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- Экономика
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К читателям журнала

Либерализация экономики Российского Дальнего Востока (РДВ) создала реальные условия для развития внешнеэкономических связей со странами Азиатско-Тихоокеанского региона (АТР). Безусловно, что интеграция в экономику тихоокеанских стран объективно зависит от комплекса политических, экономических, военно-стратегических и социально-психологических условий. Недостаточное внимание к ним и их слабая изученность чреваты замедлением интеграционных процессов. Поэтому появление журнала «Азиатско-Тихоокеанский регион: экономика, политика, право» весьма актуально в целях содействия развитию фундаментальных и прикладных исследований в области регионального сотрудничества РДВ со странами АТР, освещения проблем его участия в развитии интеграционных процессов, решения задач подготовки высокопрофессиональных специалистов в области международных отношений.

В соответствии с целью, рубрики журнала, издаваемого Дальневосточным федеральным университетом 2 раза в год, предполагают освещение следующих материалов:

- статьи по экономике, внешнеэкономической деятельности, политике, международному сотрудничеству стран АТР, Дальнего Востока, Приморского края;
- архивные материалы и комментарии к ним по истории сотрудничества России со странами АТР, политическим взаимоотношениям;
- материалы социологических исследований по важнейшим экономическим, общественно-политическим и правовым вопросам;
- справочные законодательные материалы по регулированию национальных экономик, межстрановому взаимодействию в АТР;
- обзоры деятельности региональных организаций;
- сообщения, официальная информация по материалам региональных совещаний, конференций, дипломатических встреч.

Помимо указанных проблем, в журнале освещаются и иные региональные аспекты – демографические, экологические и пр.

Учитывая важность затрагиваемых в журнале проблем, редколлегия приглашает к сотрудничеству специалистов из разных сфер деятельности, имеющих отношение к тематике журнала, в том числе: сотрудников ДВФУ и других вузов, научных институтов, специалистов, знающих на практике проблемы Дальнего Востока и регионального взаимодействия.

Для участия в издании журнала необходимо прислать:

- материалы, согласно указанной рубрике, объемом не более 15 стр. машинописного текста, включая список литературы (не более 10 источников);

- Ф.И.О. (полностью), должность, место работы, ученая степень и ученое звание – на русском и английском языках;

- название рукописи, аннотацию (250–300 слов, ключевые слова, список литературы – на русском и английском языках;

E-mail для связи с читателями.

Поля: верхнее – 20 мм; нижнее – 20 мм; левое – 20 мм; правое – 20 мм. К рукописи прилагать электронный вариант, шрифт – Times New Roman, кегль 14. Ссылки помещать в квадратных скобках (например, «Согласно работе [5], или при цитируемой ссылке [5, с. 18])». Список литературы в конце статьи.

Надеемся, что журнал «Азиатско-Тихоокеанский регион: экономика, политика, право» сыграет важную роль в обмене опытом между учеными и практиками Дальнего Востока и будет способствовать эффективному решению проблем региона.

Предложения, пожелания, заявки на участие в издательской деятельности журнала и его приобретение направлять по адресу: 690950, Владивосток, ул. Суханова, 8, зам. гл. редактора. **Информация о журнале в Интернете: apr-magazine.dvfu.ru** Тел.: (4232) 26-76-41, Факс: (4232) 22-78-25, E-mail: **zharikov.ep@dvfu.ru**

To the Readers

The Liberalization of the economy of the Russian Far East (RFE) has created the environment for development of foreign economic ties with the countries in the region of Asia-Pacific (APR). Of course, that integration into the economies of the Pacific countries objectively depends on a complex blend of political, economic, military, strategic and socio-psychological conditions. Insufficient attention to these conditions and their insufficient study has led to a slowdown in integration processes. Therefore, the emergence of "The Asia-Pacific Region: Economics, Politics, Law" Journal is very important in order to promote the development of fundamental and applied research in the field of regional cooperation of the RFE with Asia Pacific countries. Likewise, it is paramount in covering the issue of APR's participation in the development of the integration processes and solving problems of preparation of highly qualified specialists in the field of international relations.

In line with the purpose section of the journal, published by the far Eastern Federal University twice a year, the journal includes the coverage of the following topics:

- Articles on the economy, foreign economic activity, policy, international law cooperation of the countries of Asia-Pacific region, the Far East, Primorsky Krai; Archival materials and comments on the history of cooperation between Russia and Asian-Pacific countries, the political relations;
- Materials of sociological research on the most important economic, public-awareness, legal and policy;
- Legislative reference materials on the regulation of national economics and cross-country cooperation in the Asia-Pacific;
- Reviews of the activities of regional organizations;
- Messages and the official information materials of regional meetings, conferences, diplomatic meetings.

In addition to these problems, the journal covers other regional aspects, such as demographic, environmental, etc.

Given the importance of issues discussed in the journal, the editorial Board invites the cooperation and contribution of specialists from different spheres of activity relevant to the topics of the journal, including: employees of the FEFD and other universities, researchers from variety of research institutions, specialists in the problems of the Far East and its regional affairs.

For participation in publication, it is necessary to send:

- materials according to the specified category, with a volume of no more than 15 pages of text, including references (no more than 10 sources);

- Full NAME (complete), professional position,, academic degree and academic status in both Russian and English languages;

- the manuscript's title, a brief abstract (250-300 words, keywords and a list of Literatours - in both Russian and English languages;

- Access to e-mail for communication means with readers.

Margins: top - 20 mm, bottom - 20 mm, left - 20 mm, right - 20 mm. The manuscript makes an electronic variant, font - Times New Roman, № 14.

- Links placed in square brackets (for example, "According to [5], or the cited reference [5, p. 18])". List of references should be placed at the end of the article.

We hope that the journal *the Asia-Pacific Region: Economics, Politics, Law* will play an important role in experience exchange between the scientists and experts of the Far East, and will prmote effective solution of the problems of the region.

Proposals, applications for participation in publishing the journal and its acquisition should be directed to: 690950, Vladivostok, ul. Мордовцева, 12, Deputy Chief Editor.:**Use the following internet link to access the journal's website: atr.wl.dvgu.ru.** Tel.: +7(4232) 26-76-41, fax: +7(4232) 22-78-25, e-mail: **Zharikov@mail.dvgu.ru**

ПОЛИТИЧЕСКИЕ ПРОБЛЕМЫ СОВРЕМЕННОЙ АЗИИ
POLITICAL PROBLEMS OF MODERN ASIA

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МЕТОДОЛОГИЧЕСКИЙ НАЦИОНАЛИЗМ, КОСМОПОЛИТИЗМ И НЕКОТОРЫЕ ПРОБЛЕМЫ ОБЩЕСТВЕННО-ПОЛИТИЧЕСКОГО РАЗВИТИЯ ВОСТОЧНОЙ АЗИИ[1]

Основная цель представленной статьи заключается в анализе теоретических оснований концепции космополитизма в современной западноевропейской социологии. Необходимость внедрения космополитической социологии была обусловлена стремлением ряда социальных теоретиков улучшить концепт глобализация за счет в него не только экономического, но и более широкого социального и политического контекста. Поставленная цель вызвала критику «контейнерной теории» и значимости нации-государства для предшествующих социологических теорий. В результате был сделан вывод, согласно которому социальная и политическая ситуация в государстве сегодня во многом обусловлена влиянием глобализационных процессов. По этой причине прежние теоретические основания социологии были объявлены методологическим национализмом и было предложено заменить их космополитической социологией. Не случайно в 1990-х гг. наблюдается критическая переоценка концепта общества под влиянием концепций глокализации и «общества риска» У. Бека. Космополитизм в данном случае означал существование как в космосе (глобальном), так и в полисе (локальном). Кроме того, он характеризовался как внутренняя глобализация, развивающаяся в рамках национальных сообществ. Одним из базовых положений теории У. Бека стал также концепт инаковость. На его основе этот теоретик противопоставил мета-власть глобального гражданского сообщества всем основным концепциям «мейнстрима» науки о международных отношениях. Было отмечено еще одно ошибочное положение, связанное с представлением, что определенное общество может являться моделью для любого другого общества.

К сожалению, несмотря на декларируемое внимание к идее рефлексивного поворота, У. Бек не уделил внимания концепции ориентализма Э. Саида. Этот автор смог проанализировать европейский и американский варианты ориентализма, которые не имели ничего общего с реалиями этого региона и являлись лишь вариантами ориентализма (постколониализма). В силу существования барьера подобного рода мы должны провести сопоставление ситуации Европы с данными других регионов. Дело в том, что здесь складывались различные

[1] Проект поддержан Научным фондом ДВФУ.

политические, этнические, социальные и культурные общности. Подобные образования более соответствуют определениям мультикультурализма или нациестроительства, чем нации-государства. Так, регион Восточной Азии примечателен уже в силу своего разнообразия государств. Формирование в литературе специального дискурса «азиатских ценностей» наглядно отражает также специфику обществ этого региона. Значение ценностей такого рода связывается с необходимостью противостоять давлению глобализации. Еще одна примечательная особенность региона заключается в том, что азиатские страны, как никакие другие в мире, соответствуют вестфальским государствам. Следовательно, в силу таких исторических, социально-политических, культурных и экономических обстоятельств отдельных стран и регионов мы имеем дело с разными типами обществ и государств в каждом регионе. Поэтому, как было установлено, критика методологического национализма остается актуальной лишь для западноевропейской социологии.

Ключевые слова: методологический национализм, космополитизм, глобализация, нация-государство, рефлексивный поворот, ориентализм, социологическая антиномия.

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METHODOLOGICAL NATIONALISM, COSMOPOLITISM, AND OTHER PROBLEMS OF SOCIAL-POLITICAL DEVELOPMENT OF EASTERN ASIA[1]

The principal point of this article is an analysis of theoretical frameworks of the cosmopolitan concept in current West European social sciences. The idea of some social theoreticians to improve the globalization concept both in economics as well as in broader social and political contexts was responsible for voicing the need for conceptual revision in cosmopolitan sociology. This aim was realized in critics of the "container theory" and the the importance of the previous sociological theory of the nation state. It was concluded that social and political situation in states depends upon the influence of the globalization processes today. Hence, the previous theoretical frameworks in sociology were declared as the methodological nationalism, and it was proposed to replace them by means of a cosmopolitan sociology. A concept of society became a subject of critical approach in 1990s as a part of the idea of'glocalization" and'society at risk" theory by U. Beck. Cosmopolitism in this way means both living in space (global), and in polis (local). That is why it was characterized as the inner globalization developing within national communities. One of the principals for Beck's theory is the concept of alien. On its base, theoretician opposes'meta-authority of a global civil society" to all the existed concepts of'mainstream science of international relationships". A point of the mistake in having definite society as being a model to any given society was recognized.

In spite of declared interest in the "reflexive turn" idea, Beck did not pay attention to the orientalism concept by E. Said, who analyzed European and American

[1] The project was supported by the Scientific Fund of FEFU.

ideas of the East, and realized that they had nothing in common with the realities of the region forming a kind of orientalism (postcolonialism). Because of this barrier between expectations and observed reality, we have to compare the political situation in Europe and the societies of other regions. It may be concluded that comprehensive political, ethnical, social, and cultural unities form internally. Such formations stay close to the terms of multi-culturalism and nation building, rather than to the one of nation-state. The region of East Asia is remarkable with its countries' unique diversities. The formation of special discourse in modern literature dealing with the issues of'Asian values' is considered as very significant reflection of this region's societies. The very significance of the values is explained as the necessity to form some local foundations to resist the pressures of globalization.

Another remarkable fact is that Asian countries very closely approximate the Westphalia states all over the world. Therefore, due to peculiarities of historical, social-political, cultural, and economical circumstances of East Asian countries, we still have to deal with peculiarities of states and societies in every region. Thus, as it is investigated, the methodological nationalism critics are still relevant to the debates of West European sociology.

Key words: methodological nationalism, cosmopolitism, globalization, nation-state, reflexive turn, orientalism, sociological antinomy

Post-modern challenges of the last third of the 20th century made social theorists reconsider some of their previous conceptual ideas. Nevertheless, a concept of society became a subject of critical approach, as globalization problems swept in the 1990s and gave way to the opportunity to reflect on the problem through the emerging ideas of a'global society". Mass phenomenon of international migration revealed new perspectives for the conceptual approach to the problems of society. In one of his works, British sociologist John Urry established the idea of mobility (especially, intellectual mobility) to become a subject of re-institutionalized sociology researches, rather than one of the societies [Urry, 2000: 210]. Necessities to recreate the global history of humankind also demanded a redefinition of the concept of society.

As the tendencies differed under an influence of broadly accepted globalization trends, theoretically established expenses of the sociology (including those of the'methodological nationalism') became perfectly clear. Beck was one of the major scientists trying to find a way to avoid the trap [Beck, 2007; 2008; 2009]. His ideas have their coverage in several works of Russian researchers, but the very subject of methodological nationalism deserves the more profound analysis [Kravchenko, 2011; Tsygankov, 2012]. Beck's thesis of reality having been lost in its evaluation and production is the principal clue to comprehend his position. Previous ideas are just answers to the questions, which could be established in some different way. Changes in information-gathering rules, different tools used to gather the information, and different specialists that observe allow the appearance of'other reality" [Beck, 2000:251]. This thesis reflects an author's attitude to the problem of discursive practices. The assumption allows me to suggest that Beck's ideas deserve thorough analysis, given that the discursive approach is being discussed by some Russian scientists. The approach deals with analysis of different texts in order to find and verify their major ideas according to the established problems.

It is considered that in the 1970s a Portuguese scientist Germinio Martins was the first to establish methodological nationalism as the wrong practice of identification

between society and the state [Martins, 1974]. Formulation of the question appeared to be very opportune; according to a British sociologist P. Wagner, in terms of reflexive approach, undesirable identification in social theory originated exactly in the 1970s [Wagner, 1994: 30–31]. Another British sociologist, D. Chernilo, who put a special attention to the development of the nation-state social theory, mentioned his famous colleagues E. Giddens and E. Smith as the ones having supported the ideas of Martins. However, according to Chernilo's opinion, the sociologists mentioned above also wanted to overcome the identification of two major concepts in terms of the already existing concepts in sociology. Meanwhile, in the 1990s, Beck radically criticized methodological nationalism and strongly recommended to solve the problem by means of new theoretical approaches [Chernilo, 2007: 8–11]. No wonder that the German author is considered to be one of the leading specialists in a field of the questioning and the reexamination of the established'isms".

Obviously, Beck is a very active author. In the 1980s, he published several works dedicated to the idea of a'second" modernity and the concept of'society at risk", which left behind the principles of the common concept of the nation state. The tragedy of Chernobyl has become a turning point for the author himself. He pictured Chernobyl as an end to'the others' – an end of our cultivated ways to dissociate ourselves from each other [Beck, 2000:5]. Beck explained the consequences of that great tragedy as the onset of qualitative change of modern society. The point is that the reflexive stage of scientific development has produced unsustainable commodities,, social defects, and modern problems produced by humanity, a so-called'second creature of civilization" [Beck, 2000: 236]. Since all these developments were intensified in modern societies, they became characterized as the'societies at risk". The risk was no longer ignorance, but rather the knowledge, the system of solutions and objective compulsions, which was created by the industrial era [Beck, 2000: 278]. Thus, Beck did not really expect the end history to occur, as F. Fukuyama did.

That understanding was quite enough for Beck to start his analysis of the popular concept of globalization. He was not satisfied with the ubiquitous interpretations, as he marked the common one-dimensional interpretations of the concept as only based on economics. The author himself wanted to present multiple aspects of the concept, in particular one that perceives the formation of trans-national social space [Beck, 2001: 28–29; 55]. Thus, Beck subscribed to the pluralistic, Kantian concept of cosmopolitism: "Cosmopolitism is both living in space, and in polis' [Beck, 2003: 26]. Beck often applied this interpretation to his works [Beck, 2007:65]. To explain it in modern language, one exists both in general (cosmic) space, and in locus of any definite community. Thus, Beck managed to represent a concept of modern world passing through a stage of a'new modernity" and the associated processes. According to the sociologist, globalization is a nonlinear, dynamic process where the global and local contexts exist silmutanously rather than in opposition to each other Beck established the processes of globalization asinterrelated, crossing national boarders and being the reasons behind social and political transformations within national states. By force of such duality, Beck defined the processes as'cosmopolitization" [Beck, 2003:25]. As he developed his ideas further, Beck stipulated that, "Cosmopolitization is the inner globalization developing within national communities' [Beck, 2003: 25]. Moreover, he introduced into debates the theory of reflexive modernization, which takes into account all the side-effects of development and progress [Beck, 2001].

Such dualism of globalization perspectives logically drew Beck to this significant conclusion:'Germany, France, and Italy no longer exist in today's Europe the way

they do in imagination of people and on illustrated pages of history books. Because there are no limits, no competence, and no separation of experience any longer. In short, the principal basis of the previous national world means nothing today" [Beck, 2007: 7]. Of course, the conclusion forces us to remember all the predictions of inevitability of chaos and'new feudalism" in the future international order; but, still, Beck observes the whole situation more optimistically. He suggests that cosmopolitan view of the problem means the realization of an alternative order, with allows for political freedom and social and economic justice [Beck, 2007: 15]. According to him, it is the richest members of the society who thrive in a globalized world at the expense of the poorest members. In its contemporary concept, globalization is a tool that promotes the collective ideas of one country, eliminating the relevance of separation between different cultures and societies Meanwhile, the cosmopolitan idea absolutely reflects the universal self-interest of the humanity [Beck, 2007:15]. Well, theses on humanity are rather prevalent, but Beck finds his own to be universally egalitarian:. "Cosmopolitan approach connects respect and dignity, cultural alien and survival of every individual" [Beck, 2007: 15].

Thus, the concept of alien is principal one for Beck. He established five dimensions to identify external and internal differences of the concept. To him, external level of cosmopolitism means:

- To admit a difference of nature;
- To admit a difference of civilizations and types of modernity;
- To admit a difference of the future.

The internal level of cosmopolitism means:

- To admit a difference of object;
- To get over a political influence of linear and scientific rationalization.

As difference always suggests some separation, and the following assertion by Beck is perfectly clear: "Pluralization of boarders is one of the highlights of reflexive modernization" [Beck, 2003: 26]. Recently, the concept of state was firmly connected to the one of the nation; as a result, a'centaur term" appeared – nation-state. Beck could never ignore the reconceptualization of nation and state, so his position is predictable: "In global era states fall into a'trap of nationality" [Beck, 2007: 130].

To balance the'autarchy" of the political institution, Beck suggested the principle of cosmopolitan state. The idea reflects principles of national indifference and defines co-existence of national identities founded on constitutional loyalty [Beck, 2007: 139]. However, there are many other possibilities for a sociopolitical establishment. According to Beck,"architecture of cosmopolitan union of states could make a way for many regions including those of extreme national and ethnical states to avoid a policy of false alternatives [Beck, 2007: 145].

Consistent denial of political and national self-sufficiency made criticism of methodological nationalism more radical. Beck established main disadvantages of this approach. Firstly, it is a self-willed application of observation and border analysis to a social perspective, though these categories represent social structure and variability of the national approach. Secondly, there are mistakes, misconceptions, and deformations of national and governmental centrism. Thirdly, it is an abstract concept of the nation with no historical background in its base. Fourthly, national–governmental and governmental institutions demand a definite separation of their meanings. New critical theory minds re–governmental political thinking and struggles to find reasons and opportunities for a state to become a cosmopolitan one. Finally, according to the

author's opinion, national optics misrepresent the principal question: What are the reasons of legitimacy needed to transform the rules of turning a national modernity into the cosmopolitan one [Beck, 2007: 78–81]?

The last question is the vital one, as globalization results in meta-policy (a policy of policy) and meta-authority. Beck represents cosmopolitism as a challenge to all the existing theories of international relations: "It undermines national theory authority and disparages political monopoly of nation-state in terms of international relations' [Beck, 2008: 38]. The sociologist opposes'meta-authority of a global civil society" to all the existing concepts of'mainstream science of international relationships". According to Beck, a society strives for protection of human rights as a protection to a self-evident national and governmental structure. The misconception mentioned above results in a popular image of a nation following its fancy within the limits. Human rights directive allows both non–governmental organizations and international citizenship countries to influence the authority and legitimacy within other states [Beck, 2007: 105]. Thus, we discover another aspect of Beck's'difference" – it observes the survival of every man protected by universal human rights. It is a natural phenomenon, as Beck studies the realty of second modernity through the perspective of dualism. Indeed, human rights institution reveals the difference between national and international concepts being replaced with the inner cosmopolitism [Beck, 2008: 47]. Author also emphasizes, "Human rights institution turns national–governmental competent state into a borderless space of'world inner policy"... with other countries and NGOs interfered with inner policy and structure of other states' [Beck, 2007: 105–106]. Thus, Beck counts on the idea of human rights to provide a man with legitimate and competent discourse of authority and allow limited groups of society to stand for their rights with the support of every other man and woman. Moreover, governmental and non-governmental authorities have all the means to participate in discussions and disputes of the global significance [Beck, 2007: 106].

Since the universal human rights principle is already recognized and accepted widely, the author realizes perfectly well all of the disadvantages of the idea. He describes the possibility of false cosmopolitism as a kind of global adjustment of human rights to a national idea, which has been realized in the United States today. At the same time, the majority of the EU nations carry out a policy of observance of human rights and fundamental freedoms. It affirms general legal status of human rights for international relations and creates an opportunity to change the national policy criterion in terms of "cosmopolitan regime of inner policy of world citizenship" [Beck, 2007: 106].

The above example about the U.S. developed as a criticism of neo-liberalism.. The reason for the controversy is perfectly evident, as neo-liberal approach establishes a state institution as "a current one; on the contrary, it possesses the possibility of inner transformation, and applies it unilaterally in terms of adjustments to the world's market..." [Beck, 2007: 81]. On mentioning his disagreement with the approach, Beck tries to debunk it, as he believes that the influence of neo-liberal regime depends upon success and reduces in some difficult conditions. Today, we can observe a rise of world crises and risks resulting in global changes and conflicts, so we can consider the future of the egalitarian, cosmopolitan ideas as successful one [Beck, 2007: 122].

However, the author does not support the opponents of neo-liberalism, such as communitarianist principals and its myths. Instead, Beck argues the demand for social relations to be performed firstly, for "the policy to become available in terms

of national, ethnic, and territorial limits' [Beck, 2007: 75]. According to the author, communitarianism "mixes up the absence of power of decisions or collective actions, and political influence of the danger" [Beck, 2007: 75]. Having proven the groundlessness of his opponents' fundamental statements, the author represents this modest conclusion: "In other words, cosmopolitism is the next great idea to change settled questions of nationalism, socialism, communism, and neo-liberalism. The idea of cosmopolitism is able to transform something impossible into the possible one – a new humanity managed to survive XXI century with no barbarian attitude at all" [Beck, 2007: 15].

To confirm his ideas, Beck established a concept of cosmopolitan realism. The main advantage of the realism is its ability to be "specified and determined on various inner-political levels for different historical and geo-political constellations, global and local ones; moreover, it is appropriate for many regions of the world – Asia, Europe, Africa, and North America". Beck also outlines the variability and inequality of the actors, as not all of the members of transnational civil society meet the demands of this community or manage to represent it properly. In addition, actors radically differ in terms of resources, power, available information, and decision making organizations. The author's conclusion is that "transnational policy is a policy of policracy – it is pluralistic, rather controversial, and informational–sub political" [Beck, 2007: 166]. Beck also reconsiders the conceptual processes of cosmopolitism and anti–cosmopolitism. These processes are explained with "the consequences of inner cosmopolite reality on progress' [Beck, 2008: 74]. Beck is ready to face some difficulties of the cosmopolitism development processes, because not all the world's population is cosmopolitan now. Nevertheless, it is not a huge problem, as the supporters of another approach make many mistakes analyzing current circumstances. For example, a national mistake is the result of the complex reality of the co-existence of different states. The vital question of the criticism of methodological nationalism is also explained with the necessity to overcome a Universalists' mistake, which is a connection between the concepts of national–territorial and the general universal. In other words, a point of the mistake is of "the definite society" being a model to any given society structure. Thus, basic characteristics of universal society could be provided with the analysis of that society. According to Beck, Carl Marx could not avoid the mistake, as he established his ideas based on the analysis of British capitalism. Max Weber overestimated an importance of Prussian bureaucracy as well. However, a supporter of cosmopolitism realizes that a principle of'national one as the universal one" does not work [Beck, 2008: 29].

Beck's conception experienced some modifications later. The author divided his principal concept in two major parts. The first part deals with philosophical and nominative cosmopolitism (Habermas, Held) based on the theory of worldwide citizenship. The second part describes new relativistic cosmopolitism as a tool to criticize methodological nationalism. Beck proclaims the XXI century to become an era of cosmopolitism, and fights for methodological cosmopolitism and cosmopolite sociology. Observing previous experience of scientific development, Beck represents sociology as a concept framed by nationalistic paradigm. In spite of comparative research being held with the nationalistic paradigm as the basis, a great perspective for the development still exists: "Of course, Talcott Parsons adopted a comparative sociological approach and was a student of European social thought, but his sociological interest and approach was American" [Beck, 2007: 286]. Nothing has radically

changed, because even international sociology represented by Wallerstein still obeys to a power of methodological nationalism. Unfortunately, the approach does not take into account that difference between national and international sociology no longer exists [Beck, 2007: 286]. New risks and challenges – Chernobyl, 9/11 – made author raise the problem of contemporary mixed cosmopolitism., In this respect, one has to learn cosmopolite mixture of global sociology and new cosmopolite critical theory as the tools to resist repressive idealism on determination of national perspectives in policy, researches, and theory.

As these global circumstances continue to increase, Beck makes rather tough conclusions:

> As prisoners of methodological nationalism, we do not understand Europeanization; we do not understand the new global meta-power game. We do not understand that the nation-state legitimacy of social inequalities is being challenged to its core by universalized human rights; we do not understand the'global generation" and its transnational fragments, and so on. This is because we are captured by zombie categories; sociology is threatening to become a zombie science, a museum piece of antiquated ideas [Beck, 2007: 287].

Beck applies'zombie category" in many sociological contexts of his work; it brings him back to the problems of society at risk. According to the author,"... principal tools of modernity, as science, business, and policy once guaranteed the rationality and security, appear to be in confrontation, and their apparatus is no longer available, as fundamental principles of modernity do not support general blessings". Now, these tools are the source of risks, rather than an instrument to prevent the risk. Beck affirms that the being itself absolutely depends upon these circumstances:

> As a consequence, everyday life in world risk society is characterized by a new variant of individualization. The individual must cope with the uncertainty of the global world by him- or herself. Here individualization is the default outcome of a failure of expert systems to manage risks. Neither science, nor the politics in power, nor the mass media, nor business, nor the law or even the military are in a position to define or control risks rationally [Beck, 2007: 289].

Thus, the image of an individual resisting the governmental power and fighting against it is no longer surprising in some cases.. "Thus [Beck's] theory of'reflexive or second modernity" is about the unintended consequences and challenges of the success of modernity. It is about *more* modernity and the crises it produces, but *not* about post-modernity" [Beck, 2007: 289]. Therefore, contrary to all the opinions, we observe a crisis of risks rather than enjoy a post-modern period now. This state of the present is called the'reality of globalized modern" [Beck, Beck – Gersheim, 2009: 26].

Nevertheless, Beck and his co-author have to reconsider the issue, as they realize: "The social sciences, however, are still more or less in thrall to'methodological nationalism", unable to see border crossing interactions, interconnectedness and intercommunication" [Beck, Beck-Gersheim, 2009: 26]. That is why they put their hopes on a global generation and formation of the global identity, in particular. Along with A. Appadurai, scientists suggest that subsequent generations will expectglobal equality in the world. "Everywhere in the world more and more people look at their own lives through the optic of possible ways of life, presented by the mass media in every conceivable way. That means: today, imagination has become a social practice;

in countless variants it is the engine for the shaping of the social life of many people in many different societies". That is why every regular man is under the influence of the realities and opportunities of a world society [Beck, Beck-Gersheim, 2009: 28].

Beck's conceptions provoked many critical comments. His opponents argue that an entire cut of methodological nationalism principle- as classic comparative sociology theory and structural approach- has already discussed the issue of global inequality. Beck's adversary notices that specific world policies contribute to conflicts and force, rather than sympathy and collaboration [Martell, 2009: 254–255]. Moreover, Beck was reproached to lack definite arguments in his statements and conclusions. In addition, the role of the U.S. and the West in the present time was considered as an institution against cosmopolitism conception [Martell, 2009: 271].

Nonetheless, the idea to resist methodological nationalism drew the attention of many people. A. Wimmer and N. Glick Schiller also disapprove of the'idea of a state/nation/society to be natural social and political forms of modern world" [Wimmer, Glick Schiller, 2002: 301]. The authors demonstrated three major variants of practical realization of the methodological nationalism principle. They performed three major directions of the methodological nationalism realization practice:

- Ignorance (the majority of theorists);
- Naturalization (empiricists);
- Territorial limitedness (political scientists). [Wimmer, Glick Schiller, 2002: 308].

A pernicious influence of the naturalization of the nation-state was studied in terms of political economy of the Marxist tradition, world-system concept of Wallerstein, and principle of methodological individualism apart from the largest social communities [Wimmer, Glick Schiller, 2002: 303]. Comparison of different concepts and approaches allowed authors to support the idea of the present differences between Anglo-Saxon and European scientific traditions. They discuss the migration factor as the main proof of methodological nationalism failure [Wimmer, Glick Schiller, 2002: 304]. The deconstruction of the nation-state concept became the perfect basis for that conclusion.

Wimmer and Glick Schiller characterize'container theory" of society with skepticism, as it describes a state as a container for the nation. They are inclined to separate the nation and the state as two parallel concepts. Moreover, they suggested transforming the concepts, as basic ideas of contemporary state and national theories that appeared from practice and ideology of colonial governing [Wimmer, Glick Schiller, 2002: 308]. Thus, an idea of virtual (imaginative) character of many nations appeared just in time. The point is that many nations are composed of variety of ethnic communities, but their roles are undermined significantly. Anthropology of ethnic communities in terms of modern and industrial nation –states characterized them as culturally different from the majority of the population because of their historical and migratory backgrounds. It did not view these differences as a result of successive politicization of ethnicity in a context of the very development of nation-state. Thus, anthropology has just reproduced and naturalized an approach of the government of the nation-state [Wimmer, Glick Schiller, 2002: 305–306]. That is why thebuilding of a multi-ethnic nation is a basic condition for proper development of an economy or capital in many of today's states [Wimmer, Glick Schiller, 2002: 305].

One of the major disadvantages of'container theory" provided by Wimmer and Glick Schiller is that many scientists describe'container-society" as purely cultural, political, economic, and social dimensions of societies., In this respect, they do not

take into consideration the intricate connections between these dimensions. "Major theoretical debates evolved around the relative weight of those dimensions in structuring the entire social fabric– Parsonians voting for culture, while Marxists favoring economy – and whether society determined individual actions or the other way round, with social structures emerging from individual agency" [Wimmer, Glick Schiller, 2002: 307]. Well, it is time to get rid of all the disadvantages mentioned above.

Nevertheless, the'trap of methodological nationalism" is still a subject of arguments in foreign literature. Trans-limitedness, mass migrations, cosmopolitism, and ideas of general history demand to get out of'thetrap" as soon as possible. For the afore-mentioned factors, the nation–state is possible only in terms of one of the social contexts. Authors are intended to overcome container methodology, as they believe in the end of globalist debates of the 1990s, and definite issues of conceptual relations between society, nation–state, and space as relevant today [Amelina, Faist, Glick Schiller, Nergiz, 2012: 3]. They are more likely to study global or cosmopolitan culture, which are subject of hybrid reformations, as its leading representatives (Appadurai, Bhabha, and Hannertz) do [Amelina, Faist, Glick Schiller, Nergiz, 2012: 6]. The next item in this positive list belongs to trans-boundary researches that reject the world as a space that divides nations into territories. This approach comprehends a world as a trans-national space, a post-colonial and cosmopolitan entity. The authors also emphasize the very important idea of reflexive turn, given the impressive spectrum of global ideas and their impact on the modern world. Reflexive turn means the difference between reflexive theory and reflexive state. The reflexive state means that the reasoning of subjects and the interpretations of research has influence the nature of the results of any particular experiment [Amelina, Faist, Glick Schiller, Nergiz, 2012:].

Thus, it is necessary to reject the idea of methodological nationalism, as it obtains a wide recognition in international sociology in terms of the growth of the globalization concept. However, newly observed tendencies of actualization of different local phenomenon made way to the newest trend of'glocalization" [Robertson, 1992]. An ambivalence of development tendencies in modern world led to the concepts of'nation–state", zombie–categories (Beck), and fetish (Chernylo). The social science research community was strongly recommended to escape from the trap of'methodological nationalism" and reject the over-use of this form of social-political organization. The concept of'cosmopolitism" along with the ones of'reflexive modernization","reflexive globalization", and'inner globalization" became the new standards of sociological approach to understanding the vastly modern world. However, on supporting the critics over methodological nationalism, it is foremost necessary to outline some controversial points of the alternative discourse.

I want to address my principal reproach to foreign colleagues, as they could not overcome their own national limitedness in criticizing universalization of the nation-state. Indeed, "sociology as a special social practice is a result of definite historical conditions for industrial capitalism to appear in West Europe and North America" [Urry, 2000: 10]. However, arguments over a methodological nationalism do possess a practical importance, as they reveal a careless attitude of our American colleagues to the problem. Just like Beck and his adherents, Urry also complained of American ignorance over the subject of the nation-state [Urry, 2000: 7]. Multi-national group of researches made a critique of methodological nationalism; among them are Germans, Englishmen, and Portuguese. Thus, we can confirm that methodological nationalism

is mostly a problem of West European sociology. Serious differences between the Old and the New Worlds posited by Harvard sociologist Glazer contributes to the conclusion that methodological nationalism is applicable to the Old World model of social structure. Glazer proved that Europe deals with'national federations' and America performs'melting and assimilating communities of immigrants' [Glazer, 1983: 27]. Thus, there is no surprise that American and Canadian scholars are more concerned with the problems of multi-culturalism and collective identities, rather than the nation-state concept.

The idea of the universal (global) concept based on'national reality" gave way to the development of the principle of methodological nationalism in social sciences. Russian social scientists have vastly examined this tendency. For example, Zdravomislov explained sociological antinomy with the contradictions between global idea of united social theory and national (local) cultural content of any particular community [Zdravomislov, 2008: 7]. Titarenko also overestimated the development of his social theory in the same manner [Titarenko, 2011: 22]. Russian specialists paid active attention to suggestions of the voices in the international sociological congresses to put an end to the Western-centric sociology and make way for sociologies from Asia, Africa, and Latin America [Yadov, 2012]. They contended that an axis of civilized contradiction separates Western and non-Western theories, including ones of the Russian Federation [Kirdina, 2008: 27].

This rather controversial methodological concept is not the result of incompetence or carelessness of social theoreticians; it is perfectly in line with other tendencies of social significance. In spite of all the references to reflexive turn, some of our foreign colleagues do not emphasize the importance of the concept and fail to utilize potential to solve the problem it poses.. Of course, critical theory discusses the society as a form of alienated consciousness [Delanty, 2009]. Beck admitted that'dialectical imagination is a central characteristic of cosmopolitan perspective. It means cultural and rational contradictions in terms of human life of'the internationalized another" " [Beck, 2003: 25–26]. However, it seems that these sociologists have never fully utilized the major concept of orientalism, established by American researcher, E. Said. This renowned sociologist analyzed European and American ideas of the East, and realized that they had nothing in common with the realities of the region forming a kind of orientalism. Said established a variant of discourse supported by organizations, dictionaries, science, imagination, doctrines, and even colonial bureaucracy and style of governing., In his understanding of Orientalism, Said considered it as a model of Western domination over the East perpetuated by a popularized discourse of the exotic East [Said, 1978: 2]. In other words, in trying to comprehend the ways of the East, the West failed to overcome its own biases influenced by the social, political, and cultural realities of the Old World, therefore creating a mythical interpretation of the different region. Said also succeeded to influence the future discourse of English, American, and French orientalism. His ideas developed alongside the the concept of post-colonialism (Abdel-Malek, Bhabha, Spivak, Fenon, etc). The general theory regarded post-colonialism "... as multiple political, economic, cultural and philosophical responses to colonialism from its inauguration to the present day ..." [Hiddleston 2009, p. 1].

Today, the concerns of European scientist about methodological nationalism are perfectly evident – the nation-state concept is still a prerogative of Western Europe. This is why European sociologists had to get rid of their delusions about the relevance

of the nation-state in the context of modern reality and the world beyond European borders., In fairness, they are making the first step to coming to this understanding, as they no longer consider the nation-state as the perfect model of social and political structure. However, now they have to realize that their observations of the problem are still influenced by the West European model of perception. Not for nothing, Beck believes in universal human rights and supports a rather controversial practice of humanitarian investments. However, a British sociologist has to admit: "French sociological tradition tends to holism and/or collectivism, according to Durkheim; structuralism and so-called post-structuralism are the principal manifestations of the tradition" [Wagner, 2000:116]. Thus, intellectuals of Asia, Africa, and Latin America could have their own opinions about the human rights problem, cosmopolitism, and other popular concepts of the Western-centric model of sociological perception. Anyway, it is evident, that the issue of methodological nationalism is just a tip of the iceberg. Theorists of the post-modern period bolstered this conception. However, all the epistemological problems and principles demand for the profound examination of the principle. Indeed, the principle of methodological nationalism is based on controversial issues of theoretical character.

As it was demonstrated, thedevelopment of the methodological nationalism principle relies upon the processes of mass migration. However, the subject of migration reveals significant disadvantages of methodological nationalism and the concept of cosmopolitism. It is explained by underestimation of the ethnic phenomenon in contemporary societies. It is an important observation, and Beck was aware of its significance; he tried to prove that "methodological nationalism was based on the establishment both of the national and ethnical reasons' [Beck, 2007: 162]. Nevertheless, the denial of the nation-state and the idea of the connection between the global and the local, enabled Beck to spare space for an ethnic component in his conceptualization. He writes that "an ideal unity of nation, state, democracy, and people failed with the globalization of national territories. However, globalization and ethnical identity do not exclude, but include each other" [Beck, 2007: 340–341]. The role of the ethnic concept is still under discussion, but its reference to the shaping of identity is remarkable.

The point is that there are two different interpretations of the ethnic phenomenon. The first one was established in the beginning of the 20th century by Russian ethnography and deals with the theory of ethnos. The second one appeared in the1960s in English socio-cultural anthropology circles and deals with the concepts of ethnicity and identity. The analysis of methodological approach of foreign models of sociological study reflected on their practice of methodological individualism and constructivism. Russian theories of ethnos perfectly correspond to the principle of sociological rationalism and primordialism. In the light of the differences between Old and New Worlds demonstrated by Glazer, it is easy to establish a connection between the existing theories of ethnos and ethnicity and different social-political contexts. Russian tradition reflects the peculiarities of historically formed multi-ethnic countries.America itself is comprised of immigrant communities from a variety of countries, which givethe nation a truly multi-ethnic identity.. Speaking of alternative versions of the theory, we should also consider the ethnos theory of S. Shirokogoroff, which integrates principal approaches to the problem of ethnicity. The Russian social scientist was the first to study ethnos as a process in which ethnical communities are involved in shaping the social makeup of a society. According to his definition, ethnic

community is characterized as "more or less similar cultural complexes, speaking the same language, believing into a common origin, possessing group consciousness, and practicing endogamy. This is a definition which corresponds to our definition of ethnical unit"; it is also "a state of balance between centripetal and centrifugal processes' [Shirokogoroff, 1935: 14]. Evidently, uselessness of discussions over the problems of ethnos and ethnicity concepts is explained with the lack of criteria for evaluating ethnic communities and other unities as'new social groups". The gap resulted in the over-complex development of the ethnicity concept, which was discussed both as a character feature of ethnic communities and also as an indicator of diversity of any groups, including ones of social and'ethno-cultural" character. Meanwhile, an establishment of stable ethnic community in terms of endogamy and psycho-mental complex theories performed by Shirokogoroff eliminates any misunderstanding. It is necessary to realize the connection between a definite ethnic community and the territory the community occupies (other variant of primordialism). For social scientists, the coexistence of different ethnic communities, societies, and migrant diasporas means the necessity not only for cultural and political outlining of adequate policy measures that take these facts into account but also the long-term effects of the ethnic dimension of the reality of the very particular country.

On studying the issues of conceptual definition of society, it is necessary to pay attention to the increasing role of modern cultural factors. In the light of these social changes, the Frankfurt School of Social Philosophy and Cultural Studies offered to "study a culture as a tool of ideological influence and hegemony, where cultural forms help to define the way of thinking and behavior forcing individuals to admit social conditions of capitalist countries' [Kellner]. As a result, according to a German researcher V. Kashuba, culture transforms into the'other side of the society"... Thus, social analysis is a cultural analysis at the same time" [Kashuba, 2001: 57]. This theory results in another definition of culture: "culture is a society united with the same life style" [Ternborn, 2001: 59]. Such cultural expansion into the social sphere is remarkable in explaining the contemporary society.

Increasing significance of the ethnic factor, profound cultural differentiation, and new political transformations have radically changed the structure of contemporary societies. As a result of these transformations, a new political, ethnical, social, and cultural unities have emerged. Such formations stay close to the terms of multi-culturalism and nation building, rather than to the one of the nation-state. Thus, sociology along with the other fields of social-humanitarian knowledge face the'challenge of complexity" demanded by the vastly changing social landscape that demands new answers to vary different types of questions.. New definitions of society as'a quickly developing complexity" prove that the challenge to reexamine outdated models has been accepted. Inter-disciplinary synthesis is also clear, as it represents another effective strategy [Urry, 2003; Kravchenko, 2012]. An inter-disciplinary approach, however, does not deny the necessity of social research and its further development and typology. Only in that very case, it is possible to avoid mistakes of informational transference from one society to another. This disadvantage is typical for any West European social science field.

To define the perspectives of cosmopolitism, it is necessary to apply it in terms of different countries – Asian countries, for instance. A. Delanty and Baong He completed a work dedicated to the analysis of the origins of normative trans-nationalism in Europe and Asia. They emphasized that "limitation of cosmopolitism by European

specificity is revealed both in Asian neglect to cosmopolitism practices, and in reduction of the importance of cosmopolitan approach as it is' [Delanty, Baong He, 2008: 324]. According to the authors, the formation of global principles of justice and the emergence of additional issues confronted by modern societies became the basis for the spread of cosmopolitism. Thus, many social scientists make the conclusion that the "principle challenge of the present time is the necessity of a dialogue between different cultures and civilizations". Still, as reflexive inclination has appeared, therefore the current discourse has to follow its principal course – to speak about cosmopolitism is to estimate changes in one's personal perception by collaborating with different cultures in terms of global significance [Delanty, Baong He, 2008: 324].

Delanty and Baong emphasize the emergence of multiple cosmopolitan projects all over the world initiated by individuals, organizations, and social activists. The multiplicity plays a great role in Asian research, as the continent differs from Europe, both civilization-wise and culturally. Moreover, as Delanty and Baong suggest, Asian countries do not have a tradition in providing for their civil society, since they have not undergone complete democratization of their respective countries [Delanty, Baong He, 2008:]. At the same time, the authors believe that cosmopolitan tendencies are indeed profound in the Asian society. The concept flourishes in the ideas of general love of the ancient Chinese philosopher, Mo Di, in contemporary experiments with multi-culturalism in Asia, and in the forgiveness of the debt that many African countries owed to Asia. Thus, the authors conclude that cosmopolitism is the antithesis of nationalism and is a great foundation for the union of Europe and Asia [Delanty, Baong He, 2008].

Despite this conclusion,, we should not be limited by our perceptions of the concept of cosmopolitism only. To overcome Western methodological nationalism, we have to come to know and understand the true realities of the world beyond the borders of Old Europe. Unfortunately, the demand still possesses rather recommendational character. Some aspects of the discourse of Oriental Studies may provide useful information about the realities of non-Western world, for instance, East Asia.

The East Asian region is extraordinary with its multitude of diversities. One of the general classifications characterizes these states as big or small ones, and effective or non-effective. Some of them are regarded as free (Japan, South Korea, the Philippines, Taiwan, and Thailand), partly free (Hong-Kong, Indonesia, Malaysia, and Singapore), and not free (China, Cambodia, North Korea, Laos, and Vietnam) [Kim, 2000: 13]. Before any contacts with the West, Eastern Asia had a long history of a unique and thriving civilization (Confucian, Buddhist, Taoist etc). During its development, special variants of its sociol-political structure were formed. Still, unlike the European experience, the formation of centralized states had been realized far earlier there. The powerful Chinese Empire allowed the cultural unity in the region [Asia in the 21st Century..., 1997]. Entry of Eastern Asia into the contemporary era saw it be tranformed the active intervention of the West, reduction of China's authority, and upraising of Japan.

A direct threat from Western countries provoked some social-political activists from China, Korea, and Japan to accept the European model of social cohesion and governance in the second half of the 19th century. Fukazawa Yukichi of Meiji Japan, for instance, took a pro-Western position, advocating "dissociation from Asia" and the adaptation of the principles of Western civilization."Many Chinese and Korean leaders took a similar stance" [Gi-Wood Shin, 2007: 14]. At the same time, the

discussion of the differences between the West and the East started. The end of the century witnessed a remarkable change of the previous pan-European adherence for pan-Asian priorities. The reason is that'modernization" influenced mainly economy and policy of the region. At the same time, culture managed to protect its traditions, but continued to influence mostly economic and political reformations. Moreover, there exists an opinion, that culture of Eastern Asia still played a significant role in the preservation of tradition. "While all Asian countries operated in a modern economic structure, they still present many traditional values and ideas' [Compton, 2000: 5]. The formation of special discourse in modern literature dealing with the issues of'Asian values' of history and culture, is considered as further support of the methodological nationalism theory. The very significance of the values is explained with the necessity to form some local foundations to resist the pressure of globalization [Kim, 2000]. However, Eastern Asia still has quite a few problems with its international relations with other countries. [Rozman, 2004].

The majority of social scientists and politicians of Eastern Asia demonstrate a very definite attitude to the importance of the state (nation-state) and its basic principles. "Their recent deliberation from colonial or quasi-colonial rule; their relatively weak position in the international system still dominated by the West; the many internal and international challenges to their ongoing nation and state-building projects; and the fact that among the countries in the world it is the Asian countries that most closely approximate the Westphalia state" [Alagappa, 2003: 86–87]. The widespread Westphalian character of Eastern Asia strictly resonates with the concepts of methodological nationalism, since the importance of the state is not rejected, but widely accepted. "The nation state is the fundamental building block of domestic and international politics. The power and influence of countries rest not just on material power (economic and military) but also on ideational power and legitimacy of the nation-state" [Alagappa, 2012: 1]. It is quite natural that the concepts of nation and nation building are regarded in the same way. "There can be no contemporary state without a nation... Nation and state have become fused such that the only legitimate contemporary political unit is the nation-state" [Alagappa, 2012: 5]. Such Asian adherence to methodological nationalism is rather expected, as contemporary Western ideas of human rights are firmly connected to the reconsideration of state sovereignty and practice of humanitarian interventions. As national interests in the region still dominate, Western researchers have to admit: "Some government elites from Singapore and Malaysia opposed (for example, in foreign affairs) the Western understanding of democracy and human rights that they felt was to be imposed upon their states". Principal argument here is one of the decomposition of the West: "... they pointed at the increasing moral decay of Western countries, exemplified by growing public apathy and rising crime rates' [Timmermann, 2008: 4]. However, Eastern-Asian intellectuals also apply a social argument to this anti-Western sentiment. "They thought that in Asia, limited individualism and strong work and savings ethics, as well as taking responsibility for one's personal life through focusing on the family, led to the development successes of the 1980s and early 1990s' [Timmermann, 2008: 4]. Indeed, Western specialists try to keep an interest in Eastern social transformations that keep some traditions the same [Chinese Society..., 2010]. Social relations still depend upon clan/family (blood) relationships. This is precisely why Eastern Asian countries are regarded as the representatives of strong collectivistic principles [Dumont, 1983]. Thus, we comprehend another fact. "According to these governing

elites, socio-economic rights had priority, and political and civil rights had to wait until their societies were ready for them. Western, mainly American, reproaches were regarded as either interference in their national affairs, envy of their development successes or attempts to substitute former colonial imperialism with new values imperialism" [Timmermann, 2008: 5]. That is why contemporary situation of Eastern Asia cannot share in the optimism of Beck, who views the 21st century to be an era of universal cosmopolitan values.

Thus, the analysis of the methodological nationalism problem allows for the acceptance that there is a predominant movement to move away from it and establish cosmopolitanism as the principal theory of examination among West European social scientists. In fact, American specialists, like P. Bereger, mostly preoccupy themselves with the subject of global culture in a definite way: "There is an emerging global culture, and it is indeed heavily American in origin and content" [Berger, 2002: 2]. In Eastern Asia, the problem of the Westphalian state with its aspirations for sovereignty and national building is stilla prevalent issue. In terms of modern perceptions based on the principles of orientalism, post-colonialism, and ethnos, we may assume that the covered difficulties will create more serious reasons than just those of different opinions within the schools of social science. These reasons are due to peculiarities of historical, socio-political, cultural, and economical circumstances of respective countries and their regions. Thus, taking into account the complexity and the demands of understanding each county as a case-study, we have to research intra-societal peculiarities along with each society's relations to other societies. The result of the research will serve as the true basis for verification of various external and internal hypotheses and ideas. Until the research is done, the recommendation for Eastern Asia to move away from the attachment to the significance of the nation-state is just a variant of methodological nationalism. Instead, the very goal of objective research is to influence the social science arena to make further recommendations for how to solve social problems on the global scale.

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ОСОБЕННОСТИ ФОРМИРОВАНИЯ СЕВЕРОКОРЕЙСКОГО НАПРАВЛЕНИЯ ВНЕШНЕЙ ПОЛИТИКИ СОВРЕМЕННОЙ РОССИИ

В ноябре 2013 г. мир вправе отметить 70-летие знаменательного события расширившего рамки международной системы сотрудничества. Решение участвовавших в Каирской конференции (22–26 ноября 1943 г.) представителей США, Великобритании и Китая о необходимости создания единого, независимого государства Корея явилось мощным стратегическим прорывом, повлекшим серьезные геополитические перемены в регионе Северо-Восточной

Азии. Поддержанное СССР, оно послужило интересам развития долгосрочного и всеобъемлющего международного альянса, направленного на противостояние агрессивной политике милитаристской Японии.

На 2013 г. выпали еще две юбилейные даты, имеющие самое прямое отношение к решениям Каирской конференции. Это 65-летие возникновения Республики Корея (15 августа 1948 г.) и 65-летие провозглашения создания единого корейского государства Корейской Народно-Демократической Республики (9 сентября 1948 г.). Первая из них примечательна вдвойне, ибо искусственный характер стоящего за ней события явился знамением нового внешнеполитического курса США, направленного на инициирование этнических конфликтов и дробление национальных государств.

Упомянутые юбилейные даты побуждают задуматься над политическим измерением международного права и идентифицировать наблюдаемые в нем и сейчас аномальные отклонения. Эскалация напряженности на Корейском полуострове, чреватая началом очередной братоубийственной войны двух суверенных корейских государств требует, как никогда ранее, ясно выраженного заверения США в своей безоговорочной приверженности межгосударственным договоренностям, отход от которых создал в регионе СВА катастрофическое нарастание противоречий и конфликтов.

Рассматриваемые в предлагаемой статье проблемы позволяют сформировать объективное представление об особенностях оформления российского внешнеполитического курса в отношении КНДР, в основном преемственного советскому и никогда не служившего проводником экспансионизма. Он направлен на сохранение правовой основы стабильности евразийского геополитического пространства, на динамичное развитие комплексной структуры взаимосвязанных институтов и процедур, ответственных за развитие партнерства в мировом устройстве, основанном на подлинном равенстве.

Ключевые слова: внешняя политика, международное сотрудничество, Республика Корея, КНДР, этнический конфликт, экспансионизм.

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PECULIARITIES OF FORMING THE NORTH KOREAN DIRECTION OF THE RUSSIAN FOREIGN POLICY

In the November of 2013, the world can legitimately celebrate the 70th anniversary of the event that expanded the ranges of the international cooperation system. The decision made by the representatives of the USA, Great Britain and China at the Cairo Conference (November 22–23, 1943) on establishing a sovereign Korean nation was a powerful strategic breakthrough, which resulted in dramatic geopolitical changes in the Northeast Asia. Supported by the USSR, this decision served the interests of developing a long-term international alliance aimed at opposing the aggressive policy of the militarist Japan.

The year 2013 will see two more important anniversaries directly related to the decisions made at the Cairo Conference: the 65th anniversary of Republic of Korea (August 15, 1948) and the 65th anniversary of announcement of the sovereign Korean nation Democratic People's Republic of Korea (September 9, 1948). The first date

is especially significant, since the artificial character of the following event became an indicator of the new foreign political course of the USA aimed at initiating ethnic conflicts and fragmentation of national states.

These anniversaries make us think about the political dimension of the international law and identify its current anomalies. Escalation of tension in the Korean peninsula, which can result in another fratricidal war between the two sovereign Korean nations, calls for a clear assurance from the American side of the need for their compliance with international agreements; breaking these agreements brought to the Northeast Asia the catastrophic growth of conflicts and disagreement.

The problems discussed in the following article allow forming of an objective opinion about the peculiarities of the Russian foreign policy towards the DPRK – the policy that was mostly predetermined by the Soviet political course and that never pursued any attempts of expansionism. This policy is aimed at preserving the legal grounds of the stability in the Eurasian geopolitical space, at dynamic development of the complex structure of interconnected institutions, and procedures which are responsible for developing global partnership relations based on real equality.

Keywords: foreign policy, international cooperation, Republic of Korea, DPRK, ethnic conflict, expansionism.

Russia is one of the few countries in the world which has established the full-scale diplomatic relations and quite stable economic relations with the Democratic People's Republic of Korea (DPRK). These relations can hardly be considered a politically normal process, since they do not essentially serve the benefit of the mutual progress of the two countries. This process can more likely be explained by the decision of the Russian government to maintain good neighborly relations in order to prevent an influence of an external force on the North Korean nationhood and to help North Korea to not fall a victim to the democratic neo-colonialism. So far, this most unordinary decision does not have a desirable alternative that could ensure the safety of the Russian Far Eastern borders.

The very essence of the Russia-North Korean relations leads to ambivalent attitudes even among the Russian people. Discussions on the nature of these relations and the necessity of maintaining a dialogue between Moscow and Pyongyang either surge or fade in direct relationship to the situation on the Korean Peninsula. Unfortunately, the analysis of the arguments presented by both sides shows the inefficient objectivity in explaining political and historical facts that are directly related to the topic of the discussion. First, this includes ignoring the official position of the DPRK on the existing problems and disputable issues.

The relations between Russia and North Korea were established during the peak of the development of the Soviet civilization when victory in the World War II brought the country prosperity and allowed it to successfully engage in changes impacting the global order. This global geopolitical plan lead to the awakening of the Asian self-perception, which slowly began to internally destroy the Western colonial system already weakened by the military actions of Japan against the USA, Great Britain, Holland, and France.

The Korean approach to the Soviet foreign policy was formed in November, 1943, when the independence of Korea was proclaimed at the Cairo Conference (November 22–26, 1943) by the USA, Great Britain, and China as one of the consequences of the victory over the militarist Japan. Since that conference, the fledgling Korean na-

tion has gained specific self-governing tools and political dynamics initially supported by the international community.

Before November, 1943, the Soviet leaders simply had no resources and favorable political conditions for constructing strategic political engagement with Korea, which had lost its sovereignty in 1910 (long before the USSR emerged). Up until 1945, Korea was a Japanese colonial domain but lacked a nationwide popular anti-Japanese movement that would enable it to organize and present its patriotic Korean forces at the international level to defend their interests. Nevertheless, the Soviet diplomatic system was greatly interested in the sovereignty of Korea, even though it seemed like a weak and ideologically alien but a geopolitically important neighbor; most likely, the Soviets counted on Korea to become a strategic partner in collective security and stable political balance in the Northeast Asia. However, initiation of this strategic relationship could have resulted in conflict and even a full-scale war with Japan, which was very preoccupied with the state of its internal affairs.. This situation was extremely undesirable for the USSR, since the country was still involved in the war with the Nazi Germany and its European satellites. Supporting other countries in their efforts to recognize the future status of Korea as a sovereign nation remained the best solution to the problem.

Due to these circumstances, the USSR leaders based their foreign policy on voting in favor of the North Korean sovereignty at the Cairo Conference of Anti-Hitler Coalition Countries – the resolution that called for the liquidation of Japanese rule on the Korean peninsula. Only this condition could launch the process of creating a sovereign Korean nation and its legitimate government.

The resolutions at the Cairo Conference on the Korean problem turned out to be quite controversial and ambiguous; however, they proved overall positive. They all complied with the doctrines and geostrategic ambitions of the USA and the Great Britain in the Asia-Pacific Region, which was now in charge of shaping the destiny of the Asian nations. In late 1934, the Communist Chinese leader Mao Zedong provided an impartial evaluation of these policies and came to the conclusion that the Pacific problems (including Korean) could not be fully and finally solved without the Soviet Union [9].

The Soviets supported the sovereignty of the Korean nation not only through passive diplomatic correspondence but at the highest level of influence.. The record of the talks between the leaders of the USSR, the USA and the Great Britain took place on November 30, 1943, and illustrates that I.V. Stalin, the USSR Chairman of the Council of Ministers, agreed to the idea of creating an independent Korea [13].

The agreed precepts of the direction of the North Korean statehood as part of the Soviet foreign policy were recorded in the documents of the Yalta Conference that convened the heads of the three allied countries – the USSR, the USA and the Great Britain (February 4–11, 1945). These concepts were announced consecutively by I.V. Stalin to counterbalance the radical initiatives of Franklin D. Roosevelt, who personally insisted on discussing the Korean problem.

During this time, the American government suggested restricting the sovereignty of the future independent Korean nation by the guardianship of three countries – the USA, China, and the USSR. Based on the American colonial experience in the Philippines, F.D. Roosevelt considered it expedient to establish the maximum guardianship period over Korea (between 20–30 and 50 years), which could finally result in the three countries on the Korean peninsula becoming influenced and di-

rected respectively by Washington, Moscow and Beijing. These suggestions failed to hide the contours of an ambitious American doctrine saturated with the idea that Korean people were unable of embracing democracy and self-administration without external assistance [14].

The Soviet counterproposals suggested by I.V. Stalin emphasized the indefensible position of the USA towards the Korean problem. These proposals were based on the realistic geopolitical calculations: creation of an independent Korea would contribute to the long-term stability ofinternational relations in the Asia-Pacific region and assist in maintaining a political balance as a counterweight to the politically unstable and ethnically diverse neighboring countries. These initiatives complied with the Soviet foreign political principles toward China: assistance to China never involved any conditions of granting any privileges [10].

The protocols of the Crimean Conference recorded the Soviet interest in ensuring a full sovereignty to the future independent Korean nation. Implementation of this scenario could have prevented the international guardianship from transforming into protectorate, which I.V. Stalin considered completely unacceptable. Moreover, the Soviet political leaders considered it unreasonable to impose even a temporary foreign military presence on the Korean peninsula. In the end of the discussion of the future of Korea, I.V. Stalin expressed his hopes that the international guardianship over this country would by as short as possible [13].

Entry of the USSR into war with Japan on August 8, 1945, was the first and the determining military operation aimed at liberating the Korean peninsula from the Japanese occupation. Efficient strategy and operation of the Soviet Army resulted in the liberation of Korea in 3 weeks.

On August 15, 1945, the US President, Harry S. Truman, approved the surrender terms of Japan in the order issued to the General MacArthur. Clause 1b of this document called for surrender of all Japanese senior military officers and all land, sea, air and auxiliary forces on the territory of Manchuria and on the territory of Korea, north of 38th parallel [5].

The soviet army remained in the Korean peninsula as an integral part of the USSR obligations before the allies of the Anti-Hitler Coalition arrived. The Russian forces succeeded in eliminating the major Japanese forces before the American army reached Korean shores and landed in Inchon on September 9, 1945. However, some Russian and foreign researchers tend to view the Soviet military presence in Korea as calculated agenda of the aggressive foreign policy of the Soviet Union in the Northeast Asia. How legitimate and reliable is this point of view?

As early as 1943, Soviet political leaders realized that the liberating mission of the USSR in the World War II would be perceived by the West as communist expansion. The USA and the Great Britain started considering the victory of the Soviet Army over the Nazis as the onset of a direct threat to the global democratic community.

In 1952, J. McCarthy, an American republican senator, wrote that for him and his supporters, the Third World War started with the Russian victory at Stalingrad [11]. During the same time period, the tone of some messages sent to Stalin by the British Prime-Minister became overtly threatening [5].

Acute insufficiency of loyalty of public forces towards Moscow in Korea did not allow the USSR sufficient control over Korea's domestic affairs and the ability to protect its national interests like it was able to secure in Eastern Europe. For example, the Seoul-based communist party in Korea headquarters (Choson Kongsan-dang)

started its organizational activities only on September 11, 1945. Its major members were in the American zone of influence and were mostly Chinese-oriented.

The North Korea Bureau of the Communist Party of Korea was founded on October 10, 1945, and it was undoubtedly Chinese-oriented. These and other occurrences enabled the foreign policy of the Soviet Union to comply with the international agreements on creating a united Korean nation and its legitimate government without any regard to any political preferences.

The Soviet foreign-policy approach to its relationship with Korea was initially more a defensive weapon rather than an offensive measure. In essence, it could not lead any expansive campaigns, which would primarily involve maintaining an administrative control over the territories and long-term military presence.

The Soviet Military Administration in Korea, founded in September, 1945, was supposed to control all economic and public affairs in Korea; but, it only operated until the late 1948. This body was disbanded almost simultaneously with the complete withdrawal of the Soviet Army from North Korea, which occurred on December 26, 1948. The Administration followed the guideline of the Supreme High Command General Headquarters of the Soviet Army, dated September 20, 1945, which called for "not establishing Soviet bodies or imposing Soviet order on the territory of North Korea; to assist in establishing a bourgeois-democratic authority based on the wide block of all anti-Japanese democratic parties and organizations" [12].

Soviet administrative bodies and military forces in North Korea did not impose on the nation the communism which would be ideologically identical to the Stalinist regime in the USSR.

When famous Russian researchers like L.V. Zabrovskaya and O.P. Maltseva write about ideological unity being the foundation for Soviet-North Korean relations, they stipulate that there was a political force that embraced Stalinism in the post-war Korea [18].

The attempts of some researchers to find a non-existant expansion of WWII era ideaologies, especially that of Stalinism, are quite understandable. But, specific historical facts prove the opposite: communism could not have been brought to Korea by the Soviet army, since this ideology was well-spread there before August of 1945. Stalinism proved to be a respected force in Korea but not a particularly influential one.

The Korean model of Marxism-Leninism was closer to the Chinese ideology than to the Soviet beliefs. It did not even require the North Korean Bureau of Communist Party, which merged with the New People's Party and finally formed the Workers' Party of North Korea, headed by Kim Tu-Bong, who represented a Chinese-oriented party fraction. Similar merger process took place in the American zone on the Korean peninsula: on November 23, 1946, in Seoul, the assembly of the Workers' Party of South Korea elected Pak Hon-Yong to be its leader.

Since the 1920s, Marxism-Leninism in Korea provided a fertile ground for creative thinking and was successfully synthesized with the advanced traditional Korean ideas of the Left Radical "Down-With-Imperialism" Unit established on October 17, 1926. Its members laid the foundations of the Juche (Chuch'e) ideas of identity, which combined some social-democratic principles with classical medieval philosophy of Korea. This fact is crucial for understanding the genuine nature of the USSR foreign policy (as well as that of Russia), which never placed much importance to the act of spreading ideological unity in Korea.

Almost everywhere, diplomacy follows the logic of tactical reasonability defined only by contemporary circumstances. The Soviet diplomatic system was not an exception. It always concentrated on protecting the interests of the USSR in Central and Eastern Europe and made no attempts to oppose the hegemonic policies of the USA on the Korean peninsula. The attempts of Russian diplomats in encouraging the Americans to take concrete steps in creating the government of united independent Korea and withdrawing its military forces from the Korean territory proved futile. On November 14, 1947, the Soviet Union was not included to take part inthe UNO Temporary Commission to Korea at the insistence of the US.

The first sovereign country in the post-war history of the Korean peninsula – the Republic of Korea – was established on August 15, 1948, with the active support of the US foreign policy, which was motivated exclusively by political interests and not ethno-demographic criteria. Anti-communism became the ideological foundation for its leaders, and not until the present time, defined the official ideology, national identity, behavioral patterns and social self-regulation of South Korean society. These circumstance triggered mass public protests, which seized the southern part of the Korean peninsula and occasionally turning into armed uprisings.

Soviet political leaders had all reasons to view the newly-established Republic of Korea as a geopolitically-undesirable entity, a challenge to the USSR national interests, and another source of instability in the already unsettled region of Northeast Asia. Since then, all previous international leverage and agreements on creating a united Korean nation lost significance. The only logical solution that could provide for the security, defense, and free geostrategic actions of the USSR in Asia involved establishing an additional independent nation on the Korean peninsula that would answer to the interests of the Korean people.

On September 9, 1948, the second session of the People's Assembly of Korea in Pyongyang proclaimed the creation of the DPRK, which was supported by many authoritative representatives in South Korea. Kim Il-Sung became the first Prime Minister of this new country and on February 8, 1946, headed the North Korean Provisional People's Committee – a regional body of civil self-administration. On October 12, the Soviet Union became the first country to officially recognize the DPRK as a sovereign nation and acknowledge the legitimacy of its political administration.

Soviet and modern historiography lacks research work that would objectively enlighten the whole spectrum of influences related to the conditions of forming the Soviet foreign policy towards Korea. This insufficiency can be explained by the influence of the political situation and the consequent raise of certain doubts in the present day. The complexity, controversy, and growing significance of this topic call for deeper research that should undertake a complex analysis of foreign and domestic political aspects, in addition to social, economic, and ethno-cultural factors.

However, there are no doubts among researchers of these problems: the dialogue between the USSR and the DPRK was based on the shared principles of greater freedom in domestic decision-making of both sides than on ideology-based relations. This viewpoint explains the success of the maneuvering policy between the USSR and the DPRK, which was followed by the officials at Pyongyang since the initial days of sovereignty of North Korea [18].

The Agreement on Economic and Cultural Cooperation between the USSR and DPRK signed on March 17, 1949 became a milestone event in the Soviet-North Korean relations. This document strengthened the political and economic position of

North Korea thanks to the financial assistance from the Soviet Union, but it didn't solve the problem of reviving international agreements on establishing a united Korean nation signed during World War II. Even after 1948 the Soviet Union kept using its foreign political potential to achieve a peaceful solution of the problem preferring the non-military path in unifying the two independent Korean nations [8].

The fact that the USSR avoided open involvement in the 1950–1953 War on the Korean peninsula can be lauded as a successful decision of the Soviet foreign policy. The USSR provided military assistance to the DPRK in accordance with the principle that paid off in the1930s in Spain and China – supplying of weapons, food, and medicines, and manning the military aircrews. As a result, the USSR took a very favorable position equidistant from all sides involved into the conflict and used the growing antagonism against the aggressive policy of the USA for drastic geostrategic actions in Asia.

In the 1950s, the North Korean direction of the Soviet foreign policy was extremely dynamic when the cooperation between the USSR and the DPRK became more efficient and diverse as a result of the following agreements: On Scientific and Technical Cooperation (February 5, 1955); On Air Transport (December 7, 1955); On Expansion of Trade (July 12, 1956); On Cooperation in Radio Broadcasting (October 14, 1957); On Regulating the Frontier Issues (October 10, 1957); and the Agreement on Trade and Marine Navigation (June 22, 1960).

The USSR's foreign policy towards the DPRK did not undergo substantial changes during Khrushchev's rule and during the period of reevaluation of Stalin's influence and heritage. This USSR-DPRK foreign policy became an integral part of cementing the success of Soviet breakthrough into Asia, which aimed at establishing and developing friendly relations between the USSR and the new democracies of the East – the process that started from the unprecedented trip of N.S. Khrushchev to India, Burma, Indonesia, and Afghanistan (1960) [6].

Months before Khrushchev's trip, the third session of the Supreme Soviet of the USSR (October 31, 1959) announced the latest official USSR approach towards Korea – full withdrawal of foreign military forces from South Korea, thus allowing the Korean people to achieve an agreement on peaceful, democratic reunification of the two Koreas [7].

The Agreement on Friendship, Cooperation and Mutual Assistance that was signed in 1961 was the culmination in development of the relations between the USSR and North Korea. Around the same period, similar agreement was signed between North Korea and China. This process resulted in a powerful alliance in the Northeast Asia that served as an efficient counterbalance to the USA and its Far Eastern Allies, whose policies dramatically changed the balance of powers in the Asia-Pacific Region by overwhelmingly influencing the countries to favor the so-called people's democracy. Unfortunately, this ambitious project turned out to be non-durable and static, since its implementation was not efficient when it came to international cooperation, primarily with China.

However, the Agreement on Friendship, Cooperation and Mutual Assistance with DPRK (1961) gave the USSR the reputation as one of the major architects of the sociopolitical and economic landscape in the Asia-Pacific region. This agreement provided 30 years of DPRK's security as an ally and allowed it to assert its political identity as well as capitalize on freedom of self-determination, primarily in relation to the other countries of the world.

Ideological dependence of North Korea on the USSR resulted in the successful development of the economic relations between the two countries until the mid-1980s, most likely reinforced by the stagnation of foreign policy initiatives at the level of the party leaders. The eventual break-down of these ideological ties was not a a result of any situational crisis, but rather an eventual tectonic breakdown in the allied ties due to the changing landscape of international affairs and relations.

International alliances rely on mutual trust; lack of trust deems the collapse of any inter-country union unavoidable. The official Pyongyang rapprochement with Maoist China when the Sino-Soviet relations were becoming tense as well as the struggle between Soviet influence and religious influences that were initiated by the ideologists of the Catholic Church, threatened the future of the relations between the USSR and North Korea. Soon, the Soviet Union no longer considered North Korea a future military ally. Since then, the Soviet party documents rarely mentioned North Korea; in fact, it was mentioned only once in the foreign policy section of the epochal report of L. Brezhnev, the General Secretary of the Communist Party, at the mutual session of the Central Committee of the USSR Communist Party devoted to the fiftieth anniversary of the Great October Socialist Revolution (November 3–4, 1965).However, the same report contained detailed abstracts devoted to China and Vietnam [2].

One cannot ignore the fact that North Korea had many justifiable reasons to be unhappy with the USSR, especially since it was driven to despair by severe international sanctions, which were often triggered by foreign disputes between DPRK and the USA and its allies. The USSR was not able to reduce the burden of these sanctions; in some cases, it did not dare to use its right of veto in the UNO Security Council to render assistance to North Korea.

Thus, before the time of Perestroika, the relations between the USSR and North Korea were going through a crisis of mutual mistrust.. The alliance between Moscow and Pyongyang called for dramatic renewal based on the thorough clarification of the positions of domestic and foreign agenda and the development of new, mutual goals and common values.

The task of renewing and strengthening the alliance with the DPRK could have been successfully solved in the period of democratic changes sweeping the USSR in the late 1980s. However, the Soviet elite preferred to sacrifice the North Korean alliance to the strategic prospects of establishing friendly relations with South Korea, which was fundamentally justified in the project On Our Policy in South Korea, approved at the session of the Communist Party Central Committee (November 18, 1998) [15].

Establishment of diplomatic relations between the USSR and the Republic of Korea in September, 1990, threatened the collapse of the in-force and operative Agreement on Friendship, Cooperation and Mutual Assistance with the DPRK (1961). This diplomatic favor of South Korean allegiance was supposed to have taken place in late 1991; however, it's the success of the proposed alliance was ultimately dependent on South Korean authorities.. Nevertheless, despite the pessimistic forecasts on USSR's relations with DPRK, the Agreement on Friendship, Cooperation and Mutual Assistance with the DPRK wad successfully extended. Soon after, the Soviet Union seized to exist.

Throughout the history of social power relations, international relations have operated in line with national interests and territorial control. These imperatives became especially significant for the new Russian democracy, since it had to fight

for the territorial integrity of Russia that was potentially vulnerable in the face of external pressures for reform and internal conflicts that accompany radical political and socioeconomic changes. The East Asian approach to Russian foreign policy directed its focus on preserving the important geostrategic assets like the Kuril Islands and the territories of the Russian Far East that neighbor with China.

The Russian Federation inherited a heavy burden of accumulated and unsolved problems which confirm our review of forming and realizing the Soviet foreign policy towards North Korea. North Korea's specific geographical location determined Russia's immediate national priorities in terms of its Far East relations: the insufficiency of military, economic and political power of the new nation in Northeast Asia was successfully compensated for by the maintenance of the allied relations with North Korea. During his visit to Seoul in November, 1992, the first Russian President, B. Yeltsin, openly announced the intention to renew the alliance agreements with North Korea after making treaty adjustments in accordance with the new international affairs landscape [16].

Since Russia is the main legal successor of the USSR, it had all reasons to consider the Far East its special geopolitical space, its historically-formed zone of national interests protected by international agreements. The Russian political leaders started viewing the US support of the Japanese claims over the Kuril Islands as a real attempt of revising the territorial agreements of World War II. In the midst of these developments, even symbolic economic relations and the development of a system of mutual security with the DPRK became of great significance for Russia.

Maintaining the status of the country on the northern part of the Korean peninsula strengthened the geostrategic position of Russia in the Asia-Pacific Region. It further allowed Russia to have influence over dramatic geopolitical power shifts, which it sought as s an effective, long-term strategy of responding to external threats and challenges.

Unfortunately, the crisis in the Russian economy was exacerbated by the internal instability in 1990s and prevented Russia from further developing its foreign policy towards DPRK. Moreover, Russia made a strategic mistake by announcing its intention to reverse the military clause of the Agreement on Friendship, Cooperation and Mutual Assistance with North Korea, and later fully denouncing it in August, 1995. This mistake resulted in the instinctive efforts of the abandoned Pyongyang to use all means necessary to ensure its national security. Therefore, Russia became partially responsible for the current growth of international tension on the Korean peninsula and the alienation of North Korea, which over the years precipitated doubtless successes of the DPRK in developing missile and nuclear weapons.

In the 1990s, the economic relations between Russia and North Korea also diminished in the midst of the degradation of the political ties between the two countries. This is more obvious at the level of interregional relations which seemed quite promising to many Russian experts.

However, the prospects of the Russian, Far Eastern market turned out to have been overestimated; and it failed to compete with the manufacturers from other parts of the Far East regions of the country. The market failed to integrate into the economic web of the Asia-Pacific region and to pursue the course of creating a powerful and competitive economic space alongside the economies of the neighboring countries. Primorsky Krai is the most developed subject of the FE Russian region with the foreign trade turnover with the Northeast Asia of 624.4 million dol-

lars (export), 766.4 million dollars (import). The DPRK accounted for 1.6 million dollars (0.2% of the total export); 0.2 million dollars (0.03% of the whole import) [1].This quantitative data shows that Russia and North Korea do not have great economic relations but can be interested in maintaining economic relations for political reasons. The Far Eastern region calls for a dramatic modernization of the whole production structure, reorganization of the industrial and technological systems and modernization of its transport infrastructure. This region rated very low among the countries and regions of Northeast Asia, with its geopolitical interests excelling DPRK only in a few aspects.

In 1997, Zbigniew Kazimierz Brzezinski, a famous American expert in politics and the consultant for the US Center for Strategic and International Research, published a new book titled *The Grand Chessboard: American Primacy and its Geostrategic Imperatives*. Brzezinski states with conviction that Russia is losing its role as an active participant of the Asia-Pacific geostrategic processes to China, and that the USA is ready to pay the price of unifying the two Koreas for the future pact between China and America [4].

A. Toynbee, an English historian, very accurately emphasized the political weaknesses of the dominating elites as the main factor that destroyed empires, claiming that "civilizations die of suicide" [17]. There is an impression that in the 1990s, the political instability of the government almost brought Russia to an internal catastrophe characterized by the loss of national identity and historical heritage. Many of the predictions made by Z. Brzezinski did come true. Supported by the USA and other Western countries, China reached global economic supremacy through vast ties, successfully entered the WTO and became the major player in the six-party talks with North Korea [5].

By the late 1990s, Russia slowly started to resolve the negative trends in its path to democracy and institutional development and started to actively oppose American strategies of opportunistic hegemony; these trends resulted in successful realization of several Russian foreign policy efforts. Signing the Treaty on Friendship and Good Neighbor Relations and Cooperation between Russian Federation and DPRK (February 9, 2000) and the visit of President V. Putin to Pyongyang in July, 2000, undoubtedly became the pinnacle of victory for Russia in its struggle to attain geostrategic influence in the Asia-Pacific.

In the consequent years, the relations between Russia and North Korea started developing dynamically, which can be evidenced by many agreements and treaties that regulated various ties between the two countries: economic and technical cooperation, taxation, investments, cultural interaction, use of satellite navigational systems, transport routes, joint efforts in fighting criminality, etc. These international acts showcase the development, intensification and mutual reliance in the cooperation between Russia and DPRK.

Inclusion of Russia into the six-party talks on North Korea's nuclear program became yet another victory of the Russian foreign policy. It was a symbolical act, since it happened in 2003 – the time period when, according to the American foreign affairs, their country's ability to gain trust and international support on the issues of the threat posed by nuclear programs of Iran and DPRK was seriously weakened [5].

Currently, Russia has reestablished its role as an active geostrategic actor and is building its international authority in order to participate and express its will in

addressing the issues that relate to its ties with North Korea. The relations between Russia and North Korea are no longer bound by the history of military and political domination characterized by the WW II era.

Despite the attractiveness of the current model of Russia-North Korea relations, it does have a few shortcomings. First of all, it possesses geopolitical weaknesses: both Russian and North Korean politicians failed to develop a fundamental basis that outlines the nature of their relations, which leaves room to generate multiple stipulations and interpretations of the signed treaties, political decisions and specific actions of the parties involved. If the cooperation between Russia and North Korea relies on equal partnership principles, then the ideology of these relations has to be concisely developed in order to be well-established and disseminated in the public spheres of these two countries.

The relations between Russia and North Korea are very vulnerable in terms of their geopolitical and geostrategic alliances, since they lack clear goals and objectives that would conform to the national interests of the Russian and North Korean people.. The fact that the actions of the North Korean party often lead to a negative response from the Russian political leaders, gives room to conclude that relations between the two countries are weak or even failing.

Efficient foreign policy always relies on rational and reasonable approaches to the practical questions of defending national interests and national borders from most probable and concrete threats. Russia's North Korean foreign policy is directly connected to its security interests of the Russian Far East, which is an essential condition for preserving the territorial integrity of the whole country.

However, historical experience shows that realization of an insufficiently planned foreign policy towards the DPRK always brings with it the danger of having to rebuild the relations between the countries from scratch and hoping for the favorable influence of a long-standing friendship between the people of Russia and Korea as the basis for a successful reestablishment of cooperation. In order to avoid this scenario, the respective countries have to carefully develop conceptual and ideological foundation for the Russia-North Korea international partnership.

Evidently, the cooperation between Russia and DPRK has to be strengthened by assisting North Korea in finding a way out of its international isolation andto improve its political, economic and cultural ties with other countries of the world. If the country needs international guarantees of its security as the main precondition for abandoning its programs of developing the missile and nuclear weapons, then this country deserves and should get those guarantees.

The relations between Russia and North Korea can acquire a new quality as a result of the gradual involvement of South Korea in negotiations, development of economic, political and cultural ties between these countries in order to lay the foundations for future reunification and the gradual establishment of a single, democratic Korean nation.. Any different path can be a potential source of danger for the geopolitical stability in Northeast Asia.

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СТРЕМЛЕНИЕ К СОГЛАСОВАННОСТИ И ИНТЕГРАЦИИ АССОЦИАЦИИ СТРАН ЮГО-ВОСТОЧНОЙ АЗИИ

Ассоциация стран Юго-Восточной Азии (АСЕАН) была образована в 1967 году как геополитическая и экономическая организация, способствующая политическому и социоэкономическому сотрудничеству, миру и безопасности в регионе, свободному перемещению ресурсов, в том числе труда и капитала, а также взаимодействию АСЕАН и прочих стран и международных организаций. Благодаря природным и трудовым ресурсам, страны АСЕАН привлекли прямые иностранные инвестиции. Несмотря на значительный экономический потенциал, долгое время АСЕАН воспринималась как объединение десяти развивающихся стран, что сделало очевидной необходимость дальнейшей интеграции стран-участниц. Усилиями АСЕАН были созданы несколько международных форумов для усиления влияния и укрепления отношений в регионе и за его пределами. Одним из факторов, стимулирующих сотрудничество стран – участниц АСЕАН, была угроза распространения коммунизма в Индокитае. Хотя Договор о мире не содержал положений о военном сотрудничестве, он направлен на взаимодействие в сфере безопасности и политической стабильности. Несмотря на экологическое и экономическое разнообразие стран – участниц Ассоциации, многие проблемы окружающей среды имеют международный характер в Юго-Восточной Азии.

Ключевые слова: страны Юго-Восточной Азии, ассоциация, природные и трудовые ресурсы, сотрудничество, безопасность.

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ASEAN HARMONIZATION AND INTEGRATION EFFORTS

The Association of South East Asian Nations is a geo-political and economic organization, formed in 1967, to promote political and socio-economic cooperation, peace and security in the region, and to promote cooperation between ASEAN and external countries and international organizations. Because of its natural resources and labor advantages, ASEAN has been attractive to foreign direct investment and tourism. Although ASEAN has potential economic strength, it has been viewed as just an integration component of 10 developing countries. The need for further integration of the region has therefore become apparent. ASEAN created several forums to expand its role and relationship with external countries. The threat of communism in Indochina was a drive for strengthening of the economic cooperation of ASEAN. The Treaty of Amity made no demands on military cooperation, but it was understood that this treaty was an agreement focusing on political and security cooperation. Despite ecological and economic diversity, many environmental problems are widespread and transnational in character in the South-east Asian region. The geo-physical and

climatic conditions unleash a number of natural and man-made hazards: typhoons, floods, earthquakes and tsunamis, landslides, wild fires, air pollution in the cities, and water contamination that is caused by the discharge of wastewater from industrial and agricultural sources. These examples demonstrate a demand for long-standing institutional cooperation in the region. Although a few environmental agreements have been signed, cooperative implementation and enforcement has not yet been clearly instituted. The Agreement on Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area is a cooperative arrangement that will reduce intraregional tariffs and remove non-tariff barriers over a period of 10 years, commencing on January 1, 1993. ASEAN has intensively increased the cooperation regarding counterterrorism and war prevention in the recent decade.

Key words: the countries of South-East Asia, the Association of natural and labor resources, cooperation, and security.

1. ASEAN as a geo-political and economic organization.

a. Geographical area.

ASEAN stands for Association of South East Asian Nations. It is a geo-political and economic organization, established on August 8 1967, in Bangkok, Thailand, with the signing of the ASEAN Declaration ("Bangkok Declaration) by Indonesia, Malaysia, the Philippines, Singapore and Thailand. These five countries are referred to as "the Founding Fathers" of ASEAN [1]. At present, ASEAN comprises of 10 Member States. ASEAN is located in the region of Southeast Asia. It has a combined population of 600 million or 8.8 % of the world's population. ASEAN covers a land area of 4.46 million square kilometers, which is 3 % of the total land area of the Earth.

b. Economic strength.

The primary objective of the cooperation is to protect the regional peace and stability and then move forward towards the acceleration of economic growth. In the year 2010, its combined nominal GDP had increased to 1.85 trillion USD, which was 3 % of the aggregated GDP of the world, and with the growth rate of 7.4 %. The total combined volume of trade was 2.04 trillion USD, representing 6.8 % of the world trading, with a total increase of 32.9 %. The major trading partners of ASEAN are China, Japan, the EU, U.S.A., South Korea, India, Australia and New Zealand. As of 2011, the average annual population growth rate was 1.3 percent, the combined GDP has grown up more than 2 trillion USD and the total trade in terms of prices was more than 2.3 trillion USD (1.2 trillion for the exports and 1.1 trillion for the imports) [2]. In the year 2011, the combined GDP growth rate was 4.7 percent. The ratio of exports to GDP was 57 percent and the ratio of total trade to GDP was 109.7 percent.

Because of its natural resources and labor advantages, ASEAN has been attractive to foreign direct investors. In 2010, ASEAN was able to attract foreign investment of more than 74 million USD. 26.6 percent of investment was from Europe, 15.3 percent from the U.S., 15.3 percent from Japan, 6.8 percent from South Korea, 4.8 percent from China, and the rest from India, Australia and Canada.

ASEAN is also attractive to tourists. There were 72.2 million tourists visiting ASEAN in 2010. The increase of the tourism business is most likely due to the cultural diversity of the region and price attractiveness.

If ASEAN was integrated as a single entity, it would rank among the ten largest economic communities in the world.

c. The continued expansion.

Brunei Darussalam joined ASEAN on January 7, 1984, Vietnam on July 28, 1995, and Lao PDR and Myanmar on July 23, 1997. Cambodia wanted to join ASEAN at the same time as Lao and Myanmar. However, due to the political struggles within the country, Cambodia had to defer its membership for about two years. Cambodia finally joined ASEAN on April 30, 1999, after the stability of its government was achieved. Since then, ASEAN has the totality of 10 member states. During the 1990s, ASEAN experienced an increase in both membership and drive for further integration. In March 2011, Timor Leste submitted a letter of application to become the 11th member of ASEAN. According to Timor Leste's argument for acceptance, the country was already very much part of Southeast Asia [3] Malaysia, Thailand, Cambodia, Brunei, the Philippines and Myanmar have expressed public support to have Timor Leste join ASEAN. Singapore, however, while agreeing with Timor Leste's ASEAN membership, objected to its early membership on the grounds that Timor Leste is not ready to absorb the many challenges and complexities of ASEAN membership.

Although ASEAN has potential economic strength, it has been viewed rather dismissively as an economic integration of 10 developing countries. Leaders of Member States, therefore, have felt the need to call for a further integration of the region. In 1990, Malaysia introduced the establishment of the East Asia Economic Caucus [4] with the intention of counterbalancing the influence of the US in the APEC (Asia-Pacific Economic Cooperation) and in the Asian region [5]. The proposal failed because of the strong opposition from the US and Japan.

In the beginning of 1997, ASEAN began creating organizations within its framework to achieve this goal. "ASEAN Plus Three" was the first effort toward this goal to improve the existing ties with China, Japan and South Korea. This was followed by a larger forum of East Asia Summit. Participants of the East Asia Summit included these three countries, as well as India, Australia and New Zealand. This was an effort working towards the promotion of the East Asia Community.

Timor Leste submitted a letter of application to be the 11th member of ASEAN at the summit in Jakarta in March, 2011. Indonesia and most Member States of ASEAN, except Singapore, have expressed public support for Timor Leste to join ASEAN.

Papua New Guinea, a Melanesian state, was accorded the Observer status in 1976 and Special Observer status in 1981 [6]. In 2006, ASEAN was given an observer status at the United Nations General Assembly [7]. As a response, ASEAN granted the status of "dialogue partner" to the United Nations [8].

ASEAN had created several forums to expand its role and relationships with external countries. The East Asia Summit (EAS) is an example of this effort. The EAS is held annually. The members of the summit are all the 10 Member States of ASEAN in addition to China, Japan, South Korea, India, Australia and New Zealand. All together, these countries represent nearly half of the world's population. In October 2010, Russia and the US were formally invited to participate as full members of the EAS. At the EAS, ASEAN takes the leadership position. The first summit was held in Kuala Lumpur in December, 2005, with Russia attending as a guest. The Singapore Declaration on Climate Change, Energy and the Environment was issued in November, 2007, at the 3rd summit in Singapore. During the 6th summit held on November 19, 2011, in Bali, Indonesia, the US and Russia joined the summit.

The ASEAN Regional Forum (ARF) has been created as a a setting for formal, official and multilateral dialogue in Asia-Pacific region. The main objectives of the

ARF are to foster dialogue and consultation and to promote confidence building in the region. The members of the ARF are all the Member States of ASEAN, as well as Australia, Bangladesh, Canada, China, the EU, India, Japan, North Korea, South Korea, Mongolia, New Zealand, Pakistan, Papua New Guinea, Russia, Sri Lanka, Timor Leste, and the United States. Taiwan has been excluded since the beginning. Accordingly, issues regarding the Taiwan Strait have never been discussed in the ARF. The first meeting of the ARF was in 1994.

The ASEM, or the Asia-Europe Meeting, was initiated in 1996 as an informal dialogue forum for strengthening cooperation between the countries of Europe and Asia, especially the members of EU and ASEAN.Likewise, The ASEAN-Russia Summit is another forum held annually whereby leaders of ASEAN Member States meet with the President of Russia.

d. The birth of ASEAN.

ASEAN was formed in 1967 in order to promote political and socio-economic cooperation, peace and security in the region, as well as to endorse cooperation between ASEAN with the external countries and international organizations. There was little activities during the first 10 years of its establishment. The significant turning point was the year 1975, when the Indochina- comprising of Vietnam, Laos and Cambodia- succumbed to the influence of communism. Thailand then put an effort on urging ASEAN to call a summit meeting. Thailand's effort was successful. The 1st ASEAN Summit was held in Bali, Indonesia, on February 23–24, 1976. The ASEAN Member States of that time have expressed their concerns about the threat of communism in the region and reaffirmed their solidarity in socio-economic cooperation, security and peace building. The purpose and direction of ASEAN became clearer when the Declaration of ASEAN Concord (Bali Concord) and the Treaty of Amity and Cooperation (TAC) were signed. These instruments formed an important foundation of extensive economic cooperation among the Member States.

2. From the threat of communism to democratic peace.

a. The threat of communism.

From its historical background, one may say that the threat of communism in Indochina was the key to strengthening of the economic cooperation of ASEAN. This is clearly evidenced by the 1st ASEAN Summit in Bali in 1976. The 2nd ASEAN Summit was held in Kula Lumpur the following year in order to confirm the member states' strong commitment to their economic cooperation and their solidarity. In 1978, Vietnam invaded Cambodia. During 1977 to 1987, the effort of ASEAN focused primarily on forcing Vietnam out of Cambodia and counterbalancing the influence of Vietnam.

After 1978, the fear of communism had calmed. The 3rd ASEAN Summit was held in Manila in December, 1987. By that time, the situation in Cambodia was much improved. There was very little concern over security issues raised in this summit meeting. The era of the Cold War was nearly over, due to the political policy reforms sweeping Russia. In 1989, Vietnam withdrew its soldiers from Cambodia, and the Cold War officially ended by the end of the 1980s.

During the 1990s, there was no more threat of communist take-over in the region.At this time, security issues became less important. ASEAN, then, had room to concentrate more on the economic issues at hand. The January, 1992, ASEAN Summit in Singapore marked the history of the ASEAN economic cooperation. Firstly, it was the first summit held after the end of the Cold War. Secondly, the

summit meeting agreed with Thailand's proposal for the establishment of ASEAN Free Trade Area or AFTA.

b. The "ASEAN Way" of democratic peace.

The "ASEAN Way" has been adopted by the Treaty of Amity and Cooperation in South-East Asia[1] and was signed at the Bali Summit in 1976 as a set of fundamental principles of foreign policy among the member states. The principles cover the following:

- Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
- The right of every state to lead its national existence free from external interference, subversion or coercion;
- Non-interference in internal affairs;
- Settlement of differences or disputes in a peaceful manner;
- Renunciation of the threat or use of force; and
- Effective regional cooperation.

Although no mention of military cooperation was made in this treaty, it was understood that this treaty was largely an agreement focusing on the political and security cooperation of member nations. The purpose of the treaty is to promote perpetual peace and everlasting amity and cooperation among the people of Southeast Asia, which would contribute to their strength, solidarity and mutual cooperation. There are two major mechanisms for the implementation of these principles, especially relating to security issues *i.e.* SOM (Senior Official Meeting), and Special SOM. SOM is the meeting among the foreign ministries of the member states. In the Special SOM, participants include senior officials of military security from the member states. ASEAN has relied on the informal process of consultation for conflict management rather than a formal one. This wasis usually mentioned about the "ASEAN Way" when it comes to solving conflicts among Member States.

In the 10th ASEAN Summit held in Vientiane, Laos on November 29–30, 2003, the meeting adopted the Vientiane Action Program, which officially recognized the need for ASEAN Charter to strengthen ASEAN. This was followed in December, 2005, by the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter, wherein ASEAN's leaders committed themselves to establishing a Charter»to serve as a legal and institutional framework of ASEAN to support the realization of its goals and objectives."

The ASEAN Charter would give ASEAN a legal status under international law and help it to be a rules based organization. During the 12th ASEAN Summit in

[1] The treaty was amended on December 15, 1987, by a protocol to open for accession by states outside Southeast Asia and again on July 25, 1998, to provide as condition of such accession on consent of all member states of the ASEAN. India and China were the very first states outside South-East Asia that signed the treaty at the Bali Summit in 2003. Japan signed it on July 2, 2004, South Korea on November 27, 2004, Russia on November 29, 2004, Australia onDecember 10, 2005, France on July 20, 2006, and North Korea on July 24, 2008. On July 23, 2009, the Secretary of State, Hillary Rodham Clinton, signed the treaty on behalf of the United States. On the same day, the European Union also signed the treaty. The treaty had been endorsed by the General Assembly of the United Nations at its twelfth Special Session, stating that:

"The purposes and principles of the Treaty of Amity and Cooperation in Southeast Asia and its provisions for the pacific settlement of regional disputes and for regional cooperation in order to achieve peace, amity and friendship among the peoples of Southeast Asia [are] in accordance with the Charter of the United Nations."

Cebu, the Philippines, the ASEAN Eminent Persons Group (EPG) endorsed a report building on ASEAN Vision 2020 as the guidance of the ASEAN Charter and calling for the strengthening of the ASEAN Community. The EPG recommended including in the Charter, among other things, "the promotion of ASEAN's peace and stability through the active strengthening of democratic values, good governance, rejection of unconstitutional and undemocratic changes of government, the rule of law including international humanitarian law, and respect of human rights and fundamental freedoms."

The ASEAN Charter was signed by the leaders of all member states on November 20, 2007, at the 13th ASEAN Summit held in Singapore during November 18–22, 2007. On December 15, 2008, the leaders of the member states met in Jakarta, Indonesia, and the Charter was launched. The fundamental principles of the Charter include:

(a) Respect for the independence, sovereignty, equality, territorial integrity and national identity of all AEAN Member States;

(b) Shared commitment and collective responsibility in enhancing regional peace, security and prosperity;

(c) Renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law;

(d) Reliance on peaceful settlement of disputes;

(e) Non-interference in the internal affairs of ASEAN Member States;

(f) Respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;

(g) Enhanced consultations on matters seriously affecting the common interest of ASEAN;

(h) Adherence to the rule of law, good governance, the principles of democracy and constitutional government;

(i) Respect of fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;

(j) Upholding the United Nations Charter and international law, including humanitarian law, subscribed to by ASEAN Member States;

(k) Abstention from participation in any policy or activity, including the use of its territory, pursued by an ASEAN Member State or non-ASEAN state actor, which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN Member States;

(l) Respect for the different cultures, language and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity;

(m) The centrality of ASEAN in external political, economic, social and cultural relations while remaining actively engaged, outward-looking, inclusive of non-discriminatory; and

(n) Adherence to multilateral trade rules and ASEAN's rules based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration, in a market-driven economy.

It must be noted that Article 20 of the Charter postulates that decisions concerning ASEAN shall be made on consultation and consensus basis. Where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made. The EPG report has viewed this as the weakness of the decision-making process of ASEAN and had recommended the majority voting rule. However, the recommendation was excluded from the Charter.

3. The effort on environmental issues.

Despite ecological and economic diversity, many environmental problems are widespread and transnational in character in the South-east Asian region. The geophysical and climatic conditions unleash a number of natural hazards on a regular basis. The most common are typhoons, floods, earthquakes and tsunamis, landslides, volcanic eruptions, droughts and wild fires. The air pollution in cities of ASEAN major member states is getting progressively worse. Water contamination is caused by the discharge of wastewater from domestic, industrial and agricultural sources. This waste has been dumped into rivers and nearby seas. There have also been issues concerning oil spills and other contaminants from shipping and maritime activities. The rate of deforestation is high and increasing dramatically. These examples demonstrate a demand of long-standing institutional cooperation in the region. At the turn of the 21st century, ASEAN started to discuss environmental agreements, including the signing of ASEAN agreement on Trans-boundary Haze Pollution in 2002, as an attempt to control haze pollution in Southeast Asia [9]. Other environmental treaties introduced by ASEAN include: the Agreement on the Conservation of Nature and Natural Resources in 1985, the Agreement on Disaster Management and Energy Response in 2005, the Agreement on the Establishment of the ASEAN Center for Biodiversity in 2005, the Cebu Declaration on East Energy Security [10], the ASEAN Wildlife Enforcement Network in 2005 [11], and the Asia-Pacific Partnership on Clean Development and Climate. Despite these accords, cooperative implementation and enforcement had not yet been clearly achieved.

4. The initial economic cooperation and the free trade.

a. CEPT.

The Preferential Trading Arrangement (PTA) was signed on February 24, 1977, before the 2nd ASEAN Summit, which was to be held in August of that year in Kuala Lumpur, Malaysia. The objective of the PTA is to promote greater economic cooperation and intra-regional trade. This aim is to be administered by offering a range of trade concessions. For example, it would enable: scheme of preferential duties and priority supply under long-term supply contracts of basic commodities; scheme of preferential interest rate and credit to be extended to exporters or importers of selected products; scheme of preferential margin per bid of government procurement; and tariff preferences on certain products. To be eligible for preferential treatment, products must meet certain rules of regulations.

The major problems of PTA is that most of the products traded among member states are in the Exclusion List and are not eligible for duties or tariff preferences; in addition, the margin of preference (MOP) is very limited and not very different from the MFN under the WTO tariff concession regime. Accordingly, in 1987, at the 3rd ASEAN Summit held in Manila, the Philippines, the PTA was improved by the reduction of products in the Exclusion List and the increase of the margin of preferences (MOP).

At the 4th ASEAN Summit in Singapore in January, 1992, leaders of the member states agreed to establish the ASEAN Free Trade Area (AFTEA) by the year 2008 in order to open ASEAN economies to the globalization of world markets. The Agreement on Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area was signed with the intention to be the main implementation of AFTA. *During the ASEAN Economic Ministers (AEM) Meeting in September, 1994, the target*

date of establishment of AFTA was pushed to 2003. However, CEPT Scheme became effective upon signing on January 28, 1992 [12].

CEPT is the agreed-upon tariff, preferential to ASEAN, to be applied to goods originating from ASEAN member states. According to Article 3, CEPT shall apply to all manufactured products, including capital goods, processed agricultural products, and those products falling outside the definition of agricultural products as set out in this Agreement. These products, except agricultural products, shall automatically be subject to the schedule of tariff reduction, as rendered in Article 4 of CEPT. In respect to PTA items, the schedule of tariff reduction provided for in Article 4 of this Agreement shall be applied, taking into account the tariff rate after the application of the existing margin of preference (MOP) as of December 31, 1992. Agricultural products were to be excluded from the CEPT Scheme. All products under the PTA, which were not transferred to the CEPT Scheme, were to continue to operate under the MOP The member states, whose tariffs for the agreed products were reduced from 20% and below to 0%-5% as granted on an MFN basis, were to likewise receive concessions. The member states with tariff rates at MFN rates of 0%-5% were to be deemed to have satisfied the obligations under this Agreement and would also receive concessions.

There are two programs of tariff reduction under the CEPT Scheme, i.e. the Normal Track Program and the Fast Track Program. They operate under the following guidelines:

1) The Normal Track Program:

- Products with tariff rates above 20% had their rates reduced to 20% by 1 January 1998 and subsequently from 20% to 0–5% by 1 January 2003; and

- Products with tariff rates at or below 20% had their rates reduced to 0–5% by 1 January 2000.

2) The Fast Track Program:

- Products with tariff rates above 20% had their rates reduced to 0–5% by 1 January 200; and

- Products with tariff rates at or below 20% had their rates reduced to 0–5% by 1 January 1998.

There are 3 conditions for a product to be eligible for concessions under CEPT:

1) The product has to be included in the Inclusion Lists of both the exporting and the importing countries and must belong to the same tariff band, *i.e.,* above 20% or 20% and below.

2) It has to have a program of tariff reduction approved by the AFTA Council.

3) It has to be an ASEAN product, *i.*e., it has to satisfy the local content requirement of at least 40%.

Products with tariff rates of 0–5% are deemed to have satisfied all of these conditions under the CEPT Agreement and would be granted concessions..

There are 3 instances when a product may be excluded from the CEPT Scheme:

1) General Exceptions:- A Member State may exclude a product which it considers necessary for the protection of its national security, the protection of public morals, the protection of human, animal or plant life and health, and the protection of artistic, historic or archaeological value. The provision on General Exceptions in the CEPT Agreement is consistent with Article X of the 1994 General Agreement on Tariffs and Trade (GATT).

2) Temporary Exclusions:- Member States, which are in the interim, not ready to include certain sensitive products in the CEPT Scheme may exclude such products on a temporary basis. Products in the Exclusion List cannot enjoy the CEPT tariff from other ASEAN Member States. The Exclusion List does not in any way relate to products covered under the General Exceptions provisions.

3) Unprocessed Agricultural Products:

(a) Agricultural raw materials and unprocessed products covered by the Harmonized System under Chapter 1 to 24 of the Harmonized System (HS) Code and similar agricultural raw materials and unprocessed products in other related HS headings; and

(b) Products which have undergone simple processing with minimal change in form from the original products.

Apart from tariff reductions, the CEPT Scheme provides for the elimination of QRs (quotas, licenses, etc.) and Non-Tariffs Barriers (NTBs) as well as exceptions to foreign exchange restrictions on CEPT products. The member states would eliminate all QRs on CEPT products upon receiving concessions applicable to these products. As for NTBs, these shall be eliminated by the member states on a gradual basis within a period of five years after the receipt of concessions applicable to the CEPT products. The member states were also expected to make exceptions to their foreign exchange restrictions relating to payments on CEPT products, as well as repatriation of such payments.

There provisions exist to safeguard competition. For instance, as a result of the implementation of the CEPT, the import of a particular product can increase to an extent that it cause detriment to sectors or industries producing like or competitive products. The importing member state may, in turn, suspend preferences provisionally as an emergency measure. Such suspension was to be consistent with Article XIX of GATT 1994. A member state taking such an emergency action was to give immediate notice to the AFTA Council through the ASEAN Secretariat, and such action may be subject to consultations between concerned member states.

In summary, CEPT is a cooperative arrangement that will reduce intra-regional tariffs and remove non-tariff barriers over a period of 10 years, commencing January 1, 1993. The aim of the CEPT Scheme was to reduce tariffs on all manufactured goods to 0—5% by the year 2003. The CEPT Scheme, therefore, was the main instrument for enabling ASEAN trade members a free trade area in the last 10 years. This means that over the last decade, ASEAN member states had common effective tariffs in AFTA, but the level of tariffs *vis-a-vis* non-ASEAN countries was determined on individual basis.

b. The AFTA.

The AFTA stands for ASEAN Free Trade Area which seeks the removal of obstacles to freer trade among the member states. The AFTA program was initiated in 1992 to create an integrated market among ASEAN member states, which consist of about 600 million people, and to make ASEAN economies more competitive and attractive to regional investments. Accordingly, the ultimate objective of AFTA is to increase competitiveness of the region as a producer of goods geared for the world market. The challenge of this aspiration is the liberalization of trade in the region through elimination of intra-regional tariffs and non-tariff barriers. By liberalizing their trade, ASEAN's manufacturing sectors are more efficient in the global market and consumers in member states are given leeway to source goods from the most

efficient producers in the ASEAN community. As a consequence, the intra-ASEAN trade expanded.

Because the combined market of ASEAN is much larger than the one within each member state, investors can enjoy diverse economies of scale when it comes to production. In this manner, ASEAN seeks to attract more foreign direct investment into the region. This will, in turn, stimulate the growth of support industries which are mostly comprised of Small and Medium Enterprises (SMEs) in the region.

5. The ASEAN Community and the three pillars.

When the AFTA was originally signed in Singapore on January 28, 1992, ASEAN had six state members – Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand. Vietnam joined in 1995, Laos and Myanmar in 1997, and Cambodia in 1999. The latter four members have not fully met AFTA's obligations to this day. However, they are officially considered part of the AFTA, as they were required to sign the Agreement upon entry into ASEAN, which entrusted them with longer time frames in which to meet AFTA's tariff reductions.

The AFTA's goals were to institute the reduction of the tariff to 0% and at least to 5% for the restricted products on the provided list.. Before the f economic crisis, the member states felt that it was time to establish a long-term vision for their economic union. Accordingly, the "ASEAN Vision 2020" was enacted. The main target of ASEAN Vision 2020 was to establish the AEA (ASEAN Economic Area).

However, in July, 1997, an economic crisis occurred in Thailand, affecting the whole South-east Asian region. This economic crisis was known as the "Tom Yum Kung Disease". ASEAN was not in the position to extend assistance to its member states; it offered no financial assistance nor intra-ASEAN investment, and therefore, the intra-market output dramatically decreased. The member states had no choice but to turn to the IMF, the U.S., EU and Japan. As a result, AFTA and AEA were affected. ASEAN Vision 2020 could not be implemented. The member states felt necessary to restore their own economies.

After the year 2000, ASEAN member states gradually recovered from the economic crisis. They have acquired lessons from the economic crisis, particularly their economic over-dependence on ASEAN, which was only really meant to operate as integration of countries in possession of their own set of economic priorities. At the 9th ASEAN Summit in 2003 in Bali, Indonesia, leaders of the member states resolved that an ASEAN Community shall be established in the year of 2020. At the 12th ASEAN Summit in 2007, in Cebu, the Philippines, leaders of the member states confirmed their strong commitment to the acceleration of the establishment of an ASEAN Community by 2015, as was signed in the Cebu Declaration on the Acceleration of the Establishment of ASEAN Community by 2015. The ASEAN Community would be comprised of 3 pillars, namely the ASEAN Political-Security Community, the ASEAN Economic Community and the ASEAN Socio-Cultural Community. Each pillar has its own functional "blueprint", and together with the Initiative for the ASEAN Integration (IAI) Strategy Framework and IAI Work Plan Phase II (2009–2015), they form the roadmap for an ASEAN Community in 2009–2015.

ASEAN Charter was launched into force on December 15, 2008 in order to provide a legal status to the ASEAN Community. With the Charter, ASEAN will henceforth operate under a new legal framework and will establish a number of new organs to boost its community-building process. Currently, the ASEAN Charter has become a legally binding agreement among its member states.

a. The security integration.

As mentioned earlier, the drive for cooperation in the region was ignited by the perceived threat of communism The threat became even more imminent in 1975, when Vietnam, Cambodia and Laos were under the political control of communism and its neighbors feared the "domino effect" spread of the ideology. These countries are neighbors of Thailand, and Thailand was mostly affected by communist influence of that time.. The Treaty of Amity and Cooperation in South-East Asia signed in Bali in 1976 was the first treaty among the ASEAN member states that pertained to the concern of regional security. Prior to this, in 1971, Malaysia proposed an idea of making Southeast Asia region a neutral political area. The proposal was called ZOPFAN, standing for "Zone of Peace, Freedom and Neutrality in South-east Asia". However, the SOPFAN objectives become less important after the end of the Cold War period.

The concern of regional security became important again in 1978, when Vietnam invaded Cambodia. SOM, the Special SOM and the Working Group were the central forum for security consultation.

When the Cambodian government stability was eventually restored, ASEAN had initiated the ASEAN Regional Forum (ARF) at the Singapore summit in 1992. This has been the result of a consultation forum convened to address regional security issues among the member states and the guest non-ASEAN countries. The first meeting of the ARF was in Bangkok in 1994, and it met annually thereafter. In 2003, when the Bali Concord II was introduced for the establishment of the ASEAN Community, the Political-Security Community initiative had been mandated to become one of the pillars of ASEAN.

In 2004, the Plan of Action involving measures necessary for the movement towards ASEAN Community was made. However, the Plan of Action was soon replaced by a blueprint of accords adopted during the 14th Summit at Hua Hin, Thailand, on March 1, 2009.

The ASEAN Political-Security Community (ASPC) aims to ensure that countries in the region live at peace with one another and in the world be securing a just, democratic and harmonious environment domestically.

The members of the Community pledge to rely exclusively on peaceful process in the settlement of intra-regional differences and regard their security as fundamentally linked to one another by geographic location, common vision and mutual objectives. ASPC has the following components, namely: political development, shaping and sharing of norms, conflict prevention, conflict resolution, post-conflict peace building, and implementing mechanisms.

The ASPC blueprint provides a roadmap and timetable to establish the ASPC by 2015. However, there is room for flexibility to continue programs or activities beyond the year 2015 in order to ensure the enduring quality of the programs. The APSC blueprint envisages ASEAN to be a rules-based community of shared values and norms – a cohesive, peaceful, stable and resilient region with shared responsibility for comprehensive security; additionally, it hopes to create a dynamic and outward-looking region in an increasingly integrated and modern world. The APSC blueprint is guided by the ASEAN Charter and the principles and purposes contained therein are as follows:

1) The political development component of APSC.

Although the APSC Blueprint gives a significant weight on the promotion of democracy, human rights, and communication between people of Member States,

in reality ASEAN Member States still have difficulties in internal democracy building. The function of the human rights mechanism to be established is also doubtful.

2) The shaping and sharing of norms.

At present norms and principles of ASEAN are contained in the Treaty of Amity and Cooperation in South-East Asia (TAC), ASEAN Charter, and the Treaty on the Southeast Asian Nuclear Weapon-Free Zone (SEANWFZ), and other key agreements.

3) Conflict prevention.

APSC emphasized the importance of the conflict prevention mechanisms known as Confidence Building Measures (CBM), the meetings of the Defense Ministries, ASEAN arms registration, and development of an alert system. However, it is still not certain whether these measures and mechanisms will be accomplished by the year 2015. It must be also noted that, although ASEAN has been established more than 40 years ago, the first meeting of Defense Ministries was just taken place recently.

4) Conflict resolution.

Conflict resolution and pacific dispute settlement is also mentioned in the blueprint. However, there has been a debate over the recent years among the member states whether ASEAN should have its own peace-keeping force or not. Indonesia has strongly supported this concept. However, many countries in the region fear that the peacekeeping force mechanism may be abused for interference of internal affairs.

After the event of September 11, 2001, in the U.S., and the bomb in Bali in October 2002, ASEAN has increased its interest in counter-terrorism. The most important document is the ASEAN Declaration on Joint Action to Counter Terrorism, under which ASEAN member states were called on to increase their cooperation in these respects. The effort culminated in the signing and ratification of 12 counter-terrorism treaties, the Ministerial Meeting on Transnational Crimes (AMTC), increased role of ASEAN against terrorism, establishment of the Southeast Asian Counterterrorism Center in Malaysia, the meeting of AMMTC Plus 3 (China, Japan and South Korea), and the cooperation with the U.S., EU, Russia and Australia in this regard.

It can be said that ASEAN has intensively increased the cooperation of member states and other countries regarding counterterrorism in the recent decade, and one can expect more strategies and actions to be taken by ASEAN in this regard.

b. Economic integration.

Among the 3 pillars, the ASEAN Economic Community (AEC) seems to acquire the most attention from member states at the present moment. Leaders of ASEAN member states adopted the ASEAN Economic Blueprint at the 13th Summit on November 20, 2007, in Singapore. The blueprint serves as a coherent master plan guiding the establishment of the ASEAN Economic Community by 2015. AEC envisages the following key characteristics: (a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy.

According to the blueprint, the AEC will establish ASEAN as a single market and production base, which will in turn render ASEAN more dynamic and competitive with its new mechanisms and measures used to strengthen the implementation of its existing initiatives. The single market will also lead to the acceleration of regional integration in the priority sectors, which will facilitate the movement of business people, skilled laborers and other entrepreneurs, in turn strengthening the institutional mechanism of ASEAN.

ASEAN single market and production base comprises of 5 core elements:

(i) Free flow of goods.

Through ASEAN Free Trade Area (AFTA), ASEAN has achieved significant progress in the removal of tariffs. However, free flow of goods would require not only no tariffs but the removal of non-tariff barriers as well. In addition, another major component that would facilitate free flow of goods is trade facilitation measures such as integration of customs procedures, establishment of the ASEAN Single Window, continuation of the enhancement of the Common Effective Preferential Tariffs (CEPT) Rules of Origin.

The Common Effective Preferential Tariffs for ASEAN Free Trade Area (CEPT-AFTA) Agreement has been reviewed and enhanced to become a comprehensive agreement. Accordingly, ASEAN member states have adopted the ASEAN Trade in Goods Agreement on April 26, 2009in replacement of CEPT, the reasoning being the contribution of a legal framework to realize free flow of goods that is applicable to ASEAN needs for accelerated economic integration towards 2015.

(ii) Free flow of services.

The free flow of services aims at removal of substantial restrictions to service suppliers in providing services and establishing companies across national borders that are subject to domestic regulations. Liberalization of services has been carried out through rounds of negotiation, mainly under the Coordination Committee on Services. Negotiation of some specific services sectors, such as financial services and air transport, are carried out by their respective Ministerial bodies.

The AEC blueprint targets the removal of restrictions on trade in services for 4 priority service sectors – air transport, e-ASEAN, healthcare and tourism- by 2010. Its other priority is the removal of restrictions on logistic services by 2013, and removal of restrictions on trade in services for all other services sectors by 2015.

Concerning the liberalization of financial services, the ASEAN minus X formula has been adopted in the blueprint. It intends the countries that are ready to liberalize to proceed first and be joined by others later.

ASEAN member states have concluded the ASEAN Framework Agreement on Services (AFAS) on h December 15, 1995, during the 5th ASEAN Summit in Bangkok, Thailand, where they officially formalized the ASEAN integration commitment. It is interesting to note that the signing of AFAS took place only one and a half years after the conclusion of the WTO's General Agreement on Trade in Services (GATS) in April, 1994. AFAS provides a legal framework of the rules of trade in services for progressive improvement of market access and national treatment in ASEAN. It requires member states to enter into negotiations on measures affecting trade in specific service sectors. s. Prior to the adoption of the AEC blueprint in 2007, negotiations occurred in rounds of meetings since 1997 and resulted in agreed-upon packages of commitments.

Since the entry of AFAS into force, The ASEAN Economic Ministers (AEM) had signed 8 Protocols to Implement 8 Packages of Commitments under AFAS, which cover a wide range of services sectors. These packages are as follows:

- 1st Package, signed on 15 December 1997 in Kuala Lumpur, Malaysia;
- 2nd Package, signed on 16 December 1998 in Ha Noi, Viet Nam;
- 3rd Package, signed by 31 December 2001 (Ad-Referendum Signing);
- 4th Package, signed on 3 September 2004 in Jakarta, Indonesia;
- 5th Package, signed on 8 December 2006 in Cebu, the Philippines;

- 6th Package, signed on 19 November 2007 in Singapore;
- 7th Package, signed on 26 February 2009 in Cha-am, Thailand;
- 8th Package, signed on 28 October 2010 in Ha Noi, Viet Nam.

At present and per the mandate of the AEC blueprint, ASEAN member states are working towards full completion of their commitments for the 8th Package.. It should be noted that beginning with the 5th Package, all the previous AFAS and GATS commitments were consolidated into a single comprehensive schedule along with the new/improved commitments made under the subsequent packages.

(iii) Free flow of investment.

ASEAN cooperation in promoting investment flows was implemented through the 1998 Framework Agreement on the ASEAN Investment Area (AIA) and the ASEAN Agreement for the 1987 Promotion and Protection of Investment, commonly known as the ASEAN Investment Guarantee Agreement (AIGA). In 2007, the ASEAN Economic Ministerial meetings came to consensus to review the AIA and AIGA, with an objective towards consolidation of these two agreements to create a free and open investment regime, to attract investments and to achieve ASEAN economic integration.

In February 2009, the ASEAN Comprehensive Investment Agreement (ACIA) was signed. ACIA is a comprehensive agreement covering liberalisation, protection, facilitation and promotion and includes new provisions as well as improvements to AIA/AIGA provisions.

With the passing of ACIA, ASEAN is confident of remaining in the forefront as a major recipient of foreign direct investment flows. In 2008, foreign direct investment flows to the region remained steady, even in the face of adverse global circumstances.

(iv) Free flow of capital.

According to the AEC blueprint, the liberalization of capital movements is to be guided by the following principles:

a) Ensuring orderly capital account liberalization consistent with member countries' national agenda and readiness of the economy;

b) Allowing adequate safeguard against potential macroeconomic instability and systemic risk that may arise from the liberalization process, including the right to adopt necessary measures to ensure macroeconomic stability; and

c) Ensuring the benefits of liberalization to be shared by all ASEAN countries.

It is clear that the member states are not ready for liberalization of free flow of capital. The blueprint, therefore, focuses on greater account mobility.

(v) Free flow of skilled labors.

The liberalization of the movement of labor is permitted only for skilled laborers. The AEC blueprint also contemplates facilitation of issuance of visas and employment passes for ASEAN professionals and skilled labors who are engaged in cross-border trade and investment related activities, and harmonization and standardization to facilitate the free flow of services (by 2015) in order to facilitate their movement within the region.

c. Socio-cultural integration.

The establishment of ASEAN Socio-Cultural Community (ASCC) is to contribute to the realization of a people-oriented and socially responsible community, which

would facilitate enduring solidarity and unity among the peoples of the member states by forging a common identity and building a caring and sharing society where the well-being, livelihood, and welfare of the people are enhanced. The ASCC, hence, focuses on the sociocultural dimension of the ASEAN Community.

The ASCC envisages the following:

(a) Human development;
(b) Social welfare and protection;
(c) Social justice and rights;
(d) Ensuring environmental sustainability;
(e) Building the ASEAN Identity; and
(f) Narrowing the development gap.

Although ASEAN covers a large geographical area and represents a significant percentage of the world population, it has targeted the year of 2015 as the year to complete its vision of the ASEAN Community Member states, such as Thailand, were advised to cooperate externally as much as possible, creating economic alliances with both the member states but also with other willing countries.. Economic integration and liberalization of trade, either in goods or services or investment and labor, will most likely enhance the prosperity and standard of living for the constituents in all member states. For the creators and contributors to the principals and framework of ASEAN,, the challenge lies not only in the accomplishment of the establishment of the ASEAN Community, especially of the AEC pillars, but for the integration and liberalization of these larger regions. Otherwise, ASEAN will be relegated to a weak alliance of developing countries that could benefit from cooperation but that choose a mostly independent route to development.

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ФИНАНСОВЫЙ РЫНОК РОССИЙСКОГО ДАЛЬНЕГО ВОСТОКА: ПЕРСПЕКТИВЫ ВЗАИМОДЕЙСТВИЯ С ПАРТНЕРАМИ ИЗ АТР

Традиционно региональный финансовый рынок понимается как сочетание банковской системы, биржевых рынков, небанковских кредитных организаций и страхового рынка. Во всех упомянутых категориях регион АТР занимает ведущие позиции. Азиатская банковская система демонстрирует высокий и возрастающий уровень интеграции с США и другими рынками, а азиатский рынок ценных бумаг – превосходящий темп роста.

Банковская система российского Дальнего Востока состоит из региональных банков и отделений крупных национальных банков, разделивших рынок согласно конкурентным преимуществам. Система пребывает в равновесии, а кредитные риски ограничены. Филиалы крупных российских компаний являются основными поставщиками страхового покрытия и финансовых услуг в регионе. Россия начала биржевую торговлю китайской валютой, а российские банки получили соответствующие льготы с китайской стороны и планируют расширение сотрудничества.

В качестве возможного сценария интеграции финансового рынка Дальнего Востока в АТР можно рассмотреть либерализацию на национальном уровне доступа на рынки финансовых услуг. Если иностранным банкам и страховым компаниям разрешат открытие полноценных филиалов, азиатские финансовые учреждения быстро станут оптовым поставщиком финансовых ресурсов и страховой защиты.

При этом не произойдет быстрого снижения ставок по кредитам и страховых тарифов, банки будут получать большую доходность в качестве платы за риск инвестирования в Россию. Снижение процента по депозитам населения сделает психологически некомфортным размещение сбережения по ставкам значительно ниже уровня потребительской инфляции, вследствие чего значительная часть сбережений будет доверена российским и иностранным брокерам для инвестирования в ценные бумаги. Это создаст возможность для запуска не-спонсируемых программ Российских Депозитарных Расписок на акции азиатских корпораций.

Более вероятный сценарий предполагает сохранение национального протекционизма в финансовом секторе. Введение масштабной программы налоговых льгот создаст условия для консолидации промышленных проектов. Такие проекты могут создаваться в качестве корпораций в режиме народного IPO. Тогда валютные сбережения населения Дальнего Востока, могут частично

преобразоваться в инвестиции. Будет создан вторичный внебиржевой рынок ценных бумаг и, возможно, появится региональная биржевая торговая площадка. В любом случае банковская система региона не пострадает, так как она, в целом, адекватна запросам рынка.

Ключевые слова: Российский Дальний Восток, региональный финансовый рынок, финансовая интеграция, Российские депозитарные расписки, азиатские банки.

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FINANCIAL MARKET OF RUSSIAN FAR EAST: POTENTIAL FOR COOPERATION WITH ASIAN PARTNERS

The banking system of the Russian Far East consists of regional banks and branches of large national banks that divide the market according to their competitive advantages. The system stays in balance and shows very limited exposure to credit risks. Branches of Moscow based companies are major providers of insurance coverage and financial services in the region.

Russia started trading Chinese currency for rubles on the Moscow Stock Exchange and this experiment proved to be successful. Russian banks received special privileges from China and look forward to increasing the level of cooperation.

If foreign banks and insurance companies are allowed to open full-function branches, Asian financial institutions will quickly penetrate the region. But there will be no fast decrease in credit and insurance rates. The side effect will be a decrease in the average level of deposit rates for the population. It can be expected that a considerable part of savings will be entrusted to the Russian and foreign brokers for investment in securities that create opportunities for non-sponsored programs of Russian Depositary Receipts in the shares of Asian corporations.

A more probable scenario assumes continued national protectionism in financial sector. Therefore special attention should be paid to internal growth of the regional economy. Enactment of the planned programs of tax privileges will create conditions for consolidation of new manufacturing projects. Such projects can be created as public corporations through IPO processes. In this case currency savings of the population of the Far East which are now concentrated in deposits in regional banks can partially be transformed into investments. At the same time it will create a secondary over-the-counter market of regional shares and gradually there will appear conditions for forming a regional commodities and securities exchange.

Key words: Russian Far East, regional financial market, financial integration, Russian Depositary Receipts, Asian banks.

Financial Markets of Asia-Pacific Region on the Way to Further Integration

Traditionally the financial market is understood to be composed of a banking system, exchange markets, non-banking credit organizations and the insurance market. In all of these categories the APEC region occupies leading positions. Asia

is gradually becoming the major source of resources for the world financial system because of its better general position in international trade and investment markets in post crisis times.

Banking systems of Japan, Hong Kong and Singapore are major net exporters of capital. For the last two years difference between claims and liabilities to non-residents rose 15% in Hong Kong and 13% in Japan. For the same time the "long" position of Singapore decreased by 78% (Table 1).

Table 1

Claims less Liabilities to non-residents (all instruments) Millions of US dollars

	2012-Q4	2011-Q4	2010-Q4
Hong Kong SAR	260487	231697	225059
Japan	1883279	1802801	1665031
Singapore	7460	11165	34520
South Korea	-83707	-91360	-93116
India	-77488	-54873	-69955
Malaysia	-22702	-20698	-15213
Indonesia	-20234	-10433	1259

Source of Data: BIS [1]

Banking systems of India and South Korea occupy the other end of the scale. But the situation in these two economies is different. India is a pure net importer of financial investments due to industrial growth that requires long term credits and project financing. Korea has enough local financial resources to invest in industrial projects; its net position is an off-set of a giant equity market concentrated over a Stock Exchange. The total financial position of these countries is the sum of loans and deposits, debt securities and other instruments. (Table 1)

Table 2

Claims less Liabilities to non-residents (loans and deposits only), amounts outstanding (Millions of USD)

	2012-Q4	2011-Q4	2010-Q4
Hong Kong SAR	40647	28845	9572
South Korea	25778	-29101	-36401
Indonesia	-7799	-5749	4134
Malaysia	-8794	-10204	-5973
Singapore	-42750	-51827	7366
India	-52899	-37335	-44943
Japan	-158944	-2584	-130022

Source of Data: BIS [1]

Japan demonstrates large negative values (Table 2) due to the effect of massive currency devaluation. This trend began in the beginning of 2013, and the Yen has lost more than 20% against USD. If this trend continues, the dollar value of the accounts in Yen will continue declining. The banking system of South Korea improved its position in "loans and deposits" category dramatically for the last few years reflecting financial health of the national economy.

Designed by the Bank for International Settlements, ultimate risk basis tracks foreign claims of banks headquartered in individual reporting countries. Applying this indicator to the Japanese banking system gives some considerable hints about Asian banking (Table 3).

Table 3

International Bank Claims for Japan 2012 Q4 – Ultimate Risk Basis (millions of US dollars)

Claims	All countries	Total Claims by Countries	
Non-bank private sector	1639311	United States	China
Public sector	1003574	1506134	65280
Banks	373576	India	South Korea
Credit commitments	304811	26468	56255
Guarantees extended	87637	Russia	
Derivatives contracts	37980	16547	
Total	3446889		

Source of Data: BIS [1]

First of all, the United States holds 43.7% of claims on Japanese banks, while China, Hong Kong and Singapore hold 1.9%,1.9% and 1.7% respectively. The share for South Korea is even smaller, 1.6% but that is 2 times bigger than Indian's 0.8% or 3 times bigger than Russia's 0.5%. To some extent a similar picture appears for other developed economies in the region. The region's financial system is deeply integrated with USA and Europe. In some sectors neighboring countries are closely connected; Singapore's share of derivatives contracts is 3.5% while China controls 4.5% in interbank claims and 6.5% in "Guarantees extended".

Financial markets in Asia show positive trends in both traditional banking systems and stock exchange markets. According to the World Federation of Exchanges data, Asian-Pacific securities market capitalization in March 2013 was 31% of the total financial market of the world and demonstrated a one year growth rate of 8.2% (in USD), which is better than 7.8% for total WFE statistics [2]. The highest growth was seen in comparatively small national markets; the Stock Exchange of Thailand and Philippine SE added more than 40% (March/March) to their capitalization. Mid-size markets such as the Indonesia SE and Singapore Exchange rose more than 15%, while among majors only Hong Kong, the region's second biggest exchange, grew well with a 11% increase in capitalization.

At the same time the picture for the largest player, the Japan Exchange Group, is distorted by the rapid change in USD/JPY exchange rate. Its dollar capitalization increased only 7.2%, but in local currency this was equal to 22.5% growth which is better than the benchmark NYSE Euronext (US) increase of 14%. The overall excess of liquidity in Asia can be traced by the investment flows channeled through the Exchange; this indicator's dynamics are positive for the region.

Russian Banks Find Opportunities as Borrowers and as Home Banks Abroad for Russian Importers to Asia

Russian financial institutions have undertaken visible efforts to enter Asian financial markets. One of Russia's largest banking groups, VTB, operates in China, Hong Kong, Singapore and India. VTB's corporate plan aims to be the leading financial institution serving Russian companies in Asia. VTB regards this market as highly promising and expects return-on-equity of 15% or more in every region of operations [3].

Russia is a country with very expensive funds, which is not a pure market phenomenon, but more the consequence of state policy. Yield curves for state bonds exceed 6.5% for 3 year maturity and 7% for 9–10 years. Strict requirements for the state pension fund to invest most of its reserves in state securities, to ensure safety of investments, forces the government to pay high interest on these bonds.

Given stable dynamics of national currency, this policy opens windows of opportunity for different carry trade deals. Asia, with a traditionally inexpensive capital market, seems to be the perfect region for developing such activity. VTB, for example, issued bonds in Singapore nominated in local currency. VTB sees its strategy as an attempt not only to get the best rates, but also to deal with investors who would not otherwise buy Russian Eurobonds. The target markets are those with highly developed financial infrastructure, especially pension funds and insurance industries [4]. Typically, pension funds have long term obligations in local currency, so Russian banks with high ratings can borrow long money in Asian currencies then convert proceedings to rubles even if they can not invest these funds in a credit line to Russian importers.

An important step for further penetration of VTB into the Chinese market was made in 2010 when the bank was given official status as market-maker in the Ruble-Yuan exchange rate and was allowed currency trades on the stock-exchange as well as trans-border currency operations. Operations assisting cross-border trades of the VTB branch in Khabarovsk increased 60% in 2011 compare to 2010 [5].

"Vostochny" Bank, one of the initiators of listing Yuan contracts on the Moscow Exchange, is also very active in its expansion in Chinese financial markets. The bank offers its clients fixed commissions on transactions to and from China which has helped "Vostochny" occupy one of the leading positions in servicing cross-border trade and cash operations. Among partner banks of "Vostochny", the Bank Of China, the Industrial And Commercial Bank Of China Ltd. and others operate accounts in CNY and USD; the Agricultural Bank Of China CO., LTD also operates accounts in Russian currency [6].

Active cross-border trade of consumer goods in the Russian Far East, as well as in the other border regions, created a specific form of financial cooperation. For the first four months of 2013 customs of the Far Eastern region transferred into the federal budget 51.78 billion rubles (approximately $1.65 bln) [7]. In order to buy goods in

China local traders sometimes use semi-transparent money transfers in large volumes. While the vast majority of operations involve big contracts between companies and are 100% legal, there are transactions between individuals that are used to off-set goods delivery that go unregulated. It is difficult to calculate the amount of such operations but data for national currency transfers provide an estimate.

In March 2013 as well as in past months, transfers of foreign cash currency by individuals from the Russian Federation exceeded transfers into the country. Balance of transfers of foreign cash currency without opening an account increased in March by 15% and totaled $600 million. Pure export of currency by individuals via the accounts totaled $403 million [8]. It is probable that further implementation of WTO procedures will lower Russian custom duties to levels which will make such practices useless.

Russian-APEC Cooperation in Non-banking Financial Activities: Cross-border Listings and Stock Exchange Currency Operations

The Moscow Exchange on April 29, 2013 reported the day trading volume in the currency market near $31.46 billion USD or 982.05 billion rubles. This is the highest daily total in the currency market since 1992. The Russian financial market, although large and modern, still seems inferior when compared to developed markets of major national corporations. Giants of industry, planning stock offers, want to find a market with not only high liquidity but also comfortable regulations and a predictable business climate. One of the largest companies in Russia, "Rusal" through the United Company RUSAL Plc (incorporated in Jersey), made an IPO in Hong-Kong in 2010 and now shows market capitalization close to 59.6 billion HKD [9]. To invest in "Rusal" within Russia one must buy sponsored Russian Depositary Receipts brokered by "Sberbank". There were numerous discussions whether "HKEx" was the best market for the IPO, but obviously this stock exchange has a few advantages: strong legal system based on English common law, no capital flow restrictions, numerous tax advantages, currency convertibility and the free transferability of securities, plus the exchange accepts different reporting standards and its system allows local financial institutions to settle US dollar transactions in real time in the Asian time zone against the delivery of Hong Kong dollars.

Financial markets of all territories of China are seen as the major target for Russian corporations and financial institutions due to the huge potential of mutually beneficial cooperation in commodities and other goods and services. Experts expect that trade between these two countries will reach $100 bln US dollars which is why Chinese currency became the first Asian currency to be traded on Moscow Exchange.

This process was initiated by a trade agreement between the two governments in 1992. Ten years later the Bank of Russia and People Bank of China agreed to allow banks to open and service client accounts in Yuan and Rubles in border provinces. In April 2010 two state agreements about terms and conditions of trading national currencies via Stock Exchanges were finalized. And finally trading of currency contracts started on CFETS in November 2010 and on the Moscow Exchange on December 15, 2010. While this market is not very large, it is very promising. The average daily turn-over on the Moscow Exchange was 4.1 million Yuan in 2011 and rose to 6.8 mln. in 2012. According to the Stock Exchange, the number of participants is more than 80 and daily turn-over this year will be 11.6 mln. Yuan [10].

Operations of Chinese currency on the Moscow Exchange provide opportunities not only to support trade financing but also to invest in Hong Kong financial instruments and make arbitrage trades using divergences in dynamics of CNY and CNH. Contracts for USD/CNY re also popular financial products listed on many exchanges where the share of Chinese currency in international SWIFT transactions is less 1%. The Moscow Exchange undertakes efforts to make this currency more popular on the local market so the share of the MICEX-RTS among all CNY/RUB operations in Russia increased from 14% in 2011 to 21% in 2012. Major purchases are usually made by banks located in the Russian Far East for financing cross-border trade while Chinese banks mostly act as net sellers.

As Yuan trading appeared to be successful, the Moscow Exchange offered more comfortable terms beginning April 15, 2013. According to new rules one should deponent only 5% as a guarantee deposit instead of 100% of the amount of the trade as before. Commissions have declined by more than 3 times and are now the same as for USD and EUR contracts. Traders no longer need a special account for Yuan operations accounted within their general position. As a result, first quarter 2013 CNY/RUB trades volume increased 40% compared to the same period of 2012. The next step will probably be an earlier start of the trading session to make participation in China and the Russian Far East more convenient and foster further increases in trade volume.

The twelfth meeting of the Russian-Chinese Subcommittee on cooperation in the financial sphere reached the decision that the National Bank of China will give privileges to the Russian banks trading Yuan on MICEX-RTS. The eligible banks receive privileges when carrying out interbank operations in the territory of China. Therefore Russian credit organizations participating in currency trading of Yuan/Ruble are allowed to operate in Chinese commercial banks to provide services in purchase and sale of Yuan through the special target account used for interbank operations in Yuan. Transfer of funds from this account to the account of the same Russian credit organization opened in the same Chinese bank is allowed for domestic banks also. These special Yuan accounts opened by the Russian credit organizations can receive only the Yuan purchased at the auction of MICEX-RTS. This measure will stimulate trading of Yuan/Ruble on MICEX-RTS and simplify access of Russian bidders to services of Yuan clearing in the territory of China.

Financial System of the RFE[1] and Scenarios for the Future

The financial sector of the economy of the Russian Far East is represented mainly by the banking system. There is no local stock or commodities exchange in the region, and the few corporations listed on MICEX-RTS are not sufficiently interested in creating a regional over-the-counter (off-exchange) stock market. In early 2000's dozens of broker and dealer companies operated in the region in acquisition of equities from the general public who had received securities as a result of privatization. Such operations earn at least two digits percent in profits after resale on MICEX. Now, similar operations have almost disappeared, and dominant positions in the market of broker services and financial trust are occupied by branches of major Russian banks and financial groups. Occasionally banks open representative offices instead of branches that signify little real interest in the region and function

[1] RFE – Russian Far East.

only to collect savings in the Far East and funnel them to the capital for investment in securities and projects in Moscow.

The insurance market is dominated by branches of large Moscow-based companies. The DALACFES insurance company, one of a few regional insurance companies in the Far Eastern federal district, offers a wide range of insurance services in Primorsky Krai, Sakhalin and Kamchatka regions. Every year DALACFES faces more and more severe competition from branches of industry majors. The company's strategy for survival employes better knowledge of local activities and wide experience in insurance of sea and sea port associated risks.

However, the merger and acquisition boom among port operators and shipping companies makes former independent enterprises parts of vertically integrated companies thereby leaving some potential clients for regional insurance companies. That is why DALACFES is forced to increase retail sales focused on providing insurance protection for people and small business. Sales volume of the company in 2012 was 127.5 million rubles including: property risks 45 % and entrepreneurial risks and the civil responsibility 7 %. Having recovered after the crisis in 2009–2011, when many regional insurance companies left the market, DALACFES plans 10–15 % annual growth of its insurance portfolio in the next few years. [10]

In recent years there has been some activity in the market of micro-credit by non-bank credit facilities. However, these micro-financial organizations grant loans only to the individuals but have an extremely limited circle of clients because of their strategy of ultrahigh interest rates.

Regional banks have found a market niche both in active and passive operations but trail behind most Far Eastern branches of large Russian banks in most business activity indicators (Table 4).

Table 4

Assets and Liabilities of Regional Banking System on April 1st 2013 (millions of Rubles)

	Incorporated (registered) in the Russian Far East	Operating in the RFE
Assets nominated in Ruble	484 908	1 125 598
Assets nominated in foreign currencies	40 461	85 432
Liabilities nominated in Ruble	486 885	1 128 197
Liabilities nominated in foreign currencies	38 484	82 833

Source of Data: Bank of Russia [12]

Assets of the banks incorporated in the Russian Far East totaled approximately 16.68 billion USD on April 1, 2013. Currency allocation of assets is 92.67 % in national currency, for the liabilities the RUB share is 92.67 %. Assets of all banks (with branches) operating in the region is more than 38.4 billion USD with slightly less foreign currency in assets and liabilities.

Table 5

Securities purchased by banks in RFE on April 1, 2013 (millions of Rubles)

	Debt securities				Bills
	Total	incl: Governmental securities	Equities	Equities of subsidiaries	nominated in Ruble
Incorporated (registered) in the Russian Far East	40009	4665	1742	42	6371
Operating in the RFE	28316	4006	1595	42	2616

Source of Data: Bank of Russia [12]

Regional banks are active in Russian securities markets but most trades are made in Moscow so that the total of debt securities bought by banks registered in the RFE is larger than those of banks operating in the region (Table 5). Sovereign debt obligations are often used by regional banks as risk free investments when their balance positions are not strong enough to afford higher risk financial instruments. At the same time small and medium banks cannot tolerate yield to maturity of 6–7 % which is normal for state bonds, so they use these securities in REPO deals to maximize profit. Commercial paper such as bills are very popular among local non-financial organizations. Historically, bills were used to settle crises of mutual debts, then to minimize VAT payments, but now they are used mostly for their primary purpose as short term debt obligations that can be sold to banks as necessary. Investment in equities are marginal and usually connected to large scale financial operations for clients rather than as part of bank portfolio investment.

Table 6

Loans outstanding position of banks in RFE on April 1st 2013 (millions of Rubles)

	Total	Loans to non-financial organizations	Loans to banks and deposits into financial organizations	Loans to individuals
Incorporated (registered) in the Russian Far East. Credits nominated in Rubles	371765	90508	11608	259406
Operating in the RFE. Credits nominated in Rubles	762126	365490	6398	357405
Incorporated (registered) in the Russian Far East. Credits nominated in foreign currencies	15351	5260	8065	334
Operating in the RFE. Credits nominated in foreign currencies	52027	41937	8063	1550

Source of Data: Bank of Russia [12]

Regional banks compete poorly with branches of major Russian banks in providing credit lines to industrial companies and other non-financial organizations because of high cost of funding. At the same time, they are active in loans to individuals where the effective rate is much more convenient and price is not the major factor of competition. In this market they exploit their natural advantages such as flexible rate policy, well known brand name and many branches in districts where larger banks are not present (Table 6). Regional banks do not attempt to get bigger portfolios of credit in foreign currencies because they cannot get all advantages of carry trade because of smaller scales of operation (Table 7).

Table 7

Data on overdue debt on the balances of banks in RFE on April 1st 2013 (millions of Rubles)

	Loans to non-financial organizations		Loans to financial organizations		Loans to individuals
	Ruble	Foreign currency	Ruble	Foreign currency	Ruble
Incorporated (registered) in the Russian Far East	3061	23	6	3	6253
Operating in the RFE	12878	421	46	3	8120

Source of Data: Bank of Russia [12]

Despite competition and the recent financial crisis, the banking system of the region is in very good condition. The share of bad debts among loans to non-financial organizations is only 3.4% for banks registered in the region and 3.5% for the banks operating in the RFE. Loans in foreign currency are usually more specific and granted only to first class borrowers due to additional currency risks so only 0.4% and 1% of these credits appeared to be overdue. The general public of the region is not used to consumer loans so that overdue loans to individuals nominated in rubles are rare – only 2.4% of the portfolio.

Liberalization of access to national markets of financial services is one possible scenario of future integration of the financial market of the Far East in APEC. If foreign banks and insurance companies are allow to open full-function branches, Asian financial institutions will quickly become the wholesale supplier of financial resources and insurance protection because of their lower cost of capital.

But there will be no rapid decline in credit and insurance rates. In a free competition market, banks will try to provide an effective rate of their credit close to the market average, receiving higher margins as compensation for higher risks of doing business in Russia. Besides the scale effect, small population of the region as well as a limited pool of industrial enterprises, will continue their negative effects. The region does not consume enough financial services to make them cheap. However free competition will gradually reduce credit margins that will positively affect credit rates for the first-class borrowers.

A side effect will be a decrease in the average level of deposit rates for the population. Now regional banks are forced to offer deposits rates 10% – 15% higher (1–2% per year in absolute values) than large banks. Given that insurance of small deposits is performed by the state agency and the risk of loss of funds is minimized, the difference in rates can be explained by their limited access on the capital markets.

If regional banks are able to acquire credit resources from foreign banks with minimum transactional expenses, dependence on deposits by the population will be sharply reduced. Citizens will find it psychologically painful to invest savings at rates much below the level of consumer inflation, so it can be expected that a large portion of savings will be entrusted to Russian and foreign brokers for investment in securities.

Such investors in the security market will not make decisions in classical categories of risk and profitability partly because of insufficient financial literacy and knowledge and partly because of psychology. Instead, investors will create demand for shares of companies whose products are well known. It will create an opportunity to start non-sponsored programs of Russian Depositary Receipts invested in shares of Asian corporations such as Toyota or Samsung.

A more probable scenario assumes continuing national protectionism in the financial sector so special attention should be paid to internal reasons for growth of the regional economy. Enactment of the planned programs of tax privileges, in particular income tax exemption for newly created large-scale industrial projects, will create conditions for consolidation of new manufacturing projects. Such projects can be created as public corporations through IPO processes. In this case currency savings of the population of the Far East which are now mostly on deposits in the banks working in the region (37.4 billion rubles or more than 1 billion dollars [12]), can partially be transformed to investments.

Such investment will create a secondary over-the-counter market of regional shares which broker companies will be able to serve. Regional brokers and companies specializing in trust management of securities have a competitive advantage in comparison to branches of the large companies; they will be able to better estimate specifics of local projects and demonstrate more flexible approaches to cooperation with local issuers and investors.

Gradually conditions will develop for creating a regional exchange (or trading floor) in which futures contracts of energy resources exported to APEC, fishing products of the Far East, and also Russian Depositary Receipts of shares of Asian companies and securities of local entities can be traded. In any case, the bank system of the Far East will not suffer as it is stable and adequate to serve the market.

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СОВЕРШЕНСТВОВАНИЕ ПРАВОВЫХ УСЛОВИЙ РАЗВИТИЯ ЭКОНОМИЧЕСКОГО СОТРУДНИЧЕСТВА МЕЖДУ ДАЛЬНЕВОСТОЧНЫМ ФЕДЕРАЛЬНЫМ ОКРУГОМ РФ И СТРАНАМИ АЗИАТСКО-ТИХООКЕАНСКОГО РЕГИОНА

В статье исследуются возможные способы модернизации законодательства и экономического сотрудничества между Дальневосточным федеральным округом Российской Федерации, состоящим из 9 субъектов РФ, и странами Азиатско-Тихоокеанского региона (АТР). Дальний восток России и страны АТР обладают комплементарными характеристиками. Дальневосточный федеральный округ представляет собой обширную малонаселенную территорию, богатую многими природными ресурсами, такими как газ, нефть, золото и серебро, древесина и т.д. Большинство стран АТР, несмотря на высокий уровень развития промышленности, не обладают необходимыми природными ресурсами. На сегодняшний день существует лишь несколько примеров удачного использования комплементарных качеств этих двух регионов. Дальневосточный федеральный округ по-прежнему испытывает нехватку инвестиций. Торговая отрасль также недостаточно развита. Превращение Дальнего Востока РФ в международный центр торгово-экономического сотрудничества потребует значительных преобразований. Во-первых, необходимы развитие и модернизация инфраструктуры девяти субъектов РФ, входящих в состав ДВФО. Во-вторых, необходимо укрепить экономические отношения с динамично развивающимися странами АТР. Однако существуют некоторые правовые препятствия для достижения поставленных целей развития ДВФО. Указанные препятствия можно условно разделить на две категории: международные и региональные проблемы, а также внутренние проблемы РФ. Основным препятствием международного характера является участие России во Всемирной торговой организации и региональных торговых соглашениях, таких как Транс-Тихоокеанское партнерство и Региональное всестороннее экономическое сотрудничество. Наиболее существенными внутренними проблемами РФ являются коррупция и чрезмерные, повторяющиеся бюрократические процедуры. В числе возможных способов преодоления указанных препятствий и экономической интеграции ДВФО можно назвать совершенствование законодательства и административной практики, создание благоприятного инвестиционного климата и осуществление программ по борьбе с коррупцией. Также необходимо сочетать политику либерализации экономических отношений с зарубежными странами с определенным ограничением иностранного присутствия в экономике Дальневосточного федерального округа РФ.

Ключевые слова: Дальневосточный федеральный округ РФ, страны АТР, природные ресурсы, экономика, инвестиционный климат, правовые условия.

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MAKING MORE OF RUSSIA'S TILT TOWARDS ASIA: IMPROVING THE LEGAL ENVIRONMENT FOR BROADER ECONOMIC COOPERATION BETWEEN THE RUSSIA FAR EAST AND ASIA

The essay discusses ways of improving the legal environment in the Russian Far East to make better use of economic cooperation between Russia and Asia. The RFE and the Asia Pacific Region have extraordinary complementarities. The RFE is a vast sparsely populated area that is a home to many natural resources: oil and gas, coal, zinc, lead, silver and gold, timber, etc. The APR on the other hand is heavily industrialized and lacking in many important natural resources. In a few notable instances, the RFE has exploited its complementarities with the APR but still there are not enough foreign business people willing to trade and invest within the RFE. Becoming an international hub for economic relations will require two major steps. First step is to develop and modernize the infrastructure of the nine provinces that make up the RFE so that it becomes an attractive center for expanded economic relations with the APR. Second step is to strengthen economic relations with the dynamic economies of APR. However, there are some legal barriers facing the RFE in its efforts to become more integrated into the economic opportunities of the APR. These obstacles fall generally into two categories: international and regional obstacles, and domestic obstacles. The first category includes Russian membership in the WTO, and regional trade agreements, for example the Trans-Pacific Partnership and the Regional Comprehensive Economic Partner. The major domestic obstacles are corruption, excessive and overlapping bureaucratic procedures. There are a few things that can be done to overcome the above mentioned barriers and better integrate the RFE into the APR. Among them are amending laws and administrative practices, creating a favorable investment climate, and implementing a program to combat corruption. It may also be politically necessary to balance liberalizations with some restraints on foreign access to the RFE.

Key words: the far Eastern Federal district of the Russian Federation, the countries of the Asia-Pacific region, natural resources, economy, investment climate, legal conditions.

The Russian Far East (RFE) and the Asia Pacific Region (APR) have extraordinary economic complementarities. The former is sparsely populated with an abundance of natural resources, while many parts of the latter are densely populated, heavily industrialized, and generally lacking in many important natural resources. The RFE and the APR do make some use of these complementarities, but what is notable is how little of the full potential for economic cooperation is being realized. The purpose of this essay is to examine how the legal environment in the RFE can be adjusted to make better use of the complementarities between the RFE and the APR. The conclusions of this essay are twofold:

• Russia should consider participating in either the Regional Comprehensive Economic Partnership (RCEP) with China as the dominant partner or the Trans-Pacific Partnership (TPP) where the US has a large measure of control over the agenda. Given the current political dynamics, Russia is likely to be more comfortable as part of RCEP than the TPP.

• The most effective strategy for integrating the RFE into the APR is to establish Vladivostok as a free trade zone. Because Moscow is somewhat wary of heavy reliance on private sector development and also fears that unrestrained openness for foreign partners could affect Moscow's control over the RFE, it may be politically necessary to balance liberalizations with some restraints on foreign access to Vladivostok and the RFE.

1. Introduction: Russia and Asia Pacific Region.

In September, 2012, Russia hosted the APEC Summit on the new campus of Far Eastern Federal University on Russky Island in Vladivostok. Bringing the 7,000 APEC participants to Vladivostok demonstrated the increased importance Moscow attaches to its relations with Asia [1]. The APEC Summit was intended to showcase Vladivostok and the Russian Far East (RFE) as the new Russian bridge between Europe and the vibrant economies of Asia.

Russia's tilt towards Asia has two components. The first component is to develop and modernize the infrastructure of the nine provinces that make up the RFE so that it becomes an attractive hub for expanded economic relations with the APR [2]. The RFE is a vast area about two-thirds of the size of the US and 36 percent of Russia's total area, but it contains only 6.3 million people [3]. During the 1990s, after the collapse of the USSR, the national government largely ignored the RFE, its population declined by 15 percent and it lost 90 percent of its industrial base, as well as the substantial presence of the Russian Pacific Fleet and the Russian Air Force [2, *supra* note 2]. In the last decade, Moscow has attempted to reverse the decline by devoting about US$30 billion in state investments in stimulating the RFE's economy and new infrastructure, with most of the investment directed at urban improvements in Vladivostok [2, *supra* note 2]. The two new bridges, airport renovation, major new roads, and the expansive, newly constructed campus of Far Eastern Federal University in Vladivostok are the result of these investments.

The second component of Russia's Asia strategy is to strengthen economic relations with the dynamic economies of APR. The APR certainly is deserving of the increased attention. While the US struggles with a gridlocked national government, bloody and costly entanglements in the Middle East, and a tepid domestic economy, and the European Union lurches from one financial crisis to the next and faces stagnant economic growth rates, the APR stands out as the most economically dynamic part of the world. Among the more important attributes of the APR are:

• Most of the world's economic growth is produced in the region. In the last two decades, China alone has accounted for 40 percent of the increase in global GDP.

- China's growth rate has moderated, but still is 7.9 percent per year.

- Thailand, Indonesia, Malaysia, and the Philippines all have growth rates in excess of 6.0 per year and many other countries in the region have growth rates well in excess of the global average.

- Meanwhile, the EU has negative growth rates and the US rate is a relatively anemic 1.7 percent [4].

• The APR has the three largest economies in the world – the US, China and Japan.

• The APR is home to about 40 percent of the world's population, has some of the largest, most affluent markets in the world, and accounts for about 55 percent of the world's GDP.

• The APR also is dominated by market based economies which generally support the free movement of trade and investment flows.

Enhanced economic cooperation between Russia and Asia is made especially attractive because the most dynamic Asian economies often lack the primary resources that the RFE has in abundance, while the Asian economies have the capital and technical expertise to assist in development of the RFE. In other words, the RFE and the Asian economies have precisely what the other party needs: the RFE and the Asian economies have remarkable complementarities.

Of course, Moscow's tilt towards Asia involves much more than making better use of the economic opportunities presented by the RFE's geographic location. It appears that Moscow's tilt has at least three major policy underpinnings:

• To strengthen Moscow's control over its eastern territories and discourage outsiders from meddling in RFE's affairs;

• To make clear that Russia is intent on establishing the RFE as an integral part of the APR and an attractive option for expanded economic exchanges with the APR; and

• To reverse the population outflows and economic decline in the RFE, both of which are critical to the success of Moscow's ambitions in the APR [2, *supra* note 2].

2. Russia and the APR: Extraordinary Complementarities.

In addition to having an attractive geographic location, the Russian Far East has the good fortune to have an abundance of the resources in short supply in many of the other economies in the APR. The most dynamic and highly industrialized economies of the APR typically are lacking in natural resources, so their economies are sustained through imports of natural resources and manufactured components and exports of high value finished goods. Japan, South Korea, Taiwan, and Hong Kong, for example, all have built their economic prosperity on the importation of large quantities of natural resources and other primary products which have been fabricated into high value finished goods for export. China's demand for imported primary products is so great that it has driven the price of raw materials to exceptionally high levels and made Australia, the source of many of China's raw material imports, one of the richest countries in the world.

Meanwhile, the RFE is home to many of the resources in such short supply in the affluent economies of the APR.

• The oil and gas reserves around Sakhalin Island are one of Russia's most valuable resources.

• The RFE has large deposits of coal.

• There are commercially viable deposits of tin and complex ores containing zinc, lead, copper, and silver in the RFE.

• The current world market price of gold means that the gold deposits in the RFE are getting more attention.

• Primorsky Krai has Russia's largest deposit of boron.

• Deposits of germanium exist in the RFE but apparently are not being exploited.

• Several deposits of phosphorites have been discovered in the coastal regions of the RFE.

• The rivers in the mountainous regions of the RFE have considerable potential as sites for hydro-power plants.

• A large portion of the RFE is forested so the region has large timber reserves.

• Fishing stocks seem plentiful.

• The potential for tourism, especially high end eco-tourism is very considerable, but largely undeveloped. Salmon fishing in Kamchatka and Taimen fishing in Sakhalin and Primorsky Krai are good examples.

In contrast to the resource poor economies of many of the countries in the APR, the RFE has an absolute advantage in natural resources. In other words, there are great complementarities with many of the other parts of the APR.

3. Complementarities of the RFE and the APR.

In a few notable instances, the RFE has exploited its complementarities with the APR:

• Sakhalin-2 is one of the world's largest integrated, export-oriented oil and gas projects, as well as Russia's first offshore gas project. Sakhalin Energy Investment Company Ltd., the project operator, is owned by Gazprom, Shell, Mitsui and Mitsubishi. The project infrastructure includes three offshore platforms, an onshore processing facility, 300 kilometers of offshore pipelines and 1,600 kilometres of onshore pipelines, an oil export facility and a liquefied natural gas (LNG) plant. Almost all of the gas from Sakhalin-2 has been sold under long term contracts to consumers in the APR [5].

• China is the dominant trading partner for the border provinces of the RFE. The Chinese import metals, coal and timber from the RFE and in exchange supply foodstuffs, clothing and electronic products to the inhabitants of the RFE [2, *supra* note 2]. With the growing cooperation between the two national governments, this trade is likely to expand. In 2009, then presidents Dmitry Medvedev and Hu Jintao agreed to link the development of China's northeast provinces with development in the RFE [2, *supra* note 2]. Most recently, new Chinese President Xi Jinping made Moscow his first foreign destination after taking office in March, 2013. During their meetings in Moscow, presidents Xi Jinping and Vladimir Putin concluded a series of agreements, including an agreement under which Russia's state controlled oil giant, Rosneft, has agreed to supply China with a million barrels of oil per day, which will make China Russia's number one consumer of oil. China in turn is providing Rosneft with US$30 billion in loans to assist in Rosneft's acquisition of the Russian-British joint venture TNK-BP [6].

• Japanese automaker Mazada has opened its first foreign assembly plant in Vladivostok. When operational, the plant is scheduled to produce 50,000 vehicles per year [7].

• Although it seems to be on a relatively small scale, the RFE has high end tourism that offers some of the best fresh water fishing adventures in the world in Kamchatka, Sakhalin Island and Primorsky Krai. The potential for all forms of nature tourism within the RFE is extraordinary. The two Chinese provinces closest to the RFE, Jilin Province and Heilongjiang Province, have a combined population equal to about 50 percent of the entire Russian population and the newly affluent Chinese are increasingly looking outside of China for their tourist destinations.

But an important question is why there are not many more examples of the RFE making good use of its complementarities with the APR. In other words, why aren't there more foreign business people willing to trade and invest within the RFE? This question is even more notable because East and Southeast Asia have become much more closely integrated within the last decade. Whereas once the export economies of East and Southeast Asia looked almost exclusively at the North American and European markets, they now increasingly trade and invest among themselves. In the last decade, for example, China has displaced the US as the number one trading partner of Japan, Taiwan and South Korea and many of the countries in Southeast Asia. At the same time, intra-regional trade within the Southeast Asian countries has grown enormously, so that now many of the Southeast Asian countries trade more within the region than they do with North America or Europe.

So, why hasn't the RFE become more integrated with the economies of East and Southeast Asia and the APR more generally?

Certainly, there have been political obstacles to greater economic integration with the APR. Moscow is worried that the enormous population imbalance between the RFE and the Chinese regions on its border may lead to de facto (or worse) dominance of the RFE by the Chinese. Moscow also may fear that unrestrained private sector development with foreign capital and technical expertise will undermine state directed development plans. There are, however, also a number of legal obstacles to greater integration and it is the legal obstacles that will be the focus of the balance of this essay.

4. Legal Obstacles to Greater Economic Integration with the APR.

The legal obstacles facing the RFE in its efforts to become more integrated into the economic opportunities of the APR fall generally into two categories: (i) international and regional obstacles, and (ii) domestic obstacles.

International and Regional Obstacles. ***The World Trade Organization.*** One of the most formidable obstacles for the RFE was that Russia was the last major economy not a member of the WTO. In August, 2012, however, after 18 years of negotiations, Russia entered the WTO. Russia was 156th member of the WTO and its entry is likely to have a major impact on the Russian economy, including the economy of the RFE. Russian membership in the WTO also removes a significant barrier to the RFE's goals of greater integration with the countries of the APR, most of which are already WTO members.

But Russia's WTO membership is only the first step towards the more comprehensive market based liberalizations that need to be made if the RFE is to be a full economic partner in the APR. Even after joining the WTO, Russia has maintained its massive state subsidies for domestic industries, especially for agriculture, the automobile industry, and Soviet-style "Monogorods" or towns dependent on a single factory or industry. Under its accession agreements, the state subsidies are to be phased out over a seven year period [8]. In addition, importers complain that they still face uncertain import procedures and a wide array of nontariff trade barriers when exporting to Russia, making Russia an unpredictable and nontransparent market. Export regulations, the protection of intellectual property rights and the environment for inbound investment also are cited as areas that are well short of being fully compliant with WTO standards [9]. So, Russian laws and administrative practices will have to undergo major additional changes to make Russia a fully fledged member of the WTO.

Regional Trade Agreements. The stagnation of the Doha Round of multilateral trade negotiations over the last decade has caused many countries to look for alternative ways to expand international trade and investment. Largely because of lack of progress in the Doha Round, bilateral and regional trade agreements that go beyond the trade liberalization measures in the WTO have proliferated. Since 2010, Russia has a customs union with Kazakhstan and Belarus and in September, 2012, a free trade agreement between Russia and the Commonwealth of Independent States became effective. Russia also is negotiating or contemplating free trade agreements with India, Vietnam, Norway, and New Zealand.

Meanwhile, in other parts of the APR, bilateral and regional trade agreements have been actively pursued. The effectiveness of these multiple and oftentimes overlapping agreements may be in doubt, but intra-region trade and investment have increased sharply in the last decade. As mentioned earlier, the APR has become much more closely integrated and many of the countries in the region do more business within the region than they do with their historic trading partners in North America and Europe.

While there are a great many bilateral and regional trade agreements in the APR, two regional agreements now being negotiated are likely to have the greatest impact on Russia's effort to promote the RFE as an integral part of the APR. The two agreements are the Trans-Pacific Partnership (TPP) and the Regional Comprehensive Economic Partner (RCEP).

TPP's origins can be traced to the Trans-Pacific Strategic Economic Partnership (also called the P-4), signed in 2005 by the governments of Chile, Singapore, New Zealand and Brunei Darussala [10]. The objectives of this group of four small countries were threefold: first, to establish a free-trade area with unprecedented market access by agreeing to eliminate all tariffs by 2017; second, to create the first free-trade link specifically between the APR and South America; and finally, to provide a template for the expansion of free trade throughout the region by allowing additional countries to adhere to the agreement [10].

When the US joined the P-4 in 2008, the objectives became much more ambitious and contentious. Now, with the US negotiators largely dominating the agenda, TPP is seeking to become a comprehensive agreement that goes well beyond the WTO rules with the elimination of all tariffs and government commitments to significant regulatory reforms on domestic policy issues [10]. Although the TPP negotiations are secret, leaked documents and the comments of trade negotiators indicate that participating states will be obligated to provide strong protections for foreign investors, greater safeguards for patent holders, limitations of subsidies for state-owned enterprises, and more aggressive enforcement of environmental and competitions laws [10]. With the recent addition of Japan to the TPP negotiations, the TPP countries now include the original four members of the P-4, the US, Australia, Malaysia, Peru, Vietnam, Canada, Mexico, and in March, 2013, Japan.

TPP was originally scheduled to be concluded by the end of 2012, but negotiators now estimate that the agreement will be finished in late 2013. The recent addition of Japan to the negotiations, however, may push the completion date to sometime in 2014.

RCEP has a very different origin than TPP [11]. In November, 2012, at the East Asia Summit in Phnom Penh, the ten member countries of ASEAN agreed to launch the RCEP negotiations. ASEAN has bilateral and regional free trade agree-

ments with non-ASEAN countries, such as China, South Korea, Japan, India, Australia and New Zealand, which are separate from one another. The basic idea underpinning RCEP is to harmonize all of these free trade agreements into a single regional economic agreement. RCEP also is intended to establish deeper economic integration than the existing free trade agreements by liberalizing more trade in goods, eliminating trade barriers, gradually liberalizing trade in services, and establishing a more hospitable environment for inbound foreign direct investment [12]. The countries now participating in the RCEP negotiations are the ten member countries of ASEAN (the Philippines, Singapore, Brunei, Malaysia, Indonesia, Thailand, Vietnam, Cambodia, Myanmar, and Laos) plus China, Japan, India, South Korea, Australia and New Zealand.

The RCEP timetable is to conclude the negotiations sometime in 2015. Given the volume of free trade agreements to be coordinated and the ambitious goals for expanded trade liberalizations, 2015 may be an overly optimistic goal.

China is not included in the TPP negotiations and the US is excluded from the RCEP negotiations. Between TPP and RCEP, however, every major economy in the APR is represented, with only two notable exceptions: Taiwan and Russia. Taiwan is excluded because of China's efforts to isolate the island and force the island into a closer relationship with China. Russia, however, is free to pursue participation in either TPP or RCEP. Given the political tensions between Russia and US and the breadth of economic cooperation between China and Russia, it seems that participation in the RCEP negotiations is now the more attractive option for Russia. Of course, as several countries who are members of both groups have clearly demonstrated, becoming involved in the RCEP negotiations does not foreclose later participation in TPP if that become politically and economically more palatable.

Domestic Obstacles. ***Excessive, Overlapping, and Opaque Bureaucratic Procedures.*** Foreign and domestic businesses complain about excessive, overlapping and opaque bureaucratic procedures. This is recognized as a problem not just with federal government regulations, but also at the state and local level. Too often regulations affecting businesses require much more than is necessary to achieve the government's regulatory objectives; in many instances, the regulations duplicate what is required elsewhere; and quite often the regulations are confusing or contradictory so that businesses do not know what is required of them.

The World Bank's **2013 Doing Business Guide** [13] ranks Russia 112 out of 183 countries in terms of ease of doing business. In cross border transactions, Russia is ranked 162nd, which reflects the considerable administrative barriers applicable to imports and exports. In dealing with construction permits, Russia is ranked 178nd. Russia also receives low rankings for starting a business, closing a business, and in the protection of investors.

Corruption. Corruption is a systemic problem in Russia and continues to be a major obstacle to improving the climate for business and investment. Despite federal-level efforts to combat the issue, corruption remains a daunting challenge throughout Russia, including the RFE. In Transparency International's **2012 Corruption Perception Index**, Russia was ranked 133 out of 176 countries. In spite of repeated statements by the leadership in Moscow about the importance of cubing corruption, little changes in the way business is conducted and the government's law and regulations are administered.

5. Conclusions.

What can be done to better integrate the RFE into the APR?

At the international level, membership in WTO is going to help. But WTO membership should only be a beginning. Many laws and administrative practices have to be amended to make Russia a full member in the WTO.

In addition, because of the proliferation of bilateral and regional trade agreements in East and Southeast Asia and the APR more generally, many countries in the APR now have moved beyond the trade liberalization measures of the WTO. The two most notable regional trade agreements now being negotiated are RCEP and TPP. As mentioned earlier, because of the current political dynamics, Russian may be more comfortable participating in the RCEP negotiations which are dominated by China rather than TPP where the US is the most prominent member. Whichever agreement Russia chooses is probably less important than its visible participation in the negotiations. It is a central component of Russia's efforts to economically integrate the RFE into the APR that Russia be an active participant in the region.

Within Russia, the good news is that the legal environment affecting domestic and foreign business enterprises is improving. In May, 2011, then President Medvedev said that creating a favorable investment climate was the first priority for Russia. He said that corruption, flaws in the legal system and administrative barriers must be countered if a normal investment climate is to be created in Russia. He also said that various measures are being taken to solve these problems, including a program to combat corruption. Although the fruits of these statements are not yet apparent, they provide a base for some optimism, especially when combined with the recent efforts to make the RFE more attractive as an economic hub for the APR.

The World Bank's **2013 Doing Business Guide** also indicates that the business and investment climate in Russia is improving. The World Bank examined the trend for doing business in Russia over the last five years and found that the business and investment environment is improving.

The 2009 decision of the Russian Supreme Arbitrazh Court also gives reason for optimism. In the case of *Rentpool B. V. v. OOO Podyemnye Tekhnologii*, the court confirmed the enforceability of a Dutch judgment in the Russian Federation. Previously, foreign judgments were enforceable in the Russian Federation only if there was a reciprocal enforcement treaty. In the *Rentpool B. V.* case, the Supreme Arbitrazh Court said that foreign judgments also could be enforced based on principles of reciprocity and comity among nations. This decision may open the way for enforcement of foreign judgments form the United States, the United Kingdom, and many other countries.

So, there are reasons to be optimistic about the future of the business and investment climate in the Russian Far East. But here, Russia and the United States are similar. US policy makers note the improvements in the domestic business climate and they take comfort in the improvements. But the world around the US and Russia is not static. Unfortunately, what the US policy makers fail to acknowledge is that the rest of the world is changing, and in fact, it is changing at a quicker pace than in the US. So, even as the US is making improvements in the way it does business, the major competing economies in the world are changing at an even faster rate, with the consequence that the US is falling farther and farther behind.

This is the same fate that may befall the Russian Federation, including the RFE. Because the other countries in the APR are improving their business and investment

environment at a faster rate, Russia and the RFE risk being left farther and farther behind the neighbors in the region. The US and Russia both must be aware not just of need for absolute changes, but of the need to accelerate the introduction of those changes to keep pace with the other countries in the region.

After Russia's entry into the WTO, the two most serious legal obstacles to the RFE's economic integration into the APR are excessive bureaucratic procedures and corruption and, of course, they both feed on each other. In spite of repeated statements by government at all levels about the importance of dealing with red tape and corruption, the problems remain largely undiminished. Until the national, state and local governments get serious about dealing with these problems, the RFE's aspirations for greater involvement in the APR will remain largely unrealized in spite of the substantial resources the federal government devotes to building up Vladivostok.

One dramatic step that could be used as way to attack both red tape and corruption would be establish Vladivostok as a free trade zone. The elimination or simplification of trade and investment procedures would reduce red tape and at the same time diminish the opportunities for corruption. Because Moscow is somewhat wary of heavy reliance on private sector development and also fears that unrestrained openness for foreign partners could affect Moscow's control over the RFE, it may be politically necessary to balance liberalizations with some restraints on foreign access to Vladivostok and the RFE. Although there many free trade zones around the world (but none in Russia), China's experience in establishing the Shenzhen Special Economic Zone may be the most relevant to Vladivostok as a free trade zone. The Shenzhen Special Economic Zone was created in 1980 just as China was embarking on a new path of "capitalism with Chinese characteristics." China chose Shenzhen because it was attractively situated next to Hong Kong so it could serve as a hub for the movement of trade and investment through Hong Kong and into China, and vice versa. It also is important that China created the Shenzhen Special Economic Zone at a time when the Chinese leadership was not completely comfortable with the introduction of market oriented trade policies and a greater openness to private sector foreign investment. The fact that in its 30 + years as a special economic zone Shenzhen has grown from a sleepy fishing village to an economically vibrant city of more than 10 million people also may justify a closer look at the Shenzhen Special Economic Zone.

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ВЫЗОВЫ КОРЕЙСКИМ ШКОЛАМ ПРАВА ПОСЛЕ ВТОРОГО ЭКЗАМЕНА В АССОЦИАЦИЮ ЮРИСТОВ В АПРЕЛЕ 2013 ГОДА

26 апреля Министерство юстиции Республики Корея выпустило список успешных кандидатов по результатам второго нового экзамена в ассоциацию юристов после реформы юридического образования 2009 г. Проходной балл достиг 75,1% у 1538 сдавших экзамен, что несколько ниже, чем проходной балл 87,1% по результатам первого нового экзамена. Как это повлияет на юридическую профессию и юридическое образование в новых корейских школах права начиная с 2009 г.?

В 2004 г. под эгидой Правительства Кореи Комитет Верховного суда по судебной реформе (SCCJR) обнародовал планы по внедрению новых профессиональных юридических школ в 2008 г. с постепенным выводом действующей Национальной судебной экзаменационной системы (NJE). Эта новая модель юридического образования интенсивно обсуждалась заинтересованными сторонами. Главной темой дискуссии было общее количество принятых студентов-юристов. Сторонники судебной реформы хотели увеличить количество юристов за счет увеличения числа студентов профессиональных школ права. Тем не менее этот идеал столкнулся с сильной оппозицией со стороны корейских юристов (byunhosa).

Эта дискуссия явилась причиной задержки внедрения системы новой юридической школы с 2008 по 2009 гг., и, в конце концов, 4 февраля 2008 г. Министерство образования Кореи объявило список из 25 университетов, получивших право иметь профессиональные школы права. 25 университетов, из 41 университета, подавших заявки на получение разрешения на открытие профессиональных юридических школ, начали обучение студентов с марта 2009 г. В отличие от Японии, корейское правительство ограничило общее число студентов-юристов в 2000 человек в первый год и выделило различные квоты по количеству студентов в каждом из квалифицированных университетов в зависимости от производственной мощности.

Эта статья представляет краткое введение о причинах реформы юридического образования и обзор традиционной системы правового образования в главе I. В главе II объясняется процесс реформы юридического образования в Корее, основанной на предложении SCCJR. В главе III содержится анализ текущей системы реформы и вызовов в отношении экзамена в ассоциацию юристов.

Корейская система юридического образования находится в явном переходном периоде. Решающее значение для успеха реформы юридического образования имеет то, что корейское правительство должно идти в ногу с высокой успеваемостью. Результат второго экзамена в ассоциацию юристов с более низким проходным баллом делает обозримым более жесткую конкуренцию среди этих 25 профессиональных школ права, таким образом заставляя эти учреждения становиться школами, занимающимися натаскиванием студентов к сдаче экзамена в ассоциацию юристов.

Многие беспокоятся по поводу огромного притока юристов и снижения качества практиков. Тем не менее, поскольку экзамен в юридическую ассоциацию разработан для оценки того, имеет ли специалист минимальные правовые знания и навыки, а не для сравнения этих знаний и навыков с другими кандидатами, не должно быть никаких произвольных ограничений на количество людей, которые могут сдать экзамен в ассоциацию юристов. Реформа юридического образования в Корее, кажется, в состоянии эффективно справиться со многими недостатками традиционной схемы NJE. Произведет ли реализация реформ желаемые результаты, однако, еще предстоит выяснить.

Ключевые слова: корейские школы права, SCCJR, NJE, второй экзамен в ассоциацию юристов.

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CHALLENGES FOR KOREAN LAW SCHOOLS AFTER THE SECOND BAR EXAMINATION IN APRIL 2013

Summary: On April 26, the Korean Ministry of Justice released the list of successful candidates for the second new bar examination after the 2009 legal education reform. The pass rate reached 75.1% with 1,538 passers, somewhat lower than the first new bar examination pass rate of 87.1%. How would this influence legal profession and legal education in new Korean law schools started from 2009?

In 2004, the Korean Government launched the Supreme Court Committee on Judicial Reform (SCCJR) which unveiled plans to introduce new professional law schools in 2008, while gradually withdrawing the present National Judicial Examination (NJE) System. This new legal education model has been intensely debated by stakeholders. The main issue of the debate was total number of admitted law students. The supporters of judicial reform wished to increase the number of lawyers by increasing the number of professional law school students. However, this ideal was faced with a strong opposition of Korean lawyers (*byunhosa*).

This debate caused delay of initiating new law school system from 2008 to 2009, and finally, on February 4, 2008 Korean Ministry of Education and Human Resources Development announced the list of 25 qualified universities for professional law schools. The 25 Universities chosen from 41 universities applied to obtain approval to establish professional law schools have started teaching students from March, 2009. Different from Japan, the Korean government limited the total number of law students to 2,000 in the first year and allocated different number of students to each qualified universities based on capacity.

This article introduces a brief introduction about reasons for legal education reform and traditional system of legal education in Chapter I. In Chapter II, this article explains the process of legal education reform in Korea based on the proposal of SCCJR, and, in Chapter III, analyses the current system of reform and challenges for new law schools in relation to the bar examination.

Korean legal education system is clearly in transition. It is crucial for the success of legal education reform that the Korean government keep up with high pass rate. The result of the second bar examination with the lower pass rate makes foreseeable a more severe competition among these 25 professional law schools, such that these institutions would be under stronger pressure to become cram schools for bar examination preparation.

There are many people who worry about a huge influx of lawyers and the declining quality of practitioners. Nevertheless, since the bar examination is designed to evaluate whether one has the minimum legal knowledge and skills rather than the relative amount one possesses compared to other candidates, there should be no arbitrary limit on the number of people who can pass the bar examination.

The legal education reform in Korea seems to be able to deal with many imperfections of the traditional NJE scheme effectively. Whether the reform's implementation will produce intended results, however, remains to be seen.

Key words: Korean law schools, SCCJR, NJE, cram schools, second bar examination

I. Introduction

On April 26, the Korean Ministry of Justice released the list of successful candidates for the second new bar examination after the 2009 legal education reform. The pass rate reached 75.1% with 1,538 passers, somewhat lower than the first new bar examination pass rate of 87.1%.[1] How would this influence legal profession and legal education in new Korean law schools started from 2009?

In 2004, the Korean Government launched the Supreme Court Committee on Judicial Reform (SCCJR) which unveiled plans to introduce new professional law schools in 2008, while gradually withdrawing the present National Judicial Examination (NJE) System. This new legal education model has been intensely debated by stakeholders. The main issue of the debate was total number of admitted law students. The supporters of judicial reform wished to increase the number of lawyers by increasing the number of professional law school students. However, this ideal was faced with a strong opposition of Korean lawyers (*byunhosa*).

This debate caused delay of initiating new law school system from 2008 to 2009, and finally, on February 4, 2008 Korean Ministry of Education and Human Resources Development announced the list of 25 qualified universities[2] for professional law schools.[3] The 25 Universities chosen from 41 universities applied to obtain approval to establish professional law schools have started teaching students from March,

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[1] 18 from Seoul National University, 13 from Korea University and 15 candidates from Sunkyunkwan University failed, in contrast to Kyung Hee University which had only one unsuccessful candidate and thus successfully keeps up with the top ranking in pass rate over two years. See, Kim, Byung-il / Kim, Tae-ho, je 2hoe sabeopshihum 1538myung hapgyuk... loskoolbyul seongjukboni kyungheedae 2nyunjjae top ... seouldae'sseunmat' [1,538 candidates passed the second bar examination... in ranking, Kyung Hee University is in the top over two years...'bitter taste' for Seoul National University], in hankuk gyungjae [Korean Economics] April 28, 2013.

[2] Fifteen universities are located in Seoul Metropolitan area, including adjacent provinces Gyeonggi and Gangwon, and ten are in regional provinces. Fifteen universities from Seoul Metropolitan area are Seoul National Univ., Korea Univ., Yonsei Univ., Sungkyunkwan Univ., Hanyang Univ., Kyung Hee Univ., Ewha Womans Univ., Chung-Ang Univ., Sogang Univ., Konkuk Univ., Inha Univ., Ajou Univ., Kangwon National Univ., Hankuk University of Foreign Studies, University of Seoul; and ten Universities from regional provinces are Pusan National Univ., Kyungpook National Univ., Dong-a Univ., Yeungnam Univ., Chonnam National Univ., Chonbuk National Univ., Wonkwang Univ., Cheju National Univ., Chungnam National Univ., Chungbuk National Univ.

The distinction between Seoul Metropolitan area and regional provinces were made on the basis of governmental policy to allocate professional law schools nationwide avoiding concentration in Seoul Metropolitan areas where most competitive universities are located. The equal regional development policy supported some provincial universities for getting approved and, meanwhile, caused disqualification of several universities located in Seoul. However, a few of disqualified universities in provinces are claiming that the legal education committee did not strictly follow the nationwide allocation principle. See, e.g., Law School Selection Triggers Lawsuits, Korea Times, Feb. 4, 2008.

[3] The announcement, however, triggered severe opposition and protest of many universities, especially of disqualified universities. Some of them threatened to take legal action against the Ministry of Education and Human Resources Development and Legal Educational Committee which were in charge of evaluation and selection process. See, Law School Selection Triggers Lawsuits, Korea Times, Feb. 4, 2008. Some universities even filed lawsuits to invalidate the decision asking that the authorities disclose details regarding the selection standards. Even approved universities questioned the fairness of the distribution of the quota; they complained that the numbers of students are so small that schools would suffer huge deficits. See, Law School Selection Triggers Uproar, Korea Herald, Jan. 31, 2008.

2009. Different from Japan, the Korean government limited the total number of law students to 2,000 in the first year and allocated different number of students to each qualified universities based on capacity.[1]

This article will introduce a brief introduction about reasons for legal education reform and traditional system of legal education in Chapter I. In Chapter II, this article will explain the process of legal education reform in Korea based on the proposal of SCCJR, and, in Chapter III, analyse the current system of reform and challenges for new law schools in relation to the bar examination.

A. Reasons for Legal Education Reform

Number of Korean attorneys has been increased[2], especially in recent years, however Korean lawyers have been criticized that they would know only legal regulations well but lack knowledge and experiences in other social fields. With the reform it has been expected that many students majored in diverse field other than law enter into professional law schools, become lawyers, and work in areas related to their undergraduate majors. Also, the reform aimed to produce lawyers who possess competitive abilities and qualifications enough to deal with the upcoming globalization and to offer easily accessible legal services for the public in general. Korean law market will open the door to foreign lawyers almost without any restriction in a few years. Therefore, Korea needs lawyers who are qualified in international level in order to compete with foreign lawyers. Even if almost every other field of the Korean Society has opened their door to the world, only the law field kept their door closed. This has to be changed in the future to survive in the international competition. The new professional law schools are expected to raise future lawyers who are competent in international litigations.

Koreans generally think that legal fees are too expensive. Increasing number of lawyers could make this situation better. More lawyers in the market will intensify the competition, and the legal professionals will broaden the scope of their activity towards various fields of the society for their survival instead of staying in the sphere of attorneys, judges and prosecutors. In addition, the competition may bring the decentralization of lawyers who are currently centralized in certain urban area.

B. Traditional System of National Judicial Examination (NJE) and Legal Education

To be eligible for taking the NJE, one must: (1) earn 35 credits from law courses offered by university approved by the Ministry of Education and Human Resources

[1] Comparing to Seoul National University where 150 law students is granted, other approved universities have between 40 and 120 law students.

[2] See, Korean Bar Association, The Annual Fluctuation of the Number of Korean Attorney, http://www.koreanbar.or.kr/info/01_05.asp (The number of attorneys in Korea, after reaching more than 1,000 for the first time in 1981 (1,013), has increased to 2,258 in 1992, 3,078 in 1996, 4,228 in 2000, 5,073 in 2002, 6,300 in 2001, and finally 8,174 in 2007); It is interesting to know that the legal professionals were, from the beginning of their birth, hated by the public of most European countries which were influenced by ancient Roman law tradition because legal professionals at that time were arrogant and careless about their clients. The legal process lasted very long, and people couldn't understand why they lost the trial because the decision was made from highly sophisticated ancient Roman law of which the public had no knowledge. There arose a slogan in Germany "Juristen, bцse Christen," which means "Lawyers, bad Christens." Martin Luther once had the opportunity to deal with the problem and must have said that the lawyers could also be Christians, however to be good Christians, they may need great blessings from God. See, e.g., Hermann Conrad, Deutsche Rechtsgeschichte Bd. 2, 354 (Frankfurt, C.F. Mьller 1962).

Development; and (2) have Certificate of English – over 700 scores in TOEIC (equivalent to 197 scores in CBT TOEFL). Even though undergraduate legal study is not a prerequisite for taking the NJE most of the candidates are law majors who have completed or are in completion of the 4 year undergraduate program in law colleges.[1]

The NJE consists of three parts. The first NJE is a multiple-choice examination which covers Civil Law[2], Constitutional Law, Criminal Law, English, and one elective subject among Criminal Policy, International Law, International Transaction Law, Intellectual Property Law, Economy Law, Labor Law, Legal Philosophy, and Tax Law. The second NJE is an essay-format examination on Administrative Law, Civil Law, Civil Procedure, Commercial Law, Constitutional Law, Criminal Law, and Criminal Procedure. The third NJE is an interview which evaluates applicants in five categories: ethical view, specialized knowledge and applicability, communication skills, manners and attitude, and lastly creativity and perseverance. An applicant must earn at least ten scores in interview to pass the third part of NJE. But, an applicant hardly fails in third NJE.

An applicant who passes all three NJEs has to complete a 2 year practical training program in Judicial Research and Training Institute (JRTI) to become a member of the Korean Bar Association. Regardless of a successful applicant's wishes to become a judge, prosecutor or attorney, she will undertake the same training as all of the other prospective lawyers.

JRTI has been criticized that it would concentrate too much on training of judges and prosecutors while most of the trainees will become private practitioners.[3] Trainees at the JRTI must complete classes which worth sixty-six credits, including externship, during their two-year matriculations; one credit is typically equivalent to fifteen hours of lecture time. JRTI is highly competitive because the final total scores earned from two year training period, along with the scores from the NJE, play critical roles in deciding one's career as a judge, a prosecutor or an attorney in a large law firm.

This basic frame of NJE scheme has many critical flaws. Because students think that the academic legal studying at the law college is not helpful to pass NJE, they tend to focus on preparing NJE with the help of cram schools specialized in NJE. Many candidates even give up pursuing university degrees and start self-studies for NJE. Most of the candidates, however, end up with so called "*goshinangin*," people who failed many times in NJE. *Goshinangins* wasted their time and money with the only hope to pass the NJE. Moreover, *Goshinangins* have difficulty in finding jobs because they are either too old for a new employment or lack in skills other than studying black letter law for NJE.

Korean government hopes that establishment of new professional law schools would bring improvement to legal education.

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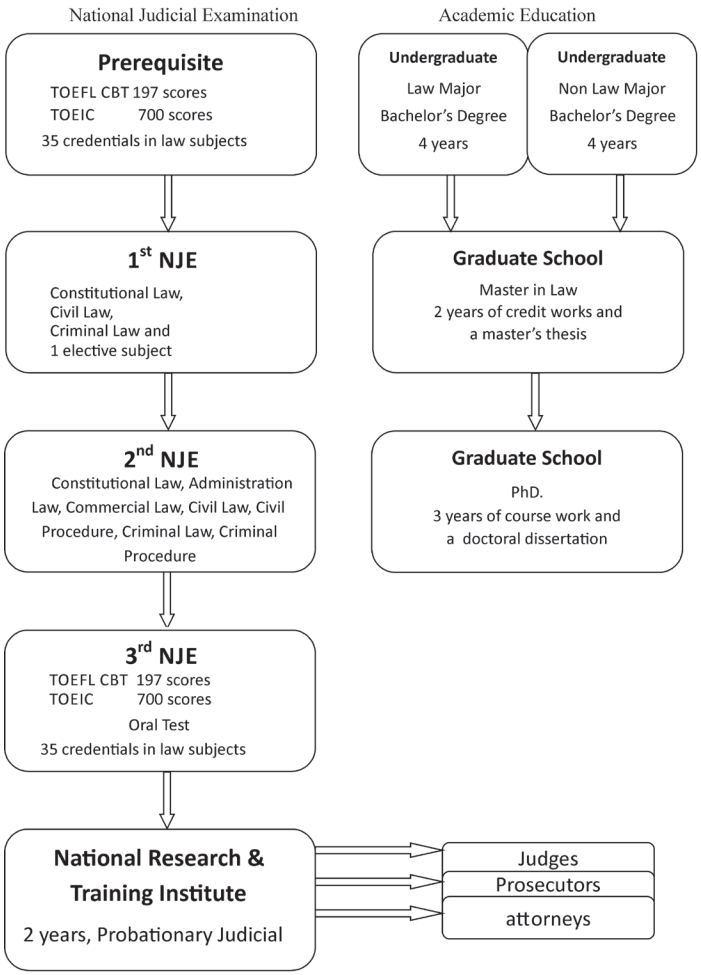
[1] See, Sang-Hyuk Yim, jungsogyumo bubgwadaehakui law school doibe kwanhan yeongu [Study on Implementation of Law School System in Small and Mid-sized Law Colleges], in Ilban Nondan [General Discussion Forum] 265, 268 (2004) (stating that approximately twenty to thirty percent of successful NLE applicants are non-law majors); Non-law-majored applicants for NJE still take large portion of total applicants. They are qualified for taking NJE if they take 35 credits of law courses. Non-law-majored applicants usually rely more on cram schools in preparing NJE.

[2] Civil Law contains broad range of subjects: contracts, property, and torts of common law curriculum.

[3] See, Yim, supra note 8, at 269 (2004) (stating JRTI is biased toward training for prospective judges); This is understandable if we consider that most of the JRTI instructors are judges or prosecutors. Based on these circumstances, current JRTI training is generally considered inadequate for training business lawyers.

Basic Frame of the Traditional NJE System



II. The Proposals from the Supreme Court Committee on Judicial Reform (*sabupgehyukwiwonhoe*) for Legal Education

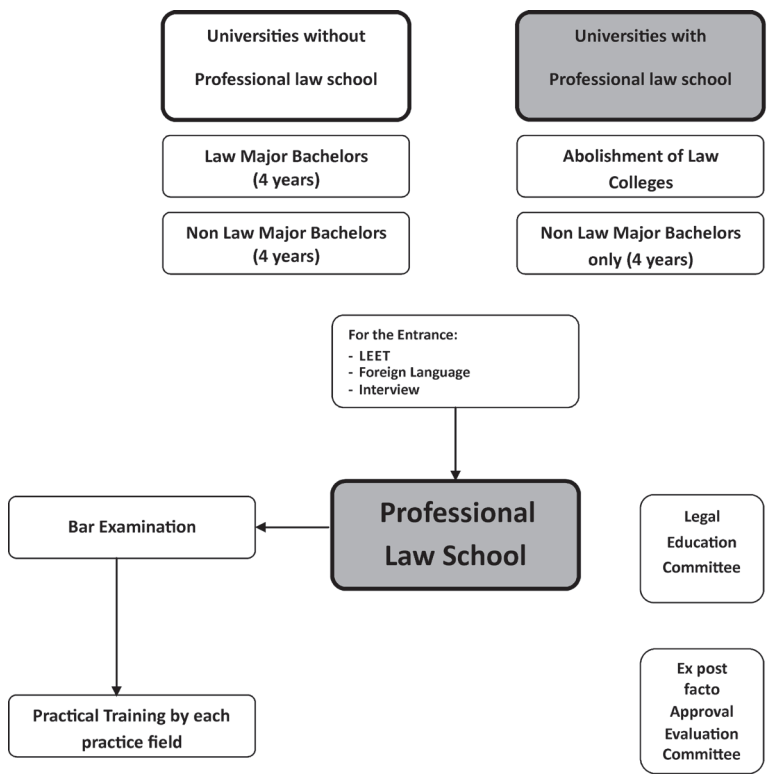
In October 2004, the Supreme Court Committee on Judicial Reform (SCCJR), an advisory board under the supervision of the Korean Supreme Court, proposed a plan to reform Korea's legal education system by eliminating National Judicial Examination (NJE) and implementing a professional law school system.[1] SCCJR

[1] Press Release of SCCJR, sabubgaehyuk ouiwonhui huieui gyulgwa [Results of October 4, 2004 SCCJR Meeting] (Oct. 4, 2004) [hereinafter SCCJR October Press Release]; bubjoin sunbal mundab puri [Questions Answered Regarding Selection of Lawyers], Donga Daily Newspaper, Oct. 5, 2004; choe-jong sullibggaji nameun jeolcha [Steps toward the Final Implementation], Hangyure Daily Newpaper, Oct. 5, 2004. Some approved the proposal, but others didn't. (see, discussions in the newspapers: law school doib hwakjung; 2007 nyun chutiIbhakshihum... eungshihoetssu jaehan [Law School Implementation Finalized], Donga Daily Newpaper, Oct. 5, 2004; law school yi sunggong haryumyun [In order for law school System to Succeed], Joongang Daily Newspaper, Oct. 5, 2004; law school gereut choongsilhi chewoya [We Must Fulfill law school's Objectives], Hangyure Daily Newspaper, Oct. 5, 2004).

suggested to establish limited number of professional law schools and to elevate bar pass rate approximately up to 80 percent.[1] Civic groups supported this decision. In contrast, most of the Korean lawyers (*byunhosa*) opposed the suggestion.[2]

Unlike Japanese law schools, the universities allowed to have 3 year professional law school have to abolish their undergraduate law program. So only those universities without professional law schools in their campus will be able to keep their law colleges. A candidate is required to complete 4-year-undergradute program and to have bachelor's degree in order to enter the professional law schools. Candidates with any kind of degree are eligible to enter the professional law school. All candidates must take both Legal Education Eligibility Test (LEET) and foreign language exam – English in most cases. Each law school will administer their own LEET. Only the successful completion of a 3 year professional law school gives the student exclusive right to take the bar examination. Once a person pass the bar examination, the person will not be trained by unified institution, such as current JRTI, but by each practice field as law firms.

A. Basic Frame of the Judicial Reform



[1] Law School Measures Stir Controversy: Universities Oppose Panel's Decision to Limit Number of Students, Korea Herald, Apr. 22, 2005; Alan Brender, New American-Style law schools Face Obstacles in Japan and South Korea, Chron. Higher Educ., at 42 (Aug. 12, 2005).

[2] Jong-Hwan Jung, bubhakjeonmundaehakwonui doibnonuiui euieuiwa banghyang [Reasons and Direction of Law School Implementation Discussion]; see also, Seoul Daihakgyo Bubhak 45 (2) [Seoul National University Law Review 45 (2)], at 21 (stating that law school system is not suitable for Korean legal culture); Soo Shin Yoon, Seoul Byunhosahoil law school Je Doib Bande [Bar Association of Seoul Opposes law school System], Bubryul Shinmunn [Law Times], Aug. 3, 2004.

B. Major Issues of SCCJR's Proposal

1. Approval System and Requirements

Under SSCJR's Plan, a university wishing to establish a professional law school must take approval from the government.[1] The legal education committee comprised of government officials, legal scholars, practitioners, and civic activists was established to oversee the approval process.[2]

The Plan did not explain whether the approval should be governed by the compliance system '(*junchicjuii*)' or the approval system '(*ingajuii*)'. The former means approval is compulsory in case of compliance with a certain standard, and the latter means the approval is dependant on judgment of the authority based on need, suitability, and other subjective or objective criteria. The Ministry of Education chose the approval system to approve 25 universities.[3]

Although the SCCJR's proposal did not reach the clear-cut conclusion in several controversial points of the professional law school establishment standards, it put forth a number of suggestions as guidelines:[4]

First, professional law school will be established in the universities that satisfies certain standards. Accordingly, professional law schools must equip with law libraries, moot courts and appropriate information technology tools.[5]

Second, every university allowed to have professional law school must abolish its undergraduate law program.

Third, a university must prepare sufficient number of human and material resources, including smaller faculty-student ratio, to offer better educational service to law students.[6]

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[1] See, SCCJR October Press release, supra note 11, at 6 (stating that university needs to obtain "right" to establish law school); see also, bubdae sengjon dalleotda [Survival of Law College Depends on Law School Establishment Right], Seoul Daily Newspaper, Oct. 7, 2004 (indicating that universities compete fiercely for law school establishment rights; stating that they treat matter as their first priority; and suggesting that failed attempt at law school establishment may lead to termination of Law College).

[2] See, Id.; see also, jungwon 1200 myungsun law school 2008 nyun doib hwak jung [Law School Implementation Finalized with 1200 Students], Seoul Daily Newpaper, Oct. 6, 2004 (indicating that various individuals will be consulted in deciding which universities will establish law schools).

[3] Majority was for the approval system. It has been indicated that the compliance system, as the considerable amount of law colleges could be converted to law school, would benefit the society in terms of offering more chances of legal education and strengthening legal manpower. However many were against the compliance system reasoning that it could produce many law schools, which might cause diminish of legal education's quality. In addition, majority's argument, made during the Public Hearing in April 21, was persuasive because it supported governmental policy of Equal Regional Development. They insisted that, under the compliance system, universities in rural area will have difficulties in receiving approval of establishing law school due to the limited resources comparing to the universities in Seoul Metropolitan Area; see also, sagechuwi chongiphak-jeongwon-ongeup woe ppajeotseulkka, [Why does the presidential committee on judicial reform did not mention law school student quota?] Hangyure Daily Newspaper, April 21, 2005 (indicating that in this public hearing the committee did not mention the quota of law school students which is critical for the enforcement of the reform plan).

[4] SCCJR October Press release, supra note 11, at 6.

[5] Id., at 7; dasuan-uro bon law school [Law School from Perspective of Majority], Seoul Daily Newspaper, Oct. 6, 2005.

[6] See, Id. (SCCJR's majority opinion was that: (1) the faculty-student ratio requirement be 1:15 or lower; (2) the threshold number of law professors be twenty or higher; and (3) the percentage of law professors with five or more years of practical experience be twenty percent or higher. Minority

Fourth, concerning for the anticipated high cost of professional law school education, the professional law schools should be capable of providing their students with financial aid.[1]

Fifth, SCCJR, considering Korean government's equal regional development policy, pointed out the necessity of regional balance between Seoul-metropolitan-area and non-Seoul-metropolitan-area in selecting universities. This factor has played a crucial role in selecting 25 universities for professional law schools.[2]

2. Number Limit on Law Students

According to the Proposals of the SCCJR, total number of first year students of professional law schools must be limited to the proper level.[3] In October 2007, the Ministry of Education and Human Resources Development set up the number to 2,000 students per year.[4]

When the Plan was made, SCCJR's majority opinion was that the number of applicants who pass NJE at the time of launching of professional law school will be the standard in deciding the total number of admitted law student. That would have meant approximately 1,200 students. Minority opinion was that total number of admitted student must be decided after the deliberation by the Minister of Education with Chairman of Court Administration Office, Minister of Justice, Chairman of

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opinion was that: (1) the faculty-student ratio requirement be 1:12 or lower; (2) the threshold number of professors be 25 or higher; and (3) the percentage of professors with 5 or more years of practical experience be 30% or higher); see also, law school doib hwakjung: 2007 nyun chutiIbhakshihum... eungshihoetssu jaehan [Law School Implementation Finalized], Donga Daily Newpaper, Oct. 5, 2004 (reporting on SCCJR's guideline for law school establishment standards); see also, bubjoin sunbal mundab puri [Questions Answered Regarding Selection of Lawyers], Donga Daily Newspaper, Oct. 5, 2004 (trying to give answers to some questions arising from the proposed plan).

[1] See SCCJR October Press release, supra note 11, at 9 (expressing its concern regarding anticipated cost of law school education); see also, bubjoin sunbal mundab puri [Questions Answered Regarding Selection of Lawyers], Donga Daily Newspaper, Oct. 5, 2004 (indicating that university's financial status is an important factor in determining eligibility for establishing professional law schools and that there are needs of balance in number of law schools between Seoul Metropolitan area and regional provinces); jaedo sunggong haryumyun [In Order for law school System to Succeed], Gukmin Daily Newspaper, Oct. 7, 2004.

[2] Based on the equal regional development policy, the Presidential Office disputed the legal education committee's exclusion of a few schools in southern provinces; this was one of the reasons why the official announcement of the twenty five law schools has been delayed until February 4, 2008. See, jiyeok-anbae [supporting the region -], Seoul Daily Newspaper, Feb. 2, 2008; Compromise sought over law school dispute, Korea Herald, Feb. 4, 2008.

[3] See, SCCJR October Press release, supra note 11, at 8 ("The number of students entering into law school should be limited to as an optimal number in order to use the nation's man power efficiently. It is desirable to maintain the appropriate level while taking into account the supply of legal manpower in the nation. In the first implementing stage, it is recommended by the majorities that the number of students entering into professional law school should be determined by considering the number of successful candidates of legal examination at that time. On the other hand, there is an argument by the minorities that such number should be maintained the optimal level whilst reflecting the supplying status of legal manpower. It is required to prepare a solution for the optimal determination of the number of students entering into professional law school in consultation with the chairman of court administration office, the chairman of the Korea Bar Association, the chairman of the Korea Law Professors' Association and other relevant person.").

[4] See, Editorial, Law School Quota of 2,000 is reasonable number, Hankook Daily Newpaper, Oct. 27, 2008 (insisting that the number of 2,000 is reasonable for law school quota in spite of opposition of many universities and civic groups).

Korean Bar Association, and Chairman of Korean Professors Association.

It was also suggested that the number of admitted students who have bachelor's degree from the same home university should be limited to the certain level for diversity and specialty in student body.[1]

Consideration for the Economically Weak, for example preparation of the scholarship, financial support by the government, has been regarded as important factor which was one of the requirements for approval to establish new professional law schools.[2]

The Korean Bar Association was of the opinion that the number of professional law school students – 80% of whom are expected to pass the bar examination – should not exceed 1,200 per year, whereas the law professors association and NGOs want more than 3,000 students per year.[3] Various aspects are hidden behind this conflict of numbers. The law professors think that being a professor in a professional law school is a privilege, because not all the universities will be qualified to open a professional law school. Observing the case of the US universities, most Korean universities have the general opinion that'a university with a professional law school is a good university', and if they fail to establish a professional law school, their reputation would be damaged. Most universities failed to establish professional law schools seem to have less interest in maintaining law colleges, because a law college would play only a role of a prerequisite educational institute[4] for professional law school entrance. The graduates from remaining law colleges in second tier universities would have less opportunity in the society if they have not attended a professional law school.

3. New Bar Examination and Practical Training

According to the recommendation of the SCCJR, the traditional National Judicial Examination should be replaced with new bar examination by 2013,[5] however the ministry of Justice decided to postpone this date to 2017. The qualification to take the bar examination is limited only to those who completed the professional law school's JD program. One who passes the bar exam must be trained in one's area of practice. The Judicial Research and Training Institute (JRTI) is no more requirement for all the successful applicants who pass the new bar examinations.[6]

4. Abolishment of Undergraduate Law Colleges

Universities establishing professional law schools must abolish their undergraduate law colleges. JRC did not give any explanation for this. However, we can find answers

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[1] However, the Legal Education Committee did not adopt this suggestion as standard for approval for professional law schools.

[2] See, Ministry of Education and Human Resources Development, boephakjeonmundaehakwon seonjeong mit pyeongkkakijun [standard for selection and evaluation of professional law school], § 5.5, (Oct. 30, 2007) (whether a professional law school has a sufficient scholarships program for the social and economic weak took up to 55 points out of the total of 1,000).

[3] See, SCCJR October Press release, supra note 11, at 8; see also, jeongwon 3000 myung doeya [Law School Student Quota Should Be 3000], Hangyure Daily Newspaper, Oct. 15, 2005 (stating that Universities and civic groups plead for 3,000 or above).

[4] Moreover, a law college will not be necessary prerequisite for professional law school entrance: To enter a professional law school one just need to finish the college education, regardless of the major. Studying law in undergraduate law college is not an advantage to enter a professional law school.

[5] SCCJR October Press release, supra note 11, at 9.

[6] See, Yim, supra note 8, at 269 (JRTI, however, will likely assume the role of training judges or prosecutors because it has historically focused on training public officials).

in political circumstances. First, it is to exclude academic clique policy that focuses on some undergraduate law program. It has been long criticized that alumni of some elite universities has made a clique which have brought negative effect on society.[1]

Second, easing the competition of high school students in the university entrance examination can be considered. The Ministry of Education and Human Resources announced that the dissolution of the undergraduate law program may lower the competition for the university entrance examination because many high school students want to major in law in undergraduate currently.

Third, if undergraduate law program remains in the same university with a professional law school, the university would be privileged too much. Therefore, law program in undergraduate must remain only in the universities that do not have professional law schools.

5. Application Process

SCCJR recommended that the admissions committee of a professional law school consider an applicant using the following criteria: (1) undergraduate academic record; (2) foreign language ability; (3) score on a professional law school Aptitude Examination; and (4) relevant work and/or community service experience.[2] It also urged that a professional law school maintain a balance between law majors and non-law majors in its student body, in order to promote diversity.[3]

C. Original Time Schedule

Classification	Procedures	Detailed Schedules
1st phase Making the Basic Plan Jan.~Sep. 2005	**1. Preparation of the Bill** -Preparation of the Draft(driving body) -Public Hearing -Laying the Bill to the Standing Committee -Laying the Bill to the National Congress	until Sep. 2005 Apr. 2005 May, 2005 Jun. 2005 Sep. 2005
	2. Preparation of the Approval Standard on the professional law school Establishment -Preparation of the Draft(driving body) -Public Hearing -Laying the Bill to the Standing Committee -Laying the Bill to the State Council	until Sep. 2005 Apr.2005 May, 2005 Jun. 2005 Sep. 2005
	3. Budget necessary Examined	until Dec. 2005

[1] For the relationship between Legal Education and elite groups in Japan, see, Setsuo Miyazawa with Hiroshi Otsuka, Legal Education and Reproduction of the Elite in Japan, 1 Asian-Pac. L. & Pol'y J. 2 (2000), available at http://www.hawaii.edu/aplpj/.

[2] See, SCCJR October Press release, supra note 11, at 8 (listing suggestions for law school admission standards).

[3] See Id. (mentioning that ratio between law college graduates and others may be regulated).

2nd phase Establishment Approval Oct. 2005~Dec. 2006	**1. Composition of the Judicial Education Committee**	Oct. 2005
	2. Preparation of the detailed Review for Approval	Nov. 2005
	3. Decision of the Total Number of professional law school Students	Dec. 2005
	4. Approval	Oct. 2006
	-Receipt of Approval Application (On-site investigation etc.)	Mar.-Jun. 2006
	-Approval confirmed	Jul.-Oct. 2006
	5. Preparation of Aptitude test Enforcement	2006-2007
	6. Preparation of Introduction of Attorney Qualification Test	2006
3rd phase Making the Operation Circumstances Jan.2007-2008	**1. Preparation for Enforcement of Entrance Aptitude test**	2007
	2. Education Course Development by University	2007-2008
	3. Preparation for Establishment of Ex Post Facto Approval Estimation Institutiion	2007-2008

D. Delay of Enforcement

On January 18, 2005 the Presidential Committee on Judicial Reform (PCJR) was established as an executive branch of advisory body to promote the comprehensive and systematic implementation of specific judicial reform proposals that were presented to the President at the end of 2004.

After drafting final version of the bill, PCJR introduced it to the Korean National Assembly in September 2005.[1] The bill announced that the professional law school selection process was to be completed between mid-2006 and late-2006.[2] However the continued debate over the total number of admitted students for the new professional law schools led the government to delay the opening of the new schools for one year.[3]

In July 2007, the National Assembly finally approved "the bill to establish and maintain professional law schools."

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[1] law school doib hwakjung: 2007 nyun chutiIbhakshihum... eungshihoetssu jaehan [Law School Implementation Finalized], Donga Daily Newspaper, Oct. 5, 2004; law school 2006 nyun sam-wol shincheong jeobsu, [law school establishment application will be accepted from March 2006], Donga Daily Newpaper, Feb. 23, 2005.

[2] law school 2006 nyun sam-wol shincheong jeobsu, [law school establishment application will be accepted from March 2006], Donga Daily Newspaper, Feb. 23, 2005.

[3] Law School Measures Stir Controversy: Universities Oppose Panel's Decision to Limit Number of Students, Korea Herald, Apr. 22, 2005.

III. Challenges for New Law Schools

A. Achievement of the new system of law schools

After the 2009 reform, only those who successfully graduate from one of the 25 professional law schools can take the new bar examination. Also, they can only take the examination five times, and must do so within the first five years after graduation. If a candidate cannot pass the new bar examination during this period, there would be no more chance to take the Korean bar examination again.

The new bar examination takes place in January and consists of a multiple-choice examination and essay examination. Those who pass the new examination don't need to enroll in the JRTI for two years of practical training, and receive the lawyers' licenses right after they pass, however to open their own legal practice, they should have been trained by a senior lawyer for at least six months.

The new law school system was proposed as part of the judicial reform proposal to increase the role of the courts and add to the number of lawyers to support such an expanded judiciary.

Even though there are criticisms against establishing law schools as professional graduate schools, following the American model, they do provide the overriding benefit of allowing students with various backgrounds to receive professional legal education. The new law schools have been praised for successfully introducing this unique opportunity. Moreover, the probability of passing the new bar examination has increased substantially and those who studied non-law subjects at universities are more likely to pass. This system will produce a substantial number of lawyers with extensive knowledge in non-law subjects, a great achievement.

B. Limiting the Number of Applicants Who Can Pass the New Bar Examination

The problem is that the number of people who are allowed to pass the bar examination is pre-determined by the Ministry of Justice rather than by the market. Even though the purpose of the bar examination is to determine whether a particular applicant is qualified enough to practice law or not, the Ministry of Justice wants to restrict and control the number of successful candidates. If the number of persons who can pass the bar examination is already set in advance, the bar exam is no more a qualifying test for lawyers. This standard has to be changed.

C. Pass Rate and Law School Education

Low pass rate and high competition for bar examination influence law school education tremendously. Since law schools and students constantly worry about passing the bar examination, they tend to focus only on subjects which are necessary for the examination. Law school may want to provide less subjects related legal theory, jurisprudence or special fields, and concentrate in teaching core bar exam subjects, following interests of their students. Students may tend to focus on solving the examination problem and only pay attention to case summary and legal framework but ignore the underlying facts or division of opinions inside the court. They may also neglect theoretical or critical analysis of the cases.

The numerical cap set by the Ministry of Justice and the low pass rates can have extremely negative impact. Lower pass rate than now would worsen the situation. The numerical cap on the number of persons who can pass the bar examination should be removed.

The bar examination should only be used to determine basic competence and the market should decide whether a lawyer is better than the others.

D. Educating Future Scholars

Because the top 25 universities with professional law schools should abolish their law colleges, the question arises where legal scholars should be educated. Japan does not have this problem because there was no such a requirement for Japanese law schools to close their traditional law program. So in Japan, the scholars are being educated in the academic curriculum of their traditional graduate program administered by law colleges[1]. Professional law school was just added to this traditional program.

The situation is totally different in Korea. Because all 25 leading law colleges will be transformed into professional law schools, the question arises as whether which university in Korea is responsible for educating legal scholars[2]. Out of this concern, every 25 university qualified to establish a professional law school is likely to open a doctoral program in its law school dissolving not only undergraduate law colleges but also graduate law programs in their graduate schools[3]. However, it is questionable whether new Korean law schools will be able to successfully carry out these two different obligations: educating legal practitioners and legal scholars.

Conclusion

Korean legal education system is clearly in transition. It sets ambiguous goals to expand the core of legal profession, both in numbers and its capacity to cope with modern legal practice domestically and internationally. Yet, there are many obstacles to overcome. Based on low pass rate, new Japanese law schools have been criticized that they are in danger to become cram schools for bar examination preparation.

To avoid this problem, Korean government has restricted the total number of students to 2,000 in only 25 professional law schools nationwide. As a result, the pass rate reached 87.1% in the first bar examination, and 75.1% in the second one this year. It is crucial for the success of legal education reform that the Korean government keep up with high pass rate. The result of the second bar examination with the lower pass rate makes foreseeable a more severe competition among these 25 professional law schools, such that these institutions would be under stronger pressure to become cram schools for bar examination preparation.

There are many people who worry about a huge influx of lawyers and the declining quality of practitioners. Nevertheless, since the bar examination is designed to evaluate whether one has the minimum legal knowledge and skills rather than the relative amount one possesses compared to other candidates, there should be no arbitrary limit on the number of people who can pass the bar examination.

This means that a significant number of new lawyers may have a hard time finding law firms that would hire them. Even if too many candidates pass the bar examina-

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[1] Japan seems never to give up its traditional legal education; it just added new program of "Professional Law School" on the former legal education system. Therefore, in many universities, including University of Tokyo, the professional law schools are not separated from the law college; professional law school program is just one of many graduates programs in the law college.

[2] Remaining law colleges in the universities disqualified for law school approval may not be eligible to fulfill this obligation. Disqualification for law school badly affects their reputations and academic program, and, thus, their alumni's academic achievements are hard to get recognition from the society.

[3] Under the Korean graduate schools system, law is one of the majors in'general graduate school' (ilban-daehakwon) which is officially not a part of college of law. Condition to dissolve the undergraduate law college does not technically affect graduate law program in general graduate school.

tion and become lawyers, it is up to the market to decide how many lawyers society needs. It is absurd to limit the number of lawyers in an effort to prevent excessive competition.

The legal education reform in Korea seems to be able to deal with many imperfections of the traditional NJE scheme effectively. Whether the reform's implementation will produce intended results, however, remains to be seen.

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РОЛЬ КОНСТИТУЦИИ В ПОЛИТИКО-ПРАВОВОМ ОБУСТРОЙСТВЕ РОССИИ: ИСХОДНЫЕ ОБСТОЯТЕЛЬСТВА И ПЕРСПЕКТИВЫ

Нынешняя российская Конституция достигла возраста 20 лет. И хотя её текст не остался незыблемым, изменения не имели принципиального характера. Необходимо осмотреться и оценить то, что сделано и соотнести отечественное конституционное движение с тем, что известно по опыту других народов. Важно опираться на ясные и проверяемые критерии, среди которых существенными представляются содержательно-исторический, структурно-формальный, генетический и подобные им.

В части содержания, обусловленного историческим временем, наша Конституция является актом третьего, последнего поколения, в разряде постсоциалистических конституций. Конституции послевоенного времени образовали третье поколение, представленное в обширных, торжественных, хорошо составленных законодательных текстах, когда конституционные стандарты стали ясными, а доставшийся от прошлого опыт – убедительным в позитивном и в отрицательном смыслах. В классификации по структурно-формальному признаку наша Конституция занимает вполне определенное место. Большинство современных конституций устроены так, что формообразующую роль в их строении выполняет основной закон, в котором собраны главные конституционные правоположения. Генетически (по происхождению) конституции различаются на оригинальные и заимствованные. Оригинальны конституции тех стран, которые эволюционным и естественным для себя путем освоили набор правил, известный теперь как конституция. Другим странам конституционное право досталось в заимствованиях. Они развивали государственность по иному, нежели конституционный, пути. Определяя место нашей Конституции, позволительно утверждать, что её текст представляет собой результат умного, но всё же заимствования. Почти всё известное нам теперь по отечественному

конституционному праву вошло в оборот на Западе задолго до написания действующей российской Конституции.

С принятием Конституции РФ выполнена самая простая часть работы по освоению конституционного права. Но само по себе конституционное законодательство, даже хорошего качества, не дает конституционному праву верной опоры. Конституцию образует общность действующих правоположений, основанный на верховенстве права и на правах личности политический строй, а не основной закон, искусно написанный. Сила конституции кроется не столько в букве и в рассуждениях о её духе, сколько в последовательном восприятии её ценностей и неукоснительном следовании им.

Ключевые слова: Конституция, государственность, конституционные стандарты

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THE ROLE OF THE CONSTITUTION IN THE DEVELOPMENT OF THE RUSSIAN POLITICAL AND LEGAL SYSTEMS: INITIAL CONDITIONS AND PROSPECTS

The current Russian Constitution has reached a significant age. Although the wording did not remain totally original, the amendments of some provisions did not have principal nature and did not relate to the essence of the Russian constitutionalism. The attempt to have a look and assess what has been done and what has been left for the future is timed to coincide with the 20 years anniversary of the Russian Constitution and is the right step to greater understanding of the development of Russia's institutions. It is important to rely upon clear and verifiable criteria: historical background, structural/formal, genetic (in the sense of origin) and the like.

Regarding the background that is conditioned by the historical period of the written constitutions, our Constitution is among the acts of the third and the latest generation, last in row of the post-Socialist constitutions. Post-warconstitutions formed in the third generation are represented by long, sometimes solemn yet well-worded legislative texts written when constitutional standards became clear and when past experience was necessary in evaluating positive and negative aspects of previous writings. In the structural/formal classification, our Constitution occupies a certain place. Most modern constitutions are worded in such a way that the key role in their structure is played by the Basic Law, which puts together the basic constitutional provisions. Genetically, i.e., by origin, constitutions are divided into original and borrowed. Original constitutions are constitutions of the countries which have utilized a number of rules in an evolutionary and natural manner. Other countries, then, borrowed the constitutional law as a model for their own constitutions. They were developing state-building in other ways rather than by constitutional mechanisms.

The Russian Constitution is the result of borrowing- quite smart borrowing and not at all mechanical, but still, borrowed it remained. No constitution engineering itself is unable to guarantee the success of democracy and constitutionalism. Constitution is established first of all by *valid* provisions, a political regime based on the supremacy of law and individual rights and not by a skillfully written basic law.

Key words: Constitution, statehood and constitutional standards.

The current Russian Constitution, legitimizing the current national political and legal systems, has reached a significant age. Surely, 20 years for the Basic Law is not a great amount of time, yet it is not a short amount of time either, taking into consideration rather less favorable and shorter lives of many other constitutional acts. That success is especially impressive in the midst of our legislative enthusiasm (if not to say, legislative fever) when in the improvement of laws or in their faults, the essence of possible hopes and failures is unleashed and the object of these expectancies and worries is thoroughly evaluated. In such circumstances, it is not possible to simply keep the Constitution unchanged, a recognition that is a a great achievement already. Although the wording did not remain totally original, it may hardly be admitted that the amendments of some provisions initiated by the President of the Russian Federation in December 2008 (in connection with the term of office of head of state and Parliament's lower chamber and the hearing by the State Duma of Government's annual reports on work results) did not have an innovative l nature and did not relate to the essence of Russian constitutionalism.

The coming anniversary, greeted without pathos and exclamations (upon cancellation of the related national holiday) is giving hope for the future of the constitutional safety.. Happy agitation, and occasional aggravation, as a response to the constitution are not the best sentiments to adhere to in bringing up the constitution in day to day basis[1] [1]. Tained by such polar-opposite sentiment, achievements and failures are seen as extraordinary and illusions due to impatience for visible progress put too much bad pressure on the development of constitutional matters. A calm look over the authentic situation concerning our Constitution is much more useful, together with a rational approach that seeks the instruments offered by it to the citizens and authorities in settlement of any life, politics, administrative matters and conflicts. Americans, including the Founding Fathers of the USA Constitution, felt little hope for the justice and happiness that would emanate from their new constitution and had to first experience a fragile structure with an uncertain future, but, pragmatically meeting the risks head-on, were able to keepi the constitutional faith through many challenges. In the end, it finally got the political regime which now seems s strong and sustainable. That restraint and insistence, gradual reliance upon constitutional rules and implicit adherence to them made a much greater contribution to the constitutional construction in America than the various technical, legislative solutions that that were not quite inventive and effective in American constitutional law.

The attempt to have a look and assess what has been done and what has been left for a future time to coincide with the 20th' anniversary of the Russian Constitution is necessity. Here, it is essential to compare the national constitutional movement

[1] Subject to the total acceptance of Constitution, overall acknowledgment of the constitutional law, its becoming a national tradition will require a lot of efforts and time to make the basics/principles declared by the Constitution be a natural part of the Russian nation's life.

with that of the other nations. A number of comparisons of the Russian Federation's Constitution with otherforeign constitutionalswill contribute to the correct understanding and orientation in the Russian constitutional space [2].

In such study, it is desirable to restrain from making comparisons by effective and showy criteria, following any biased mood, and engaging in metaphoric classifications like dividing constitutions into written and unwritten, flexible and stiff, instrumental and social [3]. What is the need to determine the Russian Constitution as written? For some time, Americans and French enjoyed the feeling of arrogant supremacy over England by contrasting a written Constitution with an unwritten one, feeling supremacy like maturing children feel over ageing parents, or a winner feelsover a defeated enemy, seeking to find merits in perceived advantages that are nonexistent. Given such judgments, classifications appear vague and inconsistent, dominated by ambitions rather than truth. Those times have past and Russia should hardly join the young (and groundless, as proven later) boasting of Americans and French of the 18th century, explaining the advantages of their written Constitution as distinct from *faulty* unwritten one, i.e., English. Generally, the British Constitution may not be called unwritten, given that a large part of its provisions is documented in statutory (written) law. On the other hand, following the principle of dividing constitutions into written and unwritten it may be asserted that the American, the Canadian and a number of other Constitutions have a lot of reasons to be deemed unwritten, as many of their constitutional provisions are fixed in unwritten case law (*Constitution is what judges say about it*) and constitutional conventions (customs and agreements).

It is important to rely upon clear and verifiable criteria, including: historical background, structural/formal typology, genetic basis (in the sense of origin) and the like.

Regarding the background conditioned by the historical period when constitutions appear, our Constitution is among the acts of the third and the latest generation, in the lastrow of post-Socialist constitutions. Historical circumstances of constitutional appearance, such as whether it is its own or borrowed, as well as the political and legal experience of the nations, their lawyers and legislators puts a particular brand of seal on each generation. In the distribution of constitutions by generations, the time criterion has an influential but not the main influence while the content difference is more foretelling. Sometimes constitutional institutions seem to be far ahead of their time. For example, the impact of the American constitutional on American way of life that is based in freedom and justice took over one hundred years to become an example for other countries. Yet, nations still took an old-fashioned and outdated constitution. A good example is when Finland, following independence, continued using the old Swedish constitution, despite being in a new century of ideas and solutions. Out of the first generation, characterized by the early 17th century and terminating at the turn of 19th and 20th centuries, a significant number of constitutions were enacted: part of the British Constitution, the French Declaration of Rights and Liberties of Man and the Citizen of 1789, the Constitutions of Canada, the Constitution of the USA and a few more. Constitutionalism was at that time a new and brave initiative with very few operating institutions that we know now, but it did addressjustice, forms of political liability of governments to parliaments freedom of conscience, social rights, and more. During this time, understandable caution in plans and expectations of the constitution was causing political neutrality, moderating the language of those constitutions and escaping from handling any promises and programs burdensome

for the state. This is mainly why many of them were in effect for so long, giving no reason of discontent for any parties.

The second generation of constitutions was formed before WWII, when constitutionalism was suffering greatly in the atmosphere of socialist, nationalist and democratic enthusiasm, as well as inevitably heavy disappointments. People, especially in the European continent, were either acclaiming the constitutional law with social optimism or were decisively rejecting it due to gradual identification with ideology of communist, national-socialism, fascism, and authoritarianism. Surely, from the technical point of view, the constitutional law had undergone great development. The whole number of institutions, even those that were unknown and lacked in visibility were greatly impacted by constitutional law and its values that are currently accepted as a standard. The Weimar Constitution, written by Prof. Hugo Preuss and adopted by Germany in 1919, became a distinguished example. In that constitution, religious tolerance was replaced by freedom of conscience, and liberalism by social state. However, it is erroneous to think that the technical achievements of the second constitutional generation were the most educative. Social hopes as well as the political situation of growing socialism and the threat of communism became the catalysts towards seeking improvement of the degrading start-building and changing political regime., under wh It was in Germany where a social state or *creeping* or *cold* socialism [4], as called by F.A. Hayek, deteriorated into a national-socialist state.

The post-war period formed the third generation constitutions. The structure and the diversity of interests subject to approval and settlement on the constitutional basics led to better-established institutions in the past, mainly during the time of the first generation constitutions. The new constitutional provisions were structured in the context of the lessons of caution learned in the first decades after WWII, although that empathy is weakening now. Nevertheless, modern constitutions, including the Russian, often gratify social squander and so called social rights, but do not offer any legally strict liabilities in that sense. Troubles inherited by the constitutions of the second generation probably convinced many that the basis and the chief participant of the constitutional legal order is not to be a passive citizen, whose needs are taken care of by the regime, but rather, a free individual who relies on himself/herself and on strict principles of just action. The Anglo-Saxons from various parts of the world, who did not follow the promises of social state-building, kept this faith in individualism, suspicion of authority, and proved to be able to hold civil responsibility, a case that was very distinct from the continental Europe. There, in order to remain within the constitutional legal order, a lot has to be done to shift the social state principles toward true constitutionalism. Declaring, say, the right to labor, a constitution of the third generation guarantees liberal freedom from forced labor and the right to choose a profession with fair remuneration for work with little assistance from the state authorities, but does not pledge overall employment, so that expectations of work and salary of any job applicant would be met on situational basis..

Surely, the constitutional texts of the latest generation were made by using the basic law's form, except for the case of Israel, whose structure and content are becoming greatly similar. The time has come when experience itself is interfering in making bold and original basic law or one that is vastly experimental and innovative but would ultimately be discarded for lack of quality.. In the meantime, no one can guarantee even in this day and age against the appearance of constitutional acts made out of pressures of a passing fad or out of light-mindedness and over-excitement,.

In general, the Russian Constitution has managed to avoid such faults. It is written rather moderately and technically, capacious when appropriate, quite attentive not to deny public expectations, and careful not to give much support to the dependency and collectivism principles of the social-state. Like many post-socialist countries, Russia was initially approaching constitutionalism through the amendments to the previous Basic Law, changing the socialist content to fit the constitutional content and adding separate constitutional acts. However, rather soon, sooner than, say, Poland or Hungary, it managed to develop a modern constitution of European type, and its quality is not the worst of the post-socialist states. That stipulation deserves some more attention, because, as opposed to Hungary*, Russia, at least in wording its Constitution, had not been blamed for restricting any fundamental personal values.

In the structural/formal classification, our Constitution occupies a certain place. Most modern constitutions are worded in such a way that the key role in their structure is characterized by the Basic Law which, as stated, holds together the basic constitutional provisions. However, no constitution may do with only one basic law, even if it is worded very verbosely. Basic Law should be developed by other parameters of law in a combination with aspects of history and tradition; such laws include statutory law, case law, parliamentary custom law, etc. A Constitution may include amendments, formally contained alongside the basic law, as is the case in the USA, or in separate constitutional laws like in Czech Republic. It can also include federative treaties like in the United States and Mexico or in other legal acts (charts, pacts, etc.) such as in Russia.

Constitutions are structurally represented by a series of constitutional laws, so that the constitution does not become the basic law as is the case in Israel, Canada, Austria and Sweden. Let us remember again the classification of constitutions into written and unwritten. Should we classify the Israeli or the Austrian Constitutions as unwritten if they are deprived of the basic law form, or should they be deemed written if they are represented in statutory laws? Then the view of basic law is losing grounds as the key feature of written constitution. What is the manner in which we can distinguish written constitutions from unwritten constitutions? Is not it more correct to leave that classification aside as having no reasonable basis or usefulness?

Finally, the United Kingdom – *homeland of the constitutional institutions* – almost singularly, together with New Zealand, does not wish to give its constitution the form deliberately fit for it and the structure allowing it to formally be placed in the middle of the national legal system. Lord Palmerstone ironically promised to award the person who will bring him a copy of the English constitution. The wise Englishman did not risk his gambling his money, allegedly knowing that there is no separate constitutional statute in the UK. That leaves us a rather spectacular example illustrating thatthe constitution and the basic law are not the same thing. Indeed, the basic law is just a form (not always constitutional by content) and a single edition of the basic law will not create a constitution. Rather, constitution is not a regulation of a supreme legal effect but rather a way of life, the sum of rules reflecting societal values but not having any coherent content. In this respect, a regime based on civil freedom rules with the governance of law, which is created and nourished by national solidarity[1] [5].

[1] As V. Sinkyavichyus fairly opines, the text of a constitution is an initial point for opening the true sense and content of constitutional regulation.

Genetically, i.e., by origin, constitutions are divided into original and borrowed. Original constitutions are characterized as the constitutions of countries which have utilized a number of principles based on individual values in an evolutionary and natural manner, producing constitutional law as the basis of protection of its society. Countries and nations with an original constitution rely solely on their own experiences and on local legal material to craft their principles of govenance, although they surely are influenced by common constitutional. England, France, Germany, Netherlands, Switzerland, Scandinavia, the USA, jointly or separately, were all involved in original constitution-building. Those are all nations of the West that mainly follow the protestant branch of Christianity and that are of Germanic origin (hardly Celtic, Slavic, Semitic or Turkic) – the descendants of Anglo-Saxons, Franks, Normans and others and jointly called Teutons long ago.

Other countries borrowed the constitutional law model. They were developing state-building in other ways than constitutional (influenced by Confucianism, Islam, Catholic absolutism, Orthodox Byzantine Christianity, and socialism) or did not even attempt to begin to develop state-building. Constitutions were borrowed in various circumstances. Distancing ourselves from particularities, it is possible to specify the two core ways it was borrowed: by transfer of the constitutional culture by its bearers and Western constitutional *pressure* which, along with the industrial, financial, military technologies ensured the delivery of constitutional material to the countries initially lacking fundamental rights, law of governance and restriction of the power of authorities. Transfer of constitutional material outside the original (West-European) oasis of constitutional tradition is observed in the examples of venturesome Europeans, mainly Anglo-Saxons, who colonized new areas, clearing them in a variety of ways, to fit their economic, religious and cultural way of living in the new territories. Transfer of constitutional material by *bearers* of Western, capitalist and Protestant (mainly Calvinist) culture, led to the implementation of borrowed material in a very admirable way, evidenced by Canada, Australia and New Zealand. The progress of European Catholics (Portuguese and Spanish) in the transfer of constitutionalism to the new areas is rather less impressive.

Pressure definitely meets viscous latent or direct and sharp resistance in the nations that were unable to be depopulated, demoralized or deprived of political ambitions. Those nations suffered military, political, economic and moral losses that in some way or other gave rise to the modern countries of the West.

Some borrowers of the constitutional material felt affinity and a strong bond with the experiences of a certain state, and those became the cases of integral, wholescale borrowings. Such cases are rare, and none of them may be listed as an absolute example. In this respect,, Australian or Canadian borrowings are just consistent reproductions of the British constitutional materials, but are characterized by unique additions, as England did not offer its dominions federalism or the experience of publishing the basic law. Those supplements were obtained by Australia and Canada as borrowings from the American constitutional model. Here, we can also mention the almost completely repeated wording of the French constitution adapted by Cote-d'Ivoire Republic, as well as the influence of the US constitutional law on Latin American constitutions and the present Japanese constitution, while its foregoer – the Meiji era constitution – had clear German influence.

We should not forget that in the Islamic countries especially any borrowing of constitutions as basic, supreme laws often had formal, imitative and decorative na-

ture and was not directly aimed at the adaptation of those constitutional ideas to the reality of the Islamic world.

Therefore, the adaption of constitutions in Iran, Kuwait, Saudi Arabia and of other constitutional acts of borrowing in various Islamic states did not lead to separation from the Sharia law. Although law literature sometimes states that such legal sources like the Cairo Declaration of Human Rights (1990) or the Basic Law of Saudi Arabia (1992) consistently reflect the constitutional ideas of human rights rather than the values typical of Islamic culture [6], it still remains undisputed that the legal documents did not help establish constitutionalism or constitutional law in traditionally Muslim countries and that does not allow speaking about them in full.

It is still rare to use the constitutional doctrine in some rare cases such as those, of the socialist countries. To prove that, it is enough to examine the Socialist Constitution of the PDRK (established in 1972 and amended in 2009), which establishes North Korea as a sovereign, socialist state representing the interests of its Korean nation and relies on ideological and political unity based on the union of workers and peasants led by the proletariat, the socialist production relations and self-reliant national economy. Meantime, even in spite of the fact that communism is not mentioned in the text of the Constitution, *Juche* (self-reliance) and *Songun* (army's priority) ideology remains the fundamental basis of the PDRK. It is clear that in such circumstances, the PRDK's Constitution has little in common with the constitutional tradition, principally contradicting it, and therefore may not be deemed as an authentic constitution constitution.

Meantime, if we look at the experience of South Korea, which due to understandable political reasons, was deemed as a suitable case-study to demonstrate the advantages of market economy and sustainability of the Western democratic values throughthe borrowing of such constitutional institutions like priority of human rights and freedoms, separation of powers, multi-party system, specialized court constitution control, etc. Its experience has been a lot more organic than that of North Korea. Furthermore, in some ways, South Korean constitutionalism is developing a long-standing deference to the Constitution and to the rules which established it. For example, it included a clause in the Constitution about the impossibility for any acting President to be elected for a second term, which is not typical for presidential republics [7]. Without any thoughtful suppositions, we can note that the density of the Protestant population in South Korea is rather high now, with the presence of communities of Calvinists (Presbyterians) and Methodists exceeding 20 % of the total population and covering an extensive part of the land as well as most affluent parts of the country. Here, we can connect this scenario with the earlier discussion about the constitutional history and influence of European Protestants that were the decisive economic, moral and political minority in Europe.

Defining the place of our Russian Constitution in the context of such constitutional variations, it is acceptable to state that its text is the result of borrowing. Speaking about the constitutional material used as a model for the constitution, especially concerning the constitutional law institutions and constitutional state-building, it is fairly apparent to discern that almost everything known to us in the national constitutional law became Western practice long before the writing of the current Russian Constitution.

Should Russia be regarded as a participant of the constitutional tradition [9], whereby it develops its logics and contributes to newest trends of constitutionalism

is of, another matter. Is our Constitution original or was Russia forced to join world constitutionalism? Had it been written in a time and place when West's leadership would not dominate, would Russia develop in another state and legal tradition? That is not only an abstract musing and the reply should be sought not only out of interest. We consider that only possessing an original (by origin) constitution or a constitution established with the transfer of the whole culture breeding constitutionalism. However, this trend has exceptions, for example, the national-socialist, authoritarian and other alternatives in recent life of Eastern Europe's nations). Forced constitutionalism promises a rather "hard life" of that Constitution, and the risk of failure, especially along with weakening pressure and growing development of the country which was forced to join the world of constitutionalism. Maintaining such constitutionalism requires special political savvy and flexibility to not only remain loyal to the constitutional fate like Americans and Englishmen, but to break the traditional fate and establish a unique blueprint a new constitution. Even if the constitutional tradition is not deemed a strange and forced legal thing, it is still impossible to avoid the fact that in the national political and legal sphere, plenty is brought into a systematic incompliance or a direct contradiction with the constitution law.

Summarizing the edifying sense from the suggested contrasts, we can surely say that upon the adoption of the Constitution of the Russian Federation, the simplest part of work on establishment of the constitutional law was done. Our Constitution's fate seems rather favorable, because in many aspects, the legislative task was fulfilled quite successfully, both with inspiration that is essential, and with the framework of examining the world experience in the context of the third generation constitutions.

Yet, the constitutional legislature itself, even though of good quality, does not give sufficient support to the constitutional law. Strange as it may seem, the countries successful in constitutionalism practice are not the main suppliers of brilliant inventions in the constitutional law. They greatly adherence to often old and imperfect rules, while the creators of distinguished samples of the constitutional legislative techniques are busy with the aspects of constitutional law-making, oftentimes neglecting the constitutional legal discipline, civil freedoms and legitimacy. First of all, a constitution is established by *valid* provisions of known quality, a political regime based on the supremacy of law and individual rights but not a skillfully written basic law. American colonies, not yet becoming states, would establish constitutional charts, which, strictly speaking, could not be called basic laws, an example being a chart established by a special patent of Pennsylvania's private owner. However, the charts can be considered early constitutions. Any basic law is just a present form, a common shell of a constitution, very important but not mandatory in essence. Establishment of formalities alone without a constitution's striking root in the society cannot promise a clear future, while the constitution which has already been established may stay without any basic law. However, in societies like Russia, which spent most of their history outside of the constitutional tradition and did not have time to gradually grow within their own culture, the basic law provides the required foundation.

Russia might be unable or might not wish to adopt the full scope of constitutional standards (which is the same). It is possible that striving to do that is a task too costly and fraught with loss. The culture of Teuton Protestants, which provided the grounds for many constitutions is rather different from the Russian culture (and most other cultures), whose violent transformation will be quite expensive. Direct imitation is a wrong way to establish constitutional way of life and its expenditures are seen here

and there. The Russian constitutional law is already suffering from the attempts to establish federalism instead of a unitary state with national autonomies and to establish local administration, instead of municipal decentralization, in order to put individual freedom on top of all values. And an inevitable shift from the declared intentions is treason to constitutional democracy or a shift towards authoritarian centralism, which undermines the principles of a constitution.

Anyway, although not totally by its own initiative, Russia stepped off that path and may have escaped suffering any damage. First of all, our country is not in isolation, and no one will liberate it from the international affairs under the rules determined by leading nations, for which a constitution is the true essence of a free life. Secondly, constitutional tradition has created and has offered a lot of institutions, legal forms and solutions, which are obviously useful and definitely should be applied and developed in Russia.

Besides due caution and useful right to *Do no harm,* constitutional development needs to focus on a more practical task – to ensure to the Constitution of the Russian Federation long-term immunity and to avoid temptation of engaging in rushed improvements. The matter at hand is not that our Constitution personalizes perfection and gives no reason for discussion on constitutional improvements. There are no ideal constitutional legislative acts and there can be none, due not only to legislative faults but also to the difference of public interests, which is always too great, so that no one legislative text would be equally fit for everyone at any time. Serious reasons for blaming the principles of a constitution will always be found. They, however, should not be allowed to be influential.

For the constitution's sake (and mostly for Russia's benefit) it important to have something fundamental enough to be perceived not only as a human creation but rather as a product of history and would thereby enjoy internal dignity, like, for example, Russian Orthodox Christianity. If constitution law order would receive anything similar in strength, its prospects would give more firmness. Therefore, the Constitution should better exist without any drastic changes and even without frequent improvements as long as possible, in order to let time accomplish the tasks which cannot be achieved by any human will, even the most rational and decisive.. Then, the Constitution may become not just a recognized legal act but the source of unshakable, governmental legitimacy. An unchangeable Constitution would also help put out dangerous, legislative fever. The continuous wishes to improve laws is developing legal carelessness and is developed itself from the irresponsibleness of a special kind when people do not accept the hard work to respect the available and not quite fit rules but are ready to explain own lack of success and impatient negligence by imperfect *legislative basis* or faults of *legal terrain*. Legislative arrogance does not allow legal confidence to grow, and it is only possible if people do not regard rules as free will objects but imagine the basic rules as a continuous force, faceless (unbiased) in essence, unreachable by the abuse of power.

If we think abstractly, meaning solely the interests of the constitutional future, and assume that Russia has nothing more precious than the Constitution, we should, much to the annoyance of a great number of citizens, make an unpleasant assessment that *slow* development of the constitutional law is the only way to establish a Constitution – the constitution law itself. It cannot be established without gradual evolution. In discordance with the Program of CPSU promising to build communism before the advent of 21st century, we may note that many of the present Russian

citizens will not fully live under constitutional rules of a legal order and if they will, they will be observers and contemporaries but not active participants and beneficiaries of the constitutional development. In essence, every constitution has never been a list of rules equally suitable for all. So far, in constitutional societies, the benefits and burdens of civil freedom, legal equality and supremacy of law are available not equally and not to everyone but to a part of population that is expanding gradually but steadily. It is useful to know beforehand that that if Russia has to remain on the constitutional path it selected, the Russian constitutional fate will not develop by itself. Risks and losses cannot be avoided and many people will participate in the constitutional discourse for a long time to come, yet many will not.

How skeptical it would not be, the aforesaid is more correct than groundless optimism in the lights of which is it impossible to see obstacles and dangers, unavoidable in the constitutional fate especially at early stages. Moderate assessments and cautious expectations may disappoint only those who feel only idle hopes and uncertain dreams of a notion of providing a *good life of everyone*. Breaking such carelessness is not a great loss for constitutionalism. Constitution is able to be created and supported by deep implicit and calm faith in the fairness of its rules and cannot be affected by expected risks and hard work. In that sense, the point specified by P. Leyland [9] can hardly be ignored: perception of constitutionalism is not an event in connection with adoption or review of the Basic Law but a long and quite complex process of constitutional order development, which, due to its nature, may be only continuous.

No constitutional engineering itself is able to guarantee the success of democracy and constitutionalism. It is essential to clearly recognize that the power of a constitution is not in its language and abstract philosophy, but rather, in the consistent emphasis of its values and their strict observance, even when it brings no short-term benefit. No constitution can represent its provisions and actively protect them without the support of its nation.

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ПРЕСТУПЛЕНИЯ НЕНАВИСТИ В АМЕРИКАНСКОМ УГОЛОВНОМ ПРАВЕ

Статья посвящена преступлениям ненависти в американском уголовном праве. Рассматриваются понятия преступлений ненависти; особенности их конструирования в федеральном уголовном законодательстве и законодательстве штатов; конституционные и социально-правовые вопросы, возникающие в связи с ними. Особенность преступлений ненависти как правовой дефиниции заключается в том, что она основана на оценке мотивов совершающего преступления лица, которое руководствуется своим личным внутренним отношением к определенной социальной группе по признаку расы, национальности, пола, религиозной принадлежности. Право США столкнулось с этим видом преступлений задолго до того, как ряд аналогичных составов был введен в УК РФ, соответственно опыт США в криминализации преступлений ненависти и сложившаяся судебная практика представляют определенный интерес для российского законодателя. В связи с этим авторы статьи рассматривают преступления ненависти в проекции законодательства США, законодательства ряда штатов, отличающихся наиболее обширной практикой применения этого раздела уголовного права, а также ряд прецедентов, оказавших максимальное влияние на развитие изучаемых составов преступления. В том числе проанализированы уголовные законы штатов Калифорния, Вирджиния, Висконсин, Вермонт, Северная Каролина, Нью-Йорк, прецеденты по делам Wisconsin v. Mitchell, R.A.V. v. St. Paul, UnitedStates v. Maybee, Virginia v. Black, политические реакции органов власти на принятые судебные решения, мнения ученых. Проведены параллели с Конституцией США, изучено соотношение преступлений ненависти и основополагающих конституционных прав человека, в том числе права на свободу слова. Рассмотрение преступлений ненависти проведено по трем направлениям: преступления ненависти как насильственные действия, продиктованные экстремистскими мотивами ненависти и предубеждения против определенных социальных признаков потерпевшего,»символические» преступления ненависти, при которых оскорбление и унижение причиняется использованием символа с экстремистским значением и преступление ненависти как выражение внутреннего убеждения человека, его этических и моральных категорий. Особое внимание уделено разграничению последнего явления без совершения преступных действий и мотива совершения преступления, а также их влияние на определение виновности и наказуемости деяния,

а также на степень суровости наказания, увеличения его пределов. С учетом актуальности полученных выводов для уголовного права любого государства, в статье проводятся параллели с российским уголовным правом в контексте борьбы с экстремистскими преступлениями.

Ключевые слова: ненависть, преступление, преступления мотивации, свобода слова, ксенофобии.

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HATE CRIMES IN AMERICAN CRIMINAL LAW

The article observes the hate crimes definition in U.S. criminal law. The following issues are analyzed: the definition of "hate crimes"; the construction features of federal criminal legislation and state legislation; constitutional, social and legal issues associated with them. The main problem of hate crimes in legal definition is related to the measurement of motivation the person was guided by when committing a hate crime —The U.S. law had faced hate crimes far longer than the same criminal constructions were included into the Russian Criminal Code, that's why the U.S. experience in hate crime criminalizing process and the precedent system may be useful for Russian legislators. Therefore, the authors analyze the place of hate crimes in U.S. federal criminal law, the law of states that have the most extensive prosecuting experience in that field, and the precedents that significantly influenced the evolution of hate crime legal constructions. Among these sources are the criminal codes and acts of such states as California, Wisconsin, Virginia, Vermont, North Carolina, New York, as well as the cases of Wisconsin v. Mitchell, R.A.V. v. St. Paul, United States v. Maybee, Virginia v. Black, and the official political opinions and legal articles. The parallels with the U.S. Constitution are made, and the relationship between hate crimes prohibition and the basic constitutional human rights, such as the freedom of speech, are analyzed. Hate crimes analyses are framed through three main points of view: the hate crimes as assaults motivated by extremists ideas of hatred and prejudice against some social characteristics of the victim; the "symbolic" hate crimes, enacted through insult and humiliation with the usage of a negatively perceived symbol; and the hate crimes initiated as an attack on expression of personal beliefs, ethics and moral ideas. The differences between the last one and the criminal motivation are emphasized, also theirs influence on the definitions of guiltiness, penalties, and the level of sentences enlargement are shown. The conclusions which are relevant to any criminal law the article also discuss the related points with Russian Criminal law in the extremists crime prevention field.

Key words: hate, crime, crime motivation, freedom of speech, xenophobia.

The rate of social progress changes in the society is quite amazing: for example, in the USA, only 150 years ago, such a thing as like slavery existed. Just over a little more than half a century ago, almost everywhere, people were separated on the basis of "white" and "black", "colored and dogs," and nowadays, the subject is so sensitive that the ideology of equality sometimes turns even acceptably common words in a dangerous crime. It is about the so-called» hate crimes"[1] and their origins in the U.S. Criminal law. The experience of U.S. legislators in the field of these crimes can be useful to the Russian experience (it is at least premature to speak about any benefits of this, because of the differences in legal systems), when over the course of several years, the legislators and jurisprudence have been searching for the best ways to respond to acts committed with political, ideological, racial, ethnic or religious enmity or because of the motives of hatred and prejudice towards any social group (aggravating circumstances in several criminal formulations in the Special Part of the Russian Criminal Code) or in any reasons associated with such hatred or enmity (criminal law articles that use the last one as a base of theirs constructions). To give an overview of hate crimes in the US Criminal law, we will provide as an overview, first, the definition of hate crimes; secondly, the construction features of federal criminal legislation and state legislation, and lastly,, constitutional, social and legal issues associated with them.

1. *Hate crimes definition*. According to the federal character of American Criminal Law, i there is no general definition of hate crimes in the legal system[2]. However, some common features of that definition can be distinguished.

First of all, it is correctly pointed out in the legal sources that the definition itself isn't precise: that crimes are linked not to hatred but to prejudice (although both terms are connected to each other) [1]. In that case, the legislator distinguishes (speaking generally) the special motives of committing the crime and evaluates the seriousness of the crime from the offense to the motivation, can increases the penalty verdict. But the concept "prejudice" remains vague. The common legal example, easily found in the sources, depicts prejudice in the following scenario: would it be a hate crime if a Caucasian elderly married couple is robbed when the robber committing this crime assumes that they are likely rich and would hardly resist the offense? That is why there is the tendency to divide prejudice offences into two groups: in the first one (like in the previous example), the offender chooses the victim on the discrimination bases but, without any personal hatred of the individual *(discriminatory selection model),* in the second which is an authentic hate crime), the victim is chosen because of the prejudice feelings to any kind of groups the victim belongs to (*racial animus model*) [2]. Even so, in the different state legal systems, crimes from both groups can be considered as a hate crimes.

The econd point is that the committed crime *must be causally related* to the hatred (prejudice). But the tightness of these causal relations (is the crime fully caused by

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[1] That term is common in U.S. legal practice and is now used as the official definition of such crimes.

[2] In federal legislation that definition of hate crimes can be found "a crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person" (SEC. 280003.Violent Crime Control and Law Enforcement Act of 1994).

this motive or only partly?) is the main subject of the discussions [3]. The existing concept of the causal relations is based on the test "but for": the offender should deliberately choose the victim because of the victim's real or supposedly inherent characteristics. However, it seems difficult to use all these tests for the recognizing the subjective motivation of the offender.

Another point is that hatred (prejudice) relates to certain factors. These factors include race and ethnicity, skin color; in the most of the states, religion is accepted as one sexual orientation and any other social characteristics of the person are also suggested as hate factors in recent years. But how wide open should the criminal law be in that sense? In fact, the problem remains unsolved nowadays and the state-to-state legislation is quite different (for example, in Vermont, the crime motivated by the victims belonging to the US armed forces is labeled as a hate crime [Pub.L. 1455 of the State Criminal Code]). Respectively, "the legal borders of the hate crimes are fixed more by the political decision then by the logic or the legal basics" [4].

And last, could hate-based demonstrations be criminalized themselves as hate crimes – *the offences which are motivated by the hate (prejudice),* and as hate crimes – *orations*? The main practical problem with the orientation justification is difficult, since US constitutional legalization respects the 1st Amendment to the U.S. Constitution, which abides the freedom of speech. The intermediate position between them belongs to the "symbolic" hate crimes (for example, a burning Christening cross or the usage of Nazi symbols), which are the combination of speech (oration) and act that mixe together to form a message to the society.

2. *The construction of hate crimes in the federal criminal legislation and in the state legislation*. Prevailing distinction in the federal and state criminal jurisdiction suggests that the prosecution is a state-initiated objective; the federal prosecution is strictly bordered and states are against any of its expansion. This can be noticed in the recent years, especially in the hate crimes field.

First steps towards the federal hate crimes construction can be traced back to the 1960s, when on the political and social activity for the racial equality, U.S. Congress passed the legislation on human rights, which included, among others, the criminal acts. In particular, in 1968, the Pub. L. 254 (b) (2) of the Federal Criminal Code[1]was passed. By the article "Federally protected activities" include: the force or threat of force to willfully injure, intimidate or interfere with, or attempts to injure, intimidate or interfere with any person because of his race, color, religion or national origin. However, the guidelines in the law used as the sine qua non for a social activity where the offense committed outline the following: the hate crime will only be a crime if committed because the victim is or has been enrolling in or attending any public school or public college, participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof and so on. This chapter also consider as a crime to injure, intimidate or interfere with any person who promotes the rights of another person. The penalty is a monetary fine or (and) imprisonment for no more than one year. If such acts include any of the side effects described in the law, the imprisonment may be prolonged for no more than ten years or for any term of years or for life, or both, or may be sentenced to death

[1] The symbolic name of the USC, title 18, part 1.

if the crime act caused the death[1]. However, the federal prosecution is possible only after the written order of the U.S. General Attorney (or any other person specially mentioned in the law) and only when the U.S. prosecution would be justified by the public interests or would be necessary for the justice; in any other cases the state prosecution is ensuring.

The Pub. L. includes in Chapter 13 "the Civil Rights," which provide liability for the conspiracy against rights, deprivation of rights under color of law, exclusion of jurors on account of race or color, discrimination against person wearing a uniform of armed forces, deprivation of relief benefits, damage to religious property; obstruction of persons in the free exercise of religious beliefs and so on.

On the 28th of October, 2008, the U.S. President Barack Obama signed an act which was introduced in Congress in 2001, and which is the cornerstone for present federal prosecution of hate crimes[2] [5]. It is called "The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act," and is named in the memory of the two victims in Wyoming and Texas who were murdered in 1998 because of hate-based motivations. In the both cases, the murderers were caught and punished with life sentences (two in Texas received the death penalty)[3], but the publicity diverted its attention to the federal legislators The Act opens (§ 4702) with the position of Congress calling the harm caused by hate crimes as "a serious national problem"; Congress also confirms the responsibility of state and local authorities to prosecute the overwhelming majority of violent hate crimes, which will be more effective with greater Federal assistance. For determining the potential significance of the act in the context of the constitution[4] [6], federal legislators use the link to the Par. 1, Chapter 8, of U.S. Constitution about the "merchandise between the states," which is significantly affected by these crimes. Sec. 4704 consists articles about the support (including financial) for criminal investigations and prosecutions

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[1] Also the death penalty may be sentenced when results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

[2] The long process of signification was accompanied by the critics of the idea of the federalization this field of Criminal law. The mentioned that a) states are successful with these crimes prevention by themselves, b) federal prosecution has had enough resources yet, c) there are some procedural difficulties on the federal level which doesn't exist on the state's.

[3] But the legislation against hate crimes wasn't used there, in the first crime the victim was gay and homosexual people weren't meant like the hate crime victims in the legislation system, in Texas there was no such legislation at all.

[4] According to the U.S. Constitution the main value of prosecution competences belongs to the states which ids strictly provides by the Xth Amendment to the U.S. Constitution in 1791,"powers not granted to the United States were reserved to the States or to the people. It added nothing to the instrument as originally ratified". Federal government according to the strict declaration in Constitution and the remark about "necessary and appropriate" power has the authority to limited legislation. The most widely annotated declaration for explanation of the federal competence is included in p. 3 ch. 8 t. I of the Constitution according to which Congress have powers to control and regulate the mercenary between the states ant tribes. According to the remarks about "necessary and appropriate" powers Congress in powered to public all laws that will be necessary and appropriate for implementing as mentioned rights as all another rights which the U.S. Government is powered by the U.S. Constitution. This situation when the brunt of the responsibility is on the states definitely reflects on the decisions of the U.S. Supreme Court: "It is certain that crime prevention and prosecution is mostly the states duty than the federals".

by State, Local, and Tribal Law enforcement officials, which is provided only by federal order.

The most important legal article of the Act is in the Sec. 4707, which is complemented Federal Criminal Code Pub. L. 249 "Hate crime acts". This Paragraph includes two separate offenses which are similar in their constructions. The first (Pub. L. 249 (a) (I)) provides liability for whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person. The second (Pub. L. 249 (a) (II)) provides as a reason for hatred the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person. The second construction is constructed in the scope of the federal nature of US: the federal legislator is empowered to prosecute the acts under race, nation, religion and any other origin of a person through the 13th, 14th, and 15thAmendments to the U.S. Constitution when the federal prosecution in the second example is possible only with the additional acts from the Pub. L. 249 (a) (II) (B) and Pub. L. 249 (a) (III) have taken place (such as crimes including the state borders crossing or merchandizing between states, or in the sphere of special maritime or trade U.S. jurisdiction). In the both examples, the Act specifies as penalty imprisonment of no more than 10 years, a fine, or, when the crime results in death or kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill the penalty is imprisonment for any term of years or for life, fined in accordance with this title, or both. According to the Pub. L. 249 (b) the federal prosecution is possible only after the General Attorney's certification of one of the four facts: the state doesn't have the jurisdiction on the act; the state asks the federal government about the jurisdiction; the state's verdict or the judgment is significantly unsatisfactory to the federal interests in hate crime prevention; and when the federal prosecution clashes with public interests Limitation period for these crimes is 7 years, but there is no time-limit in the death penalty verdicts (Pub. L. 249 (d)).

Paragraph 4710 of the Act includes detailed declarations of individual freedoms that link it with the First Amendment. In particular, the general definition of the act is that nothing in this division, or an amendment made by this division, shall be construed or applied in a manner that infringes any rights under the First Amendment to the Constitution of the United States nor shall anything in this division, or an amendment made by this division, be construed or applied in a manner that substantially burdens a person's exercise of religion (regardless of whether compelled by, or central to, a system of religious belief), speech, expression, or association, unless the Government demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest, if such exercise of religion, speech, expression, or association was not intended to plan or prepare for an act of physical violence; or incite an imminent act of physical violence against another. The interesting declaration consist the paragraph 4710 (4), according to which nothing in this act "shall be construed to allow prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs or solely upon an individual's membership in a group advocating or espousing such beliefs".

From the moment the act became significant part of legislation, the U.S. Government has used it several times for hate crime prosecution. For instance, in 2010, a group of people insulted several Mexican people at a gasoline station. After the latter group left the station, the former group that threw insults decided to follow them. This group eventually caught up with the Mexican individuals and made dangerous maneuvers that caused loss of control in the driver of the group's car. The car skidded off the road and crashed, and the driver and his passengers were injured. The accusation of a hate crime was based on the Pub. L. 249 (a) (I), finding one of the offenders guilty and sentenced to 135 months in prison. The second offender pleaded guilty and the third had the immunity of giving the testimony. The defense applied the constitutionality of the Act of 2009, because it encroached the state competences and evoked the capabilities of the U.S. Congress as more applicable than the Second Amendment. The court declined this statement and referred to the previous precedents line, which confirmed the constitutionality of the Pub. L 245 of U.S. Criminal Code, and made analogue with its declaration. Other arguments (about the absence of hate attributes and so on) were declined by the court as well, attesting to the legitimacy of the accusation.

On the state level, (there is comparable anti-hate crimes legislation in almost all the states in the country) the legislators use two main ways of creating such laws.

One of them is based on the creation of special constructions of hate crimes. The number of the constructions (or act chapters) and their specifications are different from state to state. The laconic example is the Criminal Code of North Carolina. According to the par. 14–401.14 of this Code, it is prohibited to engage in a) ethnic intimidation (assault of another person, property damage or destruction, or threat of such actions because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person; I class misdemeanor) and training the assault methods (I class misdemeanor). The burning of Christian crosses is also considered a symbolical hate crime (§ 14–12.12; which is a racist crime in Southern states) and some other assaulted actions (§ 14–12.13, 14–12.14).

The Criminal law of California is more detailed. The chapter 11.6 in the Code is titled "Civil rights" and defines special constructions and identifications of hate crimes. According to the § 422.55 (a) of the Code, "hate crime" means a criminal act committed, in whole or in part, because of one or more of the following be it actual or perceived characteristics of the victim: (1) disability; (2) gender; (3) nationality; (4) race or ethnicity; (5) religion; (6) sexual orientation; (7) association with a person or group with one or more of these actual or perceived characteristics. The § 422.56 details this definition.

The general construction of hate grime is given in § 422.6 (a) (b) as follows: "no person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55; (b) no person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfer-

ing with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.". As a penalty, the article calls for imprisonment in a county jail for no more than one year, or a fine not to exceed five thousand dollars ($5,000), or by both imprisonment and fine or alternative penalties. California Criminal Code specially defines that an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision (§ 422.5 (d), 422.8).

The North Dakota Criminal Code (12.1−14−04, 12.1−14−05) defines as a hate crime discrimination in public places whether or not acting under law, by force, or threat of force, or by economic coercion; intentionally injuring, intimidating, or interfering with another because of his sex, race, color, religion, or national origin and because he is or has been exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.

The second constriction suggests creating special rules for penalty: the legislator doesn't create the special criminal construction but can increase the punishment.

The typical example of this is the criminal law of New York. State Criminal Code 0f 2000 was completed with a special chapter 485 entitled "Hate crimes". It starts with S. 485.00, which can be annotated as a summary of the articles to show the legislator's opinion about hate crimes and the interpretation on how best to strengthen the prosecution of these crimes S. 485.05 (1) of the Code defines hate crimes as the following: "a person commits a hate crime when he or she commits a specified offense and either: (a) intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, or (b) intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct". The S. 485.05 (2) should be specially observed, because according to it, proof of race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does not, by itself, constitute legally sufficient evidence satisfying hate crimes. S. 485.05 (3) includes the list of these crimes for S. 485.05 (1), which consists of more than 50 crimes such as assault, robbery, murder in the first and second degree, stalking.

The reasons for penalty tightening is defined in the S. 485.10. According to it, if an offender commits an offense is specified as a misdemeanor or a class C, D or E felony, and the crime is hate-based, the hate crime shall be deemed to be one category higher than the specified offense the defendant committed (influenced by the penalty, the punishment conditions and the releasing process). If the offense is specified as a class B felony, it's tightens the imprisonment; when a person is convicted of a hate crime, the the specified offense is deemed a class A-1 felony, and the minimum period of the indeterminate sentence shall be not less than twenty years.

In addition to any of the dispositions, the court mayrequire as part of the sentence imposed upon a person convicted of a hate crime pursuant to this article, that the defendant complete a program, training session or counseling session directed at hate crime prevention and education (S. 485.10 (5)).

In Pennsylvania (which was among the first states that signed the anti-hate crimes legislation in 1982), the rule about penalty tightening is fixed in P. 2710 in state's Criminal Code "Ethnic intimidation". According to it, an offense under this section shall be classified one degree higher in the classification specified in section 106 (relating to classes of offenses) than the classification of the other offense if it is committed because of perceived race, color, religion, national origin, ancestry, mental or physical disability, sexual orientation, gender or gender identity of another individual or group of individuals.

In recent years, an increasing number of states use the third – combined – way of mixing the two ways of offense and penalty definition of hate crimes (like in California, where along with the special hate crime definitions there are special rules about the penalty tightening in excluding cases [422.7 of California Criminal Code]) or in the laws of North Carolina pertaining to misdemeanors (14–3 (c)).

3. *Constitutional, social and legal issues associated with hate crimes.* There is no doubt that, being very close with oratories, hate crimes became the subject of litigations especially it the context of First Amendment which includes, among others, the thesis "Congress shall make no law ... abridging the freedom of speech, or of the press".

At the beginning of the hate crimes legitimating process in the states' legal systems, these crimes drew the attention, among others, of the U.S. Supreme Court lawyers. First significant case (involving Minnesota legislation) was solved in 1992 [8]. In the summer of 1990, a group of teenagers assembled a crudely made cross by taping together broken chair legs, and burnt it on the yard of an African-American family. The offender was brought to the court under the law statute "Whoever places on public or private property, a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor". Appellation to U.S. Supreme Court based on the First Amendment was satisfied. Agreeing that that the freedom of speech can be limited, the Court emphasized that there is exceptionality to such incidents. The Court suggested the debatable thesis as limiting the content of oratorio and concluded that "Displays containing abusive invective, no matter how vicious or severe, are permissible unless they are addressed to one of the specified disfavored topics. Those who wish to use»fighting words" in connection with other ideas – to express hostility, for example, on the basis of political affiliation, union membership, or homosexuality – are not covered. The First Amendment does not permit St. Paul to impose special prohibitions on those speakers who express views on disfavored subjects" [9]. The Court concluded that the burning of a cross in someone's front yard is reprehensible and cannot account for the freedom of speech related in the constitution under different terms. The Court's opinion was perceived ambiguously. In particular, the criticisms of its conclusions mentioned that the judges didn't ask "whether, and under what circumstances, words such as»nigger" and symbols such

as burning crosses cease to be part of the freedom of speech protected by the First and Fourteenth Amendments, and instead constitute badges of servitude that may be prohibited under the Thirteenth and Fourteenth Amendments" [10]. Discussions about the constitutionality of hate crimes themselves according to that decision were popular and increased the interest in the subject [11]. One of those positions (which was accepted by the Supreme Court later in 1993) was about delimiting hate crimes and crimes with hate speeches [12]; in the context of the first, it was remarked that the First Amendment prohibited the punishment of expressed thoughts, but that it did not limit the punishment of motivation [13].

One year later, the Supreme Court took a chance to clear its position in another trial [14], where the state court used the precedent of the 1992 trial and declared as unconstitutional the law which prosecuted the hate crimes [14]. A group of African American individuals motivated by racial hatred, attacked a white teenager and beat him. Mitchell, one of the teenagers, was convicted of aggravated battery; the sentence should have not exceeded more than a 2 year imprisonment, but because Mitchell had selected his target based on race, his maximum sentence was raised to 4 years of imprisonment. The court distinguished their opinion on this matter from antidiscrimination laws which had already been ruled constitutional, claiming that the law in question for this particular case punished the»subjective mental process" of victim selection, whereas the antidiscrimination laws upheld previously had punished»objective acts of discrimination". The U.S. Supreme Court reversed the Wisconsin Supreme Court's decision. The U.S. Supreme Court responded that "... although the statute punishes criminal conduct, it enhances the maximum penalty for conduct motivated by a discriminatory point of view more severely than the same conduct engaged in for some other reason or for no reason at all. Because the only reason for the enhancement is the defendant's discriminatory motive for selecting his victim, Mitchell argues (and the Wisconsin Supreme Court held) that the statute violates the First Amendment by punishing offenders' bigoted beliefs." [16]. Rejecting this hypothesis, the U.S. Supreme Court emphasized that'the Constitution does not erect a per se barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment" (except abstract beliefs that are not connected to the concrete act) [17]. The Court suggested that the difference between 1992 precedent where the legislator punished the symbol, oratorio and this case, in the last one it was used only for raising the sentence because his motivation was considered more serious and this is constitutional [18].

The decision was perceived positively ("the decision is a good sign: states initiatives about fighting and coping the crimes caused by hatred may find valuable constitutional reasons") [19], but there was another side to the story – a very different opinion compared to the 1992 decision that evoked many questions about the differences between hate speech, symbolic hate crimes (criminalization of which is, suggestively, broke the Constitution) and hate crimes – hatred motivated offences (what is the opposite) [20].

In 2003, U.S. Supreme Court went back to the problem of how constitutional is the prosecution of the symbolic hate crimes [21], answering (or trying to do this) the questions raised in 1992. In Virginia, three defendants were convicted in two separate

cases of violating a Virginia statute against cross burning. The statute defined that "for any person..., with the intent of intimidating any person or group..., to burn... a cross on the property of another, a highway or other public place" and made it a 6 class felony, specifies that»any such burning... shall be prima facie evidence of an intent to intimidate a person or group". Referring to the precedent of1992, Virginia Supreme Court found the law unconstitutional as it limited the freedom of speech. But the U.S. Supreme Court didn't support this decision. Analyzing the extend of the history of cross-burning symbolism, founded in Scotland in the 14th century for communication with Highlands clans, the Court emphasized the difference between this cultural usage of the burning cross and the meaning of that symbolism in USA. In America, the burning of the cross is inextricably intertwined with the history of the Ku Klux Klanand as a tool of intimidation and a threat of impending violence. Analyzing the 1992 precedent, the Court also specially stressed the fact of non-absolute nature of freedom of speech, giving legislators the powers to limit this right. Unlike Minnesota's unconstitutional law, which restricted the freedom of private opinion (in other words, narrowed the speech content), Virginia legislators almost constitutionally punished the actions, intended to create a pervasive fear in victims that they are a target of violence (or in other words, the method of expression this content). "The First Amendment permits Virginia to outlaw cross burnings with the intent to intimidate, since burning a cross is a particularly virulent form of intimidation. Instead of prohibiting all intimidating messages, Virginia may choose to regulate this subset of intimidating messages in light of cross burning's long and pernicious history as a symbol of impending violence. A ban on cross burning carried out with the intent to intimidate is fully consistent with this Court's holding in R. A. V., a particular type of content discrimination does not violate the First Amendment" [22]. The Court did, however, strike down the provision in Virginia's statute about prima facie evidence as unconstitutional [23].

In different scientific articles, this precedent was suggested as facilitating the state's power to prosecute massages, which are definitely intimidating the minorities [24]. But it also should be stated that, in fact, this decision is private and needs legal evaluation[1] [25] in further line *ad hoc* precedents about hate crimes constitutionality.

Those are the reasons why constitutional and legal aspects of hate crimes are still uncertain. Three basic precedents of the U.S. Supreme Court both certainly orientate (questions about raising the sentence of hate motivated offences) and leave some problems unsolved (what are the borders of limiting the freedom of speech in hate-based cases, and how can these actions and oratories be divided).

That uncertainty coincides with socio-legal discussions that follow the existence and expansion of hate crimes.. Discussion in publications is sometimes very deep and emotional, that it touches on the philosophical basis of criminal law as well as the sociological and psychological aspects of humanity. Although there is no space for a detailed observation of these aspects, we can provide a few examples of pro and contra opinions.

In particular, one of the opinions against hate crimes can be reduced to the remarks that the legislator, paying more attention to sentences for criminal mo-

[1] As it was mentioned in one commentary to the precedent "it only starts the practice, bordered intimidating kinds of oratories and symbolic actions".

tivation, moves the accents from the traditional crime grading: "... criminalizing hatred and prejudice means moving from act-orientated theory of crime penalty to subjective-orientated theory, what means moving from liberal theory of legislation to the perfectionism" [26]. But it is also justified that "... punishes the offenders for hatred or prejudice to theirs victims... the hate (prejudice) crimes indeed punishes the offenders for bad behavior. In fact these enlarged sentences punish the offenders only for bad behavior" [27]. This hypothesis allows for making clear conclusion for all criminal law: can the offender be freed from his (her) prejudiced beliefs or are his orher beliefs static and doesdoes it excuse the increased penalty for his/her actions? [28] " And, does the legislator have potential to regulate virtue and vice of citizens beliefs by the powers of criminal law? [29]

Some articles also note that "the tendency of sentences enlargement for so called "hate crimes" ... marks the raise of political influence of those groups that previously weren't powerful enough..." [30]. The raise of influence of such groups, obstruction of theirs way of life and behavior to others polarize the society and that hardly can be suggest as positive consequence of hate crime legal acts applying process [31].

The authors, who recognize the existence of hate crimes, usually evoke the high rate of danger of such crimes and the high rate of moral guilty of the offenders: "an assault motivated by hatred and simple assault causes an almost equal physical violation ... to the victim. But the hate crime violation to the victims autonomy (means the victim's sense of life control) and dignity is higher than those caused by the simple assault. It is clear from the most often examples of depression, panic attacks, sense of helplessness and isolation that hate crime victims can be diagnosed..." [32]. Consequently, because hate crimes are more dangerous than crimes without the motive of hatred and prejudice, they intrinsically necessitate an increased penalty sentence" [33].

Given these examples, it is easy to apprehend the reasons why hate crimes are the most discussed socio-legal phenomena in recent U.S. criminal law. From the US experiences, certain conclusions can be made for the Russian Federation. Extremists crimes, which are included in Russian Criminal Code as a special features of several crime constructions in General part of Criminal Code or as an actions sui generis, generate more problems than solutions. They are usually committed by some kind of motivation (like ideological or religious hatred or enmity against some social groups), and by legally correcting the definition of criminal motivation mechanisms that outline criminal behavior, we can further raise unavoidable questions about constitutionality of legal practice and elevate the discourse about the freedom of speech in the Constitution of Russian Federation [40]. That is exactly why some of the solutions from U.S. legal practice can be very useful for Russia.

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ДЕЛИКТОЛОГИЯ В РОССИЙСКОМ ТРУДОВОМ ПРАВЕ

Автор рассматривает проблемы борьбы с трудовыми правонарушениями с точки зрения нового направления науки трудового права – **деликтологии.** Термин «деликт» означает правонарушение, т.е. незаконное действие, проступок, преступление. В более узком смысле – гражданское правонарушение, влекущее за собой обязанность возмещения причиненного ущерба.

Цель статьи реализуется через решение следующих задач: а) определение понятия и признаков деликтологии; б) уяснение предмета деликтологии. Автор отмечает, что деликтология, являясь одним из направлений науки трудового права, тесно связана с другими гуманитарными науками. В **предмет деликтологии** входят: а) состояние, уровень, латентность, структура, динамика трудовых правонарушений; б) обстоятельства, способствующие их совершению; в) личность нарушителя трудовой дисциплины; г) профилактика правонарушений в сфере общественного труда. **Состояние деликтности** является собирательным понятием и определяется: а) количеством проступков и числом совершивших их работников; б) количеством установленных официально администрацией с соблюдением предусмотренной процедуры проступков; в) характером структуры правонарушений; г) интенсивностью совершения рабочими и служащими проступков; д) уровнем или коэффициентом проступков; е) наличием латентных проступков; ж) ущербом, причиненным проступками.

В статье рассматривается вопрос о происхождении проступков, совершаемых рабочими и служащими в сфере труда, как одно из направлений деликтологии. Обстоятельства, способствующие нарушениям трудовой дисциплины, можно классифицировать по различным критериям. Исходя из сущности обстоятельств, способствующих совершению правонарушений в сфере труда, можно подразделить их на виды следующим образом: 1) политические; 2) экономические; 3) идеологические; 4) социальные; 5) правовые; 6) субъективно-психологические.

Одним из главных элементов предмета деликтологии является личность нарушителя трудовой дисциплины. Основное содержание категории «личность работника» определяется системой общественно-трудовых и других, тесно связанных с трудовыми отношений, иных социальных и социально значимых свойств и связей, отношений, участником которых является работник, а также определенной системой его нравственно-психологических свойств.

Юридически значимыми нарушителями могут быть лишь работники, установленные администрацией в качестве таковых в предусмотренном законом порядке. Изучение личности нарушителя трудовой дисциплины необходимо для выбора наиболее целесообразной меры воздействия на нее в целях ее воспитания.

Ключевые слова: трудовое право, правонарушение, деликт, личность работника

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DELICTOLOGY IN RUSSIAN LABOR LEGISLATION

Abstract

The author discusses the problems of dealing with labor offences in the context of a new area in labor law – delictology. The term *delict* signifies an offense, i.e. an illegal act, deed, or crime, and in a more narrow meaning, a civil offense that results in the liability to compensate for the damage caused.

The goal of the article is realized through the following tasks: a) defining the concept and features of delictology; b) defining the subject matter of delictology. According to the author, delictology as an area of labor science is closely connected with other humanities. The subject matter of delictology includes: a) state, level, latency, structure, and dynamics of labor offences; b) circumstances contributing to offences; c) personality of labor discipline violator; d) prevention of offences in the labor environment. Delictual offences comprise a collective concept which is defined by the following factors: a) number of offences and employees who committed them; b) number of offences officially registered by employers in compliance with official procedures; c) structure of offences; d) frequency of offences committed by employees; e) level or coefficient of offences; f) number of latent offences; g) damage inflicted by offences.

The article also discusses the question about the origin of labor offences committed by employees as one of the areas of delictology. The circumstances contributing to labor discipline violations can be classified in accordance with different criteria. Based on the nature of the circumstances that contribute to the labor offences they can be classified as follows: 1) political; 2) economic; 3) ideological; 4) social; 5) legal; 6) subjective and psychological.

The personality of a labor discipline offender is one of the major elements of the subject matter in delictology. The basic content of the category *personality of an employee* is defined by a system of social, labor, and other socially-significant properties, ties and relations which involve an employee, as well as his system of moral and psychological properties.

Only the employees registered by their employers in compliance with the legislation can be considered legally significant offenders. Research of the labor discipline offender is necessary to select the most reasonable measures of prevention and education.

Key words: labor law, offence, delict, employee's personality.

1. **Definition of delictology:** Offenses committed by employees as a reason for imposing disciplinary, material or special liability that are a part of the labor legislation subject matter. The state, structure and dynamics of offenses as well as contributing causes and personality of the offender have not been sufficiently researched in the science of labor law, and neither have the concept and major trends in prevention of labor offenses. Therefore, a question arises about the subject matter of these problems. By definition these problems are close to the subject matter of criminology but only as background/underlying phenomena and contributing causes of crimes.

However, the problems of labor law violations are not included in the subject matter of criminology.

Dealing with labor law violations has become the subject of a new area in the science of labor law – delictology.

We apply the term *delictology* to labor legislation very conventionally. The term *delict* signifies an offense, i.e. an illegal act, deed, or crime, and in a more narrow meaning, a civil offense that results in the liability to compensate for the damage caused. Therefore, delictology is a science about offenses. We apply this term to the science of labor law in the sense of a science about disciplinary offenses as asocial phenomena. The subject of delictology involves social phenomena and processes that ante cede the offenses and determine them. In addition to delictology in its narrow sense – as an area of the labor law science – it is possible to concept a wider meaning. In fact, offenses which are not crimes can be committed not only in the sphere of labor law but also within administrative, civil and other branches of law. Hence, delictology as a science about non-criminal offenses can become an independent branch of the labor law which studies the corresponding legal phenomena based on all branches of law.

Moreover, a quite bold and risky idea can be entertained: In the future, as a properly developed branch of legal science, delictology may possibly include criminology, since a crime is a concept which is involved into the content of the category of *offenses*. Therefore, this process can lead to the integrated science of delictology which would study all kinds of offenses based on consistent general theory, methods and basic theoretical provisions of criminology. However, it is too early to refer to delictology as an independent branch of legal science.

As an area of labor law science, delictology is closely connected with other humanities. Knowledge of delictology is impossible without specific sociological research. Since behavior of a person in the sphere of labor is mostly determined by the character and content of social relations of production, delictology is bound to be closely connected with economics. Study of the circumstances of offenses, their prevention, and the personality of the offender is impossible without knowledge of the most recent advances in psychology, pedagogy, statistics and criminology.

The subject matter of legal science is usually interpreted as a particular set of social phenomena and relations which became objects of human cognition. If defined like this, the subject matter of delictology includes: a) state, level, latency, structure and dynamics of labor law violations; b) contributing causes; c) personality of the violator of labor discipline; and d) prevention of offenses in the sphere of social labor.

Delictual offenses are the offenses committed by employees and defined as a social phenomenon which is dialectically dependent on other phenomena in the system of social relations and reflects the existing controversies between positive employer interests in labor management and deformed interests of particular employees. The concept of a *delictual offense* is as primary and fundamental in delictology as the concept of a *crime* in criminology.

As a social phenomenon, a delictual offense is a part of the employee-employer labor system; it is a transitory phenomenon with specific qualitative and quantitative indices. These offenses are committed by subjects of labor relations and are defined as delinquent, illegal and socially harmful.

The offense which has no properties of an illegal and delinquent deed and only violates the existing moral norms is not a subject matter of delictology. The level of delictual offenses is a collective concept and can be defined by the following factors: a) the quantity of offenses and the number of employees who committed these offenses; b) the quality of offenses officially registered by an employer in compliance with ta specified procedure; c) the structural character of offenses; d) the intensity of offenses committed by employees; e) the level or coefficient of offenses; f) occurrence of latent offenses; and g) the damage inflicted by offenses.

The level of delictual offenses is expressed in relative figures calculated based on the quantity of offenses within a specified period of time in a company, consortium, branch, district or region per a specified number of employees or a category of employees, etc. The offenses not revealed by employers and not registered officially are referred to as latent offenses. Latency results in a number of negative consequences: distorted knowledge about the real ranges of labor discipline violations and material damage; it also prevents the principle of inevitable punishment of offenders, hinders revealing the contributing causes and impedes prevention of offenses. Latent offenses also result from insufficient control, poor labor discipline and low levels of social and legal activity of employees. The methods of latent offenses, their forms and means of dealing with latency have to be elaborated.

Registered offenses are those offenses committed by employees and officially recorded by their superiors. Employees incur disciplinary punishment for committing offenses. A complete, comprehensive and science-based establishment of offenses is a significant factor in dealing with labor discipline violations. Currently the organization suffers serious disadvantages: incompleteness, narrowness and lack of a uniform system, etc. These problems call for creation of a comprehensive statistical system of delictual offenses that defines the principles, content, organization and methods for recording offenses.

The dynamics of delictual offenses characterize changes of its qualitative and quantitative parameters within a specified period of time; its structure shows the proportions of different kinds of offenses, distributions of offenses by gender, age, social status, etc. The criteria of the structure of delictual offenses are as follows: a) the proportion of unjustified absences, appearing for drunk and other violations of labor discipline; b) the proportions of intentional and unintentional offenses;

c) data about juvenile offenses; d) facts of repeated violations of labor discipline; e) the proportions of offenses committed by men and those committed by women, etc.

Therefore, delictology in labor law can be defined as an area which represents a system of objectively valid, general knowledge about delictual offenses, their state, structure, dynamics, contributing causes, offender's personality, and the ways and means of preventing the offenses committed by employees.

2. **The causes contributing to offenses committed by employees.** The origins of offenses committed by employees is one of the major problems in delictology. Determination is a process of conditioning, defining and comprehensive interrelation of all things, objects, phenomena and processes is the most general category which characterizes the origin of the phenomena under study. The factors (circumstances) that generate specific phenomena, precondition or influence them in any other way are referred to as determinants which include causes, conditions, correlates, etc. The principle of causality forms the core of the science of determinism.

The problems of conditions and causes of law violations in Russian society have been comprehensively researched by legal scientists; however, they mostly applied to crimes. The causes and conditions of labor law violations committed by employees and violations of labor legislation committed by employers, especially in modern social and economic conditions, have not been sufficiently studied, though the need for this is obvious.

We don't set our goal to study the causes and conditions of labor discipline violations; we will only define the most fundamental of them together with the circumstances that contribute to those offenses. The differences between causes, conditions and circumstances are relative: each condition is in a sense a cause, and every cause is in a sense a consequence.

The circumstances contributing to labor discipline violations can be classified according to different criteria: by the volume of offenses; general circumstances typical of all disciplinary offenses; types of particular offenses (unjustified absence, coming to office late, etc.); circumstances contributing to a particular disciplinary violation or to the economy as a whole; classification by economic branches; and classification by a labor union or even by an employee or employees.

There are two effects of these circumstances: 1) they create the environment, the situation, physical and ideological, that contribute to offenses; and they have a negative impact on forming and developing a personality resulting in its deformation and affinity for the active involvement in the existing delictological situation.

The essence of the circumstances contributing to labor offenses provides for the following classification: 1) political 2) economic; 3) ideological; 4) social; 5) legal; 6) subjective and psychological.

These causes, conditions and circumstances of labor offenses are closely interrelated and often are created by two or more specific factors including both subjective and objective phenomena. The level of democracy is a major determinant of human behavior in society including the sphere of labor; and if deformed, essentially mediates human behavior. Authoritarian methods of public management alienate a person from society and contribute to his narrow personal interests and needs which bring the person to wrongdoing in the environment of corrupted branches of power and administration. Economic causes and conditions include phenomena that exist within economic relations and result in the violations of labor and other areas of law. The condition of productive forces understood as a system of subjective (a person) and physical (equipment) elements which provide for the interaction between nature and society in the process of production is a major general factor that determines the situation with delictual offenses. Insufficient development of productive forces affects the level of technical and economic infrastructure of enterprises as well as the performance and character of labor, material and emotional wealth of employees, etc.

Denying a person property has an extremely negative effect on human behavior in the labor environment and on economic development in general. Prohibition of private ownership and preventing employees from owning and managing property kills the feeling of ownership and interest in personal labor in people. Involving employees in co-ownership of enterprises, firms and companies is an important way of preventing labor offenses and is one of the most powerful psychological factors of development of employee's creative skills.

Unqualified manual labor at the enterprise is also a contributing cause. Research shows that employees with less education and cultural awareness are more inclined to frequent employment changes and labor discipline violations. Larger shares of unqualified labor in some occupational groups results in a higher concentration of employees with affinity for negative behavior who are not easily disciplined. Shortcomings in labor organization of enterprises have a dramatic negative effect on the level of labor discipline.

Ideology is a system of views and ideas which recognizes and assess human attitudes toward reality and each other, as well as social issues and conflicts, including goals (programs) of social activity aimed at stabilizing or changing (developing) these social relations. Special means, forms and methods of forming these views, ideas and legal consciousness of the participants of social and labor relations can have shortcomings and errors which can negatively influence employee behavior by deforming mind-sets and social attitudes. These shortcomings in labor education and training can become causes and conditions contributing to offenses among employees.

The social causes and conditions contributing to offenses in the labor environment involve both individual and group circumstances. Social relations cover the spheres of labor, everyday life and recreation include subsistence, human reproduction and communication. Drug and alcohol addictions are the primary delictogenic social factors. Some family issues also have a negative effect on the behavior of employees.

The most significant legal factors which may become causes and conditions contributing to labor offenses are classified as follows:

1) Shortcomings in law creation and law content: a) the gap between individual employees and the bureaucracy of industrial organization; b) incomprehensible provisions and definitions in labor, criminal and other legislation; c) gaps in legislation; d) shortcomings in the system of legal guarantees when laws are administered and the rights and duties of subjects; e) absent or incomplete registration of factors for a particular enterprise in its specific locality.

2) Shortcomings in law enforcement: a) improper administrative disciplinary practices; unjustified or insufficiently justified application of punishment and motivation; b) incomplete application of the measures stipulated by law for dealing with labor discipline violations; c) failure to observe the principle of unavoidable punishment; d) violation of labor legislation by executives while imposing punishment on offenders; e) incomplete and incomprehensible system of registration of labor offenses; f) inconsistent measures of dealing with offenses by executives of different levels; g) insufficient transparency of the measures imposed.

3) Shortcomings in legal education of employees: a) poor legal information; b) violations of labor legislation in the norms and rules of occupational safety and health by executives, etc.

Extensive research has been done on subjective and psychological circumstances contributing to labor offenses involving factors in the category, “the personality of an employee”, determined by the consciousness and will of people as well as by their needs and interests. Subjective and psychological causes have two aspects: surface and internal.

Habitual lack of discipline and irresponsibility lead to the majority of legal offenses. However, the most important aspect causing wrongful behavior is attributed

to internal causes and primarily to deformed human needs. In the long run, most illegal actions are triggered by needs and primarily by the lower need to work juxtaposed to the higher need for material wealth. This deformation if combined with low legal awareness and insufficient moral principles preconditions illegal behavior in the labor environment.

Human needs determine attitudes towards labor via the category of interest in work, specific and general, and a complex system of motivation. One aspect involves the attitude towards labor offenses revealed in the forms of intention or negligence.

Analysis of the main circumstances that contribute to labor offenses demonstrates that they are relatively infrequently isolated from each other. Usually offenses are generated by a combination of interrelated and interdependent factor. The following disciplinary offenses are most often committed at enterprises: unjustified absence, appearing for work drunk, long absence at work, coming to work late, and leaving before office hours.

In the context of individual job-related offenses, their general circumstances can be specified and details investigated. Clear understanding of the circumstances involving disciplinary offenses has particular significance for the practical application of labor legislation that regulates disciplinary punishments. When applied to an individual, they can determine the degree of guilt, the punishment merited and the most effective preventive measures. The circumstances of a particular labor offense can be defined as the political, economic, ideological, social, legal, subjective and psychological phenomena that lead to the disciplinary offense committed by a person either by intent or by neglect. These circumstances can demonstrate the unfavorable development of the offender's personality, the creation of the objective situation for committing offenses, and interactions that eventually resulted in the offense.

Those circumstances characterize the objective reality thus determining the behavior of a human and their social, economic, and psychological environment. Personal development is an important section in this classification since personality formation is a continuous process influenced by all circumstances that an individual encounters. The process of personality formation is not interrupted "before" and "during" the offense. A specific situation in life, which is understood as a system of circumstances that constitute the life of this person in the period of offense, plays a definite role in the formation of the person's intention to commit a labor offense or of the situation causing negligence that results in an offense.

The circumstances of a particular situation in life can be divided into the following groups: 1) social and economic (poor labor management, inconsistency, idling, overtime work, much hard physical labor, low-paid work, work on weekends and holidays, etc.); b) moral and psychological (poor psychological climate in the office, conflicts with co-workers and superiors, an atmosphere of disorderliness and impunity among employees, etc.); c) personal (family-related issues, deformed needs and interests, affinity for alcohol and drug addiction, etc.); and d) social (poor housing and living conditions, lack of childcare facilities, lack of facilities for recreation and breaks at work, remote location of the enterprise from the place of living, poor transport infrastructure, etc.).

When assessing a real-life situation, it must be understood that human behavior is determined not by the situation per se, but by its subjective comprehension and interpretation which are often not the same as its objective content and meaning.

3. **The personality of the labor discipline violator.** The personality of the labor discipline violator is one of the major elements of delictology since the personality of the offending employee is a primary factor among those mediating labor offenses. Therefore, a deeper understanding of the circumstances contributing to labor offenses, the cause of wrongful behavior, the most efficient ways to prevent offenses, and the most effective forms of discipline call for comprehensive research of the personality of the labor discipline offender. This problem has not been sufficiently studied in the science of labor law although its urgent need is obvious.

Personal approach in the science of labor law is developing rapidly which emphasizes that an employee is of interest for science mostly as a social aspect that has to be corrected in the process of forming their legal and active behavior in the social labor environment.

As stated above, the word "personality" is a general social phenomenon. It is correlated with the category of "offender's personality" as a general and particular phenomenon. A violator of labor discipline is a person who intentionally fails to perform his labor duties or performs them inefficiently under the threat of disciplinary or other legal measures of punishment. The offender's personality is a personality of the individual whose behavior violates the legal norms or confronts them in any other inappropriate fashion. These violations are committed conscientiously which expresses the deformation of personal awareness and social position of the employee as well as his distorted needs and personal interests. Since the employee's personality is a combination of mental properties, conditions and processes on the one hand, and social status and relations on the other, the offender's personality exhibits deformation of one or both of these aspects. Therefore, human behavior in the labor environment is determined by an employee's attitude towards labor that is one of the primary elements of his psychology as well as by the development of business, professional and organizational qualities and creative skills which mediate the social status of a person.

The main content of the category *employee's personality* is defined by the system of social, labor and other social and socially significant properties and ties that are closely connected with labor relations. These properties and ties involve employees; a system of moral and psychological properties also defines the content of the above mentioned category.

The personality of a labor discipline violator exhibits deformation of some emotional, attitudinal, and/or behavioral response patterns. Violation of social and legal norms is expressed in unjustified non-compliance or improper compliance with labor duties. This violation which is a legal fact results in the protective legal relationship within the integrated labor relationship. Negativity in psychological of human behavior is expressed in poor attitudes towards labor and different social situations, and lower intellectual and volitional powers of the individual that eventually affect the quality of labor as well as the employer-employee relations and the overall psychological/work atmosphere.

A personality is an integrated dialectical system; therefore, both properties discussed above are closely interrelated and interdependent. Violation of labor discipline by an employee does not mean that his personality is entirely a system of only negative social and psychophysical qualities and relations. The degree of individual deformation varies depending on the public gravity of the offense, its kind and consistency.

The concept of a *labor discipline violator* is a legal category. A wrongful act or violation of labor discipline is a primary feature of this concept. Violators of labor discipline are classified as: a) established by administration or, b) latent (not established by administration).

Moreover, violators can be studied from the following points of view: a) factual; b) legal. Factual violators are those employees who fail to perform their duties or perform them improperly. Legal violators are those employees who fail to perform their duties or perform them improperly and whose guilt was established by their superiors. Only legal violators, those whose guilt was legally established, are to incur disciplinary punishments or other measures stipulated by law.

Personal qualities of a discipline violator play a significant role in addressing the problem of imposing measures of disciplinary punishment and therefore have legal significance. Employment records and behavior of the employee must be taken into account when imposing disciplinary punishment. The RF Labor Code also stipulates the possibility for pre-scheduled relief from receiving disciplinary punishment if the employee does not commit another offense and works diligently. Study of the personality of labor the discipline offender is crucial for selecting the most reasonable measures of punishment so that it has a preventive effect as well. Such analysis will provide data for a more precise description of the circumstances of the offense which will result in a higher efficiency of preventive measures. Study of the offender's personality will assist in defining the types of offenses based on selected criteria and will enrich the general knowledge about the personalities of labor offenders.

A more comprehensive analysis of the labor offender's personality calls for "resolving" the personality into its elements and possibly defining the role of every element in the formation of illegal behavior in the workplace. The term *elements* is used conditionally and describes the properties and relations in their dialectical interaction; eventually, these elements form a personality. The combination of these elements determines the approximate structure of the offender's personality. It consists of the following groups: social and demographic features (gender, age, education, social status, occupation, marital status, etc.); legal features (history of disciplinary offenses, their structure, consistency and degree of guilt); moral and psychological features (social attitudes, attitude towards labor, property, family, children; personal needs and interests; intellectual and emotional qualities, etc.); and social manifestations in different spheres of public life.

Classifications and typology of the offender's personality as well as the offender's personality in general have not been sufficiently studied in the science of labor law. Meanwhile, classification of the kinds and types of offender's personality (in accordance with different criteria of classification) is useful and reasonable both in order to enlarge theoretical and legal knowledge and for more successful applications of general preventive measures in the workplace and specific measures towards individual offenders.

Typology usually involves defining the most significant aspects of the research subject matter. It is the ontological character that makes typology different from classifications which can be done in accordance with any feature of the phenomenon. Typological analysis reveals the peculiarities of personal social and psychological qualities. Typology of the personalities of labor discipline violators

is based on the existence or loss of socially-positive labor ties between offenders and their coworkers.

Based on this criterion they can be divided into three groups: 1) those interested in labor and its results; 2) those not interested in labor and its results; 3) those who completely lost interest in labor and manifest an extremely negative behavior.

The typology of the personalities of labor discipline violators can be also based on the objective and subjective sides of disciplinary offenses.

According to the objective aspects of disciplinary offenses, the offenders can be divided into the following groups: a) regularly absent from the workplace; b) continuously violating labor discipline; c) appearing drunk at the workplace; d) occasionally absent from the workplace; e) coming to workplace late and leaving before the end of work hours; f) not executing the orders of their superiors timely and efficiently; g) committing other violations of labor discipline. This classification can be of use in elaboration of preventive measures though it does not bring to light all peculiarities of offender personalities as well as their beliefs and values.

According to the person's mental attitude towards the offense and possible negative consequences, all offenders can be classified into two groups: those who committed an offense intentionally and those who did it negligently. Intentional offenders can be further divided into several subgroups: 1) first-time violators of labor discipline by an unlucky train of events; 2) first-time violators who committed offenses without any justifying circumstances but who are socially positive in general; 3) second-time offenders; 4) malicious offenders. Moreover, intentional offenders can be divided into those who commit less serious offenses (unjustified absence, appearing drunk at the workplace), and those who commit consistent violations of labor discipline. Negligent offenders as a rule are characterized by careless and irresponsible attitudes towards internal labor policy, their duties and legislation.

4. **Prevention of labor offenses**

A preventive approach to socially-deviant behavior is also important for dealing with offenses in the workplace. Prevention of labor offenses first of all results in prevention of the damage incurred to employers, society and state, and secondly, does not allow a moral deformation of the employee's personality that could contribute to offenses. Therefore, prevention of labor discipline violations plays a far more significant role than the organizational and administrative measures taken by executives in response to a particular offense and expressed in imposing disciplinary, pecuniary or special punishment on the offender. Though the problem is important, prevention of labor offenses has not been properly studied in the science of labor law.

The concept of prevention of labor discipline violations is a particular case relative to the concept of *social prevention* which is interpreted as a set of measures aimed at improvement of social relations, elimination of social diseases, and increase in the social wealth.

The problems of preventing offenses have been comprehensively researched in the legal science though primarily with regard to crimes and criminality. The fundamental provisions of the offense prevention theory can be to the full extent applied to offenses in the workplace: violation of labor discipline, incurring material damage, or amoral acts committed by some categories of employees.

Prevention of labor offenses always involves specific actions which result in a system of measures that comprise a preventive measure. A set of interrelated and interdependent measures constitutes the content of preventive activities in general.

The major means of preventing labor offenses are as follows: a) organizational means used by the subjects of preventive activities; b) economic means; c) ideological means; d) social means; e) legal means; and f) means of forming moral and psychological qualities of a person. This classification of basic means of preventing labor offenses is in general compliant with scientific approaches to dealing with social deviations. They include informational, social and preventive, medical and biological means as well as imposing sanctions.

With regard to the fact of a particular labor discipline violation, preventive measures can be taken before the offense is committed as well as after the offense in order to have a preventive effect on the contributing causes in future. In these cases, preventive measures are aimed both at specific and general prevention of offenses in the workplace. The circumstances which contribute to offenses are referred to as delictogenic.

Increased efficiency of preventing labor offenses is related to the perfected legal regulation of preventive activity, i.e., with the normative definitions of rights and duties of preventive subjects; the goals, forms and methods of preventing offenses as well as with the positive influence of law on organizational, economic, ideological, social, subjective and psychological circumstances that contribute to the violations of labor discipline.

A scientific approach to the organization of preventive work in the labor environment involves a number of stages in the research of this issue.

The first stage calls for a comprehensive study of positive and negative moments that define the social, economic, demographic, and ideological atmosphere in the workplace; and establishment of the level of influence made by the factors on the behavior in the workplace while avoiding lopsided evaluation of positive and negative features.

The second stage will include discovering and analyzing the circumstances that contribute to labor offenses: economic, ideological, social, legal, subjective and psychological. Those circumstances must be studied in relation to the employee's personality and to the offense situation.

The third stage will involve studying the state, structure and dynamics of labor offenses. This task is very complicated since, in the ideal scenario, it is necessary to research both obvious offenses established officially in accordance with the legislation, and latent offenses which are numerous. Currently, the analysis of conditions contributing to labor discipline violations is not performed efficiently by companies; latent offenses are not analyzed at all. The situation results in distorted knowledge about the real level of "contamination" with negative trends, in incorrect calculations and choice of offense-fighting tools, and therefore dramatically reduces the efficiency of preventive measures making them fruitless and useless.

The fourth stage involves analyzing, studying and evaluating the actions of executives in preventing labor offenses, discovering them, observing the principle of unavoidable punishment for offenses and imposing penalties on offenders. At this

stage special attention must be paid to the efficiency of preventive measures, and the attitude of offenders and all employees towards them.

The fifth stage calls for studying employee personalities including those of labor discipline violators, their social, demographic and legal features, moral and psychological attitudes, material living standards, labor, social and political involvement, etc. The system of preventive measures must comprehensively cover all values of the social and demographic characteristics of the workforce, categories of employees and structure of personalities. This system must apply to all spheres of human life — labor, daily routine and recreation.

The sixth stage of studying the problems of preventing labor offenses is a conclusive stage with the primary goal of developing specific measures of influence on the personality and environment that would eliminate or stop the offenses in the workplace. These measures have to be systematized in accordance with the causes, conditions and circumstances of offenses.

Only a comprehensive scientific approach will result in efficient preventive measures and provide for a solution of labor discipline problems.

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