LEGAL NATURE OF INTERNATIONAL AGREEMENTS CONCLUDED WITH THE PARTICIPATION OF NONGOVERNMENTAL ORGANIZATIONS

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International agreements concluded by non-governmental organizations (NGOs) as well as treaties concluded by nations[1] (as *primary subjects of international law* — along with the States) whose international legal standing was not traditionally contested by any one — did not fall within the scope of two Vienna Conventions of the Law of Treaties (of 1969 and 1986). Yet, the agreements under review clearly fall within the scope of both Vienna conventions: both agreements concluded by non-governmental organizations with the states represented by their different bodies and agencies and agreements concluded with other international organizations — either non-governmental or intergovernmental. The fact that in the above-mentioned international conventions the agreements under review are not mentioned, by no means puts in question the legal force of the latter or affects the application of the norms of these conventions to these agreements, as such agreements would fall within the scope of these convention in any case by virtue of the international law. The relevant chapters of each of these two international instruments explicitly postulate this provision which is of special importance in the context of the problem under consideration.

Vienna Conventions of the Law of Treaties are applied to the agreements concluded between states, between states and non-governmental organizations and between non-governmental organizations per se. Meanwhile these two conventions are not applied to international agreements, made by states and non-governmental organizations with *other subjects of international law*. The phrase *other subjects of international law* (except states and international IGOs) contained in the text of the Conventions did not slip the attention of two Russian men of law S.U. Marochkine and B.R. Tuxmukhamedov as they write: "both Conventions target such participants of legal relations that have treaty-making capacity and competence. But it is important to note the statement of plurality of persons of international law without their clear

[1] Videlicet nations and peoples settled down to the course of creation of their own state.

identification and the absence of barriers in regard to untraditional legal entities[2].

Nowadays the number of agreements concluded by various NGOs and great variety of issues regulated by them attained a very high level or — in other words — such a critical mass, that the legal nature of such acts should be examined in completely different manner. Constructive and pertinent interpretation of empiric experience relating to collaboration between NGOs and main and secondary entities of international legal relations confirms our point of view — the phenomenon under the question lays within the framework of international public law. Needless to say that we are referring here to agreements concluded by national NGOs on the initiative and by approbation of their respective governments or to agreements of international NGOs and governments of the respective countries on the territory of which delegations and representative offices of NGO operate (i.e. agreements concerning the status, immunities and privileges of international organizations). The scope of relations regulated by agreements of this kind is far from being limited by the above-mentioned agreements.

The objective nature of this phenomenon seems to bring an universal acknowledgment of this fact by international law experts in the nearest future, as the vector of the tendency maturating in the interior of former stereotypes — judging by a number of certain manifestations — is clearly observable. "Driving gear" of the law relative to the transition from quantity to quality gradually comes into action — this fact is evidenced by international treaty practice (being the stable standard of truth). This practice shows further steady growth of agreements of this kind. However, it should be said that this circumstance is not the sole and main reason of metamorphoses, related to the status of non-governmental organizations, happening under our eyes. It is common knowledge that during the last decades an attitude towards NGO changed radically in UN system, UN specialized agencies, in regional and international intergovernmental organizations and in the whole world. All these fundamental changes (amounting to the raising of the international legal status of non-governmental organizations) were entrenched in international legal instruments, including convention provisions and norms[3].

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[2] See: International Law: Textbook / Executive editor V.I. Kuznetsov, B.R. Tuzmukhamedov. Moscow, 2007. P. 70-71.

[3] Just one example: European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations of April 24, 1986. See: International Public Law (Collection of documents in Two Parts) / Draftsmen: K.A. Bekyashev, D.K. Bekyashev, Part I, Ed., "Prospect". Moscow, 2006. P. 710-712.

On the other hand, there is nothing to be surprised about the stance of those who suggest classifying NGOs and agreements concluded by these organizations in the categories of international private law, despite the evident wrongfulness of such an approach: the process of recognition of the legal status of non-governmental organizations in Russian legal community was also rather long and took not less than half a century. Meanwhile non-governmental organizations as any other subject of international law can without hindrance conclude agreements, including agreements concluded within the framework of international private law. It should be said in the meantime that the absolute majority of authors are inclined to reckon NGOs (perhaps, just for old times» sake) among the "exclusive" subjects of international private law. However this type of agreements is not the subject of the present research, as it falls under exclusive competence of experts of international civil law regulating property relations and private non-property relations "with foreign element" (this term is deeply entrenched in the science of international private law).

International activities of non-governmental organizations are regulated by a great number of norms of national and international law as well as by numerous agreements concluded with their participation. As professor I.I. Lukashuk noticed in his two-volume research work on the law of international treaties: "It is not infrequent that agreements between non-governmental organizations regulate relations of state importance"[4].

A.N. Talalaev had a similar approach to the problem, specifying however the fact that only "the states are subjects of international law and create this very law. Other legal entities can create norms of international law, including the right of treaty-making, inasmuch as they are authorized to do so by the community of states"[5].

Speaking of non-governmental organizations, before examining this category of agreements we should mention once again the fact that there are two categories or so-to-say two different classes of these institutions: *national and international* NGOs. The latter seem to be more advanced from the point of view of their organizational structure and status. International NGOs are less constrained in choosing methods

[4] *Lukashuk I.I.* Contemporary Law of International Treaties. Vol. I. (Treaty-Making). Moscow, Walters-Kluwer Publishers, 2004. P. 110-111. His point of view is shared by some other authors. See: *Neshataeva T.N.* International Organizations and the Law: New Tendencies in International Legal Regulation. Moscow. Delo Publishing House, 1998. P. 87; *Prokuronova S.S.* The UNO. (Lecture Notes). SPb, 2000. P. 38.

[5] *Talalaev A.N.* The Law of International Treaties. Moscow, Mejdunarodnie Otnoshenia Publishers, 1980. P. 99.

and techniques for the implementation of their statutory aims and goals. Activities of international NGOs depend upon the approval or disapproval of national authorities in a much lesser degree. They function in much more comfortable conditions, feel free from the ideological pressure and are less exposed to the changes and fluctuations of the legal base, regulating their activities[6]. In its turn different status of national and international NGOs is clearly reflected in the procedure of treaty-making process[7]. And this is not surprising: activity of national NGOs is regulated by norms and standards of national law and without government approval (in clear or presumed form) of the agreement concluded by national NGO, such an agreement will hardly have any chance of being implemented in the country where it operates.

The situation is quite different when agreements are concluded by international NGOs, as they act beyond the legal framework of national law and become subject[8] of the norms applied in the international public law in general and norms of the international treaty law in particular. Hereafter this point will be illustrated by particular cases taken from the international treaty law practice.

We believe that the study of international agreements of this category should be started by the first and most simple form — international agreements concluded with the participation of national NGO.

Agreements of this kind were often concluded in our country, especially during the first years of the Soviet era[9]. They were concluded afterwards as well. The case of a barter agreement made in February 1958 by Soviet Central Union of Consumer Cooperatives and British Wholesale Cooperative Union[10] can be taken as an example. In April 1958 a similar arrangement was signed by cooperative centers of the USSR and Albania[11], in June of 1958 — between the relevant cooperative organizations of the USSR and Czechoslovakia[12].

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[6] This fact is reflected in all publications referring to IGOs. This fact is also paid attention to in relative provisions of charter documents of various inter-governmental organizations, including Article 71 of UN Charter, where the question is about their interaction with different international IGOs.

[7] This point becomes especially evident — as it will be shown below — at the stage of attachment of the binding force to the documents.

[8] This expression was used by V.V. Chernichenko in his fundamental research. See: *Chernichenko V.V.* The Theory of International Law. Moscow, 1999. Vol. I. P. 113, 129 et al.

[9] These cases were examined by prof. I.I. Lukashuk in Ch. 3. See: *Lukashuk I.I.* Op. cit. P. 111-112.

[10] Pravda. 1967. August, 27.

[11] Pravda. 1958. February, 15.

[12] Pravda. 1958. July, 1.

It is quite clear that exigent issues of the states whose official relations have not been settled yet are resolved with the help of agreements concluded with participation of NGOs. That was exactly the way chosen by China and Japan when their national associations for the advancement of fishing trade concluded an agreement in April, 1955. This agreement regulated relations between the two countries in the area of fishing in frontier zones. One year later contracting parties signed a protocol of extension of the agreement[13]. In both cases non-governmental organizations of China and Japan acted as bodies exercising functions of state jurisdiction, as both states needed an urgent solution of the problem of in-shore fishing.

In July 25, 1957, speaking to Japan journalists at a press conference, Premier of the State Council of PRC Mr. Chou En-lai said that recently "a great number of Chinese and Japanese popular and semi-official organizations concluded a lot of agreements, many of which are being implemented in spite of the fact that normal relations are not being reestablished between China and Japan and according to the norms of international law both countries are still at war, but this fact does not hinder the expansion of friendly relations between the peoples of both countries and conclusion of the agreements between public organizations. Thus, to boost relations between the countries it is necessary to begin with … the conclusion of relevant agreements, and after that we will have to declare termination of the war through diplomatic channels and reestablish normal relations"[14].

National Red Cross Societies of North Korea and Japan acted the same way. At the end of 1959 they signed agreements concerning repatriation of one hundred thousand citizens of DPRK[15]. As the above mentioned agreements were essentially intergovernmental in matter, there are enough examples of agreements also having a form of intergovernmental documents signed by NGOs. For example, a Taiwanese NGO (Coordination Council for the North America Affairs) and US NGO (Institute of Taiwan Studies), created to represent interests of their countries after the normalization of relations between the USA and PRC, signed and agreement, according to which officials of these both institutions were even entitled to diplomatic privileges[16]. A similar

[13] Drujba. 1956. May, 11.
[14] Against American occupation of Taiwan and US underhand plotting aimed at the creation of "two Chinas": Collection of documents and the sourcebook. Peking, 1958. P. 141.
[15] Pravda. 1967. August, 27.
[16] Pravda. 1980. October, 6.

agreement was made in May 1956 by national NGO of China and Japan in order to establish trade relations between the two countries[17].

As it was already noted above, such agreements of international character are concluded by national NGOs not without knowledge and approval of their relevant governments. As an example to prove this point we can refer to the speech made by Japanese Premier at the Lower House of Parliament, promising full help from the government to honour commitments assumed by the Japanese party concerning the above mentioned agreement (the latter one)[18]. It should be said that the degree of the government approval of agreements concluded by national IGOs can differ substantially: "… such agreements, if they were not officially approved by the government, are not regulated by the law of international treaties" — as prof. I.I. Lukashuk[19] notes. As it is known from the practice, agreements of this kind sometimes were concluded in conditions of a negative reaction of the respective government. Such situation emerged in 1952 in respect of the Japanese NGO, when the government of Japan made an official statement that it did not considered itself bound by this agreement[20].

Situation becomes less tense and difficult when a national NGO acts as a de facto representative of a respective government. It goes without saying that agreements thus concluded are actually international treaties — the fact that was always stressed by Russian experts in international law science[21]. This approach is shared by Russian author S.V. Chernichenko who writes: "one can easily imagine the situation when subjects of national law of different states (i.e. non-governmental organizations) conclude between them an agreement on a particular issue, but norms of such an agreement acquire legal character only provided they are sanctioned by the relative state or community of states"[22].

The use of this kind of procedure is commonly linked to the problem of unresolved issues of mutual recognition. For example, the chief of the Russian Mission of Red Cross in Czechoslovakia wrote in his letter of April 20, 1921 addressed to the Ministry of Foreign Affairs of the country of residence, that his government fully accepts the proposed project of the agreement. By its content this agreement was an agree-

[17] Drujba. 1956. May, 11.
[18] See: *Lukashuk I.I.* Op. cit. P. 112.
[19] Ibid.
[20] Tokyo News. 1952. June, 2 and 5.
[21] See: *Lukashuk I.I.* Op. cit. P. 117; *Talalaev A.N.* Op. cit. P. 99-100.
[22] See: *Chernitchenko S.V.* Op. cit. P. 107.

ment that can be concluded only between states"[23]. E. Pashuknis could have meant such cases when he wrote: "Sometimes treaties signed by states with private persons — physical or juridical entities — are more important from political point of view than treaties signed between states"[24]. There was a time when agreements where a national NGO acted as a party to the agreement were considered as official international treaties. An agreement was signed in April 1931between USSR Supreme Council of National Economy and a group of German industrialists. This agreement was a binding one for the Soviet Trade Mission in Germany. It said: "All treaties concluded after the entry of the present Agreement into force … come within the purview of the present Agreement"[25].

And finally, concluding the list of examples illustrating treaty-making practice of national NGOs, it can be said once again that the agreements of this kind are concluded par excellence in case when there are political and legal difficulties to conclude a traditional type of international treaty. Such was an agreement signed between the authorities of the Baden lands of Germany and French NGO Free Port Strasbourg (as in an after-war period the territory of Germany was occupied by Coalition Armed Forces, making a treaty of classic form and at a higher level was so to say out of question). Afterwards, in 1953 the legal status of this agreement was examined by the Federal Constitutional Court of the Federal Republic of Germany[26].

Therefore agreements concluded by non-governmental institutions have long been well known in the international treaty law practice[27] and are in no way something unusual and out of common. But our colleagues always preferred just nibbling at the subject without going into details, especially considering the fact that national authorities always had a cautious (and at times even hostile) attitude — this is the case especially of totalitarian, post-totalitarian and transitional regimes (it will suffice to mention in this context a vociferous campaign launched in

[23] Additional Aspects of Legal Training. Vol. IV. P. 76-77; March 29, 1920 delegation of USSR Supreme Council of National Economy signed Russian Italian Agreement on commodity circulation with representatives of Italian Association of consumer cooperatives. This agreement had to be ratified. See also: *Korolenko A.S.* Trade contracts and agreements of the Soviet Union with foreign states. Moscow, 1953. P. 14.

[24] Pashukanis E. International Law Outline. Moscow, 1935. P. 153.

[25] Izvestiya. 1931. April 21.

[26] See: *Lukashuk I.I.* Op.cit. P. 116.

[27] See: *Wengler W.* Agreements of States with other parties than states in International Relations // Revue hellenique de droit international. 1955. № 2-4.

2007 by Russian media against foreign non-governmental organizations, created or accredited in the Russian Federation and subsequent stiffening of the Federal Law regulation their founding and activity on the territory of the RF). Anyway, there was no special legal research work or scientific publications on this subject in Russia so far. Even more — in publications dealing with the legal status of non-government organizations and in publications focused on the law of international treaties, even a small chapter devoted to the synthesis of treaty practice, legal nature of agreements concluded by various NGOs, and a classification of such agreements[28] can hardly be found so far.

This category of international agreements was not the subject of study in publications on intergovernmental organizations treaty-making practice[29], not to mention modern textbooks on international law that even do not recognize NPO international legal personality in spite of the fact that there is a number of important international legal instruments, including the European Convention of 1986 that give a positive answer to this question[30].

Meanwhile there are some encouraging tendencies. According to the authors of a major work edited under the aegis of the Russian Asso-

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[28] *Lukashuk I.I.* Op. cit.; *Talalaev A.N.* The Law of International Treaties. Moscow, MO Publishers, 1980, Vol. I; *Sharmazanashvili G.V.* International Intergovernmental Organizations. RUDN Publishers. Moscow, 1986; *Kapustin A.Ay.* The Law of International Organizations. General Part. RUDN Publishers. Moscow, 2002; *Abashidze A.Kh., Ursin D.A.* Non-Governmental Organizations: International Law Aspects. RUDN Publishers. Moscow, 2002; *Kovalenko I.I.* International Non-Governmental Organizations. MO Publishers, Moscow. 1976; *Podshibyakin S.A.* Legal Status of International Non-governmental Organizations. Yurlitinform Publishers. Moscow, 2006 et al.

[29] *Shibaeva E.A.* About International Agreements of International Organizations // SEMP — 1969. Moscow, Nauka, 1970. P. 232-246; *Malinin S.A.* About the Law-making Activity of International Organizations // SEMP. — 1971. Moscow, Nauka, 1973. P. 173-188; *Morozov G.I.* International Organizations. Some Theoretic Aspects. Moscow, Misl Publishers, 1969; *Lukashuk I.I.* International Organization Acting As A Party in International Treaties // Soviet Yearbook of International Law, 1960. Moscow, 1961. P. 144-154; *Stepanov V.O.* About The Right of An International Organization to Participate In Multilateral International Agreements // Soviet Law. 1971. N. 12. P. 77-81 (published in Ukranian).

[30] International Law (textbook). Exe. Ed. Yu.M. Kolosov, V.I. Kuznetsov. Moscow, MO Publishers, 1994; International Law (textbook). Exe. Ed.Yu.M. Kolosov and E.S. Krivchikova. Moscow, MO Publishers, 2000; International Law (textbook). Moscow, MO Publishers, 2003; *Ushakov N.A.* International Law (textbook). Yurist Publishers. Moscow. 2003. Some other authors prefer to pass a veil over the subject of NGOs. See for example the following publications: International Law (textbook). Ed. A.A. Kovalev and S.V. Chernichenko. Moscow. Omega-L Publishers. 2008 (Subjects of International Law). P. 150-165.

ciation of International Law[31] a «coexistence» of two different approaches towards the problem of international legal personality of non-governmental organizations: negative and positive, is quite possible. Moreover, authors give much more serious arguments in favor of the latter.

International treaty practice (including respective practice of the Russian Federation) gives good reasons to recognize the «right to life» of the agreements concluded by NGOs in the context of international public law, taking into account their specific character and dissimilarity from the agreements being a subject matter of both Vienna Conventions on the law of treaties. Granting this, it should be said that today it would not be quite correct to emphatically deny the public law character of this category of agreements, even despite the fact that in Russian doctrine of international law NGOs are still not viewed as indubitable subject of international law (along with international IGOs). On the other hand, even the uncompromising opponents of the recognition of this category of agreements as international public law agreements, hardly need more weighty arguments than the increasing number of cases when supreme bodies of modern States ratify agreements concluded by NGOs along with the agreements that they sign with foreign states and intergovernmental organizations, thus confirming international legal character of such agreements and their special importance in the international law context.

According to Article 30 of the Federal Law «International Treaties of the Russian Federation», international treaties, that have already entered into force, are published in the Bulletin of International treaties upon recommendation of the RF Ministry of Foreign Affairs[32]. As is evident from the name and content of the above mentioned documents and as noted by I.I. Lukashuk in his Introduction to the Commentary of the above-mentioned Law of International Treaties[33], they are international agreements, concluded by the Russian Federation exclusively with the subjects of international treaty law. It is absolutely clear that

[31] International Law (textbook). Exe. Ed. V.I. Kuznetsov, B.R. Tuzmukhamedov. Norma Publishers. Moscow. 2007. P. 69-79.

[32] Bulletin of International Treaties — is a specialized edition for publication of the international treaties signed by RF, according to the Presidential decree No. 11 of January 11, 1993 «Publication of International Treaties of the Russian Federation» (See: Collection of Acts of President and Government of the Russian Federation. 1993. No.3. P. 182).

[33] Commentary to the Federal Law "International Treaties of the Russian Federation". SPARK Publishers. Moscow, 1996. P. 5.

such category of agreements have nothing to do with contracts and transactions, concluded in the context of international private law, among main subjects of which, according to certain authors, non-governmental organizations are mentioned.

In this connection we may refer to international treaties recently signed by RF and published in the Bulletin. This will give irrefutable proof that the Russian party considers some non-governmental organizations as subjects of international treaty law, norms of which are "embodied in the two Vienna Conventions of the Law of International Treaties"[34].

An Agreement on Cooperation between the Russian Federation and Europol, the European Police Office — a EU non-governmental organization — was signed in Rome on the 6th of November, 2003[35].

The Agreement between the Government of the Russian Federation and International Committee of the Red Cross (ICRC) on the status of the ICRC and its Delegation (Mission) on the territory of the Russian Federation was signed in Moscow on the 24th of June, 1992. Article 1 of the Agreement says that "The status of the ICRC on the territory of the RF is similar to the status of international organizations". Some of the subsequent articles of the Agreement deal with immunity of the premises, archives and assets of the Organization. Articles 8 and 9 touch upon the tax and custom duties reductions and exemptions offered to the ICRC by Russian authorities. Article 10 points out that "members of ICRC Mission to the RF … have the status similar to that of the staff of non-governmental organizations".

The Director of the ICRC Mission to the RF, deputy Directors and their families have the same status and privileges as diplomatic representatives[36].

During the period of several past decades the ICRC concluded agreements concerning its status with more than 60 countries, including Switzerland[37]. All these agreements were ratified by the respective

[34] Ibid.

[35] See: Bulletin of International Treaties. 2003. No. 3. P. 17-21.

[36] Bulletin of International Treaties. 2006. No. 3. P. 3-8.

[37] Because of the limited character of the present research we intentionally do not touch upon the agreements concluded by NGOs having an advisory status at or affiliated with non-governmental organizations (including the UN, its specialized agencies, UN Department of Public Information (DPI), regional or sub-regional or local international organizations). Nowadays such organizations and number of agreements they conclude amount to several thousand. But still — along with some other Russian legal experts — we should highlight public law character of such agreements. We don»t suggest here either a classification of NGOs agreements concerning the subjects of international law

countries. For example on the 23th of July, 2004 President of Ukraine Leonid Kuchma signed some laws, ratified by the Verkhovna Rada of Ukraine, including the law «On Ratification of the Agreement between the Government of Ukraine and the ICRC concerning the Opening of the ICRC Mission in Kiev».

President of the Republic of Kyrgyzstan Kurmanbek Bakiev signed a law of the 12th of July, 2005 «On the Ratification of the Agreement between the Government of the Republic of Kyrgyzstan and ICRC concerning the status, privileges and immunities of ICRC in the Republic of Kyrgyzstan», signed October 7, 2007 in Bishkek.

As it was put in ICRC publications: «such agreements undoubtedly fall into the category of documents referring to international public law. States who have signed them thereby recognize the fact that ICRC is a subject of international law and grant to the Organization immunities and privileges that are normally granted only to inter-governmental organizations»[38]. After reading this, it is hardly possible to give reason to the suggestion according to which non-governmental organizations are legal entities of the international private law, and that the agreements they participate in, are agreements concluded in the framework of the international private law (regulating property and private non-property relations of legal entities «with foreign element»).

An agreement by ICRC and the Government of Switzerland concluded on March 19th , 1993 concerning the status and range of activities of ICRC on the territory of Switzerland seems to be worth of our special attention, as it is said in this document that ICRC is the subject of international law and its independence vis-à-vis the authorities of this country is officially confirmed[39].

It is common knowledge that ICRC, being one of the largest and well-established international organizations, is staffed *exclusively* by Swiss citizens, this being one of the requirements of Organization Chart. Founded in Switzerland at the end of the XIXth century, this Switzerland-based organization is de facto a Swiss national NGO. In this Agreement ICRC acts in regard of its own country *as an absolutely independent subject of international law*. Isn»t it a real independence of an international organization proving — to the opinion of our col-

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and the hierarchy of state bodies that conclude such agreements, as we believe this is an object of a separate study.

[38] International Committee of Red Cross. ICRC Publishing House. Moscow, 1999.

[39] See: International Committee of Red Cross. ICRC Publishing House. Moscow, 1999. P. 6.

leagues — a fact of its international legal standing? Pointing out features of international organization legal standing our Russian men of law willfully avoided to mention them every time when it came to non-governmental organizations.

Meanwhile, this phenomenon is rather of political than legal origin, and it is surely preconditioned by peculiarities of the past historical era. For example, professor N.A. Ushakov, in the spirit and tradition of old days, wrote: «Thus neither persons and entities, nor institutions of other subjects of national law are not and can not be subjects of international law, as they all are under responsibility (power) of any given State. On the other hand — independence is one of the basic characteristics of the subjects of international law, as they do no depend on any State or other power, capable to impose to them any compulsory legal norms of behavior whatever. Furthermore, agreement between independent from legal point of view subjects of international relations concerning the content of the norm being established and validation of this norm, becomes a method of international legal regulation[40]. Authors of another textbook were not less categorical when they affirmed that: «Only interstate (inter-governmental) organizations can have independent international legal status of their own, legal ability to use their international rights and obligations … only to them can the term «international organization»[41] be applied. But in the end, accounting time and international practice mark the end of any debate. Only time and legal practice can confirm or prove wrong the statements of researchers that are at times most categorical.

As to the point concerning the category of institution designated by the term "International Organization", it should be noted in this occasion that the UN Charter also says that Observer status at the UN General Assembly can be given only to intergovernmental organizations. Nevertheless in 1990 such a status was granted to a non-governmental organization — International Committee of the Red Cross. It is quite evident that such a decision was taken contrary to the United Nations Charter. At the same time nobody has any objections or protest in this connection, calling to correct this «transgression» and to deprive ICRC of the «illegally» granted status or to correct the respective Article of the UN Charter. Therefore plenipotentiary representatives of different States and UN legal institutions (including Interna-

[40] *Ushakov N.A.* Op. cit. P. 21.
[41] See: International Law (textbook). Ed. G.V. Ignatenko and D.D. Ostapenko. Moscow, Visshaya Shkola Publishers, 1978. P. 133.

tional Law Commission — ILC) as well as UN governing body do not consider granting a status proper to a inter-governmental organization to a non-governmental organization as wrongful and illegal. Inside the UN system a reasonable explication and legal reasoning for similar decisions is always found in a most natural way.

This may also hold true for the cases when NGOs participate in peer-to-peer contractual relations with foreign States and international intergovernmental organizations, as such relations have long since ceased to be an exception from the common rule and have become a habitual practice of international law entities. Moreover, UN practice can provide a lot of cases more showy than the above-mentioned. As an example we can mention the case of International Labour Organization (ILO) — the first international organization to be granted the status of specialized UN Agency in 1946 — former non-governmental organization, that even nowadays doesn»t have not the status of hundred-percent intergovernmental and is ranked in a group of international mixed-staffed organizations.

So, Goethe was right when he wrote in his immortal Faust poem «The theory is dry, my dear friend. The tree of life is ever green and always blooming». Objectively defined laws of the evolution of the global society — and not outdated and obsolete schemes and definitions dating of the Cold War era — give a true and convincing explanation of the phenomenon of burgeoning NGOs as well as of the fact that the legal standing of the latter have been recognized by the community of States; and the European Convention of 1986 is the best proof to it.

Let's take another example. According to the United Nations General Assembly Resolution UN GA Resolution No. 54/195, December 17, 1999 the above-mentioned status of UN GA Observer was granted to another non-governmental organization — International Union for the Conservation of Nature and Natural Resources (IUCN)[42]. And what? — the world kept on spinning, though according to some authors» forecast, had to crash down…

There is sufficient reason to believe that the list of NGOs acting as UN GA Observers among non-governmental organizations will not be limited to the above-mentioned. As once M.S. Gorbachev said on another occasion: «the process in under way…».

But still — this is not the main thing about the point in question — the main thing is the approach by the opponents of the recognition of

[42] See: *Fedorov V.N.* Organisation of United Nations, other International Institutions and their Role in XXIst Century. Logos Publishers. Moscow, 2007. P. 892.

the NGO international legal standing. The thing is that they should unconditionally recognize international agreements concluded by (at least) two of the above mentioned NGOs as agreements of public nature. This is quite evident as public nature of these agreements was recognized by international institution of the highest standing and that to the general satisfaction of its independent member States.

As long as NGOs legal standing was recognized both de jure and de facto, thus making them equal in rights with international IGOs, that means that their contractual legal capacity was confirmed at the same time (though it does not need to be recognized somehow — as it is inherent to the legal standing status). That simply means that those who persist in denying this evident fact are not only out of tune with laws of logic and common sense but make more serious mistake — as they breach the norms of political correctness in regard to the above mentioned non-governmental organizations (represented in UN GA along with OAU and IAEA) ILC of UN and almost two hundred UN member-states and the present governing body of this respected organization.

So, as we can see, the problem of international agreements of non-governmental organizations turned out to be not so easy as it may seem and even has a scandalous element. Yet, we absolutely agree with a point of view according to which the agreements in question and contracting parties belong to the category of international public law. This point of view is not the fruit of intuitional (as opposed to the rational) perception of social realm, but a statement of real facts, that speak for themselves.

Agreements concluded by NGOs usually have a form of a classic international treaty accompanied by all necessary attributes, but recently a simplified form of expression of will of contracting parties have become more and more popular. Agreements of non-government organizations — as treaties concluded between States and inter-governmental organizations — can have different names and forms: such as agreement, memorandum, protocol etc.

The process of making such agreements also comes through several stages: period of negotiations, procedure of signing of the agreement by contracting parties» authorized persons and subsequent approval of the signed agreement. However, there are some particular features attributable to the peculiarity of the party to a legal relationship. But given all specificity and procedure differences of international agreements concluded with the participation of NGOs, the main characteristic feature of such agreements, expressing the will of the parties, is its conciliatory nature, resulting from the legal equality of contracting parties, no matter how mighty and influential is their counteractant —

whether it is a State or a interstate (or intergovernmental) organization. As classics said one day — a phrase for some reason not always remembered : «Only equal in rights can negotiate»…

Summing up, it can be noted that agreements concluded with participation of national and international NGOs is a permanent, fast-moving process of international life of the last two centuries (XX and XXI). As it was said above, States or community of States involved (represented by various intergovernmental organizations) by their sanction grant a status of international treaties to these agreements, thus recognizing NGOs» international legal standing, treaty making capacity and equal rights as a contracting party to international agreements. Given the fact that agreements concluded by NGOs with States and intergovernmental organizations are recognized by an absolute majority of authors as having an international public status, it would seem to be strange enough not to recognize this status as to the international agreements concluded between NGOs themselves and with other subjects of international law.

Contemporary international contractual practice of nongovernmental organizations provides normative consolidation — in the context of general international law — of the results of intensified activity of world civil society gathering momentum on international arena. This practice gives a true, unbiased picture of the process of evolution and optimization of NGO phenomenon, visible manifestation of infinite possibilities of the institute of public diplomacy. On the other hand, this process runs in the framework of a fast-moving present tendency — aggressive penetration of the international law in social relations that were previously considered as an exclusive sphere of interstate law. And such a process is under way at a time when international law is gathering momentum and comes through a period of its further democratization.

Finally, extensive international treaty practice of nongovernmental organizations, provisions of multilateral international agreements (including constituent documents of various intergovernmental organizations) having to do with the relationship with NGOs, as well as opinions of domestic and foreign authors suggest that international agreements with the participation of NGOs are actually international agreements. So, both Vienna Conventions on the law of treaties and provisions of national legal instruments in the part dealing with the making and execution of international public law treaties can be applied to such agreements.