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Chair “International Law”

Alexander C. Kuznetsov

THE FUNDAMENTALS OF PUBLIC INTERNATIONAL LAW

Manual

Translated from Russian by the author
Revised by T.N. Zhukova

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The Manual contains the summary of the fundamental themes of the Course on Public International Law and bases itself upon the material of international relations after the Second World War. It gives particular attention to new challenges in world politics emerged after the disintegration of the Soviet Union, and to international problems in the post-soviet space.

Intended for the students of the Financial University studying international economic and political relations.

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ФЕДЕРАЛЬНОЕ ГОСУДАРСТВЕННОЕ ОБРАЗОВАТЕЛЬНОЕ БЮДЖЕТНОЕ УЧРЕЖДЕНИЕ
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А.К. Кузнецов

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Пособие содержит изложение основной тематики курса международного публичного права и опирается на реалии международных отношений после Второй мировой войны. Особое внимание уделяется новым вызовам в мировой политике, возникшим после дезинтеграции Советского Союза, и международным проблемам на постсоветском пространстве.

Предназначено для студентов Финансового университета, изучающих международные экономические и политические отношения.

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PREFACE

This work is to offer a synopsis of lectures on Public International Law. Their topics have been selected in accordance with the training profile of the Finance University students for whom the course of Public International Law is devised. It stands to reason that the students will have to keep in mind that the synopsis of lectures can substitute neither lectures nor other materials, including manuals and a huge number of useful publications in Internet. The purpose of this work is to help students in their study by pointing out the most important provisions and ideas. At the same time, the author took into consideration which problems of world policy and Public International Law the students are most interested in. To be sure, the point of view presented by the author on certain problems of contemporary international relations is his exclusively personal opinion.

Public International Law, Foreign Policy and Diplomacy. The Sources of Public

Public International Law is a body of legal norms that govern relations between states.

The subjects of Public International Law are independent states and international intergovernmental organizations established by them.

Independent states possess the full degree of state sovereignty and an international legal personality. State sovereignty is the supremacy of central government all over the territory of the state and the independence of the government in international relations. International legal personality is the capacity of the state to have and acquire the rights by its actions, to exercise its duties and obligations toward other subjects of Public International Law.

The members of a federation possess a limited state sovereignty and are not participants in international intergovernmental relations. But they can participate in international economic relations being the subjects of Private International Law.

The sources of Public International Law are treaties and conventions in force as well as the customs and basic principles of Public International Law. Public International Law differs from the branches of internal law in that there is no power that can compel a state – a subject of the international legal order to abide by the standards of Public International Law. *That is why Public International Law is the law of reciprocity*. It was not until the creation of the United Nations Organization that the right of compulsion exercised in the event of threats to the peace, breaches of the peace and acts of aggression came into being and was vested in the UN Security Council.

Public International Law is the state's instrument of foreign policy. Foreign policy is the strategy of the state's conduct in its international relations, or its master-line pursued in world affairs. Foreign policy of any state changes in keeping with the historical epoch, the level of development of world economy and military technology. Besides, foreign policy changes in keeping with the political forces coming to power in that state. However, the implementation of any foreign policy inevitably relies on the standards of the Public International Law currently in force. In its turn, the prevalent Public International Law also changes together with the development of economic, scientific, technological and political life of mankind. Nowadays many statutory provisions of Public International Law of the 18th and 19th centuries are no longer the standards of Public International Law.

Foreign policy is implemented by means of diplomacy. Diplomacy, in the broad sense of the word, is the activity by the government agencies in charge of foreign relations that implements the state's foreign policy line and upholds the interests of the state by peaceful means.

In its narrow and historically original sense diplomacy is the art to negotiate and conclude treaties between the states.

The System of Public

The contemporary Public International Law is a vast and extensive sphere of statutory regulations. It has a lot of internal subdivisions that are known as the branches of Public International Law. Some of them are the old, traditional fields, like Diplomatic and Consular Law, the Law of Armed Conflict (International Humanitarian Law) and the Law of

the Sea. Other fields are new, like International Environmental Law, International Economic Law, International Nuclear Law, International Criminal Law, International Air Law, International Space Law. They all constitute **the system** of the contemporary Public International Law that is being supplemented with new legal norms and branches so as to keep abreast of the progress of human civilization and in response to its new requirements.

Principles of Public International Law

Within the huge diversity of standards of Public International Law there are basic ones called "Principles of International Law". They are not eternal or valid at all times. The principles currently in force are laid down in the United Nations Charter and in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations that was approved by the General Assembly of the UN on October 24, 1970. The Charter of the United Nations is an international multilateral treaty signed and ratified by all the United Nations member states. Therefore, it is binding on all member states.

The principles of contemporary Public International Law are:

a) The principle that States shall refrain in their international relations from the threat or use of force against territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

c) The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

d) The duty of States to co-operate with one another in accordance with the Charter;

e) The principle of equal rights and self-determination of peoples;

f) The principle of sovereign equality of States;

g) The principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter.

The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State was formulated for the first time in the Charter of the United Nations and expressed hopes for the just international relations in the post-war world after the crushing defeat of fascist Germany and her allies. “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations” (Par. 4, Art. 2, United Nations C.).

The principle that States shall settle their international disputes by peaceful means formulated in the Charter of the United Nations signifies that “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered” (Par. 3, Art. 2, United Nations C.). The parties to any dispute “shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice” (Par. 1, Art. 33, United Nations C.).

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, signifies that the intervention in any form in matters within the domestic jurisdiction of any sovereign state is forbidden. The sovereign state can only agree, of its own free will, to the foreign participation in its definite domestic affairs (for example, the invitation of international observers to elections). However, the financing of political parties and their election campaigns by foreign physical and legal entities, and, all the more so, by foreign governmental agencies is an intervention in the domestic political life of a sovereign state.

The duty of States to co-operate with one another in accordance with the Charter signifies that the co-operation of states with one another became one of the basic principles of Public International Law. The spheres of such co-operation, in accordance with the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, are:

a) States shall co-operate with other States in the maintenance of international peace and security;

b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

The principle of equal rights and self-determination of peoples signifies that all peoples have the right to determine their political status freely and without external interference and to pursue their economic, social and cultural development, and every state has the duty to respect this right. This principle is the international legal recognition of the right of any people to self-determination: “The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people” (The 1970 Declaration on Principles of International Law). The molding of this principle took quite a long time in the 19th and 20th centuries in the wake of the struggle waged by many European peoples for their independent national states, during the Civil War in Russia. It got rooted in international life thanks to national liberation movements of Asian and African colonial peoples and thanks to the diplomatic efforts of the Soviet Union. The principle of self-determination of peoples became firmly established in Public International Law after the Second World War together with the adoption of the Charter of the United Nations, the downfall of the colonial system in Asia and Africa and the completion of the process of self-determination of the territories that formed the Trusteeship System of the United Nations.

The principle of sovereign equality of States signifies that all states are legally equal irrespective of their economic power and military might and act as sovereign participants in international relations.

The principle that States shall fulfill in good faith the obligations assumed by them signifies that "every treaty in force is binding upon the parties to it and must be performed by them in good faith. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty [Art. 26, 27, the 1969 Vienna Convention on the Law of Treaties (VCLT)]. This principle is an indispensable condition for developing mutual trust between states and their leaders. It is one of the most venerable principles of Public International Law: "Pacta sunt servanda" – "Pacts must be performed", – Romans said.

Although all these basic principles of Public International Law are universally recognized and are binding upon all sovereign states of the contemporary world community, they have been trespassed against, - something that is bringing about conflicts and exacerbates relations. Nevertheless, the role of these principles in the world politics is extremely high because they are laying down the code of conduct that any state can refer to and call for its observance by any other state.

International Intergovernmental Organizations

The United Nations Organization (UN)

International cooperation is practiced nowadays by a large number of international organizations: by more than 300 intergovernmental and more than 6000 non-governmental ones. International intergovernmental organizations

are usually established by a constituent treaty, which is concluded and ratified by sovereign states in accordance with their national legislation. International intergovernmental organizations may either be universal (open) or closed. Universal organizations are open to all states (for example, the United Nations Organization and its specialized agencies). Closed organizations limit their membership by certain criteria. Such organizations can be based on geographic criteria (regional organizations), on economic criteria [the Organization of the Petroleum Exporting Countries (OPEC), the European Union (EU)] or on political criteria (NATO, the Council of Europe). An international intergovernmental organization determines the seat of its headquarters and concludes the corresponding agreement that governs all matters of its activity in the territory of the host country. Every international intergovernmental organization defines the purposes of its activity, the structure and organs indispensible for its regular work. Besides its headquarters, an international intergovernmental organization may also have its offices in other countries. Its staff ranks as the officials of the organization. They are not the representatives of member states. Their status is equivalent to the status of respective categories of diplomatic officials. Member states can have their own diplomatic missions at the international organization's headquarters.

The most important international intergovernmental organizations in the contemporary world are the United Nations Organization (UN), the North Atlantic Treaty Organization (NATO), the Council of Europe, the European Union (EU) and the World Trade Organization (WTO).

The United Nations Organization is a universal international intergovernmental organization established in 1945

at the international Conference in San Francisco (USA) by the Anti-Hitlerite Coalition member states. The inception stages of the UN were: The 1942 Declaration of 26 States, The 1943 Moscow Declaration of Ministers for Foreign Affairs of the USSR, Great Britain, the USA and China, The 1943 Teheran Declaration of the leaders of the USSR, the USA and Great Britain – J.V. Stalin, F.D. Roosevelt and W.L.S. Churchill, The 1944 Dumbarton-Ox Conference (Washington, D.C., USA), the 1945 Yalta (Crimea) Conference between J.V. Stalin, F.D. Roosevelt and W.L.S. Churchill, which settled an extremely important issue – the formula of voting in the Security Council of the UN. The United Nations Organization has become and continues as the pillar of the contemporary international legal order, the safeguard of peace and security all over the world.

The principal organs of the United Nations Organization are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat.

The General Assembly is composed of all member states (193 members in 2011), having one vote each. The General Assembly has the right to discuss any matters of international life and advise on them. However, it can make binding decisions on matters of the election of the non-permanent Members of the Security Council of the UN, Members of the Economic and Social Council (ECOSOC), Members of the Trusteeship Council, on the admission of new Members to the United Nations, the expulsion of Members, the appointment of the Secretary General of the UN and on budgetary questions.

The Security Council bears the brunt of maintaining peace and security all over the world. Its sessions can be convened

at any time, as required by the situation. The Security Council consists of fifteen members of the United Nations, five of them are permanent members of the Security Council: the People's Republic of China, France, the Russian Federation (Russia), the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Other ten members of the Security Council are non-permanent; they are elected by the General Assembly for a term of two years. A retiring member shall not be eligible for immediate re-election. Each member of the Security Council has one vote. Decisions of the Security Council on matters of procedure are made by an affirmative vote of nine members. "Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members" (Par. 3, Art. 27, the United Nations Charter).

An abstention by a permanent member of the Security Council is not deemed to be veto. The Security Council is the only body that has the right to adopt binding decisions with respect to threats to the peace, breaches of the peace and acts of aggression and to take measures against the state that is disturbing the peace, including complete or partial interruption of economic relations and the use of armed force. The Security Council can form the UN Armed Forces composed of the contingents made available to the Security Council by the UN member states or employ regional arrangements or agencies for enforcement action under its authority. "But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council" (Par. 1, Art. 53, the United Nations Charter). Thus, at all events the use of the Armed Forces must be under the permanent control and authority of the Security Council of the UN.

By contrast, the contemporary International Law qualifies any use of armed force against a sovereign state without the authorization of the Security Council of the UN unless being an act of self-defence, as an act of aggression.

The Secretariat of the UN headed by the Secretary General of the UN supports the daily work of the UN Organs and the implementation of its decisions. The Secretary General of the UN is not only the chief administrative officer of the UN, but also a high ranking diplomat who on behalf of the UN takes active part in negotiations on the settlement of international problems, disputes and conflicts. The Secretary General of the UN is appointed for a term of five years by the General Assembly upon the recommendation of the Security Council. The post of the Secretary General of the Organization is usually held by a diplomat from neutral countries, whose candidature suits all permanent Members of the Security Council of the UN.

The North Atlantic Treaty Organization (NATO)

The North Atlantic Treaty Organization (NATO) is a closed international military-political organization created at the initiative of the USA on the basis of the North Atlantic Treaty ("Treaty of Washington") signed on 4 April 1949 at the time of the Cold War between the former allies in the Anti-Hitlerite Coalition – the USA and Great Britain, on the one hand, and the Soviet Union, on the other. The North Atlantic Treaty, in accordance with the provisions of the Charter of the United Nations, proclaimed its defensive purposes and laid down that "an armed attack against one or more" of Member States "in Europe or North America shall be considered an attack against

them all and... if such an armed attack occurs, each of them... will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area" (Art. 5, NAT). Article 6 determined the action area of the Treaty: "For the purpose of Article 5, an armed attack on one or more of the Parties is deemed to include an armed attack:

on the territory of any of the Parties in Europe or North America, on the Algerian Departments of France or on the Islands under the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer;

on the forces, vessels, or aircraft of any of the Parties, when in or over these territories or any other area in Europe in which occupation forces of any of the Parties were stationed on the date when the Treaty entered into force or the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer". The North Atlantic Treaty was aimed at the USSR and its allies in Eastern Europe. The NATO initially comprised the USA, Great Britain, France, Belgium, the Netherlands, Luxemburg, Canada, Italy, Portugal, Norway, Denmark and Iceland. Greece and Turkey became NATO member states in 1952 and the Federal Republic of Germany - in 1955.

In 1966, under Charles de Gaulle, France withdrew from the Organisation's Military Structure while continuing as a Member State of the Organization. In 2009, thanks to the President of France N.Sarkozy, France joined the Military Structure of the NATO again. In 1982 Spain acceded to the Organization and after the dismantlement of the Warsaw Treaty Organization (1991), the disintegration of the Soviet Union (1991), the establishment

of bourgeois regimes in Eastern Europe and in the majority of states in the post-Soviet area the Czech Republic, Hungary and Poland acceded to the NATO in 1999, Estonia, Latvia, Lithuania, Slovakia, Slovenia, Bulgaria, Rumania became member states of the Organization in 2004, and so did Albania and Croatia in 2009.

The Soviet Union is now gone together with its social system and ideology. Nevertheless, the North Atlantic Treaty Organization has not disbanded itself. Instead, it has been expanding Eastward and Southward in Europe involving former USSR union republics. Presently Russia sees these actions as a threat to its security.

In the new military and strategic situation in Europe and in the world, when Russia lost its allies in Europe after the dismantlement of the Warsaw Treaty Organization and disintegration of the Soviet Union, the President of the Russian Federation B. Yeltsin and the leaders of NATO decided to streamline relations between Russia and NATO, to overcome apprehensions and fears, which existed in Russia concerning NATO and its possible expansion to the East and the South, first of all at the expense of the former allies of the USSR in Eastern Europe and the former USSR union republics. On May 27, 1997 in Paris NATO and Russia signed Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation, which provided for the creation of the NATO – Russia Permanent Joint Council as a basic mechanism "for consultations, coordination and, to the maximum extent possible, where appropriate, for joint decisions and joint action with respect to security issues of common concern". The Permanent Joint Council is composed of all NATO member states, on the one hand, and the Russian

Federation, on the other. The Permanent Joint Council can meet at various levels and in different forms, as required by the subject matter and the wishes of NATO and Russia. The Permanent Joint Council meets twice a year at the level of Foreign Ministers and at the level of Defence Ministers, and once a month at the level of ambassadors/permanent representatives to the North Atlantic Council. The Permanent Joint Council may also meet, as appropriate, at the level of Heads of State and Government. However, the Founding Act carried no legal commitments by NATO not to install nuclear weapons and not to deploy additional armed forces in the territory of the new member states.

In view of NATO's aggression against Yugoslavia launched on March 24, 1999, i.e. the military operations by NATO that were not authorized by the Security Council of the UN, Russia suspended the Founding Act, recalled its representative from the NATO Headquarters in Brussels and stopped the activities of the NATO information centers in Russia. The Founding Act took effect again after June 10, 1999 when the UN Security Council in its Resolution 1244 ruled that the NATO military operation shall cease on June 20, 1999 and provided for the international presence of Security Forces in Kosovo.

On 23–24 April, 1999, when the NATO bombing of Yugo slavia were at their height, the Heads of State and Government attending the Meeting of the North Atlantic Council in Washington D.C. that was convened to celebrate the 50th anniversary of NATO approved the Alliance's new Strategic Concept. The Alliance's new Strategic Concept stated: "Based on common values of democracy, human rights and the rule of law, the Alliance has striven since its inception to secure a just and lasting peaceful order in Europe. It will continue to do so… To achieve its essential

purpose, as an Alliance of nations committed to the Washington Treaty and the United Nations Charter, the Alliance performs the following fundamental security tasks: to provide one of the indispensable foundations for a stable Euro–Atlantic security environment, based on the growth of democratic institutions and commitment to the peaceful resolution of disputes, in which no country would be able to intimidate or coerce any other through the threat or use of force" (The 1999 Alliance's Strategic Concept. Part I – The purpose and tasks of the Alliance).

At the same time, the 1999 Alliance's Strategic Concept explicitly maintains that the joint armed forces of the Alliance "must also be prepared to contribute to conflict prevention and to conduct non-Article 5 crisis response operations", i.e. when the member states of the Alliance are not being exposed to an armed attack (The 1999 Alliance's Strategic Concept. Part IV – Guidelines for the Alliance's forces). While substantiating this decision, the authors of the 1999 Alliance's Strategic Concept maintain: "The security of the Alliance remains subject to a wide variety of military and non-military risks which are multi-directional and often difficult to predict. These risks include uncertainty and instability in and around the Euro–Atlantic area and the possibility of regional crises at the periphery of the Alliance, which could evolve rapidly. Some countries in and around the Euro–Atlantic area face serious economic, social and political difficulties. Ethnic and religious rivalries, territorial disputes, inadequate or failed efforts at reform, the abuse of human rights, and the dissolution of states can lead to local and even regional instability. The resulting tensions could lead to crises affecting Euro–Atlantic stability, to human suffering, and to armed conflicts. Such conflicts could affect the security of the

Alliance by spilling over into neighboring countries, including NATO countries, or in other ways, and could also affect the security of other States" (The 1999 Alliance's Strategic Concept. Part II – Strategic Perspectives. – Security Challenges and Risks).

Thus, the Alliance's new Strategic Concept openly declares that now the area of responsibility of NATO is the whole world, and any manifestation of social, ethnic, religious, political instability and a hypothetic threat could trigger off an armed intervention by the Alliance. The bombing of Yugoslavia in 1999 and the 2003 invasion in Iraq undertaken without any authorization of the UN Security Council revealed what the Alliance's new Strategic Concept was worth when in action. Iran, Venezuela or other countries may be its next target. This Strategic Concept and the relevant real policy are a case in point to question the allegedly purely defensive character of the Alliance.

The supreme organ of the North Atlantic Treaty Organization is the North Atlantic Council ordinarily convoked twice a year. Member states can be represented at the Meetings of the North Atlantic Council by the Heads of State and Government or by Ministers for Foreign Affairs as well as, depending on the agenda, by Defense and Finance Ministers. This organ composed of permanent representatives (ambassadors) of member states is called the Permanent Council of NATO and gathers for sessions two or three times a week. The North Atlantic Council discusses the matters dealing with the NATO military authorities, the building and the use of the Armed Forces of the Alliance; it elaborates and approves the Alliance's Strategic Concepts, sets defense expenditures of each member state of the Alliance.

The supreme military organ of NATO is the Military Committee formed of the Chiefs of General Staff of member states (except Luxemburg and Iceland). The International Military Staff is subordinate to it. The Military Committee elaborates military strategic plans of NATO. The most important consultative body of the Alliance is the Nuclear Planning Group. The International Secretariat headed by the Secretary General of NATO organizes all the current work and prepares sessions of high-ranking politicians of the Alliance.

The armed forces of the Alliance break down into the Armed Forces conveyed by member states under the NATO Command and guided by the NATO military authorities, and the forces, which remain under the national command. Land Forces and Air Force are included into the Combined Military Forces of Alliance. NATO Navies are under the national command and are affiliated with the Combined Military forces for the period of training and during war operations. Intercontinental ballistic missiles of the USA, strategic Air Force (intercontinental strategic bombers) and nuclear-powered missile submarines remain under the national command as well. The direct guidance of the Combined Military Forces of NATO is exercised by the Supreme Allied Commander, Europe; the Supreme Allied Commander, Atlantic; the Canadian-United States Regional Planning Group.

The USA and American generals occupy the dominant position in the NATO joint military structure. That is why Charles de Gaulle pulled France out of it because he did not want the French armed forces to be under the American authority.

The Council of Europe

The Council of Europe is a regional international intergovernmental organization whose Charter was signed in London on May 5, 1949 and came into force on August 3, 1949. The purposes of the organization were the protection of human rights and the promotion of democracy. The organization was created one month after the signing of the North Atlantic Treaty. The Council of Europe was to become the political and ideological supplement to NATO in the struggle against the regimes, which were gaining ground in Central and Eastern Europe after World War II under the Soviet Union's influence. The Council of Europe availed itself of changes in the political and economic system of East European countries when Gorbachev's group came to power and when the Soviet Union collapsed in 1991. In 1989 the Council of Europe established the status of a specially invited country for East European countries, which was supposed to continue till the country was granted membership in the Council of Europe. In 1993 the first Summit of the Council of Europe took place. It adopted the Vienna Declaration, which laid down the conditions for an East European country to fulfill upon accession to the Council of Europe: the compliance of institutions and the legal system with the basic principles of democracy; the observance of human rights; the election of representatives of the people through free, equal and universal elections; the commitment to sign the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and accept the whole complex of its control mechanisms.

The supreme organ of the Council of Europe is the Council of Ministers composed of Ministers for foreign affairs. They gather twice a year and discuss political situation in member states from the point of view of the purposes of the Council of Europe, approve

the budget of the Organization, consider recommendations of the Parliamentary Assembly of the Council of Europe and, in their turn, elaborate their own recommendations for national governments which are to be adopted unanimously. Such recommendations need to be ratified by national parliaments.

The Parliamentary Assembly of the Council of Europe consists of national delegations of parliamentarians of member states. Each delegation must be composed of all political forces represented in a national parliament including opposition parties. The Parliamentary Assembly is a consultative organ and cannot adopt binding decisions. Nevertheless, its activity is of great importance for forming public opinion on major international and domestic problems that need to be addressed.

The European Court of Human Rights (Strasburg, France) acts as a body of the Council of Europe and occupies an important place in the contemporary European affairs. It was set up in 1959 on the basis of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. Since November 1998 the Court is vested with the functions of the European Commission on Human rights. The judges of the European Court are elected by the Parliamentary Assembly for the term of six years. Their number equals the number of states – signatories to the 1950 Convention. The elections are being held on an alternative basis. Each country nominates three candidates. The rulings of the Court are mandatory for member states. These rulings deal with the matters of interpretation and application of the 1950 Convention as well as the Protocols thereto. The Court handles not only petitions submitted by member states, but also claims of non-governmental organizations and physical entities concerning the violations of the 1950 Convention by any member state.

The activity of the Parliamentary Assembly of the Council of Europe fully reveals the controversy of interests in world politics. Discussions on the protection of human rights, fundamental freedoms and democratic institutions may grow biased in their character.

The European Union (EU)

The European Union is a regional international intergovernmental organization of economic and political character that is vigorously developing into the Confederation of European States. Nowadays the European Union is composed of 27 states of Western, Central and Eastern Europe, including former union republics of the Soviet Union – Lithuania, Latvia and Estonia. The European Union was set up in 1992 by the Maastricht Treaty on the basis of three former communities: the European Coal and Steel Community (ECSC, 1951), the European Economic Community (EEC, 1957) and the European Atomic Energy Community (EAEC, 1957). The process of European integration was launched, first and foremost, by economic needs. It started after the Second World War, but, indeed, the ideas of such integration were discussed at the beginning of the 20th century. The joint organs of the European Union are: the European Council (Heads of State and Government as well as the Chairman of the Commission), the European Parliament (elected by universal, direct and equal voting), the Council of the European Union (includes one representative of each member state in the rank of minister mandated by the government of the relevant member state), the Commission (an executive body, which oversees the functioning and development of common market) and the Court (provides for the observance of law

by interpretation and application of the Treaty on the Foundation of the European Community). There is a vast body of European law, the common European currency, the common EU citizenship alongside the national citizenship. The Maastricht Treaty provides for the coordination of foreign policy of member states and the creation of EU joint units beyond the NATO military organization.

In spite of multiple inter-state and social contradictions, the European Union became a viable influential entity and developed its own identity in world politics.

Diplomatic Law

Diplomatic Law is the oldest branch of Public International Law. It came into being in the days of remote antiquity as a custom in the epoch of tribal system and of the state's inception. Initially diplomatic law was known as ambassadorial law. Now diplomatic law is understood as a body of legal standards established by customs and international agreements, which regulate the status, the functions and the procedure of diplomatic activity by the foreign policy agencies of sovereign states and international intergovernmental organizations.

The foreign policy agencies are broken down into home-based and located abroad. Home-based agencies include the head of state, the government, the ministry of foreign affairs and parliament. Their powers and mutual relations in the sphere of international relations are established by the constitutional acts of each country. In so doing, the responsibility for the elaboration and implementation of the state's foreign policy is borne by the executive power.

Standing agencies located abroad are embassies, legations, permanent missions at international intergovernmental organizations and consular offices; ad hoc bodies located abroad are special missions, delegations at international conferences and in international organs.

Permanent diplomatic missions appeared in the middle of the 15th century in Europe. Previously the practice was to dispatch, in the case of need, an embassy for a short period of time to address a definite issue. Now permanent diplomatic missions and special missions serve as a means of bilateral diplomacy.

The most important sources of contemporary diplomatic law are the 1961 Vienna Convention on Diplomatic Relations which substituted the Vienna Règlement (the regulations on the ranks of diplomatic representatives adopted by the 1815 Vienna Congress), the 1969 Convention on Special Missions, the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of Universal Character, the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons.

The 1961 Vienna Convention on Diplomatic Relations established three ranks of the heads of diplomatic missions. Each rank corresponds to the level of diplomatic relations agreed upon by the contracting parties:

1) an ambassador and a nuncio (an embassy). They are accredited to the head of state;

2) an envoy and internuncio (a legation). They are accredited to the head of state;

3) a chargé d'affaires (a legation). He is accredited to the minister for foreign affairs.

The structure of diplomatic missions usually includes the following departments: political, economic, of the press, of cultural relations, consular, military attaché group, and chancellery. The personnel of a diplomatic mission is subdivided into the diplomatic, administrative, and the service staff.

Functions of a diplomatic mission consist in protecting the interests of the sending state in the receiving state, in carrying out the foreign policy course set by the leadership of the sending state as well as in employing legal means for finding facts regarding the political situation and the circumstances of events in the host country, in keeping its own government informed and in promoting economic, scientific, cultural and other ties as well as in performing consular work.

The head of diplomatic mission is appointed by the sending state. Before his appointment it is necessary to request the agrément of the receiving state. The appointment is made only after the agrément has been granted. The receiving state can refuse the agrément without giving reasons for doing so. The head of the diplomatic mission is believed to have assumed office upon the presentation of his credentials.

The diplomatic mission and its personnel enjoy immunities and privileges. Immunity is an exception to the jurisdiction of the receiving state; privilege is a legal advantage.

According to Public International Law, immunities and privileges are not granted for personal benefit, but for the more effective activities of the diplomatic mission. The premises of the diplomatic mission, its territory and transport vehicles shall be inviolable as well as the archives, documents, and official correspondence. Public officers of the host country are allowed into the premises of diplomatic missions only if allowed by

the head of the mission. Diplomatic mail shall not be opened, and every diplomatic mission has the right to an unimpeded communication with its government as well as with other diplomatic missions of its home country.

Diplomatic personnel enjoys the highest immunities and privileges. A diplomat enjoys personal inviolability. He enjoys immunity against criminal, administrative and civil jurisdiction and has the right not to testify in court. It is the sending state alone that can strip a diplomat of immunity. The residence of a diplomat is inviolable. Immunities and privileges equally cater for the diplomat's family members.

The immunities and privileges of administrative staff are smaller than those granted to the diplomatic personnel.

Consular Law

Consular Law was recently defined as a body of legal standards governing the appointment, status, functions and termination of activities of a consul. Nowadays consular law is characterized as a body of legal standards that determines the status and functions of consular missions as well as the rights and duties of their personnel. The sources of contemporary consular law are custom and international treaty as well as the acts of national legislation concerning its own consular missions and the activities of foreign consular missions in the territory of its own country. The most important sources of consular law are the 1963 Vienna Convention on Consular Relations and the 1961 Vienna Convention on Diplomatic Relations. States also conclude bilateral agreements and conventions on consular matters (there are thousands of them).

Consuls came into being in feudal Europe (the 9th – 11th c.c.) as necessitated by international trade and maritime traffic. Consuls were independent of government authorities of their home country. In the 15th century the institution of consuls passed under the auspices of the state. In Russia the consular service was created by Peter the Great.

Consular relations are established by mutual consent. When diplomatic relations are established, it is assumed that, unless otherwise stipulated, the contracting parties have agreed to have consular relations. However, the severance of diplomatic relations is not necessarily conducive to the termination of consular relations. There are the following classes of consular institutions: consulate general, consulate, vice-consulate, consular agency. They are respectively headed by Consul-General, Consul, Vice-Consul and Consular Agent. In the middle of the 1920s the Soviet Union introduced into international practice consular departments inside its diplomatic missions in order to make its consular offices better protected against riots and attacks. This innovation gained widespread acceptance in view of its numerous and undeniable advantages.

There can be several consular missions in the territory of the receiving state, each having its relevant consular district as agreed by the contracting parties. In order to assume office, the head of a consular mission must have a consular patent and an exequatur. The consular patent is a document issued by the sending state. It certifies the appointment of the person as the head of the concrete consular mission in the receiving state. In Russia consular patent is signed by the minister for foreign affairs. Exequatur is the permission issued by the receiving state to exercise consular activity in the consular district given to the person who has

handed in his consular patent. However, the appointment of the chief of the consular department within a diplomatic mission requires no consular patent and no exequatur, - it is just enough to inform the authorities of the receiving state.

The function of consular missions according to the 1963 Vienna Convention on Consular Relations consists in the protection of interests of the sending state, its nationals and organizations in the receiving state. However, the functions of consular missions differ from those of diplomatic missions. Consular missions do not deal with the general political matters. Diplomatic functions can be assigned to a consular mission, if accepted by the receiving state and only when there is no diplomatic mission in the receiving state.

Special functions of a consular mission include:

– keeping record of nationals present in the territory of the consular district;
– supplying information to its nationals present in the territory of the consular district about the laws and customs of the receiving state;
– rendering assistance and consultations to its nationals, the officials of government bodies and organizations as well as to the legal entities of the sending state;
– performing consular functions for naval vessels, sea-craft and aircraft of the sending state and their crews;
– passport and visa work;
– performing notarial functions.

Consular premises, archives and documents are inviolable. However, in case of fire and other natural disasters the authorized officials of the receiving state have the right of access to the premises of the consular mission without an explicit consent of its

head. The authorities are also allowed to open the consular valise if they suspect that it may contain things besides the official correspondence of the consular mission and things permitted for transit. Fiscal privileges and customs concessions granted to the consular mission are similar to the privileges of a diplomatic mission.

The staff of the consular mission consists of consular officers, consular employees who perform administrative and technical work and the service staff. The matter of personal immunity of consular officers is settled by bilateral consular conventions, which either reproduce the 1963 Vienna Convention on Consular Relations or are keep personal immunity of consular officers very close to that of diplomatic agents. Fiscal privileges and customs concessions cater for consular officers and their family members.

The Law of Armed Conflict (International Humanitarian Law). The Opening of Military Operations

The Law of Armed Conflict is also known as the Law of War and as International Humanitarian Law. The law of armed conflict is one of the oldest branches of Public International Law because people have been fighting wars from time immemorial. At the end of the 19th and in the 20th century it became increasingly necessary to have international control over the methods and means of warfare and to make them as humane as possible. The reason for that was the spectacular scientific and technological progress in the sphere of arms and large-scale conflicts involving both the army and the civilian population. The most important sources of the law of armed conflict currently in force are: the 1907 Hague Conventions (among them there are the Convention Respecting the Laws and Customs of War on Land, the Convention Respecting the Rights

and Duties of Neutral Powers and Persons in Case of War on Land, the Convention Concerning the Rights and Duties of Neutral Powers in Naval War); the 1949 Geneva Conventions Concerning the Protection of Victims of War (GC I – wounded and sick on land; GC II – wounded, sick and shipwrecked at sea; GC III – treatment of prisoners of war; GC IV – protection of civilians in time of war) and the 1977 Additional Protocols I and II.

Under the 1907 Hague Convention III on Opening Military Operations the beginning of warfare shall be preceded by a prior and explicit warning in the form of a motivated declaration of war or an ultimatum that carries a conditional declaration of war. However, unless the war is an act of self-defense or a sanction of the UN Security Council, the fact of the declaration of war does not convert the war into a lawful war. Contemporary Public International Law qualifies such a war as an aggression, while the declaration of such a war is identified as an act of aggression.

The declaration of war is the competence of supreme organs of state power and signifies the beginning of the de jure state of war. The opening of military operations does not necessarily follow the declaration of war. And, visa versa, the beginning of combat actions, including those on a large scale, without the declaration of war may not lead to the state of war (for example, the 1938 Soviet-Japanese conflict at Lake Hasan or the 1939 Soviet-Mongolian-Japanese conflict at the Khalkin Gol River).

Military operations are carried out in the territory of belligerent powers – on land, sea, in air, on the high seas and in the above midair. These are the bounds of the “theatre of war”. Nuclear-free zones are included in the potential sphere of military operations, but they cannot be the theatre of nuclear war.

Neutrality in a War

The states not participating in a given war are neutral. The legal status of a neutral state is governed by the 1907 Hague Convention V Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The territory of a neutral state is inviolable, it cannot be the theatre of military operations. A neutral state has the right to employ its armed forces in order to defend itself from encroachments against its neutrality. The troops of the belligerents that found themselves in its territory must be interned till the end of the war. The states at war cannot take their troops and military transport through a neutral territory, they are not allowed to deploy their communication facilities therein. However, a neutral state may permit both sides to equally use its domestic communication facilities. A neutral state shall not supply arms and weapon-grade materials to the states at war or permit to form military units for the conflicting sides in its territory. However, a neutral state is not responsible for its nationals who are crossing the border on their own and joined either of the fighting armies. The status of a neutral state in a naval war is defined by the 1907 Hague Convention XIII Concerning the Rights and Duties of Neutral Powers in Naval War, which bans combat missions in the territorial waters of a neutral state as well as the delivery of materiel and armaments to the naval vessels that the belligerents will employ for combat. Nevertheless, combat vessels of the states at war have the right to enter the territorial waters of a neutral state for restocking in keeping with the peacetime quotas and to take enough fuel for reaching its nearest port.

Prohibited Methods and Means of Conducting Military Operations

There are many international statutory instruments that impose restrictions on the belligerent parties in choosing the methods and means of conducting military operations. The prohibited methods of warfare are:

- treacherous killing or wounding of military personnel belonging to the enemy troops;
- the taking of hostages;
- attack on persons put out of action;
- to order that there shall be no survivors, to threaten the adversary therewith or to conduct hostilities on this basis;
- to force persons to serve in enemy troops;
- bombardment of non-protected cities;
- the misuse of national and international protective emblems;
- the modification of the environment as a method of warfare.

It is prohibited to employ the following means of warfare:

- explosive bullets or projectiles under 400 grams weight;
- dum-dum bullets;
- poison and poisoned weapons;
- asphyxiating and poison gases, along with bacteriological and chemical weapons;
- weapons causing injury by fragments in the human body undetectable by X-ray;
- anti-personnel landmines and booby-traps;
- incendiary weapons;
- blinding laser weapons.

The use of nuclear weapons is not prohibited by legal provisions of Public International Law. However, the treaties currently in force are directed to prevent their proliferation, to limit their tests and deployment (the 1963 Moscow Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, the 1968 Treaty on the Non-Proliferation of Nuclear Weapons, the 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea Bed, and the Ocean Floor and in the Subsoil Thereof, the 1976 Soviet-American Treaty on Underground Nuclear Explosions for Peaceful Purposes, the 1996 Treaty on the Total and Universal Prohibition of Nuclear Weapon Tests).

The International Atomic Energy Agency (IAEA) oversees the observance of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons.

Legal Status of Participants in Armed Conflicts

Participants in armed conflicts are divided into combatants and non-combatants. Combatants are individuals within the belligerent's armed forces directly involved in combat operations. The use of violence toward them is allowed right up to their extermination. If combatants fall into enemy's hands, the regime of military captivity has to be applied to them. Non-combatants are individuals also within the belligerent's armed forces who are not directly involved in combat operations. These servicemen have their hand weapons but exclusively for self-defense. These are quatermaster's and medical personnel, correspondents, and the clergy. Guerrillas, according

to the 1949 Geneva Conventions, are combatants, while the guerilla warfare is considered as a rightful means of struggle against the aggressor, foreign occupation and colonial rule.

International legal acts distinguish the concept of a military spy from that of a scout and the concept of a volunteer from that of a mercenary. A military spy is an individual who, while acting in a secret way or under a false pretext, gathers or is trying to gather data in the area of operation of a belligerent with the intention to communicate this data to the adversary. If a military spy engaged in espionage falls into the enemy's hands, he is not entitled to the status of a prisoner of war and can be treated as a spy.

By contrast, if a person within the belligerent's armed forces is engaged in reconnaissance in the enemy's territory wearing the uniform of his army and is not acting by fraud or deliberately using secret methods, he is a scout. But should a scout fall into the enemy's hands, he is deemed a prisoner of war and shall be treated in keeping with the legal standards of the regime of war captivity.

A volunteer is an individual who has crossed the border and, of his own accord, joined the armed forces of one of the belligerents. A volunteer shall loose the status of a person belonging to a neutral state; however, the law of armed conflict shall apply to him.

Unlike a volunteer, a mercenary has neither the status of a combatant, nor of a prisoner of war. A mercenary is an individual recruited on site or abroad specifically in order to fight in an armed conflict, who is actually participates in the military actions mainly guided out of his desire to get personal profit and who was truly promised a material remuneration by the party to the conflict or as authorized by the party to the conflict

that substantially exceeds the remuneration promised or paid to combatants from the personnel of that party's armed forces holding the same rank and serving the same functions. A mercenary is neither a national nor a permanent resident in the territory controlled by the conflict-engaged party. He is not assigned to the armed forces personnel of the conflict-engaged party and has not been sent by a non-conflicting state to perform official duties on its behalf. The Convention against the Recruitment, Use, Financing and Training of Mercenaries was adopted in 1989. Mercenaries and their enlisters are liable to criminal prosecution and punishment. That also goes for the mercenaries' use, financing and training.

The Wounded and Sick. The Regime of Military Captivity

Under the 1949 Geneva Conventions the wounded and sick in armed forces in the field and civilians in the zone of combat operations enjoy protection.

The regime of military captivity is governed by the 1949 Geneva Convention Relative to the Treatment of Prisoners of War. Prisoners of war are in the power of the adverse party, but not in the power of individuals or commanders of military units. It is prohibited to cripple prisoners of war or expose them to scientific and medical experiments. Prisoners of war, with the exception of commissioned officers, can be employed to do work that is not connected with military operations. After the termination of military operations the prisoners of war shall be immediately released.

The Cessation of Military Operations and the Termination of the State of War

Military operations end either in an armistice or in the surrender of one of the belligerents. An unconditional surrender is a form of surrender. Fascist Germany signed the Act of Military Surrender of the German High Command in Berlin on May 8, 1945, Japan signed the official surrender in Tokyo Bay on September 2, 1945. Those were the acts of unconditional surrender of all German and Japanese armed forces to the commands of the Allied armies.

If hostilities were performed without the declaration of war, an armistice can lead to the permanent peace rather than mean a suspension of hostilities. In this case the armistice is concluded on a treaty basis (the cessation of military operations in the area of the 1938 Soviet- Japanese conflict at Lake Hassan, the cessation of military operations in the area of the 1939 Soviet-Mongolian-Japanese conflict at the Khalkin Gol River.

The termination of the state of war is usually formalized in a peace treaty. In 1947, after the Second World War ended, the peace treaties were signed with the former allies of Nazi Germany: Italy, Finland, Romania, Hungary and Bulgaria. There can be other forms of the termination of the state of war: the Soviet Union unilaterally terminated the state of war with Germany by the decree of the Presidium of the USSR Supreme Soviet on January 25, 1955; the USSR and Japan terminated the state of war by signing the joint Declaration on October 19, 1956.

Classification of Sea Expanses

The Law of the Sea is one of the oldest branches of Public International Law. The reason for this is economic and military-strategic importance of seas and oceans in the life of peoples. The origin of the contemporary European Public International Law is associated with the activities of the 17th century Dutch lawyer and diplomat Hugo Grotius, whose work gives prominence to the elaboration and substantiation of the legal regime for sea expanses. In 1609 Grotius published his work "Mare Liberum" – "The Free Sea". He took a stand against the monarchs of Spain and Portugal who made an attempt blessed by the Pope to divide all discovered and non-discovered lands and oceans between themselves (the 1494 and 1529 Treaties). Grotius upheld the idea of the freedom of the seas, - that the maritime space is free to all nations and must be under nobody's sovereignty.

Nowadays all sea expanses are divided into those that are under the sovereignty of coastal states and the maritime open spaces that are beyond the sovereignty of states. The former include the internal waters, territorial sea and archipelagic waters. The maritime open spaces are the contiguous zone, the exclusive economic zone, the continental shelf, and the open maritime areas beyond the external boundaries of the exclusive economic zone. The legal regimes of these sea expanses differ. The most important sources of the Law of the Sea currently in force are the 1958 Geneva Conventions on the High Seas, on the Territorial Sea and Contiguous Zone, on the Continental Shelf, on Fisheries and Conservation of the Living Resources of the High Seas; and the 1982 Convention on the Law of the Sea.

The internal waters are the waters of sea ports, bays, gulfs, inlets, estuaries, "historical" bays and all other waters located

on the coastal side of the base-lines from which territorial seas are measured.

The “historical” bays are bays, the width of natural entrance in which exceeds 24 nautical miles. They belong to internal waters in accordance with the historical traditions. Those are the Bay of Peter the Great (Russia, the Far East), the Hudson Bay (Canada). They respectively have 81 and 75 nautical miles width of their natural entrance. Many Russian lawyers in Public International Law qualify the Arctic Seas – the Kara Sea, the East Siberian Sea, the Laptev Sea, the Chukchi Sea – as “historical” waters, i.e. internal waters of Russia because Russian and Soviet seamen opened all of them up for navigation. Such point of view is supported by the fact that navigation along the Arctic Sea Route across all these seas is handled as the navigation along a national sea lane.

The legal regime of internal waters is the competence of the coastal state. Foreigners cannot engage in any off-shore operations there, do scientific research or enter internal waters without permission of the coastal state. The exceptions are the entrance into waters of open ports and in case of emergency.

The territorial sea (or the territorial waters) is a belt of sea or ocean up to 12 nautical miles wide which is adjacent to the land territory or internal waters of a coastal state. The state border of a coastal state runs along the external boundary of the territorial sea. The coastal states usually set the width of the territorial sea at their own discretion as ranging from 3 to 12 nautical miles. However, certain states declared the width of their territorial waters to be much bigger than 12 nautical miles, and nine Latin American States (Panama, El Salvador, Nicaragua, Chile, Ecuador, Peru, Argentina, Uruguay, Brazil) set 200 nautical miles as

the width of their territorial waters. The 1982 Convention on the Law of the Sea laid down a limit of 12 nautical miles for territorial waters of a coastal state.

The 1982 Convention on the Law of the Sea provides for *the right of innocent passage* of foreign ships through territorial waters, including warships, without any reservations made by the coastal state. By contrast, the 1958 Convention on the Territorial Sea and Contiguous Zone granted the right of coastal states to make reservations in case of innocent passage. Before 1958 the innocent passage of foreign warships was possible only with the permission of the coastal state.

Under the 1982 Convention of the Law of the Sea, **the archipelagic waters (waters of archipelagic states)** consist of the waters between the islands of an archipelagic state delimited from other parts of the sea by base-lines linking the most protruding points of the most remote islands and the drying reefs of the archipelago. Inside those base-lines the ratio of the water area to the land area can vary only in limits from 1:1 to 9:1. Therefore, not every island state has its archipelagic waters. Great Britain and Japan have none.

The archipelagic waters, the midair above them, the sea bed and its subsoil are under the sovereignty of an archipelagic state. The legal regime of innocent passage of foreign ships through archipelagic waters is the same as the one applied to territorial waters. A different legal regime is established for sea lanes of international navigation. That is the right of archipelagic passage which is defined as the exercise of the right of normal navigation and overflight exclusively for the purpose of continuous, prompt and unimpeded transit from one area of the High Seas or an exclusive economic zone to another area of the High Seas

or an exclusive economic zone. The archipelagic state has the right to assign 50 nautical miles wide sea lanes and air passage. The obligations of the vessels exercising the archipelagic passage along sea lanes and those of archipelagic states are governed by the provisions of the 1982 Convention on the Law of the Sea concerning the transit passage through straits used for peaceful navigation from one part of the High Seas to another.

The contiguous zone is a region of open sea contiguous to the external boundary of territorial waters. It is established by the coastal state in order to enable it to exercise control and prevent violations of the customs, fiscal, immigration and sanitary regulations within its territory or territorial waters. The coastal state may impose punishment in the contiguous zone, if the violations of these regulations occurred within the limits of the territory or territorial waters of the coastal state. However, the sovereignty of the coastal state does not apply to the contiguous zone. According to the 1982 Convention on the Law of the Sea, the width of the contiguous zone must not exceed 24 nautical miles measured from the same base-lines from which territorial waters are measured.

New possibilities in reclaiming the World Ocean brought about by the rapid progress in science and technology in the middle of the 20th century and the desire to control the living resources of the sea in the areas adjacent to the sea coast encouraged the coastal states to expand their rights to those parts of the High Seas which previously were not the subject of their particular interests or could not be one. That is why the concepts and the legal regimes of the exclusive economic zone and of the continental shelf were developed so as to comply with the interests of coastal states.

According to the 1982 Convention on the Law of the Sea, **the exclusive economic zone** is an area beyond and contiguous to the territorial waters. The width of the exclusive economic zone should not exceed 200 nautical miles measured from the same base-lines used to measure the width of the territorial sea. The exclusive economic zone is a part of the High Seas, and the coastal state does not wield sovereignty over the exclusive economic zone. However, coastal states enjoy exclusive rights in the zone to be able to explore, develop, conserve and manage the natural resources, whether living or non-living. No one, except the coastal state, can engage in the exploration and development of natural resources or engage in their conservation unless they have the consent of the coastal state. The jurisdiction of the coastal state is exercised with regard to: 1) artificial islands, installations and structures; 2) marine scientific research; 3) the protection and preservation of the marine environment.

According to the 1982 Convention on the Law of the Sea, **the continental shelf** of a coastal state is the sea bed and the subsoil of the submarine areas extending beyond the territorial sea along the entire length of the natural prolongation of the continent's land territory up to the outer boundary of the underwater limit of the mainland, or else to a distance of 200 nautical miles from the base-lines used to measure the breadth of the territorial sea when the external boundary of the underwater continent does not extend to such a distance. If the underwater boundary is located at a distance of more than 200 miles, the external boundary of the shelf will extend further, but not more than 350 nautical miles from the base-lines from which the territorial sea is measured, or else not more than 100 nautical miles from the 2,500-metre isobath (the line connecting points of equal underwater depth).

The problem of the continental shelf came up when it became possible to extract mineral resources out of its subsoil. The coastal state exercises its sovereign rights in pursuing the exploration and exploitation of natural resources of the shelf. But the shelf superjacent waters are waters of the High Seas. They are open for the navigation of other states, and the air space above them is free for flights. Other states can lay cables and pipelines on the shelf, but the coastal state has the rights to give consent to particular routes for laying them, and to determine conditions governing such activities.

Principles of International Economic Law

International Economic Law is a branch of Public International Law and represents a body of standards and principles governing economic relations, including trade and finance, among subjects of Public International Law, i.e. independent states and international intergovernmental organizations. When establishing legal standards on any economic matters, states conclude treaties (agreements, conventions), which belong in the realm of **Public International Law** because states are subjects of Public International Law. At the same time, physical and legal persons of corresponding states have to follow these legal standards in their contracts which belong in the realm of **Private International Law**.

States can conclude economic framework agreements for the legal persons to carry out. And, last but not least, a state itself can be a contracting party in a concrete economic or financial contract with a legal person. In this case the state is treated as a subject of Private International Law.

Given the present leap in the globalization of world production and trade, the significance of international economic law, international intergovernmental economic organizations and agreements has increased. Nowadays international intergovernmental universal, regional and specialized economic organizations regulate the world economy. The World Trade Organization (WTO), the European Union (EU), the International Monetary Fund (IMF), the Organization of Petroleum Exporting Countries (OPEC) are among them.

In their bilateral economic relations states establish basic principles which they address to the partner state. These are the Principle of Economic Non-Discrimination, the Principle of Most-Favored-Nation Treatment, the Principle of National Treatment, the Principle of Mutual Benefit, and the Preferential Regime.

The Principle of Economic Non-Discrimination signifies the right of any foreign state, its physical and legal entities to be granted the terms that are no worse than those extended to other foreign states and their physical and legal entities. If the discrimination occurs, a country exposed to discrimination possesses **the right to retortion**, i.e. a retaliatory restrictive action. The use of retortion is a lawful action and is not specified in Public International Law as an act of discrimination.

The Principle of Most-Favored-Nation Treatment means that each of the contracting parties will provide to the other, in the specific field indicated in the treaty, rights, advantages, privileges and benefits that are as favorable as any it currently provides or will provide in the future to any third state.

The Principle of National Treatment means that the same rights that are enjoyed in a host country by local physical and legal persons are extended to foreign physical and legal persons in certain spheres of legal relations.

The Principle of Mutual Benefit means that economic relations between states should be balanced relating to the allocation of mutual benefits and commitments. However, such an approach cannot be applied to every concrete transaction. It is designed as a principle to preclude entering into inequitable enslaving agreements between governments.

The Preferential Regime is the regime of trade advantages applied to the developing countries and also within customs unions. Public International Law does not qualify preferential regime of this type as a violation of the principle of most-favored-nation treatment.

The World Trade Organization (WTO)

The World Trade Organization (WTO) is the most important international intergovernmental organization in the sphere of world trade. The World Trade Organization was established by the 1994 Marrakesh Agreement which entered into force on January 1, 1995. The WTO stems from the General Agreement on Tariffs and Trade signed in 1947 (GATT 1947); it was a multilateral time-expiring treaty that remained effective until 1995.

The WTO is a comprehensive single international trade organization incorporating the former multilateral trade agreements resulting from the rounds of multilateral negotiations. The WTO is founded on four main pillars: GATT 1994 (GATT 1947 supplemented by a number of understandings of inter pretation and decisions), the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects

of Intellectual Property Rights (TRIPS), and the Dispute Settlement Understanding[1].

"A State or separate customs territory which wants to become a member of WTO has to accept all agreements and understandings that form the WTO. (Under GATT 1947 and the multilateral trade agreements, each State or separate customs territory could choose which agreements they wished to be a party to). The terms of accession must be agreed between the applicant and WTO members and this can be a lengthy process.

The WTO has three main organs: the Ministerial Conference which meets at least once every two years, the General Council which is composed of representatives of all members, and the Secretariat, headed by the Director-General. The General Council also operates as the Dispute Settlement Body and the Trade Policy Review Body. Three councils operate under the general guidance of the General Council: a Council for Trade in Goods, a Council for Trade in Services, and a Council for Trade-Related Aspects of Intellectual Property Rights. Other committees have been established by the Ministerial Conference such as the Committee on Trade and Development or the Committee on Trade and Environment.

As was the case with GATT 1947, decision-making is based as far as possible on consensus. Only if there is no consensus is the matter decided by majority vote, although a three-quarters majority is needed in some cases, such as decisions relating to the interpretation of the WTO Agreement and multilateral trade agreements. Each member has one vote, although the European Community is covered by special provisions. (When it exercises

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[1] Evans, MD (ed) (2010), *International Law*, 3rd edn (Oxford: Oxford University Press), p. 732.

its right to vote, the EC has a number of votes equal to the number of EC member States which are WTO members).”[1]

The purposes of the World Trade Organization, as they are determined in the Preamble of the 1994 WTO Agreement, are as follows: raising living standards and increasing incomes, achieving full employment, raising the level of production and trade in goods and services and the expedient use of world resources, including the ideas of the “sustainable development”. The principles of the World Trade Organization inherited from GATT and equally binding on all WTO members are: 1) trade without discrimination; 2) predictable and increasing access to markets; 3) promotion of fair competition; 4) free trade; 5) reciprocity; 6) development of trade through multilateral negotiations.

The activities of the World Trade Organization, unlike the policy of protectionism, are aimed at the liberalization of the world trade and the protection of free trade. However the process of globalization of world economy is contradictory. The goals of economic development of countries and regional communities necessitate an accommodation of their interests on a regular basis. Competition compels countries and communities, including the most developed ones (like the USA or the European Community member states), to use protective arrangements in order to support individual sectors of their national economies.

Free trade and protectionism are two possible lines of conduct pursued by all countries in accordance with their concrete interests. Benefits and losses for the national economy and for its individual sectors have to be taken into account when negotiating the terms of Russia’s admission in the WTO.

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[1] Evans, MD (ed) (2010), *International Law*, 3rd edn (Oxford: Oxford University Press), p. 732–733.

POSTSCRIPT

Public International Law is an indispensable instrument for any state in the implementation of its foreign policy. But after the unlawful break-down of the Soviet Union the need to provide a legal settlement of numerous international problems became imperative for the newly independent state – the Russian Federation. It was precisely at that point that there came about great many problems previously unknown to the Soviet foreign policy. Among them are: legal succession of newly independent states – the former Soviet republics, the definition of their state borders, the problem of citizenship, illegal immigrants, the destiny of nuclear weapons in the territory of the Soviet Union, disarmament in the situation of fundamental changes of international relations in Europe and in the world, the division of the Black See fleet, the status of the Russian-speaking population in specific former Soviet republics, political and armed conflicts in Moldavia, South Ossetia and Abkhazia.

When pursuing its economic policy and political strategy, the Government of the Russian Federation must be mindful of the emergence of hostile political regimes along its western borders and the attempts of the NATO and the US expansion towards the Caucasus and some other former Soviet republics.

New challenges require new efforts to safeguard economic and political security of the Russian Federation.

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Александр Константинович Кузнецов

ОСНОВЫ МЕЖДУНАРОДНОГО ПУБЛИЧНОГО ПРАВА

THE FUNDAMENTALS OF PUBLIC INTERNATIONAL LAW

Учебное пособие
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