

## RUSSIAN LAW SURVEY

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*I. A. Vasiliev, N. A. Shmigelskaia***THE REVIVAL OF THE SILK ROAD:  
BRIEF REVIEW OF THE 4<sup>th</sup> CHINA-EURASIA LEGAL FORUM**

The 4<sup>th</sup> China-Eurasia Legal Forum was held in Xi'an (China) by the China Law Society (Host) and the Northwest University of Political Science and Law (Organizer) between 17 and 19 October 2015. On the first day, October 18, the official business agenda proposed such scientific events as the first topic 'Co-Construction of 'Belt and Road': the Role of Law', second topic 'The Legal Issues Related to Construction of Silk Road Trade Area' and at last was the third topic 'The Strategy of 'Belt and Road' and International Cooperation in Finance'. The second day of the Forum involved the topic 'Legal issues on trade and investment facilitation of the Belt and Road', questions about the legal security mechanism related to the economy of national interconnection and logistics of the Belt and Road (Topic 5), problems about legal issues on the national energy security and energy cooperation of the Belt and Road were concentrated into topic 6, the last was topic 7 proposed as key legal issues on the national security and anti-terrorist cooperation of the Belt and Road, and the last topic of the Forum's second day concerned the legal issues of cultural heritage and tourism development of the Silk Road. In the present article the authors propose their brief review about the legal issues and legal problems covered by the main topics.

*Keywords:* the Silk Road, geopolitics, transportation, organization, social and economic potential, tourism, cross-border tourist route, the Shanghai cooperation organization, the prevention of extremism, terrorism and separatism.

The Silk Road is rightly considered the main transcontinental trade artery which connected Europe and Asia from the second century BC. Owing to this important achievement of human civilization, people for many centuries could carry textile, spices, handicrafts, precious stones and minerals. Many cities have been built along the the Silk Road: they were originally founded as small transportation gateways, gradually turning into a major trade and exchange centers.

Unfortunately, due to many factors, by the 15<sup>th</sup> century BC the Silk Road had stopped functioning. Incipient military conflict on the territory of Central Asia made transportation so dangerous that caravans were often attacked by thieves and highwaymen. For this

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reason merchants began to look for safer ways to move goods. In addition, during the decline of the Silk Road began the Era of the Great Geographical Discoveries. As a result of these interrelated events, merchants preferred to send goods by sea, not by land.

However, the Silk Road was actively functioning for several centuries, and during this time played the role of the main factor of economic, geopolitical and historical-cultural progress in the countries through which it ran.

On the threshold of the new Millennium, the idea of reviving the Silk Road appeared. The Treaty on the revival of the Silk Road was signed on 15 June 2014 signed by 19 Chinese cities and several Central Asian States through which the trunk road had once passed<sup>1</sup>.

During October 2015 the Fourth China-Eurasia Legal forum was held where the issues of legal support of implementation of the strategic program 'One Belt and one Road'. The discussion was attended by countries such as Russia, China, India, Malaysia, Lithuania, Mongolia, Iran, Azerbaijan, Kyrgyzstan, Pakistan, Tajikistan, Uzbekistan, Kazakhstan. Turkic States (Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, Azerbaijan) today play a special role in the international arena. Stretching from the Far East and to Europe, the Silk Road connects 33 countries and it takes place in most part through the territory of the Turkic States. At this moment, these countries embarked on a path of economic development, a large number of programs, one of which is active cooperation with other countries in the revival and development of the Silk Road.

It is interesting to note that the Legal Forum's leading theme is concerned with modern China's program idea of One Belt and One Road in three dimensions at least. Firstly we could identify a financial aspect (the investment dimension) from China and into China. The second point is the common course of transportation by air, sea and rail onshore goods, services and passengers between Asia, Europe and other Regions<sup>2</sup>. The last dimension of 'Belt and Road' may be known as energetic cooperation in resources of natural gas, oil and electricity energy received by China<sup>3</sup>. As easily could be mentioned all such legal questions related to the concept of Free Trade Area so far it will be established in perspective. On field of the Eurasia Legal Forum and especially at the Topic discussion about legal issues related to construction of the Silk Road Free Trade Area were constantly revised risks for China's economy because of the establishment of the Transpacific Trade Partnerships (TTP)<sup>4</sup>. But even if we could forget for a moment about the TTP there are differences in trade facilitation systems between China and other countries-partners. The way of resolving and overcoming differences may be found in the initiation of Special Economic Zones (an analogous legal institute we have in Russian Law System) and that is why the 'Belt and Road' Program will obligatorily include establishing a Silk Road Economic Zone. This Economic Zone is going to increase benefits from some countries in the classical manner: a special tax regime, distinctive administrative procedures, etc. But exclusive economic regimes on particular territories are not the only part of the 'Belt and Road'

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<sup>1</sup> *Bazarov B. V., Bazarov V. B., Nolev E. V.* The New silk road: the Open Door Policy of China. The Authority 11, 2015.

<sup>2</sup> *Hongze Cheng.* Silk Road economic belt and sea silk road of the 21st century from the point of view of People's Republic of China experts. Science and World, 2015. Vol. 7 (23).

<sup>3</sup> *Zonn I. S.* The Great Silk Road becomes the Great Oil and Gas Road. Problems of Post-Soviet Territories, 2015. Vol. 2 (4).

<sup>4</sup> *Piniugina E.* Eurasian Economic Union and the 'Economic belt of Silk road': Comparative study of Eurasian integration's projects. The Political Science, 2015. Vol 4.

idea, it is also an insight of the 3.0 Version of China's Opening Up Policy<sup>5</sup>. The process of financial cooperation in establishing the Belt and Road includes engagement of Global Financial Institutions such as, for example, the Asian Infrastructure Investment Bank. It was founded relatively recently and seems to be a new form of access to the international financial system. Of course such a holistic strategy as was formulated in the 'Belt and Road' idea draws on various interests of International Financial Institutions: not only International Banks but also International Funds (especial Hedge Funds) and Trusts. Projects investment attractiveness in process of realization Strategy depends on special, comprehensible and transparent legal regimes in China's Economic Zones. It seems to be important that individual Economic Regimes are considered to be applicable to different territories with respect to the 'Belt and Road'. Furthermore, tax policy may be identified as a key item of the Strategy. This policy needs individual (from one territory to another territory) optimization in such spheres as the taxation base, tax rates, tax deduction, and others. Returning to the second point (transportation goods and services) some legal questions were raised with the implementation of the 'Belt and Road' idea to the international legal regime based on the Convention concerning International Carriage of Goods by Rail. With this point were interrelated issues of Intellectual Property Rights in the Xinjiang Free Trade Area and the strategy of Intellectual Property Rights during the Construction of 'Belt and Road'. Proceeding to the second point of the 'Belt and Road' strategy we have mention some issues about transportation on air, by sea and onshore goods between Asia, Europe and other Regions. This question is correlated with point of view related to the Legal Guarantee System for International Free Exchange of Goods. Speakers supporting this dimension formulated two main groups of legal problems: aviation logistics and political risk prevention. At first aviation logistics seems to be a sphere with an extreme need for innovations and especially in legal instruments. Transportation by air has some differences with other kinds of transport, for example — obligation to pay a royalty when aircraft uses air routes of foreign country. International treaty law at the moment has no examples of legal innovation in Aviation Logistics to give to interested parties and that is why China's regional strategy of economic cooperation may propose its own well motivated position. Another question of potential Political Risk and its prevention has how regional meaning as a world effect. We are utterly in doubt that prevention only results from the realization of legal guarantees and political (state) regime. The process of prevention is connected with state economic regulation measures. That is why the special regime of China's Economic Zones is based on two principles: constitutional guarantees of commercial rights (in general) and minimal administrative procedures to control the residents' activities. China's authority declares and presumes self-efficient subjects which are acting in special Economic Zones. The sixth topic was dedicated to the legal issues on the national energy security and energy cooperation of the 'Belt and Road' Strategy. Energy questions are reviewed as legal issues on drilling, transportation and selling of natural gas, oil, electricity and related risks. About the prediction of risks we should say a few words. In China the Energy Research Society was established and its representative gave a speech about investment risks in neighbor countries (Myanmar, for example). The global investment interests of China's companies are well known and the sphere of energy is one of the

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<sup>5</sup> Bazarov B. V., Bazarov V. B., Nolev E. V. The New silk road: the Open Door Policy of China. The Authority 11, 2015.

major issues concerned with demands of China's rapidly developing economy. One convenient way to secure China's energy needs may be found in the Shanghai Cooperation Organization Energy Club (SCO Energy Club). This theme was presented by one of the speakers and he proposed us a point of view to the Legal Nature and the Basic Rules of the Energy Club. As a brief review of the Legal Nature we could name a cooperation between countries-suppliers of energy resources (such as Russia) and countries-consumers (China foremost). The question of legal guarantees to have a constant energy supply is the main code of basic rules in Energy Club. On the one hand, it is typical for China to have long term contractual obligations and transparent terms (particularly in question of price and period of supplying). On the other hand, countries-members of the Energy Club also have coherent interests to predict their quantity of drilling, refining or generating energy resources in conjunction with vast markets like China's and more or less stabilized demands. In addition to energy dimension of 'Belt and Road' was presented our speech about targeting of the Russian Law on the Negative Environmental Impact. Russian national energy security is based upon the rational approach to environmental protection: the balance of interests of private and public entities. Nowadays we can mention a change in legislative approach to economic regulation in the sphere of environmental protection. In the sphere of environmental protection the principle of priority of public interest is used in the process of legal regulation (Decision of the Russian Constitutional Court, 14.05.2009 N 8-P). Payment of management and compensation of environmental damage means the use of methods of economic regulation; in solving socio-economic tasks shall ensure a balance of interests of subjects in the sphere of economic and other activities, which is related to the impact on the environment, also we should remember about the interests of the individual and of society in General and guarantee the observance and protection of environmental rights of citizens; common interest in preserving nature and ensuring environmental security is a fundamental question for resolving the above problems. A key concept of economic regulation is payment for negative impact on the environment (The Federal Act 'About environmental protection' 10.01.2002 N 7-FZ). There is a discussion on the legal nature of payment for negative impact on the environment: tax payment or obligatory payment in public law. Why is it important to identify the legal nature of the Board as a tax payment or mandatory public law payments (collecting)? Payment of tax can be considered lawfully established only if all essential elements of the tax obligation, including the Board size, are defined by Federal law (Decision of the Russian Constitutional Court, 04.04.1996). When establishing fees, the elements of taxation are defined for specific duties (clause 3, article 17 of the RF Tax code). Public law fees are charged for the implementation of government measures for the protection of the environment and its recovery from the effects of economic and other activities having a negative impact on it within established government standards such permissible exposure. In the legal nature of the Board there are no signs of tax liabilities in the sense established by the constitutional Court of the Russian Federation dated 11.11.1997. The fee is an individual-compensatory and onerous compensatory in nature and is by its nature not a tax, and a variety of public law payment fiscal charges (Decision of the Russian Constitutional Court, 05.03.2013 N 5-P). Payment for negative impact on the environment refers to the form of compensation of economic damage and is levied on entities because of their functioning connected with negative impact on the environment (Decision of the Russian Constitutional Court, 10.12.2002 N 284-O). General principles of taxation and dues in the Russian Federation

are established by Federal legislation (part 3, article 75, Constitution of the Russian Federation). The publicly-legal nature of this payment defined by legal regulation, however, does not exclude the right to address this issue in the framework of contractual relations of business entities (Decision of the Russian Constitutional Court, 05.03.2013 N 5-P). We are concerned that two points at least must be legally defined: (1) the object of payments (a specific kind of negative impact on the environment) and (2) the category of payers (for their awareness of the obligation to pay because of their functioning connected with negative impact on environment). In the process of regulation of payments for negative impact on the environment must be considered (1) the requirements of certainty, fairness and proportionality and (2) not to interfere in the implementation of the right to the free exercise of entrepreneurial activity. The fee is charged only to those business entities whose activities are actually related to the negative impact on the environment (Definition of the Russian Constitutional Court, 10.12.2002 N 284-O). The circle of payers, as one of the elements of payment had long been defined only in General terms. The final additions to the Acts in the sphere of environmental legislation aimed at detailing payments for negative impact on the environment: (1) was reduced list of specific types of negative impact on the environment (the key shift — was excluded the legislation principle of regulation 'open list'): the emission of pollutants into atmospheric air from stationary sources, discharges of pollutants in effluents in water bodies, waste disposal of production and consumption; (2) was defined a list of entities-payers (only individual entrepreneurs or organizations); (3) if the payer make a payment for negative impact on the environment this action can't substitute his potential legal liability in the sphere of environmental protection; (4) detailed the procedure of charging a payment for negative impact on the environment in order to stimulate entities-payers for their activities to reduce the negative impact on the environment and activities to introduction of best available technologies; (5) all aspects of the procedure for charging the payment for discharges of pollutants through centralized systems of water removal (sewage) are regulated by separate and special legislation in the field of water supply and sanitation. Thus in the process of making decisions on socio-economic tasks one should seek to safeguard (1) the economic interests of individual entrepreneurs and organizations whose functioning is connected with negative impact on the environment and at the same time (2) human rights on environment and similar interests of society.

For the operation of the Silk Road, we should also pay attention to maintaining stability and security in these regions. Terrorism is the issue that today concerns all owing to recent events.

Stable economic development is impossible without a peaceful political situation in the country. The countries of Central Asia, through which paved the Silk Road, are in close proximity with the countries of the Middle East, where it is constantly break out the various national and religious conflicts, therefore, the Shanghai Cooperation Organization and The Commonwealth of Independent States (the CIS countries) concerned with the issue of maintaining peace and security in the region.

The Fourth China-Eurasia Legal Forum participants discussed the issues of organization of fight against terrorism, extremism and separatism in the framework of the Shanghai Cooperation Organization (further — SCO).

A feature of the terrorism at the present stage is that it is not limited to the territory of any state, he gradually acquires a transboundary nature, expanding its illegal activities

in other countries. The rapid development of Internet technology is not only limited to neighboring States, terrorists are able to campaign through social networks and various sites almost all over the world.

The SCO issues of organization of combat not only with terrorism, separatism and extremism, but also with curbing the illegal transportation and distribution of weapons and drugs in the region. In 1996–1996, 'Agreement on confidence building in military field in the border area' and the 'Agreement on mutual reduction of armed forces in the border area' signed.

In 2001 the Shanghai Convention on combating terrorism, extremism and separatism was signed. The Regional Anti-Terrorist Structure (RATS) of the SCO with the Executive Committee in Tashkent (Uzbekistan) was established. In the RATS SCO was organized by the mechanism of 'Meetings of secretaries of security Councils of member States'. Also, the contact group 'SCO — Afghanistan' has started functioning.

In 2004 the Regional anti-terrorist structure came into effect, its aim is: 'the Collection and analysis of information provided by member States on combating terrorism, separatism and extremism, the creation of a data bank as an anti-terrorism structure, development of proposals and recommendations on development cooperation'.

At the time of its existence through the joint efforts of these structures approximately more than 400 terrorist acts were prevented, but also they established a list of persons suspected of committing terrorist crimes, on the basis of which a Single search registry of security bodies and special services of member states of the SCO was created. They also plan to compile a List of terrorist, separatist and extremist organizations whose activity is prohibited in the territories of member States of the SCO.

The participants of the Fourth China-Eurasia Legal Forum to discuss issues concerning the organization of activities and cooperation on joint anti-terrorism military exercises and the establishment of working groups of experts on the fight against terrorism.

The implementation of ambitious project 'Belt and Road' will establish economic stability, also it will be an inexhaustible source of income. That is why the Fourth China-Eurasia Legal Forum discussed the issues of economic growth, trade development, including the creation of a free trade zone, transportation of cargoes, construction of new routes, the laying of gas and oil pipelines, negative impact on the environment, creation of new tourist routes through the old towns and cultural centers of the silk Road, and others. Trade and economic ties between China and Central Asian countries have great investment potential, which contributes to the development of this region.

Now the Silk Road is being revived not only as a tourist route, but also as 'economic zone'. One of the main initiators of this program is the Chairman of the People's Republic of China, Xi Jinping. In the framework of the economic strategy they planned to create a transport corridor between West and East. Thus, transportation of goods will be much faster and cheaper. Now there are several land and sea routes.

The roads under the General title of 'Economic Zone of Silk Road' and 'Maritime Silk Road of the 21<sup>st</sup> Century'. At the moment there are two major land routes: the Northern route and the Southern route. The Northern route presents the railway under construction, passing through Russia, Mongolia, Kazakhstan and China. The southern overland route will soon be submitted to the new railway running through Pakistan.

Cargo transportation by sea routes is currently involved in the Association of South-east Asian Nations (ASEAN) including: Thailand, Indonesia, Philippines, Brunei, Viet-

nam, Laos, Cambodia, Malaysia, Myanmar, Singapore. In 2014 Azerbaijan organized a ferry crossing of goods and cargo through the Caspian Sea and road transport through Turkey and Georgia to deliver goods to the Mediterranean and Black seas.

Now it is planned to conduct negotiations between Russia and China on the organization of Maritime traffic through the Arctic Ocean. A second project is in development: organization of railway transport from China through Kazakhstan, Orenburg, and Kazan to Moscow and St. Petersburg. On this territory accelerated economic development zones are being planned.

The Eurasian Economic Union (EEU) and the Shanghai Cooperation Organization play a big role in this integration process. In the framework of this cooperation the concept of the transport union was created, it is engaged in the development of transport routes and the laying of Railways in the most remote areas of the Silk Road. One of the goals of the SCO is also strengthening trade and economic cooperation.

Obviously, the transport issue is a major direction of development for the reason that the construction of transport routes and organization of effective communication between the two countries will deliver the goods and goods much faster, which will lead to cheaper goods and lower prices for the end consumer market. Also it will make the process of unloading, delivery and customs registration of the goods more fast and simple.

The project of revitalizing the Silk Road gives a chance to the countries to use the advantages of its geopolitical position with maximum efficiency and create infrastructure and organize industry and create new jobs for residents of the regions of Central Asia.

The Fourth China-Eurasia Legal Forum actively discussed the question of organizing tourist activities on the territory of the countries participating in this ambitious project. According to statistics of the World Tourism Organization (UNWTO) the Silk Road is the largest and longest tourist route that ever existed in the world as it runs through the country, the total area of which amounts to 55.4 million square kilometers (43 % of the globe area). In UNWTO now set up a special group, which aims to specify and develop a safe travel route through these countries.

The United Nations educational, scientific and cultural organization (UNESCO) also contributed to this project. Between 1988 and 1997 in the framework of the program 'The Silk Road: on the way to dialogue' extensive research was conducted resulting in a map on which was marked a tourist route where one could see the main objects of the world cultural and natural heritage, centres of craftsmanship, location of significant celebrations and festivals.

At the present time, the part of the Silk Route that ran through China, Kyrgyzstan and Kazakhstan received the status of world heritage site by UNESCO. This transport corridor goes through the Tien Shan mountains, runs through the ancient capital of China Xi'an and Luoyang dynasty Han and Tang and leads to a centralized center Zhetysu. Its length is 5 thousand kilometers.

Now another 38 sites, which located on the territory of the Silk Road, claim to the status of objects included in the world heritage List of UNESCO, for the most part of them are capital cities and Palace complexes of ancient empires and khanates, Buddhist cave temples, trade centers, ancient roads, postal interchange points, and various mountain passes, watchtowers and fortresses, tombs, ancient burial sites and other religious buildings.

In the Russian Federation, with support of Ministry of culture, economists are developing and implementing "The Silk Road" project at the regional and Federal levels.

In accordance with article 5.9 of the Plan of the Ministry of culture 2013–2018 they need ‘To form a cross-regional historical-cultural tourist route through involvement in the tourist turnover of monuments of history, culture, archaeology of the silk road...’

The development of tourism in the Silk Road event is very favorable from the point of view of profit, therefore, it is expected that this will attract a lot of investment. This is beneficial from the point of view of economic development, because to create a tourist route should: (1) develop transport logistics; (2) develop cultural-historical centers and towns where tourists will be, good infrastructure; (3) carry out work on creation of various tourist routes based on tourists’ personal preferences.

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