The Civil Code of the Russian Federation *and International Agreements*

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This article describes the nature, status, and operation of international agreements under the aegis of the laws of Russia in general, and under the *Civil Code of the Russian Federation* in particular. Attention is given to the means of enforcement of international agreements, their sphere of application, and their interaction with domestic legislation. In terms of this interaction, the author considers the operation of domestic Russian legislation in the absence of international agreements, the relative priority in Russia of rules in international agreements, and the relative authority of the rules in international agreements as well as in the domestic legislation of the Russian Federation.

Cet article décrit la nature, le statut et l'application des accords internationaux sous l'égide des lois de Russie en général et du *Code civil de la Fédération russe* en particulier. L'auteur porte particulièrement attention aux moyens d'exécution des accords internationaux, à leur sphère d'application, ainsi qu'à l'interaction qu'ils ont avec la législation domestique. Quant à cette interaction, l'auteur contemple l'application de la législation domestique en l'absence d'accords internationaux, l'importance relative, en Russie, des règles élaborées dans les accords internationaux, ainsi que l'autorité relative des règles élaborées dans les accords internationaux et dans la législation domestique de la Fédération russe.

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I. Definition of an International Agreement in Russian Law

The term "international agreement of the Russian Federation" is defined as an international agreement in writing entered into by the Russian Federation with one or more foreign countries, or with an international organization. Such an agreement is regulated by international law, regardless of whether it is contained in one document or in several related documents. This definition follows the *Vienna Convention on the Law of Treaties*,[1] and the *Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations*.[2]

The Russian Federation's international agreements are concluded with foreign countries as well as with international organizations on behalf of the Russian Federation (inter-state agreements), the Government of the Russian Federation (intergovernmental agreements), and federal executive authorities (inter-departmental agreements). The Russian Federation is party to a substantial number of international agreements governing civil law relations. These include, *inter alia*, agreements on contracts for the international sale and carriage of goods,[3] as well as agreements on intellectual and industrial property.[4] The U.S.S.R. and the Russian Federation took part in the development of a number of other international agreements which have yet to be ratified by the Russian Federation.[5]

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[1] 23 May 1969, 1155 U.N.T.S. 331.

[2] 21 March 1986, 25 I.L.M. 543. This treaty has yet to be ratified by the Russian Federation.

[3] See *e.g.* the *United Nations Convention on Contracts for the International Sale of Goods*, 11 April 1980, 1489 U.N.T.S. 3 [hereinafter 1980 *Vienna Convention*]; the *Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes*, 7 June 1930, 143 L.N.T.S. 257 [hereinafter 1930 *Geneva Convention*]; the *Convention on the Contract for the International Carriage of Goods by Road*, 19 May 1956, 399 U.N.T.S. 189; and the *Convention for the Unification of Certain Rules Relating to International Carriage by Air*, 12 October 1929, 261 U.N.T.S. 423 [hereinafter 1929 *Warsaw Convention*].

[4] See *e.g.* the *Paris Convention for the Protection of Industrial Property*, 20 March 1883, 74 U.K.F.S. 44 [hereinafter 1883 *Paris Convention*]; the *Universal Copyright Convention*, 6 September 1952, 216 U.N.T.S. 132; the *Berne Convention for the Protection of Literary and Artistic Works*, 24 July 1971, 1161 U.N.T.S. 3 (as revised in 1971) [hereinafter 1971 *Berne Convention*]; the *Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms*, 29 October 1971, 866 U.N.T.S. 67 [hereinafter 1971 *Geneva Convention*] and the *Madrid Agreement Concerning the International Registration of Trademarks*, 14 July 1967, 828 U.N.T.S. 389 (as revised in 1971).

[5] These include, for instance, the *Convention on the Limitation Period in the International Sale of Goods*, 14 June 1974, 1511 U.N.T.S. 3 [hereinafter 1974 *New York Convention*]; the *United Nations Convention on International Bills of Exchange and International Promissory Notes*, 9 December 1988, 28 I.L.M. 170 [hereinafter 1988 *New York Convention*]; the *United Nations Convention on Independent Guarantees and Stand-by Letters of Credit*, UN GAOR, 50th Sess., UN Doc. A/50/640 (1987) [hereinafter 1987 *Guarantees*]; the *UNIDROIT Convention on International Financial Leasing*, 28 May 1988, 27 I.L.M. 931 [hereinafter 1988 *Financial Leasing*]; the *UNIDROIT Convention on International Factoring*, 28 May 1988, 27 I.L.M. 943 [hereinafter 1988 *Factoring*]; and the *Con-*

II. Machinery for the Enforcement of International Agreements in the Russian Federation

Pursuant to article 7(2) of the *Civil Code of the Russian Federation*,[6] international agreements concluded by the Russian Federation apply directly to civil law relations—except where the agreement requires the issuance of a domestic act in order to apply. When such a domestic act is published, it applies concurrently with the international agreement it has been adopted to implement. One example of the direct application of an international agreement to civil law relations is the 1980 *Vienna Convention*.[7] In contrast, arrangements relating to bills of exchange and promissory notes in the territory of the Russian Federation are regulated by federal laws, which were brought into force in the U.S.S.R. in accordance with the 1930 *Geneva Convention*[8] provisions concerning uniform laws for bills of exchange and promissory notes. Some international agreements expressly stipulate the issuance of domestic state acts on specific matters. Articles 10 and 11 of the 1883 *Paris Convention*,[9] for example, do just that.

The Russian Federation can temporarily apply an international agreement—in full or in part—before the agreement goes into force if this is envisaged by the agreement or if it has been agreed upon by its signatories. A decision to enact such provisional enforcement is made by the same authorities in the Russian Federation who decided to sign the international agreement. Due to this, there appear to be no grounds for the occasionally recurring view that judicial authorities in the Russian Federation may, when resolving disputes, invoke ineffective international agreements as representing international custom.

Those international agreements that have taken effect in the Russian Federation and whose binding nature has been recognized in federal laws are subject to official publication in the collections of Russian national legislation. As with other international agreements—with the exception of inter-departmental accords—they are also published in the Russian-language "Bulletin of International Agreements." Inter-departmental international agreements, for their part, are published in official periodicals of the executive authorities in whose name they were concluded.

Article 15(3) of the *Constitution of the Russian Federation* decrees that no regulatory legal acts affecting any rights, freedoms, and duties of individuals and citizens may apply unless officially published for general knowledge. Resolution No. 8 of the

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vention on the Law Applicable to Contracts for the International Sale of Goods, 30 October 1986, 24 I.L.M. 1573 [hereinafter 1986 *Geneva Convention*].

[6] Part 1 was enacted in 1994: *Sobranie zakonodatelstva R.F.* (1994) No. 32, 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).

[7] *Supra* note 3.

[8] *Ibid.*

[9] *Supra* note 4.

Plenum of the Supreme Court of the Russian Federation expressly stipulates that under this constitutional provision, a court may not base its judgment on any unpublished regulations affecting rights, freedoms, and duties of individuals and citizens. It seems likely that this constitutional provision also extends to international agreements to which the Russian Federation is a party.

III. Sphere of Application of International Agreements

Depending on their spheres of application, international agreements fall into one of two groups: (i) agreements regulating purely international relations, and (ii) agreements regulating international and domestic relations.

A. *Purely International Relations*

The first type of agreement regulates international relations alone (*i.e.*, relations which involve partners from different countries). Examples of such agreements include the 1980 *Vienna Convention*, the 1974 *New York Convention*,[10] and the 1988 *New York Convention*.[11] Concluding such agreements is one way to establish uniform arrangements to regulate international markets. However, this does not result in any modification to the rules governing domestic relations; it simply leaves open the possibility that any country that is party to such an agreement may use provisions in the agreement to amend its own civil legislation regulating relations inside the country.

B. *International and Domestic Relations*

The second type of international agreement regulates relations both in the international and domestic arena. These agreements are designed for the unification of rules concerning specific issues. One example of such an international agreement is the 1930 *Geneva Convention*. While providing for the enactment of uniform laws within the territories of contracting nations, it allows certain departures from such law, in particular when it comes to regulating domestic markets. Russia took advantage of this right and adopted a national law in March 1997 that has given force to the regulations relating to bills of exchange and promissory notes.

Included in this second category are international agreements that force their member countries to make appropriate changes to domestic laws applicable to relations with and without foreign involvement. One example is the 1971 *Berne Convention*.[12]

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[10] *Supra* note 5.
[11] *Ibid.*
[12] *Supra* note 4.

IV. International Agreements and Private International Law

By virtue of article 15(4) of the *Constitution of the Russian Federation* and article 7(1) C.C.R.F., Russia's international agreements form part and parcel of its legal system. These statutory provisions require clarity in determining the operating sphere of a given international agreement. The scope of operation may be defined by appropriate prescriptions set forth in the agreement, or by deference to Russian legislation pursuant to either an understanding between the parties or a rule governing the choice of laws (*i.e.*, a domestic rule of private international law). In practice, Russian authorities—in particular, members of the International Commercial Arbitration Court ("I.C.A.C.") under the Chamber of Commerce and Industry of the Russian Federation—proceed under the premise that the sphere of application of an international agreement is determined by the agreement's own precepts. Where an international agreement establishes uniform norms of substantive law which are applicable to specific relations, generally no conflicts of law arise. Thus, there is no need to identify the applicable national law in order to regulate relations made more complex by foreign involvement. Nevertheless, in the absence of any indications in an international agreement that would make it possible to apply the agreement to regulate relations arising under a civil law contract—where Russian law is applicable by virtue of an understanding reached between the parties or a rule governing the choice of law—the rules of the international agreement should apply as prescriptions that are part of the Russian Federation's legal system. The agreement's sphere of operation, however, must encompass the regulation of the corresponding relations.

The practical significance of following one or the other approach is forcefully manifested in the following example. Russia has been a party to the 1980 *Vienna Convention* since September 1, 1991[13] and, as of February 1, 1998, it is in effect in forty-eight countries. According to article 1 of the 1980 *Vienna Convention*, this treaty applies to international contracts of sale of goods between parties whose commercial enterprises (*i.e.*, principal places of business) are in different countries when (i) the countries are Contracting States (*i.e.*, parties to the 1980 *Vienna Convention*), or when (ii) the rules of private international law lead to the application of the law of a Contracting State. However, article 566 of the 1964 *Civil Code of the Russian Soviet Federated Socialist Republic*[14] governing choice of laws which was effective until August 3, 1992 stipulated that the rights and obligations of parties under a foreign trade transaction were defined by the law of the place where the transaction was executed, unless otherwise agreed upon by the parties. A similar precept is set out in the agreement of countries grouped in the Commonwealth of Independent States ("C.I.S."), *On the Procedure for the Resolution of Disputes Pertaining to Economic Activities*, con-

[13] The respective act of accession was approved by the U.S.S.R. Supreme Soviet on May 23, 1990. The Russian Federation has continued to participate in the 1980 *Vienna Convention* as successor to the U.S.S.R. from December 24, 1991.

[14] *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1964) No. 24, item 406 [hereinafter 1964 Civil Code].

cluded on March 20, 1992,[15] and in the *Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Cases*, concluded among C.I.S. countries on January 22, 1993.[16]

If the rules governing the choice of laws as established by the 1964 Civil Code, the 1992 *Procedure*, and the 1993 *Legal Assistance* were invoked without taking into account the relevant provisions of the 1980 *Vienna Convention*, then the domestic legislation of the corresponding foreign jurisdiction, not the 1980 *Vienna Convention*, would be the governing law in certain cases contrary to the clearly expressed wishes of the Russian Federation. For example, relations arising under an agreement concluded on July 1, 1992 during an international exhibition in Britain between a Russian and Canadian organization for the supply of goods from Russia would have been subject to English law rather than to the 1980 *Vienna Convention*—to which both Russia and Canada[17] are parties—simply because Britain is not a signatory to the 1980 *Vienna Convention*.

Similar problems would also arise should provisions on conflict of laws call for the application to an agreement of a national law which is the most closely related to the agreement. A court would thus be in a position to apply the national law of a country not participating in the 1980 *Vienna Convention*, although the contracting parties are signatories to the convention. The provisions contained in the 1986 *Geneva Convention*[18] are particularly relevant here even though this Convention itself has not yet come into force. First, article 23 of the 1986 *Geneva Convention* expressly stipulates that it does not interfere with the application of the 1980 *Vienna Convention*, or the 1974 *New York Convention*. Second, according to article 8(5), the 1986 *Geneva Convention* prefers the domestic law of the State where a contract is concluded over the law of 1980 *Vienna Convention* member states where the contracting parties are based.

It should be noted that the draft section on "Private International Law" in Part 3 of the C.C.R.F.[19] directly points to an international agreement as a source for determining the governing law applicable to relations with foreign involvement.

V. Application of the *Civil Code of the Russian Federation* in Lieu of an International Agreement and as a Subsidiary Statute

The general rule is that provisions in an international agreement itself determine the possibility of applying C.C.R.F. provisions instead of those formulated in the international agreement, or of applying the C.C.R.F. as a subsidiary statute where the

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[15] Hereinafter 1992 *Procedure*.

[16] Hereinafter 1993 *Legal Assistance*.

[17] Canada has been a party to the 1980 *Vienna Convention* since May 1, 1992.

[18] *Supra* note 5.

[19] Part 3 of the C.C.R.F. is not yet in force.

international agreement features gaps and where Russian legislation is the governing law. In relation to the 1980 *Vienna Convention*, if an international contract of sale falls under its sphere of operation, the application of national civil legislation is permitted in the following cases: first, where the parties excluded the application of the 1980 *Vienna Convention* in full or in part or derogated from any of its provisions, then according to article 6 of the 1980 *Vienna Convention* national civil legislation will be permitted. Second, where matters governed by the 1980 *Vienna Convention* are not expressly settled and cannot be settled in conformity with the general principles on which the 1980 *Vienna Convention* is based, then these matters are subject to applicable Russian civil legislation under article 7(2) of the 1980 *Vienna Convention.* One should keep in mind the fundamental differences manifested in approaches to identifying the sphere of application of the 1980 *Vienna Convention* and those rules set forth in the C.C.R.F. which govern the sale of goods.

As noted above, the parties to the contract must have their commercial enterprises located in different countries for the 1980 *Vienna Convention* to apply. It follows from this that a contract concluded by subjects of different countries whose commercial enterprises are located in the same country is not recognized—within the meaning of the 1980 *Vienna Convention*—as an international contract of sale. Therefore, the contract would not be subject to the provisions of the 1980 *Vienna Convention.* Such a contract, if falling under Russian law, is governed by provisions set forth in the C.C.R.F.

The 1980 *Vienna Convention*'s application is expressly ruled out in article 2 with respect to specific goods, namely, ships, vessels, hovercraft or aircraft, electricity, and securities. At the same time, transactions involving such goods are either clearly subject to the C.C.R.F. or, as stipulated by the provisions on securities in article 454(2) C.C.R.F., are to be governed by general regulations on the sale of goods. This would be the case unless special rules are in effect for their sale.

The 1980 *Vienna Convention* also does not apply to goods bought for personal, family, or household use unless the seller—at no time before or at the conclusion of the contract—either knew or ought to have known that the goods were bought for any such use. Nor does it apply to sales by auction (on execution) or otherwise by the authority of law according to article 2.

The 1980 *Vienna Convention* only governs the formation of a contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, it is not concerned with the validity of such a contract, its provisions or usage, or with the effect the contract may have on the goods sold.[20] Moreover, under the 1980 *Vienna Convention*, the seller is not liable for death or personal injury caused by the goods to any person.[21]

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[20] 1980 *Vienna Convention*, art. 4.

[21] *Ibid.*, art. 5.

Regarding mixed contracts (*i.e.*, providing for the provision of services), the 1980 *Vienna Convention* stipulates that it is not applicable to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.[22] Meanwhile, the C.C.R.F. stipulates that the rules on contracts whose elements are contained in a mixed contract apply to the appropriate arrangement between the parties under the mixed contract, unless something otherwise follows from the parties' agreement or from the substance of the mixed contract.[23] This means that where a mixed contract featuring elements of an international contract of sale does not fall under the 1980 *Vienna Convention*, it becomes subject to the C.C.R.F.

The I.C.A.C. has made extensive practical use of Russian civil legislation (including the C.C.R.F.) as a subsidiary statute in settling disputes that are regulated by the 1980 *Vienna Convention*. This is because the 1980 *Vienna Convention* generally fails to provide—or provides only partial regulation for—certain issues which cannot be settled even by applying its general principles. One example is the enforcement of a contractual term through the imposition of fines. The 1980 *Vienna Convention* generally makes no mention of fines and their correlation to losses. Another example is the determination of the amount of default interest and a procedure for its calculation where the performance of pecuniary obligations is delayed beyond established deadlines. While granting the right to draw such interest under article 78, the 1980 *Vienna Convention* does not specify either the rate or computation procedure. Further issues, such as the validity of a contract or its individual terms, as well as the related issues regarding the observance of Russian legislative requirements for the form of foreign economic contracts, the legal capacity of Russian and foreign legal entities, representation, powers of attorney, and the invocation of a limitation period, are all subjects on which the 1980 *Vienna Convention* is silent.

The C.C.R.F. was applied as the principal statute during the resolution of some disputes on the grounds that the parties' agreement, with respect to the application of Russian legislation, was interpreted as excluding the application of the 1980 *Vienna Convention*. At the same time, in other arbitration awards the I.C.A.C. reasoned that the contracting parties' decision to apply the law of a country participating in the 1980 *Vienna Convention* does not, as a general rule, exclude the application of the 1980 *Vienna Convention*'s provisions.

VI. Priority of Rules in International Agreements

The *Constitution of the Russian Federation* and the C.C.R.F. establish the relative priority of rules in international agreements. The legislation expressly states that if an international agreement in which the Russian Federation is a party establishes rules that differ from those prescribed by Russian law, the rules of the international agree-

[22] *Ibid.*, art. 3.
[23] Art. 421(3) C.C.R.F.

ment shall prevail.[24] The same approach was taken by earlier legislation.[25] The I.C.A.C. has invariably proceeded from the same principle. For example, when the Council for Mutual Economic Assistance's General Terms of Supply were used as an international regulatory agreement, the limitation period and the procedure for its calculation were determined based on this document rather than on any national law.[26] Such court decisions provide a vivid illustration of the acknowledged supremacy of international rules.

Where the seller undertakes to refund the price of goods to the buyer, the I.C.A.C. binds the seller to pay the interest accruing on the price, and in so doing is guided by article 84 of the 1980 *Vienna Convention* rather than by article 487(4) C.C.R.F. Under the 1980 *Vienna Convention*, the interest is payable from the date on which the price was originally paid by the buyer. Under the C.C.R.F., it is payable from the day when the goods should have been delivered to the buyer—or when the amount earlier paid by the buyer is refunded to him—unless the contract binds the seller to pay interest on the prepaid amount from the day on which he receives such prepayment from the buyer.

In keeping with the *Constitution of the Russian Federation* and with article 7(1) C.C.R.F., generally recognized principles and standards of international law form part of the Russian Federation's legal system. At the same time, both the Constitution and article 7(2) C.C.R.F. formulate the rule on supremacy only with respect to international agreements.[27] The arrangement for applying generally recognized principles and standards of international law to civil law relations is not defined by law. The issue remains largely unelaborated.

Resolution No. 8 of the Plenum of the Supreme Court of the Russian Federation lists the *Universal Declaration of Human Rights*,[28] the *International Covenant on Civil and Political Rights*,[29] and the *International Covenant on Economic, Social and Cultural Rights*[30] as examples of international agreements which have institutionalized generally recognized principles and standards of international law.

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[24] See *Constitution of the Russian Federation*, art. 15(4); and art. 7(2)(ii) C.C.R.F.

[25] *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, art. 170 [hereinafter *Fundamentals*].

[26] Art. 80 of the 1964 Civil Code; and art. 198 C.C.R.F.

[27] *Supra* note 24.

[28] GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71.

[29] 19 December 1966, 999 U.N.T.S. 171.

[30] 19 December 1966, 993 U.N.T.S. 3.

VII. Autonomous Nature of International Agreements Within the Russian Federation's Legal System and Enforcement Practices

The prevalence of rules in an international agreement concerning domestic statutory precepts should be kept in mind both during the application of provisions of the international agreement and during the subsidiary enforcement of domestic legal requirements. Article 7 of the 1980 *Vienna Convention* states that, in its interpretation, regard is to be made to its international character and to the need to promote uniformity in its application. Similar principles are laid down in a number of other international agreements.[31] It seems justified to view this rule as being of a general nature, *i.e.*, to also be invoked in relation to those international agreements that do not themselves contain it. This approach supports the underlying purpose of international agreements that set out uniform rules to regulate international markets, which is to harmonize legal environments in different countries, and therefore to help remove legal barriers to international economic relations.

The fact that the Russian Federation's international agreements are, in accordance with its Constitution, part of the nation's legal system does not alter the understanding (prevalent in private law theory) of the autonomous nature of an international agreement within the framework of the national legal system of which it is part. It follows from this autonomous nature that it is inadmissible to make subsidiary use of those domestic statutory provisions which run counter to any underlying principles of the international agreement. This yardstick should also be applied to explanations issued by the Supreme Court of the Russian Federation and the Russian Higher Court of Arbitration[32] on the procedure for courts in applying C.C.R.F. provisions when the latter are used subsidiarily with respect to relations regulated by international agreements. The purpose of such explanations is not, and cannot be, to alter Russia's obligations under an international agreement. This is vividly seen in article 395 C.C.R.F. which defines the consequences of using another party's money with respect to relations regulated by the 1980 *Vienna Convention.*

Under article 78 of the 1980 *Vienna Convention*, if one party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it without prejudice to any claim for damages recoverable under article 74 of the 1980 *Vienna Convention.* Article 74 establishes the right to recover damages for breach of contract to the extent of both actual damages and lost profit. Since article 78 does not provide

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[31] See *e.g.* the 1974 *New York Convention*, *supra* note 5, art. 7; the 1988 *New York Convention*, *ibid.*, art. 4; the 1987 *Guarantees*, *ibid.*, art. 5; the 1988 *Financial Leasing*, *ibid.*, art. 6(1); and the 1988 *Factoring*, *ibid.*, art. 4(1).

[32] In accordance with the *Constitution of the Russian Federation*, the country's Supreme Court (article 126), and the Higher Arbitration Court (article 127) are empowered to issue explanations regarding issues of legal practice. Under the Federal law *On the Arbitration Courts*, *Sobranie zakonodatelstva R.F.* (1995) No. 18, item 1589, art. 13(1), the right to provide some explanations is granted to the Plenum of the Higher Arbitration Court, and resolutions issued by the Plenum on matters within its jurisdiction are binding on courts of arbitration in the Russian Federation.

any indication as to the procedure for determining the amount of interest, this gap is—by virtue of article 7(2) of the 1980 *Vienna Convention*—filled by courts invoking the applicable domestic law (*i.e.*, article 395 C.C.R.F.). This kind of subsidiary enforcement may not, and should not, result in a breach of the 1980 *Vienna Convention*. It is the Convention and not the C.C.R.F. that determines principles for applying rules on annualized interest. Further, it is necessary, pursuant to article 7(1) of the 1980 *Vienna Convention*, to give due regard for the need to achieve uniformity in the application of the Convention in different countries.[33]

In this vein, one should note that in international commercial exchange (which is also acknowledged in theory and foreign judicial and administrative practices), annualized interest is recovered regardless of whether there were any circumstances excusing the defaulting party of liability for the payment delay. The lender should not, as a general rule, be required to prove the amount of damages incurred but only the validity of the rate applied to calculate the amount of interest. In the meantime, based on the location of article 395 C.C.R.F. in Chapter 25: "Liability for Violation of Obligations," and under the subheading "Liability for Non-performance of a Monetary Obligation," the Russian Federation's Supreme Court of Arbitration treats the annualized interest stipulated by article 395 as a penalty, and orders the recovery to be effected according to those rules which apply to property liability.

VIII. Correlation of International Agreements

Where several international agreements have been concluded between the Russian Federation and another country, a particular question then arises. In essence, which should enjoy priority when identifying rules to be applied in lieu of C.C.R.F. provisions? It is obviously difficult to give an unequivocal answer to this question. It is imperative, first of all, to turn to the directions given by the international agreements themselves.

Relative to international sales, the 1980 *Vienna Convention* expressly stipulates that it does not prevail over any international agreement which has already been, or may be, entered into and which contains provisions concerning matters governed by the Convention, provided that the parties have their commercial enterprises in countries that are parties to such an agreement. It follows that this is meant to refer to other international agreements that provide regulation on issues of substantive law. It should be noted that the 1980 *Vienna Convention* does not set any rules to govern the choice

[33] A court does not have the right, when trying cases, to apply those statutory provisions that govern any legal relationships if an international agreement which has taken effect for the Russian Federation and consent to the binding nature of which was given in the form of a Federal law establishes different rules than those set out in the law. In the author's opinion, this explanation should be understood more broadly than expressly stipulated. The constitutional precept regarding the prevalence of rules contained in the Russian Federation's international agreement extends to all types of such agreements. It is of decisive significance that such consent should be expressed by an authority provided for by law and in a form consistent with statutory requirements.

of laws. Another example of such an international agreement is the Council for Mutual Economic Assistance's General Terms of Supply which, at the time the 1980 *Vienna Convention* was adopted and entered into force, had the status of an international agreement for signatory states.

The applicable provisions of the 1986 *Geneva Convention* were set out earlier in this article.[34] A direct refusal to recognize the prevalence of the corresponding international agreement over other international agreements that have already been signed or may be signed is contained in particular in article 17 of the 1988 *Financial Leasing*,[35] and article 15 of the 1988 *Factoring*.[36]

IX. Reflection in the Civil Legislation of the Russian Federation of Provisions Sealed in International Agreements

The law-making process of the U.S.S.R. and of the Russian Federation has traditionally taken account of international practices in the regulation of civil law relations. This was reflected, in particular, in the *Fundamentals*,[37] effective in the Russian Federation from August 3, 1992.

The same method was used, to a much greater extent, during drafting work on Parts 1 and 2 of the C.C.R.F. As a result, a number of provisions which the C.C.R.F. institutionalizes are identical, or close in meaning, to the relevant provisions of certain international agreements. This has provided assurance that the C.C.R.F. is consistent with the present-day international practices of regulating property relations in a market economy.

When the C.C.R.F. was drafted, due regard was given, most notably, to those international agreements to which Russia was party. Particular note was also taken of those international agreements drafted with Russia's participation, but which had yet to take effect. Other international documents of a universal nature were likewise given some consideration.

The 1980 *Vienna Convention* should be singled out among such documents. Its provisions were used in varying degrees when formulating individual provisions in the C.C.R.F.'s section dealing with the law of obligations, as well as a large number of other provisions governing sales. Since the sole provisions set forth in the C.C.R.F. are also applied to contracts other than those of sale—*i.e.*, contracts of exchange, contracts of hiring work, and trade credit contracts—the 1980 *Vienna Convention* has thus been influential in regulating these types of contracts too.

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[34] See Part IV, above.
[35] *Supra* note 5.
[36] *Ibid.*
[37] *Supra* note 25.

Account has been taken of approaches established by the 1974 *New York Convention*.[38] In particular, provisions renunciating special shortened limitation periods in the area of product quality claims, as well as provisions invoking the statute of limitations at the debtor's request.

The drafting of the C.C.R.F.'s provisions on contracts for financing against the cession of a pecuniary claim has taken account of principles set out in the 1988 *Factoring*,[39] while the drafting of the C.C.R.F.'s provisions on financing leasing contracts proceeded with due regard to the 1988 *Financial Leasing*.[40]

The *Air Code of the Russian Federation*[41] which has been adopted in line with article 784(2) C.C.R.F., considers prescriptions given by the 1929 *Warsaw Convention*.[42]

The Federal law *On Copyright and Neighbouring Rights*[43] includes the relevant provisions of the 1971 *Berne Convention*[44] and the 1971 *Geneva Convention*.[45] The various Russian legislation on patents and trademarks reflect the relevant provisions of the 1883 *Paris Convention*.[46]

Conclusion

Few today can deny the importance of uniformity of rules in today's global community, especially in the realm of international commerce. As the Russian Federation tries to find its place in a market economy, the importance that is placed on international agreements can only help to ease the transition. Yet the Russian Federation cannot lose sight of the importance of its domestic laws in this field. The challenge now is to achieve a sound balance between international and domestic rules and procedure that will further enhance business relations within the Federation and on the global scene.

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[38] *Supra* note 5.
[39] *Ibid.*
[40] *Ibid.*
[41] *Sobranie zakonodatelstva R.F.* (1997) No. 12, item 1383.
[42] *Supra* note 3.
[43] Federal law No. 5351-1 of 9 July 1993.
[44] *Supra* note 4.
[45] *Ibid.*
[46] *Ibid.*

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