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**Report on the thesis entitled**

**“Application of the Norms of International Treaties in the Practice of  
Commercial Courts of Russian Federation”**

**by**

**Kiseleva Olga Anatolyevna**

I have been requested to provide an external review of the above-mentioned thesis submitted at St Petersburg University for the degree of Candidate of Juridical Sciences.

This thesis by Ms Kiseleva deals with a very topical issue, that is, the role and relevance of treaty law in the practice of Russian commercial courts.

I have to start my assessment with the disclaimer that I am not a specialist in Russian constitutional law or Russian law in general. I am thus only in a position to assess the plausibility of the author’s arguments from a public international law perspective. I have reviewed the thesis with great interest and find it very strong in its legal reasoning.

The author starts in chapter 1 with assessing the nature of treaties concluded by the Russian Federation. I particularly appreciate her arguments determining that treaties should also be regarded as normative acts within the Russian legal order.

Chapter 2 addresses international legal grounds for the application of treaties in commercial court proceedings in Russia. It starts with the basic underlying

principle of *pacta sunt servanda* which is undoubtedly the cornerstone of treaty obligations. However, one may question whether it qualifies as a rule of *jus cogens* as asserted on page 261. On page 264, the continuation of USSR treaties by the Russian Federation is briefly addressed and grounded in the “legal institution of contractual duration”. One wonders whether a brief mentioning of the public international law concept of the Russian Federation as a “continuator state” should not be mentioned here. The discussion of custom on pages 267 *et seq.* does not sufficiently distinguish between inter-state customary law and customary principles evolving in the law of the merchants.

Chapter 3 deals with the application of treaty rules in Russian commercial court proceedings. It starts by clarifying that the unclear legislative mandate is, in fact, meant to refer not to procedural, but to substantive rules (pages 281/282); the ensuing subchapter on the procedural norms of treaties in the Russian commercial courts demonstrates, however, that this also includes issues of capacity. One may wonder though to what extent the scope of powers could be properly regarded as procedural rules.

In the following subchapters, the author analyses the difficulty of correctly interpreting treaty norms for the domestic judiciary. It then elaborates on the usefulness of having international judicial bodies interpret such treaty norms. However, the actual practice referred to in this chapter is rather limited.

In a lengthy chapter on the relevance of resolutions of international organizations for domestic courts, the author very broadly insists that such resolutions “regardless of their titles or their similarity in terms of wording with treaties are not sources of law” (page 373 *et seq.*). While that may be correct in regard to many examples drawn from the Universal Declaration of Human Rights and other UN General Assembly resolutions it seems overly broad given that many international organisations in their constituent documents specifically empower their organs to adopt binding legal resolutions which are then sources of law like treaties. Therefore, to merely treat resolutions of organisations as supplementary interpretive acts up may be too limited.

All in all, the author manages to illustrate very well all the problems arising from the application of treaties before Russian courts and, in particular, Russian commercial courts. She highlights very well the need for a more consistent approach in regard to the legal status of treaty norms even if some of the problems identified in the conclusion on pages 387/388 seem to be generic and could equally apply to any other national judiciary in regard to the application of international law.

Some of the concluding recommendations would have benefited from more elaboration: For instance, when the author recommends on page 389 that the “highest state bodies” should clarify the “content of treaties in order to establish their self-fulfilment”, which probably refers to their self-executing character, it would be interesting to know which state bodies are meant to perform this task. Usually this clarification is performed by national courts, as opposed to acts of specific transformation when domestic legislation is chosen to implement treaty obligations.

Overall and as already mentioned based on the limited accessibility to the main text through its English translation I consider this to be a very useful thesis outlining the practical problems of treaty application/interpretation by Russian courts. The thesis in my view deserves to be accepted by the faculty.

A certain complication in appreciating the academic value of the present thesis results probably from the translation. For instance, it sometimes talks about “arbitration” and sometimes about “commercial” court proceedings which appear to be identical. Another example that may derive from the fact that the English version is a translation only are references to the Court of the Eurasian Economic Union twice on page 385, leading to the suspicion that in one instance the Eurasian Economic Community was meant, or the reference to “the Russian legal system, but not the legal system of the Russian Federation” on page 391 which is difficult to understand. Sometimes the formulations chosen are very complex and lengthy. This again may be a result of the translation as, for instance, the conclusion on page 300 where the concluding paragraph’s first sentence stretches over 10 lines.

Overall, the thesis is very well written, provides a very good overview of the main issues and seems to be based on very good research. It demonstrates that the author is familiar with the main debates and it contains original thinking on the subject.

In spite of some critical remarks, I certainly support its acceptance as thesis at St Petersburg University for the degree of Candidate of Juridical Sciences.

A handwritten signature in black ink, reading "August Reinisch". The signature is written in a cursive, flowing style with a large, prominent initial 'A'.

August Reinisch