming remarks to the teams of the Russian National Debates – 2011 Chairman Ivanov noted: "In modern conditions, the quality of legal education in Russia acquires special significance. Perhaps the best of you are to become active participants in the implementation of judicial reform, to address such important tasks as improving the independent judiciary and strengthening the credibility of Russian society. I am confident that all this will be on your shoulders!"

An event of the magnitude of the XII Annual Student Moot Court Competitions: The Russian National Debates is not successfully carried out without the help of multiple sponsors. In addition to the administration of the Law Faculty and Kazan Federal University, the event has been supported throughout its history by the following organizations.

Statut Publishing House, established in 2007, specializing in the publication of legal literature, also the classical heritage of the world and Russian thought, and the publication of fundamental research as well as books introducing the readership to the concepts and key issues relating to Russian and foreign legislation, history and the philosophy of law. Statut values professionalism as a combination of the high quality of works, backed by their thorough editorial preparation, and the efficiency of the publishing and printing process.

The journal *Herald of Civil Procedure*, specialized procedural journal, the main periodical publication in the sphere of civil procedural direction of legal science in Russia. It is a longtime friend and partner of The Russian National Debates and the Law Faculty.

The All-Russian Public Association, the Association of Lawyers of Russia, the largest voluntary, self-governing public association created at the initiative of private citizens: practicing lawyers, legal scientists, state and public figures.

Public Movement "Young Lawyers of Russia", operating since September 2008 and consisting of recent graduates from law schools, practicing lawyers, young teachers of law, and career men and women from the judicial and law enforcement systems.

THE STUDENT MOOT COURT COMPETITIONS: THE RUSSIAN NATIONAL DEBATES TODAY

The Russian National Debates currently comprise moot court competitions in four areas of the law (civil proceedings in commercial courts, criminal proceedings, constitutional proceedings, and civil proceedings in courts of general jurisdiction), where bachelor students and first-year masters students of law faculties have the opportunity to demonstrate and develop their professional advocacy, legal research and writing skills. Law student teams from higher education establishments in Russia prepare throughout the year for the Competitions, which are traditionally held each April at the Law Faculty of the Kazan (Volga region) Federal University.

The Student Moot Court Competitions have gained national fame today, turning the eyes of the Russian legal community to Kazan for two days in April, and attracting moot court debate clubs from every major law school of the country. What is more, they have become a real celebration of the legal profession, a celebration of the professionalism and independence not just of Kazan Federal University and other universities, but the whole of jurisprudence

The Student Moot Court Competitions: The Russian National Debates consist of several stages. At every stage competing teams show knowledge of law and procedure (within the respective area of law), the ability to state, develop, argue, advocate and justify the position of the plaintiff or defendant. For the Competitions, the most relevant issues of law are selected which have not yet received a clear decision in the jurisprudence. The first stage is a competition of written submissions on a point of law problem. The second stage is a direct face-to-face meeting of the teams at Kazan Federal University and the oral arguments – the defense of their legal positions in a dynamic, interactive mock courtroom environment, including parrying the arguments of the opponent. But the Competitions are not only pleadings. In addition to demonstrating the ability to prove one's case, to be persuasive, to make a confident and convincing appearance before a court, participants should display deep theoretical knowledge and art in extrapolating relevant information and bring it to bear in the practical activities of a lawyer. This is manifested in the third stage, where the teams must make an assessment of procedural documents, both in terms of correctness of their registration (admissibility) and in terms of their legal connection to the point of law problem in the case at question (relevance). However, this is not all, there is still the final stage, the final push to win the coveted prize – the Themis award. In the final stage of the two-day legal battles – the fourth and final stage of the moot court debates – there remains the fight of the best versus the best, where the teams meet for the final clash of mooting skills. The Annual Student Moot

Court Competitions: The Russian National Debates has become more than just a contest for the participants, it gives them the right to declare: "We are part of the family of moot court debaters." Only through such trial by combat, the questioning of the panels of judges, having worthily and successfully completed it all, is a team awarded the title of "Winners of The Russian National Debates".

THE RUSSIAN NATIONAL DEBATES – 2017

The Annual Student Moot Court Competition: The Russian National Debates – 2017 was held at the Law Faculty of Kazan (Volga region) Federal University from 21–22 April 2017.

This year the event was marked by a great number of teams that competed, each demonstrating their advocacy skills, knowledge in various areas of law, analytical abilities as well as perseverance and spirit.

The judges announced the results of the Competitions in each of four areas of law. Awards were presented as follows:

Civil proceedings in commercial courts.

First place: Southern Federal University team of Asiyat Allaeva, Elena Kyrlig, Viktoriia Pavliuk and Olga Pokrova.

Second place: Kazan (Volga region) Federal University team of Azaliya Gubaidullina and Igor Trofimov.

Third place: Kazan (Volga region) Federal University team of Mariya Bolotova and Ellina Shmagina.

Civil proceedings in courts of general jurisdiction.

First place: Ural State Law University team of Ilia Khlopin, Pavel Mikhailov and Matvei Tarasov.

Second place: Kazan (Volga region) Federal University team of Danil Shadrin, Damir Iusupov and Ainur Salakhov.

Third place: Mari State University team of Evgeniia Pushkina, Ekaterina Novoselova, Anna Vasileva and Aleksandr Vilyavin.

Criminal proceedings.

First place: Kutafin Moscow State Law University (MSAL) team of Dmitrii Vasilev, Vladislav Fesun, Vladislav Zubovich and Dmitrii Vlasov.

Second place: Kazan (Volga region) Federal University team of Aida Sabirzyanova and Dina Valeeva.

Third place: Kazan (Volga region) Federal University team of Olga Nazarova, Kseniya Staroverova and Zhanara Ungarova.

Constitutional proceedings.

First place: Kazan (Volga region) Federal University team of Anastasiya Larionova and Darina Struk.

Second place: Lobachevsky State University of Nizhni Novgorod team of Ekaterina Ogorodova, Petr Kobylin, Alla Shuvalova and Iuliya Ibieva.

Third place: Ural State Law University team of Iuliya Abilova, Anna Zhukova and Dmitri Lystsov.

The judges and guests were representatives from the judiciary, namely the commercial courts, courts of general jurisdiction and the Constitutional Court of the Republic of Tatarstan, representatives from the Kazan, Moscow, Saratov and Yekaterinburg law schools, and also representatives from law firms and governmental executive authorities.

The judges of the Civil Proceedings Moot Court Competition were: Viacheslav Gusiakov, Judge (retired) of the Eleventh Arbitration (Commercial) Appeals Court, Assistant Professor in the Department of Civil Procedural Law and Business at Samara State University; Dmitriy Abushenko, Doctor of Legal Sciences, Professor in the Department of Civil Procedural Law at Ural State Law University; Emil Gataullin, a senior partner in the law partnership Raskin & Co; Sergei Degtiarev, Doctor of Legal Sciences, Professor in the Department of Civil Procedural Law at Ural State Law University; Andrei Pavlov, a senior partner in the law firm Quorum; Mikhail Lebedev, Candidate in law, Assistant Professor in the Department of Civil Procedural Law at Saratov State Academy of Law; Sergei Moiseyev, Candidate in law, Assistant Professor in the Department of Civil Procedural Law at Moscow State University; Airat Iskhakov, Candidate in law, Assistant Professor at the Academy of the Russian Federation Prosecutor General's Office Kazan Branch; Rafail Shakirianov, Judge of the Supreme Court of the Republic of Tatarstan; Marina Tsutskova, Judge of the Twelfth Arbitration (Commercial) Appeals Court; Bulat Bariev, Judge of the Supreme Court of the Republic of Tatarstan; Rustam Gainullin, Judge of the Supreme Court of the Republic of Tatarstan.

The judges of the Criminal Proceedings Moot Court Competition were: Ramil Bikmiev, Head of the Tiuliachinsky Regional Court of the Republic of Tatarstan; Murman Silagadze, Judge of the Supreme Court of the Republic of Tatarstan; Artem Nikolaev, Deputy Procurator of the Volga Interregional Environmental Agency; Magnavi Garaev, Head of the Laishevsky Regional Court of the Republic of Tatarstan; Airat Tagirov, Deputy Head of the Organizational Accountability Office of the Investigations Department of The Investigative Committee of the Russian Federation in the Republic of Tatarstan; Rustem Idiatullin, Head of the Office for the investigation of particularly important cases of the Investigative Committee of the Russian Federation in the Republic of Tatarstan; Rushan Mardanov, Judge of the Supreme Court of the Republic of Tatarstan; Aidar Ishmuratov, Judge of the Supreme Court of the Republic of Tatarstan; Aidar Sabirov, Judge of the Supreme Court of the Republic of Tatarstan.

CONCLUSION

Summing up then, it is possible to say with certainty that the Student Moot Court Competitions: The Russian National Debates differ substantially in format from the usual student legal scientific-practical conferences and forums. This is a unique project of the Law Faculty of Kazan Federal University, inspired by the traditions of the law school and modern trends in legal education.

The Competitions are one of the most effective and useful forms of teaching students, because the event allows students to experience not only the intensity of emotions that practicing lawyers deal with in their professional activities, but also the complexity of the legal profession, and the complexity of the training required to take up the legal profession, the difficulty of winning the argument against the opponent, the difficulty of advocacy, the difficulty in persuading the impartial judge to his side, and the bitterness of failing to do so.

Through the experience of the Student Moot Court Competitions: The Russian National Debates students hone their debating and advocacy skills, testing their strengths and learning of their weaknesses, and how to overcome them. Whether the outcome is victory or defeat, it is clear that all the students achieve a personal victory – the self-assurance that comes from having engaged in the battle and, win or lose, gained the motivation and confidence to further develop their professional careers in Law.

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KAZAN (VOLGA REGION) FEDERAL UNIVERSITY
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Journal "Kazan University Law Review"
Call for papers

The inaugural issue of the journal was launched by the Law Faculty of Kazan Federal University in December 2016. ISSN number: 2541-8823.

The journal is printed in English and comes out in four issues per year.

The journal has an International Editorial Council and a Russian Editorial Board. All articles are reviewed by a professional copyeditor whose native language is English.

Requirements for submissions:

- The journal accepts articles on fundamental issues of law not previously published elsewhere. The content of articles should reflect the author's original academic approach and developed doctrine of jurisprudence.
- Articles must be submitted in the English language only.
- Recommended number of words/pages: the journal uses the character count method. Articles (text plus footnotes) should contain 40,000 to 120,000 characters including spaces.
- Articles must include an abstract with 150–250 words and a list of at least five Keywords.
- The section 'Information about the author' must appear at the end of the article: it should contain the surname and name of the author, title of the author, place of work (or study), postal address, telephone number and e-mail address.
- For postgraduate students: please attach (as an image file) a review on the article written by a certified supervisor.
- Deadlines for submission of articles:

  Issue no. 1 – January 15 (launch of printed issue is March);

  Issue no. 2 – April 15 (launch of printed issue is June);

  Issue no. 3 – June 15 (launch of printed issue is September);

  Issue no. 4 – October 15 (launch of printed issue is December).
- Citation format: footnotes should conform to the 20th edition of *The Bluebook: A Uniform System of Citation*.

The journal staff may be contacted via e-mail at:

kulr.journal@gmail.com

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СТАТУТ

KAZAN (VOLGA REGION) FEDERAL UNIVERSITY
Federal research and practice journal «THE HERALD OF CIVIL PROCEDURE»
"STATUTE" PUBLISHING HOUSE

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Dear colleagues,

We invite you to participate at the IV annual Symposium of journal «The Herald of civil procedure»: «**2017 – E-justice and information technologies in civil procedure»**, which will take place on the base of the Law Faculty of Kazan (Volga region) Federal University, **September 29, 2017**.

The symposium will be attended by leading Russian and foreign experts in the field of civil procedure and IT; in particular, there are confirmed participations from the USA, Peru, Poland, Great Britain, the Netherlands, and participants from other countries are expected.

Reports of participants will be published as articles in special issue of «The Herald of civil procedure» journal (which is included in the list of peer-reviewed academic journals of Higher Attestation Comission, Russian Science Citation Index, Web of Science – RSCI).

Information about previous conferences: http://civpro.org/symposia/

Registration of participants is accomplished by submitting application form https://goo.gl/forms/on69sI9AjAy2UW1s2 or by sending to organizers information with indication of participant's name, title of the report (in case of speech) or "participation without report" and contact information (phone number, e-mail) **till September 1, 2017.**

Travel and accommodation expenses are paid by participants. Meals and culture program are provided by Symposium organizers and we can assist you with booking hotels. The Symposium will take place at Kazan Federal University (Russia, Kazan, Kremlevskaya St., 18, the main building of university, Law Faculty).

Contacts for questions and registration of participants:
Elena Bazilevskikh:
+7 (987) 067-52-84, e-mail: elena.bazilevskikh@gmail.com.

Master program
«JUDICIAL LAWYER IN CIVIL, ARBITRATION AND ADMINISTRATIVE PROCEDURE»
(in Russian language)

The Head of the Master's program – Doctor of Legal Sciences,
professor **Damir Valeev.**

Foreign lecturers and practicing lawyers:
Wing Winky So, Oxford University (China, Great Britain)
Pablo Bravo Hurtado, Maastricht University (Chile, the Netherlands)
Jaroslaw Turlukovski, Warsaw University (Poland)
Vincent Teahan, practicing lawyer in the sphere
of Tax law and civil procedure (USA)

Disciplines of the program:

Compulsory courses:

Philosophy of law
History of political and legal doctrines
Legal technics and technology
History and methodology of judicial science
Academic communication
Comparative legal studies
Methodology of teaching the jurisprudence in higher school
Actual problems of civil, arbitration and administrative procedure
Theory and practice of execution of judicial and non-judicial acts
Mediation in court proceedings
Procedural specifics of certain categories of civil cases
Bankruptcy in arbitration proceedings
International Civil Procedure
Arbitration proceedings
Notarial proceedings

Elective courses:

Protection of rights in the Constitutional Court of the Russian Federation and the European Court of Human Rights
Civil process in the CIS countries
Litigation on corporate disputes
Conflict counseling
Psychology of conflict
Culture of conduct in Conflict
Protection of rights in administrative cases
The trial of intellectual property rights

Practice:

Educational practice
Pre-Diploma practice

Teaching method:
Full-time/ distant; Fee-paid/ free-paying (selection on competitive basis)

Career perspectives:
Courts, Federal bailiff service, advocacy, legal companies, transnational corporations, universities

More information
about the application rules for 2017-2018 academic year on the website of KFU:
http://admissions.kpfu.ru/vyssee-obrazovanie/priem-2017

Address of admission committee:
rooms 114, 115, 35, Kremlyovskaya St., Kazan, 420008.

Phone number: +7 (843) 292-73-40, e-mail: priem@kpfu.ru;
official site: http://kpfu.ru/priem

Master program
«INTERNATIONAL BUSINESS LAW»
(in English language)

The Head of the master's program – Doctor of Legal Sciences, assoc. prof. **Nataliya Tyurina** – internationallaw@bk.ru
The Head of the direction on work with master students at Faculty of law, KFU – Doctor of Legal Sciences, assoc. prof. **Roustem Davletguildeev –** roustem.davletguildeev@kpfu.ru

Disciplines of the program:

Compulsory courses (ECTS equivalent points):

Philosophy of law (2)
History of political and legal doctrines (2)
Legal technics and technology (2)
History and methodology of judicial science (2)
Academic communication (3)
Comparative legal studies(4)
Methodology of teaching the jurisprudence in higher school (2)
Actual problems of international law in modern world (4)
International economic law and law of WTO (3)
International financial and banking law (4)
International labour law (4)
International commercial arbitration (4)
Jurisdictional immunity of the State and its property (4)
Diplomatic and consular protection in international business (4)
International legal protection of intellectual property (2)

Elective courses (credit points):

International migration law (4)
International civil process (4)
International economic organizations (4)
International business and human rights protection (4)
Law of international treaties (4)
International trade contracts (4)
Islamic trade law (4)
Preparation for the UN model and international Moot Court competitions (4)

Practice (credit points):

Educational practice (9)
Pre-Diploma practice (39)

Teaching method:

Full-time/ distant; Fee-paid/ free-paying (selection on competitive basis)

Career perspectives:

Organizations, conducting external economic activity, representative branches of the Republic of Tatarstan abroad, governmental entities all over the world, courts and attorney offices, international organizations, Eurasian Customs Union, embassies, consular agencies.

More information
about the application rules for 2017-2018 academic year on the website of KFU:
http://admissions.kpfu.ru/vyssee-obrazovanie/priem-2017

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