



Студенттер мен жас ғалымдардың
«ҒЫЛЫМ ЖӘНЕ БІЛІМ - 2018»
XIII Халықаралық ғылыми конференциясы

СБОРНИК МАТЕРИАЛОВ

XIII Международная научная конференция
студентов и молодых ученых
«НАУКА И ОБРАЗОВАНИЕ - 2018»

The XIII International Scientific Conference
for Students and Young Scientists
«SCIENCE AND EDUCATION - 2018»



12th April 2018, Astana

**ҚАЗАҚСТАН РЕСПУБЛИКАСЫ БІЛІМ ЖӘНЕ ҒЫЛЫМ МИНИСТРЛІГІ
Л.Н. ГУМИЛЕВ АТЫНДАҒЫ ЕУРАЗИЯ ҰЛТТЫҚ УНИВЕРСИТЕТІ**

**Студенттер мен жас ғалымдардың
«Ғылым және білім - 2018»
атты XIII Халықаралық ғылыми конференциясының
БАЯНДАМАЛАР ЖИНАҒЫ**

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XIII Международной научной конференции
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**PROCEEDINGS
of the XIII International Scientific Conference
for students and young scholars
«Science and education - 2018»**

2018 жыл 12 сәуір

Астана

УДК 378

ББК 74.58

Ғ 96

Ғ 96

«Ғылым және білім – 2018» атты студенттер мен жас ғалымдардың XIII Халықаралық ғылыми конференциясы = XIII Международная научная конференция студентов и молодых ученых «Наука и образование - 2018» = The XIII International Scientific Conference for students and young scholars «Science and education - 2018». – Астана: <http://www.enu.kz/ru/nauka/nauka-i-obrazovanie/>, 2018. – 7513 стр. (қазақша, орысша, ағылшынша).

ISBN 978-9965-31-997-6

Жинаққа студенттердің, магистранттардың, докторанттардың және жас ғалымдардың жаратылыстану-техникалық және гуманитарлық ғылымдардың өзекті мәселелері бойынша баяндамалары енгізілген.

The proceedings are the papers of students, undergraduates, doctoral students and young researchers on topical issues of natural and technical sciences and humanities.

В сборник вошли доклады студентов, магистрантов, докторантов и молодых ученых по актуальным вопросам естественно-технических и гуманитарных наук.

УДК 378

ББК 74.58

ISBN 978-9965-31-997-6

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ұлттық университеті, 2018

**Подсекция 10.7 Секция международного частного права: Обновление содержания
международного частного права – требование цифровой экономики**

УДК 341.9

MODERN CODIFICATIONS OF INTERNATIONAL PRIVATE LAW

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In international public law, as in the general theory of law, the essence of the concept of "codification" is disclosed through its "dual" understanding: 1) as a statement of the existing law and 2) as the development of new international legal norms.

The first aspect of codification is manifested in a special form of systematization of law: the ordering and fixing of conventional international legal norms. This idea was accurately conveyed to the French scientist S. Rousseau: "In the international legal order, the term codification denotes the translation (la conversion) of ordinary norms into a corpus of coordinated and systematized written rules that are binding on the participating states of the document in which they actually found their fixation» This approach is enshrined in Art. 15 of the Regulations on the International Law Commission of the United Nations (1947), which understands by codification "more precise formulation and systematization of the norms of international law in those areas in which there is already an extensive state practice, precedents and doctrines» .

The similar meaning of the term "codification" (from the point of view of international public and European law) is given in the "Legal Dictionary": "Agreed measures to draft a legal norm that existed before in the form of custom ...". After the conventional norms are fixed in an international treaty, the "double legal basis of their legal force" arises: from this moment, codified international norms exist as usual norms binding on the states that recognize them, and as contractual norms binding on the states party to the agreement.

The object of codification in international public law is widely recognized international legal norms, international customs and customs of business turnover, judicial precedents and scientific concepts.

The second aspect of codification in the field of public international law is closely related to the notion of "progressive development of international law". An explanation of this term was given by the UN International Law Commission in only one document. In the report of the UN General Assembly prepared by the Commission in 1956, the "progressive development of international law" was regarded as "the preparation of conventions on matters that are not yet regulated by international law or for which the law is still insufficiently developed in the practice of individual states».

According to A.P. Movchan, the delineation of the terms "codification" and "progressive development of international law" is formal and legal in nature and is carried out only for "convenience." However, it directly points to yet another aspect of the codification process in international law - the legal regulation of new areas of international relations.

As R.A. Kalamkaryan, the codification of international law in its essential understanding is not simply a combination of the norms of customary law in clear terms, but a specific fixation in the international convention of norms of a completely new order. According to the scientist, each international treaty to some extent creates new rules, and its object is of direct practical interest for the participating states, therefore, in principle, all international treaties can be considered codification acts. At present, the codification of international law, in fact, is a process of unification of law. The most suitable in international law is the conventional method of codification, the result of which is an international treaty.

Unified international legal norms aimed at regulating cross-border private legal relations can serve as a basis for the subsequent national codification of IPP. As AL writes. Makovsky, an international regulatory and legal act, may include "more or less ready to be transferred to national legislation" unified norms that guarantee minimum protection of civil rights (the so-called "international standards»).

For example, an international convention may establish in some sub-sector (or institute) of the IPP a certain general conflict-binding, which is subsequently borrowed when creating national codification act. A clear example of a unified international act, (MLC) (2006), which brought together more than 70 international instruments in the field of maritime merchant shipping, including 37 conventions and one Protocol (Article X), as a result of which the International Labor Organization (ILO) was called the Consolidated Convention. The structure of the Convention includes three interrelated parts: articles, rules and code.

It is obvious that earlier unification in the field of labor relations in international maritime navigation was carried out by the phased adoption of a number of special international acts. At the present stage, it represents the consolidation of the already accumulated norms and principles in a single comprehensive legal act.

In European law, the concept of "codification" is used in the sense that is characteristic of international public law and involves the reduction in one unifying act of the results of the law-making activities of the European Union (hereinafter - the EU). Unification of European law provides for the systematization of European legal customs and norms, the practice of the EU courts, the European doctrine of law.

In this way, for example, there was a harmonization of the legal rules for the European company (adoption of Council Regulation No. 2157/2001 of 08.10.2001 on the statute of the European Company (SE) and Council Directive 2001/86 / EC of 08.10.2001 on the addition of the statute of the European company with respect to participation of workers).

In addition, the concept of "codification" in European law acquires a special meaning reflecting the specifics of the codification process in the EU is "a kind of purely formal codification consisting in the unification of a basic act and acts changing and supplementing it in one act, without changing the contents of these acts, by publishing a new single act and repealing all previous acts ; The operation, unlike the reform, excluding any change in the content of legal norms, but having a law-making and official character, which distinguishes it from simple consolidation.»

The coding process in the EU, in fact, is a specific type of unification of law, which, as a rule, does not lead to the emergence of new legal norms. With the formal unification of European law, from the existing legal norms, a new legal act is formed that unites the rules that have retained their relevance and replaces the systematized initial acts.

Formal European unification should be distinguished from the consolidation of legal acts (English "consolidated version", German "konsolidierte Fassung"), which has been widely used in modern European law. For example, the consolidated edition of the EU Treaty, published in 2010, is a compilation of the Maastricht Treaty on the EU (1992) and its subsequent changes provided for by the Amsterdam (1997) and Lisbon Treaties (2009). Consolidation in this case is understood as the consolidation of a basic legal act and corresponding changes and corrections in one unofficial document with a view to a more visible and more accessible exposition of law.

An important distinction of formal European codification from consolidation is the granting of a new composite act during the codification of mandatory legal force.

Thus, as a result of the formal systematization of the European the legislation on the trademark was adopted by Council Regulation No. 207/2009 of 26.02.2009 on Community trademarks. It replaced the basic legal act - Council Regulation EC No 40/94 of 20.12.1993 on Community trademarks, the provisions of the six Council Regulations EC No. 3288/94, 807/2003, 1653/2003, 1992/2003, 422/2004, 1891/2006 on the introduction of amendments to the basic act, abolished certain provisions of the acts of 2003 and 2005 on the conditions for the accession of new member states to the EU treaties, participants.

The formal character of such European unifications is indicated by a special note (next to the name of the newly adopted codified act) about the form of its editorial office. For example, "codified version", "kodifizierte Fassung" (German) (Council Regulation EC No 207/2009), or "recast" (English), "Neufassung" (German). (Directive 2009/65 / EC of the European Parliament and of the Council of 13.07.2009 on the coordination of laws, regulations and administrative provisions relating to obligations for collective investment in securities (UCITS)). The goal of European unification in its formal meaning is indicated by the European legislator in the text of the acts themselves and is reduced to ensuring their "visibility and clarity" (paragraph 1 of the preamble of Council Regulation No207 / 2009, paragraph 1 of the preamble of the Directive of the European Parliament and the Council No2009 / 65 / EC). Understanding of codification in international law gives an idea of the main methods for the development of a unified international act, which, after having been implemented, becomes one of the sources of the national IPP. Within the framework of the national legal order, such an act will occupy a special position in view of its international legal nature and legal significance, and also serve as a basis for the codification of IPP. A proper understanding of codification from the point of view of international law is a prerequisite for the effective implementation of standardized norms in the course of national codification.

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УДК 341.9

THE LAW IN DIGITAL ERA

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In today's world, digital technology plays an increasingly important role in the development of countries economy. Even today, more than 40% of the world population has access to the Internet, and almost every 7 out of 10 households has a mobile phone. Digital technologies have a number of advantages – simplification of the public and business access to public services, the acceleration of the information exchange, the emergence of new business opportunities, the creation of new digital products, etc. The main goal of the government program “Digital Kazakhstan” is the