ARTICLES

RUSSIA AND INTERNATIONAL LAW IN 2000–2020: 100 THESES ABOUT FACTS AND TRENDS

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https://doi.org/10.17589/2309-8678-2021-9-4-4-32

The paper is an overview of the international legal stances of Russia, which were formed in the period from 2000 to 2020. The application of international law within the legal order of Russia is complicated by inconsistency of the Russian monistic concept, unclear status of customary law and general principles of law; lack of a developed judicial tradition. The Russia's treaty policy comprises wide participation in general U.N. treaties, as well as bilateral treaties in the field of economic cooperation and legal assistance; unwillingness to participate in treaties, if this may entail negative political consequences. Russia backs down from some minor territorial claims in order to ensure stability; in some cases, she does not formulate a clear legal stance, limiting herself to political statements; she refuses to use judicial mechanisms, preferring bilateral negotiations and/or maintaining the status quo, and does not make efforts to create coalitions that support its claims. Russia uses international organizations rather as political fora, and not as a mechanism to create new legal order; she often takes a passive position when considering issues that do not affect its interests; she makes efforts to use the U.N. mechanisms, but sometimes lacks allies and trust from other members of international community. Russia recognizes the jurisdiction of international courts, but takes a passive position by rarely filing suits, objecting to jurisdiction and refusing to participate in the proceedings. The post-Soviet international courts are politicized and do not make a serious contribution to the development of integration law. Russian doctrine is experiencing a serious crisis, which is caused by various reasons and can hardly be overcome by the efforts of the corporation itself.

Keywords: foreign policy of Russia; international legal stance; monistic concept; provisional application of treaties; treaty policy; territorial claim; international justice; international law doctrine.

Recommended citation: Vladislav Tolstykh & Aleksey Kudinov, *Russia and International Law in 2000–2020: 100 Theses About Facts and Trends*, 9(4) Russian Law Journal 4–32 (2021).

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1. International Law in the Legal Order of the Russian Federation (RF)

1. Article 15(4) of the Russian Constitution reads as follows:

> The universally-recognized principles and norms of international law and international treaties and agreements of the RF shall be a component part of its legal system. If an international treaty or agreement of the RF fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.

The Constitutional Court also recognizes the judgments of the ECtHR as part of Russia's legal system.[1] The status of treaties is governed by the Federal Law "On International Treaties of the RF" (1995).

2. Russian monistic approach is specific; the concept of self-executing international treaties, which in the USA and other monistic states plays a role of a filter in the process of the application of treaties, is set forth in Article 5 of the 1995 Law, however not applied by the Russian courts. The EAEU Court, for example, applies

[1] Постановление Конституционного Суда Российской Федерации от 14 июля 2015 г. № 21-П // СПС «КонсультантПлюс» [Ruling of the Constitutional Court of the RF of 14 July 2015 No. 21-P, SPS "ConsultantPlus"], para. 2.2 (Jun. 27, 2021), available at http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=182936#iPhzepSyc4iNyvd21.

WTO agreements[2] that the ECJ considers non-self-executing;[3] the reason for this is the obligations of the RF, stipulated in the Report of the Working Group on the accession of the Russia to the WTO.

3. The Supreme Court of the RF defines "universally-recognized principles of international law" as "fundamental peremptory norms of international law" and "rules of conduct accepted and recognized by the international community as a whole as legally binding."[4] This definition correlates with the *jus cogens* concept. The question of whether it covers customary law and general principles of law remains open. At the same time, Russian courts sometimes apply international customs.[5] Doctrine pays little attention to this problem.

4. The 1995 Law classifies all treaties into interstate, intergovernmental and interagency ones, only the first have priority over the regular laws (Arts. 1, 3); agreements concluded by executive bodies have priority only over the acts of these bodies.[6] The Constitution does not clearly reveal its relationship to treaties, but the Constitutional Court proceeds from its unequivocal priority over them.[7] Legitimation of this priority was one of the points of the constitutional reform 2020.[8]

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[2] *See* Решение Суда ЕврАзЭС по делу Новокраматорского машиностроительного завода от 24 июня 2013 г. // СПС «КонсультантПлюс» [Judgment of the Court of the Eurasian Community on the case of Novokramatorsk Machine-Building Plant of 24 June 2013, SPS "ConsultantPlus"] (Jun. 27, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_148151/.

[3] *Germany v. Council*, C-280/93, ECJ, Final Judgment, 5 October 1994, ECR 1994, I-04973; *Portugal v. Council*, Final Judgment, C-149/96, ECJ, 23 November 1999, ECR 1999, I-08395, etc.

[4] Постановление Пленума Верховного Суда Российской Федерации от 10 октября 2003 г. № 5 «О применении судами общей юрисдикции общепризнанных принципов и норм международного права и международных договоров Российской Федерации» // СПС «КонсультантПлюс» [Resolution of the Plenum of the Supreme Court of the RF No. 5 of 10 October 2003. On the Application by Courts of General Jurisdiction of the Universally-Recognized Principles and Norms of International Law and International Treaties of the RF, SPS "ConsultantPlus"], para. 1 (Jun. 27, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_44722/.

[5] Thus, in its Judgment of 9 February 2015 in case No. A56-48129/2014, the St. Petersburg Arbitration Court applied the provisions of the Draft Articles on Jurisdictional Immunities of States and Their Property (ILC, 1991) and the 2004 U.N. Convention "in accordance with customary international law." *See* Решение от 9 февраля 2015 г. по делу № А56-48129/2014 // Судебные и нормативные акты РФ [Judgment of 9 February 2015 in case No. A56-48129/2014, Judicial and Regulatory Acts of the Russian Federation] (Jun. 27, 2021), available at https://sudact.ru/arbitral/doc/ULNAJQd5JKmm.

[6] *See also* Resolution of the Plenum of the Supreme Court of the RF of 10 October 2003 No. 5, *supra* note 4, para. 8; Постановление Пленума Верховного Суда Российской Федерации от 31 октября 1995 г. № 8 «О некоторых вопросах применения судами Конституции Российской Федерации при осуществлении правосудия» // СПС «КонсультантПлюс» [Resolution of the Plenum of the Supreme Court of the RF No. 8 of 31 October 1995. On Some Issues of the Application by the Courts of the Constitution of the RF in the Delivery of Justice, SPS "ConsultantPlus"], para. 5 (Jun. 27, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_8847/.

[7] Ruling of the Constitutional Court of 14 July 2015 No. 21-P, *supra* note 1.

[8] In the Address to the Federal Assembly of 20 January 2020, the President of the RF stated: "The time has come to introduce some amendments to the Basic Law of the country that directly guarantee the

5. Article 15 of the 1995 Law requires parliamentary ratification of treaties amending legislation on human rights, territorial issues, principles of international relations, participation in international organizations.[9] Article 16(2) requires the submission to Parliament of a certified copy of the official text of a treaty, statement of reasons for its ratification, determination of the treaty's compliance with the legislation, as well as an assessment of the consequences of ratification. Noteworthy, the translation of a treaty is not required.[10]

6. In the conclusion of a treaty, in addition to state bodies, an organization may participate, "authorized in accordance with federal law to submit to the President of the RF or to the Government of the RF proposals on the conclusion, implementation and termination of international treaties of the RF" (Art. 2(i) and 3 of the 1995 Law, adopted in 2007). In accordance with Article 6(2) authorized organizations have the right to decide whether to agree to be bound by a treaty.[11]

7. The main state bodies[12] can submit recommendations on the conclusion of a treaty to the President or the Government, which are obliged to give an answer

priority of the Russian Constitution in our legal framework. What does this mean? This literally means the following: the requirements of international legislation and treaties, as well as decisions of international bodies can be in force on the territory of Russia only to the extent that they do not entail restrictions on the human and civil rights and freedoms and do not contradict our Constitution." *See* Послание Президента Федеральному Собранию от 15 января 2020 г. // Президент России [Address to the Federal Assembly of 15 January 2020, President of Russia] (Jun. 27, 2021) available at http://kremlin.ru/events/president/news/62582. The new Article 79 states: "The RF may participate in interstate associations and transfer to them part of its powers according to international treaties and agreements, if this does not involve the limitation of the rights and freedoms of man and citizen and does not contradict the principles of the constitutional system of the RF." *See* Law on Amendment to Russian Federation Constitution, President of Russia, 14 March 2020 (Jun. 27, 2021), available at http://en.kremlin.ru/acts/news/62988.

9 On 23 September 2019 Prime Minister D. Medvedev signed a Resolution on the adoption of the Paris Agreement; according to a government press release, the Agreement "does not contain the grounds for ratification provided for by Russian law." Article 20 of the Paris Agreement stipulates that "this Agreement shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations that are Parties to the Convention."

10 As a result, some treaties do not have an official translation – as in the case of the WTO agreements. In the Judgment of 20 July 2012, the Constitutional Court refused to consider the applicants' allegation, that the non-translation of WTO agreements violates Article 68 of the Constitution ("The Russian language shall be a state language on the whole territory of the RF"). The Court held it to be sufficient that the Protocol on Accession to the Marrakesh Agreement was translated into Russian (para. 5.2).

11 Currently, there are only agreements in which Gazprom is defined as an organization authorized to execute the agreement. *See* Соглашение между Правительством Российской Федерации и Правительством Республики Казахстан о совместной деятельности по геологическому изучению и разведке трансграничного газоконденсатного месторождения Имашевское от 7 сентября 2010 г. // Электронный фонд правовой и нормативно-технической информации [Agreement between the Government of the RF and the Government of Kazakhstan on joint activities with respect to geological survey and exploration of the *Imashevskoye* transboundary gas condensate field of 7 September 2013, Electronic Fund of Legal and Regulatory Technical Information] (Jun. 27, 2021), available at http://docs.cntd.ru/document/902240035?section=text.

12 Chambers of the Federal Assembly, constituent entity of the RF, Supreme Court, Prosecutor General's Office, Central Bank, High Commissioner for Human Rights.

(Art. 8); The Ministry of Foreign Affairs and the executive authorities, with the approval of the Ministry of Foreign Affairs (and, if necessary, of the Ministry of Justice) can make proposals for concluding an agreement (Art. 9), containing statement of reasons for such decision. The role of the Ministry of Foreign Affairs is depicted in the Decree of the President of 8 November 2011 No. 1478 "On the Coordinating Role of the Ministry of Foreign Affairs of the RF in the Implementation of a Uniform Foreign Policy of the RF."

8. Provisional application is allowed by decision of the body that has decided to sign the treaty. If the treaty needs ratification, it must be submitted to the State Duma within a period not exceeding 6 months from the date of the beginning of provisional application (Art. 23); the consequences of failure to submit the draft, however, are undefined. The regime of provisional application is applied with respect to the Agreement between the USSR and the USA on the maritime boundary 1990 and the Energy Charter Treaty 1994 which was in force until 2009. In the Ruling 24 December 2020 the Constitutional Court (No. 2867-O-P) stated that the Government's consent to the provisional application does not apply to those provisions of the treaty that govern matters within the exclusive jurisdiction of Parliament.[13]

9. Article 4 of the 1995 Law requires the approval to be received from the constituent entities of the RF with respect to treaties potentially affecting the interests of these entities. Their proposals are to be under consideration during the preparation of the draft. This rule is interpreted by the Constitutional Court restrictively, as meaning "coordination with the authorities of certain constituent entities of the RF with respect only to those agreements that functionally burden these entities." The Court concluded, that there is no need for such approval with respect to every agreement on "key economic issues."[14]

10. Article 72(1) refers to the joint jurisdiction of the RF and her constituent entities with respect to the "coordination of international and foreign economic relations of the subjects of the RF." The 1998 Law on the Coordination of [these] Relationships requires that the agreements of Russian regions be coordinated with the Ministry of Foreign Affairs and stipulates that they "are not considered as international treaties" (Art. 7), and federal authorities are not responsible for them, except in cases of consent or guarantees given by the federal Government. The constituent entities of the RF

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[13] As a result, the Constitutional Court ruled out the application of the provisions of investment treaties providing for the jurisdiction of investment arbitrations, on the pretext that, in accordance with Article 47(1) of the Constitution, the competence of the courts may be determined exclusively by the Law. This ruling is a reaction to the decision of the Hague Court of Appeal dated 18 February 2020, in which the Dutch court admitted that Russia was bound by the ECT at the time she took repressive measures against the company YUKOS.

[14] *See* Постановление Конституционного Суда Российской Федерации от 9 июля 2012 г. № 17-П // СПС «КонсультантПлюс» [Ruling of the Constitutional Court of the RF of 9 July 2012 No. 17-P, SPS "ConsultantPlus"] (Jun. 27, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_132320/.

have concluded over a thousand general agreements, in recent years this practice has been curtailed.

11. The Constitutional Court consider cases on the correspondence to the Constitution of the RF of "international treaties and agreements of the RF which have not come into force" (Art. 125 (2) of the Constitution). In a Ruling dated 9 July 2012, the Court recognized the Protocol on Russia's accession to the Marrakesh Agreement establishing the WTO in conformity with the Constitution. The Court refused to assess the correspondence to the Constitution of the Agreement *per se*, pointing out that only the Protocol and the reasons for its conclusion is subject to the review, and indicated that this issue is within the competence of the Government.

12. The Russian courts use the principle of consistent interpretation of treaties (the Charming Betsy doctrine)[15]. Its application in the field of human rights is based upon Article 17(1) of the Constitution:

> In the RF recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law ...

The courts determine applicable rules of international law *ex officio*. They can request information concerning the validity of a treaty and the practice of its application from the Ministry of Foreign Affairs and the Ministry of Justice. However, such cooperation is rare.

13. There exist some problems of the application of international law within the legal order of the RF, that is: 1) inconsistency in the application of the monistic concept which is stipulated in Article 15 of the Constitution; 2) the unclear status of customary law and general principles of law recognized by civilized nations; 3) unclear solution of some issues of treaty law (e.g. provisional application of treaties); 4) lack of a developed judicial tradition of interpretation and application of international law.

2. Treaty Policy

14. Russia continues to be the party of the main conventions concluded after World War II that have become the basis of common law: Geneva Conventions of 1949, 1969 Convention on the Law of Treaties, 1982 Convention on the Law of the Sea, etc. These conventions are ritually defined by Russian doctrine[16] and diplomacy

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[15] In its Ruling in the Yahya Gafur case of 17 February 1998 the Constitutional Court interpreted the rights to freedom and judicial protection in the context of "universally-recognized principles and norms of international law." By the Judgment of 27 June 2013 "On the Application by the Courts of General Jurisdiction of the 1950 European Convention" the Supreme Court ordered the lower courts to take into account the positions of the ECtHR.

[16] The Russian International Law Association commemorates the anniversaries of important treaties by holding conferences.

as the basis of international order, while not accompanied by detailed comments and not the subject to meaningful discussions.

15. In the period 2000–2020, Russia joined the 2000 Convention against Transnational Organized Crime; 2003 Convention against Corruption; 2003 Framework Convention on Tobacco Control; 2005 Convention Against Doping in Sport; 2008 Convention on the Rights of Persons with Disabilities; WTO agreements (2012); 2015 Paris Agreement under the United Nations Framework Convention on Climate Change (2016); voted for the 2018 Global Compact on Migration, etc.

16. At the same time she refused to participate in the 2001 Treaty on Plant Genetic Resources; 2004 Convention on Jurisdictional Immunities of States; 2006 Convention for the Protection of All Persons from Enforced Disappearance; 2008 Convention on Cluster Munitions; 2011 Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure; 2013 Arms Trade Treaty; 2002 Chisinau Convention on Legal Assistance (within the CIS).

17. Russia withdrew from some treaties: the 1990 Treaty on Conventional Armed Forces in Europe;[17] 2000 Plutonium Management and Disposition Agreement between Russia and the USA;[18] 1992 Treaty on Open Skies.[19] Russia refused to participate in the ICC Statute, which it signed in 2000,[20] and the 1994 Energy Charter Treaty, which

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[17] Указ Президента Российской Федерации от 13 июля 2007 г. № 872 // СПС «Гарант» [Decree of the President of the RF of 14 July 2007 No. 872, SPS "Garabt"] (Jun. 27, 2021), available at http://base.garant.ru/12154582/; Федеральный закон от 29 ноября 2007 г. № 276-ФЗ «О приостановлении Российской Федерацией действия Договора об обычных вооруженных силах в Европе» // СПС «КонсультантПлюс» [Federal Law No. 276-FZ of 29 November 2007. On the Suspension by the Russian Federation of the Operation of the Treaty on Conventional Armed Forces in Europe, SPS "ConsultantPlus"] (Jun. 27, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_72838/. The explanatory note to the mentioned Federal law stated: "until all NATO countries ratify the Adapted CFE Treaty and begin to implement this document in good faith."

[18] Указ Президента Российской Федерации от 3 октября 2016 г. № 511 «О приостановлении Российской Федерацией действия Соглашения между Правительством Российской Федерации и Правительством Соединенных Штатов Америки об утилизации плутония, заявленного как плутоний, не являющийся более необходимым для целей обороны, обращению с ним и сотрудничеству в этой области и протоколов к этому Соглашению» // СПС «КонсультантПлюс» [Decree of the President of the RF No. 511 of 3 October 2016. On the Suspension by the Russian Federation of the Agreement Between the Government of the Russian Federation and the Government of the United States of America on the Disposal of Plutonium Declared as Plutonium That Is No Longer Necessary for Defense Purposes, its Handling and Cooperation in This Area and the Protocols to This Agreement, SPS "ConsultantPlus"] (Jun. 27, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_206046/, containing a reference to "a fundamental change of circumstances."

[19] On 15 January 2021, the Foreign Ministry announced that U.S.' withdrawal from the Treaty undermines the "balance of interests" and Russia was withdrawing "due to the lack of progress in removing obstacles to the continuation of the Treaty's functioning in the new conditions."

[20] Распоряжение Президента Российской Федерации от 16 ноября 2016 г. № 361-рп «О намерении Российской Федерации не стать участником Римского статута Международного уголовного суда» // Президент России [Order of the President of the RF of No. 261-rp 16 November 2016. On the Intention of the RF Not to Become a Party to the Rome Statute of the ICC, President of Russia] (Jun. 27, 2021), available at http://kremlin.ru/acts/bank/41387.

it signed for the aims of provisional application.[21] It also withdrew the declaration to the Protocol I to the Geneva Conventions recognizing the competence of the International (Humanitarian) Fact-Finding Commission.[22]

18. Russia participates in the creation of the Eurasian Economic Union treaty law (2014 Agreement on the EAEU, 2017 Agreement on the EAEU Customs Code). In recent years, she has entered into several general agreements within the Eurasian Economic Space: 2018 Agreement on International Treaties of the EAEU; 2018 Agreement on the Harmonization of Legislation in the Field of the Financial Market; 2019 Agreement on the Principles of Tax Policy in the Field of Excise Taxes on Tobacco Products; 2019 Shipping Treaty; 2020 Trademark Agreement.

19. Within the CIS, the following conventions were adopted: on legal assistance in 2002; on the standards for democratic elections in 2002; on the status of a [foreign] journalist in 2004; on the legal status of migrant workers in 2008; on cross-border cooperation in 2008; on interregional cooperation in 2016; on agrobiodiversity in 2016; on cooperation in outer space in 2018; on the transfer for punishment not related to imprisonment in 2019. Russia does not participate in some of them.

20. Since 2000, Russia has entered into 52 bilateral agreements on legal assistance; often they regulate only one form of assistance in criminal cases (extradition, transfer for punishment, etc.), for instance – treaties with Abkhazia and South Ossetia; legal assistance in civil cases is governed only by treaties with Argentina and India (2000);[23] there are no such agreements with Germany, Great Britain, France, USA, Canada, Israel, despite extensive commercial and family contacts with these countries.

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[21] Распоряжение Правительства Российской Федерации от 30 июля 2009 г. № 1055-р «О направлении уведомления о намерении Российской Федерации не становиться участником Договора к Энергетической Хартии, а также Протокола к Энергетической Хартии по вопросам энергетической эффективности и соответствующим экологическим аспектам» // Электронный фонд правовой и нормативно-технической информации [Order of the Government of the RF No. 1055-r of 30 July 2009. On Sending a Notification of the Russian Federation's Intention Not to Become a Party to the Energy Charter Treaty, as Well as the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects, Electronic Fund of Legal and Regulatory Technical Information] (Jun. 27, 2021), available at https://docs.cntd.ru/document/902169103. This decision was made after a series of lawsuits by the YUKOS group of companies.

[22] *See* Федеральный закон от 12 ноября 2019 г. № 368-ФЗ «Об отзыве заявления, сделанного при ратификации Дополнительного протокола к Женевским конвенциям от 12 августа 1949 года, касающегося защиты жертв международных вооруженных конфликтов (Протокол I)» // СПС «КонсультантПлюс» [Federal Law No. 368-FZ of 12 November 2019. On the Withdrawal of the Declaration Made Upon the Ratification of the Additional Protocol to the Geneva Conventions of 1949, Concerning the Protection of Victims of International Armed Conflicts, SPS "ConsultantPlus"] (Jun. 27, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_337349/. The explanatory note stated that since 1991 the International Fact-finding Commission has actually not been working; there is no Russian representative among its members; a risk of politicized decisions increases in the given circumstances.

[23] List of international treaties of the Russian Federation on legal assistance, extradition and transfer of persons sentenced to imprisonment, Ministry of Justice of the RF (Jun. 27, 2021), available at https://minjust.gov.ru/ru/pages/perechen-mezhdunarodnyh/.

21. Since 2000, Russia has concluded 23 agreements on the avoidance of double taxation, including with China (2014), Japan (2017); agreements with Western countries were concluded earlier (total number – 84).[24] Russia joined the 1988 OECD Convention on Mutual Administrative Assistance in Tax Matters; 2014 Agreement on the Automatic Exchange of Financial Account Information; 2017 Convention to Implement Tax Treaty Related Measures (concerning countering offshores).

22. Since 2000, Russia has entered into 32 new investment protection agreements, mainly with secondary economic partners (except the 2006 agreement with China). The main agreements were concluded in the 80–90s; the total number as of 1 March 2016 – 80 agreements, of which 63 entered into force.[25] Russia does not participate in the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States.

23. The main principles of Russia's treaty policy are as follows: 1) wide participation in treaties that form the basis of general international law, as well as treaties in the field of economic cooperation, regional integration and legal assistance; 2) unwillingness to participate in treaties, if this may entail negative political consequences; 3) lack of a clear position regarding the provisional application of treaties; 4) the decisive role of the Ministry of Foreign Affairs in determining treaty policy.

3. Borders of the RF

24. Russia has borders with 18 countries, the total length of them is 61 thousand km. Typically, the boundaries are orographic, defined by treaties, or duplicate the administrative boundaries established during the Soviet period. The largest borders are with Kazakhstan (7.6 thousand km), China (4.2), Mongolia (3.5), Ukraine (2.2), Finland (1.3). Russia has two exclaves (Kaliningrad Oblast and Sankovo-Medvezhye). The borders with some countries are a matter of controversy.

25. Russia participates in the 1920 Spitsbergen Treaty and insisted on its application in the exclusive economic zone and on the shelf. Until recently, she insisted on a sectoral delimitation with Norway, while Norway proposed to use an equidistance line. In the 2010 Treaty on Delimitation of the Sea Areas, the parties agreed upon compromise delimitation: thereby, Russia abandoned the sectoral principle and recognized that Spitsbergen had its own shelf.[26]

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[24] List of the tax agreements for the avoidance of double taxation between the Russian Federation and other States, Ministry of Finance of the RF (Jun. 27, 2021), available at https://m.minfin.ru/ru/document/?id_38=124786-spisok_mezhdunarodnykh_dogovorov_ob_izbezhanii_dvoinogo_nalogooblozheniya_mezhdu_rossiiskoi_federatsiei_i_drugimi_gosudarstvami_list_of_the_tax_agreements_for_the_avoidance_.

[25] On bilateral agreements of the Russian Federation with foreign countries on the encouragement and mutual protection of investment, Ministry of Foreign Affairs of the RF (Jun. 27, 2021), available at https://www.mid.ru/foreign_policy/economic_diplomacy/-/asset_publisher/VVbcI0lf1FVU/content/id/2631716.

[26] *See Криворотов А.К.* Неравный раздел пополам: к подписанию российско-норвежского договора о разграничении в Арктике // Вестник МГУ. Сер. 25. Международные отношения и мировая политика. 2011. № 2. С. 62–91 [Andrei K. Krivorotov, *Unequal Division in Halves: Towards the Signing of the Russian-Norwegian Agreement on Delimitation in the Arctic*, 2 Moscow University Bulletin. Series 25. International Relations and World Politics 62 (2011)].

26. The border with Ukraine was defined in the 2004 Treaty and duplicated the former administrative boundary line. The ownership of Tuzla Island and the status of the Kerch Strait caused controversy: Russia was interested in the common internal waters regime while Ukraine stood for the allocation of sectors. The cooperation treaty concerning the use of the Sea of Azov and the Kerch Strait proclaimed the regime of historical waters, but did not resolve the issue of delimitation. In 2014, Crimea, Tuzla and the Kerch Strait were transferred to Russia.

27. Russian doctrine and diplomacy stand upon the following arguments: 1) Russia used force to protect its nationals; 2) President of Ukraine V. Ianukovych appealed to the RF with a request for help; 3) Events in Crimea constitute a legitimate secession; 4) Ukraine has violated the principle of self-determination; 5) Crimea is a historic Russian territory; 6) The 1994 Budapest Memorandum is a political document; 7) Events in Crimea are similar to events in Kosovo, Mayotte, etc.[27]

28. Ukrainian and Western experts make the following arguments: 1) Change of political power is an internal matter of states; 2) There were no massive violations of human rights in Crimea; 3) A request for help cannot be made by illegitimate and ineffective authorities; 4) There is no general right to secession; 5) Crimeans do not constitute a "people"; 6) Crimea seceded as a result of Russian aggression; 7) References to history are not supported by international law; 8) The 1994 Memorandum is a treaty.[28]

29. The border with China mainly runs along the rivers Amur and Ussuri. According to the Aigun Treaty of 1858 and the Peking Treaty of 1860, the Amur River region and the Primorye region were ceded to Russia; the border was established along the Chinese coast. Under the 1991, 1994 and 2004 Treaties several islands located on the Chinese side of the fairway, but considered as Russian ones, including Damansky Island, Tarabarov Island and the western part of the Bolshoi Ussuriysky Island, came under the jurisdiction of China.[29]

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[27] *See* Anatoly Kapustin, *Crimea's Self-Determination in the Light of Contemporary International Law*, 75(1) Heidelb. J. Int'l L. 101 (2015); *Вельяминов Г.М.* Воссоединение Крыма с Россией: правовой ракурс // Государство и право. 2014. № 9. С. 12–18 [Georgii M. Veliaminov, *Reunification of Crimea with Russia: Legal Perspective*, 9 State and Law Journal 12 (2014)]; *Хлестов О.Н.* Украина: право на восстание // Международный правовой курьер. 2014. № 1. С. 18–19 [Oleg N. Khlestov, *Ukraine: The Right to Rebellion*, 1 International Legal Courier 18 (2014)]; *Томсинов В.А.* «Крымское право» или юридические основания воссоединения Крыма с Россией [Vladimir A. Tomsinov, *"Crimean Law" or Legal Basis for the Reunification of Crimea with Russia*] (2015); *Толстых В.Л.* Воссоединение Крыма с Россией: правовые квалификации // Евразийский юридический журнал. 2014. № 5(72). С. 40–46 [Vladislav L. Tolstykh, *Reunification of Crimea with Russia: Legal Qualifications*, 5(72) Eurasian Law Journal 40 (2014)].

[28] *See Маркссен К.* Крымский кризис с точки зрения международного права // Сравнительное конституционное обозрение. 2014. № 5(102). С. 56–72 [Christian Marxsen, *Crimean Crisis from the International Law Perspective*, 5(102) Comparative Constitutional Review 56 (2014)]; Enrico Milano, *The Non-Recognition of Russia's Annexation of Crimea: Three Different Legal Approaches and One Unanswered Question*, 1 Quest. Int'l L. 35 (2014); Antonello Tancredi, *The Russian Annexation of the Crimea: Questions Relating to the Use of Force*, 1 Quest. Int'l L. 5 (2014); *Задорожный А.В.* Российская доктрина международного права после аннексии Крыма [Aleksandr V. Zadorozhnyi, *Russian Doctrine of International Law After the Annexation of Crimea*] (2015); Oleksandr Merezhko, *Crimea's Annexation in the Light of International Law: A Critique of Russia's Legal Argumentation*, 2 Kyiv-Mohyla L. Pol. J. 37 (2016).

[29] *See Ткаченко Б.И.* Восточная граница между Россией и Китаем в документах и фактах [Boris I. Tkachenko, *Eastern Border Between Russia and China in Documents and Facts*] (2010).

30. Paragraph 9 of the Joint Declaration on the Cessation of the State of War of 1956 provides:

> The USSR, going to meet the wishes of Japan and taking into account the interests of the Japanese state, agrees to the transfer to Japan of the Habomai Islands and the Island of Sycotan in order, however, that the actual transfer of these Islands will be made after the conclusion of the Peace Treaty between the USSR and Japan.

The Peace treaty was not concluded, and in 1960 the USSR refused to transfer the islands, justifying it by the threat from the USA.

31. Japan disputes the title of the RF to islands Kunashir, Iturup, Shikotan and Habomai, using the following arguments: 1) Japan was the first to "open" and "occupy" the Kuril Islands; 2) The Treaties of 1855 and 1875, on the basis of which Japan received the Kuriles, remain to be in force; 3) The Kuriles were acquired peacefully and are not subject to the 1943 Declaration; 4) The Crimean Agreement of 1945 does not bind Japan; 5) the USSR violated the 1941 bilateral Neutrality Pact; 6) The USSR did not sign the 1951 San Francisco Treaty.[30]

32. Russia does not formulate clear counterarguments, but refers to the "universally-recognized principles and the results of World War II formalized by the U.N. Charter." She does not consider the Kuril Islands case as a legal dispute and refuses to discuss the issue of transferring them in total or partly to Japan.[31] In 2018–2019 the presidents of the two states expressed their intention to conclude a peace treaty that would decide the fate of the islands (one of the options was a regime for their joint use), but the negotiations on this issue were not successful.[32]

33. The Alaska Purchase Treaty of 1867 delimited only land areas.[33] In 1977 the USSR and the USA agreed to be bound by the 1867 line to delimit fishing zones; thus the USSR abandoned the equidistance line, provided by Articles 74 and 83 of the 1982 Convention on the law of the sea. In 1990, the USSR and the USA signed the Agreement on the maritime boundary, also reproducing the 1867 line. However, the USSR agreed only to its provisional application. The current status of the Agreement

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[30] *See Неверова Е.В.* Международно-правовой режим южно-курильских островов: дис. … канд. юрид. наук [Evgeniia V. Neverova, *The International Legal Status of Southern Kuril Islands: Thesis*] 14–15 (2019).

[31] РФ не рассматривает ситуацию с Японией в вопросе о границах как некий территориальный спор // ТАСС. 18 февраля 2014 г. [The RF Does Not Consider the Situation with Japan on the Issue of Borders as a Kind of Territorial Dispute, TASS, 18 February 2014] (Jul. 4, 2021), available at https://tass.ru/politika/977894.

[32] *Фахрутдинов Р.* «Будем развивать»: Путин закрыл вопрос по передаче Курил // Газета.Ру. 22 июня 2019 г. [Rafael Fakhrutdinov, *"We Will Develop": Putin Closed the Issue of Transferring the Kuriles*, Gazeta.Ru, 22 June 2019] (Jul. 4, 2021), available at https://www.gazeta.ru/politics/2019/06/22_a_12434575.shtml.

[33] In the Award on the preservation of fur seals dated 15 August 1893 (USA and Great Britain), the arbitral tribunal concluded that at the time of the cession of Alaska to the USA, Russia never asserted in fact or exercised any exclusive rights in the seal fisheries therein beyond the ordinary limits of territorial waters (3 nautical miles); therefore, the USA, being Russia's successor, also does not have these rights.

is unclear: Russia could refer to Article 25(2) of the Vienna Convention on the Law of Treaties while the USA could rely on the principles of estoppel and prescription.[34]

34. In the early 2000s the issue of concluding the Agreement was discussed in the Federation Council; it was noted that in 1990 the legislation of the USSR did not provide for provisional application; the agreement was subject to ratification by the Congress of People's Deputies (Art. 108 (para. 3) of the USSR Constitution); the USSR handed over 30 thousand square km of its own EEZ; according to the Accounts Chamber of the RF the losses of the Russia for the period 1991–2002 amounted to 1.6–1.9 million tons of fish ($2 billion); the Agreement blocks the Northern Sea Route and does not comply with the law of the sea.

35. Russia puts forward the demands in relation to the Arctic, that could be formed into three groups. First, she insists on the application of the sectoral principle of delimitation. These claims were set forth in the note of the Ministry of Foreign Affairs of the Russian Empire dated 20 September 1916 and in the Decree of the Presidium of the Central Executive Committee of the USSR dated 15 April 1926 "On the Declaration of the Lands and Islands Located in the Arctic Ocean to be the Territory of the USSR."[35] Having concluded an Agreement with Norway in 2010, Russia actually renounced this claim.

36. Second, Russia considers the Arctic shelf and the Lomonosov Ridge as an extension of the Eurasian continent and claims shelf boundaries beyond 200 miles. Denmark believes that the Lomonosov Ridge was previously connected to Greenland. In 2001, Russia filed an application to the U.N. Commission on the Limits of the Continental Shelf, but the Commission found the evidence presented to be insufficient. Thus, the issue requires further research.[36]

37. Third, Russia is interested in extending of the legal status of historical waters to the East Siberian Sea, Kara Sea, Laptev Sea and the part of the Chukchi Sea. A decree of the USSR Council of Ministers of 15 January 1985, however, defined the USSR's baselines for the *coastline* of the Arctic Ocean and thus recognised the abandonment of this claim.[37] At present, the control by Russia of the passage along the Northern Sea Route can only be based on Article 234 of the Convention.

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[34] *See Вылегжанин А.Н.* 20 лет «временного применения» Соглашения между СССР и США о линии разграничения морских пространств // Вестник МГИМО-Университета. 2010. № 1. С. 104–113 [Alexander N. Vylegzhanin, *20 Years of Provisional Application of the Agreement Between the USA and the USSR on the Maritime Boundary*, 1 MGIMO Review of International Relations 104 (2010)].

[35] The Decree declares to be the territory of the USSR "all either discovered or undiscovered lands and islands located in the Arctic Ocean, north of the coast of the USSR to the North Pole, that are not at the time of publication of this Decree the territory of any foreign states or have not been recognized as such by the government of the USSR."

[36] In 2007, the Russian expedition "Arctic 2007" took soil and water samples near the North Pole and planted a Russian flag at the bottom. The United States and Canada have stated that this act has no legal consequences.

[37] Article 5.1 of the Merchant Shipping Code of Russia defines the water area of the Northern Sea Route as consisting of internal sea waters, the territorial sea, the contiguous zone and the EEZ of the RF.

38. In 2018, five Caspian littoral states signed the Convention on the Legal Status of the Caspian Sea. The parties agreed upon a *sui generis* legal regime, i.e. made a reference to bilateral agreements on the delimitation of the shelf and established a condominium regime for maritime spaces beyond 25 miles from the coast. This regime is objectively disadvantageous for Russia, since denies her access to rich oil and gas fields and makes it possible to build the Trans-Caspian pipeline without her consent.[38]

39. General legal trends in this field are as follows: 1) the RF backs down from some minor claims in order to ensure stability; 2) in some cases, the RF does not formulate a clear legal stance, limiting herself to political statements; 3) the RF refuses to use judicial mechanisms, preferring bilateral negotiations and/or maintaining the *status quo*; 4) the RF does not make efforts to create coalitions that support her claims (with South Korea in relation to the Kuriles, with Canada and China in relation to the Arctic, etc.).

4. Russia and International Organizations

40. The RF regularly submits draft resolutions to the U.N. General Assembly,[39] some of them, however, are not supported.[40] After 2014, the U.N. General Assembly adopted several resolutions concerning the situation in Ukraine, directed against Russia.[41] Russia makes some efforts to defend its interests in other bodies and organizations of the U.N. system, sometimes successfully,[42] sometimes not.[43] The situation in Crimea has been the subject of investigations by the UNHCR and the

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[38] *See Толстых В.Л.* Правовой режим Каспийского моря по Конвенции 2018 г. и интересы прикаспийских государств // Российский юридический журнал. 2020. № 1. С. 9–19 [Vladislav L. Tolstykh, *The Legal Regime of the Caspian Sea Under the 2018 Convention and the Interests of the Caspian States*, 1 Russian Juridical Journal 9 (2020)].

[39] In December 2019, the U.N. GA voted for a number of drafts sponsored by Russia: 74/173 on the combat against cybercrime (79 – for, 60 – against, 33 – abst.); 74/136 on the combat against the glorification of Nazism, neo-Nazism and other practices of intolerance (133 – for, 2 – against (USA and Ukraine, 52 – abst.); 74/66 on arms control, disarmament and non-proliferation.

[40] On 20 December 2019, the U.N. GA did not support the draft resolution A/73/L.70 on maintaining in force and observing the Intermediate-Range Nuclear Forces Treaty (43 – for, 46 – against, 78 – abst.).

[41] U.N. GA Resolution 68/262 of 27 March 2014 on the territorial integrity of Ukraine (100 – for; 11 – against, 58 – abst.). Abstaining – China, India, Kazakhstan, Uzbekistan, Mongolia and others. 24 states were absent, e.g. Turkmenistan, Kyrgyzstan, Tajikistan, Iran, Israel. *See* also Resolutions 71/205 (2016), 72/190 (2017), 73/263 (2018), 73/194 (2018); 74/168 (2019).

[42] In March 2018, the U.N. Human Rights Council adopted the Russian-proposed Resolution on the Integrity of the judicial system, requiring the closure of secret prisons (2 – against, the USA and Georgia).

[43] In April 2018, Russia submitted to the Executive Council of the Organization for the Prohibition of Chemical Weapons a draft resolution on a joint investigation of the Skripals incident, for which only 6 out of 41 states voted.

U.N. Secretary-General. The President of the RF made a speech at the 70th session of the U.N. GA (but not at the 75th one).

41. Russia makes active use of the veto right. In 2010–2020s she used it 25 times, mainly when voting for draft resolutions related to the Middle East (other situations – Venezuela, Ukraine, Myanmar and Georgia cases). During the same period, China used its veto power 13 times (most often simultaneously with Russia); USA – 14 times (resolutions on Palestine); France and Great Britain – never. In 1990-2000s Russia used her veto right only twice.[44]

42. In April 2014, PACE recognized the legitimacy of the new government of Ukraine and qualified the accession of Crimea to Russia as annexation. The Russian delegation was deprived of the right to vote; the ban was subsequently extended to 2015. The credentials of the Russian delegation, however, have not been revoked. In 2016-18s Russia did not apply to PACE to approve the credentials of her delegation; PACE, in turn, has adopted several resolutions condemning various aspects of Russian politics.

43. In 2017–18s Russia did not pay most of its contribution to the Council of Europe budget (55 million euros), citing the lack of voting rights in PACE. The Russian authorities also stated that since they are denied the opportunity to elect the judges of the ECtHR, the legitimacy of these judges is in question. In April 2019, PACE called on Russia to form a delegation and pay contribution, and in June confirmed her full powers. After that, the Russian delegation returned to PACE.

44. The Commonwealth of Independent States, formed as a result of the breakup of the USSR, according to Article 1 of its Charter "does not have supranational powers." Initially, the members of the CIS were 12 former Soviet republics; subsequently, the number of members was reduced, and many areas of cooperation were closed. In fact, the CIS functioned as a regular conference in which states discussed current problems and concluded treaties.[45] The most important are agreements on succession, pensions and legal assistance.[46]

45. The Shanghai Cooperation Organization (SCO) was created on the basis of annual summits with the participation of Russia, China and Central Asian countries. Its Charter was adopted in 2002. In addition to be a forum for regional cooperation, it is designed to develop a common position in relations with the West. At present, its activities are limited to holding meetings, adopting political documents and

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[44] Security Council – Veto List, United Nations (Jul. 4, 2021), available at http://research.un.org/en/docs/sc/quick/veto.

[45] The report "Results of the CIS Activities for 10 Years and Tasks for the Future" noted: "Today the Commonwealth is an association with a free and in fact unobtrusive nature of relations, where there is no system of responsibility for the fulfilment of the assumed obligations" (Jul. 4, 2021), available at www.cis.minsk.by.

[46] Agreement on the procedure for the settlement of disputes related to the implementation of economic activities of 1992: Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993, etc.

concluding international treaties. The most notable is cooperation in crime control.[47]

46. The Eurasian Economic Union is the first supranational organization in the post-Soviet area. The Treaty on the Establishment of the Eurasian Economic Community (EAEC) was concluded in 2000. In 2009–2012, were concluded agreements that determined the areas of cooperation: Customs Union and Common Economic Space. In 2014, a decision was made to transform the EAEC into the EAEU and the Treaty on the EAEU was signed (entered into force on 1 January 2015). Initially, the members of the Union were Belarus, Kazakhstan and Russia; in 2014, Kyrgyzstan joined it, and in 2015, – Armenia.

47. The bodies of the EAEU are the Supreme Economic Council, the Intergovernmental Council, the Economic Commission and the Court. Council decisions are adopted by consensus. The Commission consists of the Council (consisting of representatives of states) and the Board and is the permanent regulatory body of the Union. It makes decisions and prepares proposals on the issues of integration, monitors the implementation of treaties, prepares expert opinions and draft agreements, etc.

48. In the field of the Customs Union, there were adopted the customs code and customs tariff, 30 technical regulations,[48] etc.; in the field of the Common Economic Space – Agreements that established uniform rules for competition, subsidies, etc. Customs control at the internal borders of the Union was removed and established at external borders; at the same time, border and migration control at internal borders was preserved. Russia receives 85.33% of import duties, Kazakhstan – 7.11%, Belarus – 4.55%, Kyrgyzstan – 1.9%, Armenia – 1.11%.

49. The development of Eurasian integration cannot be qualified as conflict-free. In 2016, Russia accused Belarus of violating the EAEU law in connection with the detention by the Belarusian authorities of goods carried from the Kaliningrad region to other Russian regions. The customs clearance of them was carried out by Russian authorities. In a Decision of 21 February 2017, the EAEU Court concluded that Belarus had fulfilled its obligations under the 2014 Treaty "not to the fullest extent."

50. The EAEU treaty framework is imperfect: the basic documents contain contradictions, gaps, inaccuracies, or are simply written in poor Russian. Many legal issues have not been resolved (concept of "Union law," relationship between the WTO law and the EAEU law, procedure for the Commission's interaction with business entities, etc.). An inevitable consequence of shortcomings in primary law is the faults in decisions of the Commission and the Court of the EAEU, the analysis of which is sometimes a difficult task.

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[47] Under the auspices of the SCO, the 2001 Convention on Combating Terrorism, Separatism and Extremism was adopted, the 2002 Regional Anti-Terrorist Structure was established, etc.

[48] "On the safety of pyrotechnic products," "On the safety of toys," "On the safety of packaging," etc.

51. The institutional framework of the EAEU is imperfect; the architects of the Union were never able to form a holistic vision of its essence: whether it is an improved version of the CIS or an analogue of the EU. Within the Councils, the majority decision does not bind the minority; the EAEU Commission, designed to perform supranational functions, consists of representatives of states, and does not have the right to bring claims against states; the EAEU Court is not entitled to adjudicate requests from domestic courts, etc.

52. General trends are as follows: 1) Russia uses international organizations rather as political fora, and not as a mechanism to create new legal order; 2) She often takes a passive position when considering issues that do not affect her interests; 3) the RF make efforts to use the U.N. mechanisms, but sometimes lacks allies and trust from other members of international community; 4) Regional institutions created by the RF suffer from systemic problems and are limited to trade cooperation.

5. Russia and International Courts

53. Russia recognizes the jurisdiction of the ICJ, Permanent Court of Arbitration, ITLOS, WTO Dispute Settlement Body, ECtHR, CIS Economic Court and EAEU Court. Russian judges are permanent members of the ICJ and ITLOS. The RF is a participant to several lawsuits, including one at the ICJ and two under the auspices of the PCA (all three cases were initiated upon the requests of Ukraine). The Russian doctrine intensively researches the problems of international justice (e.g. A. Ispolinov, A. Smbatian, V. Tolstykh).

54. In 1989, the USSR withdrew clauses on non-recognition of the compulsory jurisdiction of the ICJ with respect to disputes on the interpretation and application of six conventions in the field of human rights[49] – this allowed Georgia and Ukraine to submit claims concerning alleged violations of the 1965 Convention on the Elimination of All Forms of Racial Discrimination to the ICJ (in 2008 and 2017). Russia, nevertheless, retained reservations to some other conventions, for example, to the Convention on the Law of the Sea (she unsuccessfully tried to use this reservation in the Arctic Sunrise case).

55. In a Judgment of 1 April 2011 the ICJ concluded that since Georgia did not try to start negotiations with Russia on the violation of the Convention on the Elimination of All Forms of Racial Discrimination between August 9 (the date when the dispute arose) and 12 August 2008 (the date when application was filed to the Court), the mandatory condition of seizing the Court (Art. 22 of the Convention) had not been met. In their dissenting opinion, five judges indicated that at the time of the appeal to the Court there was no reasonable prospect of resolving the dispute through negotiations – therefore, the condition of Article 22 was had been met.

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[49] Decree of the Presidium of the Supreme Soviet of the USSR of 10 February 1989 No. 10125-XI.

56. By an Order dated 19 April 2017 on the application of Ukraine, the ICJ has indicated provisional measures.[50] In the Judgement dated 8 November 2019, the Court has found that it had had jurisdiction and had rejected the objections raised by the RF on the basis of: lack of jurisdiction *ratione materiae*, failure to settle the dispute through negotiations and the procedure use by the Committee on the Elimination of Racial Discrimination, non-exhaustion of local remedies. A key aspect was the rejection by the Court of Russian arguments based on the implausibility of Ukraine's claims.[51]

57. Russia has been involved in five cases under the auspices of the ITLOS; once – as a plaintiff (the "Volga" case); four times – as a respondent. The first three cases concerned the reasonableness of the bail, in which Russia basically defended her interests. The last two cases concerned the indication of provisional measures pending the formation of the arbitral panel. By the Order of 22 November 2013 in the Arctic Sunrise case, the ITLOS has indicated provisional measures at the request of Holland, rejecting Russia's reference to her declaration made in accordance with Article 298(1b) of the 1982 Convention.

58. By an Order dated 25 May 2019, the ITLOS indicated provisional measures in the case concerning the detention of three Ukrainian naval vessels in the Kerch Strait, rejecting Russia's reference to her reservation under Article 298, which excludes consideration of "military disputes." After analyzing the circumstances of the case, the ITLOS concluded that Russia's actions were the use of force in the context of a law enforcement operation rather than a military operation.

59. By an award of 14 August 2015, the arbitral tribunal condemned the arrest by Russia of the icebreaker Artic Sunrise, owned by Greenpeace, that has been carrying out a protest action in the Russian EEZ. The arbitration concluded that a vessel that violated the laws on artificial installations can be detained in the EEZ only in the event of a hot pursuit, which should begin when the vessel is in the security zone and be continuous (Art. 111); the pursuit of the icebreaker, however, was interrupted. This statement of the Court is difficult to agree with.[52]

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[50] *See Толстых В.Л.* Определение Международного Суда ООН от 19 апреля 2017 г. по делу о применении Конвенции о борьбе с финансированием терроризма и Конвенции о ликвидации всех форм расовой дискриминации (временные меры, Украина против России) // Евразийский юридический журнал. 2017. № 4(107). С. 33–36 [Vladislav L. Tolstykh, *The Order of International Court of Justice on the Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention of the Elimination of All Forms of Racial Discrimination (Provisional Measures, Ukraine vs. Russia)*, 4(107) Eurasian Law Journal 33 (2017)].

[51] *See Толстых В.Л.* Решение Международного Суда ООН от 8 ноября 2019 г. о применении Конвенции о борьбе с финансированием терроризма 1999 г. и Конвенции о ликвидации всех форм расовой дискриминации 1965 г. (предварительные возражения, Украина против России) и комментарий к нему // Евразийский юридический журнал. 2019. № 10(137). С. 30–35 [Vladislav L. Tolstykh, *Judgement of the International Court of Justice in Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention of the Elimination of all Forms of Racial Discrimination (8 November 2019, Preliminary Objections, Ukraine vs. Russian Federation) and the Comment thereto*, 10(137) Eurasian Law Journal 30 (2019)].

[52] First, Article 111(4) of the 1982 Convention does not mention the 500-meter security zone around the facility among the areas where the pursuit is allowed to start. Secondly, hot pursuit is not a security

60. Russia has been a member of the WTO since 2012. In this period, she took part in 17 processes: in 8 cases as a complainant, in 9 – as a respondent. Most of the cases are pending; Russia won one of them at first instance (Russia v Ukraine – "ammonium nitrate" case), lost several cases, including the extremely important case of the Third Energy Package: in its Report dated 10 August 2018, the Panel recognized legitimate the measures taken by the EU to unbundle energy companies.

61. Almost a quarter of the ECtHR decisions were made on applications from Russia; in most cases, the Court finds a violation.[53] The most sensitive are the cases related to violations of Articles 2 and 3; persecution of opposition oligarchs (Gusinsky, Khodorkovsky); Russian control over unrecognized entities (Ilaşcu, Katan); carrying out protest actions (Pussy Riot, National Bolshevik Party). The amounts of compensation are significant: 2 billion over 20 years, including 1.86 billion in the Yukos case (Judgement of 31 July 2014).

62. The result is "principled resistance": Russian officials have subjected the Court's determinations to substantive criticism[54] and announced plans to withdraw from the Council of Europe;[55] in the Ruling of 14 July 2015, the Constitutional Court concluded that it had the right to consider the ECtHR decisions on the correspondence to the Constitution, the Federal Law of 14 December 2015 made the proper amendments to the Federal Constitutional Law "On the Constitutional Court of the RF"; in two considerable rulings, the Court found the execution of the ECtHR judgments to be inconsistent with the Constitution.[56]

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measure, but a measure aimed at implementation of responsibility. Third, the establishment of a safety zone is the right of the coastal state; its absence should not deprive that state of the right to persecution. Fourth, since an intruder can cover 500 meters in just a few minutes, the right to pursue, following the logic of the Court, can only be exercised if a warship is permanently located near each installation; such an encumbrance is clearly not stipulated by the Convention.

53 *See* statistics of 2018: *Вараксин М.* ЕСПЧ подвел итоги 2018 года. Россия – лидер по числу жалоб и нарушений // Право.ру. 24 января 2019 г. [Maksim Varaksin, *The ECtHR Summed up the Results of 2018. Russia Is the Leader in the Number of Complaints and Violations*, Pravo.ru, 24 Jan. 2019] (6 July 2021) available at https://pravo.ru/news/208489; general statistics: *Алехина М.* Россия заняла второе место по числу решений ЕСПЧ за всю его историю // РБК. 24 января 2019 г. [Margarita Alekhina, *Russia Ranked Second in the Number of Decisions of the ECtHR in its Entire History*, RBC, 24 January 2019] (Jul. 6, 2021), available at https://www.rbc.ru/society/24/01/2019/5c4956369a79473746e69e74.

54 *See Зорькин В.Д.* Россия и Страсбург. Проблемы реализации Конвенции о правах человека // Российская газета. 22 октября 2015 г. [Valery D. Zorkin, *Russia and Strasbourg. Challenges to the Implementation of the Convention on Human Rights*, Rossiiskaia Gazeta, 22 October 2015] (Jul. 4, 2021), available at https://rg.ru/2015/10/21/zorkin.html.

55 *Корченкова Н. и др.* Россия рассматривает виды исключения // Коммерсант. 6 мая 2019 г. [Natalia Korchenkova et al., *Russia is Considering Types of Exclusion*, Kommersant, 6 May 2019] (Jul. 4, 2021), available at https://www.kommersant.ru/doc/3961860.

56 Постановление Конституционного Суда Российской Федерации от 19 апреля 2016 г. № 12-П // СПС «КонсультантПлюс» [Ruling of the Constitutional Court of the RF of 19 April 2016 No. 12-P, SPS "ConsultantPlus"] (Jul. 4, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_197028/; Постановление Конституционного Суда Российской Федерации от 19 января 2017 г. № 1-П // СПС «КонсультантПлюс» [Ruling of the Constitutional Court of the RF of 19 January 2017 No. 1-P, SPS "ConsultantPlus"] (Jul. 4, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_211287/.

63. The Ruling of 14 July provoked a debate: many experts criticized the position of the Court.[57] Indeed, the Court used fragile arguments: it indicated that it has the right to establish a violation of Article 31(1) of the 1969 Vienna Convention by the ECtHR; that a judgment of the ECtHR cannot be considered binding if it violates the principles of sovereign equality and non-interference; that according to Article 46(1) of the Vienna Convention, a state may not comply with those treaties that violate the provisions of Chapters 1 and 2 of the Constitution.

64. The CIS Economic Court turned out to be a bad experience. Its obvious shortcomings are: the limitation of its jurisdiction to interstate economic disputes, recommendatory (non-binding) force of decisions, adjudication only during sessions, lack of guarantees for the independence of judges and the presence of the unusual superstructure – Plenum which consists of representatives of states. It should also be noted that the Court's activity is sometimes politicized.[58] The reform of the Court is long overdue, but the creation of the EAEU Court has overshadowed it.

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[57] *See* Zorkin 2015; *Марочкин С.Ю.* ЕСПЧ и Конституционный Суд РФ двадцать лет спустя: в будущее назад? // Российский юридический журнал. 2019. № 1. С. 9–21 [Sergei Iu. Marochkin, *ECtHR and Constitutional Court of Russia Twenty Years Later: Back to the Future?*, 1 Russian Juridical Journal 9 (2019)]; *Бланкенагель А.* «Прощай Совет Европы!» или «Совет Европы, давай поговорим!»? // Сравнительное конституционное обозрение. 2016. № 6(115). С. 135–160 [Aleksandr Blankenagel, *"Good-Bye, Council of Europe" or "Council of Europe, We Got to Talk!"?*, 6(115) Comparative Constitutional Review 135 (2016)]; *Бланкенагель А., Левин И.Г.* В принципе нельзя, но можно! Конституционный Суд России и дело об обязательности решений ЕСПЧ // Сравнительное конституционное обозрение. 2015. № 5(108). С. 152–162 [Aleksandr Blankenagel & Ilia G. Levin, *In Principle, No… but Yes, it is Possible! The Russian Constitutional Court and the Binding Power of Decisions of the European Court of Human Rights*, 5(108) Comparative Constitutional Review 152 (2015)]; *Вайпан Г.В.* Трудно быть богом: Конституционный Суд России и его первое дело о возможности исполнения постановления ЕСПЧ // Сравнительное конституционное обозрение. 2016. № 4(113). С. 107–124 [Grigorii V. Vaipan, *Hard to be a God: The Russian Constitutional Court and its First Case on Enforceability of a Judgement of the European Court of Human Rights*, 4(113) Comparative Constitutional Review 107 (2016)]; *Красиков Д.* Конвенционно-конституционные коллизии: что лежит в основе «возражения» Конституционного Суда России в адрес ЕСПЧ? // Международное правосудие. 2016. № 3(19). С. 101–117 [Dmitrii Krasikov, *Collisions and Illusions Amid the Convention and the Constitution: What Does Underlie the Russian Constitutional Court's Objection to the European Court of Human Rights*, 3(19) International Justice Journal 101 (2016)]; *Толстых В.Л.* «Принципиальное сопротивление» решениям Европейского суда по правам человека в свете критической теории // Международное правосудие. 2018. № 1(25). С. 79–89 [Vladislav L. Tolstykh, *"Principled Resistance" Against European Court of Human Rights Judgements in the Light of Critical Theory*, 1(25) International Justice Journal 79 (2018)].

[58] In the Judgment of 18 April 2008, the Court recognized that the Uzen sanatorium located in the territory of Russia was built at the expense of a Kazakh enterprise and obliged Russia to recognize the property right of Kazakhstan. Russia was advised to settle the dispute by concluding an agreement with Kazakhstan. Russia has appealed against this decision. In a judgment of 12 March 2009, the Plenum of the Court postponed consideration of the complaint for three months in order to resolve the issue at the intergovernmental level. The issue was not settled, and on 14 April 2010, the Plenum issued a new ruling, in which it changed the wording of the 2008 Judgment: citing the fact that the Court was only entitled to recommend certain measures, it excluded the provision obliging Russia to recognize the property right of Kazakhstan, and instead of this recommended that the parties settle the dispute in a bilateral agreement.

65. The Court has heard more than 100 cases, mainly on the interpretation of the law of the treaties, statutes of organizations, agreements on legal assistance, succession, pensions (the largest category) and economic cooperation. The Court was often asked questions that were obvious to a specialist; the answers were just as obvious. The last judgment of the Court was delivered in April 2017. Currently, there are only two judges working for the Court (from Russia and Belarus), the judicial activity is frozen.

66. The EAEC Court was established in 2012. Initially, it operated on the basis of the 2000 Treaty on the Establishment of the EAEC, 2010 Statute and 2010 Treaty on Application by Business Entities to the Court within the Customs Union. The 2014 Treaty on the EAEU put in force the new Statute of the Court (Appendix No. 2) and significantly changed the legal framework of its activities. The Court was renamed into the EAEU Court, its competence was significantly limited, some organizational and procedural rules were changed.

67. The Court ensures the uniform application of treaties and decisions of the Union and considers: 1) cases on the compliance of a treaty of the Union with the Treaty on the EAEU (at requests of states-members); 2) cases on state's observance of treaties and decisions of the Union (at request of states-members); 3) cases on the compliance of decisions, actions or omissions of the Commission with the treaties and decisions of the Union (at request of states-members and economic entities); 4) cases on interpretation of treaties and acts of the EAEU (at request of states-members and bodies of the Union).[59]

68. For almost nine years (from September 2012 to Avril 2021), the Court mainly considered claims from business entities (42 applications) on issues of customs law. 19 of them were considered on the merits: the Court ruled in favor of the Commission 15 times, and in favor of the plaintiffs – only 4 times. Almost all judgments were appealed, but the Appeals Chamber only four times overturned the judgement of the Chamber. 2/3 applications were submitted by the entities from the RF.

69. The Court also issued 19 advisory opinions: 10 – at the request of the Commission, 7 – at the request of national institutions, 2 – at the request of international officials. 16 opinions were issued in 2017–20. The Court also delivered one prejudicial opinion (at the request of the Supreme Economic Court of Belarus), one decision on an interstate dispute (Russia versus Belarus), one decision on the interpretation of its decision (Southern Kuzbass).

70. The Court coped with some problems by setting the procedure of execution of its judgements, clarifying the methodology of customs classification, etc., but was unable to resolve others, for example, the existence of the Commission's obligation

[59] The EAEU Court is not entitled to consider prejudicial requests of national courts and claims of the Commission against states. Such competence was appropriate to the Court of the Eurasian Community; only case of its use led to a conflict between the Court and the Supreme Economic Court of Belarus: the former refused to accept the withdrawal of the request, made by the latter two weeks after the request was accepted for consideration (decisions of 20 May 2013 and 10 July 2013).

to monitor treaties at the request of economic entities. In many cases, the Court took a biased and fragile position (Judgement in the Remdizel case of 8 April 2016, Advisory Opinion on the application of B.M. Adilov of 11 December 2017, etc.).[60]

71. The RF participated in 26 investment lawsuits: 11 cases were ruled in favor of the investor, 4 cases – in favor of the state. The most serious defeats were the claims of the YUKOS group, the rulings on which awarded $50 billion (the RF was unable to achieve reversal of the judgement) and the claims of a group of Ukrainian enterprises in Crimea, with respect to which the jurisdiction of arbitrage was confirmed. One of the results of these lawsuits was Russia's refusal to participate in the Energy Charter Treaty.

72. Trends concerning participation of Russia in international judicial procedure are as follows: 1) Russia recognizes the jurisdiction of the international courts, but takes a passive position by rarely filing suits, objecting to jurisdiction and refusing to participate in the proceedings; 2) The use of this tactic in recent years has led to several serious losses in cases; 3) The RF retains Western lawyers and uses "western" legal arguments; 4) The post-Soviet international courts are politicized and do not make a serious contribution to the development of communitarian law.

6. Russian Doctrine of International Law

73. The Soviet doctrine of international law borrowed a dogmatic form from the West, but had an original ideological (political) content based on Marxist-Leninist teaching and opposite to the liberal content of the Western doctrine. Thus, the denial of the jurisdiction of international courts was based upon the thesis of the ideological bias of Western judges, and the non-participation in economic institutions was justified by the imperialist nature of their economic assistance mechanisms.

74. After the defeat in the Cold War, Russian doctrine abandoned its own ideology and borrowed the ideology of its former adversaries. This entailed a number of negative consequences: 1) new ideas came into conflict with the remaining elements of the old ideology; 2) they were not borrowed in their entirety and were unable to provide a high level of legal rhetoric; 3) Russian doctrine has never become a full-fledged participant in the Western legal discourse and was not able to influence the development of international law.

75. The Russian doctrine is represented by both monistic[61] and dualistic[62] approaches, the latter, however, has more supporters. A feature of Russian dualism theory is

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[60] *See Толстых В.Л.* Практика Суда ЕАЭС/Суда ЕврАзЭС: проблемы правоприменения и некоторые итоги // Международное правосудие. 2016. № 4(20). С. 114–128 [Vladislav L. Tolstykh, *Jurisprudence of the Court of the EEU/Court of the EEC: Problems of the Application of Law and Some Results*, 4(20) International Justice Journal 114 (2018)].

[61] *See* Международное право [*International Law*] (Gennadii V. Ignatenko & Oleg I. Tiunov eds., 2013).

[62] *See Ануфриева Л.П.* Соотношение международного публичного и международного частного права: правовые категории [Liudmila P. Anufrieva, *Correlation of International Public and International Private Law: Legal Categories*] (2002); *Гаврилов В.В.* Понятие и взаимодействие международной

the idea of the automatic transformation of the international legal rules, which takes place even in the case of *renvoi*. Some authors do not identify themselves with any of the approaches, suggesting to focus on the practical aspects of the application of international law in the domestic order.[63]

76. The rigid arguments of the Russian doctrine reflect the postulates of voluntarism formulated in the 19th – early 20th centuries by G. Jellinek, D. Anzilotti and others and creatively modified by Soviet publicists, primarily by G. Tunkin. Russian doctrine is not familiar with modern non-voluntarist theories (constitutionalism, structuralism, neo-naturalism, etc.) and, as a result, unable to participate in serious theoretical polemics and ineffective in practical situations (for example, in international trials).

77. Russian doctrine focuses on the analysis of major treaties. It is wary of a custom: recognizing customs as a source of law, it prefers not to work with it and perceives it as an auxiliary source. Even more problematic is the attitude towards general principles of law, which are often misidentified with the principles of international law[64] or *jus cogens* norms. For a long time, judicial decisions aroused mistrust; in recent years, however, a number of authors carry out researches in the field.

78. The results of such selectivity are: 1) lack of understanding of non-treaty institutions (recognition, succession, responsibility, etc.); 2) lack of a reasoned position on practical issues that go beyond treaties (the reunification of Crimea with Russia); 3) lack of coordination between non-treaty sources and internal legal order; 4) passive attitude to the processes of formation of non-treaty sources; 5) incomplete analysis of treaties themselves.

79. The level of argumentation of Russian doctrine is low. Main disadvantages are as follows: poor level and of linguistic and interpretation technique; misunderstanding of the structural connections between elements of the international legal order (exclusion, addition, hierarchy, etc.); inability to operate with basic philosophic categories ("will,""actor,""action," etc.); subordination of the legal discourse to political attitudes; lack of attention to historical, political and cultural aspects.

80. As a result, the doctrine turns out to be incapable to comprehend theoretical trends and be a basis for legal stance in disputes. Besides, it seeks to go beyond legal discourse and use non-legal arguments (appeal to history, political conflict, opponent's bias, unimportance of the issue, etc.). In fact, it turns into a ritual, divorced

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и национальной правовых систем [Viacheslav V. Gavrilov, *Concept and Interaction of International and National Legal*] (2005); *Зимненко Б.Л.* Международное право и правовая система Российской Федерации [Bogdan L. Zimnenko, *International Law and the Legal System of the Russian Federation*] (2006); *Усенко Е.Т.* Очерки теории международного права [Evgenii T. Usenko, *Essays on the Theory of International Law*] (2008); *Черниченко С.В.* Международное право: современные теоретические проблемы [Stanislav V. Chernichenko, *International Law: Modern Theoretical Problems*] (1993).

63 *See Марочкин С.Ю.* Действие и реализация норм международного права в правовой системе Российской Федерации [Sergei Iu. Marochkin, *Action and Implementation of International Law in the Legal System of the Russian Federation*] (2011).

64 The first researcher to develop this approach appears to be V. Koretskii. *See Корецкий В.М.* Избранные труды: в 2 кн. Кн. 2 [Vladimir M. Koretskii, 2 *Selected Works*] 194–195 (1989).

from reality, a method of psychological relief, justifying one's own powerlessness in an avoidable rhetorical duel.

81. There are few original Russian studies. First, it is the ongoing development of Soviet doctrine concerning diplomacy, the relationship between law and politics, etc. Secondly, this is a series of papers on the law of the sea (prepared by A. Vylegzhanin, A. Kolodkin, etc.). Thirdly, these are some critical studies (the papers of G. Velyaminov on economic law and A.B. Mezyaev on criminal law). Fourth, there are some historical studies (L. Kofanov's papers on *jus gentium*).

82. The rest of contributions are reduced, at the best, to an adequate reproduction of modern Western approaches (economic, environmental, European law); at the worst – to the creation of a pseudoscientific discourse (most of the papers on the EAEU law) or the retelling of constitutional legal concepts that often do not correspond to the nature of international law. The problem of the lack of serious research in the field of theory, history and philosophy of international law is a monumental challenge.

83. The institutional structure of the doctrine is deteriorating. The only research center is Moscow, once strong regional schools (Yekaterinburg, Kazan, St. Petersburg) are declining. The continuity of generations is broken; the academic environment attracts people without special education; ties with the post-Soviet republics are weakening or severed; meetings of the Russian Association of International Law and other forums ignore urgent problems, do not generate discussion and become a mere formality.

84. Due to the policy of the Russian Ministry of Education, which periodically changes educational standards and qualification requirements, the majority of scientists, instead of reading, writing and discussing academic texts, prepare meaningless teaching materials and compete for the number of publications and the value of the Hirsch index. It is no longer so much about the lack of time required for work, but about the systemic degradation of the skills of scientific analysis.

85. The quality of academic publications is low. Their typical shortcomings are as follows: retelling of official documents; statement of obvious facts; obsessive anti-Western rhetoric; excessive quoting of politicians; abuse of stereotypes (ritual mention of sovereignty); lack of economic analysis; non-use of foreign doctrine and judicial decisions; excessive scholasticism (addiction to definitions and classifications); speech defects.

86. Academic publications do not provide the formation of true knowledge; do not support serious discussions; often form a pseudoscientific discourse, that disorients students and rejects deep research. Many researchers in this regard turn to foreign publications. Their use, however, raises other problems: impossibility of full-fledged participation in the discussion, intellectual inactivity, degradation of legal language, etc.

87. In 2013–17 127 scientific theses were defended[65] (117 candidate's and 10 doctoral ones). 25 of them are devoted to international criminal law;[66] 25 – to economic

[65] In 2013, 23 theses were defended; in 2014 – 9; in 2015 – 30; in 2016 – 42; in 2017 – 23. Since 2018, the Higher Attestation Commission does not publish the texts of theses on its websites. Therefore, there is no statistical information about the later period.

[66] Some theses in this list refer to two areas of international law at once, for example, the thesis of I. Nikishkin "The legal regulation of police cooperation in the European Union."

law; 23 – to human rights; 19 – to EU law[67]; 16 – to environmental law; 13 – to law of the sea; 9 – to air and space law; 8 – to law of security; 4 each – to state responsibility, international organizations, sources of international law, correlation of international law with internal law; 3 each – to diplomatic law and international humanitarian law; 2 – to issues concerning population; 2 – to EAEU law; 1 – to international law history; to statehood – not a single one (!).[68]

88. Many theses are defended by people who are not engaged in science and need a scientific degree for self-realization and raising their status. In fact, thesis' defence has been transformed into a service provided by the academic community. Dissertations often contain conclusions that are difficult to recognize as scientific: statement of obvious facts, new definitions of old concepts, introduction of dubious terminology, etc. In other cases, the novelty consists in the transfer of foreign theories into domestic framework.

89. This crisis of doctrine is caused by various reasons: 1) general inadequacy of international law to global political transformations; 2) degradation of the intellectual environment in post-Soviet countries; 3) educational policies aimed at destroying the best Soviet traditions and encouraging simulations; 4) inactivity of the universities themselves and the lack of consolidation, responsibility, conscientiousness and attention of the scientific corporation. The crisis can hardly be overcome by the efforts of the corporation itself.

7. Foreign Policy of the RF and International Law

90. The Foreign Policy Concept of the RF is approved by decrees of the President of the RF (2000, 2008, 2013, 2016). Analysts say the latest version became more accurate. It proclaims new goals (consolidation of the position of the RF as a center of influence, promotion of the Russian mass media; confronting interference in the domestic affairs with the aim of unconstitutional change of regime, condemnation of NATO expansion and the U.S. containment policy against Russia, strengthening ties with China and India, cooperation within the EAEU).[69]

91. In the field of international security, Russia declares commitment to the principles of the U.N. Charter. She argues that the secession of Crimea corresponds to the principle of self-determination, while the secession of Kosovo is the result of interference in the internal affairs of Serbia. She condemns the intervention of Western powers in Afghanistan, Iraq, Libya and Syria and uses a different rhetoric to justify her presence in Syria, emphasizing the consent of the legitimate president.

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[67] Almost half of theses from MGIMO University and Moscow State Law Academy are devoted to EU law.

[68] In 2018, S. Aleksanian defended her thesis titled "Principle of Equal Rights and Self-Determination of Peoples in Modern International Law."

[69] *See Веселов А.* Что нового в концепции внешней политики России // ТАСС. 2 декабря 2016 г. [Andrei Veselov, *What's New in the Concept of Russian Foreign Policy*, TASS, 2 December 2016] (Jul. 4, 2021), available at https://tass.ru/politika/3835736.

92. Russia tries to act as a mediator in the settlement of post-Soviet conflicts and, in general, pursues a policy of freezing them. She recognized Abkhazia and South Ossetia only after Georgia's attack on Tskhinvali (2008). In the Ukrainian conflict, she insists on the fulfillment of the Minsk agreements, which will result in the transfer of the rebellious regions under the jurisdiction of Ukraine. Georgia and Ukraine, in their turn, accuse Russia of exercising control over the separatists and *de facto* occupation of their territory.

93. Russia seeks to participate in the world market as a narrowly specialized but influential agent; over 50% of its exports are hydrocarbons, 9% – metals, 5% – chemical products.[70] She is interested in the development of new markets and implementation of infrastructure projects. She strives to achieve this goal, including with the help of non-economic instruments (support for the Maduro regime in Venezuela, etc.). As a result, Russian oil projects are one of the targets of Western sanctions.

94. The RF does not prevent the offshorisation of Russian business, which have taken place thanks to investment and double taxation treaties and is reaching alarming proportions.[71] Since 2014, however, Russia has been taking moderate anti-offshore measures (Federal Law of 24 November 2014, etc.). Offshorization affects also the aviation sector: 95% of the Russian aircraft fleet is registered abroad. Abovementioned investment lawsuits are one of the results of offshorization.

95. Russia participates in human rights treaties and recognizes the jurisdiction of the ECtHR and the U.N. Committees, but criticizes them for bias and interference in domestic affairs and often does not comply with their decisions. A special area of humanitarian policy is the protection of compatriots abroad; the tools for its implementation are the conferment of nationality and activities of *Rossotrudnichestvo* (Federal Agency for the Commonwealth of Independent States Affairs, Compatriots Living Abroad, and International Humanitarian Cooperation). Russia also participates in some humanitarian actions abroad, primarily in Syria.

96. Russia's efforts to create a Eurasian order are quite effective, but insufficient. The CIS and the EAEU suffer from institutional and regulatory weaknesses; the post-Soviet republics are jealous of their sovereignty; some of them are increasingly oriented towards other centers (the West, China, Turkey); in some cases, Russia is unable to offer significant benefits from cooperation with her and does not have the necessary tools for influence.

97. The Ministry of Foreign Affairs acts as a monopolist in terms of organization and legal support of external policy; in some cases, however, this policy is determined

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[70] Россия: Статистика внешней торговли // Ru-Stat [Russia: Foreign Trade Statistics, Ru-Stat] (Jul. 4, 2021), available at https://ru-stat.com/.

[71] ЦБ: Из России в офшоры вывели $42 млрд за год // Finanz.ru. 30 мая 2018 г. [Central Bank: $ 42 Billion Was Withdrawn From Russia to Offshores in a Year, Finanz.ru, 30 May 2018] (Jul. 4, 2021), available at https://www.finanz.ru/novosti/aktsii/cb-iz-rossii-v-ofshory-vyveli-$42-mlrd-za-god-1025855305.

by the Ministry of Economic Development. The Foreign Ministry relies on what is arguably the world's best diplomatic tradition. Russian diplomats are competent, skillful negotiators, and in most cases do their duty responsibly. They receive education in a prestigious and reputable university, – Moscow State Institute of International Relations (MGIMO University).

98. Russian diplomacy, however, is not responding effectively to a number of challenges: it does not formulate a clear global agenda and does not form a broad pro-Russian coalition. Besides, it is unable to overcome disintegration processes within the post-Soviet territory. In some cases it shows excessive caution and compliance and operates in a closed (non-public) mode. As a result, it does not effectively counter the policies of Western states.

99. A very serious problem is the lack of a clear and balanced legal position with respect to both general and specific issues. Russia does not influence the development of customary law and the interpretation of treaties; Russian international judges, as a rule, are passive, and Western lawyers are retained to protect the interests of the Russia; statements and activities of the Ministry of Foreign Affairs are usually not accompanied by a detailed legal argumentation; Russian doctrine is frankly weak and incompetent.

100. As a general consequence, international legal discourse in the world is monopolized by the Western doctrine and diplomacy, which creates a misconception about the moral righteousness of the West and the lack of alternatives to existing approaches (just as Russia's legal weakness sometimes creates a misconception about her guiltiness). A particular conclusion in this regard is the need for major changes at the level of international diplomatic and academic practice; the general conclusion is the need for the alternatives in the ambit of the theory of international law.

Acknowledgements

The paper was prepared thanks to the MGIMO University research grant for young researchers under the guidance of doctors or candidates of sciences.

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