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PRINCIPLE OF PEACEFUL SETTLEMENT OF DISPUTES AS A GENERAL PRINCIPLE OF LAW[1]

Globalization determines the formation of a global law and order, including national, integration and international law and order. It can be stated that globalization leads to the detection of previously closed, enclosed systems, including legal systems, mutual exchange of norms and institutions. These processes have been existed before and generated the mutual impact of domestic and international law and order, but with the sufficiently high degree of closed nature. Globality of the modern law and order, in turn, is reflected in each component of the system, generating, on the basis of the feedback, the growing influence of the national law on international legal phenomena and, in turn, expanding the impact of the international law on the development of the domestic law at qualitatively other level.

Similar processes take place through private - public law, there is a strengthening of their interaction and mutual influence, the distinction between them have tends to erasing, which is reflected in the universalization of approaches, the development of common principles, also in the sphere of dispute resolution involving states.

That's why researches, the object of which are institutions, including both private law and public law phenomenon and international law and domestic law phenomenon, became very actual. This approach allows to avoid the narrow scopes, limitation of the research of the complex legal objects that exist at the joint of public and private, domestic and international basics. Moreover, this approach allows us to mutually enrich the various branches of the legal science, to expand their methodological tools and to approximate them to the multidimensionality of the legal substance. This is what caused the value and relevance of the chosen by I.Orlova topic of the scientific research - consideration of the institute of international disputes resolution, disputes in frames of international public law and international private law, disputes, where one of the parties performs the state.

In connection with the above, the relevance of monograph doesn't raise doubt. I. Orlova in her research provides a deep comparative-legal analysis of the existing methods of resolving legal disputes, which had set in the international public and international private law.

The research under review consists of three chapters. In the first chapter "Theoretical problems of legal disputes resolution" (p. 8-63) researcher considers the ratio of the categories of "conflict" and "dispute". Doctrinal and normative analysis in the framework of national and international law is held. The difference between the concept of disputes and conflicts is shown. General legal concept of a legal conflict and legal disputes is identified. In the work, the author does not affect the power methods of conflict resolution (interpersonal, intersocial, international, etc..), does not study their relevancy or illegality, and confined to the subject of research legal disputes.

The author's hypothesis is the assignment of the principle of peaceful settlement of disputes to the general principles of law that led to the consideration of this category. This study is very useful and profound. Importance of the analysis is caused by the fact that this category is estimated to be ambiguous doctrine of international law, and, in spite of a reasonable allocation to the sources of international law in accordance with Art. 38 of the Statute of the International Court of Justice, the application of general principles of law in the practice of international judicial bodies is low.

Exploring the nature and the content of general principles of law, I.Orlova had based on the premise that «the category of «general principles of law» is a specific concept of a more general category of principles of law» (p 30). The complexity is not only the identification of principles with respect to which "the opinions of experts are not the same ..." (p. 32), but the regulations of the last. Securities is a comprehensive analysis of the category of general principles of law with the usage of the comparative method, the study of their content both domestic and foreign doctrine theory of law and international law, the laws of various states and jurisprudence. The author brings a variety of approaches regarding to the content of this category and comes to the conclusion that "the general principles of law - it is the inherent

[1] Review of the monograph: Orlova, I.A. (2011). Institute of dispute resolution in the system of international law: *a monograph*. Saint-Petersburg: SCF "Russia-Neva".

right of mandatory provisions, structuring its particular social phenomenon, is a qualitative characteristic of his status and operation of the entire area of legal regulation (in all legal systems) "(p. 46).

An important conclusion, determining the direction of further scientific research, is a statement of the existence of the principle of peaceful settlement of disputes as a general principle of modern law. The author proves, at first, its legal character, and secondly, its universal character, spread to the whole sphere of legal regulation on the basis of a study of the genesis of this principle in international law and its role and status in the present (pp. 47-51), the principle of peaceful settlement of disputes in domestic law as a historical retrospective, and at the present stage, it had been incorporated in the current legislation (p. 52-54). Special attention is paid to the application of the principle of peaceful settlement of disputes in the international private law (pp. 54-63). In conclusion, the author makes an important conclusion that in modern law general legal institution of dispute resolution was formed; structure-forming basic principle is the principle of peaceful settlement of disputes, which determines the development of the law in the direction of increasing humanization (pp. 62-63).

Exploration of new trends in dispute resolution in public international law is in the second chapter of the monograph (p. 64-128). The author examines the evolution of the series of conciliatory means of settling international disputes, based on their traditional classification (negotiation, good offices, mediation, inquiry, conciliation), as well as mixed commissions and border representatives. This paragraph contains a significant amount of factual material, reflecting the emergence of separate conciliation dispute resolution, their development and application nowadays. The author highlights the genesis of regulatory consolidation procedures for the application of these methods.

This paper proposes a division of dispute resolution in the diplomatic and jurisdictional. The basis of the principle of dividing is the final decision on the dispute. By diplomatic include those methods in the application of which the parties themselves determine ways to resolve them. By the jurisdictional, the author considers such kind of a dispute resolution in which compulsory decision for disputant parties is made by a third party.

Furthermore, the author believes that among diplomatic dispute resolution can distinguish primary and secondary. Auxiliary methods, which carried by I.Orlova examination (investigation procedure) and expertise, in her opinion, only contribute to the development of the most appropriate ways to resolve, because the facts, which may affect on the coordination of their positions, are provided to the parties.

Analysis of the formation and development of the international judicial system is a logical extension of the topic. I. Orlova preceded by study of the history and causes of specific international judicial by investigation of views of classics of Russian international legal thinking about the prospects of the international judicial system - Kamarovskii L., F. Martens, B. Tatishcheva. International arbitration courts, the principles of their devices and activities are characterized (pp. 93-100). Significant, in our view, is to analyze the nature of the regular international arbitration courts, their competence. The author makes an interesting conclusion that the arbitration courts established under the agreement between the states have an international nature, and the fact that in some of them one of the parties can be a powerless entity, does not deprive them of an international legal nature (pp. 97-98). And further: "... the court, resolving a dispute between the powerless subjects of different states, created with their consent, is also an international" (p. 99). Special attention is paid by I.Orlova on international courts, background, reasons and circumstances of their occurrence. Giving the forecast of prospects for the development of the international judicial system, I.Orlova came to the conclusion that it will be held in the following areas: 1) granting greater jurisdiction of international courts and tribunals; 2) expanding the range of subjects that can appeal to international judicial bodies; 3) expansion of spheres of international relations, in which is possible to use the judicial process to resolve disputes; 4) Increasing the number of specialized courts or tribunals (p. 107).

In the peer-reviewed paper, there is detailed analysis of the dispute resolution mechanisms within the framework of international organizations. Particular attention is paid by I.Orlova on administrative tribunals as specific bodies to resolve disputes between staff and international organizations.

The monograph presents the detailed characteristics of the dispute settlement systems, formed in international integration associations of states. The author proves that the different levels of integration leads to the creation of various organs to resolve disputes on the basis of a comparative analysis of the courts established in various communities of states (the Court of the East African Community, COMECA Court of Justice, the Court of the Andean Community, the Court of the European Communities). Exploring the nature of courts established in the framework of integration associations, I.Orlova concludes that the courts established under integration organizations are international courts sui generis (p. 127).

In the third chapter, "The resolution of international private law disputes" (p. 129-193) was investigated the complex issues related to the resolution of international private law disputes, namely the features of the international civil process, the problem of implementation of the freedom to choose the method of settling international private law disputes by peaceful means of settling international private law disputes , the specific production of Arbitration in private international law, especially the national proceedings in cases involving a foreign element. According to I.Orlova, international civil procedure is a system of principles and rules governing the resolution of transnational private law disputes, and the principles and rules governing the process of alternative resolution of international private law disputes also apply to international civil procedure.

The features and a variety of conciliation, the level of regulation in different countries are also considered. Thus, relatively to the mediation author states that the laws (regulations) on mediation adopted in common law countries and continental Europe. They defined the scope of the mediation, the principles, rights and duties of a mediator, the mediation procedure, the conditions of disclosure of confidential information. Legislation on mediation some states, the model standards of conduct of professional organizations of mediators, the provisions of the EU Directive concerning certain aspects of mediation in civil and commercial matters are analyzing. The author draws parallels between the ways of resolving disputes in international public law (good offices, conciliation) and conciliatory, and conciliation in international private law (pp. 149-151). I.Orlova examines in detail such means of dispute resolution as a solution within the permanent commissions, mini-courts, ombudsman, preliminary independent evaluation of the case, the procedure for establishing the facts and concluded that, based on the usage of conciliation in the resolution of international private law debate is the party autonomy and the absence of legislation prohibiting this method (p. 160).

Questions related to the nature of arbitration, the categories of disputes that are subject to proceedings in arbitration courts in different states, guarantee enforcement of arbitral awards, especially the production of Arbitration in private international law are discussed in a separate section of the monograph.

Very interesting is the analysis of different modifications of arbitration: dispute resolution procedure arbitrators as amiable, the arbitral tribunal according to conscience, voluntary arbitration with the optional solution. According to scientists, especially international arbitration procedure is a significant autonomy in choosing the type of the arbitral tribunal, arbitrators and applicable law (p. 180).

The paper analyzes the Russian and foreign legislation on arbitration body for settling disputes. The author points to the competition rules of Russian law in the field of arbitration, as it is regulated by different laws. Analysis of the current legislation allows the author to conclude that the arbitration courts (including international commercial arbitration) are by their legal nature domestic jurisdictional bodies. The name of the "international" for the arbitration of allowing cross-border private law disputes has a certain convention and indicates only the international character of their disputes resolved. Such bodies themselves are not international. The name "court" for such bodies as conditional data tribunals is not included in the judicial system of the state, carried out on behalf of justice.

The author points to the problem of multiple versions of arbitration. Some forms of arbitration (arbitration with optional solution pretrial arbitration), the author refers to the varieties of mediation. These differences may cause non-award, unless such performance is required in states that do not recognize such forms of arbitration.

The problems of unification of the rules of international jurisdiction are investigated by the author in the last paragraph of the monograph. The issues of supranational enforcement of foreign judgments in the European Union, reciprocity in the execution of judgments, recognition and enforcement of a settlement agreement approved by the court of one state on the territory of another. The paper presents an analysis of the discussion in the Russian doctrine about the methods of recognition and enforcement of foreign judgments. The position of some researchers is encouraged to apply the condition of reciprocity in the recognition and enforcement of foreign judgments and arbitral awards is criticized. The author agrees with those scientists who insist on the correctness of the procedural legislation of the Russian Federation, the possibility of linking the recognition and enforcement of foreign judgments and arbitral awards to the presence of international treaties.

The monograph is proved that the institution of the resolution of disputes related to the principle of protection of human rights and is a realization of both the international and the domestic level.

It should be noted that the reviewed work is done at a high level and contains a number of conclusions of practical interest. The theoretical material is logically interconnected and supported by

quotes from respected sources. In our opinion, the monograph of I.Orlova "Institute of dispute resolution in international law" can serve as a basis for further research on the interaction of public and private international law. The monograph, which is a serious scientific work, not only offers ways to improve dispute resolution mechanisms in international law, but also opens a wide scope for debate among legal scholars, thereby fulfilling its purpose.