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Human Potential of the Constitutions of the Russian Federation and the People's Republic of China

Гуманитарный потенциал конституций Российской Федерации и Китайской Народной Республики

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Abstract. The article describes the issues of preserving and strengthening traditional cultural, spiritual and moral values implemented in the constitutions of BRICS countries on the cases of Russia and China. Russian Constitution with its amendments of 2020 aims at constitutionalizing cultural and moral values, implementing them to the current legislation, and creating economic, political and social conditions for their enforcement. Also, the article examines the activities of non-governmental organizations in the People's Republic of China with the focus on their contribution to preservation and amplification of cultural and moral values enshrined in the Constitution of China.

Аннотация. Статья посвящена проблемам сохранения и укрепления традиционных российских и китайских духовно-нравственных ценностей. С внесением поправок в Конституцию России в 2020 г. актуальной задачей стала конституционализация духовно-нравственных ценностей, их правовое закрепление в действующем законодательстве, создание экономических, политических и социальных условий их реализации. В статье также рассматривается

деятельность неправительственных общественно-полезных организаций в КНР при поддержке государства по сохранению и укреплению закрепленных Конституцией Китая народных духовно-нравственных ценностей.

Keywords: constitutionalization; culture; spiritual and moral values; family traditions; education; civil society institutions; non-governmental organizations.

Ключевые слова: конституционализация; культура; духовно-нравственные ценности; семейные традиции; нравственное воспитание; институты гражданского общества; организации общественного благосостояния.

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Introduction

В закреплении традиционных духовно-нравственных ценностей, которые в совокупности являются своего рода генетическим гуманитарным кодом народа, велика роль конституций государств.

После включения в текст конституции традиционных духовно-нравственных ценностей они приобретают нормативность, становятся конституционными духовно-нравственными ценностями.

Под конституционными ценностями ряд авторов понимает признанные обществом и закрепленные конституционным законодательством идеи, явления, объекты, занимающие место ключевых и служащие основой для организации правового порядка в обществе, включая систему взаимоотношений между членами гражданского общества и институтами публичной власти.[1]

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[1] *Саликов М.С., Гончаров М.В.* Конституционные ценности на новом этапе развития Основного Закона Российской Федерации // European and Asian Law Review. 2020. № 1. С. 61–68.

Конечно, не все духовно-нравственные ценности могут иметь нормативно-правовой характер. Многие из них регулируются иными социальными, в том числе религиозными, нормами, народными обычаями. К примеру, вопросы богослужения, отправления религиозных обрядов священнослужителями, участие в них верующих людей регулируются нормами канонического права, на основе религиозных традиций. Вместе с тем, по мнению И.Н. Плотниковой, в качестве конституционных ценностей могут выступать не только идеи, идеальные ориентиры, но и блага, наиболее важные и значимые как для общества и государства, так и для существования и развития индивида.[2]

Как считает В.И. Крусс, «чтобы некое благо могло считаться конституционной ценностью, оно должно иметь место – номинальное, либо – интерпретированное – в тексте Конституции».[3]

Так, в ряду таких конституционных ценностей, закрепленных Конституцией РФ, как основы конституционного строя, здоровья, прав и законных интересов других лиц, обеспечение обороны страны и безопасности государства, названа и нравственность, которую, как можно сделать вывод из анализа постановления Конституционного Суда РФ от 5 марта 2020 г. №11-П, Суд также считает конституционно значимой ценностью.[4]

В целях правового регулирования духовно-нравственных отношений необходимо уяснить само понимание духовности и нравственности, а также объективную обусловленность соединения их в органичный единый концепт. Предваряя раскрытие содержания данных категорий, можно утверждать, что бездуховной нравственности не бывает – духовность всегда нравственна. Их единство вытекает из самой природы человека в совокупности его физических и духовных состояний.

В.И. Даль определяет слово «духовный» как «безплотный, нетелесный, из одного духа и души состоящий; все относящееся к Богу, церкви, вере; все относимое к душе человека, все умственные и нравственные силы его, ум и воля».[5]

Под термином «нравственный» он понимает «противоположное телесному, плотскому; духовный, душевный … относящийся к одной половине духовного быта, противоположный умственному, но составляющий общее с ним духов-

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[2] Современный конституционализм: к 85-летию со дня рождения академика О.Е. Кутафина: монография / под общ. ред. В.В. Комаровой; отв. ред. О.С. Рыбакова. М.: Проспект, 2023. С. 15.

[3] *Крусс В.И.* Нормативность конституционных ценностей // Конституционные ценности: содержание и проблемы реализации: материалы международной научно-практической конференции 4–6 декабря 2008 г.: в 2 т. Т. 1 / под ред. В.В. Витрука, Л.А. Нудненко. М.: РАП, 2010. С. 36.

[4] Постановление Конституционного Суда РФ от 5 марта 2020 г. № 11-П «По делу о проверке конституционности подпунктов 4 и 5 пункта 1 и пункта 5 статьи 57 Земельного кодекса Российской Федерации в связи с жалобой граждански И.С. Бутриловой» // Вестник Конституционного Суда РФ. 2020. № 3.

[5] *Даль В.* Толковый словарь живого великого русского языка: в 4 т. Т. 1. М.: Русс. яз., 1998. С. 503.

ное начало: к умственному относится истина и ложь; к нравственному – добро и зло».[6]

Как отмечал И.А. Ильин, «говоря о духовности или о духе, не следует представлять себе какую-то непроглядную метафизику или запутанно-непостижимую философию. Дух есть нечто, что каждый из нас не раз переживал в своем опыте и что нам всем доступно; но только один переживал духовное состояние и содержание с радостным наслаждением, другой – с холодным безразличием, третий – с отвращением или даже со злобой. Дух не есть ни привидение, ни иллюзия. Он есть подлинная реальность и притом драгоценная реальность, самая драгоценная из всех».[7]

Эта реальность, соединенная с традициями духовной жизни предыдущих поколений людей, составляет ядро духовно-нравственных отношений людей друг с другом, обществом и государством. Истинно духовному человеку присущи такие состояния души, как вера в Бога, любовь к ближнему и Отечеству, самоотверженность и трудолюбие, честность и справедливость, доброта и отзывчивость, милосердие и сопереживание. Да, не все отношения в духовно-нравственной сфере получают нормативное закрепление. Вместе с тем духовно-нравственные ценности как бы инкорпорируются в конституционные принципы и воспринимаются людьми душой и сердцем. Если человек готов внутренне исполнять нормативные предписания, конституционные идеи и принципы, а не под воздействием внешних обстоятельств, то, как подчеркивал Николай Бердяев, «духовно возрожденный человек и народ по-иному будут делать политику, чем те, что провозглашают внешние абсолютные принципы и отвлеченные начала».[8]

Истинно традиционные духовно-нравственные народные ценности передаются из поколения в поколение, сохраняются и чтутся людьми в самых разных ситуациях: и в мирное время, и во времена тяжких военных испытаний.

Важно инкорпорировать традиционные духовно-нравственные ценности в государственную политику, программные документы партий, общественных движений и объединений, законодательство. Прежде всего это духовно-нравственные ценности, которые почитаются в народе и которые надо не только уважать, но и закреплять в законодательстве, охранять и защищать.

Как отмечал Г.В. Мальцев, реальной и самой активной формой поддержки нравственных ценностей является закрепление юридической обязанности лиц совершать действия, имеющие нравственную ценность, например, «добросовестного исполнения государственным служащим своих полномочий, обязанность взрослых детей содержать нетрудоспособных родителей и т.п. … менее твердой, но также весьма существенной формой правовой поддержки нрав-

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[6] *Даль В.* Толковый словарь живого великого русского языка: в 4 т. Т. 2. М.: Русс. яз., 1998. С. 558.

[7] *Ильин И.А.* Пути России / сост. А.Д. Путинцев. М.: Вагриус, 2007. С. 323.

[8] *Бердяев Н.* Философия свободы. М.: Фомо. 2004. С. 453.

ственных ценностей можно считать установление права лица совершать действия, имеющие высокую нравственную ценность, например, права на благотворительную деятельность как выражение человеческой (христианской) доброты и милосердия».[9]

1. Constitutional Spiritual and Moral Values of the Russian Federation and the People's Republic of China

В Преамбуле Конституции КНР отмечается, что Китай в течение длительного времени находится на начальной стадии социализма, и для реализации цели великого возрождения китайской нации задача государства состоит в том, чтобы на основе теории социализма с китайской спецификой сконцентрировать силы на социалистической модернизации.

В Конституции Российской Федерации цель не сформулирована. В связи с этим ряд ученых, в частности Судья Конституционного Суда РФ в отставке М.И. Клеандров, предлагает в будущей новой Конституции сформулировать цель, которая станет базовым стержнем Основного закона.[10] Представляется, что в Конституции РФ такой целью могло бы стать возрождение в полной мере величия российской самобытной цивилизации. И одной из стержневых задач государства на этом пути должно стать укрепление вековых традиционных духовно-нравственных ценностей многонационального народа России.

Конституционная реформа 2020 г. усилила гуманитарный потенциал Конституции Российской Федерации, закрепила нравственные ориентиры развития общества и государства. Такие традиционные народные ценности, как патриотизм, гражданственность, служение Отечеству, крепкая семья, историческая память, преемственность поколений, единство народов Российской Федерации и др., получив закрепление в Конституции РФ, стали конституционными ценностями и составили духовно-нравственный фундамент Конституции.

Так, внесенная в 2020 г. в Конституцию Российской Федерации поправка, закрепляющая понятия брака и супружества как союза женщины и мужчины, в совокупности с положением ст. 38, устанавливающей, что материнство и детство, семья находятся под защитой государства, прямо свидетельствует о придании семье статуса конституционной ценности. Семья в традициях многонационального народа России, как отметил Президент Российской Федерации Владимир Владимирович Путин на съезде Всемирного Русского Народного Собора, всегда была фундаментом солидарного общества и государства, центром духовно-нравственной жизни. «Сбережение и приумножение народа Рос-

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[9] *Мальцев Г.В.* Нравственные основания права. М.: Изд-во СГУ, 2008. С. 109.

[10] *Клеандров М.И.* России нужна новая Конституция // Вестник Тюменского госуниверситета. Социально-экономические исследования. 2021. Т. 7. № 4/28. С. 144–145.

сии – наша задача на предстоящие десятилетия, и скажу больше: на поколения вперед».[11]

Как созвучно это с высказываниями великого русского ученого Дмитрия Ивановича Менделеева, который писал: «Для меня высшая или важнейшая и гуманнейшая цель всякой «политики» яснее, проще и осязательнее всего выражается в выработке условий для размножения людского…» «Разрозненных нас – сразу уничтожат, наша сила в единстве, воинстве, благодушной семейственности, умножающей прирост народа…»[12]

В Конституции Китайской Народной Республики также закреплены нравственные ценности народов Китая. Установившиеся в государстве и обществе ценностные социалистические национальные отношения равенства, сплоченности, взаимопомощи и гармонии, как установлено в ст. 4 Конституции, охраняются государством, развиваются. Каждая национальность пользуется свободой использования и развития своего языка и письменности, свободой сохранения или изменения своих нравов и обычаев.

В ст. 14 говорится и о том, что государство учитывает государственные, коллективные и личные интересы, на основе развития производства постепенно улучшает материальную и духовную жизнь народа. Как закреплено в ст. 24 Конституции, государство усиливает строительство социалистической духовной культуры путем широкого распространения высоких идеалов, нравственного и культурного воспитания. Ключевыми ценностями социализма и общественной морали названы любовь к Родине, народу, труду, науке, социализму. Государство проводит в народе воспитание патриотизма, коллективизма и интернационализма, коммунизма.

Так же как и в Конституции РФ, Конституция КНР в ст. 49 устанавливает, что брак, семья, материнство и младенчество находятся под охраной государства. Учитывая, что в Китае другая демографическая ситуация, чем в России, Конституция Китая закрепляет обязанность супругов – мужа и жены – осуществлять планирование рождаемости.

В России в 2024 г., объявленном Президентом РФ Годом семьи, предстоит решать несколько иные задачи, в частности обеспечить государственную поддержку многодетных и многопоколенных семей, формировать здоровую моду на многодетную семью. Традиционные российские духовно-нравственные конституционные ценности – семья, дети, дальнейшее правовое регулирование их поддержки, сохранения и укрепления стали главным вектором формирования духовно-нравственного российского общества.

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[11] Выступление Президента России В.В. Путина на пленарном заседании Всемирного русского народного собора // https://vrns.ru/news/vystuplenie-prezidenta-rossii-v-v-putina-na-plenarnom-zasedanii-vsemirnogo-russkogo-narodnogo-sobora/.

[12] *Менделеев Д.И.* Заветные мысли // Тобольский гений России: в 2 т. Т. 1: Неизвестный Менделеев: Избранные сочинения / сост. Г. Смирнов; отв. ред. Н. Полунина. Тобольск: Изд-во Общественного фонда «Возрождение Тобольска», 2003. С. 133.

К важным ценностным установкам в Конституции РФ отнесена защита исторической правды, памяти защитников Отечества. В современных внешнеполитических условиях сохранение исторической памяти приобретает особую актуальность, так как Россия столкнулась с внешними вызовами и угрозами. Знание подлинной истории и ее передача поколениям являются основой развития гражданского общества и ключевым фактором формирования гражданской ответственности и патриотизма. По мнению жителей одного из регионов России – Тюменской области, принявших участие в опросе «Как Вы относитесь к закреплению в Конституции РФ сохранения исторической правды и памяти защитников Отечества», данное конституционное положение является ценностным фактором для укрепления национальной идентичности и гражданского патриотизма.

В Конституции КНР также закрепляется, что граждане КНР обязаны защищать единство, государство и сплоченность всех национальностей страны.

Конституции КНР и РФ в качестве конституционной ценности закрепили национальную культуру. Как отмечается в Преамбуле к Конституции КНР, народы всех национальностей Китая вместе создали великолепную культуру, которая опирается на конфуцианские традиции, такие главные ценности конфуцианства, даосизма и буддизма, как гуманитарность, мир, порядок, гармония, иерархия, справедливость.[13]

Как отмечает доктор юридических наук Чу Дефон, необходимо и в современном Китае «активно практиковать дух «использования наследия прошлого в интересах настоящего», по-настоящему доискиваться, резюмировать и воспринимать культурные традиции общественного благосостояния в традиционной культуры, пробуждать духовную память о национальной культуре общественного благосостояния».[14]

В ст. 22 Конституции Китая говорится, что государство развивает литературу и искусство, печать, радио и телевидение, издательское дело, расширяет сеть библиотек, музеев, домов культуры и иных учреждений культуры, охраняет исторические достопримечательности, ценные памятники культуры и иное важное историческое и культурное наследие.

Показателен опыт китайских властей по государственной поддержке Уйгурской культуры. С 2015 г. в Синьзян-Уйгурском районе на Северо-Западе Китая –

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[13] См.: *Чэн В., Жуй Ц.* Влияние ценностей традиционной китайской культуры на современную политику Китая // Практики воспроизводства ценностей: гуманитарный, социальный и экономический аспекты: сборник тезисов докладов Всероссийской научной конференции студентов-стипендиатов Оксфордского Российского фонда. Екатеринбург, 14–15 ноября 2019 г. Екатеринбург: Изд-во Уральского ун-та, 2020. С. 43.

[14] См.: *Дэфон Ч.* О практических путях преодоления моральной аномии в современных китайских общественных организациях // Государственное и муниципальное управление. Ученые записки. 2023. № 2. С. 276.

месте компактного проживания мусульман-уйгуров стали создавать центры перевоспитания, организовываться туристические маршруты в старый город, реализовываться инвестиционные проекты по развитию Уйгурской культуры. Благодаря таким мерам поддержки удалось существенно уменьшить случаи подогреваемого извне уйгурского сепаратизма.

Автору данной статьи посчастливилось познакомиться со многими всемирно известными памятниками культуры во время посещения Китая с делегацией Международного союза юристов, в том числе посетить Мемориальный центр «Конфуция», а затем в ходе визитов дружественный вуз-партнер Тюменского госуниверситета Цюйфуский педагогический университет имени Конфуция. Впечатляет бережное отношение властей Китая к сохранению и охране своего культурного наследия, использованию его в целях духовно-нравственного воспитания молодежи.

Конституция РФ также признает культуру как уникальное наследие ее многонационального народа особой конституционной ценностью. В ст. 69 Конституции РФ закрепляется, что государство защищает культурную самобытность всех народов и этнических общностей Российской Федерации, гарантирует сохранение этнокультурного и языкового многообразия.

Основы законодательства Российской Федерации о культуре гарантируют право «всем этническим общностям, компактно проживающим вне своих национально-государственных образований или не имеющим своей государственности, на культурно-национальную автономию». Указанные этнические общности обладают правом на свободную реализацию своей культурной самобытности посредством создания на основе волеизъявления населения или по инициативе отдельных граждан национальных культурных центров, национальных обществ и землячеств.[15] В частности, государство поддерживает и развивает уникальную культуру коренных малочисленных народов Севера, Сибири и Дальнего Востока. В Российской Арктике проживает 19 коренных малочисленных народов, располагаются объекты их культурного наследия, которые представляют историческую и культурную ценность общемирового значения. Важной составляющей культуры коренных народов Севера являются духовные ценности, которые проявляются прежде всего в отношениях между людьми в семье, обществе, верованиях. Духовные ценности коренных народов Севера сложились под влиянием необходимости выживания в суровой арктической природе, обязывающей народы вырабатывать традиции взаимопомощи, защищать наряду с человеком и природу.

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[15] Основы законодательства Российской Федерации о культуре (утв. ВС РФ 9 октября 1992 г. № 3612-I) // Ведомости СНД и ВС РФ. 1992. № 46. Ст. 2615.

2. Constitutionalizing Cultural, Spiritual and Moral Values

Сохранение и укрепление традиционных духовно-нравственных ценностей зависит не только от конституционного закрепления народных традиций, культуры, верований, но и от их конституционализации.

В национальном праве России сформировались основы теории конституционализации. От узкого понятия конституционализации как процесса закрепления в тексте Конституции основополагающих правовых общественно значимых явлений действительности ряд известных ученых-правоведов пришел к необходимости расширительного токования процесса конституционализации, включения в него также конкретизацию конституционных норм, принципов, идей в нормативно-правовых актах, программных документах, а также реализацию конституционных норм, принципов в государственной и общественной жизни.[16]

Конституционализация предполагает не только конкретизацию конституционных норм в отраслевом законодательстве, но и конституционализацию жизни гражданского общества, всей системы многообразных общественных правоотношений, связанных с реализацией естественных демократических прав и свобод человека, формированием нравственных устоев жизни, поддержкой и государственной защитой духовно-нравственных ценностей.

В Российской Федерации ценностные конституционные установки о поддержке семьи, материнства, детства, о создании государством условий, способствующих всестороннему духовному, нравственному, интеллектуальному и физическому развитию детей, воспитанию в них патриотизма, гражданственности и уважения к старшим, а также об исполнении государством обязанности родителей в отношении детей, оставшихся без попечения, получили развитие в Указе Президента Российской Федерации от 9 ноября 2022 г., утвердившем Основы государственной политики по сохранению и укреплению традиционных российских духовно-нравственных ценностей (далее – Основы).[17]

Как сформулировано в Основах, традиционные ценности – это нравственные ориентиры, формирующие мировоззрение граждан России, передаваемые от поколения к поколению, лежащие в основе общероссийской гражданской идентичности и единого культурного пространства страны, укрепляющие

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[16] См.: *Кутафин О.Е.* Российский конституционализм. М.: Норма, 2008. С. 44, 380–381; *Крусс В.И.* Конституционализация права: основы теории: монография. М.: Норма, 2016. С. 10; *Хабриева Т.Я.* Этапы и основные направления конституционализации современного российского законодательства // Журнал конституционного правосудия. 2013. № 6. С. 26; *Бондарь Н.С.* Судебный конституционализм. М.: Норма, 2008. С. 228–229.

[17] Указ Президента РФ от 9 ноября 2022 г. № 809 «Об утверждении Основ государственной политики по сохранению и укреплению традиционных российских духовно-нравственных ценностей» // Собрание законодательства РФ. 2022. № 46. Ст. 7977.

гражданское единство, нашедшие свое уникальное, самобытное проявление в духовном, историческом и культурном развитии многонационального народа России.

К числу традиционных ценностей Основами отнесены жизнь, достоинство, права и свободы человека, патриотизм, гражданственность, служение Отечеству и ответственность за его судьбу, высокие нравственные идеалы, крепкая семья, созидательный труд, приоритет духовного над материальным, гуманизм, милосердие, справедливость, коллективизм, взаимопомощь, взаимоуважение, историческая память и преемственность поколений, единство народов Российской Федерации.

В Указе Президента РФ «О мерах социальной поддержки многодетных семей»[18] предусматривается предоставление многодетным семьям мер социальной поддержки по достижению старшим ребенком возраста 18 лет или возраста 23 года при условии его обучения в организации, осуществляющей образовательную деятельность, по очной форме обучения. Согласно Указу многодетным семьям гарантируется в соответствии с законодательством РФ: предоставление государственных пособий и выплат в связи с рождением и воспитанием детей; досрочное назначение женщинам страховой пенсии по старости в связи с рождением и воспитанием трех и более детей; профессиональное обучение многодетных родителей и получение ими дополнительного профессионального образования; право на бесплатное посещение музеев, парков культуры и отдыха, выставок на территории РФ независимо от места жительства в порядке и на условиях, которые определены в субъектах РФ, и другие меры социальной поддержки.

В утвержденном Правительством РФ плане мероприятий по проведению в 2024 г. Года семьи в России ключевыми задачами названы создание условий для рождения первых детей в молодых семьях, укрепление репродуктивного здоровья, поддержка многодетных и многопоколенных семей. Запланированы мероприятия по укреплению ответственного родительства, охране здоровья семей с детьми, укреплению у детей и молодежи семейных ценностей, а также культурно-массовые, спортивные и общественные мероприятия.[19]

Конституционализация происходит и в сфере культуры. Так, в рамках национального проекта «Культура» декларируется, что к концу 2024 г. будет реконструировано 73 региональных и муниципальных театров юного зрителя и театров кукол. Реконструированные театры станут современными объектами, оснащенными мультимедийными технологиями, новейшими инженерными и коммуникационными системами. Таким образом, реконструкция будет способствовать увеличению качества и объемов спектаклей. Также продеклари-

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[18] Указ Президента РФ от 23 января 2024 г. № 63 «О мерах социальной поддержки многодетных семей в Российской Федерации» // Собрание законодательства РФ. 2024. № 5. Ст. 665.

[19] Правительство утвердило план основных мероприятий по проведению Года семьи // http://government.ru/news/50603/.

ровано, что к концу 2024 г. драйверами федерального проекта «Культурная среда» станут 39 центров культурного развития (многофункциональных культурных пространств с концертным залом и кинозалом для детей и взрослых, а также сервисными зонами), которые будут построены по типовым проектам в городах с количеством жителей до 300 000 человек. К концу 2024 г. будет реконструировано и капитально отремонтировано 989 региональных и муниципальных детских школ искусств, что позволит улучшить условия, в которых будут обучаться творчески одаренные дети.[20]

В целях развития российско-китайских отношений и расширения двусторонних связей в области культуры Распоряжением Президента РФ предусмотрено проведение в 2024–2025 гг. Годов культуры России–Китая.[21] Правительством РФ во взаимодействии с китайской стороной разработаны мероприятия по проведению Годов культуры. Совместно проведенные мероприятия будут способствовать укреплению культурных ценностей в России и Китае.

3. The Role of Civil Society in Preserving and Amplifying Spiritual and Moral Values

В конституционализации духовно-нравственных ценностей, как закрепленных в законах государства, так и еще не получивших нормативности, важно участие институтов гражданского общества – общественных объединений, некоммерческих организаций, иных общественных формирований. Их участие в процессе сохранения, укрепления и развития духовно-нравственных основ общества и государства актуально и для России, и для Китая.

В России заметную роль в поддержке гражданских инициатив, направленных на укрепление духовно-нравственных ценностей, стали играть общественные палаты, которые в своей совокупности являются интегрированным комплексным институтом гражданского общества, выполняющим определенные функции общественной власти. В соответствии с Федеральным законом «Об общих принципах организации и деятельности общественных палат субъектов Российской Федерации»[22] общественные палаты призваны обеспечить согласование общественно значимых интересов граждан, общественных объединений, органов государственной власти субъектов Российской Федерации и органов местного самоуправления для решения наиболее важных вопросов экономического и социального развития, защиты прав и свобод граждан, конституци-

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[20] «Национальные проекты» – информационный ресурс о планах развития страны на ближайшее будущее и мерах по улучшению качества жизни людей // https://национальныепроекты.рф.

[21] Распоряжение Президента РФ от 3 января 2024 г. № 3-рп «О проведении Годов культуры России–Китая» // http://publication.pravo.gov.ru/document/0001202401030009.

[22] Федеральный закон от 23 июня 2016 г. № 183-ФЗ «Об общих принципах организации и деятельности общественных палат субъектов Российской Федерации» // http://www.pravo.gov.ru.

онного строя Российской Федерации и демократических принципов развития гражданского общества. Одним из приоритетных направлений в деятельности общественных палат является оказание поддержки некоммерческим организациям, многодетным семьям, участникам специальной военной операции.[23]

В последние годы в России сформировались новые общероссийские общественно-государственные организации, деятельность которых направлена на сохранение и укрепление традиционных духовно-нравственных ценностей. Указом Президента Российской Федерации от 11 декабря 2018 г. поддержано предложение общественной организации «Союз женщин России» об участии государства в ее деятельности, изменении статуса организации на общественно-государственную организацию. Определены основные направления ее деятельности, в том числе защита прав и интересов женщин; содействие в осуществлении государственной семейной политики, укрепление института семьи; поддержка социальных институтов в целях реализации национальных проектов в области демографии, здравоохранения, образования, культуры и экологии и др.

Еще одно общероссийское общественно-государственное движение создано в соответствии с Федеральным законом «О российском движении детей и молодежи».[24] Согласно Федеральному закону Движение является добровольным, самоуправляемым, общероссийским общественно-государственным движением, преследующим прежде всего цели содействия проведению государственной политики в интересах детей и молодежи, воспитанию детей, их профессиональной ориентации, организации досуга, подготовке детей и молодежи к полноценной жизни в обществе.

Созданная Указом Президента Российской Федерации общественно-государственная организация «Ассамблея народов России» призвана реализовать на практике культурные духовно-нравственные ценности народов России, основываясь на положениях Конституции, с учетом традиций, обычаев народов России. Среди задач нового института гражданского общества названы:

• развитие межнационального сотрудничества народов Российской Федерации, духовно-нравственное и патриотическое воспитание граждан Российской Федерации;

• участие в информационном обеспечении реализации государственной национальной политики, содействие распространению объективных сведений, характеризующих состояние межнациональных отношений в Российской Федерации;

• подготовка предложений органам государственной власти и местного самоуправления по актуальным вопросам реализации государственной наци-

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[23] См. подробнее: *Чеботарев Г.Н.* Общественные палаты как особый общественно-государственный институт гражданского общества // Российский юридический журнал. 2023. № 6.

[24] Федеральный закон от 14 июля 2022 г. № 261-ФЗ «О российском движении детей и молодежи» // Собрание законодательства РФ. 2022. № 29 (ч. II). Ст. 5228.

ональной политики, гармонизации межнациональных отношений, профилактике экстремизма и межнациональной напряженности;

• участие в работе по социально-культурной адаптации иностранных граждан и их интеграции в российское общество;

• содействие общественным и иным национально-культурным объединениям народов России в осуществлении их связей с соотечественниками за рубежом;

• организация и проведение общественных премий, иных мероприятий, направленных на поощрение лиц, внесших значимый вклад в реализацию государственной национальной политики, укрепление единства российской нации др.

В январе 2024 г. учреждена Общероссийская общественная организация по поддержке семей «Союз семей России». 5 апреля 2024 г. в Москве прошел I съезд «Союза семей России», который объединил самые разные семейные общественные организации, например «Матери России», «Союз отцов» и др. Съезд назвал главными целями Года семьи поддержку многодетных семей, семей участников СВО, семей, воспитывающих детей с инвалидностью, семей, оказавшихся в трудной жизненной ситуации, и особенно семей, живущих в обстреливаемых регионах страны.

По мнению ряда ученых, конституционной ценностью является и местное самоуправление, которое проводит в жизнь конституционно-правовые нормы, принципы, идеи, в том числе в духовно-нравственной сфере.[25] С внесением в Конституцию России поправок о вхождении муниципальной власти в единую систему публичной власти укрепилось взаимодействие органов государственной власти и органов муниципальной власти, в том числе в решении таких вопросов местного значения на территории муниципального района, как разработка и осуществление мер, направленных на укрепление межнационального и межконфессионального согласия, поддержку и развитие языков и культуры народов РФ, проживающих на территориях муниципального района, реализацию прав коренных малочисленных народов и других национальных меньшинств, обеспечение социальной и культурной адаптации мигрантов, профилактику межнациональных (межэтнических) конфликтов; создание условий для развития традиционного народного художественного творчества в поселениях, входящих в состав муниципального района; сохранение, использование и популяризация объектов культурного наследия (памятников истории и культуры), находящихся в собственности муниципального района охрана объектов культурного наследия (памятников истории и культуры) местного (муниципально-

[25] *Шугрина Е.С.* Местное самоуправление на весах конституционных ценностей // Журнал конституционного правосудия. 2021. № 2. С. 21–31; *Кожевников О.А.* Местное самоуправление как конституционная ценность: от истоков к современному состоянию // Вестник Санкт-Петербургского университета МВД России. 2021. № 4(22). С. 49–56.

го) значения, расположенных на территории муниципального района; оказание поддержки социально ориентированным некоммерческим организациям, благотворительной деятельности и добровольчеству (волонтерству). В целях реализации названных полномочий важно развивать взаимодействие органов местного самоуправления с институтами гражданского общества – общественными палатами, некоммерческими организациями.

В Китае в последние десятилетия созданы сотни тысяч неправительственных организаций, поддерживающих народные культурные ценности. Китайское законодательство различает неправительственные организации, деятельность которых имеет целью общественную пользу, и те, которые созданы для иных целей. Закон КНР о пожертвованиях для социальной защиты населения присваивает общественно полезный статус двум категориям организаций: «организации общественного благосостояния» и «некоммерческие государственные учреждения общественного благосостояния».[26] Согласно ст. 10 Закона «общественно полезными организациями» являются установленные законом фонды, благотворительные организации и другие общественные организации, созданные в целях содействия общественно полезным начинаниям. Статья 3 в качестве общественно полезных начинаний предусматривает:

• помощь при стихийных бедствиях, борьбу с нищетой, содействие инвалидам и малообеспеченным гражданам;

• образовательную, научную, культурную и здравоохранительную деятельность;

• охрану окружающей среды и строительство общественных сооружений;

• другие предприятия общественного блага, содействующие социальному развитию и прогрессу.

В соответствии с Законом КНР в качестве «некоммерческих государственных учреждений общественного благосостояния» законодательно закреплены образовательные, научно-исследовательские учреждения, учреждения здравоохранения, культуры, общественно-спортивные учреждения, учреждения социальной защиты населения и другие, занимающиеся общественно полезной деятельностью на некоммерческой основе.[27] Общественно-полезные организации являются важным фактором сохранения и укрепления традиционных ценностей китайского народа.

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[26] Чжунхуа женьминь гунхэго гуни шие цзюаньцзен фа – Закон Китайской Народной Республики о пожертвованиях для социальной защиты населения // http://www.lowinfochina.com/display.aspx?id=6238&lib=low.

[27] *Янчжен Ш.* Основные результаты и перспективы развития общественных организаций Китая // Актуальные проблемы государственного управления. 2013. Т. 2. № 44. С. 230–233.

Conclusion

Конституции Российской Федерации и Китайской Народной Республики обладают значительным гуманитарным потенциалом для дальнейшего упрочения в обществе и государстве традиционных духовно-нравственных ценностей. Конституционные установления задают такой вектор развития государства и общества, который отражает интересы и чаяния людей.

Вместе с тем, чтобы конституционные ценности в полной мере были восприняты гражданами, необходимо и дальше совершенствовать законодательство, на научной основе изучать тенденции развития страны, прогностически оценивать необходимость внесения поправок в конституции, а в будущем и принятие новой Конституции.

Несмотря на внесение в 2020 г. значимых поправок в Конституцию РФ, остается еще ряд сфер общественной жизни, не получивших конституционного регулирования. Учитывая возрастающую роль гражданского общества в управлении делами государства, представляется назревшей потребностью более фундаментально определить в Конституции возросшую роль и место в государстве таких институтов, как общественные объединения (партии, профсоюзы, общественно-государственные организации, общественные палаты, социально ориентированные некоммерческие организации, религиозные общественные организации, местное самоуправление, СМИ и др.). Учитывая значимую роль церкви в жизни гражданского общества, уместно было бы в будущем в разделе Конституции, посвященном гражданскому обществу, отметить ее социальное служение по укреплению духовности и нравственности.

В КНР, как отмечено в Конституции, коренная задача государства состоит в концентрировании силы на социалистической модернизации. Успешное продвижение Китая по этому пути со временем также приведет к необходимости обновления отдельных положений Конституции, связанных с достигнутым новым этапом реализации цели великого возрождения китайской нации.

Наши страны – уникальные цивилизации, приверженные национальным традиционным ценностям, отличающимся от западных псевдодемократических либеральных ценностей. В этом видится залог нашего стратегического партнерства, дальнейшего развития гуманитарного сотрудничества.

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ARTICLE

National and Ethnic Identity in the Constitutions of the BRICS Countries

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Abstract. The article presents the transformation of the concept of ethnicity, which is evident in many countries across the world in the context of changing world order. The author demonstrates the tendency to accept poly ethnicity and multiple faces in modern states, including the BRICS countries. Also, the author examines various approaches to defining ethnicity that exist both in legal science and in other social sciences. Using the example of the BRICS countries, it is shown that the legal recognition of ethnic identity, language and cultural differences occurs at the level of national constitutions since these categories are essential for recognition and awareness of each citizen and each national society in existing multinational states. The author proves that the formation of constitutional and legal norms taking into account the essence of ethnicity will contribute to the sustainable development of multinational states.

Keywords: constitutional law; indigenous peoples; state; Constitution; ethnicity; identity; BRICS.

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Introduction

An increasing number of researchers affirm that all existing theories discussing the division of human society into different nations are considered disputable. The concept of "ethnos" and related categories such as "ethnicity," "ethnic affiliation," "ethnic identity," "nationality," and others are difficult to define unambiguously because they contain many different characteristics, and their study and definition require multifaceted approaches.[1]

The first definition of ethnicity, which belongs to the American sociologist David Riesman, appeared in 1953.[2] Widespread use of the term "ethnicity" is usually attributed to the mid-1970s with the names of American political scientists Nathan Glazer and Daniel P. Moynihan.[3] In Russia, the concept of "ethnicity" became visible and began to be frequently used in ethnology and other social sciences since the early 1990s.[4] In general, ethnicity is a somewhat subjective category, an interdisciplinary concept, and its definition depends on what approach or what science considers ethnos, ethnicity, etc.

Legal and political scientists have only partially studied ethnicity issues. Among the most essential works in Russia are the studies of Ramazan Abdulatipov, Vladik Nersesyants, Valerii Solovey, Valerii Tishkov, Talya Khabrieva and others, in which the authors consider the following aspects: models of ethnic identity, concepts

[1] Kharabaeva, A. (2010). Axiological Foundations of the Ethnos. *Vestnik of North-Eastern Federal University*, 7(4), 149–154. (In Russian).

[2] Riesman, D. (1953). Psychological Types and National Character: An Informal Commentary. *American Quarterly, 5*(4), 325–343.

[3] Glaser, N., & Moynihan D. P. (Ed.). (1975). *Ethnicity: Theory and Experience*. Harvard University Press.

[4] Artanovsky, S. N. (1992). Ethnocentrism and the "Return to Ethnicity": Concepts and Reality. *Etnograficheskoe obozrenie*, 3, 22–23. (In Russian); Cheshko, S. V. (2001). Crisis of the Doctrine of Self-Determination. *Etnograficheskoe obozrenie*, 2, 35–38. (In Russian).

of ethnic identity, multi-level studies of civil and ethnic identity, and civilizational processes in Russia.[5]

Brazilian scholars – Jeff Garmany, Anthony Pereira, Mark Sawyer, Felipe Sánchez-Barría, Mark Q. Sawye, Rafael Trapp, Pedro Ferreira de Souza, among others – from the middle of the 20th century till present time have manifested the results of their studies in intellectual history, sociological and anthropological fieldwork, political science, and cultural studies for a wide-ranging analysis of how Brazilians (across social classes) became one Brazilian nation.[6]

In India, the studies on ethnicity are represented through the period from 1970 till now by various authors including Dibyesh Anand, Sanjib Baruah, Crispin Bates, Susan Bayly, Andre Beteille and others. History, political and (to a lesser extent) legal scholars have been considering questions of caste, race, indigeneity, racism and racialization in India and operate at the intersections of caste supremacy and coloniality, all of which are calibrated through shifting economy and legal process in the country.[7]

Studies on ethnic groups in China present research from a wide variety of disciplines on ethnicity and ethnic relations mainly related to the names of David R. Stroup, Justin M. Jacobs, Agnieszka Joniak-Lüthi, Morris Rossabi, Mette Halskov Hansen.[8]

In South Africa, the studies on ethnicity are primarily contemporary and dwell upon multiple, longstanding modes of ethnic and religious diversity subjected to new migration flows that are varied in terms of countries of origin, ethnicity, language, gendered channels of mobility, education, occupation, and location (Rupert Taylor, Mark Orkin, Henry Lever, Kira Erwin and others).[9]

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[5] Libakova, N. M., & Sertakova, E. A. (2015). The Method of Expert Interview as an Effective Research Procedure of Studying the Indigenous Peoples of the North. *Journal of Siberian Federal University. Humanities & Social Sciences*, 8(1), 114–129. (In Russian).

[6] Eakin, M. (2017). *Becoming Brazilians: Race and National Identity in Twentieth-Century Brazil*. Cambridge University Press; Sánchez-Barría, F. (2014). Diploma of Whiteness: Race and Social Policy in Brazil, 1917–1945. Jerry Dávila. *Cuadernos de Historia, 40*, 190–191; Garmany, J., & Pereira, A. W. (2018). Race and Ethnicity in Brazil. In J. Garmany & A. W. Pereira (Eds.), *Race and Ethnicity in Brazil* (pp. 84–100). Routledge; Sawyer, M. (2007). Race in Another America: The Significance of Skin Color in Brazil. By Telles, Edward E. *Hispanic American Historical Review, 87*(2), 408–409.

[7] Anand, D. (2012). China and India: Postcolonial Informal Empires in the Emerging Global Order. *Rethinking Marxism, 24*(1), 68–86; Baruah, S. (2020). *In the Name of the Nation: India and its Northeast*. Stanford University Press; Bates, C. (1995). Race, Caste and Tribe in Central India: The Early Origins of Indian Anthropometry. In P. Robb (Ed.), *The Concept of Race in South Asia* (pp. 219–259). Oxford University Press; Bayly, S. (1995). Caste and 'Race' in the Colonial Ethnography of India. In P. Robb (Ed.), *The Concept of Race in South Asia* (pp. 165–218). Oxford University Press; Beteille, A. (2004). Race and Caste. In S. Thorat & Umakant (Eds.), *Caste, Race and Discrimination: Discourses in International Context* (pp. 49–52). Rawat Publications.

[8] Stroup D. R. (2022). *Pure and True: The Everyday Politics of Ethnicity for China's Hui Muslims*. University of Washington Press; Jacobs J. M. (2016). *Xinjiang and the Modern Chinese State*. University of Washington Press; Joniak-Lüthi, A. (2015). *The Han China's Diverse Majority*. University of Washington Press.

[9] Taylor, R., & Orkin M. (2001). The Racialization of Social Scientific Research on South Africa. In P. Ratcliffe (Ed.), *The Politics of Social Science Research: Migration, Minorities and Citizenship* (pp. 61–84). Palgrave Macmillan; Lever, H. (1982). Ethnicity in South African Society. *Humboldt Journal of Social Relations, 10*(1), 239–

1. Interrelation of Ethnicity and Law

The problem of determining the place of ethnicity in the legal scope remains the most relevant and requires more in-depth study. Relationships between ethnicity and politics or law have not been the object of close attention of either theoretical and legal thought or political practice up to the present time. I believe there is a need to formulate some general theoretical guidelines in law, which should be based on the concept of "ethnos" defined in anthropology and sociology. Formulating ethnic components in the basic law of a state (the Constitution) will help theoretically and practically confirm the special place of various ethnic groups in the composition of multinational states, designate the unique position of each one, and articulate their constitutional and legal status.

In my opinion, the interrelation between ethnicity and law is obvious and influences legal relations in a multinational society, constructs them and justifies certain government decisions. Legal recognition of ethnic identity, language, and cultural affiliation is vital for each ethnic group to realize itself as an equal group in society fully and that each member of this group is an eligible individual. According to researchers, the state is the crucial actor possessing symbolic power and participating in the construction of identities (including ethnic ones),[10] since, on the one hand, it is capable of nominating and attributing ethnic groups, giving them a particular political, economic, and legal status.[11] On the other hand, the state can take measures and create a policy aimed at strengthening ethnicity, enhancing the successful worldview of ethnic groups, and removing restrictions on free development.[12]

Thus, one of the key aspects in modern multiethnic states is national and ethnic identity, which is supported in one way or another in the state and legal system. In scientific literature and political practice, the issue of ethnic identity has become central in the 1990s. According to Samuel P. Huntington, "the crisis of national identity has become a global phenomenon."[13] Such crises lead to the exclusion of ethnic groups from nations, protest against such alienation, socio-political instability, and

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253; Erwin, K. (2012). Race and Race Thinking: Reflections in Theory and Practice for Researchers in South Africa and Beyond. *Transformation: Critical Perspectives on Southern Africa, 79*(1), 93–113; Nnawulezi, U., & Nwaechefu, H. (2022). Reinforcing Indigenous Peoples' Right to Health in the Wake of the COVID-19 Pandemic: A Panacea for Sustainable Human Rights Protection. *BRICS Law Journal, 9*(4), 108–133.

10 Tulaeva, S. A., Gladun, E. F., & Zakharova, O. V. (2022). Youth of Indigenous Peoples of the North: Strategies for Constructing Identity. *Journal of Sociology and Social Anthropology*, 25(1), 168–189. (In Russian).

11 Brubaker, R. (2004). *Ethnicity Without Groups*. Harvard University Press.

12 Gladun, E. (2022). The Concept and Legal Characteristics of Indigenous Peoples. In E. Gladun (Ed.), *Indigenous Peoples in the BRICS Countries: Political and Legal Aspects: Monograph* (p. 43). University of Tyumen Publishing House. (In Russian).

13 Hantington, S. P. (2005). *Who Are We? The Challenges to America's National Identity*. Simon & Schuster.

acute and persistent political divisions. Thus, the construction of identities becomes a necessary element of the legitimization of power, the acceptance of legal norms as necessary for implementation (observance, use, execution, application) and their protection in the event of violation by any subjects.

With theoretically supported legal decisions, the state is able to create a balanced system in which people belonging to different ethnic groups will identify themselves as loyal citizens of a holistic and prosperous state, as compatriots who expect the state to build national legislation complying with the Constitution (social contract), national interests, ensuring conditions for the security and well-being of citizens, and expects, in turn, from fellow citizens law-abidingness, patriotism and adherence to national interests. This is precisely what can explain the appearance in 2020 in Article 69 of the Constitution of the Russian Federation of a new norm on "all-Russian cultural identity."[14]

2. National Identity and Indigenous Peoples in BRICS Countries

National identity is a complex phenomenon that includes national, ethnic, and social dimensions. Polyethnic states are characterized by dual identity, which means that citizens have a sense of belonging both to their ethnic group and to the whole nation. Ethnic differences are not perceived critically; they are combined in lifestyle, values, and behavior. Knowledge and perception of common legal traditions and the traditions of one's ethnic group and identification with one's cultural roots are fundamental in determining dual identity. The most crucial aspect of national identity is integration into a national community.

When multiple ethnicities are united in the territory of the state they witness the phenomenon of dual cultural identity, which is characterized by a sense of belonging simultaneously to both their own culture and the culture of the national state. Cultural differences are not perceived critically, they are combined in lifestyle, values, and behavior. Knowledge and perception of national traditions, including legal ones, and the awareness of the traditions of the ethnic group and identification with ethnic cultural roots and traditions are extremely important in determining dual identity. However, all polyethnic states distinguish one specific ethnic group – indigenous peoples – which is, as a general rule, entitled with a special legal status. This status is based on various characteristics considered the most important or unique by the governments. Typically, those characteristics are as follows:

- the ancestors from among the indigenous peoples;
- priority in the time of settlement of a certain territory (residence on ancestral lands);

[14] Constitution of the Russian Federation (adopted by popular vote on December 12, 1993, with amendments approved during the all-Russian vote on July 1, 2020). The Ministry of Foreign Affairs of the Russian Federation. https://mid.ru/upload/medialibrary/fa3/xwhwumdwunawy9iprvhcxdqds1lzx-qdx/CONSTITUTION-Eng.pdf

• subsistence, i.e. voluntary preservation of the distinctive features of traditional culture (social organization, language, religion, spiritual values) or a sacred way that they live in relationship with the natural world;

• ethnic identification, i.e. conscious identification of oneself as a distinctive ethnic community and recognition by other groups as a special ethnic community;

• ethnic economics, i.e. a specific type of economic activities based on traditional knowledge and traditional use of natural resources.

It seems interesting to observe the characteristics mentioned above in the national constitutions that establish national and ethnic identity and define the idea of national statehood based on the integrity of a multinational society. In the BRICS countries, which represent multiethnic, multicultural states, specific legal structures have been developed that establish interdependence and mutual influence of the two categories described above – national and ethnic identity. BRICS states construct constitutional models of identity in different ways, depending on how the relations of the ethnic groups inhabiting them are formed at a particular historical period, as well as on the goals that are embedded in political and legal systems towards one specific ethnic group, i.e. indigenous peoples.

2.1. Indigenous Peoples in Brazil

Brazilian society is multiethnic and composed of different races; about half of the population identifies as "white" (those who possess Euro-Brazilian identity), which refers to Brazilian citizens who are considered or self-identify as "white," typically because of European or Levantine ancestry. The other 50% identify as "Afro-Brazilians" with predominantly or total Sub-Saharan African ancestry. However, most of the population speaks one language (Portuguese) and shares common political and legal values and traditions, uniting them into a single Brazilian nation. Differences between ethnic groups are mainly cultural and, to some extent, economic.[15] Indigenous peoples ("tribal Indians") are underrepresented in the country's population, accounting for only 0.4%. In total, there are 305 ethnic groups in Brazil speaking 274 languages. Before the adoption of the 1988 Constitution, aboriginal peoples in Brazil were not considered full citizens of the state, were not granted civil rights, and, in some cases, were not even recognized as legally competent. Until the end of the 20th Century, the state actively pursued a policy of assimilation and integration into the Brazilian nation. Following the trends and actions of the international community, political movements, and the growth of national consciousness among Brazilian Indigenous people, their right to identity, civil rights, and land rights have been recognized.[16]

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[15] Mochalov, A. N. (2017). Territorial Structure of the State as a Way of Managing Ethnic Diversity (Constitutional and Legal Regulation in the BRICS Countries). *Law. Journal of the Higher School of Economics*, 3, 134–173. (In Russian). https://doi.org/10.17323/2072-8166.2017.2.154.173

[16] Oliveira, N. L. (2007). The Struggles for Land Demarcation by the Indigenous Peoples of Brazil. In B. de Sousa Santos (Ed.), *Another Knowledge Is Possible: Beyond Northern Epistemologies* (pp. 112–113). Verso.

We can conclude that in Brazil, the ethnic (indigenous) identity is mostly related to the ancestral domain and traditional economic activities.

2.2. Russia's National Minorities

Russia is one of the most multinational states in the world. The dominant ethnic group – Russians – makes up about 80% of the country's population and form the ethnic majority in the overwhelming majority of regions. Only in 13 constituent entities of the Russian Federation does the share of Russians in the population structure amount to less than 50%. The multiethnic nature of the Russian Federation is reflected in the preamble to the 1993 Constitution, which calls all residents of the state a "multinational people" united by a common destiny on their land. The Constitution also officially approves the historically established state unity based on the generally recognized principles of equality and self-determination of peoples, the historical memory of ancestors and sovereign statehood. In the established constitutional system and legislation, Russia recognizes a special status of Indigenous peoples called "national minorities." It forms a system of their special rights. These special rights are intended to overcome the formal legal equality of all citizens before the law to smooth out the actual differences in the social, economic, political, and cultural status of national minorities.[17] Thus, the Russian state acknowledges certain ethnic groups and establishes their constitutional and legal status which guarantees harmony of the legal and actual equality of all peoples, nations, and groups in a civilized society.[18] The main characteristics that justify legal status of indigenous peoples are: living on ancestral lands, subsistence and ethnic economics as well as ethnic identification.

The most distinctive concept of the Russian constitutional law is the "ethnic minority" used in different Russian laws and identifying the ethnic community numbered less than 50 thousand as indigenous peoples. Legal status of indigenous peoples is established in federal legislation and in the legislation of the Russian regions, while the status of other ethnic minorities is regulated fragmentarily. The unique feature of the Russian legal system is that the status of indigenous peoples is related to the size of this ethnic community, which predetermines the possibility/impossibility of a policy of positive discrimination concerning this community.

2.3. Tribes and Linguistic Groups in India

The most "colorful" ethnic and cultural composition of the population is in India, which is one of the vivid examples of a multinational society.[19] It is difficult to name the

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[17] Gladun, E., & Zadorin, M. (2023). The System of Indigenous Peoples' Protection in BRICS States: An Overview of Legal and Litigation Support. *BRICS Law Journal, 10*(4), 121–141.

[18] Vitruk, N. V. (2001, March 30). *From the Transcript of the Round Table Meeting "Council of Europe Standards in the Field of Protection of National Minorities and Russian Practice."* Institute for Law and Public Policy. http://www.ilpp.ru/proiects/index.htmn. (In Russian).

[19] Lijphart, A. (1996). The Puzzle of Indian Democracy: A Consociational Interpretation. *American Political Science Review, 90*(2), 258–268.

exact number of ethnic groups in this country since the main feature of social groups and territorial organization here is considered not ethnic but religious (confessional). According to the 2011 census, the population of India amounted to 1210.2 million people,[20] while the indigenous peoples make up only 8% of India's citizens. At the same time, the official status of the indigenous peoples ("Scheduled tribes") is received only if they are registered in the so-called "List of scheduled tribes" published at the federal level.

Another peculiarity of India is its caste system, which divides the society and creates religious, cultural and linguistic differences. The Constitution of India, enshrining the principle of federalism and proclaiming India in Article 1 as a "Union of States,"[21] does not directly establish the ethnic basis of the federal division in the country. Moreover, the Constitution, despite the multiethnic composition of the population of India, does not define the country as a multinational state and generally avoids mentioning the ethnic (or national) stratification of the population since caste and religious identity come to the fore.

India has the most remarkable linguistic diversity of all the BRICS countries and the world. The country's population speaks 448 languages (which together have about 2,000 dialects and vernaculars).[22] Linguistic criteria began to have significance for the legal status of nationalities after the administrative-territorial reform of 1956 – most of the Indian states were formed depending on the dominant language in a particular territory.[23] To sum up, ethnic identification is of secondary importance in India and the ethnicity of indigenous peoples is determined by the state on the basis of language and religious peculiarities.

2.4. Ethnic Groups of China

In China, the dominant ethnic group, the Han Chinese, makes up 92% of the population. However, there are also 55 officially recognized ethnic minority groups in the country, most of which have historical regions of residence.[24] At the same time, the distribution of ethnic groups is highly uneven. For example, in the Tibet Autonomous Region, almost 92% of the population are ethnic Tibetans, and only 8%

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[20] Office of the Registrar General and Census Commissioner, India, Ministry of Home Affairs. (2011, March 31). *Census 2011: Provisional Population Totals*. Census of India. https://censusindia.gov.in/census.website/

[21] Constitution of India, 1950. India Code. https://www.indiacode.nic.in/bitstream/123456789/19151/1/constitution_of_india.pdf

[22] Republic of India. (n.d.). Ethnologue. https://www.ethnologue.com/country/IN/

[23] Salikov, M. S. (Ed.). (2014). Ethnicity. Culture. Statehood. Problems of Ethnic Federalism in the 21st Century: Monograph (pp. 131–132). Publishing House of the Educational and Methodological Center of the Ural Federal University. (In Russian).

[24] National Bureau of Statistics of China. (2011, April 28). *Communiqué of the National Bureau of Statistics of People's Republic of China on Major Figures of the 2010 Population Census (No. 1)*. National Bureau of Statistics of China. http://www.stats.gov.cn/english/NewsEvents/201104/t20110428_26449.html

are Han, while the region occupies almost a quarter of China's territory. In the East, vast territories are occupied by the historical region of Xinjiang (East Turkestan, 17% of the country's area) – the "small homeland" of the Muslim Uyghurs and a number of other national minorities. The Han Chinese make up less than half of the population here, numerically inferior to the Uyghurs.[25]

One of the leading constitutional goals of multinational China is to "preserve national cohesion" and "equality of all nationalities," as well as the preservation of a single multinational state based on economic, political and cultural unity in which the entire population of the country is considered as the "Chinese nation." The status of a "united nation" means the unity of all peoples living on the territory of the People's Republic of China (PRC), while the Chinese nation also unites all ethnic groups since they are "contributed to the history of the country." That is, the form of self-determination of all nationalities inhabiting China has become their inclusion in the PRC. Article 4 of China's Constitution confirms this concept and establishes a ban on discrimination on the basis of nationality but guarantees certain rights of national minorities. Such rights include language rights and the right to create autonomies (part 3 of Article 4 of the Constitution).[26]

Thus, the concept of ethnic identity is very vague in China compared to the concept of national identity and the first one is mostly perpetuated to the language and ancestorial lands.

2.5. South Africa's Ethnic Diversity

South Africa, known as the "Rainbow Nation," is ethnically, religiously and linguistically diverse. In South Africa, ethnic differences have a racial basis. More than 80% of the population are Africans (in official South African terminology – "black"), approximately 8.5% are descendants of European migrants ("white"), as well as mulattos, or "coloreds" – descendants of people born in mixed African-European marriages.[27] The African population lives mainly in the East of the country, while in the west, the majority of residents are mulattos. Ethnic (or racial) groups are perceived by South African society as relatively autonomous political segments with a pronounced racial self-awareness which primarily is a result of the apartheid policy. However, the racial groups of South Africa are also heterogeneous in terms of ethnic and linguistic composition. The most widely spoken language is Zulu, but it is the native language of only a quarter of the population (although most citizens understand it). Language affiliation became a law-forming factor of ethnicity in

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[25] Mochalov, 2017.

[26] Constitution of the People's Republic of China, 1982. The State Council of the People's Republic of China. https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0-b3f0e9499913.html

[27] Statistics South Africa. (2011). *Census 2011: Census in Brief*. Statistics South Africa. http://www.statssa.gov.za/census/census_2011/census_products/Census_2011_Census_in_brief.pdf

1993–1994 when socio-political movements demanded the implementation of the principle of self-determination and the formation of a "national state."[28]

In accordance with the current Constitution of South Africa (part 3 of Article 9), "unfair direct or indirect discrimination by the state, including on the basis of ... race ... ethnic and social origin, color ... religion, belief, culture, language and origin" is prohibited. Analyzing the Constitutional Court's decisions and the provisions of part 3 of Article 9 of the South African Constitution,[29] it can be concluded that ethnic diversity in the state is not denied. However, the principle of "unity in diversity" is decisive in forming state policy, as opposed to the policy of apartheid. Considering that the ideology of apartheid was based on racial and ethnic segregation, the new constitutional value of the state is a "single nation." "Ethnic identity" is not a legal status of any social group, the state only recognizes and ensures the cultural and linguistic rights of certain groups of the population.

Conclusion

It is evident that all BRICS countries have a complex ethnic composition and specific constructions based on ethnicity, the foundations of which are reflected in the fundamental law. A general conclusion can be made that external conditions for existing ethnic groups in the state can be different, and ethnic groups manifest their ethnic identity and self-awareness in various ways. Nevertheless, the state constructs the constitutional and legal status of these ethnic groups in the formed constitutional systems and principles, taking into account ethnic identification. It is possible to determine ethnic identity and self-awareness through empirical observations, in the process of dialogue and other ways of expressing an opinion that help establish what a person means when asserting his or her ethnic affiliation. Sometimes, a situation arises where marginalization, social and economic problems, along with the desire to recognize and protect their collective and individual rights, to preserve the continuity of their culture, encourage local communities to declare that they identify themselves as special ethnic groups, meet the primary criterion identified at the international level and, therefore, can claim protection of fundamental rights. The well-known Russian ethnographer A.V. Golovnev also links the variability and renewability of ethnicity with a "personal and group strategy of self-determination," in which "common understanding and trust are realized," and "resources for self-realization and positioning" are drawn.[30]

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[28] Mochalov, 2017.

[29] Constitution of the Republic of South Africa, 1996. South African Government. https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-04-feb-1997

[30] Golovnev, A. V. (2012). Ethnicity: Stability and Variability (Experience of the North). *Etnograficheskoe obozrenie*, 2, 3–12. (In Russian).

If legal norms, primarily in the constitutions, are formulated on the essence of ethnicity, its physiological, historical, cultural, value and other features it will be possible to make the connection of individuals (in particular, indigenous peoples) with the existing ethnic policy and law more stable, ensure the inclusion of representatives of all ethnic groups that make up the united nation of the state in legal, administrative and social processes, make the socio-political goals and values of the state more understandable and close to all citizens and thereby guarantee more effective law enforcement and commitment to national values and development goals, while at the same time preserving and supporting their own ethnic identity, expressing it through culture, traditions, languages and other ethnic characteristics that are a significant contribution to the sustainable development of the entire society.

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ARTICLE

Economic Sanctions: How to Make International Trade a Legal Right Instead of a Privilege

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Abstract. The wave of new economic trade sanctions in the world needs the comprehension of the grounds and potential consequences of this phenomenon. The author summarizes the annual reports of the UN Special Rapporteur on the negative impact of the unilateral coercive measurers for 2015–2022. Also, the paper explains why the "broken windows theory" is relevant to unilateral economic sanctions imposed by developed countries against developing countries. Analyzing the results of voting in the UN for non-specific country sanction issue resolutions, the author proves that the developed countries and European developing countries except Russia usually support economic sanctions as a policy tool which is unlikely for non-European developing countries. The increase in multi-regionalism facilitated by imposed or potential economic sanctions is a factor which could lead to the collapse of the unilateral system of international trade regulations under the WTO scope. Finally, the paper offers to unblock the Doha Round of WTO negotiations through a switch from multilateral agreement ideology to plurilateral agreement ideology, starting from signing an in-depth and comprehensive anti-economic sanctions agreement initiated by the BRICS member states.

Keywords: BRICS; economic sanctions; unilateral coercive measures; WTO; international trade; agreement; multilateralism.

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Table of Contents

Introduction

In the mid-1990s as part of the Uruguay Round negotiations under the General Agreement on Tariffs and Trade (GATT) there was strong optimism associated with the widespread belief that it would set new universal and fair-trade rules. Broad comprehensive trade sanctions and trade wars would disappear and international trade goods and services would be separated from politics. That is, with the exception of trade in goods and services, which is clearly of military and dual-use items, and several other clearly defined specific cases (the use of prison labor for production, child labor, etc.), merchants would be able to choose their trading partners freely, regardless of the political opinion of purchasing countries. International negotiations on new rules of international trade would become transparent as well.

Indeed, due to the results of the Uruguay Round negotiations the WTO was created, as well as a lower level of customs duties on goods, which was presented as a great success of global development. There was moderate liberalization of certain rules of international trade in services as well. But was not the positive impact of these events for international trade and development overestimated? What is the point of the lower duties on goods (and some technically more liberal rules for trade in services), when the purchase is virtually impossible due to economic sanctions imposed by politicians?

Within the framework of the WTO Uruguay Round, the existing GATT rules, dating from 1947, about the possibility of the establishment of any restriction on international trade based on the "security" and "emergency in international relations" were left unchanged. Moreover, these rules adopted in 1947, with the creation of the WTO in 1995, were extended to trade in services. Can we say that if the world continues to trade

on the basis of the legal standards of 1947, the real international trade rules are based on principles of the era of a divided world and the Cold War? The fact is that, nothing has changed since 1947, and we must continue to do business in the spirit of 1940s standards. Alternatively, if the political standards of the 1940s are redundant, why is this not legally fixed by adjusting the legal documents composed that time? My first argument is that almost all world developing countries are likely to agree to refuse using sanctions as a tool of international policy. The active use of economic sanctions as a method of international policy is based on the will of a coalition of developed countries. De facto, economic sanctions is a tool used by developed countries in order to brake the economic growth of developing countries. Their aim is to prevent the latter from reducing its backlog so as to catch up with more developed countries. Thus, it reduces the speed of the overall progress of the global economy. At the same time, the economic development of politically loyal foreign regimes is promoted, even if they are odious, which is essentially a monopoly on the development, and the elimination of the interstate fair competition in the development.

My second argument is that neither national nor international courts provide a real defense against unilateral economic sanctions. Unilateral economic sanctions imposed by developed countries against developing countries could provoke the collapse of unified world trade and spilt into several trade megablocks. It's senseless for most developing countries to adhere to WTO rules, because the retaliation system in WTO law is designed to protect developed countries in mutual trade with each other plus with several of their major trade partners from the list of developing countries. In the system of megablock split, even though the WTO formally remains, WTO law will regulate only minor secondary trade issues, but the primary regulation of international trade will go into mega-block law. However, the real power of the WTO as a much more unified system of international trade rules could be kept through a switch to plurilateral agreement development ideology. The signatories of the latter will refuse to use in mutual trade out with direct war or the scope of proper United Nations Security Council Resolutions the GATT Article XXI(b)(iii), (c) and GATS Article XIV bis(b)(iii), (c) respectively provisions related to emergency in international relation exceptions, and maintenance of international peace and security exceptions.

1. What Is Meant by "Economic Sanctions" and "Unilateral Coercive Measures"?

There is neither official determination nor academic consensus related to the differentiation of such terms as "economic sanctions" and "coercive measures" in trade. In practice, they often are used as synonyms.

Hufbauer et al. define economic sanctions to mean

> the deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade of financial relations. "Customary" does not mean

> "contractual"; it simply means levels of trade and financial activity that would probably have occurred in the absence of sanctions.[1]

Carter offers a definition of the term "economic sanctions" to mean "coercive economic measures taken against one or more countries to force a change in policies, or at least to demonstrate a country's opinion about the other's policies." The terms "economic boycott" and "embargo" are often used interchangeably with "economic sanctions."[2] Malloy uses the term "economic sanction" to refer to any country – specific economic or financial prohibition imposed upon a target country or its nationals with the intended effect of creating dysfunction in commercial and financial transactions with respect to the specified target, in the service of specified foreign policy purposes. The term "sanction" in the present context therefore includes a range of trade and financial measures that may be imposed in varying combinations and administered by a number of agencies.[3] Taylor says that the term "sanctions" is one of the more confused to have entered the discourse of international politics. For the purposes of his study he defines sanctions as "an economic instrument which is employed by one or more international actors against another, ostensibly with a view to influencing that entities foreign and/or security behavior."[4] Taylor also classified sanctions' scholars into three academic schools:

a) "the sanctions don't work" school (Johan Galtung, Margaret Doxey, Donald L. Losman, Robert A. Rape, Richard N. Haass, Reed M. Wood);

b) "the sanctions as symbols" school with a separate international symbolism and domestic symbolism issues (Hedley Bull);

c) "the sanctions can work" school (David Mitrany, T. Clifton Morgan, Valerie L. Schwebach, Hufbauer–Schott–Elliott–Oegg).[5]

We define economic sanctions as

> full of partial restrictions of free movement of goods, freedom of movement for workers, right of establishment and freedom to provide services and free movement of capital if their lift is caused by fulfilling some political demands by the government of the target country.

Several recent United Nations documents help us to better understand the terminological aspects of economic sanctions and similar terms.

The term "unilateral coercive measures" has been used broadly to include measures such as "unilateral economic sanctions," "unilateral economic measures"

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1 Hufbauer, G., Schott, J., Elliott, K., & Oegg, B. (2009). *Economic Sanctions Reconsidered* (3rd ed., p. 3). Peterson Institute for International Economics.

2 Carter, B. (1998). *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime* (pp. 4–5). Cambridge University Press.

3 Malloy, M. (2000). The Many Faces of Economic Sanctions: Efficacy and Morality. *Global Dialogue, 2*(3), 1–10.

4 Taylor, B. (2010). *Sanctions as a Grand Strategy* (pp. 10–12). Routledge.

5 *Id*. pp. 18–23.

and "coercive economic measures" in various studies, as well as in United Nations documents and resolutions. To date, the term "unilateral coercive measures" does not seem to have a commonly agreed-upon definition.[6] The most commonly-used definition of the term is "the use of economic measures taken by one State to compel a change of policy of another State."[7] Some studies, however, tend to hold the view that the term "unilateral" may be used in a broader sense to include states, groups of states and "autonomous" regional organizations, unless such measures are authorized under Chapter VII of the Charter of the United Nations. For example, Portela stated that "… one can distinguish the unilateral sanctions practice of individual states and organizations – such as the EU, the US, Canada or Japan – from the mandatory sanctions of the Security Council."[8] The working definition of the term "unilateral coercive measures" preferred for the purposes of the study by the Human Rights Council Advisory Committee was

> the use of economic, trade or other measures taken by a State, group of States or international organizations acting autonomously to compel a change of policy of another State or to pressure individuals, groups or entities in targeted states to influence a course of action without the authorization of the Security Council.[9]

However, it is important to notice that to offer personal definitions of the term "economic sanctions," "coercive measures," etc. is not conventional in academic research. Some scholars prefer to avoid defining such terms formally, and concentrate on analyzing targets and aims. Books written by Eyler[10] and Selden[11] are good examples of such approach.

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6 UN General Assembly Human Rights Council. (2013, June 24). *Proceedings of the Workshop on the Various Aspects Relating to the Impact of the Application of Unilateral Coercive Measures on the Enjoyment of Human Rights by the Affected Populations in the States Targeted* (A/HRC/24/20). UN Official Documents. https://documents.un.org/doc/undoc/gen/g13/149/93/pdf/g1314993.pdf; see also the presentation made by Antonios Tzanakopoulos. Tzanakopoulos, A. (2014). *Workshop on the Impact of the Application of Unilateral Coercive Measures on the Enjoyment of Human Rights by the Affected Populations, in Particular Their Socioeconomic Impact on Women and Children, in the States Targeted*. Office of the High Commissioner for Human Rights. http://www.ohchr.org/EN/NewsEvents/Seminars/Pages/Workshop23May2014.aspx

7 Lowenfeld, A. F. (2002). *International Economic Law* (p. 698). Oxford University Press.

8 Portela, C. (2014, March). *The EU's Use of 'Targeted' Sanctions: Evaluating Effectiveness* (CEPS Working Document No. 391). CEPS. https://www.ceps.eu/system/files/WD391%20Portela%20EU%20Targeted%20Sanctions.pdf

9 UN General Assembly Human Rights Council. (2015, February 10). *Research-Based Progress Report of the Human Rights Council Advisory Committee Containing Recommendations on Mechanisms to Assess the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights and to Promote Accountability* (A/HRC/28/74, paras. 7–9). UN Official Documents. https://documents.un.org/doc/undoc/gen/g15/022/08/pdf/g1502208.pdf

10 Eyler, R. (2007). *Economic Sanctions: International Policy and Political Economy at Work*. Palgrave Macmillan.

11 Selden, Z. (1999). *Economic Sanctions as Instruments of American Foreign Policy*. Praeger Publishers.

Counsellor in the WTO Maarten Smeets, speaking of the main purpose of sanctions, expressed an opinion that trade sanctions result from political decisions to act against another country. They are meant to isolate a country economically, thus providing one way of expressing disagreement with a country's policies. The objectives of sanctions vary for each individual case, but generally are related to achieving changes in the internal or foreign policy of the target country. Economic sanctions should be seen as an instrument to exert pressure to bring about such policy changes. The objectives of sanctions can range from the "soft," i.e., simply expressing dissatisfaction with a country's behaviour, to the "hard," i.e., securing a fundamental change in such behaviour. Trade sanctions are thus an economic instrument for achieving political objectives. The more ambitious the objectives, the larger the sanctions package should be. Nevertheless, experience shows that even when full-scale sanctions are applied and a country seems to be totally isolated, there is still no guarantee of success. Although sanctions are politically popular, the empirical evidence suggests that the number of successful sanctions campaigns is limited.[12]

Economic sanctions, which are in practice now, in most cases, are a widespread type of unilateral coercive measurers. I am convinced that the most complete and detailed analysis of these measures is carried out by the Special Rapporteurs on the negative impact of the unilateral coercive measurers under the Office of the United Nations High Commissioner for Human Rights (OHCHR) in their annual reports. In the academic literature one can often find references to their reports for individual years, but we found comprehensive summaries of these reports for several years, despite the fact that these reports had a different focus in different years. I'm convinced that the significance of these reports in political and legal science is underestimated. Therefore, I decided to fill this gap, that is, to summarize at least the most important key provisions in my opinion of these annual reports for 2015–2024.

According to Idriss Jazairy, who served as the Special Rapporteur from May 2015 to March 2020, a variety of the expressions are being used to refer to unilateral coercive measures. Some refer to them as "sanctions," others as "restrictive measures" and others still use them interchangeably or jointly as, for example, "restrictive measures (sanctions)." The term "restrictive measure" does not carry the same ethical overtones of punishment as "sanctions." However, this term eschews the mention of "unilateral," which itself raises the issue of legitimacy of such measures since what is unilateral can, in given circumstances, lack legitimacy. The term "unilateral coercive measures," though more cumbersome, has the advantage of not prejudging any of the aforementioned, rather controversial, issues.[13]

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[12] Smeets, M. (2000, Summer). Conflicting Goals: Economic Sanctions and the WTO. *Global Policy Dialogue, 2*(3), 119–128.

[13] UN General Assembly Human Rights Council. (2015, August 10). *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Idriss Jazairy*

Another possible terminological economic sanctions-related confusion refers to distinction between the terms "retorsion," "retaliation" and "reprisals."

Retorsion refers one country to applying pressure on a second country, which may or may not be in breach of its international obligations, without the source country itself suspending any international obligation owed to the target country. Retaliation refers to the *lex talionis*, which demands that a wrongdoer be inflicted with the same injury as that which he has caused to another. It may thus be used to describe a suspension by a source country, by way of a unilateral coercive measure, of its international commitments selectively against the target country to an extent that is proportionate with the wrongful act of the latter, thus staying within the alleged bounds of legitimacy. Finally, the concept of reprisal, traditionally used to cover otherwise unlawful action, including forcible action, taken by way of self-help in response to a breach, is now mostly used to refer to action taken in time of international armed conflict. In that context, reprisals have been defined as "coercive measures which would normally be contrary to international law but which are taken in retaliation by one party to a conflict in order to stop the adversary from violating international law."[14]

Unilateral coercive measures may be invoked for political motives or for reasons pertaining to human rights. It is recognized that they are not legitimate if they pursue an economic objective of the source country or group of countries. International law will only consider such measures as legitimate if: (a) they are a response to a breach of the international obligations of the target country; and (b) the breach of such obligations causes injury on a State or group of States giving them the right to retorsion/retaliation. The notion of extraterritorial source of injury giving rise to the right to retorsion/retaliation is clear for political or commercial disputes, but less so for claims of violations of human rights overseas. Be that as it may, the measures taken by the aggrieved State(s) might have been qualified as wrongful had it not been for the fact that they are a proportionate response to a breach of the international obligations by the target country. This legitimacy would also depend on the source countries having given due notice to the target country to have to comply with its international obligations. However, the legitimacy of retorsion/retaliation may be put in doubt if the negative human rights impact of the unilateral coercive measures undermines basic human rights or if the measures are pursued indefinitely without any progress in achieving their proclaimed objective. Thus, human rights law mitigates the rigors of international law.[15]

Next year (2016) Jazairy paid attention to the fact that

(A/HRC/30/45, para. 20). UN Official Documents. https://documents.un.org/doc/undoc/gen/g15/177/05/pdf/g1517705.pdf

[14] UN General Assembly Human Rights Council, 2015, para. 37.

[15] *Id.*

> The International Court of Justice has already considered the legality of economic sanctions under public international law. Called to rule on, inter alia, the legality of acts of "economic pressure" exercised by the United States of America against Nicaragua, the Court stated that "a State is not bound to continue particular trade relations longer than it sees fit to do so, in the absence of a treaty commitment or other specific legal obligation." This suggests that the freedom to impose measures restricting trade with a targeted State is circumscribed to situations where such measures would not involve a violation of existing treaty obligations. This leaves the Court much to decide upon as regards unilateral coercive measures, their legality or otherwise under public international law, and their conformity or otherwise with human rights, including an assessment of the legal significance and consequences of repeated resolutions of the General Assembly condemning recourse to unilateral coercive measures.[16]

In his 2017 report Jazairy concluded that

> most international businesses, while legally not subject to the jurisdiction of the targeting State, will in practice be unwilling to entertain any economic relations with parties in the targeted State that might lead to their "violating" the provisions of the extraterritorial sanction regime – and thus might jeopardize their ability to pursue their own business activities in the targeting State. This has led to the damaging practice of over-compliance by trading partners of targeted countries. The result is a de facto blockade of the target State, voluntarily complied with by economic actors that are not even legally subject to the jurisdiction of the targeting State. The distinct additional impact of extraterritorial sanctions may also be related to their effects on the targeted State's ability to gain access to international financial institutions, foreign financial markets and international aid. As an example, the impact of the extraterritorial sanctions imposed on Cuba by the United States (before their lifting, de jure rather than de facto, in 2016) on the country's ability to conduct commerce with the outside world and access international financial markets has been described as amounting de facto to a global embargo. The Helms–Burton Act had the effect of blocking access by Cuba to global financial institutions, as well as to access to the SWIFT financial messaging system, which had severe effects in the context of the economic crisis of Cuba.[17]

According to Jazairy's following year (2018) report,

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[16] UN General Assembly Human Rights Council. (2016, August 2). *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights* (A/HRC/33/48, para. 22). UN Official Documents. https://documents.un.org/doc/undoc/gen/g16/171/14/pdf/g1617114.pdf

[17] UN General Assembly Human Rights Council. (2017, July 26). *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights* (A/HRC/36/44, paras. 27–28). UN Official Documents. https://documents.un.org/doc/undoc/gen/g17/224/28/pdf/g1722428.pdf

> When sanctions, especially those purporting to have extraterritorial effect, are used as a routine foreign policy tool against each and every State, Government or entity that the most prolific sanctions user unilaterally determines, on the basis of questionable "evidence" or mere suspicions or allegations that a corrupt regime engaged in malign activities is attempting to subvert Western democracies, the very architecture of the international system based on the Charter of the United Nations and the International Bill of Human Rights is at risk. It will be increasingly difficult to maintain an international order allowing for international cooperation and understanding, effective respect for and promotion of human rights, or even mere coexistence among States, if sanctions and embargoes grounded in the rhetoric of confrontation become commonplace tools and take precedence over normal diplomatic intercourse.[18]

In his 2019 report, Jazairy conducted a detailed analysis of the current economic sanctions that various countries have imposed against Iran, Cuba, Venezuela, Russia, Qatar, Palestine, Syria and Yemen. In particular,

It should be recalled that the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has found that the blockade constitutes collective punishment of the people of Gaza, contrary to Article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (A/70/392, para. 22, and A/73/175, para. 30). The Special Rapporteur also cannot but draw attention to an alarming recent report in which the United Nations Relief and Works Agency for Palestine Refugees in the Near East states that more than one million people in Gaza – half of the population of the territory – may not have enough food by June 2019 as a result of the blockade coupled with other factors such as successive conflicts that have razed entire neighbourhoods and public infrastructure to the ground … Rejection of the United States embargo on Cuba has become so widespread within the international community that in 2018 a near-universal consensus was reached by the General Assembly. Moreover, successive Assembly resolutions nominally concerned with the Cuban embargo actually have a broader scope and broader implications, since they contain language that clearly applies to unilateral coercive measures in general, whatever the context. In its resolutions, the Assembly calls on all States to refrain from using unilateral coercive measures. The measures condemned are laws and regulations adopted by States the extraterritorial effects of which affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation.[19]

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[18] UN General Assembly Human Rights Council. (2018, August 30). *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights* (A/HRC/39/54, para. 29). UN Official Documents. https://documents.un.org/doc/undoc/gen/g18/264/85/pdf/g1826485.pdf

[19] UN General Assembly Human Rights Council. (2019, July 5). *Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights – Report of the Special Rapporteur on the Negative Impact of*

Jazairy also offered to include to the draft General Assembly declaration on unilateral coercive measures and the rule of law the provision that

> Unilateral coercive measures requiring extraterritorial application to third parties of laws adopted by a source country against a target country, and which call for secondary sanctions on such third parties in case of non-compliance, are unlawful under international law.[20]

In March 2020, the newly appointed UN Special Rapporteur on the negative impact of the unilateral coercive measurers Alena Douhan in her first annual report stated that

> The extraterritorial effects of unilateral sanctions raise special concerns for the Special Rapporteur due to the increasing number of reported cases of human rights violations. This includes the broad scope of aspects, starting from the general notion of extraterritoriality as regards unilateral action, the legal qualification of extraterritorial activity, the impact of extraterritorial application on third States, their nationals and legal entities, and various aspects of overcompliance … The Special Rapporteur insists that economic sanctions today can often be qualified as unilateral coercive measures that undermine normal inter-State relations and the rule of law and that bear enormous humanitarian costs.[21]

In report the following year (2021) Douhan underlined that

> The Special Rapporteur notes that the traditional approach of the 1970s, that a legitimate (proper) purpose or motive can justify the use of coercion, was repeatedly used when seeking to justify the concept of humanitarian intervention in the 1990s. However, no grounds for this approach can be found in international law … The Special Rapporteur recalls the existence of general consensus on the illegality of the application of extraterritorial sanctions from the side of legal doctrine, among directly targeted States and also among countries traditionally viewed as imposing sanctions … The Special Rapporteur recalls that in accordance with the draft articles on responsibility of States for internationally wrongful acts, countermeasures may only be taken by the directly affected States in response to a violation of an international obligation in order

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Unilateral Coercive Measures on the Enjoyment of Human Rights (A/HRC/42/46, paras. 39, 44). UN Official Documents. https://documents.un.org/doc/undoc/gen/g19/206/24/pdf/g1920624.pdf

[20] UN General Assembly Human Rights Council. (2019, August 29). *Elements for a Draft General Assembly Declaration on Unilateral Coercive Measures and the Rule of Law (Updated) – Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights* (A/HRC/42/46/Add.1, para. 3). UN Official Documents. https://documents.un.org/doc/undoc/gen/g19/257/21/pdf/g1925721.pdf

[21] UN General Assembly Human Rights Council. (2020, July 21). *Negative Impact of Unilateral Coercive Measures: Priorities and Road Map – Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights* (A/HRC/45/7, paras. 59, 75). UN Official Documents. https://documents.un.org/doc/undoc/gen/g20/187/55/pdf/g2018755.pdf

> to restore fulfilment of that obligation; the measures must be temporary and proportionate to the violation, and must not violate human rights, peremptory norms of international law or humanitarian law … The Special Rapporteur also notes the need to observe other norms of international law when taking unilateral action. In particular, customary norms on the immunity of State property provide for the immunity of central bank assets and property used for public functions as belonging to the corresponding State rather than to its Government or any individual … Unilateral measures may be taken by States or regional organizations in compliance with international legal standards only: that is, they are taken with the authorization of the Security Council acting under Chapter VII of the Charter of the United Nations in response to a breach of peace, a threat to peace or an act of aggression, and they do not violate any international treaty or customary norm, or their wrongfulness is excluded in accordance with international law in the course of countermeasures in full compliance with the rules of law of international responsibility. Unilateral sanctions that do not satisfy the above criteria constitute unilateral coercive measures and are illegal under international law.[22]

In her report (2022) Douhan stated that

> The Special Rapporteur joins the position of many States that the legality of secondary sanctions imposed extraterritorially is doubtful in international law, firstly in view of the questions that are often raised about the legality of unilateral primary sanctions; secondly because the extraterritorial enforcement of unilateral sanctions is widely deemed as infringing on the sovereignty of other States by violating the legal principles of jurisdiction and non-intervention in the internal affairs of States; and thirdly because of conflicts with the obligations of sanctioning States under international trade law, friendship and commerce treaties, international investment agreements and the International Covenant on Civil and Political Rights. She highlights that foreign targets of secondary sanctions are generally not charged with crimes or tried, and are thereby denied the due process rights enshrined in Articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR). Despite this, given the enormous expansion in the use of primary sanctions in recent years, the use of secondary sanctions has grown considerably and the fear of being targeted by them has reinforced a global trend of overcompliance with primary sanctions. Moreover, she notes that the growing use of secondary sanctions raises the prospect for overcompliance with them as well, indeed, the potential for tertiary sanctions against parties that trade with the targets of secondary sanctions has already been reported … The Special Rapporteur

[22] UN General Assembly Human Rights Council. (2021, July 8). *Unilateral Coercive Measures: Notion, Types and Qualification – Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Alena Douhan* (A/HRC/48/59, paras. 24, 59, 74, 84, 98–99). United Nations Digital Library System. https://digitallibrary.un.org/record/3936670?v=pdf

> notes that initiatives by States to diminish overcompliance have been sporadic and modest, and there is no indication that sanctions are being designed to minimize it. Indeed, four key drivers of overcompliance remain in place: the complexity of sanctions regimes; the vagueness of their provisions; tough enforcement measures; and threats of secondary sanctions or criminal or civil penalties. As earlier sanctions remain unclear, evidence that more recent sanctions also lack clarity is the overcompliance that occurs with them as well, all while enforcement has become harsher.[23]

In 2023, Douhan reported that

> The global community is currently facing the expansion and increasing complexity of various forms of unilateral sanctions regimes applied to governmental and non-governmental actors and economic sectors, in addition to threats of secondary sanctions, civil and criminal penalties for violations or the circumvention of sanctions and the growing use of zero-risk policies and overcompliance by banks, producers of goods, transport and insurance companies and other private actors. Unilateral sanctions and overcompliance have a detrimental impact on the implementation of all aspects of the right to health of all people in the countries under sanctions, including access to adequate medicine, health-care facilities, medical equipment and qualified medical assistance; the prevention and control of disease; and an adequate number of health professionals with access to training and up-to-date scientific knowledge, technologies, research and exchange of good practices. Such sanctions also affect all relevant underlying rights, including the rights to adequate food, clean water, sanitation, electricity and fuel, to freedom of movement and to a favourable environment, economic and labour rights and the elimination of poverty. Women, girls, children, persons with disabilities, persons suffering from rare and severe diseases, older persons and socioeconomically marginalized groups are the most vulnerable in the face of unilateral sanctions. Increasing mortality rates, reduced life expectancy, the rising prevalence of physical and mental health conditions and disabilities due to the lack of timely diagnosis and treatment and increasing physical and psychological suffering are only some of the serious tangible consequence. These constitute violations of human rights, such as the rights to life and to freedom from torture and inhuman treatment, and the principle of non-discrimination.[24]

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[23] UN General Assembly Human Rights Council. (2022, July 15). *Secondary Sanctions, Civil and Criminal Penalties for Circumvention of Sanctions Regimes and Overcompliance with Sanctions – Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Alena F. Douhan* (A/HRC/51/33, paras. 13, 14, 70). UN Official Documents. https://documents.un.org/doc/undoc/gen/g22/408/16/pdf/g2240816.pdf

[24] UN General Assembly Human Rights Council. (2023, March 28). *Impact of Unilateral Coercive Measures on the Right to Health – Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Alena Douhan* (A/HRC/54/23, paras. 86–88). UN Official Documents. https://documents.un.org/doc/undoc/gen/g23/148/52/pdf/g2314852.pdf

In her last available report (2024), Douhan stated that

> Despite three calls for contributions sent by the Special Rapporteur (for the development of the methodology, the establishment of the monitoring tool and the collection of information), no evidence has been received of any initiatives by sanctioning State to monitor and assess the humanitarian impact of their unilateral measures, despite their obligation under the principle of due diligence to take all measures necessary, including by applying humanitarian precaution to ensure that their activities and activities under their jurisdiction or control do not affect human rights. The preliminary results of the monitoring demonstrate the tremendous impact of unilateral coercive measures on all humanitarian areas (blocks) indicated in the questionnaire and reflect their destructive effects on the most vulnerable groups (children, women, persons with disabilities, migrants, refugees, asylum-seekers, internally displaced persons, persons in extreme poverty).[25]

2. Broken Windows

Economic sanctions could be theorized within a variety of frameworks. In this chapter, we look at the broken windows theory as an initial perspective of seeing how sanctions work. The "broken windows theory" developed by the criminologists James Q. Wilson and George L. Kelling to fight crime in New York has made its authors famous. One of the cornerstones of the theory is the idea that offenses of social order should not be allowed with impunity to anyone. An atmosphere in which law and order are lacking is like a virus infection which will spread if it is not suppressed. If some part of the population is allowed to openly to commit offenses and with impunity, the whole social system instantly becomes destabilized.

In 1982, after another year of record lawlessness in New York City, the two college professors advanced or, more accurately, rekindled a plausible and uncomplicated theory that would revolutionize law enforcement in the city: Maintaining public order also helps prevent crime. "If a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken," Wilson and Kelling wrote.[26]

Citing Wilson and Kelling (1982) in more detail:

> at the community level, disorder and crime are usually inextricably linked, in a kind of developmental sequence. Social psychologists and police officers tend

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[25] UN General Assembly Human Rights Council. (2024, August 9). *Monitoring and Assessment of the Impact of Unilateral Sanctions and Overcompliance on Human Rights – Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Alena F. Douhan* (A/HRC/57/55, paras. 81, 83). UN Official Documents. https://documents.un.org/doc/undoc/gen/g24/133/16/pdf/g2413316.pdf

[26] Roberts, S. (2014, August 10). Author of 'Broken Windows' policing defends his theory. *The New York Times*. https://www.nytimes.com/2014/08/11/nyregion/author-of-broken-windows-policing-defends-his-theory.html

> to agree that if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken. This is as true in nice neighborhoods as in rundown ones. Window-breaking does not necessarily occur on a large scale because some areas are inhabited by determined window-breakers whereas others are populated by window-lovers; rather, one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing. (It has always been fun.) … A particular rule that seems to make sense in the individual case makes no sense when it is made a universal rule and applied to all cases. It makes no sense because it fails to take into account the connection between one broken window left untended and a thousand broken windows. Of course, agencies other than the police could attend to the problems posed by drunks or the mentally ill, but in most communities especially where the "deinstitutionalization" movement has been strong – they do not.[27]

I believe that this theory, strangely enough, is applicable to interstate relations in general and to international economic sanctions in particular. Social disorder is social disorder regardless of scale, and often there is no significant difference between development disorders on the local (city) level and the global level.

Imagine, a law that would allow individuals to break windows on Thursdays or Sundays exists. Or, perhaps, a general law against break windows exists but, in practice, citizens whose surnames begin with letters A–K, and their relatives, would not be punished for breaking the windows. It is obvious that other citizens never stop breaking windows, which would lead to general social disorder. A successful anti-disorder strategy must be based on zero tolerance.

Analogously, for international relations applications, if we punish countries for something selectively (e.g., for violation of human rights), such violations will never stop. Effective anti-violation strategy could be based on punishing all offenders to everybody. In reality, the cruel government of a developing country, that commit a human rights violation, is punished only if none of the major world powers support it. Governments of certain developing countries have no incentives to stop massive violations of the human rights of their citizens, because they are sure in support by certain governments in the developed world.

The next aspect worth researching is the behavior of the punishers. Imagine, that everybody in a troubled city such as Newark or New York City will be punished for breaking windows, except the officers of the local police departments. It's clear the windows will continue to be broken. Similarly, in the field of international relations violations of human rights will never be stopped by economic sanctions, if the governments imposing sanctions commit the same violations in the territory of other countries. Developed countries provide the models of behavior, positive or negative,

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[27] Wilson, J. Q., & Kelling, G. L. (1982). The Police and Neighborhood Safety: Broken Windows. *Atlantic Monthly, 249*(3), 29–38.

for governments of developing countries, as adult people provide such models for teenagers. So, both sorts of demonstrated models – positive and negative – at some future time are likely to be repeated by governments of developing countries.

Also, imagine that a joint group of Boston and Detroit local police officers came to Newark to arrest a local resident for breaking windows in Newark. Such an arrest will never be effective, because neither Boston nor Detroit police has a legitimate source of power for operating in Newark. Only local Newark police and, in some specific cases, the federal government, have legitimate authority for coercion in Newark. The analogue in international relations means that sanctions will never be legitimate for people of country A if their outside source is an alliance of several other countries (like the alliance of Boston and Detroit police working in Newark arbitrarily) rather than the United Nations Security Council acting on behalf of the international community as a whole (analogous to the federal government).

3. Sanctions as a Tool of International Policy: Developed Countries *vs* Developing Countries

Most countries, for strategic reasons, try to control the export of weapons. Nevertheless, no other country in the world has imposed so many sanctions and with such frequency as the United States. As the only superpower and as the most powerful economy of the world, the United States can unilaterally exercise more economic power than any other country.[28]

First of all, we emphasize that economic sanctions are nothing new. In my opinion, the most extensive empirical study of economic sanctions belongs to a group of American scientists from the Washington Peterson Institute for International Economics, including Gary C. Hufbauer, Jeffrey J. Schott, Kimberly A. Elliott and Barbara Oegg. The first two have been engaged in professional research economic sanctions for more than 30 years since the early 1980s, the latter two later joined as co-researchers. Their work[29] is the gold standard in an academic research of economic sanctions. As Carter concluded, "there have been numerous studies of the effectiveness of one or more recent uses of sanctions. The Hafbauer–Schott study, which ably draws on previous scholarly work, is the most comprehensive."[30] Selden considered the Hafbauer–Schott study the most comprehensive work on sanctions to date.[31] Taylor said that Hufbauer, Schott, Elliott, Oegg "names remain

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[28] Osieja, H. (2006). Economic Sanctions as an Instrument of U.S. Foreign Policy: The Case of the U.S. Embargo against Cuba. *Academia.edu*. https://www.academia.edu/63768702/Economic_Sanctions_as_an_Instrument_of_U_S_Foreign_Policy_The_Case_of_the_U_S_Embargo_against_Cuba

[29] Hufbauer et al., 2009.

[30] Carter, 1998.

[31] Selden, 1999, p. 8.

at the very forefront of the sanctions research."[32] The last edition of this Hufbauer et al. study (2007) includes information current through 2006. I extracted the data for the most recent 20 years period (1987–2006) in as far as I believe that it is more relevant for analysis of the contemporary world situation. My calculations, based on the Hufbauer et al. data, have shown that for 20 years (1987–2006) the United States imposed economic sanctions against other countries 49 times (including 8 times in the framework of the relevant UN Security Council resolutions).

Talking about sanctions affecting the specific country is rarely politically and emotionally neutral, even for academics. In a certain situation, they could sincerely believe for some personal reasons, that some country deserves or does not deserve sanctions against it. It can have an essential impact on the research results and make them biased. So, the representative of Algeria in the UN General Assembly was right when voicing regret at the continued double standards in the proliferation of country-specific resolutions. Selective resolutions that targeted specific countries undermined the mandate of the Human Rights Council.[33]

To avoid such subjective factors, we would like to pay special attention to the question of how countries voted for politically neutral UN resolutions which were related to sanctions in general, not against any specific country. The resolutions we speak about use polite diplomatic language and do not blame anybody for anything. They look like a neutral impartial test as to whether voting countries believe in general that sanctions are a good or bad method of international policy. At first, we describe the narrower context of the UN Human Rights Council, where only 47 UN members vote. Then, we make the switch to the wider UN General Assembly where all UN members participate.

These resolutions against unilateral coercive measures as such regardless of their target were adopted by the UN Human Rights Council in 2019,[34] twice in 2020[35] and in 2022[36] have some minor textual differences, but the same spirit. Voting results

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32 Taylor, 2010, pp. 10–12.

33 UN General Assembly. (2014, December 18). *Adopting 68 Texts Recommended by Third Committee, General Assembly Sends Strong Message Towards Ending Impunity, Renewing Efforts to Protect Human Rights* (GA/11604). United Nations. http://www.un.org/press/en/2014/ga11604.doc.htm

34 UN General Assembly Human Rights Council. (2019, 5 April). *Resolution Adopted by the Human Rights Council on 21 March 2019 – The Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights* (A/HRC/RES/40/3). UN Official Documents. https://documents.un.org/doc/undoc/gen/g19/098/96/pdf/g1909896.pdf

35 UN General Assembly Human Rights Council. (2020, July 1). *Resolution Adopted by the Human Rights Council on 22 June 2020 – The Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights* (A/HRC/RES/43/15). UN Official Documents. https://documents.un.org/doc/undoc/gen/g20/159/08/pdf/g2015908.pdf; UN General Assembly Human Rights Council. (2020, October 12). *Resolution Adopted by the Human Rights Council on 6 October 2020 – Human Rights and Unilateral Coercive Measures* (A/HRC/RES/45/5). UN Official Documents. https://documents.un.org/doc/undoc/gen/g20/259/79/pdf/g2025979.pdf

36 UN General Assembly Human Rights Council. (2022, April 12). *Resolution Adopted by the Human Rights Council on 31 March 2022 – The Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights* (A/HRC/RES/49/6). UN Official Documents. https://documents.un.org/doc/undoc/gen/g22/307/98/pdf/g2230798.pdf

demonstrate that these resolutions were adopted by votes of non-European developing countries plus Russia minus Marshall Islands which always voted in favour or at least abstained. All developed countries, European developing countries and Marshall Islands always voted against.

These results are not a surprise as far as historically similar results have been demonstrated earlier while the composition of the UN Human Rights Council was different. Jazairy reported in 2015 that

In this regard, there is a difference in views among Member States as to whether source countries should simply put "an immediate end to unilateral coercive measures," which is the view of target countries and developing countries at large, or whether such measures should remain a key component of foreign policy that at best requires a small adjustment to mitigate their adverse human rights impacts, which is the view of most source countries. This difference in views finds expression in the polarized voting pattern that has prevailed so far in the adoption of resolutions pertaining to unilateral coercive measures. For developing States, adopting guidelines should not signify a recognition of the legitimacy of such measures as a tool of foreign policy, a position they do not countenance. For the source countries, mostly advanced States, of which one group has indeed adopted exhaustive guidelines, the issue might signify no more than sharing such guidelines with others.[37]

To look at the broader world picture, let's move forward from UN Human Rights Council to the UN General Assembly Resolution 75/181 adopted on December 28, 2020, by 131 votes 56 to, with 0 abstention, 6 non-voting.[38] All developed countries and European developing countries voted against the resolution, and the rest of the world, with few exceptions, voted for.[39] This position of European countries is regrettable, since in the past they have been less supportive of the use of sanctions against developing countries. For example, the US Helms–Burton Act of 1996 imposed penalties on third parties doing business in Cuba, bringing sharp protests from Canada, Mexico, European countries and many others. On June 4, 1996, the General Assembly of the Organization of American States passed a resolution asking for a legal opinion on the embargo from the Inter-American Juridical Committee. The Committee returned an opinion that Helms–Burton "is not in conformity with international law." On November 12, 1996, the UN General Assembly

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[37] UN General Assembly Human Rights Council. (2015, August 10). *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Idriss Jazairy* (A/HRC/30/45, para. 53). UN Official Documents. https://documents.un.org/doc/undoc/gen/g15/177/05/pdf/g1517705.pdf

[38] UN General Assembly Human Rights Council. (2020, December 28). *Resolution Adopted by the General Assembly on 16 December 2020 – Human Rights and Unilateral Coercive Measures* (A/RES/75/181). UN Official Documents. https://documents.un.org/doc/undoc/gen/n20/372/60/pdf/n2037260.pdf

[39] Voting Information. (n.d.). United Nations. https://www.un.org/en/library/page/voting-information

adopted a resolution again condemning the embargo by the largest vote ever – 117 ayes, 3 nays and 25 abstentions.[40] All the European Union countries voted in the affirmative.[41]

In 2011, while the discussion in the UN the representative of the United States said that each State had the right to decide how to conduct its trade policy, and restricting trade was legitimate when deemed necessary. As part of that strategy, sanctions were a successful means for achieving foreign policy objectives peacefully, and were always applied with specific aims in mind, such as restoring the rule of law and preventing nuclear proliferation or the financing of terrorism. The draft resolution sought to limit the international community's means of responding peacefully to threats, he said, adding that his delegation would vote against it. Opposing to him, the representative of Mexico reiterated his delegation's strong rejection of unilateral coercive economic measures, saying they had no basis in the United Nations Charter. They had severe human consequences, were in violation of international law and removed diplomacy as a viable channel for seeking resolution. Emphasizing that Mexico was historically principled in its opposition to sanctions, except those resulting from Security Council decisions, he said multilateralism remained the best way to resolve disputes and ensure peaceful coexistence, adding that his delegation would vote in favor of the draft.[42]

In my opinion, such a US–Mexico polemic is a clear demonstration of the difference between developed and developing countries' positions in the sphere of unilateral sanctions. The Harvard University professor Gordon provides a detailed legal motivation of why US economic sanctions against Iraq violated human rights so massively and had such catastrophic consequences for national development that it had all the legal elements of genocide. He supports similar positions by Denis Halliday, the former UN humanitarian coordinator in Iraq, and UN Commission on Human Rights working paper written by Marc Bossyut who accused the US of genocide in Iraq earlier. Gordon reminds of impressive US Congressman Ron Paul words said in the Congress in 2001:

Our sanctions policies undermine America's position as a humane nation, bolstering the common criticism that we are a bully with a respect for people outside our borders. Economic common sense, self-interested foreign policy goals, and

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[40] For deeper analysis of US sanctions against Cuba history see Haney, P., & Vanderbush, W. (2005). *The Cuban Embargo: The Domestic Politics of an American Foreign Policy.* University of Pittsburgh Press; Rodman, K. A. (2001). *Sanctions Beyond Borders: Multinational Corporations and US Economic Statecraft.* Rowman & Littlefield.

[41] Paul, J. A., & Akhtar, S. (1998, August). *Sanctions: An Analysis*. Global Policy Forum. https://www.globalpolicy.org/component/content/article/202-sanctions/41612-sanctions-an-analysis.html

[42] UN General Assembly. (2011, December 1). *Second Committee Approves Text Urging Elimination of Unilateral Coercive Economic Measures against Developing Countries* (GA/EF/3329). United Nations. http://www.un.org/press/en/2011/gaef3329.doc.htm

humanitarian ideals all point to the same conclusion: Congress should work to the end economic sanctions against all nations immediately.[43]

Like in the law of armed conflict, in economic sanction relations, UN, understanding its lack of power to prevent some situations, attempts at least to reduce the consequences for the civilian population. Definitely one should welcome such attempts. At the same time, the International Court of Justice (ICJ) was the sole body who challenged the concept of "emergency" in connection with international trade embargos. Such ICJ case-law is exceptionally important for our analysis, because it touches both human rights and economic sanctions issues at the same time. In his famous decision of June 27, 1986, the ICJ found that on May 1, 1985, the President of the United States made an Executive Order, which contained a finding that "the policies and actions of the Government of Nicaragua constitute an unusual and extraordinary threat to the national security and foreign policy of the United States" and declared a "national emergency." According to the US President's message to Congress, this emergency situation had been created by "the Nicaraguan Government's aggressive activities in Central America." The Executive Order declared a total trade embargo on Nicaragua, prohibiting al1 imports from and exports to that country, barring Nicaraguan vessels from United States ports and excluding Nicaraguan aircraft from air transportation to and from the United States.[44]

ICJ interpreted that case based on the mutual US–Nicaraguan 1956 Treaty of Friendship, Commerce and Navigation, not GATT. ICJ underlined the lack of its jurisdiction to solve GATT-based disputes.[45] However, de facto ICJ interpreted GATT, saying that the burden of proof to justify security restrictions in the Treaty is differ than in GATT because in the Treaty the word "necessary" is used unlike the word "consider" in GATT. Also, speaking of Article XXI of the GATT, ICJ says that

> This provision of GATT, contemplating exceptions to the normal implementation of the General Agreement, stipulates that the Agreement is not to be construed to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests, in such fields as nuclear fission, arms, etc.

So, the ICJ demonstrates clear doubts that Article XXI of the GATT is related to trade of non-military goods and services.

In its judgement ICJ alleges that

> A State is not bound to continue particular trade relations longer than it sees fit to do so, in the absence of a treaty commitment or other specific legal obligation; but where there exists such a commitment, of the kind implied

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43 Gordon, J. (2010). *Invisible War: The United States and the Iraq Sanctions.* Harvard University Press.

44 International Court of Justice. (1986, June 27). *Case concerning Military and Paramilitary Activities in and Against Nicaragua*. https://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf

45 *Id.* paras. 222, 245.

> in a treaty of friendship and commerce, such an abrupt act of termination of commercial intercourse as the general trade embargo of 1 May 1985 will normally constitute a violation of the obligation not to defeat the object and purpose of the treaty. (Para. 276)

It raises a question about whether GATT and GATS create for their members a specific obligation to trade. We believe they do.

Such an ICJ decision is also prominent because the Court obliged the US

> to award to the Republic of Nicaragua the sum of 370,200,000 United States dollars, which sum constitutes the minimum valuation of the direct damages, with the exception of damages for killing nationals of Nicaragua, resulting from the violations of international law indicated in the substance of this Memorial. (Paras. 16, 283–285)

However, such sum has never been paid by the US even partially.

4. Megaregionalism, WTO and Sanctions

As WTO Director-General Pascal Lamy reported,

> The GATT/WTO's traditional mainstay of non-discriminatory trade has increasingly yielded ground to preferential arrangements. This has occurred for a complex array of reasons, increasing trading opportunities but also raising challenges for the core principle of non-discrimination enshrined in multilateralism. Preferential arrangements established geographically (among countries) will by definition embody some elements of discrimination. Agreements focusing on specific issues may or may not be discriminatory. This will depend on their design. The rise of regionalism raises important questions both as to the role and the relevance of the WTO. The expansion of preferential trade opening among subsets of countries may be easier or politically more attractive, but the economic benefits from such opening may be less. Governments need to ask themselves if there are good reasons why the fundamental logic of non-discrimination – a cornerstone of post-war trade governance – no longer serves a useful purpose. We are also convinced that once this process of consolidation is under way, members will find it easier to make progress on re-writing GATT/WTO rules in this area – rules that are widely regarded as incomplete and ineffectual. The multilateral system will remain deficient until a real set of disciplines is established to facilitate the convergence of PTAs with the multilateral trading system.[46]

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[46] Panel on Defining the Future of Trade. (2013, April 24). *The Future of Trade: The Challenges of Convergence – Report of the Panel on Defining the Future of Trade convened by WTO Director-General Pascal Lamy* (pp. 53–54). World Trade Organization. https://www.wto.org/english/thewto_e/dg_e/dft_panel_e/future_of_trade_report_e.pdf

As far as two of four original WTO plurilateral agreements (PTAs) – the International Diary Agreement and International Bovine Meats (IBM) were terminated in 1997, two plurilateral agreements remain into force – Agreement on Government Procurement (GPA) and Agreement on Civil Aircraft. Development of plurilateral WTO agreements potentially is a good compromise between multilateralism and bilateralism in the WTO.

Within the framework of the WTO Uruguay Round it was left unchanged the existed GATT rules, dating from 1947, about the possibility of the establishment of virtually any restriction on international trade based on the national security or emergency in international relations. Moreover, these rules in 1947, with the creation of the WTO in 1995, were extended to trade in services. If the world continues to trade on the basis of legal standards in 1947, the real rules of international trade are rules of the era of the divided world and the Cold War. If the political standards of the 1940s really done, why it is not legally fixed by adjusting composed while legal documents?

Conclusion

Economic sanctions also often brutally violate human rights. In fact, this is a mechanism of management of development of individual countries, as they imposed by the more developed countries in order to brake the development of economically less developed countries, to prevent the latter to reduce its backlog, to catch up with more developed countries. Thus, it decreases the pace of the overall progress of the global economy. At the same time, the economic development of the politically loyal to the regime promoted, even absolutely odious regimes, which is essentially a monopoly on the development, the elimination of the interstate fair competition in the development.

Some tensions related to the international trade of specific goods and services between developed countries always exist, and the database of WTO Dispute Settlement Body provides a lot of information on such disputes. However, developed countries have stopped using really intensive economic sanctions against each other. At the same time, as we demonstrated, developed countries sincerely believe that they have the right to impose economic sanctions against developing countries. It artificially makes economic sanctions "usual," "ordinary" in international trade. Moreover, the general atmosphere of the "normality" of economic sanctions, formed by some developed countries, creates incentives for developing countries also to impose them against other developing countries. Factually, we observe the escalation of economic sanctions initially triggered by some developed countries and then widely expanded which undermine normal international trade.

The fundamental ideological issue is whether the right to foreign trade exists as a part of national sovereignty. So, is trade a right or reward, privilege for good behavior? If exists a right for foreign trade, albeit with some reasonable restrictions, like

weapons and dual-use goods, the governments should not have a right for such wide disproportional interventions into foreign trade like allowed by WTO rules now.

The positive impact of the results of the Uruguay Round is overestimated in the sense that the benefits of lower tariffs on goods, some technically more liberal rules for trade in services, if to buy goods/services could be impossible due to economic sanctions imposed by politicians. With the exception of trade in goods and services of clearly military use, traders must obtain the right to freely choose their foreign trading partners. WTO is unnecessary for arranging the trade relationships between countries with brilliant relations, they can do without the WTO. The role and mission of the WTO may be unique as a facilitator of international development by building a trading system between states with complicated political relations.

Doha round exit from the crisis can be achieved by abandoning the ideology of a binding agreement which requires a consensus of all members of the WTO, which in many areas is unattainable. To provide real access to foreign trade as a cornerstone of the sovereignty of developing countries, the WTO needs a shift for plurilateral agreements. First of the latter should be the anti-sanctions agreement.

At the same time, I would like to note that, unfortunately, BRICS bloc does not currently offer other developing countries to sign any specific agreements that could improve their economic situation like the anti-sanctions' agreement signed by BRICS countries. Key provisions of this potential agreement are the following:

• WTO members, have signed an agreement, waive the right to apply to each other trade restrictions based on national security and on emergency in international relations, except for the goods and services of military use specified in the annex to the agreement;

• the right to the introduction of trade restrictions to the base of state of war is only limited of direct trade between the warring countries;

• the right to the introduction of trade restrictions to the base of commitments in the framework of the UN Charter is limited to situations of enforcement of sanctions under UN Security Council resolution;

• the introduction of an expedited review of the new separate WTO tribunal of disputes of economic sanctions in violation of the terms of this agreement. This tribunal is granted to award monetary damages for violations of agreement, the ceiling of which is fixed in agreement;

• deny of enforcement, as contrary to public order, of decisions of the governments, courts and tribunals of third countries, if their decisions are based on the application of economic sanctions against member of the agreement.

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ARTICLE

Risk-Based Approach as a Basic Element of the Tax Security of the States in the BRICS Countries

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Abstract. This study is devoted to a comparative analysis of different models of the risk-based approach used in tax administration in the BRICS countries. The risk-based approach is widely recognized as the fundamental basis for defining and legally consolidating the tasks of tax administration bodies in modern conditions. According to this approach, the objectives of the tax administration are to identify, prevent and

minimize threats to tax security in the course of the implementation of the full range of administrative functions in the tax sphere, as well as to work towards overcoming the consequences of the realization of threats. The authors propose the following points for conducting a comparison of the BRICS countries using tax risk assessment: the implementation of risk assessment in the practice of tax administration and the quality of its legislative regulation, the impact of risk indicators on the behavior of taxpayers and the impact of risk indicators on the effective implementation of tax control measures. In general, there is a high degree of similarity among all aspects of the risk-based approaches adopted in the BRICS countries. However, the methods of implementation and levels of legal certainty in laws differ from country to country.

Keywords: tax law; tax security; tax compliance; BRICS; tax administration; taxation.

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Table of Contents

Introduction

The improvement of the system of tax control is one of the main tasks required to achieve the goals of ensuring overall economic security and, more specifically, the tax security of a state. The tax security of a state is the result of the balance between countering specific risks on the one hand and the measures taken by the government to minimize them on the other. The control and supervisory activities of executive

authorities are an important aspect of the system of measures aimed at protecting national interests in the financial and economic areas, and actively countering external and internal threats to such interests. The development of tax control as well as tax monitoring is recognized by scholars as an integral and unconditional condition for countering threats to tax security and ensuring the stable functioning of a state's financial system.[1]

The need to ensure compliance with the fiscal interests of the state requires the transformation of essential approaches to the regulation of tax relations in the current conditions of dynamically changing economic relations.[2] Thus, the current research focuses on the risk-based approach as one of the basic practical elements of the tax security of the state.

The risk-based approach involves analyzing each planned and implemented management decision related to taxation in order to counteract a specific threat to tax security and the possibility of harming other protected interests.[3] Scholars reasonably emphasize the need for a comprehensive diagnosis of tax security.[4] Taking into account the approaches formed in the area of economic security, a "tax security risk management strategy" entails the recognition, analysis and assessment of the degree of risk and its acceptability; the development and implementation of measures to prevent, minimize and manage risk; the elimination of the consequences of threats and the setting up of management facilities (across both sectors of the economy and specific taxpayers) according to risk levels. The main factors that help us understand the implications of using a risk-based approach in the practical provision of tax security are the quality of its legislative regulation, the implementation of risk assessment strategies in the practice of tax administration, and the impact of risk indicators on the behavior of taxpayers and on the conduct of tax control measures. All of the described actions are based on a clear identification of the goals of ensuring tax security.

In this article, we shall examine these issues using the examples of the BRICS countries. Every country is of course free to approach its relationship with taxpayers in a manner that best suits its legal traditions, tax practices, historic and cultural background and economic development.[5]

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1 Ponomareva, K. A., & Maslov, K. V. (2021). National Tax Security Assessment in the Tax Administration Mechanism. *Journal of Siberian Federal University, Humanities and Social Sciences, 14*(5), 670.

2 Ponomareva, K. (2023). Digital Transformation Challenges to the Tax Security of the State in Russia and Other BRICS Countries. *BRICS Law Journal, 10*(4), 142–161.

3 Maslov, K. V. (2023). *Legal Support of the Tax Security of the State* (Doctoral Thesis). Dostoevsky Omsk State University. (In Russian).

4 Timofeeva, I. Y. (2011). *Tax Security of the State, Business and Society: Concept and Methodology* (Doctoral Thesis, p. 40). Moscow University of the Ministry of Internal Affairs of Russia. (In Russian).

5 Martini, M. H., Russo, R., & Pankov, Y. (2020). An Analysis of the Russian Tax Monitoring Programme in Light of the OECD Concept of Cooperative Tax Compliance and the Experience of Other Countries. *European Taxation, 61*(1), 29.

1. The Risk-Based Approach to Tax Control in the Russian Federation

1.1. The Legal Basis of Risk Assessment as an Element of the Tax Security Strategy in the Russian Federation

As mentioned in the OECD's *Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment*, risk assessment tools allow tax authorities to identify indicators that either suggest certain taxpayers or arrangements pose an increased risk to their jurisdiction, necessitating further compliance activity, or conversely, a reduced risk scenario, which may mean less compliance activity or more targeted compliance activity, is possible.[6]

Scholars and tax agencies typically allocate three levels of tax compliance risk management strategies.[7] At the first level, which is the tax level, the majority of compliance risks with respect to each major tax are identified. At the second level, also known as the segment level, the major compliance risks that are prevalent among certain social groups of taxpayers or industries (market segments) are revealed. The third level, the taxpayer level, is devoted to the evaluation of risks posed by individual enterprises and persons. A specific tax risk management strategy must be developed for each element on every level.

For example, tax risks in Russia are divided into sectoral, intersectoral and industry-wide according to the number of sectors of the economy, the functioning of which they affect. In identifying higher-risk taxpayers, some tax authorities use a points-based system, which ranks groups based on the number of risk indicators present (with some indicators or combinations of indicators being worth more points). Alternatively, other tax authorities use size or complexity as a key indicator of potential risk and then use risk assessment tools to identify areas to focus on within these groups.[8]

In Russia, the tax risk assessment in the context of control activities is not specifically mentioned in the Tax Code of the Russian Federation. However, it is subjected to fragmented regulation by various departmental subordinate acts.

The main subjects of the state's tax security system are the tax authorities. They administer the largest amount of tax revenues in the budgets. Various other functions of the Federal Tax Service of Russia and its territorial bodies are also aimed at ensuring tax security (as the main or additional goal). The legal basis for the implementation of a risk-based approach in the tax control activities of tax authorities in Russia is provided by the Order of the Federal Tax Service No. MM-3-06/333@ of May 30, 2007

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6 OECD. (2017, September). *Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment*. https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/cbcr/country-by-country-reporting-handbook-on-effective-tax-risk-assessment.pdf

7 Lam, W. R., Rodlauer, M., & Schipke A. (Eds.). (2017). *Modernizing China: Investing in Soft Infrastructure*. International Monetary Fund.

8 OECD, 2017, p. 23.

"On Approval of the Concept of the On-site Tax Audit Planning System,"[9] Decree of the Government of the Russian Federation No. 381-r of February 21, 2020 "On Approval of the Concept of Development and Functioning of the Tax Monitoring System in the Russian Federation"[10] along with several other departmental orders and internal management program documents (for, e.g., the orders of the Federal Tax Service of Russia No. MMV-7-16/225@ of March 20, 2017 "On Approval of the Basic Provisions on Risk Management in the Activities of the Federal Tax Service of Russia," No. MMV-7-16/132@ of March 14, 2016 "On Approval of the Basic Provisions on the Implementation of Internal Control of Technological Processes of the Federal Tax Service of Russia" and No. MMV-7-16/140@ of March 12, 2018 "On Approval of the Procedure for Maintaining a Document on Accounting for Information on Risks in the Activities of the Federal Tax Service of Russia").

In the regulations of the Federal Tax Service of Russia, indicators of tax security are defined exclusively in relation to the microlevel (the financial and economic activities of specific taxpayers) under the heading "risk assessment criteria." These indicators include, in particular, twelve publicly available criteria for conducting a self-assessment of risks for taxpayers, which, as stated, make it possible to assess the necessity of conducting an on-site tax audit.[11]

Thus, the following risks can be mentioned:

- negative ratio of a taxpayer's tax burden or profitability to an average industry level;
- failure to provide explanations and documents upon request from the tax authority;
- "migration" between tax authorities;
- presence of signs of tax evasion schemes in the activity (officially this indicator is called "conducting financial and economic activities with high tax risk").

In fact, the Federal Tax Service ranks taxpayers using the automated information system – AIS "Nalog-3." This ranking is determined according to the presence of criteria indicating possible non-payment of a particular tax in their activities. The responsibility of tax officials for the organization and implementation of risk management measures is regarded as a fundamental principle in the regulations of the Federal Tax Service of Russia.

The Federal Customs Service and its territorial bodies ensure the tax security of the state within their areas of expertise and jurisdictions by countering threats to

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[9] Order of the Federal Tax Service of Russia No. MM-3-06/333@ of May 30, 2007 "On Approval of the Concept of the On-site Tax Audit Planning System". ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_55729/. (In Russian).

[10] Decree of the Government of the Russian Federation No. 381-r of February 21, 2020 "On Approval of the Concept of Development and Functioning of the Tax Monitoring System in the Russian Federation." ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_346794/. (In Russian).

[11] Order of the Federal Tax Service of Russia No. MM-3-06/333@.

the collection of value-added tax and excise taxes on goods that are imported into Russia from countries outside the Eurasian Economic Union.[12]

At the same time, the regulation pertaining to this service directly reflects its authority to implement a risk management system, including the development and maintenance of risk analysis methods, the application of measures to minimize them, the definition of measures based on risk assessment and the categorization of persons performing customs operations by risk level. However, the absence of similar provisions in the basic regulations governing the activities of tax authorities should be recognized as an omission. The Law on Customs Regulation generally establishes the basics of the "risk management system" in the terminology of the law and obliges customs authorities to apply it when selecting objects, forms of customs control and the measures to ensure its implementation. It covers risk assessment, including forming and updating risk profiles (which outline the description of the risk and conditions that determine the risk indicator, as well as the as measures to minimize the risk), categorizing the persons carrying out customs operations according to the level of risk, applying measures to minimize those risks and taking into account the consequences of such an action.[13]

The Bank of Russia ensures the tax security of the state by identifying signs of assistance in tax evasion or insufficient control over customer transactions involving non-payment of taxes by a credit institution during banking supervision. Money-laundering violations are often closely linked to tax evasion. The Bank of Russia is responsible for compiling a list of risks of money-laundering violations committed by customers of credit institutions and for providing automatic notifications of such persons (via the Know Your Customer platform).[14] Combating money laundering in Russia is regulated by the Federal Law No. 115-FZ of August 7, 2001 "On Countering the Legalization (Laundering) of Proceeds from Crime and the Financing of Terrorism" (hereinafter Law No. 115-FZ).[15] This law provides for the powers of public authorities as well as the public powers of private organizations to counteract the underestimation of the tax base in cases involving transactions that do not have a reasonable business purpose (referred to as "suspicious transactions"), including those conducted using foreign jurisdictions. Such powers, while not fully attributed to tax administration in the strict sense, significantly minimize threats to the country's tax security. This law also describes the general methodology for countering threats

12 Maslov, 2023.

13 Federal Law No. 289-FZ of August 3, 2018 "On Customs Regulation in the Russian Federation and on Amendments to Some Legislative Acts of the Russian Federation." ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_304093/. (In Russian).

14 Bank of Russia. (2022, July 1). *Know Your Customer platform launched*. www.cbr.ru/press/event/?id=13981

15 Federal Law No. 115-FZ of August 7, 2001 "On Countering the Legalization (Laundering) of Proceeds from Crime and the Financing of Terrorism." ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_32834/. (In Russian).

using the terms "national risk assessment" and "risk-based approach." In terms of the national risk assessment, it obliges the Federal Financial Monitoring Service of the Russian Federation (Rosfinmonitoring), along with other public administration entities, to identify and prevent the risks associated with performing restricted operations (transactions) and develop measures to minimize such risks (Art. 3 of Law No. 115-FZ). Organizations engaged in transactions involving cash or other property are authorized by law to monitor customer transactions by assigning to each customer a level (degree) of risk. This level of risk determines the scope and nature of control measures and the enforcement measures that are applied to the customer. In addition, organizations that engage in transactions involving cash or other property are likewise subject to a risk-based approach, whose activities should also be categorized by risk levels of non-compliance in accordance with the requirements of the law (Art. 9.1 of Law No. 115-FZ). However, the specified law does not provide a detailed description of the methodology for countering threats, delegating this responsibility to the subordinate level of regulation.

Countering indirect threats to the tax security of the state is carried out by streamlining other financial controls and verification activities that indirectly affect the receipt of tax revenues for budgets and the related legitimate interests of taxpayers and other participants in relations that promote taxation. For example, control over the use of cash registers, licensing control, control in the field of production and turnover of ethyl alcohol, alcoholic and alcohol-containing products and municipal land control affect the tax security of the state indirectly. The general methodological foundations for countering threats are described in the Federal Law No. 248-FZ of July 31, 2020 "On State Control (Supervision) and Municipal Control in the Russian Federation," using the category "harm risk management (damage) to legally protected values."[16] This law also obliges the assessment of such risks, including assigning a risk category to the objects of control according to the severity of harm and the probability of such harm (there may be from three to six categories in total) and determining the types and frequency of control measures according to the level of risk.

Thus, the risk-based approach also provides the conceptual basis for effective public control, which is crucial in ensuring the tax security of the state. The priority in this approach is to identify and neutralize situations, as well as business and accounting transactions that pose the greatest threat to tax revenues due to their sizes or prevalence. Nonetheless, operations that meet these criteria should not be the exclusive subject of control, since in this case the dynamics of threats are not taken into account; only the priority.

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[16] Federal Law No. 248-FZ of July 31, 2020 "On State Control (Supervision) and Municipal Control in the Russian Federation." ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_358750/. (In Russian).

1.2. Transparency of Information Regarding Tax Risks

Transparency is closely linked to the principle of cooperation between participants in tax relations and other principles, the implementation of which is ultimately aimed at creating a transparent, stable and simple tax system. Moreover, transparency in tax relations should be mutual: the rules of regulatory and individual taxation regulation should be as clear as possible for taxpayers, while their economic activities should be available for analysis by tax administration authorities.

The tax authorities present the selection of taxpayers for on-site tax audits as a transparent procedure carried out on the basis of criteria that are publicly available for independent assessment by taxpayers and aimed at, among other things, reducing administrative pressure on business.

Among the criteria included should be the deviation of the taxpayer's tax burden in comparison with the industry average as specified in the abovementioned Concept of the On-site Tax Audit Planning System. Meanwhile, the average level of the tax burden is published for very large types of economic activities (for example, administrative activities and related additional services; such as the production of food, beverages and tobacco products), which does not allow an adequate assessment of the tax risks of a particular business. Another criterion is "conducting financial and economic activities with high tax risk."

In addition to the fact that the title of the criterion category is much broader than the content, suggesting a description of actions assessed as distortion of the tax base and tax evasion, all of the "high-risk" methods listed on the official website of the Federal Tax Service of Russia are related to the interaction of the taxpayer with so-called "technical companies" (or "one-day firms") that do not carry out real economic activity. Furthermore, some methods that are particularly prone to frequently resulting in tax disputes, such as artificial "business splitting" or substitution of civil labor relations with individual entrepreneurs or payers of professional income tax, are not mentioned at all. Taking into account the transparency of tax administration and its preventive functions, it would be advisable to officially publish (along with an annual supplement based on law enforcement practice) the most common and dynamic ways of conducting entrepreneurial activities with high tax risk. The proven use of one of these above methods by a specific taxpayer should be a sufficient, unconditional basis for qualifying a tax offense as intentional.

At the same time, the taxpayers, by default, typically remain unaware of the level of risk assigned to them or their counterparties. To rectify this situation, a subsequent decentralized method that meets the principles of cooperation between public and private entities and transparency in ensuring tax security has been developed with the aim of incorporating it into the practice of tax administration.

This method entails disclosing the indicators of economic activity to the taxpayers (both their own and those related to the counterparty – with the consent of the latter), which are then assessed by the tax inspectorate as risk indicators of potential tax law violations.

1.3. Identification of Tax Risks as a Precondition for Tax Control Measures

According to the regulations of the Federal Tax Service of Russia, the identification of the most likely "risk zones" should also ensure timely response to a possible tax offense and the establishment of necessary tax control measures. At the legislative level, the grounds for implementing tax control measures are not dependent on the existence of any particular indicators of threats to tax security.

Such correlation is provided by departmental documents of the tax service, which, as recognized in judicial practice, cannot be used by taxpayers to challenge the actions of tax authorities' officials. In recent years, an approach has emerged in judicial practice according to which the provisions of the orders of the Federal Tax Service, which utilize risk-based criteria for the appointment of tax control measures, are considered intra-organizational and do not limit tax authorities' right to conduct on-site tax audits. That is to say, these orders are recognized in judicial practice as non-binding by tax authorities, and they do not grant any rights to taxpayers or entail negative legal consequences for the taxpayer.[17]

The attribution of the taxpayers and their counterparties to a particular level of risk also determines the duration of the desk tax return, which in turn in turn determines their right to a refund of the VAT amount from the budget, as well as the excise tax return.

The risk-based approach is actually used when requesting documents as part of a desk tax audit of the VAT declaration, which reflects transactions that are not subject to VAT taxation (exempt from taxation).

The risk assessment, on the other hand, is actually used by the tax authorities when determining the scope of the audit (complex or thematic) and when selecting taxpayers for inclusion in the plan of on-site tax audits, in accordance with the above-mentioned Concept. At the same time, the selection indicators are not limited to those specified in the Concept; they are provided for by departmental documents (which are non-public, like the plan itself) that are designated "for official use."

On-site tax audits are the most resource-intensive tax control measures for both tax administration bodies and taxpayers, and they have the potential to influence changes in their financial and economic performance in the future. Therefore, the state's tax security objectives are typically met by conducting on-site tax audits, mostly in cases when there are threat indicators in the taxpayer's financial and economic activities (tax risks) and when the goals of minimizing them cannot be achieved through other control measures. The consolidation of the following rules

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[17] See, e.g., Decision of the Supreme Court of the Russian Federation No. AKPI23-1033 of April 18, 2024; Ruling of the Supreme Court of the Russian Federation No. 301-KG18-6270 in Case No. A38-5998/2017 of May 29, 2018; Resolution of the Arbitration Court of the Northwestern District No. F07-17238/2021 in Case No. A56-31859/2021 of January 10, 2022. ConsultantPlus. https://www.consultant.ru. (In Russian).

that are mandatory for tax authorities to apply in their relations with taxpayers can facilitate the achievement of this goal:

1. Firstly, the regulatory consolidation of the tax risk indicators as ordered by the Ministry of Finance of the Russian Federation.

2. Secondly, the right of tax authorities to demand explanations and documents from the taxpayer regarding a disputed transaction within the framework of an in-house tax audit, when determining an indicator of a tax risk regardless of the restrictions that are currently established in Article 88 of the Tax Code of the Russian Federation.

3. In addition, the right to demand any documents and explanations regarding all relations with the counterparty in which an indicator of tax risk is identified, outside the framework of tax audits.

In these cases, the guarantee of the absence of excessive interference in the taxpayer's activities should be guaranteed from excessive interference by the authorization of the request for such documents by the head (deputy head) of a higher tax authority, and the prosecutor should also authorize the identification of risk indicators based on the materials received for operational investigative measures. When the relevant rules are introduced into the legislation, it becomes possible to consolidate the reasons for initiating an on-site tax audit based on risk indicators.

Moreover, it would be advisable if the appointment of an on-site tax audit were preceded by familiarization of the taxpayer with the implications of a preliminary assessment of his risks and the refusal of the taxpayer to clarify tax obligations within the time fixed in the Tax Code of the Russian Federation. An exception should be allowed for in cases where there are sufficient grounds to believe that notifying the taxpayer could lead to the destruction of evidence or the impossibility of actually paying the tax. Currently, the practice of notifying the taxpayer of identified tax risks with a proposal to eliminate them and pay additional tax is used by the Federal Tax Service. However, this practice lacks a normative basis and is not mandatory. Despite the ambiguity surrounding the procedure of notifying a taxpayer of a possible violation of tax legislation along with the need for a consolidation of the form of such notification, the procedure for sending it has been explicitly provided for by a priority project of the Government of the Russian Federation back in 2018.[18]

[18] Passport of the Priority Project, "Development of the Automated Information System of the Federal Tax Service of Russia (AIS 'Tax-3') in Terms of Creating an Integrated Analytical Data Warehouse and Upgrading the Information and Analytical Subsystem for the Purposes of Control Work" ("Information and Analytical Subsystem for the Purposes of Control Work of the Federal Tax Service of Russia") (approved by the Protocol of the Meeting of the Project Committee No. 2 of March 27, 2018). ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_289283/. (In Russian).

2. Practical Elements of a Risk-Based Approach in the Area of Taxation in the BRICS Countries

The issue of tax security of a state is related to the complexity or simplicity of the tax system of the state as such. Thus, Brazil is ranked among the top countries in terms of the complexity of the tax compliance environment. Some scholars even rank Brazil in first position as the "most complex tax system" and rank the complexity of the Brazilian tax system as "very high," in comparison to the complexity of tax systems in China, India, Russia and South Africa, which are ranked as "high."[19]

Let us make a comparison of the approaches to risk management that are adopted in the area of taxation in the BRICS countries.

2.1. The Risk-Based Approach to Tax Control in Brazil

The Brazilian tax system is regarded as the most complicated in the world.[20] That is why it is especially complex to maintain audits and comply with all the rules of tax legislation in Brazil. However, Brazil has established multiple structures to facilitate coordination and communication across the various organization functions within the federal public administration. These factors make it extremely difficult to understand tax requirements and comply with the duty to collect and pay tax, resulting in a very high cost of compliance.

For instance, in 2018, the Federal Revenue Service introduced a proposal titled 4/2018 relating to a draft edition of an ordinance implementing a Program for Tax Compliance. The program aimed to encourage companies to adopt best practices in order to avoid deviations of conduct by establishing a classification of taxpayers according to the degree of risk they pose to the tax authorities. The proposal was based on best practices adopted by other tax administrations, following the OECD's example of encouraging tax compliance practices.[21]

In 2020, Brazil faced a severe fiscal challenge with its highest deficit in almost two decades, reaching a GDP of -11.9%, largely due to COVID-19 measures. Although fiscal conditions improved in 2021–2022, a new administration's expansionary policies in 2023 led to a projected deficit of 7.1% of GDP. Public debt, which peaked at 96.0% in 2020, fell to 85.3% in 2022; however, it is expected to rise again to 92.4% by 2025. Despite the introduction of a new fiscal framework and revised spending rules in 2023, concerns about optimistic revenue projections and potential

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19 Hoppe, T., Schanz, D., Sturm, S., & Sureth, C. (2019, October). *Measuring Tax Complexity Across Countries: A Survey Study on MNCs* (arqus Discussion Paper, No. 245, pp. 64–65). EconStor. https://www.econstor.eu/bitstream/10419/204651/1/1679097326.pdf

20 Pinto, D. (2024, May 3). *Brazil Tax Reform*. International Trade Administration. https://www.trade.gov/market-intelligence/brazil-tax-reform

21 IBFD. (2018, October 25). *Public Consultation Launched on Program for Tax Compliance*. IBFD Tax Research Platform. https://research.ibfd.org/#/doc?url=/data/tns/docs/html/tns_2018-10-25_br_2.html

overspending persist. It is expected to be challenging to achieve a balanced budget by 2024, and the public debt to GDP ratio is forecasted to reach 86% by 2028, posing macroeconomic risks even though external debt remains relatively low. Expansionary policies, revenue projection optimism and the burden of public debt are among the challenges facing this nation.[22]

One can assume that these preconditions stipulate a crucial role of tax control since an increase in tax revenues can help to secure the national fiscal base.

In Brazil, the tax obligation is basically divided into two parts: the information required for the fiscal control over business operations by the government and the organization and the payment of taxes. In essence, the regulation of tax obligations is based on the management of processes using information systems.[23]

In 2007, the federal government created the Public System of Digital Bookkeeping (SPED), a platform that unifies the presentation and retention of tax and accounting information.[24] In this context, the first step is to expand the system's scope by allowing different levels of tax authorities to access and share information through this system. The Sped system is an integrated initiative of tax administrations in the three spheres of government, namely federal, state and municipality, that collaborates with some companies to plan, identify and devise rapid solutions to the tributary obligations, and in doing so, also invites taxpayers' participation in determining means of meeting these obligations and building a new relation between the two based on transparency.[25] Sped is an innovative instrument that consolidates the activities of receipt, validation, authentication and storage of books and documents for accounting and bookkeeping entrepreneurs and legal entities, including those that are immune or exempt (such as by being single), using a computerized flow of information.

In the course of the operation of Sped, these books and documents will be disseminated electronically, along with a digital signature, using the Brazilian Public Key Infrastructure, known as ICP-Brasil, which was created by the "Medida Provisória No. 2.200-2/2001."[26] However, the taxpayers still have the obligation of keeping these e-books and e-documents in accordance with the manner and timeframe required by the law.

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22 Allianz Trade. (2024, January). *Brazil Country Risk Report*. https://www.allianz-trade.com/en_US/resources/country-reports/brazil.html

23 Castro, H. U., & Sobrinho, R. L. G. M. (2022). Tax Governance, Practices and Technologies: Examples of Shared Services in Brazil. *South Florida Journal of Development, 3*(6), 7096.

24 Decreto No. 6.022, de 22 de janeiro de 2007 [Decree No. 6.022 of January 22, 2007]. Planalto. https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6022.htm

25 Ramos Junior, H. S., & Galiotto S. (2014). *Government-to-Business: The Brazilian Public Digital Bookkeeping System (Sped) and the eSocial Project* (p. 89). SADIO. https://43jaiio.sadio.org.ar/proceedings/SID/9.pdf.

26 Medida provisória No. 2.200-2, de 24 de agosto de 2001 [Provisional Measure No. 2.200-2 of August 24, 2001]. Planalto. http://www.planalto.gov.br/ccivil_03/mpv/Antigas_2001/2200-2.htm

In addition, it is possible that representatives of business and legal companies, including immune or exempt entities representing the national professional accounting area, may participate in activities related to Sped, as and when requested by the Secretariat of the Federal Revenue of Brazil's Ministry of Finance (Art. 5r, sec. 2, Decree 6,022/2007, as amended by Decree 7,979/2013).

In this context, as a rule, tax audits are based on data made available electronically, and the analysis is carried out at the tax authority's headquarters. Generally, the request for information is made in writing, and the taxpayer is expected to provide the information in writing to the tax authorities through the electronic tax domicile. In certain exceptional situations (especially concerning large taxpayers), tax authorities may visit the taxpayer's premises in order to investigate possible irregularities.

Today, the Internal Revenue Service of Brazil (RFB) uses an internal development platform, which incorporates a set of tools for data crossing, data mining, graph analytics and the application of some artificial intelligence (AI) techniques. This platform also uses a big data environment to perform queries on large tables, with data volumes reaching "petabytes" (one million gigabytes). For example, the electronic invoice table totals trillions of records and hundreds of pieces of information about each taxpayer. In addition to ready-to-use tools, the development platform allows tax administration members to build their own tools or improve existing ones. This can be accomplished by the creation of new scripts, shared in a collaborative space and cataloged to be used as automation assets. Those who are not proficient in programming languages are able to use a "no-code" programming style created on the platform under the name of "Visual Script." This platform facilitated a strategy called "High Performance Inspection" (FAPE) in which tax intelligence was combined with the Big Data environment. This enabled multiple regional teams to collaborate and perform cross-referencing on different databases, including digital tax bookkeeping, digital accounting, electronic invoices, financial movement data, and registration data, among others. FAPE also includes the automatic generation of notifications to taxpayers for self-assessment in cases where there are divergences on the declared values from the data held. This high level of automation optimizes the use of the workforce, allowing small regional teams to dramatically increase their fiscal presence.

In recent years, an increasing number of taxpayers have been summoned using these automatic notifications. In 2021, more than 40,000 taxpayers were summoned, totaling BRL 7.4 billion in amounts subject to self-assessment, which would not have been possible without the automation provided by the FAPE work.[27]

Furthermore, an AI tool called SISAM, a Portuguese acronym for "Customs Selection System through Machine Learning" in English, has also been implemented.

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[27] OECD. (2022). *Tax Administration 2022: Comparative Information on OECD and other Advanced and Emerging Economies*. https://www.oecd.org/en/publications/tax-administration-2022_1e797131-en.html

This computerized tool has been in use since August 2014 to evaluate the risks posed by importations. It runs 24/7 in one of the Brazilian government's data centers. The AI tool "learns" from the history of import declarations, both through supervised and unsupervised learning – two ways in which machines (algorithms) can be set loose on a data set and expected to learn something useful from it.[28]

Historically, the RFB managed institutional risks based on its organizational structure and operational framework, while tax compliance risks were handled in a fragmented manner by various business units according to their own criteria and understanding of the risks.

Since 2021, and with the technical support of international organizations, a strategic program was established to restructure an organization's risk management model supported by a multi-faceted, integrated approach. Program milestones included a new risk management policy, the design of a national risk management office with regional focal points and revised roles, responsibilities, delegations of authority and governance structures.

The new model is to be applied across all business areas and levels of the organization and intends to provide better coordination of the RFB's risk treatment initiatives, which are identified using an integrated risk assessment system that employs advanced technology tools. Outcomes generated by the framework are fully integrated into real-time business performance reporting.

Advanced data analytics is leveraged to collect, convert, and process large volumes of data in the RFB's databases into clear and readily understandable risk management information to inform proactive decision-making. The goal is to make this information increasingly available in real time and to staff across the organization. Ultimately, the RFB's goal is to have its risk management model embedded into its core administration values and reflected in the day-to-day activities of its employees and organizational culture.[29]

2.2. The Risk-Based Approach to Tax Control in China

The risk-based approach is widely used in tax control in China, but there are no clear rules in the legislation regarding the grounds and procedures for risk assessment.

The Regulation on the procedure for conducting tax audits (Order of the State Tax Administration No. 52 of July 12, 2021) contains only a general statement without mentioning risks: "The Audit Bureau should strengthen the management of audit

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[28] Lacerda Coutinho, G., & de Schoucair Jambeiro Filho, J. E. (2018, 20 June). *Brazil's New Integrated Risk Management Solutions*. World Customs Organization. https://mag.wcoomd.org/magazine/wco-news-86/brazils-new-integrated-risk-management-solutions/

[29] OECD. (2023). *Tax Administration 2023: Comparative Information on OECD and other Advanced and Emerging Economies*. https://doi.org/10.1787/900b6382-en

sources, comprehensively collect and systematize initial information about cases, as well as reasonably and accurately select objects for investigation."[30] The Detailed Rules for the Implementation of the Law of the People's Republic of China on the Administration of Tax Collection (Order No. 362 of the State Council of September 7, 2002)[31] also does not specify any details about the measures that can be used for risk assessment.

Despite these shortcomings, tax risk assessment has been a significant part of tax administration in China for years.

The application of a risk-based approach to tax control began with the identification of cases of VAT evasion in 2001 when the Golden Tax Project (Phase 2), an automated system controlling the issuance of VAT invoices, was implemented nationwide. By 2022, the accuracy of identifying VAT tax gaps exceeded 90%, as a result of cross-references in machine-readable documents and appropriate monitoring of objects of transactions with goods and services, product names, prices, amounts, flows and other information recorded in invoices and other data from STA and other authorities.[32] A large amount of data, such as tax reports, financial reports, invoices information, social security data, customs declarations etc., is now analyzed using a unified system in order to identify risks in the taxpayer's reporting.

The new computer-based system, the Golden Tax Project (Phase 3), is a comprehensive tool for identifying tax risks because it combines databases of both national and provincial authorities, including a broader set of tax administration applications for all taxes in China.[33] This Chinese system and the Russian automated information system, "AIS Nalog-3," are very similar in terms of their functions.

In addition, the State Tax Administration (hereinafter STA) has developed the "audit big data case selection and case study and judgment system" as a component of Golden Tax Project (Phase 4), which uses big data, cloud computing, and artificial intelligence, as well as machine learning and data mining, to accurately explore

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30 Order No. 52 of the State Tax Administration, "Regulations on the Procedures for Handling Tax Audit Cases" (has been reviewed and approved at the 2nd Bureau Meeting of the State Administration of Taxation in 2021 on June 18, 2021, and is hereby promulgated and will come into effect on August 11, 2021). State Council of the People's Republic of China. www.gov.cn/gongbao/content/2021/content_5637950.htm. (In Chinese).

31 Rules for the Implementation of the Law of the People's Republic of China on the Administration of Tax Collection (promulgated by Decree No. 362 of the State Council of the People's Republic of China on September 7, 2002, and effective as of October 15, 2002). China.org.cn. http://www.china.org.cn/english/DAT/214799.htm

32 State Tax Administration. (2023, April 6). The State Council Information Office held a press conference on "Better Play the Role of Tax Functions and Better Serve the High-Quality Development of the Economy and Society." https://www.chinatax.gov.cn/chinatax/n810219/n810724/c5186224/content.html. (In Chinese).

33 Lam, W. R., Rodlauer, M., & Schipke, A. (2017). *Modernizing China: Investing in Soft Infrastructure*. International Monetary Fund. https://www.imf.org/en/Publications/Books/Issues/2017/03/24/Modernizing-China-Investing-in-Soft-Infrastructure-43711

various high-risk cases and identify the key objectives of a tax audit.[34] As the former STA Head, Wang Jun, acknowledged while speaking at the meeting of BRICS Tax Directors, thanks to the widespread use of these new technologies, STA is embarking on an intelligent transformation of tax collection and administration in order to create a "risk-free, trouble-free and secure tax system."[35]

The detection of a risk indicator in relation to a particular category of taxpayer is a common but not an exceptional reason for implementing tax control measures in China. The STA performs random checking on industries, regions, and groups of people where tax evasion and avoidance occur frequently.[36] General criteria, such as level of sales, industry-specificity, nationality or origin of the parent company, etc., can also influence the selection of an object for tax audit. Thus, risk management is often used at a segmented level.

At the same time, there can be indicators of high risk that are related to a specific taxpayer. However, all of these indicators that can trigger a tax audit are not legally established and are not disclosed to taxpayers; the STA only announces typical tax evasion schemes. In practice, the STA takes into account the following risks: public-to-private transactions, mergers and acquisitions, asset transfers, transactions with shell enterprises, abnormal tax burdens, discrepancies between income and cost, export tax refunds, false invoicing, arrears in individual income tax and social insurance premiums, inconsistencies in tax reports, etc.[37]

The level of risk assigned to a particular taxpayer affects the warning notification that is issued about a potential future field tax audit, as well as the frequency of tax audits, their circumstances and the ratio between an automatic audit and an extended tax investigation.[38]

As a general rule, before starting a tax audit, when identifying risk indicators, the STA uses the "five-step work method." This means first issuing notifications about the risks, subsequently demanding corrections, then conducting interviews and finally, issuing a warning about the field tax audit and liability involved in the event

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34 OECD, 2022.

35 State Tax Administration. (2021, September 17). Deepen BRICS Tax Cooperation and Jointly Explore the Golden Road of Development – Speech at the BRICS Taxation Directors Meeting. https://www.chinatax.gov.cn/chinatax/n810219/n810724/c5169150/content.html. (In Chinese).

36 Guangdong Provincial Tax Service, State Tax Administration. (2022, December 10). *Opinions on Further Deepening the Reform of Tax Collection and Administration*. https://guangdong.chinatax.gov.cn/gdsw/hzsw_yhssyshj2022E_zxfb/2022-12/10/content_04a8c6ed062840b6866794104324ae8a.shtml

37 Zhou, Q., & Sun, F. (2024, July 11). *Tax Audit in China: A Complete Guide*. China Briefing. https://www.china-briefing.com/news/tax-audit-in-china-a-complete-guide/; Zhang, Z. (2021, December 10). *China's Golden Tax System Phase IV: An Explainer*. China Briefing. https://www.china-briefing.com/news/chinas-golden-tax-system-phase-iv-an-explainer/

38 Shanghai Municipal Tax Service, State Tax Administration. (2022). *White Paper on Shanghai's Tax Doing-Business Environment*. https://shanghai.chinatax.gov.cn/xwdt/ztzl/zhl/yhysgj/gzbs/ndbg/202304/P020230420346130009376.pdf

of a refusal to conduct self-inspection.[39] This procedure does not apply to taxpayers considered high-risk, including repeat tax offenders, who are likely to be subject to an audit directly without warning.

Risk reminders, opportunities for taxpayers to amend their tax returns and coaching taxpayers on mandatory self-inspection to avoid tax evasion are important aspects of Chinese tax control.[40] When tax risks are identified, the STA asks taxpayers to "self-inspect." This includes offering a waiver of penalties to persuade taxpayers to declare and pay the additional taxes that they previously failed to report. Taxpayers selected for self-inspection would then be given a limited period of time to declare additional taxes (for e.g. ten days to a month). The vast majority of field audits are initiated only after a self-audit phase, with only 5% of field audits beginning right after the interview without a self-audit.[41] Mandatory taxpayer self-inspections, although carried out in China on a routine basis, have no legal foundation in Chinese law. Thus, the imposition of additional tax payments following self-inspection does not exclude the possibility of a subsequent field audit in the future.

Due to the use of risk assessment methods in tax control, in 2022 the effectiveness of one tax audit in the context of additional taxes exceeded 1.5 million RMB. Thus, in 2022, tax inspections across the country conducted investigations against 128.3 thousand taxpayers who violated the law. As a result of such investigations, 195.5 billion RMB of tax losses were reimbursed, and about 900 typical tax evasion schemes were publicly exposed.[42]

The Chinese tax administration as a whole is now in the process of implementing a new paradigm based on "credit plus risk." The new paradigm provides for a dynamic classification of taxpayers' credit ratings, which are based on both tax and general social indicators and intelligent control over taxpayers' risks. The aim of this approach is "no disturbance with no risks, investigation upon violation and intelligent control for the whole process."[43]

According to this paradigm, the taxpayers' risk level impacts not only tax control but a number of aspects of tax administration. Taxpayers are put on four credit levels and subjected to different service standards in the areas of communication channels, documentation, processing time and other issues of administration. High-risk "dishonest" taxpayers will have their online services cut off and access to offline

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39 State Tax Administration, 2003.

40 Martini, M. H. (2022). A Review of China Approach to Cooperative Compliance in Light of the International Tax Practice and the OECD Framework. *Journal of Chinese Tax and Policy, 12*(1), 51.

41 Cui, W. (2020, November). *Taxpayer Self-Inspections, Audits, and Optimal Tax Administration: Evidence from China*. Allard Research Commons. https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1624&context=fac_pubs

42 State Tax Administration, 2003.

43 Guangdong Provincial Tax Service, State Tax Administration, 2022.

procedures restricted. On the other hand, for taxpayers with good credit records, documentation requirements are reduced by more than 40%, and manual approval processes for requests are being replaced by automated systems, allowing for over 90% of financial data to be automatically pre-filled in tax returns.[44]

2.3. The Risk-Based Approach to Tax Control in India

The Indian legislation has set out the general provisions for the application of a risk-based approach to tax control. However, the wording of the tax legislation is rather vague. As an illustration, the clause "the risk management strategy formulated by the Board from time to time" is frequently used. For example,

the claim of the assessee for a deduction in respect of any sum referred to in sub-section (2) in the return of income for any assessment year filed by him, shall be allowed on the basis of information relating to such sum furnished by the payee to the prescribed income-tax authority or the person authorized by such authority, subject to verification in accordance with the *risk management strategy formulated by the Board from time to time*. (Sec. 80GGA of the Income-Tax Act, with effect from June 1, 2020).

Another amendment has been made in sections 148 and 148A of the Income-Tax Act:

For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means, (i) any information in the case of the assessee for the relevant assessment year in accordance with *the risk management strategy formulated by the Board from time to time*.[45]

Thus, it is evident that frequent amendments to tax legislation in the parts of the regulation that employ a risk-oriented approach demonstrate the legislator's particular attention to this issue.

The concept of "risk management strategy" is not explicitly defined in Indian law, but it is explained in the Notification of the Central Board of Direct Taxes dated December 13, 2021, which defines risk management strategy as an algorithm for standardized examination of information, utilizing suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of risk, as decided by the Board from time to time.[46]

The notification specifies the procedures to be carried out depending on the degree of risk. Thus,

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[44] Shanghai Municipal Tax Service, State Tax Administration, 2022.

[45] Finance (No. 2) Act, 2024 (15 of 2024). Income Tax Department. https://incometaxindia.gov.in/Documents/Finance-No.2-Act-2024.pdf

[46] Department of Revenue, Ministry of Finance. (2021, December 12). *Notification of the Central Board of Direct Taxes*. Income Tax Department. https://incometaxindia.gov.in/News/Notification-137-2021.pdf

in cases where the mismatch between the amount accepted by the assessee and the amount reported by the reporting entity persists, the information after such initial e-verification shall be run through a risk management strategy laid down by the Board and the information found to be no or low risk on such risk criteria, where no further action is required, shall be processed for closure.[47]

The risk management strategy in India now predominantly relies on the utilization of technologies, including artificial intelligence and machine learning. In 2019, a national e-assessment center (NeAC) was created. The e-assessment procedure is aimed at minimizing the level of interaction between taxpayers and the Income-Tax Department, which leads to certain undesirable practices on the part of tax officials. The e-assessment scheme intends to facilitate faceless assessment of income-tax returns through electronic communication between tax officials and taxpayers.

In order to effectively implement tax control and identify risks in the activities of taxpayers it is necessary to determine the limits of sources of information that can be used. According to section 148(i) of the Income-Tax Act, "any information flagged in the case of an assessee for the relevant assessment year shall be in accordance with the risk management strategy formulated by the Board from time to time."[48] According to Instruction F. No. 225/135/2021/ITA-II, for effective implementation of risk management strategy, the Central Board of Direct Taxes, in exercise of its powers under section 119 of the Act,[49] directs that the Assessing Officers shall identify the following categories of information:

Information from any other Government Agency/Law Enforcement Agency, Information arising out of Internal Audit objection, which requires action u/s 148 of the Act, Information received from any Income-tax Authority including the assessing officer himself or herself, Information arising out of search or survey action and other.[50]

In practice, disputes arise between the Central Board of Direct Taxes and taxpayers in terms of challenging the information that has been used by the Board to assess tax risks. In a judgment issued by the Supreme Court, in the case of *Union of India & Ors. v. Ashish Agarwal*,[51] the Court declared that notices issued between January 1, 2021 and June 30, 2021 would be treated as deemed notices u/s 148A(b) of the Act. The majority of these notices were issued based on information from four sources, namely (i) from another assessing officer, (ii) from other agencies, (iii) from the investigation wing and (iv) from the insight portal. Other than the information

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47 *Id.*

48 Income-Tax Act, 1961 (43 of 1961) as amended by the Finance Act, 2022 (6 of 2022). Income Tax Department. https://incometaxindia.gov.in/documents/income-tax-act-1961-amended-by-finance-no.-2-act-2024.pdf

49 Meaning Income-Tax Act (1961).

50 Instruction F. No. 225/135/2021/ITA-II (December 10, 2021).

51 *Union of India & Ors. v. Ashish Agarwal*, 2022 SCC OnLine SC 543.

received from the Insight Portal no other source qualified for the criterion of being flagged in accordance with the risk management strategy. Thus, the question that arose was: should the assessing officer be allowed to proceed in these cases where the information is not determined to be in accordance with the risk management strategy, as it would then not be treated as "information" at all?[52] Almost 90,000 notices were issued by the revenue department, which led to the anticipation that this judgment would be extremely critical and far-reaching, and a total of 9000 writ petitions were filed throughout India.[53]

As a result, it can be concluded that the Indian approach to the use of "risk management strategy" in tax control is quite variable, since it depends on the changes made to tax laws annually through the adoption of the Finance Act. At the same time, the clause "the risk management strategy formulated by the Board from time to time" is uncertain and vague, while the time frame is not defined by law. On the other hand, active utilization of modern technologies, including artificial intelligence, provides for the effective identification of tax risks of taxpayers.

2.4. The Risk-Based Approach to Tax Control in South Africa

In recent years, scholars have attempted to analyze the compliance approach used by revenue authorities in South Africa with specific reference to case selection and risk profiling.[54] Thus, according to one research author, M.N. Nel, the following are some of the issues that have been observed in relation to the various case selection methodologies used by revenue authorities: "no feedback loop exists between the actual results achieved by the audit team and the risks determined by the risk profilers; it is questionable whether the increase in the strike rate can be attributed to the implementation of the business intelligence unit; a taxpayer not receiving a refund in excess of the refund limit, has a smaller possibility of being subjected to investigation" etc.[55]

The Tax Administration Act was adopted in 2011.[56] It includes a number of provisions on tax risks. The law provides for the powers of the South African Revenue Service

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[52] Hemani, T., & Hemani, S. (2022, June 24). *Clause by Clause Analysis of Provisions of Reassessment Under the Income Tax Act, 1961*. itatonline.org. https://itatonline.org/digest/articles/clause-by-clause-analysis-of-provisions-of-reassessment-under-the-income-tax-act-1961/

[53] SC Judgment Analysis. (n.d.). TaxGuru. https://taxguru.in/income-tax/gospel-truth-reassessment-proceedings-sc-judgment-analysis.html

[54] Nel, M. J. (2024, December). *An Analysis of the Compliance Approach Used by Revenue Authorities with Specific Reference to Case Selection and Risk Profiling* (a thesis submitted in the partial fulfilment of the requirements for the degree Masters in Commerce (Taxation)). CiteSeerX. https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=3be76030d252cd598c5a5a752730f0c1916737f8

[55] *Id.*

[56] Tax Administration Act, 2011 (Act 28 of 2011). South African Government. https://www.gov.za/documents/tax-administration-act

(SARS) to make provisions with respect to tax assessments. The term "assessment" here means the determination of the amount of a tax liability or refund by way of self-assessment by the taxpayer or assessment by SARS. The tax law provides the following types of assessments: original assessments; additional assessments; reduced assessments; jeopardy assessments and estimation of assessments.

In accordance with paragraph 40 of the Tax Administration Act, SARS may select a person for inspection, verification or audit on the basis of any consideration that may be relevant for the proper administration of a tax act, including on a random or a risk assessment basis. Thus, risk assessment is only one of the bases for inspection, verification or audit along with random selection. It appears that a risk-based approach should be prioritized over a random selection of audits of taxpayers.

The principal focus of SARS is on high-risk sectors, for example, the cash and carry industry, which is one of the major high-risk sectors. The potential risks in this sector include the withholding of VAT payments from cash sales, the illegal repatriation of funds to global tax havens and fraudulent VAT refund claims.[57]

High tax risks may also arise in certain cases when paying taxes on personal income received through employers. It is noted that failure to meet budget tax collection targets (for the year 2018–2019) has led to increased tax control, particularly concerning the payment of personal income taxes.[58] The SARS procedure may also include interviews with a random selection of employees. SARS is required to issue employers with a formal "Notification of Audit" letter from a specific SARS auditor. It should be noted that a payroll questionnaire from SARS does not constitute a formal "Notification of Audit." It is also important to note that the detailed information provided to SARS by the employer during the bi-annual reconciliation process or the issuance of tax certificates may be enough for SARS to initiate a focused and specific audit of compensation and benefit items, which may be seen as having a high risk for errors to occur.[59]

The fact that the law does not indicate the criteria for high or low risk for the selection of taxpayers of control measures (neither "risk" nor "risk assessment" categories are defined in the Tax Administration Act) leads to judicial disputes when taxpayers challenge decisions of tax authorities. In the case of *Carte Blanche Marketing CC and Others v. Commissioner for the South African Revenue Service*,[60] SARS used risk assessment methods to evaluate the taxpayer's compliance with value-added tax and income tax. This process identified discrepancies between

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57 South African Revenue Service. (2015, December 10). *SARS Cracks Down on High Risk Sectors*. https://www.sars.gov.za/media-release/10-december-2015-sars-cracks-down-on-high-risk-sectors/

58 KPMG South Africa. (2019, June). *Employees' Tax Audits by SARS*. https://assets.kpmg.com/content/dam/kpmg/us/pdf/2019/06/tnf-za-june7-2019.pdf

59 *Id.*

60 *Carte Blanche Marketing CC and Others v. Commissioner for the South African Revenue Service* (26244/2015) [2017] ZAGPPHC 253 (May 26, 2017).

the turnovers declared by the taxpayers and their customs declarations. This in turn led to the selection of these taxpayers for an audit. The taxpayers decided to neither participate in the audit nor provide any of the requested information, as they contended that the decision to provide a tax audit was unlawful. The court reached the conclusion that the actions of the tax authority were legal based on the fact that an audit requested by SARS is merely the start of an investigation and the initiation thereof is not subject to review, as the decision is incomplete.

Tax risks in South Africa are not just assessed directly by tax authorities. This is the feature that demonstrates the similarities between the rules in South Africa and those of Russia. Rather, tax authorities work together within the framework to implement various types of financial control over organizations' activities, which could constitute risks affecting tax aspects. The Tax Administration Act places a significant obligation on SARS to disclose information related to money laundering or terrorist financing to law enforcement agencies or other relevant authorities.

Conclusion

The risk-based approach is the fundamental basis of a new approach to defining and legally consolidating the tasks of tax administration bodies in modern conditions. According to this approach, the objectives of the tax administration are to identify, prevent and minimize threats to tax security in the implementation of the full range of administrative functions in the tax sphere, as well as work to overcome the consequences of the realization of threats.

Risk management serves as a universal principle for ensuring the tax security of a state that should cover all of the elements of control and supervisory activities in the tax sphere, starting with the planning and establishment of control measures and ending with the implementation of law enforcement acts adopted as a result of such control.

The experience of the BRICS countries shows that most countries have recognized commonalities across organizations and management cultures endowed with enforcement powers, such as the tax administration, customs administration, as well as risk management systems.

Thus, the following points can be proposed for a comparison of the countries using tax risk assessment:

- implementation of risk assessment strategies in the practice of tax administration and the quality of each state's legislative regulation;
- impact of risk indicators on the behavior of taxpayers;
- impact of risk indicators on the conduct of tax control measures.

The risk-based approach to tax control is widely used by the tax administration authorities of the BRICS countries. At the same time, there are no clear indications in the legislation of the BRICS countries on the obligations of using risk assessment, as well as the nuances and procedures for the application of a risk-based approach.

The implementation of the risk-based approach in the BRICS countries is, as a rule, based on the use of computer databases in which information about the taxpayer is collected from disparate sources and analyzed using modern computer technologies (such as the Automated Information System "Nalog-3" in Russia and the Golden Tax Project in China).

The tax risks identified by the tax administrations of the BRICS countries are also quite similar, as are the similarities in the specific risk indicators that trigger on-site tax audits for taxpayers in these countries.

On-site tax audits in the BRICS countries are typically aimed at verifying the accuracy of the calculations and payment of taxes by all taxpayers, especially those who are more likely to commit violations of the tax legislation.

The risk-based approach is used not only in performing tax audits but also in a broader context, such as in determining the scope of tax control measures.

In general, the key aspects of the risk-based approaches employed in the BRICS countries are very similar. The Chinese experience with "credit and risk system," which involves cutting off online services and restricting offline procedures for "low-rated" taxpayers, stands out, in particular. This experience should be applied cautiously and only after detailed discussion.

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ARTICLE

Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the BRICS Member States and Candidate States

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Abstract. This article analyzes the legal regulation of the extradition of persons for criminal prosecution or execution of a sentence in the BRICS states. The legal and technical features of the national legal regulations governing extradition in Brazil, India, China and South Africa are analyzed. It is noted that each of these nations (with the exception of Russia) has adopted a special law on extradition, which regulates in detail all procedural aspects of international cooperation in the field of the extradition of criminals. In addition, the legal regulation of the extradition of persons for criminal prosecution or execution of a sentence in the BRICS candidate states is also analyzed. In particular, this study provides both a general description of the countries' legislation (the different legal systems) and an assessment of the national legal regulations governing extradition in each of the BRICS countries, including such countries as Iran, Argentina, Algeria, Bahrain and the UAE. The mechanisms of interstate and interdepartmental cooperation are deeply described. Furthermore, the prospects of international legal integration of the BRICS states in the field of extradition are assessed, taking into account the possible entry of the candidate states into the BRICS group. Following an analysis of the national legislation of both the BRICS member states and the BRICS candidate states, the idea of creating and adopting a "BRICS Convention on Extradition" is proposed.

Keywords: extradition; international cooperation in criminal matters; legal integration; Brazil; Russia; India; China; South Africa; BRICS; BRICS candidate states.

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Introduction

The institution of extradition of persons for criminal prosecution or the execution of a sentence, as one of the forms of international cooperation in the field of criminal proceedings, ensures the achievement of the goals of the criminal process and the restoration of violated rights, as well as guarantees equality and justice in society and the inevitability of punishment.[1] Nowadays it is almost impossible to imagine a state that does not participate in international cooperation with regard to the extradition of criminals. This was caused by many interdependent factors, such as the global and regional trend of increasing the number of extradition requests, the need to improve criminal law and criminal procedure mechanisms in the field

[1] Volzhenkina, V. (2009). *Extradition in the Russian Criminal Process* (p. 56). Iurlitinform. (In Russian).

of extradition of persons for criminal prosecution or execution of a sentence,[2] the growth of transnational (cross-border) crimes,[3] the influence of global organized criminal groups on the security and stability of states, and the evolving operations activities of international law enforcement organizations (such as Europol, Interpol, Afripol and Eurojust) and international criminal justice bodies.[4]

Successful extradition also makes it possible to fight crime at the international level, particularly in situations where criminals flee from the states in which they have committed illegal acts. It is commonly known that criminals frequently try to avoid criminal liability in this way. In our opinion, the existing challenges and threats can be overcome only by taking into account the improvement of mechanisms of interstate cooperation not only at the international, but also at the regional level.

A special role in the study of problems related to extradition procedures should be given to the grounds for refusal of extradition, although many of them may be, as it may seem at first glance, rather abstract in nature. An illustrative example would be the politicization of the extradition procedure of a person who needs to be extradited for criminal prosecution or execution of a sentence. Thus, many states and their competent authorities refuse extradition if they believe that the request for a person or a specific committed crime is politically motivated. Another common reason for refusing to execute an extradition request can be the unfairness of the justice system, as well as improper conditions of detention of a criminal. These grounds are widely used, but to this day it is not possible to establish clear criteria for such grounds in extradition, and states continue to abuse their right to use such grounds in the process of considering extradition requests.

The legal regulation of the extradition of persons for criminal prosecution or execution of a sentence is carried out at three levels: international law, the national legislation of the requesting state as well as the national legislation of requested state.[5] This is one of the important conditions in the context of legal regulation of extradition, i.e., its "polysystem nature."[6] Simultaneously, the establishment of effective links and the search for a legal framework for formal cooperation between the requesting and the requested party is possible only taking into account all levels. In addition to legally established interactions, there is also an exchange of operational information

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2 Goncharenko, A. (2015). Conditions of Extradition. *Society and Law*, 2(52), 146–149. (In Russian).

3 Volevodz, A. (2011). *International Law Enforcement Organizations* (p. 344). Prospekt. (In Russian).

4 Volevodz, A. (2011). *Mezhdunarodnye partnerskie organizatsii* [International Law Enforcement Organizations] (p. 344). Prospekt.

5 Volevodz, A. (2021). International Cooperation Between Russia and the United States in Extradition of Persons for the Purposes of Prosecution: Challenges and Opportunities. *Law. Journal of the Higher School of Economics, 13*(4), 230–258.

6 Reshetneva, T. (2010). To the Issue of the Definition of the Concept of "Extradition" and its Legal Clearance in the Legislation of the Russian Federation. *Bulletin of the Siberian Law Institute of the Ministry of Internal Affairs of Russia*, 3(7), 151–154. (In Russian).

between the competent authorities. Moreover, in the absence of international treaties, cooperation is carried out on the basis of the principle of reciprocity.

As for the framework of international legal regulation of extradition, it includes a set of bilateral and multilateral treaties. Bilateral extradition treaties are concluded between two states, whereas multilateral international (universal) and regional treaties are concluded between two or more states. Along with other international treaties, multilateral treaties on extradition are adopted at the level of international and regional organizations, such as, for instance, the United Nations (UN), Organisation for Economic Cooperation and Development (OECD), Organization of American States, Council of Europe, Center for Internet Security, South Asian Association of Regional Cooperation (SAARC), etc.

BRICS is one of the regional organizations that is actively developing. The legislation of each of the BRICS countries, especially its criminal law and criminal procedure, is constantly evolving and undergoing significant and progressive changes.[7] In addition to topical issues of international policy, the unification, harmonization and internationalization of legal provisions are actively carried out within the framework of BRICS. Thus, each of the BRICS member states strives to fight crime at the national level by improving its legislation on international cooperation in the field of criminal justice. Taking into account existing developments and practices, as well as national legal traditions, joint communiques are adopted and BRICS-level plenary sessions of BRICS working groups on counterterrorism and meetings of foreign ministers are held. Meetings of the BRICS Anti-Terrorist Working Group are also held on a consistent basis. In this regard, in order to strengthen cooperation and combat transnational crime, it is necessary to consider and analyze the national legislation of the BRICS member states, as well as any of the candidate states seeking to join the BRICS (in particular, Algeria, Argentina, Bahrain, Iran and the UAE), and assess the prospects for legal integration on the extradition of persons for criminal prosecution or execution of a sentence, with a particular focus on considering the possibility of developing and adopting a "BRICS convention on extradition."

As already noted, in addition to examining the legislation of the BRICS member states, one of the goals of this study is also to analyze the legal regulation of the extradition of persons for criminal prosecution or execution of a sentence in the BRICS candidate states. Thus, it is necessary, first of all, to assess the prospects of these states joining the BRICS group, as well as the presence or absence of barriers to further legal integration, including extradition.[8]

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[7] Markuntsov, S. (2018). Characteristics of Changes in the Criminal Legislation of Russia and China. *BRICS Law Journal, 5*(4), 90–113.

[8] Nanda, V. P. (1999). Bases for Refusing International Extradition Requests – Capital Punishment and Torture. *Fordham International Law Journal, 23*(5), 1369–1396.

1. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the Brazilian Republic

The legal regulation of the extradition of persons for criminal prosecution or execution of a sentence in the Brazilian Republic is complex. First of all, the Brazilian Constitution stipulates that no Brazilian can be extradited, with the exception of naturalized citizens and in the event that they commit a common crime before acquiring citizenship or have proven involvement in the illegal transportation of drugs or similar substances in accordance with the provisions of the law (Art. 5, para. 51). It also follows from paragraph 52 of Article 5 that an alien cannot be extradited for a political crime or for a crime in connection with his or her beliefs. Thus, the Constitution prohibits the extradition of indigenous Brazilians (born in Brazil), while naturalized citizens may be extradited in some cases – this is a rather rare rule because, in the context of extradition, states typically do not divide citizens into naturalized and indigenous.

The jurisdiction of the Union includes the powers to extradite criminals (Art. 22 of the Brazilian Constitution). The Federal Supreme Court, as a court of first instance, is authorized to initiate the process and make a decision in relation to extradition cases from a foreign requesting state (Art. 102 of the Brazilian Constitution). Certain procedural provisions are contained in the Code of Criminal Procedure; in particular, execution requests of a sentence from a foreign court that has not concluded an extradition treaty with Brazil will depend upon the decision of the Minister of Justice (part 1 of Art. 789 of the Criminal Procedure Code of Brazil). Furthermore, requests from the competent authorities of foreign states will be considered if they are sent by diplomatic channels and Brazilian legislation does not exclude extradition (Art. 784 of the Criminal Procedure Code of Brazil).

The fundamentals of migration legislation are established by the Federal Republic of Brazil Law No. 13,445 of 2017.[9] Chapter 8, in particular, is devoted to international cooperation in the field of criminal proceedings, while section 1 regulates issues of interstate and interdepartmental cooperation in the field of extradition. In general, the conditions of extradition and the grounds for a refusal are quite typical, but political crimes warrant special attention.[10] Thus, Article 81 states that the Supreme Court may refuse to consider any attempt on the head of state or any authorities as a political crime (i.e., politically motivated), as well as a crime against humanity, a war crime and crimes of genocide and terrorism. Thus, the extradition of a citizen is prohibited, but the extradition of a naturalized person is possible in cases provided for by the Brazilian Constitution. Article 96 provides that the requesting state must

[9] Lei nº 13.445, de 24 de maio de 2017 [Law No. 13,445 of May 24, 2017]. Planto. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13445.htm

[10] Souza, A. (2019). Extradition in South America: The Case of Brazil. *ERA Forum, 19*, 313–337.

provide guarantees to replace life imprisonment, corporal punishment or the death penalty with imprisonment, provided that the maximum sentence does not exceed thirty years.

Decree-Law of the Federal Republic of Brazil No. 394 of 1938 regulates some of the foundations of international cooperation in the field of extradition.[11] Currently, according to the official website of the Brazilian government, this law retains its legal force; however, this is limited to only those provisions that are not in conflict with new laws. For example, the law provides for refusal of an extradition if the Brazilian laws for the requested crime stipulate the term of imprisonment to be less than a year, while Law No. 13,445 specifies two years of imprisonment. Such a collision is obviously resolved in favor of Law No. 13,445. Extradition is also not carried out if the crime is of a military, religious or political nature. It is noteworthy that this law also contains provisions that exclude the use of grounds for political crimes, in particular, attacks on heads of state or any person exercising authority. Additionally, acts of anarchism, terrorism and sabotage, along with any propaganda of war or violent acts with the aim of undermining political or public order are not considered political crimes.

2. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the Russian Federation

In the Russian Federation, there is no special legal act directly regulating the extradition of criminals. The Russian legislator has incorporated these provisions into a separate chapter of the Criminal Procedure Code. Moreover, there is currently no well-established and uniform understanding of extradition among representatives of the scientific doctrine since it is not legally enshrined in the legislation of the Russian Federation.[12]

While some representatives of Russian legal science claim that extradition relates to international (criminal) law, others refer it to criminal procedure law (international cooperation in criminal proceedings). Thus, A.V. Grinenko asserts that "the main types of international cooperation in the field of criminal justice are now ... extradition for criminal prosecution or execution a sentence."[13] L.V. Golovko similarly considers the extradition of persons for criminal prosecution or execution of a sentence one of the directions of such cooperation. He defines extradition as "the transfer of a person who has violated the criminal law of a country to a state authorized to investigate

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[11] Decreto-Lei nº 394, de 28 de abril de 1938 [Decree-Law No. 394 of April 28, 1938]. Planto. https://www.planalto.gov.br/ccivil_03/decreto-lei/del0394.htm

[12] Reshetneva, 2010.

[13] Grinenko, A. (2023). *Criminal Procedure: Textbook and Practicum for Universities*. Iurait. (In Russian).

him and consider a criminal case on this fact."[14] In addition, the issue of extradition is touched upon in such dissertation studies for the degree of Doctor of Law, such as "Legal Foundations of New Directions of International Cooperation in the Field of Criminal Procedure" by A.G. Volevodz,[15] "Extradition in International Criminal Law: Problems of Theory and Practice" by N.A. Safarov,[16] as well as in PhD dissertations, such as "Extradition in the Criminal Process of the Russian Federation" by A.K. Stroganova[17] and a number of others. Such theses confirm that there is uncertainty in Russian legal science, in particular, about the place of the institution of extradition of persons for criminal prosecution or execution of a sentence.[18]

The system of legal acts regulating the procedural aspects of extradition in the Russian Federation is as follows:

1. The Constitution of the Russian Federation.
2. Ratified international treaties (multilateral and bilateral).
3. The Criminal Procedure Code of the Russian Federation.
4. The Criminal Code of the Russian Federation.
5. Departmental regulatory legal acts.

In fact, international treaties occupy a dominant position in practice in the implementation of interstate cooperation since they describe in detail the procedure for such interaction, the conditions for the extradition of a criminal, the competent authorities, as well as the grounds for refusing extradition.

Extradition is traditionally recognized as one of the most widespread forms of bilateral cooperation in the Russian Federation in the field of criminal proceedings. According to Article 61, "a citizen of the Russian Federation may not be expelled from the Russian Federation or extradited to another State." Furthermore, Article 63 of the Constitution of the Russian Federation provides that the extradition of persons who are accused of committing a crime is carried out in accordance with a federal law or an international treaty of the Russian Federation.[19]

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[14] Golovko, L. (2017). *Course of Criminal Procedure* (2nd ed.). Statut. (In Russian).

[15] Volevodz, A. (2002). *Legal Framework of New Areas of International Cooperation in the Field of Criminal Process* (Doctoral Thesis). Research Institute for Problems of Strengthening Law and Order at the Academy of the Prosecutor General's Office of the Russian Federation. (In Russian).

[16] Safarov, N. (2007). *Extradition in International Criminal Law (Problems of Theory and Practice* (Doctoral Thesis). MGIMO University. (In Russian).

[17] Stroganova, A. (2004). *Extradition in the Criminal Process of the Russian Federation* (PhD Thesis). Moscow University of the Ministry of Internal Affairs of Russia. (In Russian).

[18] Klevtsov, K. (2022). Discussion on the Place of International Cooperation in the Field of Criminal Justice in the Legal System. *International Criminal Law and International Justice*, 2, 6–8. (In Russian).

[19] Constitution of the Russian Federation (adopted by popular vote on December 12, 1993, with amendments approved during the all-Russian vote on July 1, 2020). The Ministry of Foreign Affairs of the Russian Federation. https://mid.ru/upload/medialibrary/fa3/xwhwumdwunawy9iprvhcxdqds1lzxqdx/CONSTITUTION-Eng.pdf

Part 5 of the Criminal Procedure Code of the Russian Federation is devoted to international cooperation of the Russian Federation in the field of criminal proceedings. As for the institution of extradition itself as one of the directions (forms) of such cooperation, Chapter 54 titled "Extradition of a person for criminal prosecution or execution of a sentence" is devoted to it separately.[20] The Prosecutor General's Office of the Russian Federation, in particular, its General Department of International Legal Cooperation, has exclusive competence in the field of the extradition of criminals.[21]

Meanwhile, it is possible to single out judicial practice, which, although formally not considered a source of law in the Russian Federation, has a huge practical role in the interpretation of legal norms. The resolutions of the plenum of the Supreme Court of the Russian Federation play a special role here. In order to interpret and apply the provisions of legislation in the field of extradition, one should refer to the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 11.[22] Departmental normative legal acts, namely instructions and orders of the Prosecutor General's Office, also play an important role for the effective execution of the practical activities of employees (prosecutors) of the General Department of International Legal Cooperation of the Prosecutor General's Office (which has exclusive competence in extradition matters).[23,24]

Russia has also concluded about sixty-five existing bilateral extradition treaties with foreign countries. For those states that are signatories to the above-mentioned international treaties, in the event that no bilateral treaties have also been negotiated with the state, the possibility of extradition is provided on the basis of the conventional mechanisms. At the same time, as for example, in the Republic of India, extradition may be possible on the basis of the principle of reciprocity in the absence of a common international agreement or a bilateral agreement.

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[20] Criminal Procedure Code of the Russian Federation No. 174-FZ of December 18, 2001. WIPO Lex. https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/ru/ru065en.pdf

[21] Regulations on the Main Directorate of International Legal Cooperation of the Prosecutor General's Office of the Russian Federation (approved by the Prosecutor General's Office of Russia on September 6, 2021). ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_396362/. (In Russian).

[22] Resolution of the Plenum of the Supreme Court of the Russian Federation No. 11 of June 14, 2012 "On the Practice of Consideration by Courts of Issues Related to the Extradition of Persons for Criminal Prosecution or Execution of a Sentence, as Well as the Transfer of Persons to Serve a Sentence." ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_131317/. (In Russian).

[23] Order of the Prosecutor General's Office of the Russian Federation No. 297 of June 3, 2020 "On the Procedure for International Cooperation by Bodies and Organizations of the Prosecutor's Office of the Russian Federation." ConsultantPlus. https://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=EXP&n=745136#DqksaVU4UcJEmEZ21. (In Russian).

[24] Instruction of the Prosecutor General's Office of the Russian Federation No. 116/35 of March 5, 2018 "On the Procedure for the Work of the Prosecutor's Office of the Russian Federation on the Extradition of Persons for Criminal Prosecution or Execution of a Sentence." ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_294316/. (In Russian).

In accordance with part 1 of Article 460 of the CPC, the Russian Federation may send a request to a foreign state through the Prosecutor's office for an extradition of a person for criminal prosecution or execution of a sentence on the basis of either an international agreement made between the Russian Federation and this state or a written obligation of the Prosecutor General of the Russian Federation to extradite persons to this state in the future based on the principle of reciprocity in accordance with the legislation of the Russian Federation.

Part 1 of Article 13 of the Criminal Code of the Russian Federation contains similar provisions as Article 61 of the Constitution of the Russian Federation and provides that "citizens of the Russian Federation who have committed a crime on the territory of a foreign state should not be extradited to this state." That is, it establishes the principle of non-extradition for its own citizens. In turn, part 2 of Article 13 of the Criminal Code of the Russian Federation establishes the principle of extradition of foreign citizens and stateless persons who have committed crimes outside the territory of the Russian Federation.

The Russian Federation has signed and ratified a significant number of international treaties that provide for a procedure for the extradition of criminals. The Russian Federation also provides for the possibility of extradition in the absence of bilateral treaties with those states that are signatories of such international treaties. As mentioned before, extradition is possible on the basis of the principle of reciprocity in the absence of a general international agreement or a bilateral agreement.

3. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the Republic of India

The influence of Indian organized crime organizations strongly affects the criminogenic situation of the entire region. The transnational nature of Asian crime invariably leads to the need for international cooperation in the fight against crime. Integration and globalization processes have become significant reasons for establishing broad interstate contacts and establishing channels of information exchange between special services.

Extradition of persons for criminal prosecution or execution of a sentence remains one of the most common forms of international cooperation in India. At the same time, statistics on extradition in India indicate that there is no global scale of activity in this area. For example, from 2002 to 2019, only seventy-four criminals were extradited to India. About 150 fugitives are subject to extradition, but for a number of reasons they have not been transferred to India.[25] Most often they hide in nearby states within the Asian region itself.

[25] Kancharla, B. (2019, June 15). 74 Fugitives Extradited to India Since 2002, Another 150 Yet to Be Extradited. *Factly*. https://factly.in/74-fugitives-extradited-to-india-since-2002-another-150-yet-to-be-extradited/

The Republic of India has signed and ratified the following international treaties, which provide for the mechanism of extradition: "Convention of the Association for Regional Cooperation of South Asia on Mutual Cooperation in Criminal Matters";[26] "United Nations Convention against Transnational Organized Crime" and its three Protocols;[27] "United Nations Convention against Corruption";[28] "International Convention for the Suppression of Acts of Nuclear Terrorism."[29] At the level of bilateral international cooperation, the Republic of India has concluded forty-three extradition treaties with foreign States.[30] The central authority responsible for sending and reviewing extradition requests in the Republic of India is the Ministry of Foreign Affairs of the Republic of India, namely the Department of Consular, Passport and Visa Division.[31]

Extradition powers are assigned to the Union under Article 246 of the Constitution of the Republic of India. Article 105 of the Criminal Procedure Code of India contains some procedural provisions concerning the transfer of convicted persons; other than that, there is no detailed regulation pertaining to extradition in the Criminal Procedure Code.

However, India has adopted a special law, namely, the Extradition Act of 1962.[32] This law defines extradition crimes, the procedure for extradition of criminals to states with which the country has signed a bilateral agreement, and in the absence of such an agreement, on the basis of the principle of reciprocity. It describes in detail and regulates the procedure of interstate cooperation in the field of extradition and the actions of competent authorities, the conditions for the execution of an extradition request and the grounds for refusal of extradition.[33]

Article 34 of the Extradition Act duplicates the provisions of the Indian Criminal Code and establishes extraterritorial jurisdiction, which means if an Indian citizen

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[26] SAARC Convention on Mutual Assistance in Criminal Matters, 2008. Ministry of External Affairs, Government of India. https://www.mea.gov.in/Portal/LegalTreatiesDoc/08M0401.pdf

[27] United Nations. (2000). Convention against Transnational Organized Crime (adopted by General Assembly resolution 55/25 of November 15, 2000). United Nations Office on Drugs and Crime. https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf

[28] United Nations. (2003). Convention against Corruption (adopted by General Assembly resolution 58/4 of October 31, 2003). United Nations Office on Drugs and Crime. https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

[29] United Nations. (2005). International Convention for the Suppression of Acts of Nuclear Terrorism. United Nations Treaty Collection. https://treaties.un.org/doc/source/RecentTexts/English_18_15.pdf

[30] Ministry of External Affairs of the Republic of India. https://www.mea.gov.in/leta.htm

[31] Ministry of Home Affairs of the Republic of India. (2019). Guidelines on Mutual Legal Assistance in Criminal Matters. https://www.mha.gov.in/sites/default/files/ISII_ComprehensiveGuidelines_16032020.pdf

[32] The Extradition Act, 1962. India Code. https://www.indiacode.nic.in/bitstream/123456789/1440/1/196234.pdf

[33] Goel, S. (2016). Extradition Law: Indian Perspective. *SSRN*. https://doi.org/10.2139/ssrn.2712453

commits a crime in a foreign country, he or she is subject to criminal liability in India.[34] It is noteworthy that Article 34A of the Extradition Act provides for competent authorities to independently carry out criminal prosecution of a person even in case of a refusal of extradition to a foreign state.

The law also contains a list of crimes that are excluded from the list of political crimes (in the appendix); these crimes include those listed under the Indian Penal Code, crimes subject to special Indian laws, as well as crimes provided for by international conventions ratified by India.[35]

4. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the People's Republic of China

A special extradition act is dedicated to the legal regulation of the extradition of persons for criminal prosecution or execution of a sentence in the People's Republic of China, while in the process of searching, detaining and direct transfer of a person, public security officers are guided by the provisions of the Criminal Procedure Code of the People's Republic of China.

Furthermore, the Constitution of the People's Republic of China does not contain provisions on the extradition of criminals. The basic act regulating the procedural aspects of extradition is the Extradition Law of the People's Republic of China.[36,37] The conditions of extradition are as follows: for double criminality, the minimum term of imprisonment is one year or more of severe punishment in the case of extradition for criminal prosecution, or there must be at least six months remaining before the expiration of execution of a sentence (i.e., serving the sentence). Article 3 states that "no cooperation in extradition matters may prejudice the sovereignty, security or public interests of the People's Republic of China." The extradition of Chinese citizens is also prohibited.

In addition to other well-known grounds for refusal of extradition, the law provides that extradition may be refused on the grounds of age, health or humanitarian considerations. Similar provisions are also contained, in particular, in the legislation of Afghanistan.[38] There are no exceptions to the categorization of political crimes, that

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[34] Indian Penal Code, 1860. India Code. https://www.indiacode.nic.in/bitstream/123456789/2263/1/A1860-45.pdf

[35] Shestak, V., & Karpovich, V. (2022). Institute of Extradition of Persons for Criminal Prosecution: Experience of the Republic of India. *International Criminal Law and International Justice*, 3, 18–22. (In Russian).

[36] Huang, F. (2006). The Establishment and Characteristics of China's Extradition System. *Frontiers of Law in China, 1*(4), 595–615.

[37] Extradition Law of the People's Republic of China, 2000. Asian Legal Information Institute. http://www.asianlii.org/cn/legis/cen/laws/el161/

[38] Shestak, V., & Karpovich, V. (2022). Modern Features of Cooperation Between the Russian Federation and the Islamic Emirate of Afghanistan in the Fight Against Crime. Bulletin of Moscow University of the Ministry of Internal Affairs of Russia, 3, 318–325. (In Russian).

is, any crime in the process of resolving the issue of extradition can be recognized as politically motivated.

As for the procedural aspects, extradition requests are received by the Ministry of Foreign Affairs of the People's Republic of China. It should be noted that China has concluded fifty-nine extradition treaties, of which thirty-nine have been ratified. Before the competent authorities of foreign states formally request extradition from China, they may send a request in the form of written requests, such as diplomatic channels or the International Police Association, or by mail, telegram and telegraph, requesting temporary enforcement measures against the person requesting extradition.

Upon receiving notification of an extradition, the person subject to extradition has the right to engage Chinese legal representation to present the opposing reasons for the extradition request to the relevant authorities within fifteen days. At the same time, the Supreme People's Court of the People's Republic of China checks the legality and validity of the extradition request, as well as conducts an assessment of the evidence. The court makes a decision to either refuse extradition or to execute an extradition request. This decision is submitted to the Ministry of Foreign Affairs of China and subsequently to the approval of the State Council of China.

The actual, physical (referred to as "direct") transfer of the criminal is carried out by public security agencies on behalf of the Ministry of Foreign Affairs of the People's Republic of China with the requesting state. A temporary delay in extradition may result in the person requested for extradition having the opportunity to flee without any punishment due to the fact that the requesting party failed to meet the deadlines. As a result, in order to avoid such a scenario, Chinese authorities may decide to consent to a temporary extradition if it is deemed feasible at the request of the requesting country.

5. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the Republic of South Africa

The legal regulation of extradition in South Africa is mainly based on special regulatory legal acts. The Constitution of South Africa does not contain specific provisions on extradition.[39] As for the Criminal Procedure Act of South Africa, it contains a provision that allows a police officer to make an arrest without a warrant if a reasonable statement has been filed against him/ her or there are suspicions that a person has committed a crime abroad and it is punishable under South African law, provided that he is subject to arrest or detention for this crime (Art. 40).[40]

[39] Constitution of the Republic of South Africa, 1996. Parliament of South Africa. https://www.parliament.gov.za/storage/app/media/Acts/constitution/SAConstitution.pdf

[40] Criminal Procedure Act 51 of 1977. South African Government. https://www.gov.za/sites/default/files/gcis_document/201503/act-51-1977s.pdf

The Republic of South Africa has, however, much like India, adopted a special law to address the issue of extradition, more precisely, The Extradition Act 67 of 1962.[41] The conditions of extradition under this law are quite typical – that is, double criminality and the presence of a concluded bilateral extradition treaty. Let us consider some specific provisions of this law.[42] For instance, Article 3 provides for the possibility of extradition of a criminal in the absence of an extradition treaty with a foreign state if there is a written decision from the President on this. In the event that a criminal who is extradited to South Africa has been acquitted in this criminal case or a criminal case has not been initiated, or criminal prosecution has not been carried out within six months, then by decision of the Minister of Justice of South Africa, that person is subject to being transferred back to the requesting state (Art. 20). The South African Minister of Justice receives extradition requests through diplomatic channels. Thus, the Minister of Justice of South Africa has exclusive competence in the issue of extradition, while the court performs the function of verifying evidence on behalf of the requesting party.[43]

In the case of *President of the Republic of South Africa v. Quagliani*, the Constitutional Court of South Africa ruled on the legal nature of extradition, recognizing that it includes something more than just international relations or an extradition based on the principle of reciprocity.[44] Extradition includes three important components: the sovereign actions of two states; the appeal of one state to another state with a request for the extradition of an alleged criminal and the extradition of the requested person for the purposes of trial and sentencing on the territory of the requesting state (in Russia, such procedures are called extradition for criminal prosecution or execution of a sentence). Thus, extradition co-exists without violating state sovereignty or the principle of (international) "politeness" between states and also functions at the intersection of domestic and international law.

6. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in Some BRICS Candidate States

Currently, the number of countries that have submitted official applications to join the BRICS organization stands at seven – these are Algeria, Argentina, Egypt, Bahrain, Saudi Arabia, the UAE and Iran. Several other countries have also expressed their desire to join the BRICS group, namely Indonesia, Mexico, Greece, Thailand, Turkey and many others.

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41 Extradition Act 67 of 1962. South African Government. https://www.gov.za/sites/default/files/gcis_document/201505/act-67-1962.pdf

42 Van Zyl Smit, D. (1995). Reentering the International Community; South Africa and Extradition. *Criminal Law Forum, 6*, 369–377.

43 Watney, M. (2012). A South African Perspective on Mutual Legal Assistance and Extradition in a Globalized World. *Potchefstroomse Elektroniese Regsblad, 15*(2), 292–318.

44 *President of the Republic of South Africa v. Quagliani* (2009) 2 SA 466 (CC).

It is well acknowledged that each state has its own respective distinctive features and traditions related to the legal regulation of individual institutions and its legislation. Given the recent expansion of the BRICS organization, as well as the systematic and progressive strengthening of cooperation between the Russian Federation and the BRICS member states on a number of key foreign policy issues, this organization should set itself the goal of developing and forming a legal framework for cooperation on legal issues, including in the field of international cooperation in the field of criminal proceedings.[45]

One of such topical issues, in particular, is the extradition of persons for criminal prosecution or execution of a sentence. It should be noted that for a better analysis of the national legal regulation of the extradition of the BRICS candidate states, first and foremost, it is necessary to understand which legal system the state belongs to, what are the main sources of law, whether legislation has been codified, whether special laws on extradition have been adopted and whether the provisions have been incorporated into the national Code of Criminal Procedure.

The **People's Democratic Republic of Algeria** has a mixed (hybrid) legal system. It exists in close interaction between the French legal tradition and Muslim law. At the same time, it is formally fixed that the main source of law comprises normative legal acts (such as the Constitution of Algeria, laws, presidential decrees and by-laws). In turn, the norms of Islamic law govern family law (Algerian Family Code) and probate law.

The basic source of the national legal regulation of extradition in Algeria is the Code of Criminal Procedure.[46] Section 1, Book 7 of the Algerian Code of Criminal Procedure is dedicated to international cooperation in the field of the extradition of criminals.[47] This section contains five chapters, namely conditions of extradition, extradition procedure, consequences of extradition, transit and seizure of items and includes Articles 694 to 730, respectively.

Article 694 establishes that "unless otherwise provided by international treaties or conventions, the conditions, procedure and consequences of extradition are determined by this act." The provisions of international treaties have priority over the Code of Criminal Procedure of Algeria (Art. 132 of the Constitution).[48] Furthermore, Article 588 of the Code of Criminal Procedure of Algeria, Algeria extends its criminal jurisdiction over crimes committed by a foreign citizen "against the security of the

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45 Astakhov, E. (2016). The Place of BRICS in World Politics. *Herald of MGIMO University*, 1(46), 42–50. (In Russian).

46 International Centre for Missing & Exploited Children. (2022, August). *Algeria, People's Democratic Republic of*. https://cdn.icmec.org/wp-content/uploads/2022/09/ICMEC-Algeria-National-Legislation-_Aug-2022.pdf

47 Algerian Penal Code of Procedure, 2007.

48 Algeria's Constitution of 2020. ConstituteProject.org. https://www.constituteproject.org/constitution/Algeria_2020.pdf?lang=en

Algerian State," counterfeiting and the person is subject to criminal prosecution under Algerian law.

The conditions for the extradition of criminals, as well as the sending of an extradition request and the execution of a foreign extradition request are contained in Article 697. In particular, these conditions include the following:

1. The principle of double criminality.

2. The minimum sentence for a crime is two years of imprisonment.

3. The term of serving (execution) of a sentence of an already convicted person is equal to or more than two months.

4. Attempted crime or complicity in a crime is subject to the principle of double criminality.

5. If a person has committed several crimes, the minimum term is determined by the aggregate and must exceed (or be equal to) two years of imprisonment;

6. Military personnel, sailors and other such persons shall be extradited in accordance with Article 697, provided that they have committed a crime under common law punishable by Algerian law.

In accordance with Article 698 of the Code of Criminal Procedure of Algeria, the request for extradition cannot be executed in the following cases: (a) the person at the time of the commission of the crime is recognized as an Algerian citizen; (b) the statute of limitations of the crime has expired; (c) the crime or misdemeanor is of a political nature or the request for extradition is sent on the basis of a political motive; (d) the crime or misdemeanor was committed on the territory of Algeria; (e) the crime was committed outside Algeria, though the person is already being prosecuted or has been convicted in Algeria (the principle of *non bis in idem*) and (f) the person has been amnestied.

Another important source in the field of extradition is the Algerian Constitution.[49] Article 50 of the Constitution establishes the following: "No person may be extradited except in accordance with a ratified international agreement or in accordance with extradition legislation. Under no circumstances should a refugee legally entitled to political asylum be transferred or extradited."

In the practice of international cooperation on extradition, the imposition of such a type of punishment as the death penalty is in many cases recognized as the basis for refusing extradition requests. However, it should be mentioned that the death penalty, in accordance with the Algerian Criminal Code, is provided for in more than thirty crimes, that is to say, its use is legalized in Algeria.[50]

The **Argentine Republic** follows the Romano-Germanic legal system. Argentine legislation is recognized as the fundamental source of law. Uncharacteristically for the Romano-Germanic legal system, judicial precedent, in particular, "plenary decisions," is also considered the source of law in Argentina (the Court of Appeal).

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[49] Constitution of Algeria of 1996. Konstitutsii. https://worldconstitutions.ru/?p=53. (In Russian).

[50] Algerian Penal Code of Procedure, 2007.

Argentina is a federal state, which includes twenty-three provinces. It is noteworthy that Article 8 of the Argentine Constitution in this regard establishes the obligation for all provinces to extradite criminals on a reciprocal basis.[51]

Argentina has also adopted Law No. 24,767 "On International Cooperation in Criminal Matters."[52] It includes such key issues of legal regulation of international cooperation in the field of criminal proceedings as extradition, mutual legal assistance in criminal cases, execution of sentences, establishing criminal jurisdiction etc. The central authority responsible for the extradition of criminals is the Ministry of Foreign Affairs, International Trade and Worship of Argentina.

In accordance with Articles 6 and 7 of this Law, the following conditions for the extradition of criminals are established:

1. Extradition for criminal prosecution – a minimum period of one year;

2. Extradition for execution of a sentence – the minimum term of serving (execution) the sentence of a convicted person must exceed one year at the time of sending the request for extradition;

3. If a person is accused of several crimes, it is sufficient for extradition that at least one crime is recognized as extraditable;

4. Compliance with the principle of double criminality.

Additionally, Article 8 of the Law establishes the following grounds for refusal of extradition:

1. A person may be subjected to torture or harsh treatment;

2. The crime for which extradition is requested is political in nature;

3. If the crime in connection with which extradition is requested is a crime under military criminal law but at the same time is not a crime under ordinary criminal law;

4. The person is being prosecuted on the basis of race, nationality etc.;

5. A death penalty is imposed for a crime, and the requesting party has an obligation not to use it.

The Law also establishes a list of crimes that cannot be recognized as political. Article 9 states that the following acts cannot be recognized as political crimes under any circumstances:

1. War crimes and crimes against humanity;

2. Encroachment on the life, physical integrity or freedom of the head of government or head of state, or a member of their family;

3. Encroachment on the life, physical integrity or freedom of diplomatic personnel or other persons enjoying international protection;

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[51] Argentina's Constitution of 1853 (reinstated in 1983, with Amendments through 1994). ConstituteProject.org. https://www.constituteproject.org/constitution/Argentina_1994.pdf?lang=en

[52] Ley 24.767 de Cooperación Internacional en Materia Penal [Law 24.767 on International Cooperation in Criminal Matters]. (1996). http://www.cooperacion-penal.gov.ar/userfiles/LEY%20DE%20COOPERACION%20INTERNACIONAL%20EN%20MATERIA%20PENAL.pdf

4. An attack on the life, physical integrity or freedom of the population or innocent civilian personnel not involved in violence caused by armed conflict;

5. Any crime that comprises the safety of civil aviation or navigation;

6. Crimes in respect of which the Argentine Republic has assumed an international legal obligation to extradite or prosecute;

7. Terrorist acts.

Article 10 stipulates that an extradition request must be refused if the execution of the request (or the consequences of its execution) may violate the sovereignty, security, public order or other essential public interests of Argentina. In addition to Articles 8 and 10, Article 11 also contains such grounds for refusal of extradition as:

1. The expiration of the statute of limitations of criminal prosecution;

2. The person has already been convicted in the requesting state for the act for which extradition is requested;

3. The person has not reached the age of criminal responsibility under the legislation of Argentina;

4. The Court has rendered a decision in absentia and the requesting state does not provide sufficient guarantees that the case will be resumed to hear the arguments of the convicted person in order to allow him to assert his rights and a fair judgment will subsequently be rendered;

5. If the requesting state, at the time of consideration of the extradition request, has not provided sufficient evidence that the time during which the wanted person is in places of deprivation of liberty is considered the time served by the person in connection with the criminal case that served as the basis for the request.

An Argentine citizen may also voluntarily decide on the place of his own criminal prosecution if criminal prosecution is being pursued by both the requesting state and the requested one, except in cases where a bilateral treaty providing for the obligation of extradition is not applicable to this case (Art. 12). However, the status of an Argentine citizen must be confirmed at the time of the commission of the crime and also be preserved when deciding on the place of criminal prosecution. If an Argentine citizen uses this right, the extradition will be refused. An Argentine citizen is subject to prosecution in Argentina in accordance with Argentine criminal law, provided that the requesting state itself agrees to this, waiving its own jurisdiction over this crime (crimes). Subsequently, the requesting state sends to the requested state the full range and list of available evidence necessary to bring a person to criminal responsibility, as well as for a qualitative investigation of a criminal case.

The **Kingdom of Bahrain** is a mixed (hybrid) legal system. The legislation of Bahrain includes a set of provisions of customary tribal law, Muslim and English law. British influence played a special role in the formation of modern Bahraini law. Now, the Constitution of 1973 (Art. 2), explicitly recognizes sharia norms as the fundamental source of law and Arabic as the state language.[53]

[53] Bahrain's Constitution of 2002. ConstituteProject.org. https://www.constituteproject.org/constitution/Bahrain_2002.pdf

The provisions on extradition are incorporated into the Criminal Procedure Code of Bahrain (Book 6, Arts. 412–425).[54] The central authority for extradition is the Ministry of Justice of Bahrain (Art. 417 of the CPC). In turn, the Supreme Criminal Court considers extradition requests, compliance by the requested party with the conditions of extradition and compliance with all procedural rules (Art. 419 of the CPC).

Article 413 regulates the conditions of extradition, namely:

1. The crime must be committed on the territory of the requesting state or outside its territory if the act is recognized as a crime under its legislation;

2. The act is recognized as a felony or a misdemeanor and the principle of double criminality is observed;

3. Imprisonment for a period of at least one year;

4. Conviction by a court sentence of imprisonment for a term of at least six months.

Article 415 of the Code of Criminal Procedure of Bahrain, in particular, also contains a number of grounds for refusing extradition. First of all, a request for extradition cannot be issued for a person who is a citizen of Bahrain. Non-compliance with the principle of *non bis in idem* also serves as a basis for refusal to execute an extradition request. Extradition will be refused if a crime against military service has been committed. In the context of political crimes which are a classic reason for refusing extradition, there are several complex nuances and subtleties. Thus, extradition is refused in the following cases enumerated below regardless of whether a political crime has been committed (even if committed for a political purpose):

1. An attack on kings and heads of state of countries, their wives, direct family members or relatives of the mother-in-law;

2. An attack on crown princes or deputy heads of state;

3. Premeditated murder and theft, accompanied by violence against individuals, representatives of authorities or against transport and communication facilities.

The **Islamic Republic of Iran** is a mixed (hybrid) legal system. It contains the features of the Romano-Germanic and Muslim legal systems. The 1979 Constitution fixed the mandatory compliance of all adopted laws with sharia norms (Art. 4).[55] Even though at the beginning of the 20th century Iran underwent the Europeanization of legislation, over time (particularly after the 1979 revolution), all the norms were brought into line with Muslim principles and customs; however, the legal and technical component of the Romano-Germanic tradition was preserved.

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[54] Code of Criminal Procedure No. 46 of 2022. UNODC Sherloc. https://sherloc.unodc.org/cld/uploads/res/document/bhr/code-of-criminal-procedures_html/Bahrain_Code_of_Criminal_Procedure_Decree_No_46_of_2002_EN_translation_-_non_official.pdf

[55] Constitution of the Islamic Republic of Iran of 1979. Konstitutsii. https://worldconstitutions.ru/?p=83. (In Russian).

The Iranian Law "On Extradition" of 1960 is devoted to the legal aspects of international cooperation on extradition.[56] With regard to the conditions of extradition, a request for the extradition of a person must be approved by Iran if the requested person has been prosecuted or convicted of one of the crimes mentioned in this Law (Art. 2), namely:

1. The crime is committed by a citizen of the requesting state on its territory (the territorial jurisdictional principle).

2. The crime is committed by a citizen of the requesting state outside its borders (active personal jurisdictional principle).

3. The crime is committed by an alien outside the requesting state (protective jurisdictional principle).

In all of these instances, we are talking about the establishment of criminal jurisdiction over the committed crimes.[57] At the same time, the law also has a vague but standard wording for all three mentioned provisions, which is as follows: "provided that the public interests of the requesting state are not harmed." It is also mandatory to comply with the principle of double criminality (Art. 4) and the principle of *non bis in idem*. However, in the principle of *non bis in idem* there is also an exception (Art. 11):

If a person is already being prosecuted by Iranian law enforcement agencies, the request must be rejected. However, Iran may temporarily extradite a person to the requesting State for the period of investigation only on condition of subsequent extradition back to Iran. This provision applies if the request is made for the purpose of paying the accused debts in the requesting State.

Extradition for criminal prosecution is possible only if the maximum penalty for the crime is at least one year of imprisonment, and extradition for execution of the sentence can be carried out only if the sentence term is more than two months.

Article 8 of this Law establishes the following grounds for refusal of extradition:

1. The person is a citizen of Iran.

2. The crime has a political character (nature) or is based on the essence of the extradition request or it is evident that the extradition is requested for political purposes. In cases of civil wars or internal conflicts, a request for extradition is not executed, except in cases where the crimes committed are cruel and contrary to the rules and customs of warfare. In such cases, the extradition itself will be carried out after the end of civil wars. At the same time, murder cases will not be considered a political crime.

3. Whether a crime is committed on the territory of Iran or whether it is committed outside the territory of the government of Iran, the person is subject to court proceedings, prosecution or conviction within the territory of Iran.

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[56] Extradition Law of 1960. UNODC Sherloc. https://sherloc.unodc.org/cld/en/legislation/irn/extradition_law/chapter_1/article_1-11/chapter_1.html

[57] Tatarinov, M. (2023). *Criminal Jurisdiction in International Criminal Law* (p. 828). Prometei. (In Russian).

4. The person has committed a war crime.

5. The statute of limitations for criminal prosecution has expired.

The **United Arab Emirates** has a mixed (hybrid) legal system. The UAE Constitution of 1996 recognizes sharia as the main source of law. It is worth noting that the legislation in the UAE is quite codified. In 1970, the UAE adopted the Criminal Code, the CPC and the CPC. Case law also has a special role: the decisions of the Supreme Court are precedent-setting in nature. Moreover, it should be noted that the Supreme Court in its decisions is guided not only by sharia norms and laws but also recognizes customs as a source of law.

UAE legislation criminalizes a number of cross-border (transnational) crimes such as human trafficking, cybercrime, money laundering and terrorist financing. Special laws have been adopted on each of these issues.[58]

The central authority in the field of extradition in the UAE is the Department of International Cooperation of the Ministry of Justice. This Department receives the requests for extraditions, registers them and sends them for consideration to other structural units to resolve the issue of compliance with the conditions of extradition, as well as the absence of grounds for refusing extradition. The main regulatory legal act regulating issues of international cooperation in the field of extradition of persons for criminal prosecution or execution of a sentence is Federal Law No. 39, "On International Cooperation in the Field of Criminal Proceedings" of 2006.[59] This Law provides for the following conditions for the extradition of a criminal (Arts. 7–8):

1. The minimum term of punishment for a crime or an alleged criminally punishable act must be no less than one year of imprisonment.

2. If there is a request for the execution of a sentence, the minimum term of serving this sentence must be at least six months.

3. When interpreting whether an act is a crime both in the requested and requesting state, the essential characteristics (composition of the crime) of the act itself are taken into account rather than its designation or its individual elements.

4. If extradition is requested in respect of several crimes, it is sufficient that at least one of these crimes is recognized as extraditable.

The grounds for a refusal of extradition are provided for in Article 9 of the abovementioned law and are as follows:

1. The person for whom extradition is requested is a citizen of the UAE.

2. The judicial authorities of the UAE have complete jurisdiction over the requested crime.

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[58] Ministry of Justice of the United Arab Emirates. (2020). *Guide to the International Judicial Cooperation in Criminal Matters (Surrender of Persons and Things – Judicial Assistance)*. https://www.moj.gov.ae/Content/Userfiles/Assets/Documents/ce11fada.pdf

[59] Federal Law No. 39 of 2006 "On International Judicial Cooperation in Criminal Matters". United Nations Office on Drugs and Crime. https://www.unodc.org/uploads/icsant/documents/Legislation/United%20Arab%20Emirates/English/FEDERAL_LAW_NO.39_of_2006.pdf

3. A crime is recognized as a political or related to a political crime, with the exception of the following crimes:

crimes of a terrorist nature, war crimes, genocide, crimes of aggression against the head of state or any of his family members, his deputies, or any of the members of the Supreme Council or members of his family, or the Prime Minister, or a crime in relation to other persons enjoying international protection in addition to crimes of aggression against the government and the interests protected by it.

4. Extradition is requested for violation of military duties.

5. The request for extradition is based on race, gender, religion, nationality, ethnic origin, political beliefs or if there is an encroachment on the personal position of any person.

6. Non-compliance with the principle of *non bis in idem*.

7. The statute of limitations for criminal prosecution has expired.

8. A person may be subjected to torture, inhuman or degrading treatment or severe punishment that does not correspond to the crime committed in the requesting state or if minimum guarantees of respect for the rights of the person prescribed by the Code of Criminal Procedure may not be provided.

It should be noted that in many cases the conditions of extradition are unambiguous and generally recognized, for example, the principle of double criminality. On the other hand, such grounds as politicization of the crime or ill-treatment of a suspect (convicted) person are evaluative in nature and can be used by the parties at their discretion. In general, in the practice of international cooperation on extradition, there are both general conditions for the extradition of persons and grounds for the refusal of extradition and special ones, which are explained, in fact, by the socio-cultural and legal traditions of a particular state.

Conclusion – Prospects of Legal Regulation of Extradition in the BRICS States

The legal regulation of extradition in the BRICS states is predominantly intricate and complex. There are no serious gaps in the legal regulation of the basic provisions concerning interstate and interdepartmental cooperation in the field of extradition. The majority of the BRICS countries, including candidates for membership in the BRICS, have adopted special acts regulating the extradition of criminals (the only exceptions are Russia, Algeria and Bahrain). All the above-mentioned factors indicate that new opportunities and prospects are opening up in terms of legal integration in the field of extradition in the BRICS states, as well as in some states that have submitted official applications to the BRICS organization. The findings of this study revealed that there are no significant barriers or restrictions for such integration.

The development and possible adoption of a "BRICS convention on extradition" is not a premature decision. Of course, the adoption of such an act requires the will

of the foreign ministers of each BRICS member state. Given the varied legal, religious and cultural traditions in the different BRICS member states, the legal regulation of extradition conditions in these BRICS member states is also different and has its own distinctive features. Moreover, at the national level there is a sufficiently high-quality regulatory and legal framework and well-established judicial practice in the field of the extradition of persons for criminal prosecution or execution of a sentence. In particular, the BRICS member states have adopted a number of special legal acts (including codes and laws) on extradition, which include:

1. Decree-Law of the Federal Republic of Brazil No. 394 of 1938, Law of the Federal Republic of Brazil No. 13,445 of 1980.
2. The Extradition Act of 1962 (India).
3. The Extradition Act of 1962 (South Asia).
4. The Law of the People's Republic of China on Extradition of 2000.
5. The Criminal Procedure Code of the Russian Federation of 2001 (Part 5 "International Cooperation in Criminal Proceedings," Chapter 54 "Extradition of Persons for Criminal Prosecution or Execution of a Sentence").

The mentioned normative legal acts describe in detail the procedure for cooperation in the field of extradition; more specifically, they provide for criminal procedural mechanisms of interstate and interdepartmental cooperation on extradition, define a list of extraditable crimes, regulate the conditions for extradition and the grounds for refusing to execute an extradition request, resolve the problems of establishing the criminal jurisdiction of states over crimes as well as contain other essential provisions (see Table 1 below).

Table 1

Distinctive Features of the Legal Regulation of Issuance of an Extradition Request

	Special law	**Legal system**	**Exclusion from political crimes**
Brazil	+	Romano-German	+
Russia	–	Romano-German	–
India	+	Mixed (hybrid)	+
China	+	Socialist (or mixed)	–
South Africa	+	Mixed (hybrid)	–
Algeria	–	Mixed (hybrid)	–
Argentina	+	Romano-German	+
Bahrain	–	Mixed (hybrid)	+
Iran	+	Mixed (hybrid)	+
United Arab Emirates	+	Mixed (hybrid)	+

Source: Author, based on open data.

It is necessary to comment on the provisions shown in Table 1. For example, Argentina and the UAE have adopted special laws on international cooperation in criminal proceedings with extradition serving as one of the objectives, respectively. There is no special act in Russia and Bahrain, but the provisions on extradition have been incorporated into each country's respective national Code of Criminal Procedure. Previously, the concept of so-called politicized (political) crimes was discussed. Of course, it is also necessary to develop a list of those (special categories) crimes that will not be recognized as political and for which the person will be extradited under any circumstances. Such provisions are provided for in the legislation of the UAE (Art. 9 of the Law "On International Cooperation in Criminal Proceedings"), Iran (Art. 8 of the Law of Iran "On Extradition"), Argentina (Art. 9 of the Law "On International Cooperation in Criminal Matters"), Brazil (Art. 81 of the Brazilian Law No. 13,445 of 1980 and Art. 2 of Decree-Law No. 394 of 1938) and India (Annex of the Extradition Act) legislation. However, Bahrain does include some special political crimes (Art. 415 of the Criminal Procedure Code of Bahrain) for which an extradition request will be refused. Something similar can also be found in the SAARC Convention on the Suppression of Terrorism (Arts. 2).[60] It mentions that states and their competent authorities may, by agreement, come to the conclusion that certain serious crimes cannot be equated as "a political crime or a crime related to a political crime or a crime caused by political motives." Considering all of these variations and distinctions, it is clear that the issue of the adoption of a BRICS convention on extradition requires discussion and elaboration at the highest level and enough time should be given to making decisions in this area.

According to the data in Table 1, three legal systems are distinguished, specifically mixed, socialist and Romano-German legal systems. It is noteworthy that the exclusion of political crimes from the list of crimes stipulated in the BRICS states is provided for only in the legislation of Brazil and India, whereas four out of five BRICS candidate states do contain provisions on the extradition of political criminals who have committed specific individual crimes.

As for bilateral cooperation on extradition, the Russian Federation has not concluded an extradition treaty with only one BRICS member state, namely the Republic of South Africa. Nevertheless, we believe that one of the initial stages of improving and strengthening cooperation among the BRICS member states should be the conclusion of relevant bilateral extradition treaties. Of course, this is a rather laborious and lengthy process, but it is necessary to eliminate primary disagreements before the immediate development of a BRICS convention on extradition. Thus, Table 2 schematically shows the presence or absence of a concluded bilateral extradition treaty between the different BRICS states (see Table 2 below).

[60] SAARC Regional Convention on Suppression of Terrorism, 1988. United Nations Treaty Collection. https://treaties.un.org/doc/db/Terrorism/Conv18-english.pdf

Table 2

Concluded Bilateral Extradition Agreements Between BRICS States

Brazil	Russia	India	China	South Africa	
Brazil	&	+	+	+	–
Russia	+	&	+	+	–
India	+	+	&	–	+
China	+	+	–	&	+
South Africa	–	–	+	+	&

Source: Author, based on open data.

Based on a study of the detailed legal regulations, the availability of special laws and a clear extradition procedure both in the BRICS member states and in the BRICS candidate states, it can be concluded that there are no serious gaps in extradition issues within the legislation of these states. By carrying out a thorough analysis and taking into consideration the peculiarities of the legislation of these states, the mechanisms of interaction between states and their competent authorities could be elevated to a qualitatively new level. Additionally, it is crucial to address the qualitative development and advancement in the formulation of the international legal framework regulating extradition within the BRICS format.

The research further shows that it is necessary to develop and adopt a BRICS convention on extradition, provided that these candidate states also become full members of the BRICS alliance in the near future. Obviously, such integration processes cannot be imagined without also taking into account the political will of the heads of state and foreign ministries. The basic provisions of the proposed BRICS convention on extradition can be based on existing regional conventions and their criminal procedure mechanisms, for example, the European Convention on Extradition, the Inter-American Convention on Extradition and others. It is also important to pay attention to those extradition procedures that are provided for in universal international treaties, such as the UN Convention against Transnational Organized Crime. At the same time, it is necessary to achieve consensus on a number of controversial issues, such as the grounds for refusing extradition, and make them acceptable to all BRICS member states.

It is worth noting that the adoption of a comprehensive and special act providing for key criminal law and criminal procedure mechanisms within the framework of global international organizations, such as the United Nations, may likely prove to be an impossible task. Nonetheless, the use of regional organizations as a platform for building a dialogue greatly simplifies this task because the fewer participating states, the easier it is to agree and find compromises.

Due to the strengthening of the Russian Federation's cooperation with Asian states and its shift "to the east" in the foreign policy arena, it would be advisable to consider the possibility of legal integration within an organization such as BRICS, including on extradition issues. In addition to topical issues of international policy, the BRICS organization actively implements the integration and harmonization of legal provisions. Thus, each of the BRICS member states strives to fight crime at the national level; subsequently, on the basis of accepted developments and practices and taking into account national legal traditions, joint communiques are adopted within the framework of the BRICS group, and plenary sessions of BRICS working groups on counterterrorism and meetings of foreign ministers, as well as meetings of the BRICS Antiterrorist Working Group are held.

During the process of development and preparation for the adoption of a BRICS convention on extradition, it is essential to reach a consensus on a number of significant and problematic issues, including the following:

1. Eliminate differences in the understanding of certain legal terms as well as criminal procedural mechanisms (e.g., linguistic and semantic country differences).

2. Provide mechanisms for resolving disputes between states and their law enforcement agencies.

3. Take into account the special grounds for refusing the extradition of criminals in accordance with the legislation of the BRICS states.

4. Distinguish in detail the establishment of dispositive and imperative principles in matters involving the extradition of criminals. For example, distinguish between cases in which the state is obliged to extradite a criminal and those in which the law enforcement agencies possess discretion.

5. Establish rules regarding competing requests (collision of requests).

6. Simplify cooperation and minimize the time for consideration of extradition requests.

7. Adopt a standard extradition request.

8. Consolidate the principle of respect for the sovereignty of states in the implementation of interstate and interdepartmental cooperation.

8. Approve the list of crimes that the party shall not recognize as a political crime (politically motivated).

At the same time, in the process of working on the draft convention and subsequently after its adoption, states parties, as well as legislators, need to systematically and progressively come to the need to harmonize, unify and internationalize national legislation and legal provisions in the field of extradition. It is obvious that such integration processes are possible only when taking into account the peculiarities of the legal, socio-cultural and ethnic traditions of each of the BRICS states.

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ARTICLE

Genomic Security in the Criminal Policies of the BRICS Countries

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Abstract. This article is devoted to the legislative regulation, court practice, and criminal policy in the field of genomic security within the jurisdiction of the BRICS countries. Researchers examine China's experience with national legal regulation on matters related to genomics, the legal practices regarding genomic security in India, and the legal experience with genetic regulation of South Africa. For the longest time, the Chinese model of legal regulation had remained in its infancy; however, the high-profile case of a biologist named He Jiankui, who genetically edited the human genome, raised ethical issues that necessitated urgent legislative settlement. As a result, amendments were introduced to the criminal and civil codes and stricter

state control was established over the research activities of scientists and the licensing of clinical trials. In South Africa, for instance, tribal genomic sovereignty is protected by local laws. Nevertheless, the free circulation of genetic data is a cause for concern, licensing control by the South African government is not adequately developed, and there is a lack of sufficient knowledge and training among scientists.

Keywords: BRICS; ethics; legal regulation; security; human rights; criminal policy; biotechnology; genome; DNA; gene editing; CRISPR; reproductive medicine; genomic.

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Introduction

In light of the significant relevance of scientific studies on the human genome and their real-world applications in medicine, forensics, agriculture, and other fields, in recent years there have been active requests arising in this area regarding the regulation of legal, ethical and moral issues, including pressing issues of biosafety and the genomic sovereignty of entire nations.

Experimentation with human genes and the radical invasion of the human genome are not considered acceptable in the world today, as they are still not fully aligned with international and national norms, as well as professional ethical standards.[1] Beyond the uncertainties in the legal framework for biosafety and the chaotic use of genetic technologies by private individuals, this state of affairs is attributed to the subsequent irreversible reactions resulting from "genetic enhancement" and "genome editing." These reactions can include unintentional or deliberate changes to the genetic code, which are subsequently transmitted to future generations who in turn have not consented to such consequences.

[1] Li, J.-r., et al. (2019). Experiments that Led to the First Gene-Edited Babies: The Ethical Failings and the Urgent Need for Better Governance. *Journal of Zhejiang University Science, 20*(1), 32–38.

More than five years have passed since the heated debate surrounding the first engineered babies born in China distracted the entire community from the real benefits of gene editing technologies that could make a real difference in the lives of adults with their serious medical conditions. Some fifty experimental studies are currently being carried out worldwide on human volunteers whose genes are being edited to treat diseases ranging from cancer to HIV and blood diseases (such as sickle-cell disease), forty of these using the CRISPR (Clustered Interspaced Short Palindromic Repeats) or "genetic scissors" technology.[2]

International organizations and nongovernmental scientific associations agree that there is an urgent need for an effective ethical and legal framework aimed specifically at regulating research in the field of genome editing. Over twenty countries now explicitly prohibit germline modification in human reproduction in their legislation, including the United Kingdom (UK), Australia, Germany, France, Netherlands, Belgium, Japan, Canada, Brazil, and South Korea. The BRICS countries, led by China, Russia, and India, are setting an important vector in this direction.

Our empirical basis for this study is the current regulations and ethical standards for genetic biotechnology in the Russian Federation, as well as in several other BRICS countries such as China, India, and South Africa. Techniques of knowledge and data collection, such as the formal-logical method, systematic analysis, statistical techniques, legal-technical, and jurisprudential analysis of the texts of laws and jurisprudence, form the methodological basis of the work. The study also makes use of private scientific methods, such as empirical description, comparative legal method, methods of exegetics and hermeneutics, structural and functional methods, etc.

As for domestic legislation, some states expressly prohibit germline editing through criminal liability, others prohibit it through administrative sanctions, and still others regulate this area through non-binding guidelines.[3] It should be noted that genome editing for research purposes is permitted in the United States and European countries but artificially produced embryos must be destroyed after the experiment, i.e., it is forbidden to implant them for a woman to carry to term.

The Chinese approach to human genome editing is the most liberal approach in all of Southeast Asia, particularly because there is still no mandatory authorization required for genetic diagnosis, although other forms of genetic manipulations in the management of genetic resources are strictly licensed.[4]

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[2] Regalado, A. (2023, March 7). Forget Designer Babies. Here's How CRISPR Is Really Changing Lives: The Gene-Editing Tool Is Being Tested in People, and the First Treatment Could Be Approved This Year. *MIT Technology Review*. https://www.technologyreview.com/2023/03/07/1069475/forget-designer-babies-heres-how-crispr-is-really-changing-lives/

[3] Yotova, R. (2020). Regulating Genome Editing under International Human Rights Law. *International & Comparative Law Quarterly, 69*(3), 653–684.

[4] Trikoz, E. (2021). Criminal Law Codification of the Norms of Genomic Law in the EU and BRICS Countries. In *XI International Congress of Comparative Law "Emergency Situations: Problems of Legal Regulation in Modern Society"* (p. 6). http://dx.doi.org/10.2139/ssrn.4126519

1. China's Experience with National Legal Regulation in the Field of Genomics

The "Made in China 2025" strategy document sets ambitious goals for China to become a global leader in genetic technology production, with an emphasis on biomedicine and the development of high-performance medical technologies. In January 2022, the Ministry of Commerce and the National Development and Reform Commission issued a general opinion on liberalizing market access in the southern metropolitan area of Shenzhen as part of efforts to further promote reform and openness in the Guangdong-Hong Kong-Macao Greater Bay Area. The document calls for easing market access restrictions for pharmaceutical drugs and medical devices, as well as streamlining permitting processes and access services for human genetic resources.

Over the past decade, there has been impressive financial support for genetic and genomic development in China, both at the government and commercial company level.[5] The "Thousand Talents Plan" or *Qianren Jihua* is considered to be the leading scientific program of the central government of the People's Republic of China (PRC). With the involvement of almost every government agency in China, this program is the most prestigious and influential government science program in the world. *Qianren Jihua*'s overall aim is to promote financial and specific scientific areas, such as the genetics industry and biotechnology in general, as these are considered of paramount and strategic importance by the Chinese government.[6]

One factor that has contributed to the increased attention in this area has been the pioneering yet controversial experiment of Chinese scientist, He Jiankui (贺建奎; born 1984), who by coincidence and talent had been invited to the Chinese government's aforementioned program. This associate professor with the Southern University of Science and Technology publicly announced in November 2018 that he had previously conducted a genetic experiment in his Shenzhen research laboratory, secretly and without a license, to create the world's first children with an artificially altered genome-DNA. This DNA was altered to prevent it from contracting HIV (the "designer babies" effect) by applying the revolutionary "genetic scissors" technology (CRISPR/Cas9). A third child was born the following year using this method.

He Jiankui took advantage of China's lack of an explicit ban on editing a viable human embryo to carry out a risky experiment without expecting to be prosecuted by the authorities. He Jiankui's manuscript shows how he ignored ethical and scientific norms in creating the gene-edited twins Lulu and Nana.[7] And predictably,

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5 National Science Board. (2012). *Science and Engineering Indicators*. National Science Foundation. http://www.nsf.gov/statistics/seind12/pdf/seind12.pdf

6 Jing-Bao, N. (2018, December 8). *He Jiankui's Genetic Misadventure: Why Him? Why China?* The Hastings Center. https://www.thehastingscenter.org/jiankuis-genetic-misadventure-china/

7 Regalado, A. (2019, December 3). China's CRISPR Babies: Read Exclusive Excerpts from the Unseen Original Research – He Jiankui's Manuscript Shows How He Ignored Ethical and Scientific Norms in Cre-

his act was universally condemned not only by Chinese government agencies and international organizations, but also by the scientific community around the world, including experimental geneticists and bioethicists.[8]

One year later, in December 2019, a daring Chinese biophysicist was sentenced by the Nanshan District People's Court of Shenzhen to three years in prison and fined RMB 3 million for illegally editing the genes of three human embryos intended to be reproduced in the womb of a biological mother, which resulted in the birth of three genetically modified babies. The court said in its verdict that researcher He Jiankui, "in the pursuit of personal fame and gain," had "deliberately violated" the country's medical regulations and "rashly applied gene editing technology to human assisted reproductive medicine." He Jiankui's research was illegal because it had violated regulations that had been in place for more than fifteen years, prohibiting unethical or immoral research on the human genome. Two other scientists from two medical institutes in Guangdong Province – Zhang Renli and Qin Jinzhou – were also sentenced to two and a half years in prison, respectively, and fined for illegal gene editing in the field of assisted reproductive medicine.

Still, the field of human genome editing in China remains largely unregulated in the form of a comprehensive law. In the 1990s and 2010s, China progressively strengthened legislation on genomic research, the handling of genetic information, and the operation of genetic data biobanks. The "Reproductive Technology Act" prohibits the use of embryos for commercial goals. The "Maternal and Child Health Protection Law" 1995 regulates the conduct of genetic tests, which does not require authorization for genetic diagnosis. However, these tests can be only performed by a physician who is licensed by the Ministry of Health of the PRC to carry out genetic tests.

In 1998, the State Council adopted "Interim Measures for the Management of Human Genetic Resources." Secondary legislation has also been used, most notably the 2003 Ethical Guiding Principles for Research on Human Embryonic Stem Cells, which sets out a detailed procedure for conducting such research. For example, artificially created embryos can only be studied for fourteen days and cannot subsequently be implanted into the human body. It also established the principle of free and informed consent. In 2008, China established its first independent ethics committee at the Shanghai Clinical Research Centre, which is guided by the World Health Organization's (WHO) "Principles of Conduct for Ethics Committees Reviewing Biomedical Research" and aims to protect the rights of patients involved in clinical research and manipulation.

Under the auspices of the Ministry of Science and Technology of the State Council of the People's Republic of China, the "Guidelines for the Collection, Trade, Export,

ating the Gene-Edited Twins Lulu and Nana. *MIT Technology Review*. https://www.technologyreview.com/2019/12/03/131752/chinas-crispr-babies-read-exclusive-excerpts-he-jiankui-paper/

[8] Krimsky, S. (2019). Ten Ways in Which He Jiankui Violated Ethics. *Nat Biotechnology, 37*(1), 19–20.

and Export of Genetic Resources" were approved in 2015, and the "Regulation on the Procedure for Review and Approval of Optimization of Human Genetic Resources" came into force in 2017. Following the sensational case of He Jiankui, the Chinese Ministry of Science initiated a special review of the administrative management of licenses issued for the use of human genetic resources in 2018.

On November 29, 2018, the China's Vice Minister of Science and Technology called for the suspension of all work at He's lab, while the Minister of Industry and Information Technology announced a "zero tolerance" policy and banned He Jiankui from competing for a government award for which he had previously been nominated.[9] The China's Ministry of Education sent out notices to self-check gene-editing research in all universities and called for stricter ethics control in the area of research and "monitoring of research related to gene-editing technology."[10]

In early 2019, China's President Xi Jinping called for stricter regulation of gene editing through the implementation of new legislation, and China's State Council announced new regulations on "high-risk" technologies and the establishment of a National Medical Ethics Committee to supervise high-risk clinical trials and samples.[11]

Nevertheless, there has long been no formal criminal law prohibiting DNA editing of viable embryos in China. The government qualified CRISPR technology as a medical technology, not a medicine, so no central government approval was required. Even in the case of embryo research, it was sufficient to obtain approval from the ethics committee of the hospital or IVF clinic to ensure that patients gave informed consent and were not faced with unnecessary risks. This is why such research flourished in China, with twelve medical trials using CRISPR registered, surpassing the number of such trials carried out in the rest of the world at the time.

It was these legal gaps that were exploited by He Jiankui, a biotechnologist and geneticist. The implications of his semi-legal experiment were so significant that they led to amendments to the draft Civil Code and an expansive interpretation of the current Criminal Code of China. Consequently, it was proposed that human genes and human embryos also be included in the section of the Civil Code pertaining to the protection of individual rights. Thus, any experimentation with genes in adults or embryos that threatens public health or is contrary to ethical rules, respectively, could be considered a violation of fundamental human rights.[12]

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[9] Regalado, A. (2018, November 26). The Chinese Scientist Who Claims He Made CRISPR Babies Is Under Investigation. *MIT Technology Review*. https://www.technologyreview.com/2018/11/26/138957/the-chinese-scientist-who-claims-he-made-crispr-babies-has-been-suspended-without-pay/

[10] Yanan, W., & Fu, T. (2019, February 27). China Drafts Rules on Biotech after Gene-Editing Scandal. *Associated Press*. https://www.apnews.com/47aa8ffa382c4ae19eb6ec202f93ddf8

[11] Qiu, J. (2019, March 5). *China Creating National Medical Ethics Committee to Oversee High-Risk Clinical Trials*. STAT. https://www.statnews.com/2019/03/05/china-creating-national-medical-ethics-committee

[12] Cyranoski, D. (2019, May 20). China Set to Introduce Gene-Editing Regulation Following CRISPR-Baby Furore. *Nature*. https://www.nature.com/articles/d41586-019-01580-1

Most importantly, the recently adopted PRC National Regulations on the Management of Human Genetic Resources, 2019 (hereinafter Regulation) aims to strengthen the protection of genetic data and related human biomaterials and tighten the mechanism for regulating and monitoring their proper use.[13] The relevance of this regulation stems from the fact that pharmaceutical companies in China collect large amounts of genetic material for the purpose of drug trials and other research. Incidentally, it was the Chinese company SiBiono GeneTech Co. that developed the world's first commercial gene therapy product, Gendicine®, which was approved by Chinese regulators in 2003 for the treatment of head and neck malignancies with p53 gene mutations.[14]

The aforementioned document defines "genetic resources" as the relevant genetic material (human organs, tissues, and cells containing genes) and genetic information (data that have been obtained through genetic research). The legal status of 'genetic banks' is determined, and they are subject to a number of requirements, including a legal entity status, approved ethical rules for the use of genetic material, and an official license, the absence of which can entail both administrative and criminal liability, etc.

According to Article 4 of the regulation in question, the Ministry of Science and Technology of the State Council of the People's Republic of China has the main authority for regulating genomic research. This body is responsible for organizing research on human genetic resources in China as well as developing specific methods for declaring and implementing a registration system for human genetic materials (Art. 5).

This Regulation also contains the following important points:

1. The Chinese State is responsible for the rational use of human genetic resources in scientific research, diagnostic and therapeutic activities, and the development of the biomedical industry (Art. 6).

2. The collection, storage, use, and transfer of human genetic material by foreign individuals and organizations is prohibited (Art. 7).

3. The collection, storage, or use of human genetic material and genetic information must not endanger national security, public health, or the public interest (Art 8).

4. These activities must comply with ethical principles and approved standards, respecting the patient's right to privacy and the right to prior informed consent (Art. 9).

5. The commercial use of human genetic material is prohibited (Art. 10).

Moreover, it is important to note that the Ministry of Science and Technology has the authority to stop the activities of the offender, confiscate illegally collected,

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[13] National Regulations of the People's Republic of China on the Management of Human Genetic Resources (adopted at the 41st Executive Meeting of the State Council on March 20, 2019, are hereby promulgated and shall come into force on July 1, 2019). The State Council of the People's Republic of China. http://www.gov.cn/zhengce/content/2019-06/10/content_5398829.htm. (In Chinese).

[14] Melnikova, E., et al. (2019). International Practices of Registration and Use of Drugs for Gene Therapy in Clinical Practice. *Antibiotics and Chemotherapy, 64*(1-2), 61.

illegally stored, or illegally used genetic materials, as well as impose fines for violation of the articles of the Regulation in question (Arts. 36–43).

In April 2020, the Standing Committee of the National People's Congress considered a new draft of the Biosecurity Law,[15] which aims to introduce a separate chapter on biosecurity. The draft law proposes a specific chapter on the management of human genetic resources. It would provide for stricter administrative penalties for violations of regulations governing the management of human genetic resources.

In the PRC today, genomic research activities are carried out by research and scientific centers, educational institutions, and medical facilities. However, they are carried out under the direct support of the support and subject to governmental control. The PRC has three of the largest institutions working with large genomic databases and biobanks. They are the Chinese National Human Genome Centre in Shanghai (South Centre), the Chinese National Human Genome Centre in Beijing (North Centre), and the Beijing Institute of Genomics (Shenzhen).[16] In 2021, for example, it was revealed that the All-China Genetic Company, which sells prenatal tests around the world, developed them in collaboration with the Chinese military and used them to collect genetic data from millions of women, ostensibly for subsequent large-scale studies of population traits. This genetic data, which is collected from both within and outside China, is stored in the PRC government-funded gene database, one of the largest in the world.[17]

However, those and other organizations must be provided with the necessary certified equipment, and the research they carry out has to comply with an approved quality control system. Furthermore, strict records must be kept of the research carried out and be regularly sent to the State Council of China. All genomic research organizations must also adhere to an approved list of procedures and services, and all new methods of genomic research are required to undergo compulsory registration. In the cases of ethical problems or high risk, these methods are subjected to review by the competent state organizations.[18]

In the autumn of 2022, it became known that the Chinese authorities were collecting DNA samples throughout the Tibetan Autonomous Region, including from kindergarten children, without the explicit consent of their parents, as part of a campaign to "solve crimes." Systematic DNA collection began back in 2019 as part of the "Three Greats" initiative (inspection, investigation, and mediation) designed

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15 Biosafety Law of the People's Republic of China (Draft). (2020). http://law.foodmate.net/file/upload/202005/01/093552211434922.pdf. (In Chinese).

16 Yoshizawa, G., et al. (2014). ELSI Practices in Genomic Research in East Asia: Implications for Research Collaboration and Public Participation. *Genome Medicine, 6*(5). https://doi.org/10.1186/gm556

17 Needham, K., & Baldwin, C. (2021, July 7). Special Report: China's Gene Giant Harvests Data from Millions of Women. *Reuters*. https://www.reuters.com/article/us-health-china-bgi-dna-idUSKCN2ED1A6

18 Vasiliev, S. (2020). Analysis of Administrative and Legal Regulation of Genomic Medicine in China. *Bulletin of South Ural State University, Law Series*, 20(3), 112. (In Russian).

to strengthen China's intense grassroots policing system. State tenders were even issued for the establishment of local DNA databases in 2019.

Although several human rights activists have argued that the police had no credible evidence of criminal behavior to justify such collection, and people were not given the option to refuse to participate in the collection of genetic data, which is a serious human rights violation as such a measure "cannot be justified as necessary or proportionate."[19]

Despite the fact that Chinese law restricts the collection of DNA samples to those individuals linked to a specific criminal case, authorities frequently conduct campaigns to collect biometric information and DNA data from ordinary citizens for an unspecified need to solve crimes. Nevertheless, any forcible collection or taking of blood samples without informed, meaningful, and voluntary consent and then the use of such data by the state is "a serious infringement of the right to privacy, human dignity, and physical freedom."[20]

2. National Legal Regulation of Genomic Security in India

India has a number of laws governing clinical research, including genetic research: the Drugs and Cosmetics Act, 1940; the Medical Council of India Act, 1956; the Guidelines for Exchange of Biological Material, 1997; the Right to Information Act, 2005; and others.

The Indian Penal Code, 1860, in several articles under its Special Part makes direct or indirect reference to the use of DNA technology, particularly in offenses such as culpable homicide (sec. 299), murder (sec. 300), culpable homicide by causing the death of a person other than the person whose death was interned (sec. 301), causing death by negligence (sec. 304-A), dowry death (sec. 304-B), abetment of suicide (sec. 306), causing miscarriage (sec. 312), causing miscarriage, injuries to unborn child, infant's exposure or concealment after birth (sec. 313–315), rape (sec. 375), intercourse of man with wife during separation (sec. 376A), intercourse by a public servant with a women in custody (sec. 376B), intercourse by a superintendent of a jail or remand home (sec. 376C), by management staff of hospital (sec. 376D), and adultery (sec. 497).[21]

Yet, such legal acts are unclear and incomplete with regard to the identification of persons based on genetic data (e.g., for the purposes of identifying victims of natural

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[19] Human Rights Watch. (2022, November 5). *China: New Evidence of Mass DNA Collection in Tibet*. https://www.hrw.org/news/2022/09/05/china-new-evidence-mass-dna-collection-tibet

[20] Davidson, H. (2022, September 5). China Collecting DNA Samples from Across Tibet, Says Rights Group. *The Guardian*. https://www.theguardian.com/world/2022/sep/05/china-collecting-dna-samples-from-across-tibet-says-rights-group

[21] Krasheninnikova, N., & Trikoz, E. (2022). Criminal Protection of Women's Rights in India: History and Modernity. Bulletin of St. Petersburg University, Law, 13(1), 230–245. (In Russian).

disasters, accidents, or missing persons, etc.). In 2016, therefore, the Department of Biotechnology, Government of India, initiated a special bill on the "Use and Regulation of DNA-based Technology in Civil and Criminal Proceedings, Identification of Missing Persons, and Human Remains Bill" and sent it to the Law Commission for approval.

The drafters of the bill argued that DNA profiling technology, which based on proven scientific principles, is highly effective for maintaining social order and stability in society, protecting against rampant crime and allowing the justice system to identify criminals by their genotype. DNA technology is being actively used in solving crimes and identifying unidentified corpses in certain types of civil disputes (succession, inheritance, paternity search), for medical purposes, etc.[22]

Multiple court cases have confirmed that the DNA test yields 99.99 percent accurate results and should be perceived as an objective scientific test that is almost impossible to disprove.[23] Another case highlighted that genetic testing conducted by a party to a criminal case without a doubt constitutes corroborating supporting evidence for his or position.[24] DNA testing has steadily become an established part of criminal proceedings, and the admissibility of test results has become common practice in court.[25] The Supreme Court of India has repeatedly upheld the admissibility of DNA testing as evidence in the legal proceedings both independently and in conjunction with other evidence; however, the Court has clarified that when there is a discrepancy between ocular evidence and medical evidence (expert-DNA evidence), the former takes precedence.[26]

The very first use of DNA testing in Indian courts occurred in 1988 in Kerala in the paternity case[27] of *Kunhiraman v. Manoj*, just a year after the first use of genetic testing in US courts.

The Criminal Procedure Code, 1973 contains an indirect provision for DNA testing, which has long been used in complex investigative and judicial situations. For example, Article 53 of the Code provides for the examination of an accused person by a medical practitioner at the request of a police officer or investigator who has reasonable grounds to believe that the examination will yield relevant evidence of a crime. Section 54 provides for examination of an arrested person by a registered medical practitioner at the request of the arrested person.

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22 Mishra, B. (2007). DNA & Indian Legal System. *The Shillong Times*.

23 *Veeran v. Veeravarmalle & Anr*., AIR 2009 Mad. 64; *Harjinder Kaur v. State of Punjab & Ors*., (2) RCR (Criminal) 146 (2013).

24 *Simpson v. Collinson* (1964) 1 All ER 262.

25 Singh, S. Ch. (2011). DNA Profiling and the Forensic Use of DNA Evidence in Criminal Proceedings. *Journal of the Indian Law Institute, 53*.

26 *State v. Sughar Singh*, 1978 Cr LJ 141: AIR 1978 SC 191; *Surinder Singh v. State of UP*, 2003 Cri LJ 4446; *State v. Suraj Singh Yadav*, 2004 Cri LJ 2132 (All).

27 *Kunhiraman v. Manoj*, 1991(2) KLT 190 at 195.

In the case of *D.J. Vaghela v. Kantibai Jethabai*, 1985, the High Court held that the taking of blood, semen, saliva, urine, and other samples under Section 53 of the Code of Criminal Procedure did not violate Article 20(3) of the Constitution which allows protection against self-incrimination under Sections 156 and 174 of the Code of Criminal Procedure.

The Code of Criminal Procedure (Amendment) Act, 2005 added a new Section 53-A to this code, under which a rape accused may be examined by a medical practitioner for the purpose of taking bodily samples from the accused for further genetic analysis and DNA testing.[28]

Section 27(1)15 of the Prevention of Terrorism Act, 2002 states that the investigating officer must make a written request to the court for permission to take samples of blood, saliva, semen, hair, handwriting, fingerprints, footprints or voice of an accused who is reasonably suspected of involvement in a terrorist offense. In that case, the court may order such samples to be given by the accused to a police officer, either through a medical practitioner or otherwise, whichever is appropriate.[29]

In India, barriers to realizing the full potential of DNA evidence include a lack of clear communication between law enforcement agencies and court and laboratory personnel, limited resources in carrying out research on human DNA, and the use of incompatible systems for genetic testing. Corruption, falsification of court records, false results as evidence, and most importantly, the political authority of the accused, as highlighted in the high-profile Madhumita Shukla case of Uttar Pradesh [Madhumita case, 2007], additionally remain major barriers.

After examining various court orders and constitutional provisions, the Law Commission of India published its 2017 annual report titled "The DNA Based Technology (Use and Regulation) Bill." Two years later, the Minister of Science and Technology of India introduced the "DNA Technology (Use and Application) Regulation Bill, 2019" in the Lok Sabha. It provides for mandatory accreditation and regulation of DNA laboratories under the *aegis* of the DNA Regulatory Board, reliability and enhanced protection of DNA test results against misuse or misuse. The law proposes the establishment of national and regional genetic data banks, including for the purposes of forensic DNA-based investigations and forensic analysis and the identification of missing persons, victims, offenders, suspects, missing persons, and unknown deceased persons. The proposed legislation has prompted the development of a single set of ethical guidelines for all laboratories involved in DNA testing.[30] The

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[28] Kumar, S. (2018). *Legal Status of Human Genetic Material – A Study Relating to Human DNA its Ethical Problems and Law* (p. 136). Rawat Prakashan.

[29] Sati, M. (2016, February 11). Evidentiary Value of Forensic Report in Indian Courts. *Scholarticles*. https://scholarticles.wordpress.com/2016/02/11/ms1/

[30] Dhillon, M., et al. (2021). The DNA Technology (Use and Application) Regulation Bill, 2019: A Critical Analysis. *ILI Law Review*, Winter Issue, 278–301.

Digital Personal Data Privacy Bill was also recently passed, which eliminates the distinction between sensitive personal data and general personal data.

In January 2022, after the DNA Bill was introduced in the Upper House, the Directorate of Forensic Science Services (DFSS), which comes under the Ministry of Home Affairs (MHA), issued guidelines and recommendations for collecting forensic evidence in sexual harassment cases and set up a state-of-the-art DNA analysis laboratory, the Central Forensic Sciences Laboratory, in Chandigarh. Following this, in April 2022, the Criminal Procedure (Identification) Bill was enacted. This Bill, which seeks to empower investigators to collect biometric details of prisoners, was passed despite strong protests from the opposition, which saw the law as a precursor to a police state. The law allows police to collect a variety of biometric data on inmates, including iris and retinal scans, fingerprints, palm prints, footprints, and photographs; other physical and biological samples; and even behavioral traits such as handwriting samples and signatures. By using the term "prisoners" it is generally meant all those who have been arrested, detained, convicted, or any person sent under the direction of a judicial or executive magistrate – in effect, "any person involved in any crime."

Ironically, almost a century later, the previous British Identification of Prisoners Act 1920, has been repealed, and in its place the Indian government introduced a law even more intrusive on personal data and with fewer checks and balances. For instance, the Criminal Procedure Identification Act, 2022, that repealed the 1920 Act, allows personal data records of "inmates" to be kept for seventy-five years and allows the National Crime Records Bureau to hand over personal data to "any law enforcement agency." This violates the fundamentally recognized data protection best practices, including the principle of "purpose limitation." And yet the refusal of an inmate to provide a police officer with his biometric data and samples would now be an offense under Section 186 of the Indian Penal Code, i.e., "obstructing a public servant in discharge of public functions." This is almost reminiscent of the post-pandemic and external threat era methods of biopolitics on the part of state authorities.

3. Legal Experience of South Africa with Genetic Regulation

In South Africa's multicultural and multilingual society, different perspectives on the use of biological materials prevail, as local culture attaches great importance to heritage and self-identity, which are passed down through generations in local tribal communities. The South African health care system therefore emphasizes that a patient's decision to participate in clinical testing should also be obtained from his or her family and tribal community. For example, the South African San Institute has developed a separate "Code of Research Ethics" that incorporates five principles from the San worldview, namely respect, honesty, care, justice, and fairness.

These principles are expected to be followed by geneticists and other medical researchers while also accommodating the conventional principles of clinical

ethics and due respect to San tribal culture.[31] On the other hand, the South African Constitutional Court has repeatedly stressed that constitutional values should be deciphered through the prism of the "Ubuntu philosophy."[32]

Culturally, many ethnic groups in South Africa view family or community as central, but respect individual choice. Thus, the most important decisions are necessarily reached after consultation with the family or community. The South African specificity of informed consent for DNA testing is discussed in the DoH's guidelines on Ethics in Health Research: Principles, Processes, and Structures, 2015. Respect for the people of the Ubuntu tribal community necessitates discussion of decisions about participation in genetic testing and sharing and consenting to genomic data with family members, as well as the secondary use of such personal data and gene samples for potentially useful research. However, it is characteristic of Africa that the majority of research scientists and patient clients do not have sufficient practical and professional experience in the genomic ethics associated with DNA and exome sequencing studies. Obtaining data on genotypes and phenotypes as well as information on an individual's lineage should be monitored more closely in order to avoid identifying individuals and revealing their identities, families, or tribal communities.[33]

The South African Constitution guarantees autonomy and self-determination: the right to life, dignity, psychological and physical integrity, security and control over one's body, and control over reproductive decisions. Article 12(2)(c) stipulates that "no one shall be subjected to medical or scientific experimentation without their informed consent."[34]

Article 9(3) and (4) of the Constitution prohibit direct or indirect discrimination on one or more grounds, some of which are listed in the article itself (open list). The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 was enacted, which gives effect to the constitutional equality provision. In the case of indirect discrimination, genetic abnormalities may be attributable to a particular ethnicity or even race. The sickle cell anemia is commonly found in individuals of African descent.

Article 14(d) of the Constitution enshrines a "right to know nothing and to have no information" of a personal nature in the event of breach of confidentiality of communications, which protects the confidentiality of any communication between a person undergoing genetic testing and their physician regarding their genetic result.

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31 Schroeder, D., Chatfield, K., Singh, M., Chennells, R., & Herissone-Kelly, P. (2019). The San Code of Research Ethics. In D. Schroeder, K. Chatfield, M. Singh, R. Chennells & P. Herissone-Kelly. *Equitable Research Partnerships: A Global Code of Conduct to Counter Ethics Dumping* (pp. 73–87). Springer.

32 *S v. Makwanyane & Another* (CCT3/94) [1995] ZACC 3.

33 Wright, G., et al. (2013). Ethical and Legal Implications of Whole Genome and Whole Exome Sequencing in African Populations. *British Medical Council Journal of Medical Ethics, 14*(1), 21–40.

34 Neethling J. et al. (2005). *Neethling's Law of Personality*. LexisNexis Butterworths.

A judicial example of protecting the constitutional right to privacy and personal information is *S v. Orrie*, 2004, in which blood samples for DNA testing were taken as part of a criminal investigation without first obtaining consent for such testing.[35] Particular attention should be paid to the consent requirements for minors or persons under the age of eighteen in clinical settings, as provided for in section 129 of the South African Children's Act, 2005.

Article 71 of the SA National Health Act states that research or experimentation on a living person may only be carried out in accordance with established procedures and with the written consent of the person. The person must be informed of the purpose, the objective of the research or experiment, and any potential positive or negative effects on health.[36]

This raises the issue of the need to include a separate question on the informed consent form indicating whether the individual wishes to be informed if genetic data or genomic information relating to his or her lineage or tribe is accidentally discovered.[37] The CIOMS guidelines 2016 on the ethical criteria at the point of obtaining or accidental discovery of research results: there must be analytical validity, clinical relevance, and efficacy in order to qualify for returned results.[38]

The Promotion of Access to Information Act, 2000 gives effect to the constitutional right of access to any information held by the state or any person. Another Act, the SA Protection of Personal Information Act, 2013 requires that an individual must be given specific and explicit information about the use of his or her personal data at all times and the informed consent form must be as close as possible to the requirements of the Act. The Act emphasizes the confidentiality of medical and biometric information (including DNA information), designating these two categories as specific personal data, access to and processing of which is limited to the healthcare sector and must be in the interests of patients and clinical trial participants.

The POPI Act imposes a general prohibition on the processing of special personal information but allows for a number of exceptions, for example, where the personal data subject has consented to its processing or where the use of such information is necessary for research, statistical, or historical purposes.

It is quite rare for South African courts to hear cases involving informed consent for clinical trials. For example, *Venter v. Roche Products* (2014) was a landmark decision which dealt with a claim for non-medical harm resulting from a patient's participation

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[35] Academy of Science of South Africa & Department of Science and Technology. (2018). *Human Genetics and Genomics in South Africa: Ethical, Legal and Social Implications* (pp. 61–62). http://dx.doi.org/10.17159/assaf.2018/0033

[36] *Id*. pp. 46–47.

[37] De Vries, J., et al. (2012). Ethical, Legal and Social Issues in the Context of the Planning Stages of the Southern African Human Genome Programme. *Medicine & Law, 31*, 119–120.

[38] Academy of Science of South Africa & Department of Science and Technology, 2018, p. 62.

in a clinical trial (pain and suffering as well as loss of income, none of which was covered by the clinical insurance policy).

The Criminal Law (Forensic Procedures) Amendment Act, 2013 contains a requirement for informed consent for biological samples, as well as provisions on access to information obtained from such samples. Article 12 of the Regulations describes the process for "removal of forensic DNA profiles from the NFDD on application": such removal must be carried out within thirty days of receipt of the relevant notifications. DNA samples for forensic purposes must be processed at an accredited laboratory that meets the appropriate ISO standard as prescribed by the South African Police Service Act, 1995, and the Forensic DNA Regulations, 2015. Clause 10(1) of the Forensic DNA Regulations provides that buccal and DNA samples must be destroyed no later than thirty days after receipt of the forensic DNA profile or processing of the DNA sample by the Forensic Science Laboratory.

According to the Accreditation for Conformity Assessment, Calibration, and Good Laboratory Practice Act, 2006, genetic testing and genomic laboratories must be accredited by the South African National Accreditation System. Meanwhile, accreditation of laboratories in South Africa is still not a legally mandatory requirement, with the exception of forensic laboratories performing genetic tests. For forensic scientists using DNA testing, the Memorandum of Understanding between the South African Council for Natural Scientific Professions and the Health Professions Council of South Africa is important.

According to Article 4(2) of the National Health Act (NHA) regulations (regulations relating to the import and export of human tissue, blood, blood products, cultured cells, stem cells, embryos, fetal tissue, zygotes, and gametes, 2012), import and export of placental tissue, embryonic or fetal tissue, and stem cells are prohibited without written permission by the Director-General of Health. Article 4(10) of the NHA's regulations provides that biological material may only be exported to Southern African Development Community countries. However, the NHA's regulations do not cover the import of adult biological material, which is often confusing and open to abuse in practice.

In the South African context, where particular views on biological material and human data in terms of tribal identity philosophy prevail, the role of communities in genome management and their involvement in the genetic protection of their community is important. Here, a regulatory framework called the "DNA on Loan" model, pioneered by Aboriginal and geneticist researchers in Canada could prove to be quite applicable. The essence of this model is that more than anything else, the sacredness and profound religious significance of biological material to Aboriginal peoples in Canada is recognized. This principle is also enshrined in the process for releasing bio-samples in trust or on loan to geneticist researchers for specific projects. In the event that they wish to conduct further research or make the samples available to other experts, an application must be made to the Aboriginal communities who

hold the authority to decide whether or not to allow such further use and also whether reuse of the samples is appropriate.[39]

The current agenda is to introduce and adapt training programs in South Africa in order to provide quality training for genetic counselors that do not currently possess adequate experience in interpreting whole genome sequencing and stranding results. Still, local clinicians and practitioners are not sufficiently trained to provide feedback to test participants and patients,[40] as medical curricula in South Africa do not take into account the rapidly evolving field of genomics and genetics. An independent and professional body, such as the Human Genetics Advisory Board, should be established to assess the genetic tests offered to patients in public and private health facilities in terms of their scientific and analytical validity and clinical utility, as well as to investigate complaints of misuse of DNA tests. Additionally, these assessments should be tailored and appropriate to the specific population and communities in South Africa (for example, in line with the values of the Ubuntu philosophy).

Conclusion

Two expert panels have been set up internationally in response to the announcement of the controversial experiment carried out by Chinese geneticist He Jiankui. The UN WHO in this regard has established a multidisciplinary expert advisory committee to systematically examine a range of issues (including scientific, ethical, social, and legal problems) related to genome editing and to subsequently develop a global framework for the regulation of legislation in this area. In addition, at the initiative of the US Academy of Sciences, the US National Academy of Medicine, and the Royal Society of London, an International Commission on the Clinical Use of Human Germline Genome Editing has been convened.

The majority of BRICS countries should also seek to establish special ethical committees in the field of genomic research and manipulation of human genetic resources, which will assess genetic scientists' and clinicians' compliance with ethical and humanistic principles in the implementation of innovative developments and genetic technologies.

Against the backdrop of rapid scientific and technological progress and a strong push for experimental medicine in the BRICS countries, a legal and ethical framework aimed at regulating genomic research and protecting genetic integrity is gradually taking shape.[41] Although in the majority of these countries, human genome research

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[39] Arbour, L., & Cook, D. (2006). DNA on Loan: Issues to Consider when Carrying Out Genetic Research with Aboriginal Families and Communities. *Community Genetics, 9*(3), 153–160.

[40] Academy of Science of South Africa & Department of Science and Technology, 2018, pp. 83–84.

[41] Travieso, J., et al. (2021). Bioethical Aspects of Human Rights in Modern Latin America. *Kutafin Law Review, 8*(1), 85–98.

is strictly controlled by state authorities, there are still many gaps in legislation and clinical practice in terms of ensuring the safety of genomic research and national biopolitics in general, which should be addressed.

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ARTICLE

Legal Implications for the BRICS Countries in the Carbon Trading System Through Carbon Exchanges: Perspective from the Precautionary Principle

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Abstract. The largest emitting countries in the world are predominantly developing countries, including the BRICS countries. The general principle of "climate justice" asserts that the largest emitting countries should take the lead in efforts to reduce greenhouse gas emissions. The legal implications for the implementation of climate change mitigation efforts play an active role in the implementation and establishment of the carbon exchange concept in the context of the carbon trading system. The urgency of listing on the carbon exchange is driven by the precautionary principle of global carbon accounting, which aims to avoid the risk of carbon leakage. The purpose of this research is to examine the obligation of emitting countries to make ambitious efforts towards reducing their greenhouse gas emissions while also upholding the basic principles of accountability and transparency. Offsetting the amount of carbon emitted by each country is largely calculated based on carbon credits purchased. In order to prevent double counting, carbon exchanges have the responsibility of recording the sale of carbon units with certificates issued under a "polluter pays" system.

Keywords: carbon exchange; carbon trading; carbon emissions; BRICS countries; climate change mitigation; double counting; Paris agreement.

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Introduction

Climate change has forced and encouraged international countries to make global agreements in order to prevent environmental collapse due to climate change. Prior to the agreement of the United Nations Framework Convention on Climate Change (UNFCCC), the Vienna Convention for the Protection of Ozone Layer (1985) served as the primary document of the parties in establishing state obligations. In adopting legislative measures and building contributions through co-operation, it is mandatory to align appropriate legal policies to limit, reduce, and control or prevent all negative impacts resulting from human activities.[1]

The current global conditions caused as a result of climate change do not appear to be responding to the objectives of the agreement aimed at preventing climate change from getting worse. Countries listed as parties to the Climate Change Convention have not shown ambitious efforts, such as through mitigating climate change with carbon trading and a corresponding carbon tax that can be monitored in aggregate by the Global Stocktake mechanism.[2]

Climate change mitigation efforts are currently driving countries to take ambitious action to reduce emissions. Carbon markets play a role in shaping mitigation that is inclusive of emitting activities. There are two types of carbon markets, mainly: (a) compliance markets, which are established by governments or multi-governmental

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[1] Gladun, E., & Ahsan, D. (2016) 'BRICS Countries' Political and Legal Participation in the Global Climate Change Agenda. *BRICS Law Journal, 3*(3), 8–42.

[2] Sun, R. Sh., et al. (2022). Is the Paris Rulebook Sufficient for Effective Implementation of Paris Agreement? *Advances in Climate Change Research, 13*(4), 600–611.

bodies to control the supply of credits and organise the flow of trade;[3] and (b) voluntary markets, which are markets that sell carbon credits through voluntary trading from private entities developing carbon projects or from governments developing programmes through certification by carbon standards that result in emissions reduction or elimination actions.[4]

As a general principle in "climate justice," emitting countries have an obligation to lead global efforts to reduce their greenhouse gas emissions (GHG).[5] The People's Republic of China was the first BRICS country to introduce carbon trading in 2021, which is the largest emissions coverage in the world. However, currently, at least 2,000 companies have been implemented, with the majority of them in the power sector. As a result, estimates for expanding to other sectors are needed in the future.[6] Carbon trading and cap-and-trade systems have been effective and economically helpful in curbing global emissions.[7] There are forty countries that have introduced carbon trading today, and more than twenty emission training system (ETS) programmes are in operation. Carbon trading covers nearly fifteen per cent of global carbon emissions.[8]

International environmental law has essentially accommodated and recognised the rules and theories of distributive justice between developed and poor countries. The climate response is often criticised as having many weaknesses that cannot inclusively reduce emissions. This is because there is a lack of clarity on how climate justice can be effectively implemented and addressed. Another problem is that implementing emission reduction solutions alone does not have a significant effect on the harmful effects of climate change. In addition, Annex I countries have done nothing to reduce their emissions, and other countries have been unable to make more ambitious efforts to curb the rise of the earth's temperature.[9]

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[3] Understanding the Compliance and Voluntary Carbon Trading Markets. (n.d.). Deloitte. https://www2.deloitte.com/uk/en/blog/risk-powers-performance/2023/understanding-the-compliance-and-voluntary-carbon-trading-markets.html

[4] Climate Promise. (2022, May 18). *What Are Carbon Markets and Why Are They Important?* https://climatepromise.undp.org/news-and-stories/what-are-carbon-markets-and-why-are-they-important

[5] Cassegård, C., & Thörn, H. (2018). Climate Justice, Equity and Movement Mobilization. In H. Thörn, C. Cassegård, L. Soneryd & Å. Wettergren (Eds.), *Climate Action in a Globalizing World: Comparative Perspectives on Environmental Movements in the Global North* (pp. 32–56). Routledge.

[6] International Carbon Action Partnership. (2021). *China National ETS*. https://icapcarbonaction.com/system/files/ets_pdfs/icap-etsmap-factsheet-55.pdf

[7] Peng, H., Shen, N., Ying, H., & Wang, Q. (2021). Can Environmental Regulation Directly Promote Green Innovation Behavior? – Based on Situation of Industrial Agglomeration. *Journal of Cleaner Production, 314*, Article 128044.

[8] Zhou, B., Zhang, C., Song, H., & Wang, Q. (2019). How Does Emission Trading Reduce China's Carbon Intensity? An Exploration Using a Decomposition and Difference-in-Differences Approach. *Science of the Total Environment, 676*, 514–523.

[9] Fite, M. D. (2018). The International Responsibilities of Developed Countries in Adaptation to and Mitigation of Climate Change: An Ethical Mandate. *BRICS L.aw J.ournal, 5*(2), 100–111.

Parties to the UNFCCC that produce higher carbon emissions need to make more ambitious efforts to reduce their GHG emissions. The BRICS countries, which included Brazil, China, South Africa, India, and Russia, have expanded to include the United Arab Emirates, Egypt, Ethiopia, and Iran, most of which are developing nations and on average collectively have the largest population in the world. Accurately accounting for the emissions produced by each of these countries will be a major responsibility for attaining global success in reducing emissions. Global inventories influence the calculation of the amount of GHG emissions suppressed by each country. Hence, it is important to keep records of accounting practices and provide transparency regarding the amount of emissions produced. Consequently, the legal instrument for carbon markets that is established on the basis of the transfer of emission credits can serve as a reference for carbon trading activities in the BRICS countries.

On the other hand, a country like Brazil has enormous potential for carbon trading that could be realised through the use of a carbon exchange. Record-keeping and transparency practices in carbon trading based on "appropriate adjustment" reflect the BRICS countries' co-operation in the context of climate change, highlighting their awareness of the environmental damage caused due to the effects of increasing greenhouse gases. Meanwhile, Russia and China have embarked on a new chapter of "carbon neutral" and "low-carbon" energy, necessitating a need for technology and innovation in fostering low-carbon co-operation.[10] By forming other similar collaborative partnerships to establish a green economic system and accustom companies and other industries to use sources of low-carbon energy, a framework for joint emission accounting of carbon credits can be established in a transparent and accountable manner.

1. Legal Implications of Carbon Trading Policies Through Carbon Markets in the BRICS Countries

Carbon trading is a market mechanism used as one of the efforts to reduce greenhouse gas emissions by buying and selling carbon units. Carbon trading can be conducted through a carbon exchange, covering both domestic and foreign carbon trading transactions. It is a form of state effort through which the government aims to achieve effective targets in mitigating climate change.[11]

The process of implementing a carbon exchange includes: (a) determination of emission limits for which permits are granted based on national or international emission targets; (b) issuance of permits or carbon credits by the competent

[10] Steblyanskaya, A., et al. (2022). How Russia's Trade with China Influences Carbon Dioxide Emissions in Russian Regions. *BRICS Journal of Economics, 3*(4), 271–298.

[11] Prihatiningtyas, W., et al. (2023). Perspektif Keadilan dalam Kebijakan Perdagangan Karbon (Carbon Trading) di Indonesia Sebagai Upaya Mengatasi Perubahan Iklim. *Refleksi Hukum: Jurnal Ilmu Hukum*, 7(2), 163–186.

authority; (c) permit trading; (d) reporting and monitoring of emission permits; (e) verification of emission permits; and (f) implementation of appropriate adjustments to achieve emission reduction targets and efforts.

In order to address the challenge of how countries can manage funding and meet the needs of emissions reduction efforts, it is imperative to enforce a new model for carbon inventories. This guideline on community-scale GHG emission inventories is used as a tool to investigate and calculate the total amount of GHG emissions and the accuracy of the data. The role and active participation of governments of the countries that agreed to the Paris Agreement are critical to realising GHG emission rate control through climate change mitigation.[12] The management of funding sourced from carbon trading is an important component. This includes an analysis of the allocation of funding in accordance with the legal policy direction of the BRICS countries, with the aim of partially transitioning to new renewable energy as part of the BRICS cooperation to address climate change through energy collaboration. The BRICS Summit is also a significant aspect of the BRICS countries' commitment to multilateral energy cooperation. Similarly, collaborative efforts through the BRICS Energy Research Cooperation Platform (BRICS ERCP)[13] involve working together to establish carbon trading in the carbon market as a form of the BRICS commitment to utilise existing potential and turn it into green economic value.

Dan Wei's research provides insights into the potential for co-operation among BRICS countries on local governance and the role of law in this context, particularly in regard to co-operation on fulfilling their legal responsibilities for the environment.[14] However, one of the differences between Chinese and Brazilian legal systems that affect green governance, for example, the scope of legal responsibility.[15]

Incorporating merely simple measures to reduce greenhouse gas emissions cannot prevent vulnerability to climate change. Moreover, carbon funds in the international market for countries that are the most vulnerable to climate change, especially poor countries, have not yet received clarity and effective realisation. This situation shows that developed countries are unable to fulfil their obligations under the Kyoto Protocol. In order to effectively help in reducing global emissions in an equitable manner, steps need to be taken to transition to a green economy both in the form of renewable energy transition and funding for climate change adaptation efforts, such as expanding forestry projects in green areas in the form of forests and

[12] Kongboon, R., Gheewala, S. H., & Sampattagul, S. (2022). Greenhouse Gas Emissions Inventory Data Acquisition and Analytics for Low Carbon Cities. *Journal of Cleaner Production, 343*, Article 130711.

[13] Oliveira, I., Panova, V., & Silva Barros, P. (2020). *BRICS: Ten Years and New Challenges* (Presentation). https://doi.org/10.38116/rtm22pre

[14] Wei, D., & Rafael, A. P. (2023). Influencing Companies' Green Governance Through the System of Legal Liability for Environmental Infractions in China and Brazil: Lighting the Way Toward BRICS Cooperation. *BRICS Law Journal, 10*(2), 37–67.

[15] *Id.* p. 39.

national parks, which can help significantly absorb carbon emissions generated from industrial activities to help produce net zero emissions.[16]

Carbon trading is conducted through transactions in the carbon market in accordance with a country's efforts to mitigate climate change. Proceeds from carbon sales can be allocated to redirect activities towards low carbon alternatives through green finance and incentives that promote a green economy.[17] The carbon trading system, which is commonly known as Cap and Trade, has a carbon price that changes more frequently. It refers to the maximum level of pollution determined, and producers are required to have a licence to emit greenhouse gases. The cost of a licence under a carbon trading system is contingent upon the proximity of the emissions to the cap.

Carbon exchanges are an important tool for achieving global climate goals in the short or medium term. Carbon exchanges incentivise activities that allow parties to trade carbon credits earned for efforts to reduce GHG emissions. Such efforts can encourage an energy transition from fossil fuels to renewable energy or increase carbon stocks, especially in forestry ecosystems. According to the Worldbank, carbon credit trading could reduce the costs associated with the implementation processes of the participating countries' Nationally Determined Contribution (NDC) by as much as $250 billion by 2030, thereby facilitating 50% of the effort.[18]

Commitments to the Climate Change Convention do not impose legally binding conditions on the states parties to it. However, the Kyoto Protocol does provide specific legal requirements as a key feature, including the requirement that developed countries must reduce greenhouse gas emissions by 5% below 1990 levels. Furthermore, according to an International Performance Computing and Communications (IPCCC) report, developed countries needed to achieve aggregate emission reductions of 25%–40% by 2020 in order to make any considerable contribution to limit global warming.

The BRICS countries are all developing countries but possess immense potential for global energy security. Economic development in many of these countries depends on the energy sector.[19] In addition, the BRICS countries are actively engaged in addressing climate change globally. Climate change mitigation and adaptation are steps that must be taken together by countries that are parties to the UNFCCC agreement, including the BRICS countries. Some of the BRICS countries, such as

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16 Sulistiawati, L. Y., & Buana, L. (2023). Legal Analysis on President Regulation on Carbon Pricing in Indonesia. *SSRN Electronic Journal*.

17 McLaughlin, M. (2022, May 12). *Green Economy* (Report). Volonteurope. https://volonteurope.eu/wp-content/uploads/2022/05/Turkey-Europe-Civil-Society-Forum-Program_10-12-May.pdf

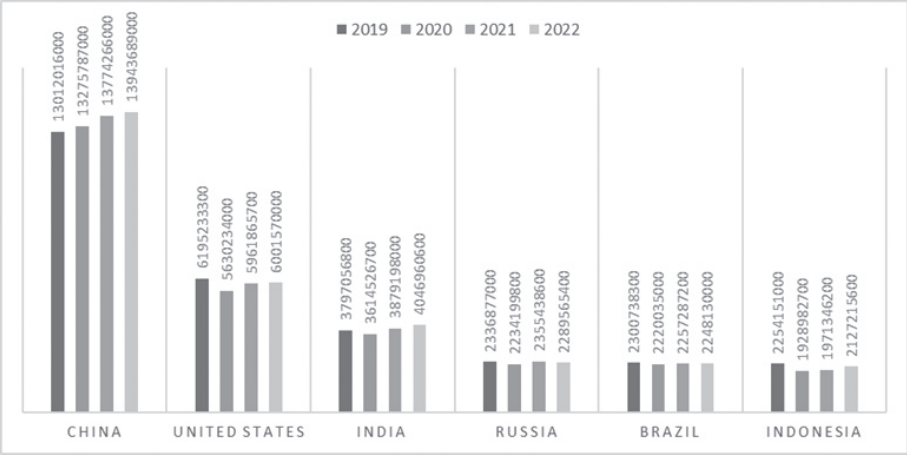
18 World Bank Group. (2022, May 24). *Countries on the Cusp of Carbon Markets*. https://www.worldbank.org/en/news/feature/2022/05/24/countries-on-the-cusp-of-carbon-markets

19 Sahu, M. K. (2016). Energy Revolution Under the Brics Nations. *BRICS Law Journal, 3*(1), 34–41.

China, are among the largest carbon emitters in the world. This country is particularly obliged to make utmost efforts to neutralise their carbon emissions through the implementation of inclusive measures, namely building carbon markets, increasing renewable energy efficiency, and developing green energy.[20] Additionally, India, the world's third-largest carbon emitter, is undertaking mitigation efforts by making large-scale investments in renewable energy in an effort to reduce its reliance on fossil fuels.[21] Similarly, Russia, the world's fourth largest emitter, is also focusing on the development of clean energy to replace fossil fuels.[22]

Figure 1

Countries Producing Greenhouse Gas Emissions, 2019–2022 (in MtCO2e)



Source: Climate Watch Data

According to the data presented above, three of the BRICS countries are among the top five of the world's largest emitters. Mitigation actions without accountability and transparency will lead to the failure of climate change mitigation and the targets of each country's Nationally Determined Contribution (NDC). The legal implications of successfully reducing emissions to net zero carbon by 2050 in the BRICS countries can only be achieved through more ambitious measures. These countries' dependence on fossil fuels, forest clearance, and various agriculture AFOLU (Agriculture Forestry and

[20] Zhang, F. et al. (2023). Carbon Trading in BRICS Countries: Challenges and Recommendations. *Journal of Economics and Public Finance, 9*(3), 127–139.

[21] *Id.*

[22] *Id.*

Other Land Use) projects has a sensitive effect on carbon market fluctuations.[23] Of all the BRICS countries China is leading the carbon trading system at the moment. The carbon market in China is modelled on the auction carbon market in Guangdon, China. This system is having a positive impact as well as a significant effect on mitigation efforts in reducing GHG emissions in China. On the other hand, the development of the pilot auction mechanism in China's carbon market has been found to be flawed and inadequate. This is based on two reasons, namely:[24] (a) the constraints placed on management and the allocation of funds in the form of integrated management of financial revenues and expenditures, which allows for feedback that regulates the market; (b) government agencies that have authority over this particular field of activity do not have a strong incentive to carry out quota auctions. This is because it will drive up the production costs of local companies and weaken their market competitiveness if the allocation of carbon market funding does not adequately provide some breathing space for them.

Carbon trading is a market mechanism that brings together sellers and buyers of carbon emission allowances, with the basic principle underlying this system being to set emission reduction targets that are subsequently sold to companies or countries, who are then responsible for ensuring that their emissions do not exceed those targets. If the company buying the emission allowances does not exceed the target and there are leftovers, then the company can sell the remaining emission allowances to other companies that need more emission allowances than the set target. As a result, this condition will encourage companies to use technologies that help reduce the amount of emissions released. In the research conducted by Ildar Begishev, a sandbox model of regulation for the field of digital innovation is considered and examined. It is noted that this can encourage businesses in the BRICS countries to experiment with innovations that are environmentally friendly, minimize the risk of causing any harm to consumers, and make it easier for regulatory agencies to assess potential risks.[25]

At the moment, China is the only BRICS country to have set up a carbon trading market system. Furthermore, in this initial stage, only power generation companies are part of the carbon market target. China is in the process of preparing the carbon trading mechanism, which includes an offsetting mechanism, carbon quota allocation, and government penalties to attract interest and participation from the point of view of companies targeted by the carbon market.[26] The Chinese government leads carbon

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[23] Chapungu, L., et al. (2022). BRICS and the Race to Net-Zero Emissions by 2050: Is COVID-19 a Barrier or an Opportunity? *Journal of Open Innovation: Technology, Market, and Complexity, 8*(4), 172.

[24] Wang, W., et al. (2022). Auction Mechanism Design of the Chinese National Carbon Market for Carbon Neutralization. *Chinese Journal of Population Resources and Environment, 20*(2), 115–124.

[25] Begishev, I. (2023). Review of the Monograph "Law of the Digital Environment" (Tikhon Podshivalov et al. (eds.), 2022). *BRICS Law Journal, 10*(1), 186–194.

[26] Zha, D.-S., Feng, T.-T., & Kong, J.-J. (2022). Effects of Enterprise Carbon Trading Mechanism Design on Willingness to Participate – Evidence from China. *Frontiers in Environmental Science, 10*, 1–22.

trading through an approach enforced by rules and policies.[27] The legal system in China is based on the existence of proven fault indications regarding environmental pollution. A strict liability system is enforced in Chinese jurisdictions.[28]

Depending on the system that is adopted, there needs to be a mechanism that allows for the successful operation of carbon trading, one which can be adjusted by establishing coordination among interested parties regarding relevant policies. Spontaneous over-aggressive action will only lead to rejection of over-emitting carbon market targets.[29] Therefore, the government is likely to lose out on the success of the carbon market. Meanwhile, policies that are too lenient will have implications for companies' neglect of efforts to reduce their greenhouse gas emissions.[30] The value of investment in carbon trading certification is indicated to have positive implications for developing a green economy. For example, a hydropower project, if certified by an international body established by the Kyoto Protocol under the Clean Development Mechanism (CDM), would sell carbon credits representing millions of metric tonnes of CO2 emissions per year.[31]

The climate crisis needs to be addressed with an equitable system and cannot only be solved by carbon trading. Understanding the complexity of carbon trading by involving stakeholders is necessary to effectively address the climate issue. The trend towards establishing carbon trading markets is now recognised as an important tool in the international community's response to the climate change crisis. In addition, the carbon trading market plays a crucial role in environmental governance and the development of an environmentally friendly green economy.[32]

The current carbon trading market system has not actively contributed to the implementation of carbon trading due to several factors, such as inadequate institutional systems, minimal comparative scale of implementation, and poor carbon trading mechanisms.[33] The carbon market mechanism needs to be well-developed in order to allow for the integration of policy implementation into climate change mitigation and adaptation efforts. A successful carbon trading policy needs to be

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27 Zha, Feng & Kong, 2022.

28 Wei & Rafael, 2023.

29 Zha, Feng & Kong, 2022.

30 Yifei, Z., et al. (2020). The Effect of Emission Trading Policy on Carbon Emission Reduction: Evidence from an Integrated Study of Pilot Regions in China. *Journal of Cleaner Production, 265*, Article 121843.

31 Kerr, B. P. (2022). Mitigating the Risk of Failure: Legal Accountability for International Carbon Markets. *Utrecht Law Review, 18*(2), 145–161.

32 Yu, X., et al. (2022). Carbon Trading Market Policies and Corporate Environmental Performance in China. *Journal of Cleaner Production, 371*, Article 133683.

33 Zhao, X. G., et al. (2016). How to Improve the Market Efficiency of Carbon Trading: A Perspective of China. *Renewable and Sustainable Energy Reviews, 59*, 1229–1245.

analysed on the basis of its implementation system. Learning from existing carbon market policies in countries such as the United States, New Zealand, Canada, the EU, Switzerland, and China and their effectiveness in operation will indicate the difficulties associated with their full implementation without first studying these institutions. There is a need for implementation of the precautionary principle in its administration, followed by the subsequent appropriate management of carbon trading revenues, as well as stakeholder engagement.[34]

The BRICS countries, such as China, Russia, Brazil, India, and South Africa, are among the world's largest countries and possess enormous potential for carbon trading. Although China is still in the early stages, based on Zhang's (2020) opinion, there remain a series of initial problems, namely the vulnerable and weak market mechanism, inadequate laws and regulations, an imperfect trading system and an overall ineffectiveness of carbon trading, which has not significantly highlighted numbers that demonstrate reduced pollutants and emissions.[35]

Brazil's progress on financing carbon capture projects through reforestation is one of this country's measures towards generating carbon credits. Brazil has received widespread support from exporters, who believe that a regulated carbon market is necessary to maintain key overseas consumer markets and attract investments. Home to 60% of the Amazon rainforest, Brazil has an important role to play in global efforts to significantly reduce emissions and slow global warming. Brazil is responsible for 1.3% of global CO2 emissions according to the Global Carbon Atlas and is expected to continue to increase and fall further short of the 2015 Paris Agreement target, necessitating a carbon trading market. Brazil has been identified as having the potential to supply 28% of global regulated market demand, which accounts for 5% of the global voluntary market demand by 2020; this figure is expected to increase to 48.7% by 2030. The estimated revenue from carbon trading is US$120 billion.[36] Brazil uses a carbon trading method called carbon capture and storage (CCS) to reduce greenhouse gas emissions, the costs, and the most appropriate policies to commercially develop the technology.[37]

The aspect of morality and sense of responsibility built by countries in the BRICS region in relation to sustainable development and climate change is directed at building a common concept in an effort to reduce emissions. The scope of this

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[34] Narassimhan, E., Gallagher, K. S., Koester, S., & Rivera Alejo, J. (2018). Carbon Pricing in Practice: A Review of Existing Emissions Trading Systems. *Climate Policy, 18*(8), 967–991.

[35] Zhang, Sh., et al. (2020). Do the Performance and Efficiency of China's Carbon Emission Trading Market Change over Time? *Environmental Science and Pollution Research, 27*(26), 33140–33160.

[36] ICC Brasil. (2021). *Opportunities for Brazil in Carbon Markets*. https://www.iccbrasil.org/wp-content/uploads/2022/10/RELATORIO_ICCBR_2022_IN_22.10.21.pdf

[37] Machado, P. G., Hawkes, A., & de Oliveira Ribeiro, C. (2021). What Is the Future Potential of CCS in Brazil? An Expert Elicitation Study on the Role of CCS in the Country. *International Journal of Greenhouse Gas Control, 112*, Article 103503.

research is limited to examining the central and important role of the BRICS contribution to sensitising climate change mitigation. This form of awareness is developed through partnerships, which encourage the establishment of legal policies that compel entities in their countries to minimise carbon-emitting activities and generate benefits for a sustainable green economy. Despite sceptical views among some of the BRICS countries regarding the state of their emission profiles and positions in climate negotiations, this should not serve as the basis or reason influencing their sense of morality and collective responsibility to increase their ambitious efforts in reducing GHG emissions.[38]

As an EIT (economies in transition) party to the Global Agreement on Climate Change, the Russian Federation, as a member of BRICS, has a special obligation to take all possible actions to reduce emissions. Meanwhile, China, India, Brazil, and South Africa as Annex I Parties to the Global Agreement on Climate Change can strategically align themselves with the most relevant actions as pledged national contributions.[39]

Basically, carbon trading that is not systematised and accumulated properly will also have implications for carbon leakage. This clouds policy makers' anticipation of fraud and leads to inappropriate accounting practices; for example, the emissions generated by international trade in its activities. In this regard, who is obliged to bear the financial burden of the resulting emissions. Although climate change and trade are intertwined in international law, these two topics should be discussed separately, each with its own urgency. Doing otherwise would only impede any progress that could be made at the intersection of trade and climate change policy through ambitious efforts towards global climate mitigation.[40] Emissions leakage is the process of emissions outsourcing, i.e. the reduction of emissions in countries with stringent climate policies to countries with less stringent climate policies.[41] International trade activities are also part of the implications of mandatory legal policies for clear emissions accounting. International agreements on climate change often only focus on climate action and responsibility-sharing between countries while paying little attention to documents that address international trade in emissions accounting, particularly in the context of emissions outsourcing.

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[38] Kiprizli, G. (2022). Through the Lenses of Morality and Responsibility: BRICS, Climate Change and Sustainable Development. *Uluslararasi Iliskiler, 19*(75), 65–82.

[39] Gladun & Ahsan, 2016.

[40] Nielsen, T., Baumert, N., Kander, A., Jiborn, M., & Kulionis, V. (2021). The Risk of Carbon Leakage in Global Climate Agreements. *International Environmental Agreements: Politics, Law and Economics, 21*(2), 147–163.

[41] *Id.*

2. Precautionary Principles to Prevent the Occurrence of Double Counting in Carbon Trading through Carbon Exchanges in the BRICS Countries

The agreement of countries in the Paris Agreement provides the basis for ambitious efforts to reduce emissions. Through the international market, it reinforces international goals and targets, and demonstrates the accountability of parties to the UNFCCC. The basis for an international carbon market is implied in Article 6 of the Paris Agreement, which allows parties to:[42] (a) conduct and use international carbon trading of emission allowances to contribute to achieving emission reduction targets; (b) establish a framework of strong common accounting rules; and (c) create mechanisms for a more ambitious carbon market.

Offsetting in calculating the amount of carbon emitted by a country must be adjusted in accordance with the Paris Agreement. This in turn creates a dilemma for cross-border carbon offsets. The purchase of carbon credits may pose a risk of bi-lateral claims.[43] This means there is double counting in emission reduction efforts. This is stated in Article 6, paragraph 2:[44]

> (2) Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

Failure to reduce emissions resulting from double counting could affect and weaken the integrity of the carbon market. Therefore, double counting in emissions calculations must be prevented to mitigate the risk of actual GHG emissions being greater than the aggregate achievements reported by countries participating in carbon markets. The credibility of the Paris Agreement regime is at stake in the effort to reduce greenhouse gas emissions by preventing double counting in a transparent manner.[45]

Carbon trading among countries necessitates making "appropriate adjustments," whereby pairwise accounting is used to calculate emissions with an accounting framework in accordance with Article 6.2 of the Paris Agreement.[46] This means that

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42 International Carbon Market. (n.d.). Climate Action – European Commission. https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/international-carbon-market_en

43 Cullenward, D., Grayson, B., & Freya, C. (2023). Carbon Offsets Are Incompatible with the Paris Agreement. *One Earth, 6*(9), 1085–1088.

44 World Bank Group. (May 17, 2022). *What You Need to Know About Article 6 of the Paris Agreement*. https://www.worldbank.org/en/news/feature/2022/05/17/what-you-need-to-know-about-article-6-of-the-paris-agreement

45 Schneider, L., et al. (2019). Double Counting and the Paris Agreement Rulebook. *Science, 366*(6462), 180–183.

46 *Id.*

the selling country must increase its climate mitigation efforts for every unit of carbon offsets transferred out of the country. However, Article 6.4 of the Paris Agreement does not require the seller's host country to make adjustments for trades between private parties. This can result in private buyers claiming international offsets without adjustments. The identical benefits reported by the seller's host country under the Paris Agreement will thus be counted twice.

Previously, the Kyoto Protocol, in an effort to transition away from emissions reductions and the Paris Agreement, needed to reconsider the role of carbon offsets. In implementing climate change mitigation, there are five overlapping issues that require immediate response, including:[47] (a) carbon offsets often do not deliver the promised benefits. Furthermore, emission offsetting through the Clean Development Mechanism (CDM) was widely criticised in the past for generating non-additive carbon credits rather than new, actual emission reductions. Then there are several projects that can provide credit issuance for carbon offsets, each of which is equivalent to one tonne of CO2, including REDD+, IFM, and reforestation; (b) some carbon offsets make claims that aim to avoid emissions, such as only making efforts to develop renewable energy electricity rather than trying to eliminate CO2 in the atmosphere; (c) addressing the need for permanent carbon storage in order to truly reduce the impact of global warming because the current efforts of the state mostly only store carbon temporarily; (d) dealing with the issue of unsystematic carbon purchases that lead to unsubstantiated claims. This is done by using offsetting to report net CO2 emissions with lower claims on the basis of equality between the adverse effects of CO2 and the benefits of carbon credits; (e) tackling double counting in carbon offsetting, which is the most serious issue.

Considering the risks associated with double counting, it is imperative to promote colonial meetings in the carbon market system in order to avoid errors that could occur as a result of double counting, as stated in Article 6 of the Paris Agreement.[48] Carbon exchange is a system that regulates the flow of carbon trading and the records-keeping of the ownership of carbon units. The carbon exchange needs to be implemented based on the precautionary principle so that efficiency and accurate calculation of emissions can be implemented. The precautionary principle in international environmental law applies if: (a) a condition or situation (such as the use of a substance or a behaviour) poses a threat to the environment; (b) in addition, it poses a threat to human health; and (c) serious impacts are certain to occur.[49]

The main challenges in implementing voluntary carbon trading are the establishment of a clear standardisation system, the integrity of implementation, and

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47 Cullenward, Grayson & Freya, 2023.

48 Silbert, N. (2021). Making International Law, Making Carbon Markets. *Alternative Law Journal, 46*(4), 263–267.

49 Boutillon, S. (2002). The Precautionary Principle: Development of an International Standard. *Michigan Journal of International Law, 23*(2), 429–470.

a transparency in results. If the three components of the system are not clear on a clear carbon credit standard, it will be difficult to determine how companies have actually reduced their emissions. Since any occurrence of double counting would refer to carbon credits claimed by more than one entity, the implementation of carbon trading must be done in a precautionary manner in order to avoid errors in calculating the emissions suppressed by a country.

The precautionary principle is at the heart of scientific uncertainty. According to Gintanjali Gill, an esteemed professor of environmental law, the precautionary principle is part of the fundamental tools that give impetus to sustainable development and functions at both international and national levels.[50] The precautionary principle is the 15th principle of international environmental law in the Rio Declaration on Environment and Development which states that: "Where the threat of serious or irreversible damage is indicated, the lack of scientific certainty should not be used as a basis for postponing cost-effective measures to prevent environmental degradation."[51] This principle is particularly relevant to companies' estimates of emissions due to steady emissions reductions and is vital to complying with climate benchmarking requirements where most companies do not disclose emissions data.[52] The precautionary principle has been widely applied by several countries, such as Germany, France, and several other countries in Europe, in certain laws regarding environmental law policies. For example, the French law (Barnier Act of 1995) stipulates the formulation of the precautionary principle.[53]

Regarding carbon exchanges, several countries have organised carbon exchanges for carbon credit buying and selling activities, such as Australia and China. In Australia, for example, the Australian Carbon Credit Unit (ACCU) scheme is the issuing body for carbon credits and credits are issued on the basis of the Emission Reduction Fund. Companies, and other legal entities have the right to participate in the Emission Reduction Fund purchase and crediting mechanism. Double counting may occur if a safeguard facility is able to receive ACCUs as a means to reduce its emissions and subsequently surrender the same ACCUs to reduce its net emissions through the safeguard mechanism.[54] To prevent double counting under the Emission Reduction

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50 Gill, G. N. (2019). Precautionary Principle, its Interpretation and Application by the Indian Judiciary: 'When I Use a Word It Means Just What I Choose It to Mean-Neither More nor Less' Humpty Dumpty. *Environmental Law Review, 21*(4), 292–308.

51 Peel, J. (2004). Precaution – A Matter of Principle, Approach or Process? *Melbourne Journal of International Law, 5*(2), 483–501.

52 FTSE Russell. (2022). *Mind the Gaps: Clarifying Corporate Carbon*. Asia-Pacific Research Exchange. https://www.arx.cfa/en/research/2022/05/soc300522-mind-the-gaps-clarifying-corporate-carbon

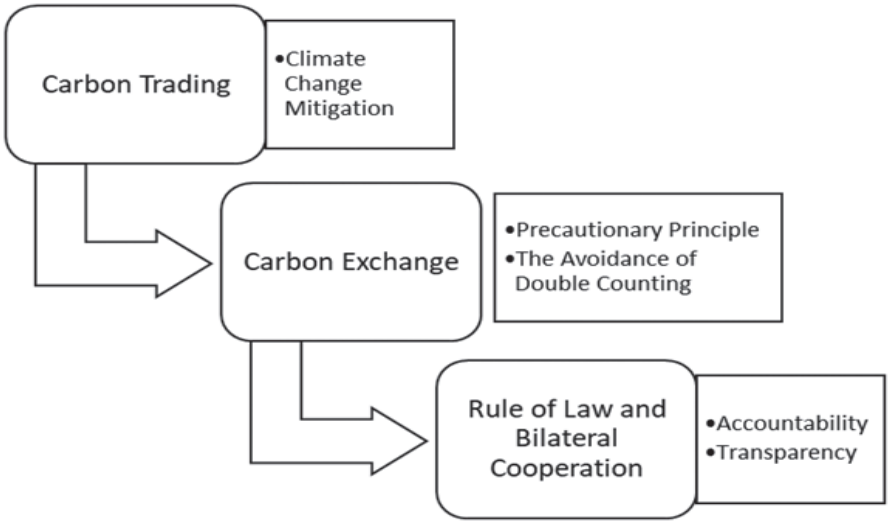
53 Rodrigue, M. (2023). The Precautionary Principle in Environmental Law. *Open Journal of Social Sciences, 11*(12), 548–567.

54 Australian Government. (2015). *The Safeguard Mechanism: Carbon Offsets and Avoiding Double Counting of Emissions Reductions Using Carbon Offsets to Manage Emissions*. Department of Climate Change,

Fund legislation, which ensures that net emissions are not counted more than once, if a facility uses ACCUs to offset emissions under the safeguard mechanism, the net emissions counted will be solely for that facility. The ACCUs that have been issued are then added to the emissions figure for the relevant financial year.[55]

The findings of this research, thus, indicate that there is a need for a concept of "accountable emissions trading," which links public trust to transparent processes and outcomes through carbon exchanges in the BRICS countries.

Figure 2
Carbon Trading Mechanism Through the Carbon Market in the BRICS Countries in a Bilateral Context



As illustrated in the flowchart above, this study takes into account the novel concept of establishing a carbon exchange through the implementation of bilateral cooperation between the BRICS countries. The purpose of this cooperation is to achieve each country's NDC target. It is likely that this achievement will lead to bilateral expansion of the BRICS membership with the inclusion of the United Arab Emirates, Iran, Ethiopia, and Egypt in early 2024. Carbon exchanges are expected to be one of the steps that can be taken to realise the NDC targets. Given that the BRICS countries are among the largest emission contributors in the world, these nations need to

Energy, the Environment and Water. https://www.dcceew.gov.au/sites/default/files/documents/fact-sheet-safeguard-mechanism-avoiding-double-counting.pdf

[55] Australian Government, 2015.

make immediate decarbonisation efforts. The success of reducing global emissions will depend on the BRICS countries taking ambitious actions aimed at achieving net zero carbon by 2050. The decarbonisation process will ultimately follow the system and influence structures created by each country. However, one form of cooperation that can be done is through carbon trading with the carbon exchange in an effort to prevent double counting while adhering to the precautionary principle.

Conclusion

Global commitment to tackling climate change is critical to successfully reducing emissions by 2030. Climate change mitigation efforts of the BRICS countries through carbon trading can have a significant impact on global efforts to reduce emissions. This is because the majority of global greenhouse gas emissions come from countries such as China, Russia, India, and Brazil. Climate change mitigation through carbon trading can be implemented with both voluntary and compliance carbon markets. Given the potential for carbon sequestration in the BRICS countries, there is tremendous opportunity to generate funding from voluntary trading. Since the majority of these countries are still dependent on fossil energy, the funding generated from carbon trading activities can be allocated as part of the BRICS countries' funding efforts towards a new renewable energy transition as well as providing funding for forest land and biodiversity conservation activities. These efforts will fulfil the targets specified in the Nationally Determined Contributions (NDC), thereby influencing the legal policies adopted by each country. Carbon accounting that is carried out with both transparency and accountability can be achieved with the application of the precautionary principle. The carbon exchange, as a place to buy and sell carbon, will prevent the occurrence of double counting, which in turn will prevent the worsening of the global increase in greenhouse gas emissions.

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ARTICLE

Green Waste Practices as Climate Adaptation and Mitigation Actions: Grassroots Initiatives in Russia

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Abstract. Responding to global climate challenges, states are pursuing mitigation and climate adaptation policies, which requires involvement of all actors ranging from global institutions to the public. This article aims to evaluate green waste practices of nongovernmental organizations in terms of the possibility of incorporating these practices into climate mitigation and adaptation policies. The study focuses on two nongovernmental organizations that have been involved in waste management for more than 10 years and has examined the online posts of these organizations to determine the prevalence of nine green waste practices, as well as subscribers' interest in them. The posts are classified using modern machine learning methods. To train a machine learning classifier, we used a dataset for detecting mentions of green practices in social media posts. The study demonstrated that environmental nongovernmental organizations engage hundreds of people

in green practices aiming to reduce anthropogenic climate impacts or adapt to climate change. The often-mentioned practices (separate waste collection, recycling, and other adaptation activities such as promoting responsible consumption or refusing purchases) can be included in governmental policy. Subscribers are aware of ways to reduce consumption and manage wastes responsibly and they can share their experience with the communities gaining the support of the government. The proposed recommendations are related to broad engagement of grassroots initiatives in climate policy implementation.

Keywords: climate policy; green waste practices; grassroots initiatives; mitigation; adaptation; language model; engagement index.

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Introduction

Responding to global climate challenges, states are pursuing mitigation and climate adaptation policies, which requires involvement of all actors, from global institutions to the public.[1] These policies may be different in various states. For example, the Russian Federation has developed a climate policy with measures aimed at

[1] Wang, D., Chen, L., & Dong, L. (2024). A Critical Review of Climate Change Mitigation Policies in the EU – Based on Vertical, Horizontal and Policy Instrument Perspectives. *Journal of Cleaner Production, 467*, Article 142972.

different economic sectors as well as regions.[2] This climate policy also includes support for scientific research on the mechanisms of adaptation to climate change and its consequences, and commercialization of the results obtained.[3] In addition, activities have been developed to monitor and forecast the parameters of the environment and climate and mitigate anthropogenic impacts on the climate.

One of the issues related to Russia's climate policy is waste management.[4] Waste production and delivery results in carbon dioxide emissions, affecting the climate when waste is transported to landfills or incinerated.[5] Landfills contribute to environmental pollution and occupy vast areas that could be used in alternative ways.[6] Furthermore, the production and disposal of things accounts for about 45% of greenhouse gas emissions, so the reuse of waste can affect the overall carbon footprint much more than the direct emissions of waste management.[7] Therefore, to reduce greenhouse gas emissions, resource extraction, and environmental pollution, states are striving to improve waste management practices and to implement new economic models of circular economy.

While studies confirm the effectiveness of citizen participation in waste management,[8] none of Russian strategic documents take into account the potential of cooperation with small businesses, nongovernmental organizations, and citizens for successful implementation of waste management policy. According to the sociological survey, citizens are willing to participate in green waste practices, organize and support environmental activities.[9] However, these practices are not

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2 Presidential Decree No. 812 of October 23, 2023 "On Approval of the Climate Doctrine of the Russian Federation." Collection of Legislation of the Russian Federation, 2023, No. 44, Art. 7865. (In Russian); Order of the Government of the Russian Federation No. 3052-r of October 29, 2021 "On Approval of the Strategy of Socio-Economic Development of the Russian Federation with Low Greenhouse Gas Emissions until 2050." Collection of Legislation of the Russian Federation, 2021, No. 45, Art. 7556. (In Russian).

3 Resolution of the Government of the Russian Federation No. 133 of February 8, 2022 "On Approval of the Federal Scientific and Technical Program in the Field of Ecological Development of the Russian Federation and Climate Change for 2021–2030." Collection of Legislation of the Russian Federation, 2022, No. 8, Art. 1151. (In Russian).

4 Order of the Government of the Russian Federation No. 3052-r.

5 Creutzig, F., et al. (2022). Demand, Services and Social Aspects of Mitigation (Chapter 5). In *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (pp. 503–612). Cambridge University Press.

6 Guseva, A., & Polishchuk, A. (2017). On Readiness of St. Petersburg Residents to Separate Waste: Recycling of Plastic Waste as Problem of Social Ecology. Scientific Notes of Russian State Hydrometeorological University, 47, 205–215. (In Russian).

7 Firmansyah, F., et al. (2024). Variation in Municipal Solid Waste Generation and Management Across Time and Space. *Resources, Conservation and Recycling, 204*, Article 107472.

8 Paes, M. X. et al. (2024). Waste Management Intervention to Boost Circular Economy and Mitigate Climate Change in Cities of Developing Countries: The Case of Brazil. *Habitat International, 143*, Article 102990.

9 Russian Public Opinion Research Center. (2024, February 6). Ecological Situation in Russia: Monitoring. https://wciom.ru/analytical-reviews/analiticheskiiobzor/ehkologicheskaja-situacija-v-rossii-monitoring-2. (In Russian).

considered climate change adaptation or mitigation and are not included in official policies at the federal and regional levels. Therefore, this article aims to evaluate the green waste practices of nongovernmental organizations and citizens and to describe the possibilities of incorporating these practices into climate mitigation and adaptation policies.

To evaluate the activities of nongovernmental organizations in terms of their contribution into climate adaptation and mitigation policies, we focus on two nongovernmental organizations, "Krugovorot" and "RazDel'nyi Sbor." The organizations carry out green practices, including waste management and pollution prevention. They operate in two cities: St. Petersburg (5.6 million inhabitants) and Tyumen (850 thousand inhabitants). The population of these cities has a high level of living; the average monthly salary in St. Petersburg amounted to 91,886 rubles and in Tyumen – 90,705 rubles in 2023. Both cities are regional centers; St. Petersburg is located in the northwest of the country, and Tyumen is in Western Siberia.

Founded by eco-activists, these organizations have been involved in separate waste collection for more than 10 years. The environmental nongovernmental organization "RazDel'nyi Sbor" which means "Separate waste collection" started separate waste collection in St. Petersburg in 2011. Currently, the organization aims to implement separate waste collection to develop responsible production and consumption and to improve the environment and the quality of human life.[10] The nongovernmental organization "Nol' otkhodov v Tiumeni. Krugovorot" which means "Zero waste in Tyumen. Circulation" was founded in Tyumen in 2014 when a group of young people came together to collect recyclable materials in a mobile station and transport them for recycling. Since 2019, a permanent waste collection station has been operating. In general, "Krugovorot" aims to develop green practices in Tyumen.[11] Involving volunteers and thousands of people in their activities, "RazDel'nyi Sbor" and "Krugovorot" are the examples of successful grassroot initiatives related to waste management. Scientists emphasize the public importance and influence of these organizations which manifest that grassroot initiatives are a special feature of the Russia's waste management.[12]

In order to develop recommendations for state climate policy and law, it is beneficial to consider a wider range of methods, not just legal ones. Legal methods and research

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[10] Mission of the Movement (2024). Ecological Movement "RazDel'nyi Sbor." https://rsbor.ru/about/mission/. (In Russian).

[11] About Us (2024). Ecological Movement "Krugovorot. Zero Waste in Tyumen." https://zerowastetmn.ru/about/. (In Russian).

[12] Shabanova, M. (2024). Unnecessary Items, Waste Issue and Solidarity Practices Among Russian Consumers. *Journal of Economic Sociology, 25*(2), 11–42. (In Russian); Chalganova, A. (2016). Sustainable Development and the Problem of Municipal Solid Waste Management in Russia. *Perspectives of Science, 12*(87), 135–139. (In Russian)

often fail to evaluate social relations that go beyond the law. It is therefore necessary to utilize and benefit from complicated methodologies, one of those is automated big data analysis which is capable to prove the relevance of social practices and incorporate them into state climate policy. In this study, we use modern language models pretrained on large collections of texts and then fine-tuned on the target dataset. Pretraining allows for a deeper understanding of text semantics compared to classical text analysis algorithms, while fine-tuning on the target dataset enables the identification of patterns within the texts related to environmental nongovernmental organizations. The information obtained provides knowledge about social processes to formulate justified recommendations for climate policy and law.

To evaluate these organizations' green waste practices from a climate mitigation or adaptation policy perspective, we focused on nine green practices, such as waste sorting, studying the product labeling, waste recycling, and signing petitions, exchanging, refusing purchases, sharing, repairing, and participating in actions to promote responsible consumption. Practices aimed at reducing greenhouse gas emissions or their sequestration are determined as mitigation ones, while adaptation is perceived as practices aimed at adapting to the negative effects of climate change or utilizing the positive effects. An illustrative example of mitigation practices is waste recycling, which reduces the carbon footprint of products and greenhouse gas emissions from landfills, while an example of adaptive practices can be sharing, which helps people meet their needs in the condition of declining production.

To examine the potential of green practices for climate policy, we studied the prevalence of each practice in the activities of "Krugovorot" and "RazDel'nyi Sbor" and the subscribers' interest in these practices by using information from the online communities in the Russian social media (VK). Communities in VK are the main platform for disseminating information about activities and attracting subscribers.[13] Online communities allow accumulating and broadcasting the experience of separate waste collection to many people; the total number of subscribers in both communities is almost 100,000 people. Besides, through extensive eco-enlightenment content, online communities are becoming important sites for greening society[14] and engaging new participants in offline activities.[15] Posts and subscribers' involvement provide important social information,[16] which can be used

[13] Shalunova, E. (2013). "RazDel'nyi Sbor" – Mission Possible. *Solid Household Waste, 12*(90), 52–55; Pupkova, Y., & Grabovskaya, E. (2019). Eco-Ducational Potential of Social Media (the Case Study of Online Communications of the Association "Separate Waste Collection"). *Information and Education: Boundaries of Communications*, 19(11), 156–158. (In Russian).

[14] Pupkova & Grabovskaya, 2019.

[15] Tsepilova, O., & Golbraih, V. (2020). Environmental Activism: Resource Mobilisation for "Garbage" Protests in Russia in 2018–2020. *Journal of Sociology and Social Anthropology*, 23(4), 136–162. (In Russian).

[16] Zakharova, O., & Glazkova, A. (2024). GreenRu: A Russian Dataset for Detecting Mentions of Green Practices in Social Media Posts. *Applied Sciences, 14*(11), 1–17; Frolov, A., & Agurova, A. (2019). Indeksnyi analiz

to monitor the environmental activities promote the implementation of climate policies.[17]

Additionally, we assessed the prevalence of mentions of green practices by evaluating the subscribers' interest in these posts. For this purpose, the posts were classified using a language model fine-tuned on a dataset for detecting mentions of green practices. For classified posts, we calculated the engagement index of social media subscribers. It was calculated as the ratio of users' activity in relation to this post (through the number of likes, reposts, and comments) to the number of views of this post.

1. Climate Regulatory Framework and Grassroots Waste Management Initiatives

To improve waste management and solve some environmental problems, the government of the Russian Federation implemented a waste management reform in 2019. The activities of collection, transportation, treatment, recycling, disposal, neutralization, and burial of solid municipal waste were entrusted to organizations that were named regional operators. Thus, in 2019 Tyumen Ecological Association was established as a regional operator for municipal solid waste management in Tyumen region[18]. In 2021, Nevsky Ecological Operator was granted the status of a regional operator for solid municipal waste management in St. Petersburg.[19] Consequently, both regional operators started their activities on the territory where some companies and nongovernmental organizations had been involved in separate waste collection for many years.[20] However, these two regional operators did not include the existing practices related to separate waste collection in their planned activities. Moreover, the activities of these regional operators became an obstacle for other organizations dealing with separate waste collection and processing in St. Petersburg and Tyumen. Instead of separate waste collection on waste-generated sites, the regional operators were planning to sort waste at specialized plants. So far, separate waste collection has only been sporadically and fragmentarily present in the activities of these regional operators.

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grazhdanskoi aktivnosti v sotsial'nykh setiakh [Index Analysis of Active Citizenship in Social Networks]. *Bulletin of Irkutsk State University. Geoarchaeology, Ethnology, and Anthropology Series, 29*, 28–43.

17 Shchekotin, E., Dunaeva, D., Basina, P., & Vakhrameev, P. (2023). Digital Footprints in Ecology: Empirical Research. *Virtual Communication & Social Networks*, *2*(4), 255–263. (In Russian).

18 Tyumen Ecological Association. https://teo.ecotko.ru/

19 Nevsky Ecological Operator. https://spb-neo.ru/

20 Institute of Design, Ecology and Hygiene. (2021). *Unified Concept of Solid Municipal Waste (SMW) Management in the Territory of St. Petersburg and Leningrad Region (with the Possibility of Waste Stream Separation)*. https://spb-neo.ru/upload/docs/Единая%20концепция%20текст_приложения_20.02.2022.pdf. (In Russian).

It is worth emphasizing that nongovernmental organizations in the field of waste management organized separate waste collection long before the 2019 government waste management reform. For example, the environmental organization "RazDel'nyi Sbor" started separate waste collection in St. Petersburg in November 2011. In 2013, more than a thousand people participated in one campaign compared to 40,900 participants in 2023. By 2017, campaigns had been held in 25 different locations in the city.[21] Volunteers collected waste paper, glass containers, plastic, multilayer tetrapack cartons, and CDs from local citizens once a month. The list of accepted types of waste varied depending on the rules of public services, legislative changes, and interaction with entrepreneurs. "RazDel'nyi Sbor" cooperates with different organizations that transport and recycle waste.[22] To the present day, the organization considers separate waste collection mandatory for encouraging a responsible production and consumption society and improving the environment and the quality of life. "RazDel'nyi Sbor" promotes the 3R principles (reduce, reuse, recycle) and conducts many enlightening events focusing on waste prevention. For example, in 2023, 26,494 people participated in such events.[23] Apart from separate waste collection and environmental related events, the environmental organization "RazDel'nyi Sbor" is engaged in legislative initiatives in the sphere of waste management, developing volunteerism, greening business, etc.

Another environmental organization "Krugovorot" was founded in Tyumen in 2014. Its volunteers started the Eco-Mobile project, driving around several locations in the city and picking up recyclable materials. In 2019, a waste collection station was established and positioned as a training center for waste management. In 2022, "Krugovorot" had 35 volunteers helping 14,000 people sort waste for recycling.[24] "Krugovorot'"s activities are based on the Zero Waste concept aimed at minimizing waste generation. Therefore, this organization encourages reducing consumption by exchanging, refusing purchases, sharing, repairing, and reusing. For this purpose, the volunteers deliver enlightenment lectures, arrange sharing practices, and hold many different events in residential areas, schools, and various public places of the city.

The activities of "RazDel'nyi Sbor" and "Krugovorot" have been previously examined as flagships of grassroots environmental initiatives.[25] These organizations help to

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21 Shalunova, 2013; Guseva & Polishchuk, 2017; Ecological Movement "RazDel'nyi Sbor." (2023). Ecological Movement "RazDel'nyi Sbor." (2023). *Ecological Movement "RazDel'nyi Sbor": Annual Report 2023*. https://rsbor.ru/assets/templates/rsbor/docs/rds_docs/reports/Godovoy_otchet_2023.pdf. (In Russian).

22 Guseva & Polishchuk, 2017.

23 Ecological Movement "RazDel'nyi Sbor," 2023.

24 About Us, 2024.

25 Zatolokin, A., & Petrov, Y. (2023). "Tire Trap" in the Urban Improvement of Tyumen: Environmental, Social and Economic Problems. *Waste and Resources*, 10(4), 1–9. (In Russian); Guseva & Polishchuk, 2017; Pupysheva, I. N., Zakharova, O. V., & Kuznetsova, N. (2023). Varieties of the Discourse about Collection and Processing of Recyclable Materials: Between Pursuit of Gain and Saving the World. *Sotsiologicheskie issledovaniya*, 3, 53–65. (In Russian).

solve important problems: the growth of landfill space, increasing waste volumes, plastic pollution, and the declining quality of various waste types due to their mixing with food waste.[26] "RazDel'nyi Sbor" and "Krugovorot" are an important platform for communicating with the citizens and helping to maintain an environmentally friendly way of life.[27] Researchers also highlight the contribution of these organizations to the development of separate collection infrastructure, creating the possibility to dispose of rare types of waste and, in general, different types of waste in one location.[28] The organizations cooperate not only with the public and other nongovernmental organizations, but also with the government.[29] Additionally, the activists of "RazDel'nyi Sbor" and "Krugovorot" take part in various seminars, online conferences, festivals, panel discussions, and media interviews promoting an environmentally friendly lifestyle.[30] However, the environmental activities are not considered from the perspective of climate policy thought they can be a contribution to the adaptation to climate change or to mitigation of anthropogenic impact on the climate. To justify the involvement of nongovernmental organizations into the climate policy in the Russian Federation we assessed the prevalence of mentions of nine green practices of these organizations in their online posts; second, we studied subscribers' interest in posts mentioning green practices and calculated the engagement index; third, we identified the features of subscribers' interest in green practices in two Russian cities.

2. Big-Data Analysis as a Method to Justify State Climate Policy

2.1. Data

For this study, the VK API[31] was used to collect the posts from the "Krugovorot" and "RazDel'nyi Sbor" VKontakte communities published from 2014 to 2023. Only the posts containing textual information were selected. The data statistics and dynamics of posts and user activity including comments, likes, and reposts are presented in Table 1 and Figure 1, 176 respectively.

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[26] Risto, E. (2020). Waste Management System in Saint Petersburg: The Selection of the Optimal Waste. *Current Scientific Research in the Modern World, 9-2*(65), 17–20. (In Russian).

[27] Shalunova, 2013.

[28] Golovneva, A., & Chernysheva, L. (2017). Plastic, Bicycles and Urban Citizenships: Two Cases of Infrastructural Reorganization in St. Petersburg. *Journal of Sociology and Social Anthropology*, 20(3), 7–31. (In Russian).

[29] Guseva & Polishchuk, 2017.

[30] Shalunova, 2013.

[31] API | VK for developers. https://dev.vk.com/en/reference

Table 1
The Data Statistics

Characteristic	Krugovorot	RazDel'nyi Sbor
Number of posts from 2014 to 2023	1,596	7,169
Avg post length (symbols)	890.94±811.91	986.79±932.95
Number of subscribers (08-28-2024)	9,061	88,951

2.2. Evaluation of the Prevalence of Environmental Waste Practices

Since we analyzed a large number of posts, we used machine learning methods to search for mentions of green waste practices. For each green waste practice, a language model was fine-tuned for a binary text classification problem. The GreenRu dataset[32] was used for fine-tuning. GreenRu is the first dataset for detecting mentions of green practices in Russian social media posts. It contains 1,326 posts collected in Russian online communities. Each post has a sentence-level markup, the total number of mentions of green waste practices in GreenRu is 3,765. GreenRu covers nine types of green waste practices described in:[33] 1) waste sorting (P1), separating waste by its type; 2) studying the product labeling (P2), identifying product packaging as a type of waste; 3) waste recycling (P3), converting waste materials into reusable materials for further use in the production of something; 4) signing petitions (P4), signing documents to influence the authorities; 5) refusing purchases (P5), consciously choosing not to buy certain products or services that have a negative environmental impact, thereby reducing consumption and environmental footprint; 6) exchanging (P6), giving an unnecessary item or service to receive the desired item or service; 7) sharing (P7), using one thing by different people for a fee or free of charge; 8) participating in actions to promote responsible consumption (P8), participating in any events (workshops, festivals, lessons) aimed at popularizing the idea of reducing consumption; 9) repairing (P9), restoring consumer properties of things as an alternative to throwing them away.

In this study, we used RuBERT-base-cased,[34] a Russian-language adaptation of the BERT model.[35] To create validation sets, 100 random posts for each online community ("Krugovorot" and "RazDel'nyi Sbor") were selected and annotated by an expert on green practices from the University of Tyumen, Russia. Thus, we first fine-tuned

[32] Zakharova & Glazkova, 2024.

[33] Zakharova, O. V., Glazkova, A. V., Pupysheva, I. N., & Kuznetsova, N. V. (2022). The Importance of Green Practices to Reduce Consumption. *Changing Societies & Personalities, 6*(4), 884–905.

[34] RuBERT. (n.d.). Hugging Face. https://huggingface.co/DeepPavlov/rubert-base-cased

[35] Kuratov, Y., & Arkhipov, M. (2019). Adaptation of Deep Bidirectional Multilingual Transformers for Russian Language. In *Computational Linguistics and Intelligent Technologies: Proceedings of the International Conference "Dialogue": Issue 18* (pp. 333–339). V.V. Vinogradov Russian Language Institute of the Russian Academy of Sciences. (In Russian). https://ruslang.ru/doc/stoynova/Khomchenkova&Pleshak&Stoynova-2019-NonStandRussianCorpus.pdf

ten models for each green waste practice using the input length of 256 tokens, the learning rate of 4e-5, the cross-entropy loss function, and the AdamW optimizer. The number of training epochs was randomly selected within the range from one to ten. The model that showed the best performance (F1-score) on the validation set for each community was used to annotate mentions of green practices in the collected posts from this community. The average F1-score across all green waste practices on the validation set was 64.05% for "RazDel'nyi Sbor" and 71% for "Krugovorot."

2.3. Engagement Index

To determine subscriber involvement in the discussion of posts, we used the engagement index based on the article of Frolov and Agurova.[36] In this work, the engagement index was utilized for analyzing subscribers' involvement in discussions about waste disposal in Russia. The engagement index *E′* proposed in the article *Adaptation of Deep Bidirectional Multilingual Transformers for Russian Language*[37] evaluates the number of comments, likes, and reposts for each post relative to the total number of subscribers in the community:

$$E_i^{'} = \frac{likes_i \times a + comments_i \times b + reposts_i \times c}{subscribers} \times 100\%, \quad (1)$$

where *a*, *b*, and *c* represent weight coefficients for likes, comments, and reposts respectively, $likes_i$, $comments_i$, $reposts_i$ are the number of likes, comments, and reposts for the *i* post, *subscribers* is the number of subscribers in the community. The weight coefficients *a*, *b*, and *c* were determined in[38] as 0.26, 0.35, and 0.39 respectively based on a survey of experts.

The mentioned study was conducted on short-term data from 2018 to 2019. However, our study considers a ten-year time frame. Over ten years, the number of subscribers can change significantly, and we do not have retrospective data on the number of subscribers. Thus, using the number of subscribers to calculate subscribers' involvement does not seem appropriate. Therefore, we adapted the engagement index *E* for analyzing subscribers' involvement using long-term data. For this purpose, we propose using the number of views of a specific post instead of the number of subscribers. The view counter for posts became available on the social network VKontakte on January 1, 2017. Therefore, data on views is unavailable for posts from 2014–2016. For posts from this period, we predicted the number of views based on available data on likes, comments, reposts, and the year of publication.

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[36] Frolov & Agurova, 2019.

[37] *Id*.

[38] *Id.*

To accomplish this, we trained a linear regression model implemented using Scikit-learn.[39] The adapted engagement index *E* takes the form:

$$E_i = \frac{likes_i \times a + comments_i \times b + reposts_i \times c}{views_i} \times 100\%, \quad (2)$$

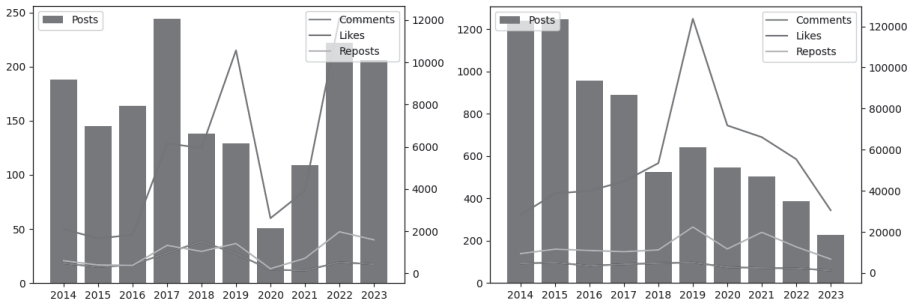
where $views_i$ represents the number of views for the *i* post. Thus, to assess subscribers' involvement for a specific post, the number of likes, comments, and reposts, multiplied by the corresponding coefficients, is used relative to the number of views of the post.

3. Prospects for Incorporating Grassroots Waste Management Initiatives into State Climate Policy

The study showed the dynamics of activity in online communities of nongovernmental organizations "RazDel'nyi Sbor" and "Krugovorot" over 10 years, in terms of both content creators and subscribers (Figure 1, a, b). For example, we can see the maximum number of posts in "Krugovorot" in 2017 when "Krugovorot"'s activities included organizing truck routes to collect recyclable materials from residents in various locations in the city (Figure 1, a). Therefore, some of the posts were functionally providing relevant information on the planned actions. In addition, the increase in the number of posts in 2017 may be related to the construction of a waste sorting plant, which was actively discussed in the community, and the launch of "Krugovorot" projects in other cities of the region. The active work of community members and other participants on separate waste collection resulted in Tyumen being among the top 20 cities in the ranking of separate waste collection availability in 2017. The lowest number of posts in the "Krugovorot" community was in 2020, when separate waste collection was suspended due to the lockdown. During the same period, the subscribers' activity was at its lowest too, as the lockdown interrupted its growth and then quickly recovered after the COVID-19 pandemic. The increase in the subscribers' activity is due to the growth in the number of subscribers, for example, in 2017 the number of subscribers grew from two thousand people to five thousand.

[39] Pedregosa, F., et al. (2011). Scikit-Learn: Machine Learning in Python. *Journal of Machine Learning Research, 12*, 2825–2830.

Figure 1
The Distribution of the Number of Posts, Comments, Likes, and Reposts in the Communities



a) Krugovorot b) RazDel'nyi Sbor

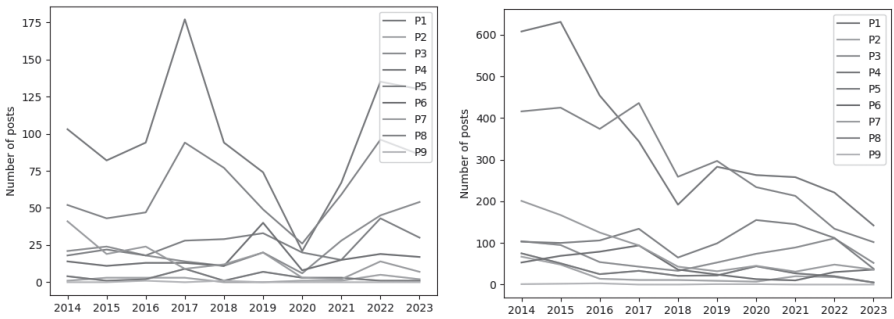
In the online community of "RazDel'nyi Sbor," the highest number of posts was in 2014 and 2015 (Figure 1, b). Until now, the number of posts started to decrease. In addition to functional posts about the venue, time, and rules for accepting recyclable materials, in 2014 the community discussed the construction of an incineration plant, which caused a negative reaction from both eco-activists and the community subscribers. Additionally, the posts contained information about project teams that worked in different city locations. The posts about special environmental events and about new locations for receiving various types of waste were the most welcomed by the subscribers during that period. The peak of "RazDel'nyi Sbor" subscribers' activity was in 2019, when much support was given to posts about protest actions and petitions related to the construction of new landfills, new legislative initiatives, and protests against non-environmental actions, such as the mass launch of balloons on holidays (Figure 1, b).

The study showed which practices were mentioned in posts more often and visualized the dynamics of these mentions (Figure 2, a, b). For "Krugovorot," the practice of separate waste collection was mentioned most often (P1), the posts included announcements about waste collection times and locations, schedule changes, and information about different types of waste such as plastic lids, biodegradable plastic, tin cans, etc. (Figure 2, a). The second most frequently mentioned practice was participation in actions to promote responsible consumption (P8), since the organization employs volunteers, the posts contained calls to join the team to help during the actions. The posts also included requests for financial support, calls for cooperation with each other, and invitations to events. For example, the Eco-Neighbor campaign announced calls to help neighbors who did not have a car by taking their waste to a permanent waste collection station. During the COVID-19 pandemic, participation in actions to promote sustainable consumption was mentioned even more often than separate

collection, because a permanent waste collection station was not functioning due to the lockdown, and actions could be carried out online. Sharing (P7) and other ways to reduce consumption (P5) were mentioned frequently in "Krugovorot" posts because they are important practices in the Zero Waste concept promoted in this community. For example, eco-activists proposed a solution to the problem of leftover food by organizing food sharing online community. Another example, eco-activists organized enlightening lectures on sustainable fashion, which included tips on minimizing the clothing used. During the pandemic, mentions of these practices declined strongly and did not return to previous levels until 2023. In contrast, the mention of recycling practices (P3) became more frequent in 2021–2023. Posts mentioning this practice included a description of the operation of a waste sorting plant located near the city, as well as a description of how the "Krugovorot"'s partners used sorted waste in their production. Such posts emphasized the importance of waste sorting and received a positive response from subscribers.

Figure 2

The Distribution of the Number of Posts That Mention Green Waste Practices



a) Krugovorot b) RazDel'nyi Sbor

Regarding "RazDel'nyi Sbor," mentions of separate waste collection practices (P1) and actions to promote responsible consumption (P8) tended to be the most common (Figure 2, b). For almost three years, 2016–2019, actions promoting responsible consumption were mentioned more often than actions related to the organization of separate waste collection, because "RazDel'nyi Sbor" focused on waste prevention and enlightenment activities and posted about them frequently. For example, eco-activists of "RazDel'nyi Sbor" participated in various festivals, discussion platforms, rallies on environmental issues. For the same reason, refusing purchases (P5) and sharing (P7) were also mentioned very often in community posts. For example, "RazDel'nyi Sbor" organized a free distribution of jam jars to anyone who needed one so that the jars could be used over and over again. We have already mentioned the

high protest activity of the community, which is also confirmed by the high frequency of mentioning the practice of signing petitions (P4). The posts creators often criticized the actions of authorities, organizers of events and manufacturers of goods, and subscribers were invited to join in signing petitions or to write a complaint.

Our research also allowed studying the dynamics of subscribers' interest in posts published in "RazDel'nyi Sbor" and "Krugovorot" communities by analyzing likes, reposts, and comments (Figure 1, a, b). Subscribers' interest in "Krugovorot"'s activities peaked in 2023, especially in the number of likes and reposts (Figure 1, a). This can be explained by both a twofold increase in the number of subscribers from 2017 to 2023 and the growing relevance of the climate and environmental agenda in Russian society. Subscribers demonstrated solidarity with the content of the post through likes and tried to share important information through reposts.[40] The number of comments in "Krugovorot" community decreased in 2020 and has not changed significantly since that period. Since comments in the community most often represented inquiries about the actions, the decrease in their number was due to the stabilization of the activities of the environmental organization because the permanent waste collection station had working hours and a list of types of accepted waste. In addition, registering for events through comments used to be spread in the community, later it was replaced by online registration. Often comments informed about the financial support provided. Additionally, comments contained congratulations, thanks, criticism, words of encouragement, and sharing personal experiences.

In "RazDel'nyi Sbor" community, the maximum subscribers' activity was in 2019, which can be explained by mass protests against the construction of a new landfill in a neighboring region, attempts to weaken environmental legislation, and non-environmental practices of organizers of festive events (Figure 1, b). Thus, strong approval of subscribers in 2019 was given to posts with calls to participate in protest events. However, the post containing relevant environmental information about micro plastics in food products gained the highest number of likes in 2019. This information was shared by more than a quarter of those who liked it. In the comments to this post, people expressed emotions and shared additional information. Subscribers most often shared the post about the questionnaire on the readiness to join separate waste collection.

We also evaluated subscribers' interest toward green practices by analyzing likes, reposts and comments on posts that mention these practices (Tables 2, 3). The number of reposts and likes of posts mentioning signing petitions practices (P4) was particularly high in "Krugovorot," with subscribers actively discussing and joining proposed petitions (Table 2). For example, in Tyumen, the implementation of the waste management reform led to the closure of small waste recycling businesses

[40] Frolov & Agurova, 2019.

and the destruction of the separate waste collection infrastructure that had already existed in Tyumen residential areas. Tyumen residents criticized the reform that caused the increase in utility bills. They participated in signing a petition addressed to the authorities to develop separate waste collection near houses and reduce payments for utilities. Subscribers also frequently shared information about waste labeling (P2), new actions for sharing things (P6), and requests for community help (P8). Posts mentioning recycling practices (P3), exchanging (P6), and enlightenment events (P8) received more likes than posts mentioning sharing (P7) or repairing (P9) practices. The average number of comments was one comment per post. Subscribers commented more on the posts mentioning sorting (P1), recycling (P3), labeling (P2), and signing petitions (P4). In general, the engagement index for the practices mentioned in the "Krugovorot" community showed that the practices of studying the product labeling (P2) and signing petitions (P4) were of the greatest interest to subscribers (Figure 3).

Figure 3

The Values of Engagement Index per Green Waste Practice for "Krugovorot" and "RazDel'nyi Sbor"

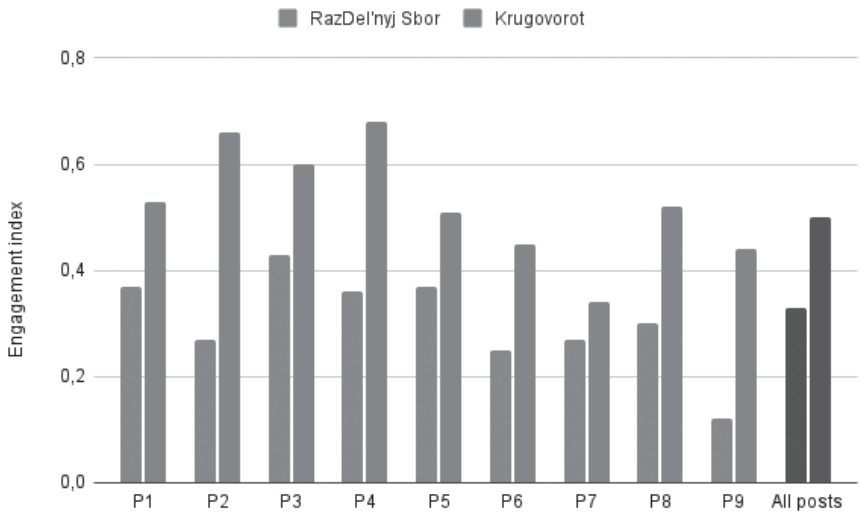


Table 2
The Indicators of Users' Activity in the "Krugovorot" Community

Practice	Likes	Com-ments	Reposts	*E*				
	Avg	Median	Avg	Median	Avg	Median	Avg	Median
P1	39.86	23	4.81	2	6.29	3	0.53	0.5
P2	51.47	29	5.21	2	10.16	6	0.66	0.53
P3	58.77	39	3.59	2	9.17	4	0.6	0.6
P4	92.28	62.5	4.28	2.5	17.84	8	0.68	0.73
P5	39.97	30	3.18	1	6.87	3	0.51	0.48
P6	36.4	29	2.81	0	6.71	3	0.45	0.45
P7	21.11	11	1.46	0	5.26	2	0.34	0.3
P8	38.08	28	4.13	1	5.79	3	0.52	0.49
P9	17	17	1	1	1.5	1.5	0.44	0.44
All posts	36.85	22	3.71	1	6.1	3	0.5	0.47

Regarding "RazDel'nyi Sbor," on average, posts mentioning recycling (P3) and refusing purchases (P5) received maximum approval in the community (Table 3). For example, posts dedicated to Global Recycling Day were very popular in the community. Another example of popular posts was tips on how not to buy unnecessary items or how to replace disposable plastic packaging with reusable packaging. The practice of signing petitions (P4) was third place in number of likes. Subscribers' comments most often included information related to waste recycling (P3), actions on separate waste collection (P1), and waste labeling (P2). For example, the construction of an incineration plant was actively discussed: the government proposed incineration as a way to convert waste into heat energy, but eco-activists insisted that waste should be involved in the production of products, not incinerated. Subscribers also asked many questions to clarify the list of accepted waste and expressed their gratitude to the volunteers who worked on the actions. Subscribers to "RazDel'nyi Sbor" community were most likely to share information about recycling practices (P3), separate waste collection (P1), and petition signing (P4). Reposts most often referred to the information related to protest actions, which proves the strong influence of the community on the public life in St. Petersburg and neighboring regions and political engagement of the population. The engagement index of the "RazDel'nyi Sbor" community subscribers was higher in relation to mentions of recycling practices (P3), signing petitions (P4), and refusing purchases (P5) (Figure 3).

Table 3

The Indicators of Users' Activity in the "RazDel'nyi Sbor" Community

Practice	Likes	Comments		Reposts	*E*				
	Avg	Median	Avg	Median		Avg	Median	Avg	Median
P1	87.36	49	5.92	3		21.74	10	0.37	0.28
P2	73.2	13	6.31	3.5		16.11	1	0.27	0.11
P3	125	90	6.4	4		27.88	15	0.43	0.41
P4	96.02	48	6.28	2		24.66	8	0.36	0.27
P5	98.44	55	4.87	2		21.06	9	0.37	0.3
P6	52.25	28.5	2.04	0		12.87	6	0.25	0.18
P7	61.64	24.5	4.35	2		15.11	6	0.27	0.17
P8	64.74	37	3.86	1		12.84	6	0.3	0.21
P9	27.5	21	0.88	0		3.75	1.5	0.12	0.07
All posts	77.06	40	5.07	2		17.71	7	0.33	0.24

We identified the top 20 posts with the highest engagement index in each online community. In "Krugovorot" community, the greatest interest was aroused by the posts about resuming the collection of popular types of waste, about "Krugovorot" obtaining legal status, bright dates in the history of the organization, collection points of hazardous waste. The message about signing a petition to organize separate collection in the residential areas was found only once in the top 20. However, in "RazDel'nyi Sbor" community 8 out of 20 most interesting posts for subscribers were of protest issue. Thus, posts about the refusal of balloons at city events aroused the greatest interest. In addition, subscribers were interested in posts about waste collection actions, about the collection of rare types of waste, for example, New Year trees.

The study found that environmental organizations "RazDel'nyi Sbor" and "Krugovorot" arranged activities that can a crucial part of climate change adaptation or mitigation (Figure 4). For example, the activities of these organizations helped to build chains in the logic of the circular economy, such as studying the labeling of packaging of goods, sorting waste, using waste in the production of new things, signing petitions to improve such chains.[41] Through such chains, the carbon footprint of waste and the production of new things is reduced, which can be used as part of measures to reduce human impact on climate.[42] Eco-activists have much experience in organizing separate collection in apartments and residential areas, interaction with waste transporters and recyclers, which will allow using their experience to replicate

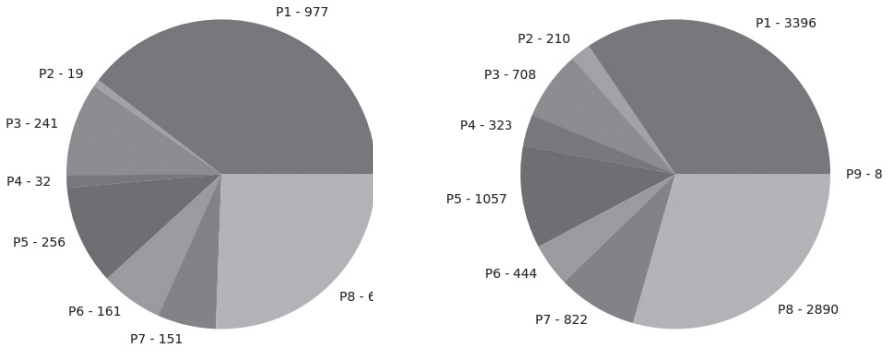
[41] Hobson, K. (2020). "Small Stories of Closing Loops": Social Circularity and the Everyday Circular Economy. *Climatic Change, 163*(1), 99–116.

[42] Creutzig et al., 2022.

the most efficient chains in the logic of circular economy.[43] Moreover, eco-activists favor recycling methods that reduce greenhouse gas emissions without exacerbating other environmental problems.[44] For instance, eco-activists of "RazDel'nyi Sbor" opposed the construction of an incineration plant as an alternative to waste processing, because they believed that such a plant would not solve the problem of waste, but it would only increase the problems of environmental pollution.

Figure 4

The Number of Posts That Mention Green Waste Practices



a) Krugovorot b) RazDel'nyi Sbor

In turn, weather hazards and cataclysms, as well as reduced resources and production, will require behavioral changes as part of adaptation activities.[45] Therefore, practices such as sharing, exchange, and repairing can help people adapt to new conditions and reduce consumption without reducing the quality of life.[46] Sharing, for example, allows people to use the same things for longer time.[47] In addition, these environmental organizations lead campaigns to promote behavioral

[43] Shabanova, 2024.

[44] Verplanken, B., & Whitmarsh, L. (2021). Habit and Climate Change. *Current Opinion in Behavioral Sciences, 42*, 42–46.

[45] Dubois, G., et al. (2019). It Starts at Home? Climate Policies Targeting Household Consumption and Behavioral Decisions Are Key to Low-Carbon Futures. *Energy Research & Social Science, 52*, 144–158; Creutzig et al., 2022.

[46] Raworth, K. (2017). *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist*. Chelsea Green.

[47] Hobson, K., & Lynch, N. (2016). Diversifying and De-growing the Circular Economy: Radical Social Transformation in a Resource-Scarce World. *Futures, 82*, 15–25.

change and waste prevention, have successful cases of engaging people in new practices, and authorities and regional solid waste management operators can scale their experience (Figure 4). Thus, on the one hand, green waste practices that improve waste management can be expanded and supported within the framework of climate mitigation policies and strategic documents.[48] On the other hand, green organizations have considerable experience in promoting practices that prevent waste generation and meet the needs of people in the context of decreasing production of things, which can be supported within the framework of adaptation activities.[49]

The organizations "RazDel'nyi Sbor" and "Krugovorot" have existed for a long time and have proven their ability to interact with various actors of environmental change. They have legal status, which makes it possible to legitimize interaction and cooperation with them. Therefore, cooperation with these organizations can be seen as an important way of bottom-up management and involvement of grassroots initiatives in climate policy implementation.[50]

It should be emphasized that these organizations need financial support.[51] Both organizations accept waste free of charge and give it to recyclers for a fee, but the market price of waste is so low that it does not cover even half of the organizations' expenses. State financial support in the form of grants is rarely received by these organizations and does not ensure their stable operation. Both organizations exist on donations from subscribers and entrepreneurs. Both organizations are constantly under the threat of cessation of activities and complete closure. It is a paradoxical situation: a socially significant activity can stop due to the lack of funding at the very time when it can help to implement strategic initiatives of the state.[52] Integrating these and other similar organizations as implementers in government programs will allow them to receive stable funding and fulfill their potential to achieve climate goals.[53]

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48 Guseva & Polishchuk, 2017.

49 Kasianova, A., Frolenok, V., & Chekrygin, M. (2020). The Change of Everyday Habits of People According to Current Ecological Situation. *Business Education in the Knowledge Economy*, 2(16), 65–68. (In Russian).

50 Creutzig et al., 2022.

51 Guseva & Polishchuk, 2017.

52 Schmid, B. (2021). Hybrid Infrastructures: The Role of Strategy and Compromise in Grassroot Governance. *Environmental Policy and Governance, 31*(3), 199–210.

53 Litvintsev, D., Abramova, N., & Romanov, D. (2023). Separate Waste Collection: Institutional Problems of Developing Pro-Ecological Practices in Everyday Life. Monitoring of Public Opinion: Economic and Social Changes, 3(175), 169–185. (In Russian); Verplanken & Whitmarsh, 2021; Concari, A., Kok, G., & Martens, P. (2022). Recycling Behaviour: Mapping Knowledge Domain Through Bibliometrics and Text Mining. *Journal of Environmental Management, 303*, Article 114160.

Conclusion

The study demonstrates that environmental nongovernmental organizations have been active for 10 years, engaging hundreds of people in green practices that help reduce anthropogenic climate impacts or adapt to climate change. These green practices can be included in government policy documents as mitigation activities, such as the often-mentioned practices of separate waste collection, recycling, or as adaptation activities, such as promoting responsible consumption or refusing purchases.

This study has justified that environmental nongovernmental organizations "RazDel'nyi Sbor" and "Krugovorot" carry out complex activities related to waste, they are involved not only in waste management, but also in waste prevention, which can be used to implement climate policy. The activities of these green organizations attract wide public interest, subscribers of the online communities of these organizations are actively involved in offline activities. Subscribers are aware of ways to reduce consumption and manage waste responsibly. Participation in separate waste collection, exchanges, sharing, etc. has become a part of their daily life and they can share their experience in the communities, especially with the governmental support.

However, ignoring grassroots initiatives can lead not only to a decrease in the effectiveness of climate policy, but also to conflicts in society. The study has shown that the maximum value of the engagement index is associated with topics negatively perceived by society, people's protest can be caused both by the actions of the government and non-environmental actions of various organizations.

Our recommendations for governmental policies are as follows:

1. It is necessary to use the valuable experience of environmental nongovernmental organizations for implementation of behavioral changes, involve them in activities within the framework of mitigation and adaptation policies.

2. The activities of environmental public organizations should be financially supported and the budget money allocated for the implementation of climate policy.

Evaluation of the dynamics of environmental nongovernmental organizations' activities allows us to determine the periods of maximum and minimum activity during 10 years. Further research is required to identify internal and external factors affecting the activities of these organizations in the periods of maximum and minimum activity, considering them as opportunities and threats. In addition, evaluation of the dynamics of mentions of green waste practices provides an opportunity to analyze trends in the activities of environmental communities and to propose measures to support certain green waste practices.

The study has manifested that big data analysis can be used to improve legislation and to develop state climate policy.

The main limitations of the research are related to the fact that we have studied the activities of only two environmental nongovernmental organizations that are related to waste management. Further study of various environmental organizations

is required to establish common patterns of their activities and broad involvement of grassroots initiatives in the implementation of climate policy.

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COMMENT

Problems of Implementation of the Ramsar Convention on Wetlands in China

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Abstract. The Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention) was signed in February 1971 in Ramsar, Iran, and currently has 172 parties. China acceded to this Convention in 1992, became the 67th party, and was elected a member of the Standing Committee in 2005. Wetlands conservation in China has achieved some positive results, but it still faces serious challenges. China's wetlands level is much lower than the world average (global wetlands level is 8.60%), and the wetlands area per capita is only $^{1}/_{5}$ of the world average.[1] Until 2022, China lacked legislation to protect wetlands; the article's objective is to analyze the recently adopted Chinese legislation in this area. Ultimately, the authors conclude that it is necessary to strengthen legal standards in China to contribute to the conservation and restoration of global wetlands.

[1] National Forestry and Grassland Administration. http://www.forestry.gov.cn/portal/main/govfile/13/govfile_2285.htm

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Introduction

Wetlands are located in the transition zone between aquatic ecosystems and terrestrial ecosystems, known as "kidneys of the earth" and "species gene repository."[2] Wetlands are important habitats that are closely linked to the survival and development of mankind. They can provide mankind with unique ecological services such as supplying clean water and aquatic products, maintaining biodiversity, regulating the climate, and mitigating droughts.[3] Wetlands are widely distributed around the world in abundant forms. Their quality and area are closely related to human health and production and life. They are precious habitats for the growth and breeding of animals and plants, and also an important part of the land and natural resources of each country.

Over a long period of human history, people have failed to understand the importance of wetlands, and even what wetlands are, so wetland systems around the world have been severely damaged. Since 1900, nearly half of the earth's wetlands

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[2] Erwin, K. L. (2009). Wetlands and Global Climate Change: The Role of Wetland Restoration in a Changing World. *Wetlands Ecology and Management, 17*(1), 71–84.

[3] Vymazal, J. (2022). The Historical Development of Constructed Wetlands for Wastewater Treatment. *Land, 11*(2), 174.

have been lost due to unsustainable human development and use.[4] As research and knowledge of wetlands has spread, people have gradually come to understand the importance of wetland ecosystems to mankind, and governments around the world have begun to take measures to protect and save wetlands.

In February 1971, representatives of 18 countries signed the *Convention on Wetlands of International Importance Especially as Waterfowl Habitat* (also known as the Ramsar Convention and "Wetlands Convention") in Ramsar, Iran. The Ramsar Convention is one of the earliest intergovernmental conservation conventions in the world and the only international convention to protect a single ecosystem in the world.[5]

The main causes of wetland degradation worldwide are anthropogenic and natural factors, i.e. human activities and climate change.[6] Over the past 300 years, inland wetlands in China, the United States, Europe and other places have been seriously lost and degraded, reaching about 3.4×106 (approximately 360.4) square kilometers.[7]

Since joining the Convention on Wetlands in 1992, China has actively fulfilled its national obligations and achieved remarkable results, but there are still a number of problems in the process of implementing the Convention. China should constantly overcome difficulties in the process of wetlands conservation and restoration and make its contribution to global environmental protection.

1. Basic Information on the Ramsar Convention

Wetlands, forests and oceans are known as the three major ecosystems on Earth. Today, the problem of water scarcity has risen from the regional to the global level.[8] A healthy wetland ecosystem plays an important role in water purification, water resource management, carbon storage, the provision of food and resources, biodiversity conservation, and cultural and recreational value. It has significant ecological, economic, social and cultural functions, so its conservation value cannot be ignored. However, at the same time, the loss of wetlands worldwide is very serious, bringing many negative impacts.

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4 He, Y., & Xiong, X. (1994). On the Characteristics of the Wetland Ecosystem. *Environmental Protection in Agriculture*, 13(6), 275–278. (In Chinese).

5 Kopylov, M. N., & Solntsev, A. M. (2012). Ramsar Convention's 40th Anniversary. Journal of Russian Law, 3(183), 105–112. (In Russian).

6 Solntsev, A. M. (2018). Climate Change: International Legal Dimension. *Moscow Journal of International Law*, 106(1), 60–78. (In Russian).

7 Fluet-Chouinard, E., et al. (2023). Extensive Global Wetland Loss over the Past Three Centuries. *Nature, 614*(7947), 281–286.

8 Likhacheva, A., Kalachyhin, H., Abdolova, S., & Kamenkovich, N. (2021). Water Dimension of BRICS Cooperation: National Challenges and Joint Opportunities. *BRICS Law Journal, 8*(2), 41–65.

The Ramsar Convention entered into force on December 21, 1975, and has 172 parties today.[9] The Convention aims to protect wetland ecosystems by preventing the loss of wetlands as breeding and wintering grounds for many waterfowl, and by encouraging "wise use."

The Ramsar Convention has become the most important wetlands conservation convention in the world,[10] emphasizing the protection and sustainable use of wetland resources. On January 3, 1992, China decided to accede to the Convention on Wetlands. The Convention entered into force for China on July 31, 1992, and China became the 67th member state of the Convention, shouldering international responsibilities and obligations for wetland protection. In 1996, the 19th Standing Committee of the Ramsar Convention decided to celebrate World Wetlands Day on February 2 every year to commemorate the signing of the Convention and raise public awareness of wetland protection.

The Ramsar Convention is short and clear. It consists of 12 articles that define the broad concept of wetlands, the responsibilities and notification obligations of the contracting parties, the procedures for convening the Conference of the Parties and the content of its deliberations, etc. The Conference of the Parties meets every three years to agree on the work plan and budget arrangements for the next work cycle and to consider guidance on environmental issues. Non-member states, intergovernmental organisations and non-governmental organisations also attend the meeting as non-voting observers.

Article 1 of the Ramsar Convention defines wetlands as "areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres." As of 2021, more than 2,400 wetlands around the world have been included in the List of Wetlands of International Importance, with a total area of more than 2.5 million square kilometres, which is about 13–18% of the world's wetlands area.[11] Wetlands of international importance are wetlands that meet the evaluation criteria of the Wetlands Convention and are internationally representative in terms of ecology, flora and fauna, landscape, etc.[12]

The parties to the Ramsar Convention are required to fulfil the following obligations: 1) to carry out sustainable management of wetland resources, actively formulate corresponding policies and regulations, balance the relationship between

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[9] Convention on Wetlands of International Importance especially as Waterfowl Habitat (February 2, 1971). UNESCO. https://www.unesco.org/en/legal-affairs/convention-wetlands-international-importance-especially-waterfowl-habitat?hub=66535#item-3

[10] Feng, X. (2008). "*Convention on Wetlands" and Wetland Protection in China* (Master's Thesis, p. 14). Ocean University of China.

[11] Global Wetland Outlook. https://www.global-wetland-outlook.ramsar.org

[12] Kleijn, D., et al. (2014). Waterbirds Increase More Rapidly in Ramsar Designated Wetlands Then in Unprotected Wetlands. *Journal of Applied Ecology, 51*(2), 289–298.

economic development and environmental protection, and promote the health and stability of the ecosystem; 2) to identify and protect key wetland ecosystems, designate and take necessary measures to protect wetlands of international importance, and protect the biodiversity of wetland ecosystems; 3) to promote the development of global wetland conservation through international cooperation such as sharing wetland management experience and jointly carrying out research and conservation projects. As noted in its own Global Wetland Outlook,[13] over the past 50 years approximately 35% of wetlands globally have been lost over the convention's life,[14] with larger numbers reported by other authoritative global assessments.[15] Combating wetlands degradation requires a global effort.

After 10 years of discussion and research, the Ramsar Convention focused on protecting urban wetlands, which was very challenging and quite innovative. In 2008, the 10th Conference of the Parties to the Ramsar Convention formally addressed the issue of wetlands and urbanization and adopted a resolution "Wetlands and Urbanization." The 11th Conference of the Parties to the Ramsar Convention adopted a resolution "Principles for the Planning and Management of Urban and Peri-urban Wetlands," and then the 12th Conference of the Parties adopted a resolution "Wetland City Accreditation." These resolutions help increase public awareness of wetlands, promote sustainable urban development, and closely link environmental protection to quality urban development and are important milestones in the process of wetlands conservation.

2. Problems of Implementation of the Ramsar Wetlands Convention in China

Wetlands in China are widespread and rich in types, they include all types of Ramsar wetlands and cover a large area of the country. However, the concept of wetlands is relatively unknown in China. Before the 1990s, wetlands conservation activities in China were at the stage of raising awareness and were relatively rare. At that time, there were no laws and regulations specifically addressing wetlands as conservation areas.

In the past, the level of wetlands conservation in China was low, and some wetlands with important ecological functions were not included in the conservation

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[13] Ramsar Convention on Wetlands. (2018). *Global Wetland Outlook: State of the World's Wetlands and Their Services to People 2018*. https://www.ramsar.org/sites/default/files/documents/library/gwo_e.pdf

[14] Bridgewater, P., & Kim, R. E. (2021). The Ramsar Convention on Wetlands at 50. *Nature Ecology & Evolution, 5*(3), 268–270.

[15] Watson, R., et al. (2019). *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (pp. 22–47). IPBES. https://files.ipbes.net/ipbes-web-prod-public-files/inline/files/ipbes_global_assessment_report_summary_for_policymakers.pdf

system, which resulted in the decline of wetlands bird species and populations and the reduction of wetlands biodiversity. For example, the "Great Northern Wilderness" region of China once had abundant wetland resources. In the mid-20th century, the Chinese government over-developed agriculture in the region in order to solve the "food problem" for the vast population, which caused the wetland water resources to dry up and the ecological environment to deteriorate. According to statistics, 40% of China's important wetlands are at risk of serious degradation. China's North China Plain, the middle and lower reaches of the Yangtze River and Yellow River basins, the Sanjiang Plain and Songnen Plain in the northeast, the tidal flats and mangroves along the eastern coast, Poyang Lake, Taihu Lake, Dianchi Lake and other wetlands are facing varying degrees of destruction and degradation. By the mid-1990s, about 50% of coastal wetlands had ceased to exist, and nearly 1,000 natural lakes had disappeared.

After China joined the Ramsar Convention in 1992, awareness of wetlands conservation increased and legislative initiatives for wetlands protection have been taken. China has gone through 4 stages of development in the process of establishing legal protection for wetlands and implementing the convention:

1) 1992–2003, comprehensive study and initial phase. China conducted the first national wetlands resource survey and released the "China Wetlands Conservation Action Plan";

2) 2004–2015, rescue conservation stage. China has carried out large-scale construction of wetland parks and implemented wetlands conservation projects;

3) 2016–2021, system conservation stage. With the goal of building an "ecological civilization," China issued and implemented a plan for a wetland's conservation and restoration system;

4) 2022 – present. China has adopted the Wetlands Protection Law of the People's Republic of China and continues to actively implement the Ramsar Convention and the decisions of the Conference of the Parties.

The process of wetlands conservation and implementation of the Ramsar Convention in China has been complicated. Wetland protection in China and the implementation process of the Ramsar Convention are quite complicated. According to the results of the first national wetland resources survey (2003), the total area of wetlands in China was 38.4855 million hectares, of which natural wetlands accounted for 36.2005 million hectares. The second national wetland resources survey (2014) showed that the total area of wetlands in the country had increased to 53.6026 million hectares, and the area of natural wetlands was 46.6747 million hectares. Comparing the two surveys using the same criteria, China's wetland area has decreased by 3.3963 million hectares, a decrease of 8.82%; the area of natural wetlands has decreased by 3.3762 million hectares, a decrease of 9.33%.[16] The frequency of threat factors in

[16] National Forestry and Grassland Administration. (2014). *Results of the Second National Wetland Resources Survey*. http://www.forestry.gov.cn/main/65/20140128/758154.html. (In Chinese).

China's wetlands has increased by 38.72%,[17] and there are many factors that have caused a reduction in wetland area, which has placed the ecological conditions of wetlands under severe strain.[18]

Firstly, public awareness of wetland protection is relatively weak. In developed countries and regions, wetland research was carried out earlier and environmental awareness is stronger. In contrast, local governments and the public in China attach significantly less importance to wetland protection, fail to fully understand the important role and value of wetlands, and relevant research and publicity efforts are also inadequate.

In many cases, industries and government agencies focus on one element of the wetlands for their own benefit and have even treated wetlands as "barren wastelands." In the past, wetlands were used for agriculture. China has a "cropland redlining" policy. When a development project is supposed to occupy croplands, other land must be reclaimed as compensation. The wetlands were once considered "unused land" and were reclaimed by local governments as compensation for occupied croplands. Therefore, conservation and management measures taken for wetlands are not systematic, scientific, coordinated and comprehensive.

Secondly, China is relatively weak in terms of its scientific and technological foundation and its ability to fulfil its commitments. Scientific research on wetlands is still inadequate, there is a lack of sound monitoring methods and mechanisms, systematic recording of wetland distribution and classification information, and limited financial investment in wetland research.

Wetland conservation and research require cooperation between the relevant fields and departments, such as water resources, land, agriculture and environmental protection. At present, Chinese wetlands conservation authorities need to improve cooperation and coordination mechanisms – they lack the ability to act in a coordinated manner to better promote wetlands conservation and management.

Thirdly, there has long been no legislation on wetlands conservation. The delay in enacting legislation is a major reason for the dramatic decline in wetland areas. Before the Wetland Protection Law of the People's Republic of China was formally implemented in 2022, China lacked wetland protection legislation at the national level. Wetland destruction was serious, and it was difficult to pursue accountability in related cases. Before 2022, China had fewer wetlands conservation regulations scattered in other laws and regulations. These rules were neither systematic nor comprehensive and could not meet the requirements for systematic wetlands conservation. Some regulations even violate current wetlands conservation requirements due to their long duration and differing legislative objectives.

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[17] National Forestry and Grassland Administration, 2014.

[18] Liu, L. (2021). *Research on the Controversial Issues of Wetlands Conservation Law*. Beijing Jiaotong University. (In Chinese).

In 2014, amendments regarding wetlands were made to the Environmental Protection Law of the People's Republic of China. Article 2 of this Law states:

"Environment" as used in this Law refers to the total body of all natural elements and artificially transformed natural elements affecting human existence and development, which includes the atmosphere, water, seas, land, minerals, forests, grasslands, wildlife, natural and human remains, nature reserves, historic sites and scenic spots, and urban and rural areas.[19]

Although wetlands are listed as independent natural elements along with other elements, there have been no specific regulations to protect wetlands.

In some laws in China, wetlands are only considered as a means of environmental protection and are not classified as protected areas. For example, Article 68 of the Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution states:

Local people's governments at all levels shall strengthen the management of construction and transportation, keep roads clean, control the stacking of materials and debris, expand the area of green spaces, water surfaces, wetlands and paved ground, and prevent and control dust pollution.[20]

This section of the Law addresses the expansion of wetlands as a means of preventing and controlling dust pollution, notes the ecological value of wetlands, but does not propose measures to protect wetlands.

Some of China's laws have been amended to conserve wetlands, but they are limited in content and application, and do not create a consistent system of protection. For example, Article 29 of the Law of the People's Republic of China on the Prevention and Control of Water Pollution states:

The local people's government at or above the county level shall, according to the requirements for the ecological environment functions of valleys, organize the protection and recovery of lakes, rivers and wet land, construct ecological environment treatment and protection projects such as artificial wetland, water source cultivation forest, buffer belts and isolation belts of plants along rivers and lakes, rectify black and smelly waters according to the actual local circumstances, and enhance the bearing capacity of environmental resources in valleys.[21]

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[19] Environmental Protection Law of the People's Republic of China (adopted at the 11th Meeting of the Standing Committee of the 7th National People's Congress on April 24, 1989; as amended on April 24, 2014). National People's Congress of the People's Republic of China. http://www.npc.gov.cn. (In Chinese).

[20] Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution (adopted at the 22nd Meeting of the 6th Standing Committee of the National People's Congress on September 5, 1987; as amended on October 26, 2018). Ministry of Ecology and Environment of People's Republic of China. https://www.mee.gov.cn/ywgz/fgbz/fl/201811/t20181113_673567.shtml. (In Chinese).

[21] Law of the People's Republic of China on the Prevention and Control of Water Pollution (adopted at the 5th Meeting of the Standing Committee of the 6th National People's Congress on May 11, 1984;

Although the law mentions that wetlands must be protected and restored, it does not indicate specific methods of protection.

Articles 20 and 22 of the Marine Environment Protection Law of the People's Republic of China mention the conservation of coastal wetlands, emphasizing that the State Council and coastal local people's governments at all levels should take effective measures to protect typical and representative marine ecosystems such as mangroves bushland and coastal wetlands. Marine nature reserves should be established in areas of seas, coasts, islands, coastal wetlands, estuaries and bays that have special conservation value.[22] These articles only cover coastal wetlands and mangroves, which do not present all types of wetlands.

In the absence of specific legislation on the conservation of wetlands, local governments at all levels have formulated relevant local regulations, such as: "Regulations on the Conservation of Wetlands in Heilongjiang Province,"[23] "Regulations on the Conservation of Wetlands in Guangxi Zhuang Autonomous Region,"[24] "Regulations on the Conservation of Lake Poyang Wetlands in Jiangxi Province,"[25] and others.[26] In different local settings, some important systems are not harmonized with each other, so they cannot systematically protect wetlands. Local legislation is at a lower level and the protection it provides is not strong enough to replace state-level wetlands conservation legislation. These facts affect the image of China as a participant in the Ramsar Convention.[27]

With the rapid development of China's social economy and urbanization, the pressure on wetland resources is increasing day by day. In the pursuit of economic interests, wetland resources are often overexploited or used irrationally, and the conflict between wetland ecological protection and resource utilization is

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as amended on June 27, 2017). Ministry of Ecology and Environment of People's Republic of China. https://www.mee.gov.cn/ywgz/fgbz/fl/200802/t20080229_118802.shtml. (In Chinese).

22 Marine Environment Protection Law of the People's Republic of China (adopted at the 24th Meeting of the Standing Committee of the 5th National People's Congress on November 4, 1982; as amended on November 4, 2017). Ministry of Ecology and Environment of People's Republic of China. https://www.mee.gov.cn/ywgz/fgbz/fl/201805/t20180517_440477.shtml. (In Chinese).

23 Regulations on the Conservation of Wetlands in Heilongjiang Province (adopted at the 22nd Meeting of the Standing Committee of the 12th People's Congress of Heilongjiang Province on October 22, 2015; as amended on June 28, 2018). Legal Library. http://m.law-lib.com/. (In Chinese).

24 Regulations on Wetlands Conservation in Guangxi Zhuang Autonomous Region (adopted at the 13th Meeting of the Standing Committee of the 12th People's Congress of Guangxi Zhuang Autonomous Region on November 28, 2014). Legal Library. http://m.law-lib.com/. (In Chinese).

25 Regulations on the Conservation of Poyang Lake Wetlands in Jiangxi Province (adopted at the 6th Meeting of the Standing Committee of the 10th People's Congress of Jiangxi Province on November 27, 2003). Legal Library. http://m.law-lib.com/. (In Chinese).

26 Chen, G. (2022). China as a Party to the Ramsar Convention. *Eurasian Journal of International Law*, 2(2), 92–107. (In Russian).

27 Liu, 2021.

becoming increasingly prominent.[28] Consistent expansion of anthropogenic land covers occurred within 43 Ramsar sites, and anthropogenic threats from land cover change were particularly notable in eastern China.[29] Indiscriminate development and destruction of wetlands in the Yangtze River and coastal areas continues. The destruction of the ecological environment has weakened the ability of wetlands to store floodwaters, increasing the risk of natural disasters and posing a serious threat to people's lives and property.[30]

With the improvement of laws and the awakening of public consciousness with regard to environmental protection, the conservation of wetlands has become a concern of the entire society. China actively implements the Convention on Wetlands and has established a "baseline of 800 million mu." It is the only member country in the world to have completed three consecutive national wetland resource surveys. Central government documents such as the "Opinions on Accelerating the Construction of Ecological Civilization" and the "Overall Plan for the Reform of the Ecological Civilization System" reflect the Chinese government's great emphasis on wetland protection. Chinese President Xi Jinping has repeatedly directed wetland protection work and delivered an important speech at the opening ceremony of the 14th Conference of the Parties to the Convention on Wetlands (COP14). By the end of 2023, China's wetland area ranks fourth in the world and first in Asia, with more than 56 million hectares.[31]

As of 2024, there are 82 Ramsar sites in China, covering a total area of more than 7.6 million hectares.[32] China has greatly increased its focus on wetlands protection, but the road to wetlands conservation is still long. China should make continuous efforts to improve its ability to implement the Ramsar Convention.

3. China's Recent Achievements in Wetlands Protection

1) China adopted the Wetlands Protection Law of the People's Republic of China. The development of the Wetlands Protection Law of the PRC took more than three years from drafting to promulgation. It is one of the fastest tracks in the field of environmental protection legislation. With the deepening of the concept of "ecological civilization," the PRC Central Committee attaches great importance

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28 Kou, J. (2022). The Rule of Law Protects the Beauty of Wetland. *People's Daily*. (In Chinese).

29 Mao, D., et al. (2021). Remote Observations in China's Ramsar Sites: Wetland Dynamics, Anthropogenic Threats, and Implications for Sustainable Development Goals. *Journal of Remote Sensing, 2021*, 1–13.

30 National Forestry and Grassland Administration. http://www.forestry.gov.cn/main/72/content-1046971.html

31 Siyu, D. (2023, November 8). *The Current Wetland Area in China Exceeds 56 Million Hectares*. Central People's Government Portal. https://www.gov.cn/lianbo/bumen/202311/content_6914115.htm. (In Chinese).

32 Ramsar Convention on Wetlands. https://www.ramsar.org

to the protection and development of wetlands. The promulgation of the Wetland Protection Law of the People's Republic of China marks an important step for China in wetland protection, reflecting the fact that Chinese legislation has responded to the people's ardent hope for a beautiful ecological environment. At the same time, "Chinese wisdom" and "Chinese solutions" have also become part of the international wetland protection system, making important contributions to global wetland ecological protection.

The Wetland Protection Law of the People's Republic of China provides both a legal basis and safeguards for wetland protection, clarifying the responsibilities and obligations of governments at all levels and relevant departments for wetland protection. It requires the establishment of wetland monitoring and assessment mechanisms and the provision of scientific research support. It encourages public participation in wetland protection work and raises the awareness of all sectors of society regarding their responsibility to protect wetlands. It calls for the integration of wetland protection and reasonable utilization, which aims to achieve a win-win situation for ecological and environmental protection as well as economic and social development. It promotes the building of an ecological civilization and the harmonious coexistence of humans and nature. It demonstrates China's proactive attitude towards global environmental governance, provides a Chinese solution for international wetland protection, and enhances the country's image. Wetlands are ecosystems as important as forests, grasslands, and water bodies. The introduction of this law has specialized wetland protection efforts, further enriching and improving China's ecological civilization system.[33]

In view of China's food security and the actual demand for aquatic products, the definition of wetlands in Article 2, paragraph 2 of the Wetlands Protection Law has been changed from the Ramsar Convention by adding the expression "except for rice fields and artificial waters and muddy areas, used for aquaculture," which not only meets the needs of building an ecological civilization in China, but is also in line with the current situation of wetlands conservation and management in China, and promotes the development of comprehensive wetlands conservation in China.

2) China hosted the 14th Conference of the Parties to the Ramsar Convention, at which the Wuhan Declaration was adopted. On November 5, 2022, the 14th Conference of the Parties to the Convention on Wetlands (COP14) was held simultaneously in Wuhan (China) and Geneva (Switzerland), marking the first time the conference was held in China. The Wuhan Declaration was officially adopted at the Conference. As one of the main outcomes of the Conference, the Wuhan Declaration calls for the mobilization of additional resources from various sources to strengthen the implementation of the 4th Ramsar Strategic Plan and the development of a stronger 5th Ramsar Strategic Plan with more impactful actions by 2030. At the same time, the Wuhan Declaration put

[33] Ministry of Natural Resources. https://www.mnr.gov.cn/dt/ywbb/202206/t20220601_2738038.html

forward 12 initiatives aimed at strengthening legislation and law enforcement for the protection, restoration, management and rational and sustainable use of wetlands on a global scale. These initiatives call for close cooperation among governments, all sectors of society and relevant institutions to work together to assess and maintain the ecosystem services of wetlands and to promote the sustainable use of wetland resources. The Declaration also emphasizes the importance of scientific assessment and economic accounting of the natural capital of wetlands and their ecosystem services, which helps people better understand the ecological and economic benefits of wetlands through accurate value assessment, and then take practical actions to protect and restore wetlands.

The Declaration encourages appropriate priority conservation and management of vulnerable ecosystems such as peatlands, coral reefs and seagrass beds, mangroves, highland wetlands and subterranean wetlands; enhances technical cooperation and knowledge exchange among wetlands conservation professionals worldwide; calls for the establishment of wetland parks or wetland education centers as needed; strengthens the prevention of water pollution in wetlands; calls on Parties to ensure the full participation of indigenous peoples and local communities, women, youth, people with disabilities, academia, civil society and private institutions in the conservation, restoration, management and wise and sustainable use of all types of wetlands. These initiatives will not only help to enhance the positive role of wetlands in addressing climate change, biodiversity conservation, and freshwater resource management, but also effectively address the increasingly prominent social, economic, and environmental issues, and achieve a harmonious symbiosis between human society and the natural ecology.[34]

3) China ranks first in the world in terms of the number of "International Wetland Cities." On November 10, 2022, the Secretariat of the Convention on Wetlands issued certificates to seven Chinese cities, including Wuhan in Hubei, Liangping in Chongqing, Hefei in Anhui. With six cities in 2018 including Harbin, Haikou, Dongying, China now has 13 International Wetland Cities, the largest number in the world. This clearly demonstrates the effectiveness of wetlands conservation and restoration in China. In the 30 years since joining the Ramsar Convention, China has not only taken decisive measures to protect its wetlands, but also established a relatively comprehensive wetlands protection system. Many Chinese cities, such as Wuhan, have integrated urban development with wetlands conservation, leading to significant improvements in the city's environmental conditions.

Wetlands are a precious asset for China and for all of humanity. In his opening speech at COP14, Chinese President Xi Jinping proposed three initiatives: "building

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[34] Shan, H., Zeying, L., & Hui, Z. (2022, November 7). *The Wuhan Declaration was adopted at the high-level ministerial meeting of the 14th Conference of the Parties to the Convention on Wetlands*. National Forestry and Grassland Administration. http://www.forestry.gov.cn/c/www/COP14dh/30970.jhtml. (In Chinese).

a global consensus on wetland protection, promoting the global wetland protection process, and improving the well-being of people living in wetlands around the world." These initiatives provide scientific guidance for global wetland protection efforts and point to a direction for development. In the future, China will further support global ecological collaboration in the field of wetlands, promote the selection of more cities as "International Wetland Cities," actively promote close cooperation with the international community, work together to maintain the ecological value of wetlands and world natural heritage, and make new contributions to building a community of shared future for mankind.

4) The area of mangroves in China is steadily increasing. Mangroves around the world provide humanity with a variety of ecosystem services,[35] but the current global mangrove situation is worrying, with a continuous decline in area, at a rate of 1% per year. China's wetland protection model provides valuable experience and examples for the global cause of environmental protection. China has gradually established a collaborative mechanism involving multiple levels and multiple departments, and has formulated and implemented a series of special plans for the protection, restoration and rational use of wetland resources, actively promoting mangrove protection and restoration projects.

China is one of the richest countries in the world in terms of wetland types, thanks to its vast territory and diverse climate types. In recent years, China has continued to increase its scientific research and innovation in the protection and restoration of mangroves, forming a unique protection and management model. It has become one of the few countries in the world to achieve an increase in mangrove area, effectively maintaining the ecological security of coastal areas and making a positive contribution to addressing climate change and protecting biodiversity. Currently, China's mangrove forest area has reached 27,100 hectares. The Ramsar Convention on Wetlands Secretariat has decided to establish the International Mangrove Centre in China. In the future, the International Mangrove Centre will be dedicated to promoting the protection and restoration of mangrove resources worldwide, helping to achieve the Sustainable Development Goals, and further strengthening the pace of global ecological civilization construction.

5) China has greatly improved its comprehensive capabilities in wetlands conservation and restoration. Currently, China's urbanization rate has exceeded 60%, which means that the continuous increase in the urban population and changes in land use pose unprecedented challenges to wetland protection. Against this background, it is particularly important to explore new models of wetland protection and management that are suitable for urban environments and to find a balance between urbanization and wetland protection. To address these challenges, China

[35] Padonou, E. A., et al. (2021). How Far Are Mangrove Ecosystems in Benin (West Africa) Conserved by the Ramsar Convention? *Land Use Policy, 108*, Article 105583.

has taken a series of measures to strengthen wetland protection. For example, in March 2020, in order to promote the construction of an ecological civilization and create a beautiful future of harmonious coexistence between humans and nature, Chinese President Xi Jinping visited the Xixi National Wetland Park, emphasizing the coordinated development of urban development and wetland protection, and pointing out that the principle of giving priority to protection should be adhered to. President Xi Jinping has set a direction for wetland protection work, calling on governments at all levels and relevant departments to pay attention to the protection and restoration of the ecological environment while promoting the urbanization process.

Since the 18th National Congress of the Communist Party of China in 2012, China has attached great importance to ecological civilization construction, focusing on wetland protection and restoration.[36] Under this policy direction, China's wetland protection work has set a positive example for the world in the following aspects: Firstly, China has included various important wetlands in the ecological red line, clarifying the principle of protection priority. At present, the country has added and restored more than 800,000 hectares of wetlands, and implemented more than 3,400 wetland protection and restoration projects, which provides a solid foundation for the sustainable development of wetland ecosystems. Secondly, the implementation of the Wetland Protection Law has marked a further advance in the rule of law for wetland protection in China. Since the implementation of the law, various localities have formulated specific protection measures based on local conditions. More than 20 provinces have successively and actively introduced wetland protection regulations tailored to local conditions to enhance the pertinence and effectiveness of wetland protection. Thirdly, there has been increased investment in scientific research on wetland protection. Local governments have actively built wetland monitoring, research and management platforms to provide a scientific basis for policy formulation, making wetland protection more scientific and systematic. Finally, China is actively promoting pollution prevention and control work, and continuously improving the diversity, stability and resilience of the ecosystem. The country is committed to restoring the ecological functions of wetlands, enhancing the self-healing capacity of the ecosystem, and contributing to the goal of "beautiful China." Through a series of measures, China has demonstrated its firm determination and actions in the field of wetland protection and restoration, providing valuable experience for global wetland ecological protection.

[36] Chen, G. (2024). The Concept of Ecological Civilization in the Constitution of the PRC. *Russian Judge*, 9, 51–55. (In Russian).

4. Countermeasures for China's Implementation of the Ramsar Convention

In 2022, China's wetlands conservation activities have entered a new stage. On June 1, 2022, the Wetlands Protection Law of the People's Republic of China officially came into force, aimed at strengthening the protection of wetlands, preserving the ecological functions and biodiversity of wetlands, ensuring environmental safety, promoting the construction of ecological civilization and realizing harmonious coexistence of man and nature. From November 5 to 13, 2022, China successfully held the 14th Conference of the Parties to the Ramsar Convention and adopted the "Wuhan Declaration" and the "Global Strategic Framework for Wetlands Conservation 2025–2030."[37] The Conference set the direction for current and future global wetlands protection and restoration and put forward China's projects to promote global action on wetlands conservation.

Through long-term attention and investment in wetland protection and restoration, the quality and area of China's wetlands have been improved, and the Chinese government has also been committed to finding a balance between wetland protection and economic development. China's achievements in wetland protection have also received the attention and recognition of the international community. However, compared to the developed countries, China still has some problems in the implementation of the Ramsar Convention. In order to better implement the Ramsar Convention, China needs to constantly introduce new measures and new policies to fulfill its responsibilities as a world power:

1) Fully implement the Wetlands Protection Law of the People's Republic of China.

The Wetland Protection Law of the People's Republic of China is divided into 7 chapters and 65 articles. Its promulgation marks an important step for China in wetland protection and establishes the highest level of wetland protection and management structure. This is China's first wetland ecosystem protection law, which will bring China's wetland protection work to the rule of law and usher in a new stage of protection work.[38] China should strictly enforce the law, strengthen the construction of systems and mechanisms and institutional innovation, ensure full and systematic protection of wetland resources in China, and encourage citizens, social groups, especially residents around wetlands, to participate in the management of wetlands and policy formulation to provide the legal basis for meeting the obligations under the Ramsar Convention.

2) Promote the accreditation of international wetland cities.

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[37] Chen, G. (2023). Analysis of the Results of the 14th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands (COP14). *Eurasian Law Journal*, 3(178), 48–51. (In Russian).

[38] National Development and Reform Commission. https://www.ndrc.gov.cn/fggz/dqjj/qt/202207/t20220701_1329877_ext.html

In 2017, the Ramsar Convention began a process of accreditation of international wetland cities, which aims to promote the harmonious development of cities, wetlands and human well-being. Wetland protection and restoration provide urban residents with a healthier and more livable ecological environment. China actively promotes the scientific assessment of international wetland cities, and has issued the Interim Measures for the Nomination and Certification of International Wetland Cities and the Nomination Indicators for the Certification of International Wetland Cities, providing systematic and scientific guiding standards for the creation of international wetland cities. Through these efforts, China has not only taken new steps in promoting wetland protection, but has also set an example for wetland protection and sustainable urban development on a global scale.

In the future, China should use international standards to focus the wetlands conservation and management activities on the establishment of international wetland cities, promote the certification process of international wetland cities, clarify laws, regulations, standards and policies related to protection of wetlands. China should give full play to the core role of local governments in wetlands protection and management, and guide local governments to fully implement and strengthen relevant policies and systems for the protection and management of wetlands. When the number of cities applying for certification as "international wetland cities" is large, international wetland city certification standards should be consulted to create national wetland cities. When the number of places is limited, but there are many cities that meet the conditions, they can first be awarded the title of National Wetland City to increase enthusiasm for the city's quality development.

3) Promote the construction of national parks.

At the opening ceremony of the COP14 Ramsar Convention, Chinese President Xi Jinping delivered an important speech emphasizing China's firm determination and practical actions in wetland protection. President Xi Jinping pointed out that China has formulated the National Park Spatial Layout Plan, with the core objectives of protecting the natural ecosystem and promoting the construction of an ecological civilization. According to this plan, China will gradually establish a number of national parks and strive to include about 11 million hectares of wetland resources in the national park system. At the same time, China will also fully implement the National Wetland Conservation Plan and promote a series of major wetland protection projects to strengthen the restoration and protection of wetland ecosystems.[39] As of the end of 2021, China has established 5 national parks, 602 wetland reserves, 899 national wetland parks (a total of more than 1,600 wetland parks), and a large number of wetland protection communities with a level of wetland protection of 52.65%. In the future, China should improve relevant laws, regulations, systems and

[39] Xueren, L. (2022, November 5). *Xi Jinping delivers a speech at the opening ceremony of the 14th Conference of the Parties to the Convention on Wetlands*. National Forestry and Grassland Administration. http://www.forestry.gov.cn/main/6225/20221105/181905927807795.html. (In Chinese).

mechanisms, gradually establish a wetland protection system based on national parks, nature reserves and wetland parks, and make practical efforts to implement the Ramsar Convention.

4) Conduct awareness-raising activities on wetlands conservation.

The Wetland Protection Law of the People's Republic of China encourages local governments to promote publicity and popularization of wetland protection, to disseminate knowledge of wetland protection to the public through newspapers, television, the internet and other media, to actively guide public opinion, and to create a favourable social atmosphere for wetland protection; encourages local mass organizations, social groups and volunteer organizations to reach out to communities and schools to extensively carry out publicity activities for wetland protection; and requires education departments and schools to pay attention to raising students' awareness of wetland protection in teaching activities, so that students will gain a deep understanding of the ecological value of wetlands as they grow up.[40]

5) Focus on research and training of personnel.

Article 4, paragraph 5 of the Ramsar Convention states that "The Contracting Parties shall promote the training of personnel competent in the fields of wetland research, management and wardening." Regarding research and training, Article 9 of the Wetlands Protection Law of the PRC suggests that "The State shall support the research, development, application and promotion of science and technology for wetland protection, strengthen the training of professional technical personnel for wetland protection, and improve the level of science and technology for wetland protection."

Article 7 of the Ramsar Convention clearly states that wetland or waterfowl experts should play an important role in strengthening the ecological protection of wetlands of international importance. Article 17 of the Wetlands Protection Law of the PRC clearly states that it is necessary "to establish a consultation mechanism of wetland protection experts to provide evaluation and demonstration services for the preparation of wetland protection plans, the compilation of wetland lists and the development of relevant standards."

In the future, China should strictly follow the requirements of the Ramsar Convention and its own Wetlands Protection Law to develop research and training of personnel for wetlands protection.

6) Promote global cooperation on wetlands conservation and learn from the excellent experiences of BRICS countries.

The preamble to the Convention on Wetlands states: "Waterfowl migrate seasonally across national borders and should be regarded as an international resource. Combining national policies with international action can effectively protect wetlands

[40] Wetlands Protection Law of the People's Republic of China (adopted at the 32nd Meeting of the Standing Committee of the 13th National People's Congress on September 24, 2021). National People's Congress of the People's Republic of China. http://www.npc.gov.cn/npc/c10134/201404/6c982d10b95a47bbb9ccc7a321bdec0f.shtml. (In Chinese).

and their flora and fauna." In the Convention on Wetlands, international cooperation is not just a measure to protect wetlands, but also a far-reaching international environmental protection concept. As a concrete manifestation of international cooperation in wetland protection, Article 10 of the Wetland Protection Law of the People's Republic of China clearly stipulates: "The state supports international cooperation and exchanges in scientific and technological fields such as wetland protection, biodiversity, and migratory bird migration." With the clear support of the law, China actively promotes international cooperation in wetland protection, focusing not only on the ecological value of wetlands themselves, but also on international cooperation in protecting migratory bird migration and biodiversity, further enriching and deepening the meaning and practice of wetland protection.

In the future, China needs to learn from the relevant experiences of other BRICS countries, for example, the Brazilian Parliament approved the reform of the Water and Sanitation Services (WSS) sector in July 2020, which is dedicated to solving the problems of sewage treatment and water supply for the people.[41] Russia, with 20% of its area represented by peat bogs and overwatered lands occupying up to 35% of its surface, has unique resources of undisturbed wetlands and good prospects for implementing the principles of the Ramsar Convention and organizing nature management in accordance with modern recommendations.[42] China should learn from Russia's experience in peatland protection. Environmental issues are global and complex, and often require joint efforts by countries and enterprises. The legislation of the BRICS countries in the field of public-private partnership (PPP) practices is worth learning from China.[43] China should also actively adopt the successful experience of other countries in wetland protection and restoration. Aboriginal participation in the wetland management system in Australia and the wetland compensation system in the United States are successful models for wetlands conservation and restoration.

At the 14th Conference of the Parties, China and other parties jointly presented the Global Cooperation Mechanism for Wetland Nature Education and the Global Cooperation Mechanism for the Conservation and Management of Mangroves. In the future, China should actively pursue relevant initiatives to provide new opportunities and space to fulfill its international cooperation obligations under the Ramsar Convention. China should strengthen international cooperation with other countries on wetlands conservation and restoration, build a platform for information exchange and sharing, promote the ecological "One Belt, One Road"

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41 Nunes, C. M., Anderaos, A. A., & Leal, M. D. A. C. (2021). The 2020 Reform of the Water and Sanitation Services Sector in Brazil. *BRICS Law Journal, 8*(2), 66–88.

42 Kopylov & Solntsev, 2012.

43 Kvanina, V., Kovalenko, E., & Vypkhanova, G. (2023). Improving the Legislation on Public-Private Partnerships in Environmental Protection in the BRICS Countries. *BRICS Law Journal, 10*(3), 106–121.

under the Convention on Wetlands, and promote the construction of a community of common destiny for humanity.

7) Fully discharge the responsibilities of the Chair State of the Standing Committee of the Ramsar Convention.

The 14th Conference of the Parties to the Ramsar Convention adopted the Wuhan Declaration and a number of conference resolutions indicating the direction of further development of the Convention. China became the Chair State of the Standing Committee of the Ramsar Convention for the next 3 years, and should actively lead various work to promote the development of the Ramsar Convention and other global environmental conventions, continue work on the unfinished issues at the 14th Conference of the Parties to the Ramsar Convention, and promote the implementation of the Ramsar Convention and the protection and restoration of global wetlands.

Conclusion

The Ramsar Convention promotes the wise use of wetlands as a fundamental tenet behind the desire to stop and reverse the loss and degradation of wetlands.[44] Although biological conservation is based on international agreements, its effectiveness depends on how countries implement such recommendations as effective conservation tools.[45]

In the process of implementing the Ramsar Convention, China faced many problems such as insufficient public awareness, delayed legislation and weakness of science and technology in wetlands monitoring. However, at the same time, China has introduced effective wetlands conservation policies and measures according to national conditions, and public awareness is improving. Overall, wetlands conservation in China continues to develop.

In October 2022, China issued the "National Wetland Protection Plan (2022–2030)" to clarify the goals and development direction for future wetland protection work. According to the plan, China's wetland protection rate will increase to 55% by 2025. In addition, it is expected that 20 new internationally important wetlands and 50 new nationally important wetlands will be added during this period. Looking ahead to 2030, the quality of wetland ecosystems, their ecological services and their carbon sequestration capacity will have improved significantly, thus basically achieving the goal of high-quality wetland protection.

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[44] McInnes, R. J., et al. (2017). Wetland Ecosystem Services and the Ramsar Convention: An Assessment of Needs. *Wetlands, 37*(1), 123–134.

[45] Gaget, E., et al. (2020). Assessing the Effectiveness of the Ramsar Convention in Preserving Wintering Waterbirds in the Mediterranean. *Biological Conservation, 243*, Article 108485.

These plans and measures form a solid foundation for achieving the goal of wetland protection. They not only demonstrate China's firm determination in wetland protection, but also reflect the value of "Chinese wisdom" and have made a positive contribution to promoting the construction of a global ecological civilization and sustainable development. China's wetland protection is not only related to the improvement of the domestic ecological environment, but also provides a reference and model for global wetland protection.

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