The New Civil Code of the Russian Federation *and Private International Law*

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The author traces the legislative activity surrounding the formulation of rules on private international law in the new *Civil Code of the Russian Federation* ("C.C.R.F."). Many of the previously existing rules on conflict of laws have been repealed as part of the process of legal reconstruction subsequent to the breakdown of the U.S.S.R. While they have been repealed, nothing comprehensive has taken their place. The lack of provisions on private international law for a society that is exposed to so many foreign actors has obvious implications.

The author examines the state of the law regarding foreign trade transactions and the various formal validity requirements surrounding such agreements. While there is a general invalidation of transactions that fail to meet the prescribed written form, it is observed that there is no longer any legislative gnidance regarding the signing procedure of such agreements. Thus, a prohibition exists, but the means to avoid its invalidating effect are unknown.

The article broaches the issue of the State's status in a matter involving a conflict of laws, and the role that immunity might play in private international law. International treaties are also examined. In general, the author outlines the kinds of norms which should animate Russian rules on conflict, and concludes that the principle of proximity should always prevail.

Throughout the essay, the author highlights a recurring tension in the development of Russian private international law. On the one hand, there are numerous specific areas of legislation (*e.g.* family law, commercial law, etc.) which have certain rules on disputes over jurisdiction and applieable laws. On the other hand, there is a movement for an overarching set of principles on private international law to be consolidated within the C.C.R.F. The author proposes that both can bo done: general principles can be expressed in the C.C.R.F. while legislation in specific areas could have their own rules on private international law.

L'auteur retrace le développement législatif entourant la formulation des règles de droit international privé dans le nouveau *Code civil de la Fédération russe*. Plusieurs règles régissant les conflits de lois ont été abrogées lors du processus de reconstruction légale survenu à la suite du démembrement de l'U.R.S.S. Alors que les règles ont été abrogées, rien de significatif ne les a remplacées. Les conséquences de l'absence de dispositions de droit international privé dans une société exposée à tant d'acteurs étrangers sont évidentes.

L'auteur examine l'état de la loi concernant les transactions d'échange international et les diverses formalités nécessaires à la validité de tels accords. Alors que les transactions qui ne sont pas dans la forme écrite prescrite sont invalides de façon générale, il n'y a aucune balise législative explicitant la procédure de signature de ces convcntions. Ainsi, si une interdiction générale existe, les moyens pour l'éviter sont inconnus.

L'article évalue la position de l'État dans une affaire concernant un conflit de lois, mais aussi le rôle que pourrait jouer l'immunité étatique en droit international privé. Le rôle des traités internationaux y est aussi étudié. D'une manière générale, l'auteur expose les types de normes qui devraient régir les règles de conflit msses et conclut que le principo de proximité devrait toujours prévaloir.

Tout au long de l'article, l'auteur souligne une tension récurrente dans le développement du droit international privé russe. D'une part, il existe plusieurs domaines spécifiques de législation (par exemple le droit de la famille, le droit commercial, etc.) qui possèdent des règles sur la contestation de compétence et des lois applicables. D'autre part, il existe un mouvement désirant intégrer au sein du Code une série de principes notoires de droit international privé. L'auteur propose que les deux avenues sont réalisables: les principes généraux peuvent être formulés dans le Code, alors que la législation régissant des domaines spécialisés pourrait avoir ses propres règles de droit international privé.

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I. The Background to Private International Law in Current Russian Legislation

The Russian Federation, like some other countries, has no special legislation on private international law and international civil procedure. Rather, rules on conflict of laws and other legal norms regulating private international legal relations are dealt with primarily in legislative acts of specific branches of law—*e.g.* family law, commercial law, etc. Over the past few years, the number of codified acts consolidating relevant legal norms in the Russian Federation has significantly increased. For example, on March 1, 1996, the new *Family Code of the Russian Federation*[1] came into effect. Section 7 of this Code regulates the application of family law rules to relations involving foreigu citizens and stateless persons. In addition, on July 1, 1995 the new *Code of Arbitration Procedure of the Russian Federation*[2] came into effect. Articles 12 and 210 through 215 of this Code regulate the application of foreign law by state courts of arbitration, as well as the judicial proceedings in cases involving foreign persons. In 1993, a law on international commercial arbitration was developed and adopted[3] on the basis of the 1985 *Model Law on International Commercial Arbitration* adopted by the United Nations Commission on International Trade Law (UNCITRAL).[4]

Russian federal law makes reference to private international law to define participants in foreign trade transactions.[5] For example, Russian participants are defined as *legal* persons established in accordance with the legislation of the Russian Federation that are permanently located in its territory, and/or *physical* persons who permanently or usually reside in the Russian Federation and are registered as individual entrepreneurs. Foreign participants are defined as *legal* persons whose civil legal capacity is determined according to the law of the foreign country where such legal persons were established, as well as citizens and permanent residents of foreign countries as determined by their own national laws.

Russian legislation related to private international law and international civil procedure is developing in compliance with Chapter 2 of the 1993 *Constitution of the Russian Federation*: "Rights and Freedoms of the Human Being and Citizen." The Constitution defines the rights and freedoms of a person as vested in everyone by virtue of birth, and considers them to be inalienable.[6] In this respect, the Constitution

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[1] *Sobranie zakonodatelstva R.F.* (1996) No. 1, item 16.

[2] *Sobranie zakonodatelstva R.F.* (1995) No. 19, item 1709.

[3] Federal law *On International Commercial Arbitration, Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1993) No. 32, item 1240.

[4] UN Doc. A/40/17 (1995), reprinted in 24 I.L.M. 1302.

[5] In particular, the Federal law *On State Regulation of Foreign Trade Activities, Sobranie zakonodatelstva R.F.* (1995) No. 42, item 3923 employs categories of private international law to define participants in foreign trade transactions.

[6] *Constitution of the Russian Federation*, art. 17(2).

relies on the natural character of such rights and freedoms. This conception of rights is reflected in the first words of the constitutional rules: "every person has the right," "every person is guaranteed," and "every person may". Such phrases "emphasize that the specified rights and freedoms are acknowledged as belonging to any person residing in Russia, be that person a citizen of the Russian Federation, a foreigner, or a stateless person."[7]

By its recognition of equality and its declaration of rights and freedoms, the Constitution envisages a legal system which will provide the foundation for the realization of these guarantees at a level consistent with international standards. Closely related to this goal is the renewal of Russian civil law rules relating to conflict of laws and private international law.[8]

While the adoption of Parts 1 and 2 of the *Civil Code of the Russian Federation*[9] was a significant achievement, the codification of Russian civil law has yet to be completed. The draft of Part 3 of the C.C.R.F.—which includes a section on private international law—at the time of writing this article is still pending submission to Parliament. Methodologically speaking, existing provisions of the C.C.R.F. will undoubtedly be relied upon as foundational materials for the development of federal laws and other pieces of civil legislation. Through this process, it is hoped that greater consistency and seamlessness between the larger civil law and the C.C.R.F. might be achieved.

At the outset of the codification process, drafters unanimously agreed that concepts relating to private international law would not be excluded from the general framework of civil legislation. Rules relating to conflict of laws and private international law are to be incorporated into Part 3 of the C.C.R.F. The fact that these rules are not incorporated in the introductory sections should not be construed as a denial of their importance or any sort of tacit attempt to maintain the traditions of the former Soviet era. On the contrary, the consensus seems to be that any reference to the traditions of the former regime would not be appropriate.[10]

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[7] E.A. Lukasheva, ed., *The General Theory of Human Rights* (Moscow, 1996) at 32.

[8] This can be seen in the *Fundamentals of Civil Legislation of the U.S.S.R. and Union Republics*, *Vedomosti S"ezda Narodnykh Deputatov S.S.S.R. i Verkhovnogo Soveta S.S.S.R.* (1991) No. 26, item 733 [hereinafter *Fundamentals*], as well as in the 1964 *Civil Code of the Russian Soviet Federated Socialist Republic*, *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1964) No. 24, item 406 [hereinafter 1964 Civil Code].

[9] Part 1 was enacted in 1994: *Sobranie zakonodatelstva R.F.* (1994) No. 1, item 3301; and Part 2 was enacted in 1995: *Sobranie zakonodatelstva R.F.* (1996) No. 5, item 410 [hereinafter C.C.R.F.]. For the English-language translation, see P.B. Maggs & A.N. Zhiltsov, eds., *The Civil Code of the Russian Federation*, trans. P.B. Maggs & A.N. Zhiltsov (Armonk, N.Y.: M.E. Sharpe, 1997).

[10] It is typical of many European and Latin American countries to place the entire body of conflict of laws rules in the introductory sections of the relevant civil codes. However, the Civil Codes of Louisiana (Book 4) and of Quebec (Book 10) demonstrate a different approach.

The C.C.R.F. will become a cornerstone of profound change in Russian society. Part of this change will stem from the definition of "civil law", which is provided for in Part 1 of the C.C.R.F. Part 1 provides a comprehensive framework for the development of rules for a civilized market and, more generally speaking, for the revival of private law. Furthermore, the conceptual framework of this section—its principles and rules—will be maintained in the Part 3 rules pertaining to conflict of laws and private international law. The C.C.R.F. will thus maintain and promote the fundamental principles set forth in the foregoing sections, facilitating their further development and application to relations involving an international element. The ideology and orientation of the draft section on private international law will, to a large extent, depend on the content of Parts 1 and 2 of the C.C.R.F., and primarily on those legal norms that pertain to the fundamental concepts of civil legislation, namely, the equality of parties in civil transactions, the free will and self-sufficiency of the parties, the freedom of contract, the inadmissibility of arbitrary intervention in private affairs, and mandatory judicial remedies for the violation of civil rights.

Despite the obvious importance of the section devoted to private international law within the structure of the C.C.R.F., innovations in this sphere will not be limited to the provisions of this section. A number of basic legal principles in Part 1 of the C.C.R.F. directly regulate issues pertaining to private international law. For example, article 2(1)(iii) C.C.R.F. stipulates that rules established by civil legislation, unless otherwise provided for by a federal law, will apply to relations involving foreign citizens, stateless persons, and foreign legal persons. For the first time, Russian civil legislation asserts a wide and equal scope of authority on both foreign and national subjects of law. The rules, moreover, do not apply only to foreign citizens and stateless persons, but also to foreign legal persons whose legal status was previously determined in special legal acts and was contingent on particular spheres of activities. In addition, the principle of equal treatment extends to the entire set of civil law rules, with the exception of such provisions as may be established by federal laws and—as it follows from article 7 C.C.R.F.—by international treaties of the Russian Federation.

II. Foreign Transactions and the Signing Requirement: An Example

At one time, failure to execute a relevant document in the prescribed form may have resulted in a foreign trade transaction being declared invalid.[11] The new C.C.R.F. does reproduce some of the formal requirements of the former legislation, but not to the same extent. It may be useful at this point to compare some of the requirements of the old law with those of the new.

[11] The *Fundamentals* sets out requirements of form for foreign trade transactions. Art. 162(3) states that "a foreign trade transaction may be declared invalid because of a failure to adhere to the simple written form prescribed for such transactions." This piece of legislation simply refers to formal (as opposed to substantive) requirements respecting these transactions.

Articles 45 and 565 of the 1964 Civil Code imposed several requirements of form in relation to the execution of foreign trade transactions with Russian legal persons.[12] The new C.C.R.F. does not reproduce these requirements, nor does it expressly state what consequences will result from a failure to comply with the former procedures. The *Fundamentals*,[13] however, does stipulate that failing to adhere to particular formal requirements will invalidate a foreign trade transaction.[14]

The procedures for signing foreign trade transactions described in articles 45 and 565 of the 1964 Civil Code were mandatory in character and they applied to Soviet organizations regardless of where the transaction was concluded.[15] One such procedure stipulated that any foreign trade transaction concluded by an authorized Soviet organization was to be signed by two persons.[16] With the passage of the *Fundamentals*, these procedures were nullified to the extent that they were inconsistent with the *Fundamentals*.[17] Subsequent to the passage of the *Fundamentals*, the procedure that applied to Soviet legal persons signing foreign trade transactions came to be regulated by general rules based on the relevant stipulations of the constitutive transaction documents.

Some have questioned whether the aforementioned formal requirements[18] ("the old rules") would continue to be applicable to those foreign trade transactions entered into prior to the passage of the *Fundamentals* ("the new rules"). For example, where a Russian contractor violated the old rules, would the old rules continue to apply to those cases notwithstanding the fact that they were no longer the law? This question would appear to be confused by the passage of the Federal law *On Bringing into Effect Part I of the Civil Code of the Russian Federation*, which declared section 1 of the

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[12] These requirements applied regardless of the location where the given transaction was concluded.

[13] *Supra* note 8.

[14] *Fundamentals*, art. 30 stipulates that the "failure to adhere to the form established for foreign trade transactions entails invalidation thereof." Art. 165 states that "the form of foreign trade transactions concluded by Soviet legal persons and citizens is defined by legislation of the Union of Soviet Socialist Republics, regardless of the place where the said transactions were eoncluded." Note that neither of these articles provide for a special procedure for the *signing* of foreign trade transactions.

[15] Special resolutions of the U.S.S.R. government established the mandatory character of these articles.

[16] Resolution No. 122, most commonly referred to as "The Resolution on Two Signatures" stipulated that

> foreign trade transactions concluded by authorized Soviet organizations are to be signed by two persons. Unless otherwise provided for by the charter of an organization, the right to sign such transactions is conferred on the director and deputy director of the specified organization, directors of companies comprising the organization, and authorized persons issued with powers of attorney personally signed by the director of the organization.

[17] The *Fundamentals* came into effect in the Russian Federation on August 3, 1992. Thus, arts. 45, 565 of the 1964 Civil Code and Resolution No. 122 were invalidated on that date.

[18] The procedures being those as articulated in arts. 45, 565 of the 1964 Civil Code and Resolution No. 122.

"General Provisions" of the 1964 Civil Code invalid as of January 1, 1995.[19] At least one ruling of the International Commercial Arbitration Court has considered the question of the applicability of the old rules and it appears that the new rules are to apply regardless of the date of conclusion of the transaction.

III. Article 127 and the Law Applicable to the State

Where the Russian Federation enters relations that are governed by civil legislation, the law applicable to the State is essentially the same as the law applicable to citizens and legal persons.[20] This is not necessarily the case for *foreign* legal persons, citizens, and states; relations between the Russian State and foreign entities are informed by article 127 C.C.R.F., which specifies the nature of the State's responsibility relative to situations involving civil legislation and foreign legal persons, citizens and States. Article 127 states:

> The peculiarities of liability of the Russian Federation and subjects of the Russian Federation in relations regulated by civil legislation with the participation of foreign legal persons, citizens, or states shall be determined by the statute on the immunity of the state and its property.

Normally, relations between the Russian Federation and foreign entities would be defined in a law detailing the immunity of the State and its property. Article 25 of the *Fundamentals* provides for the development and adoption of such a law. However, this work was not completed because of the collapse of the U.S.S.R. Similarly, the rule stipulated in article 127 C.C.R.F. has not been implemented.

There are several concerns with respect to future development of the law in this area. First, it seems necessary to resolve the question of how several provisions of relevant laws in this area might be harmonized. For example, laws relating to suits against a foreign state's diplomatic immunity,[21] immunity of the State,[22] product sharing agreements,[23] and jurisdictional immunity[24] all require harmonization.

Next, it would also seem appropriate to mention that the provisions of article 435 C.C.P. are based on the principle of absolute immunity of a foreign state, and on the

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[19] This included the provision of art. 45 of the 1964 Civil Code which had already been "superceded" by the provisions of the *Fundamentals*.

[20] Art. 124 C.C.R.F. provides that the Russian State may enter into relations that are regulated by civil legislation on the same basis as may its citizens and legal persons. In these circumstances, the State is governed by the norms appliable to legal persons unless otherwise provided for by law.

[21] Art. 435 of the *Code of Civil Procedure of the Russian Federation, Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1964) No. 24, item 407, as am. by *Sobranie zakonodatelstva R.F.* (1995) No. 49, item 4696 [hereinafter C.C.P.]: "Suits Against Foreign State's Diplomatic Immunity."

[22] Art. 23 C.C.P.: "Immunity of the State."

[23] Federal law *On Product Sharing Agreements, Sobranie zakonodatelstva R.F.* (1996) No. 1, item 18.

[24] Art. 213 of the *Code of Arbitration Procedure of the Russian Federation, supra* note 2.

demand for an appropriate treatment of "the Soviet State, its property or representatives of the Soviet State." According to article 213 of the *Code of Arbitration Procedure of the Russian Federation*,[25] to file a suit in a court of arbitration against a foreign state or to take various other measures[26] against a foreign state, it is necessary to have the consent of authorized bodies of that foreign state unless Russian federal laws or international treaties of the Russian Federation provide otherwise. Russian federal law also stipulates that product sharing agreements concluded with foreign citizens or foreign legal persons may include the right of the State to renounce its jurisdictional immunity or immunity against seizure of property in order to ensure the execution of a court of arbitration ruling.[27]

IV. The Role of International Treaties

What is the relationship between international treaties of the Russian Federation and domestic Russian law? International treaties are mentioned in the "General Provisions" of Part 1 of the Civil Code. These provisions state that generally accepted principles and norms of international law, constitutionalism, and international treaties signed by the Russian Federation constitute an integral part of its legal system.[28] Futhermore, it is a constitutional rule that where there is a conflict between international treaties and domestic civil legislation, the rules of the former prevail.[29]

As far as contracts are concerned, Russian law recognizes the well-known division of contracts into contracts of direct and indirect application.[30] The former are directly applied to relations governed by civil legislation, while the latter require the adoption of certain inter-state acts.

In relation to the judicial consideration of international treaties, Russian federal law states that courts must consider provisions of officially published international treaties to ensure those provisions are directly applied in the Russian Federation.[31] Courts, however, do not appear to be compelled to consider the application of international treaty provisions that are contingent on certain internal state acts. In such cir-

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[25] *Ibid.*

[26] Such other measures include involving a foreign state in a law suit as a third party, seizing property which is located in the territory of the Russian Federation, and enforcing a foreign judgment against such property.

[27] Federal law *On Product Sharing Agreements, supra* note 23.

[28] Art. 7 C.C.R.F.

[29] *Constitution of the Russian Federation*, art. 15(4): "If an international treaty of the Russian Fedeartion establishes rules other than those established by the law, the rules of the international treaty shall apply."

[30] Both the C.C.R.F. and the Federal law *On International Treaties of the Russian Federation, Sobranie zakonodatelstva R.F.* (1995) No. 29, item 2757 recognize this division.

[31] Resolution No. 8 of the Plenary Session of the Supreme Court of the Russian Federation "On Certain Issues Concerning the Application of the Constitution of the Russian Fedearation by Courts When Administering Justice" (31 October 1995). See also the Federal law *On International Treaties of the Russian Federation, ibid.*, art. 5(3).

cumstances, an international treaty should be applied in conjunction with the appropriate intra-state implementation act.

V. Toward a Civil Code Section on Private International Law

Significant steps have been taken to develop the section in the C.C.R.F. devoted to private international law. A draft of this section was tabled by the Research Centre for Private Law on November 30, 1996. Russian and foreign experts have since offered several comments which have resulted in several amendments. This process of amendment and the resulting text have, to some extent, been infiuenced by the private international law provisions of the Model Civil Code.[32] Many of these provisions were incorporated in the draft of Part 3 of the C.C.R.F.[33]

The development of a Russian approach to dealing with conflict of laws is an extremely important component of the codification process. Generally speaking, current developments show that the draft will include a general conflict rule which will be subject to specific application. Such a rule will obviously create difficulties for law enforcement agencies. However, the reasoning underlying this approach is an attempt to avoid a legal vacuum by identifying the best solution in a given situation. In this respect, drafters seem to have succeeded in making conflict rules more flexible in terms of their application.

In the absence of an agreement between the parties as to applicable law, the obligations under the agreement would be subject to the law of the country most closely related to the agreement. Unless otherwise provided for in the agreement, the applicable law is deemed to be the place of residence or primary place of business of the party whose performance is deemed decisive for the content of the agreement. It should be noted that the Russian draft defines the concept of a party "whose performance is deemed as decisive for the content of an agreement."

Development of the framework of conflict regulation has resulted in an increase in the number of conflict rules. New rules include provisions applicable to obligations arising from unilateral actions, to obligations resulting from the infliction of harm on consumers, and to intellectual property rights.

Some conflict rules on unilateral actions are treated as bilateral norms. Examples of such rules are the provisions applicable to rights and obligations under obligations resulting from the infliction of harm abroad (provided that the relevant parties are citizens or legal persons of one and the same state), and provisions applicable to the inheritance of immovable property.

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[32] A Model Civil Code [hereinafter Model Code] was developed under the asupices of the Commonwealth of Independent States Research and Consulting Centre for Private Law. The Model Code was subsequently approved by the Interparliamentary Assembly of the Member-States of the Commonwealth of Independent States. The Model Code includes s. 7: "Private International Law" as well as sections on intellectual property and inheritance law.

[33] The Russian-language draft of the private international law section is nearing completion.

In defining the status of obligations under an agreement, both the Model Code and the draft of Part 3 of the C.C.R.F. have rejected a dualistic approach (*i.e.*, a "double standard" approach). Unlike the *Fundamentals* that envisage different conflict rules for defining the rights and obligations of parties to foreign trade transactions[34] and those of parties to transactions that do not fall into the category of foreign trade transactions,[35] the Model Code and the draft of Part 3 propose the introduction of uniform conflict rules whereby the status of an obligation under an agreement will be subordinate. However, conflict regulation still retains all of the former differences with respect to the form of foreign trade and other types of transactions.

Both the Model Code and the draft of Part 3 refer to a wide range of legal transactions. For example, matters such as the interpretation of agreements, rights and obligations of parties to an agreement, performance of agreements, consequences of non-performance or improper performance of agreements, termination of agreements, consequences arising from an agreement declared null and void or invalid, the assignment of claims, and the transfer of debts under an agreement can all be found in these two documents.

The Model Code and the draft of Part 3 allow parties to an agreement to choose applicable law, either with respect to the entire agreement or specific parts thereof. Both the Model Code and the draft of Part 3 contain opening general provisions which give rise to the following observations: first, never before has the national legislation incorporated in such detail so many of the general concepts of private international law. Second, the general provisions in the Model Code and the draft of Part 3 include principles that were incorporated in the national legislation (*i.e.*, the definition of the content of a "foreign law" and the public order clause) as well as those that were primarily referred to within the doctrinal framework (*i.e.*, qualification of the legal concepts of the conflict rule and of the imperative norm, which restricts the application of conflict rules).

Issues related to the application of imperative norms in private international law were reflected in the 1980 *Rome Convention*[36] of applicable legal obligations arising from an agreement, in some international treaties, and in a number of foreign legislative acts. The introduction of the relevant norms in Russian legislation would be contingent on a determination of the scope of applicable imperative norms. The task of the legislature and experts is to provide guidelines to facilitate that process. The wording of applicable imperative norms proposed by the Russian draft of Division 7 of Part 3 of the C.C.R.F. seems to meet the specified requirements more precisely than the Model Code. The proposed imperative norms—as a result of directives in a norm itself or in view of their particular significance in ensuring the rights and lawfully

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[34] *Fundamentals*, art. 166.

[35] *Ibid.*, art. 165(2).

[36] EC, *Council Convention on the Law Applicable to Contractual Obligations* [1980] O.J. L. 23/1492.

protected interests of participants in the usual course of business—regulate the pertinent relations regardless of the applicable law.

The Model Code and the draft of Part 3 propose to categorize legal concepts in accordance with the law of the country of the court, unless otherwise stipulated by law. However, the draft of Part 3 contains a significant clarification in making a determination of applicable law. On the whole, this innovation cannot be regarded as indisputable, especially in light of the possibility provided by the national doctrine to offer an independent categorization of the concepts constituting the scope of a conflict rule on the basis of the fundamental principles of comparative jurisprudence.

Another block of rules included in the Model Code and the draft of Part 3 pertain to the legal status of foreign citizens, stateless persons, and foreign organizations. The principal distinction of the rules can be seen in a number of areas. First, the Russian draft introduces the concept of personal law which—pursuant to article 62(1) of the *Constitution of the Russian Federation*—takes into account the possibility of dual citizenship. The personal law of a physical person is considered the law of the person's state of citizenship. A citizen who holds foreign citizenship along with Russian citizenship is personally governed by Russian law. If a person holds several foreign citizenships, the applicable law is the law of the State where the person is most closely connected. The personal law of a permanent resident is the law of the State where the person resides. The personal law of refugees is the law of the State providing asylum.

Second, following the rule set forth in article 2(1) C.C.R.F., the draft provides for equal legal status to foreign citizens, permanent residents, and Russian citizens with respect to civil rights and obligations. The draft applies to foreign legal persons involved in entrepreneurial and other activities in the territory of the Russian Federation. The respective provisions on the national regime for the activities of foreign citizens, permanent residents, and foreign legal persons are included in the Model Code.

Third, with the exception of personal law, the Model Code and the draft of Part 3 introduce and define the concept of a legal person. Fourth, both the Model Code and the draft of Part 3 contain provisions that establish the capacity of a foreign citizen or permanent resident to be an individual entrepreneur. This provision refers to the law of the State where the person is registered as an individual entrepreneur. In the instances where this law cannot be applied—in view of the absence of a mandatory registration requirement—the law of the State which is the primary place where the entrepreneurial activity is performed is applied.

Fifth, the draft of Part 3 of the C.C.R.F. introduces provisions that were previously unknown to legislation of the Russian Federation, namely those referring to the legal status of a foreign organization which is not a legal person according to foreign law but which is thereby recognized as a subject of law. The personal law of such organizations is the law of the State where said organizations are registered, and the activities of such organizations will be governed by those provisions of the C.C.R.F. that govern the activities of legal persons, unless otherwise provided for by a statute, other legal acts, or the nature of the legal relations.

Conclusion

The inclusion of private international law in the draft of Part 3 of the C.C.R.F. would not signify the renunciation of the idea of developing a special section on private international law. The subject matter of such law could be represented by the general institutions of private international law whereas legislative acts in specific branches of law could incorporate provisions regulating civil, family, labour and procedural relations with a foreign element.

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