Features of international agreements concluded for the implementation of the projects of the "MegaScience" class

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Abstract. The article presents aspects of the legal regulation of international scientific cooperation aimed at the creation and operation of unique scientific installations of the "MegaScience" class. On the example of scientific projects CERN, ITER, XFEL and JINR, the individual features of legal regulation are analyzed: the legal basis, the key provisions of the concluded international agreements, as well as the relationship with the legislation of the Russian Federation. On the basis of the analysis and generalization, the author identifies the features of legal regulation, which should be taken into account when creating future scientific projects of the "MegaScience" class.

1. Introduction

The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation between States in Accordance with the Charter of the United Nations, adopted by Resolution 2625 (XXV) of the UN General Assembly of October 24, 1970, established the obligation of states to cooperate with each other in accordance with the UN Charter. States cooperate in the economic, social and cultural fields, as well as in the field of science and technology, and promote world progress in the field of culture and education. States must cooperate to promote economic growth around the world, especially in developing countries [1].

Cooperation in the field of science is one of the few spheres of human activity where it is possible to combine the efforts of states which have different socio-political views.

The advantages of developing international scientific cooperation are:

- joining efforts in solving global problems (combating climate change, searching for new sources of energy, combating serious diseases, etc.);
- generation of new fundamental scientific knowledge;
- exchange of experience and mutual supplementation of skills / competencies of scientists from different countries;
- distribution of risks and optimization of costs between cooperation participants.

Strengthening scientific and technical cooperation between countries leads to an increase in the efficiency of their participation in the international division of labor, the consolidation of their own
technologies and science-intensive products in traditional and emerging markets, the practical use of scientific achievements.

At the same time, it is no longer possible to imagine modern science without scientific projects of the "MegaScience" class, created on the basis of international agreements to solve fundamental scientific problems.

On the basis of the analysis and generalization of these agreements, it seems possible to single out a whole complex of legal norms governing relations arising between the subjects of scientific and technical cooperation: states, scientific and educational organizations, scientific collaborations and individual scientists. At the same time, it should be noted that a number of scientific projects of the "MegaScience" class contain "soft law" norms that are not characteristic of the Russian legal system.

The Russian Federation is a party to a large number of bilateral and multilateral agreements with foreign states on cooperation in various fields of science and technology. Moreover, these agreements have been concluded both at the interstate and at the intergovernmental and interdepartmental levels. International agreements, on the one hand, are one of the sources of Russian law and have priority over national legislation; on the other hand, they become a trigger for the implementation of the provisions of these agreements at the domestic level in terms of amending national legislation.

It should be noted that the fulfillment of international legal obligations in the development of scientific and technological cooperation creates a favorable environment for achieving sustainability of global scientific and technological development, while demonstrating the key role of modern states in managing scientific and technological progress at the international level [2].

As noted by legal scholars [3, 4], the main models for the implementation of projects of the "MegaScience" class are the creation of an international intergovernmental organization or a legal entity under the law of the state, on the territory of which a unique scientific installation will be located. Projects of the "MegaScience" class are most often implemented on the basis of interstate multilateral agreements, in which the entry of new states ready to join the goals of the project is allowed.

2. International scientific cooperation with CERN

The most famous example of an international intergovernmental organization in the field of "MegaScience" is the European Organization for Nuclear Research (CERN), acting on the basis of the Convention for the Establishment of the European Organization for Nuclear Research of July 1, 1953, which entered into force on September 29, 1954.

This Convention, subject to subsequent amendments, contains the following main provisions, which have been agreed by the signatory states:

- CERN governing bodies and their powers have been determined: the supreme governing body is the Council (includes no more than 2 representatives from each member state, but each state has only one vote) and the Director General for each laboratory, who in relation to their laboratory is the chief executive officer of CERN and its legal representative;
- "starting" scientific laboratories and a program of scientific activity have been determined, while it is established that, with the approval of the Council, it is possible to adopt other programs of scientific activity;
- the accession of other interested states is allowed, subject to the unanimous decision of all the participating states, as well as to the payment of an additional entrance fee, which is aimed at reimbursing the costs previously covered by the participating states to create the scientific infrastructure;
- CERN is endowed with the status of a legal entity in the territories of the participating states (i.e., it is an international intergovernmental organization);
- the contributions of the member states have been established, and the dependence of the amount of contributions on the member state has been provided. At the same time, in special circumstances, with the consent of the Council, it is allowed to reduce the amount of contributions for individual member states, for example, this was done in 1994 for Poland [5];
CERN and its member states representatives in the Council, members of any subordinate bodies, directors general and staff members shall be granted such privileges and immunities as are necessary to perform the functions of CERN, based on agreements with the member states;

Agreements between CERN and the States Parties on whose territory CERN laboratories will be established shall contain additional provisions governing the special relations between CERN and those States Parties;

the settlement of disputes concerning the Convention between States Parties, which is not settled by the good offices of the Council, shall be referred to the International Court of Justice unless the States Parties concerned agree on any other method of settlement;

the exclusion of a non-fulfilling participating State is allowed;

the minimum number of parties to the Convention (at least five) has been determined, upon reaching which CERN must be dissolved.

CERN became the first international scientific laboratory in the post-war Europe. At that time the main task for the Organization was set to conduct basic research in the field of high energy and elementary particle physics on the basis of international cooperation, expanding human knowledge on the principles of open research. This meant the publication of all works and the dissemination of the results [6].

A number of scientific experiments ALICE, ATLAS, CMS, LHCb are carried out under the auspices of CERN, for the implementation of which separate scientific collaborations have been created. The legal basis for these collaborations is Memorandums of Understanding between various scientific and educational organizations and the leadership of a scientific experiment, which is accountable to CERN. Collaborations around LHC detectors are de facto independent organizations each with its own members, its own governing bodies and other bodies. De jure, collaborations are not considered an integral part of the CERN organizational mechanism, i.e. act as satellite organizations of CERN (“under its legal umbrella”) [7].

Although Russia is not a CERN member state, it participates in many scientific experiments conducted under the auspices of CERN. Currently, the legal basis of relations between Russia and CERN is the Agreement between the Government of the Russian Federation and the European Organization for Nuclear Research (CERN) on scientific and technical cooperation in the field of high energy physics and other areas of mutual interest and the Protocol to it dated April 16, 2019, for Russia entered into force on December 1, 2019 (ratified by Federal Law No. 366-FZ of November 12, 2019).

This Agreement is a classic framework agreement of understanding, creating the basis for future forms of cooperation between the parties, including the provision of human resources, information, know-how, equipment, materials, services, funds or any combination thereof. At the same time, specific forms of cooperation will be determined on the basis of protocols and additional agreements between the European Organization for Nuclear Research and the Government of the Russian Federation and (or) Russian scientific organizations and educational institutions of higher education, specifying for each project the procedure for cooperation on issues related to additions to goals, programs, resources, personnel status, intellectual property, responsibility.

A very important point is the expansion of the list of scientific experiments carried out on the territory of Russia, in relation to which the parties show mutual interest:

- Experiments at the electron-positron collider at the Federal State Budgetary Institution of Science Institute of Nuclear Physics named after G.I. Budker of the Siberian Branch of the Russian Academy of Sciences;
- Development of a new compact linear proton accelerator for hadron therapy;
- Research and development work on particle detection methods;
- Research and development work on the high-field material of the superconducting magnet;
- Study of radioactive isotopes using a neutron facility (IRINA) at the PIK reactor;
● Development of information technologies and systems for collecting and processing data, including methods of managing "big data";
● Physical research carried out outside the colliders;
● Commissioning of a complex of superconducting rings on colliding beams of heavy ions NICA (JINR) [8].

The Protocol to the Agreement between the Government of the Russian Federation and the European Organization for Nuclear Research (CERN) on scientific and technical cooperation in the field of high-energy physics and other areas of mutual interest dated April 16, 2019 details some conditions of cooperation. In particular, the participation of a Russian scientific organization or educational institution of higher education in an experimental collaboration in the European Organization for Nuclear Research is regulated in accordance with the provisions of the applicable memorandum of understanding, while the provisions of such memorandums do not legally bind the Government of the Russian Federation.

Many leading Russian scientific and educational organizations, including NRNU MEPhI, are directly involved in scientific experiments at CERN, having joined them on the basis of the corresponding memorandums of understanding [9].

3. International scientific cooperation with ITER
The International Experimental Thermonuclear Reactor (ITER) is also a very large scientific project, implemented according to the organizational and legal model of an international intergovernmental organization.

The Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project was signed on November 21, 2006 by the European Atomic Energy Community (EURATOM), the Government of the Republic of India, the Government of the People's Republic of China, the Government of the Republic of Korea, the Government of the Russian Federation, the Government The United States of America and the Government of Japan, however it formally entered into force after ratification by all parties on October 24, 2007 [10]. Additionally, an Agreement on the privileges and immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project was concluded for the joint implementation of the ITER project, which was also signed on November 21, 2006 [11].

These Agreements contain the following main provisions, which have been agreed on by the signatory states:

● a specific goal of the project has been established - to demonstrate the scientific and technological possibility of using thermonuclear energy for peaceful purposes, the main task of which will be to achieve sustainable production of thermonuclear energy;
● the accession of other interested states is allowed, subject to a unanimous decision of the Council, which determines the conditions of accession;
● the ITER Organization is endowed with the status of a legal entity in the territories of the member states (i.e., it is an international intergovernmental organization);
● the governing bodies of the ITER Organization and their powers have been determined: the supreme governing body - the Council (includes up to 4 representatives from each member state, but each state has a corresponding weight of votes reflecting their contributions to ITER Organization) and the Director General, who is the chief executive officer of the ITER Organization and its legal representative;
● contributions of the participating States are determined on the basis of agreements. During the construction phase, Europe accounts for approximately 45.5% of construction costs, while China, India, Japan, Korea, the Russian Federation and the United States each contribute approximately 9.1%. During the operational phase, the distribution of costs among member countries will be as follows: Europe - 34 percent, Japan and the United States - 13 percent and China, India, Korea and Russia - 10 percent [12];
the ITER Organization, its property and assets, the Director General and staff of the ITER Organization and the representatives of the Members in the Council and its subsidiary bodies, as well as their alternates and experts, shall have in the territory of each Member State such privileges and immunities as are necessary for the performance of their functions, in connection with the activities of the ITER Organization;

- A Headquarters Agreement is concluded between the ITER Organization and the host States, containing additional provisions in comparison with the Agreement;

- the procedure for resolving disputes on the implementation of the Agreement has been established, while no specific body has been determined for consideration of which the dispute will be submitted, if the parties are unable to resolve it through consultations or through the mediation of the Chairman of the Council;

- the procedure for excluding a non-fulfilling State party has not been defined;

- there is a time limit during which a member state cannot withdraw from the Agreement (10 years after the Agreement enters into force), the state on whose territory ITER is located cannot withdraw. Withdrawal from the Agreement does not affect the contributions, covering the costs of the construction of ITER facilities, of the State Party withdrawing from the Agreement. If a State Party withdraws from the Agreement during the operation phase of ITER, it will also contribute its agreed share of the cost of decommissioning the ITER facilities.

- as a general rule, all rights to the results of intellectual activity belong to the ITER Organization, unless otherwise agreed;

- during the operation period, the ITER Organization creates a Fund to ensure the decommissioning of ITER facilities. Once the host State accepts the ITER Foundation and the ITER facilities, the Organization shall not assume any obligation or responsibility for the ITER facilities, unless otherwise agreed by the Organization and the host State;

- the initial term of the Agreement is set at 35 years. The last 5 years of this period or less, if agreed with the host State, are intended for the deactivation of ITER installations. The mechanism for extending the term of the Agreement has also been predetermined.

An important feature of the functioning of the ITER project is the creation in the territory of the member states of the ITER "local branches", managed by the ITER Organization in the interests of performing its functions and achieving its goals (in the Russian Federation - a private institution of the State Atomic Energy Corporation "ROSATOM" "ITER Project Center"). A local branch agreement is concluded between the ITER Organization and each Member State. In 2015 MEPhI and ITER IO signed Memorandum of Understanding that regulates the relations between the two parties and also facilitates the internship process for MEPhI students and collaboration between MEPhI and ITER divisions and staff [13].

It should be noted that the approaches of legal regulation, laid down in the creation of ITER, are well-developed and are a good example for the implementation of scientific projects of the "MegaScience" class.

4. International scientific cooperation with XFEL
In the Federal Republic of Germany, a MegaScience project is under way to create the world's largest free electron laser for monitoring chemical reactions - the European Free Electron X-ray Laser.

A distinctive feature of international scientific cooperation carried out during its implementation is the creation of an organization that manages the implementation of the project, under the law of the Federal Republic of Germany - a limited liability company "European X-Ray Free-Electron Laser Facility GmbH" (hereinafter - European XFEL GmbH). The Convention concerning the Construction and Operation of the European X-ray Free Electron Laser Facility signed on November 30, 2009 by the authorized representatives of the Republic of Hungary, the Hellenic Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of Spain, the Italian Republic, the Republic of Poland,
the Russian Federation, the Slovak Republic, the United Kingdom of Great Britain and Northern Ireland, French Republic, Swiss Confederation, Kingdom of Sweden [14].

This Convention contain the following main provisions, which have been agreed by the signatory states:

- the goals of cooperation are defined, aimed at creating a unique scientific installation;
- participants of European XFEL GmbH will not be the states themselves, but the organizations designated by them;
- European XFEL GmbH acquires legal personality under the national law of the Federal Republic of Germany;
- the accession of other interested states is allowed, subject to a unanimous decision of all participating states on agreed terms;
- the governing bodies of European XFEL GmbH and their powers have been determined: the supreme governing body - the Shareholder’ Assembly (includes no more than 2 representatives from each member state and the Board);
- the contributions of the participating States are determined on the basis of the agreements of the parties. The Shareholder’ Assembly must create preconditions in order to avoid an imbalance between the use of the facility by the scientific community of the participating State and the contribution to the financing of this state;
- Member States are obliged to facilitate the travel and stay of nationals of the Member States employed or seconded to European XFEL GmbH or conducting research there, as well as their family members, however, the privileges and immunities of international intergovernmental organizations are not granted;
- the procedure for resolving disputes regarding the Convention has been established, which provides for negotiations with the subsequent possibility of resolving the dispute through arbitration;
- Germany has assumed responsibility for the costs of dismantling the scientific installation in excess of two annual operating budgets, calculations are based on the average budget for the last 5 years of operation;
- the initial term of the Convention is set to 31 December 2026. The mechanism for extending the term of the Convention is also predetermined.

A feature of the legal model of European XFEL GmbH is the need to combine the norms of international law and national legislation of the Federal Republic of Germany. In particular, an annex to the Convention concerning the Construction and Operation of the European X-ray Free Electron Laser Facility is the Articles of Association of European XFEL GmbH provided by the German Gesetz betreffend die Gesellschaft mit beschränkter Haftung [15]. The share capital of European XFEL GmbH is 25,000 euros (the minimum amount established by law). The Articles of Association of European XFEL GmbH stipulate that the company operates exclusively for non-commercial purposes in the field of science and research, and the participants do not receive any share of the profits.

Each 1 euro of the share capital gives the right to one vote, the acquisition or transfer of shares of participants is allowed with the approval of the Shareholders’ Assembly.

The Convention concerning the Construction and Operation of the European X-ray Free Electron Laser Facility does not contain a clause on the exclusion of a non-fulfilling member state, however, the relevant legal mechanism is provided for by the Articles of Association of European XFEL GmbH: compulsory redemption of the participant's share, including if there are more than three years. In this case, he receives compensation equal to the nominal value of his shares. At the same time, in the event that a state party withdraws from the Convention, the conditions and consequences of the withdrawal, in particular its share in the costs of dismantling equipment and buildings of the company and in compensation for losses, must be determined by agreement between the Parties.
According to the resolution of the Conference of Plenipotentiaries for the establishment of a European X-ray free electron laser, the provisions of the Convention are applied temporarily, pending the implementation of the relevant constitutional procedures in each of the interested states.

On the basis of the Vienna Convention on the Law of Treaties, adopted on May 23, 1969 [16], practically all the states parties made separate reservations (in the form of declarations), by means of which they wished to exclude or change the legal effect of certain provisions of the Convention in their application to this state. In particular, the Russian Federation made a reservation that the Russian side would make a contribution of € 250 million (in 2005 prices), provided that the Russian participant's share in the company's capital must provide such an amount of voting rights that the Board of the company cannot make any decision requiring a qualified majority (not less than 77% of the share capital) in accordance with the Articles of Association of European XFEL GmbH, in case of disagreement of such a participant. Under any circumstances, the list of issues to be approved by this qualified majority remains unchanged.

Thus, the Russian Federation has a blocking stake in European XFEL GmbH, being the second largest sponsor after Germany.

5. International scientific cooperation with JINR

Scientific projects of the "MegaScience " class based on international scientific cooperation are also being implemented on the territory of the Russian Federation.

NICA (Nuclotron-based Ion Collider facility) is a new accelerator complex designed at the Joint Institute for Nuclear Research (Dubna, Russia) to study properties of dense baryonic matter. After putting the NICA collider into operation JINR scientists will be able to create in the Laboratory a special state of matter in which our Universe was shortly after the Big Bang – the Quark-Gluon Plasma (QGP) [17].

The Joint Institute for Nuclear Research is an international intergovernmental research organization established on the basis of the Agreement on the establishment of a Joint Institute for Nuclear Research, signed on March 26, 1956 [18].

In particular, this Agreement defines:

- establishment of an international research organization as a legal entity as well as its location;
- goals of cooperation aimed at creating unique scientific installations;
- development of the Charter of JINR as the main source of law for this organization, approved by the governments of the member states;
- JINR governing bodies: Director and Scientific Council;
- the accession of other interested states is allowed, subject to the consent of the majority of the member states;
- contributions based on the agreements of the Member States. At the same time, the size of the share participation of the Member States cannot be a factor influencing the degree of participation of one or another JINR Member State in scientific activities and in the management of JINR;
- the procedure for the withdrawal of states from the membership and liquidation of JINR. Upon liquidation, all equipment, main, auxiliary and administrative structures will become the property of the USSR, on whose territory JINR is located. The rest of the Member States are paid monetary compensation in accordance with the equity participation of each individual state in the capital expenditures of JINR.

However, the Agreement on the establishment of a Joint Institute for Nuclear Research is mainly of a framework nature, since the detailed legal regulations of the status of JINR is carried out on the basis of its Charter, adopted at the Meeting of Plenipotentiaries of the JINR Member States on 23 September 1956 with subsequent additions and changes.

The Charter of JINR identifies the following important legal aspects:
● the supreme body is the Committee of Plenipotentiaries of the governments of the JINR Member States. Each Member State has one representative on the Committee of Plenipotentiaries and has one vote in decision-making;
● decisions on admission and exclusion of members are made by consensus. Other decisions are made by the majority of 2/3 of those present and voting;
● a member state with financial arrears in contributions is deprived of the right to vote in the Committee of Plenipotentiaries, and the question of the participation of this state in the activities of JINR is also raised;
● the rights and privileges arising from membership in JINR shall be suspended in respect of any member with arrears in the payment of contributions, if the amount of arrears equals or exceeds the amount of contributions due from it for the two previous years;
● disputes between JINR members are resolved through consultations between the disputing parties, if the dispute has not been resolved within one month from the beginning of the consultations, any party can refer the dispute to the conciliation commission in accordance with the rules approved by the Committee of Plenipotentiaries;
● JINR's activity is terminated by agreement of its members, or in the case when there are less than three Member States of JINR;
● In the event of JINR liquidation, its funds and property after the repayment of all JINR obligations are distributed among all members, including those who left earlier, in proportion to the amount of their contributions. Buildings, structures and other objects of JINR, which cannot be distributed in their natural form due to their inseparability from the territory in which they are located, are sold through their sale with the subsequent distribution of funds received from the sale among members. The state where JINR is located has the preferential right to acquire this property.

Additionally, on October 23, 1995, an Agreement was signed between the Government of the Russian Federation and the Joint Institute for Nuclear Research on the location and conditions of the activities of the Joint Institute for Nuclear Research in the Russian Federation [19]. In accordance with this agreement, the privileges and immunities of JINR and its employees on the territory of the Russian Federation, tax incentives are determined, as well as other issues arising in connection with the presence of JINR on the territory of Russia are regulated.

As a lack of legal regulations of international cooperation within the framework of JINR, it should be noted that neither the Agreement on the establishment of a Joint Institute for Nuclear Research, nor the Charter of JINR contain legal norms governing the distribution of rights to the results of intellectual activity arising from joint scientific activities.

6. Conclusions
The legal regulations of scientific projects of the "MegaScience" class is multidimensional, each such project is unique in its technical implementation and regulation. At the same time, it should be noted that in the implementation of these projects, both with the creation of an international intergovernmental organization and a legal entity under the national law of the state on whose territory the unique scientific installation will be located, there are a number of common points that arise due to the application of international law regulating cooperation issues.

The above analysis also showed that at the level of international agreements on the implementation of scientific projects of the "MegaScience" class, there are a number of features that should be taken into account when creating future similar projects:

● it is advisable to establish the dependence of the number of votes available to a member state in deciding issues of managing a scientific project on the amount of contributions made for the implementation of a scientific project (reasonable analogies like ITER or European XFEL GmbH);
taking into account the scale of the scientific equipment and infrastructure, as well as the existing environmental risks, it is advisable from the moment of the project design to initially resolve the issue of their subsequent disposal after the termination of the scientific project of the "MegaScience" class (regardless of the reasons for termination). In this regard, the experience of ITER is indicative, within the framework of which a separate fund is created to finance the costs of subsequent disposal;

● to determine in advance the procedure for excluding a participating State that is in breach of its obligations, as well as the procedure for settlements with it;

● establish obligations for the member states to simplify the legal procedures for mobility for scientists, engineers and other specialists involved in the needs of scientific projects of the "MegaScience" class.

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