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Legal Self-Defense: Yesterday, Today, and Tomorrow

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Abstract:

This paper presents a detailed analysis of legal self-defense as a complex legal category and is in demand not only at the modern stage of existence of state-organized civilizations but also in the past. Essential parameters of self-defense are studied due to which self-defense is characterized as scientific construction, subjective right, legal activity, form of protection of violated right, special legal measure, and complex legal institution. Such multi aspect characteristics of self-defense require close attention in order to increase efficiency of further application (from theory to normative consolidation and practical implementation). Tendencies in normative regulation of self-defense beginning from savagery (Talion principles) through the Middle Ages, in bourgeois states and up the present time are depicted. The author compares the limits of self-defense that were established during various historical epochs. For example, primitive self-defense is acknowledged as the most inhuman and violent. It is associated with group interests of a tribal community. In the Middle Ages the limits were established considering self-defense application by sole discretion of the subject, that was why the state began to ask for help third parties and official mediators to act between the person and the state. Moreover the sphere of self-defense here is getting narrow here to prevent unrestrained arbitrary actions. During bourgeois epoch legal regulation of self-defense was much politicized. Its implementation was connected for example with the right to participate in public manifestation, submit a petition etc. Today to some extent the international documents and the Russian legislation regulate it. However, regulation of self-defense is fragmented, so it is necessary to adopt a special act concerning self-defense.

Key Words: *Protection of the right, legal self-defense, right to self-defense, history of self-defense, self-defense regulation, Declaration of self-defense.*

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1. Introduction

1.1 Introduction of the Problem

Discussing the problems of constitutional nationhood we, unfortunately, have to acknowledge the fact that even in the current environment the personality is not protected enough. Infringement of human rights and freedoms (under conditions of social, economic and political instability, ecological crises, militarized conflicts etc.) lead to the situation when full realization of legal statuses protected by the world community and national states is almost impossible and this causes instability of various spheres of its living space and disorganizes society in general.

What should a person do? The answer is evident: address to the officials, to human rights institutions, judicial organs, international institutions etc. However, official procedures usually require a lot of time. There is a universal measure and it is self-defense. Self-defense is a form of defense that suggests unilateral actions of the authorized person in using certain measures and methods of defense without addressing to authorities with jurisdiction. All the subjects have the right to self-defense including the state and its organs thought the state is the subject (the center) of a state defense itself.

While importance, legitimacy, feasibility and practicability are unquestionable, its limits are not clearly defined. For this reason it is important to study past experience of self-defense, to assess its current regulation and submit proposals about prospective normative support of relationships in relation to the subjects using their right to self-defense. This paper is devoted to the solution of these problems.

1.2 Importance of the Problem

Not adequate regulation of self-defense does not allow use it as an active potential even within minimal requirements. Research in this sphere has been conducted for 10 years only. For this reason not many legal practitioners can give a definite and affirmative answer regarding characteristics of the legal self-defense structure.

Efficient self-defense is possible only when there is adequate structure of a complex institution of legal self-defense, its clear normative formulation and consolidation. And this information is necessary for the lawyers as well. They will learn about self-defense and teach the others. Society will become more legally aware and its members will have adequate knowledge and knowledge, as we are all aware, can give freedom and power. There is need to choose the right "course" for solving this problem.

1.3 Relevant Scholarship

The right to self-defense is not studied well. The authors Avakjan (2005), Anisimov (2005), Bondar (2002), Braginskiy (2000), Bratus' (1976), Vitruk (2008), Malko (2011), Matuzov (1972, 2003), Lukasheva (2002), Tikhomirov (1999) and others mentioned self-defense when analyzing the problems of legal status. Some other aspects of self-defense were analyzed in branch legal sciences by the authors

Zhivikhina (2005, 2006), Kornev (1994), Sadikov (2004), Fomin (2006, 2011), Yuzhanin (2002) and others. The first attempts to emphasize the theory of self-defense were made by Baranov (1996, 2011), Kazakova (2005, 2012), Maltsev (2006), Snezhko (2006) and others.

Today researches share the opinion that self-defense is a notion with multiple meanings. First, it is regarded as an independent subjective right (Goncharov, 2006). Second, self-defense is associated with legal activity and is acknowledged as the way of its manifestation (Malko, Subbochev, Sheriev, 2010). Third, self-defense is equaled with civil law enforcement, specific form of protection of the infringed right (Braginskiy, Vitryanskiy, 2000). Fourth, self-defense is regarded as a specific legal measure, legal guarantee of realization of other rights and obligations (Arabuli, 2010). Finally, self-defense is interpreted as a complex institute of law (Kazakova, 2010). Importantly, however, that in any case self-defense has an interdisciplinary status.
The problem is still not studied well enough and requires further exploration.

1.4 State Hypotheses and Their Correspondence to Research Design
Taking into account the above-mentioned points, the aim of this work is to analyse different manifestations of self-defense and clarification of their content and also identification of perspectives in adopting the Declaration of self-defense regarding past and present experience of self-defense formalization.

The main objectives aimed at achievement of the goal are:

- Characteristic of legal self-defense as a subjective right, type of legal activity, form of protection of infringed right, legal measure, and complex legal institution;
- Exploration of the main tendencies in using and regulating self-defense in ancient times, Middle Ages, during early bourgeois revolutions and at present time;
- Description of the standard of self-defense regulation in current international law in comparison with Russian legislation;
- Formulation of proposals in terms of adoption of the self-defense Declaration as the most important document regulating the exercise of the right to self-defense.

2. Method

2.1 Historical Method
Historical method enabled us to depict the first primitive forms of exercising the right to self-defense in a primitive society and in other historical periods (slavery, Middle Ages etc.). We also analyzed the extent of the state interference into the exercise of this right by the individuals and their representatives, by groups of people in different time intervals until present time when the state itself is

recognized as the holder of a right to self-defense. With the help of historical method we could emphasize the dynamic aspect of self-defense.

2.2 Comparative Legal Method

This method helped us to compare characteristics of private legal and public legal self-defense simultaneously in different legal areas and in different nations and states as well as in different time in legislations of the same countries and nations. Due to this we managed to obtain the more objective result which lead us to finding more efficient and more demanded mechanism of self-defense.

2.3 Synergetic Method

Synergetic method underlines the issue of self-defense organization. A detailed research shows that it is self-defense that helps a personality and different association groups, the state and international community in general to survive. Even if it were prohibited, those whose rights, freedoms and legal interests are under serious threat or are infringed, would never reject it. And by no means can we ignore this fact. Self-defense distinguishes people from each other allowing them save their personal statuses and uniqueness and at the same time unites them in achieving the common goal. At the base of it are not only normative factors which we will discuss in this paper, but also economic, political, ideological and other factors which we analyzed wherever possible but which require further research.

2.4 Formal Legal Method

With the help of this method we studied the ways of formalization of self-defense in international and Russian legislation and made a proposal on improving legislation in this sphere, namely on adoption of the Declaration of legal self-defense the major provisions of which are described in detail in the final part of this paper.

3. Results and Discussion

Self-defense as a form of protection of the infringed right. The specific character of self-defense as a form of protection of the infringed right is in its unilateral nature. This nature is expressed not only in the fact that a personality (and the subject of self-defense is the personality) "itself" reflects all the infringements of its interests or prevents their real threat, but also because the personality defines the degree of its own response to illegal behavior of the other party, the pattern of its own legal self-defense behavior and certain measures for legal self-defense.

We cannot say that self-defense is a sign of civilization or advancement of society. It is based on the primary human instinct, the instinct of self-preservation that is immanently inherent to any living being. The instinct emerges regardless someone's approval or disapproval as it is inherent in the very nature. It is a defense reaction of a man, and it is realized through protective actions, namely through self-defense. In other words, the source of self-defense is rooted in a specific psychophysiological organization of the personality. It is as a living being cannot but defend itself when it

is attacked and has to stand against any evil.

Self-defense as a subjective right is a special type and measure of legally acceptable behavior of the subject of law. These are the possibilities of an individual when his or her rights, freedoms and/or legal interests are infringed or associated with the threat of infringement due to independent actions (without addressing to jurisdictional authorities) oriented towards prevention or repairing violation and remedying the breach of rights.

Amy subject of law makes decision about self-defense on his on when his rights, freedoms and legal interests are infringed. It is entirely appropriate in this context to quote N.I. Matuzov who analyzed the subjective right and emphasized that the realization of the latter "depends within bounds on the will and consciousness, personal desire and discretion especially in terms of using" (Matuzov, 1972) by the relevant subject of law.

As any other subjective right, self-defense is a complex of authorities of a subject (Matuzov, 1972; Bratus', 1976). In our view the right to self-defense includes these abilities (authorities):

- Ability to perform any authorized or permissible by the state legal activity for defending infringed rights, freedoms, responsibilities without restrictions which is necessary for providing an adequate standard of living, for expressing one own political and legal position, for adequate realization of family, professional and other statuses including making a proportionate harm to a counteragent in the process of self-defense;
- Ability to demand from all the other individuals: to end conduct that prevents legal activity of the subject (non-commission of violation of law) and to prevent security risks; provide conditions for proper implementation of self-defense;
- Ability to address to the state in case with appearance of obstacles to self-defense with request to eliminate these obstacles or/and for state protection;
- Ability to use the immunity (failure to hold to account) for independent self-defending activities which are not beyond the limits established by law.
- It is prohibited to act beyond the limits of these abilities as the freedom of self-defense will be boundless and "boundless freedoms" is "arbitrariness having nothing to do with law" (Malinovskiy, 2005).

Self-defense as a way of manifesting legal activity is expressed by actions differ by their degree of intensity. Proactive and creative character of self-defense is revealed in its exceptional independence which starts form the moment of making a decision to act in self-defense and also in independent choice of measures and ways of self-defense (Tsybulevskaya, 2014).

Active self-defense has a specific content. On the one hand, it is oriented towards protection of rights, freedoms and interests of a personality, its close people and that

is why it is necessary and beneficial for a personality. On the other hand, activity in self-defense is oriented towards elimination unlawful phenomena from the social reality, realization of the right and stabilization of public order and, consequently, it is beneficial for the state. For this reason E.L. Sidorenko characterizes the right to self-defense as "socially encouraged" (Sidorenko, 2011).

The content of legal activity in the sphere of self-defense is attributable primarily to the level of legal consciousness and legal culture of the subject. The higher the level, the better self-defense will be performed. Emotional and volitional qualities of the subject are also important here. Not every subject is able to defend himself (herself) but only the subject who is able to make a discretionary decision to protect his right.

Unfortunately, the citizens of the Russian Federation do not exercise their right to self-defense often. The majority still prefers jurisdictional methods of defending their rights. V.A. Usanova correctly noted that the main reason for it is that people "do not know their rights and do not suspect that they can defend them in this way, and thus, lack of knowledge (ignorance) leads to lack of action" (Usanova, 2003).

Specific character of self-defense as a form of defending infringed right is in its unilateral character. It differs from the other forms of defending the right by the following signs: 1) only the subject whose rights are infringed or on exceptional occasions by other subjects acting on his behalf may use it; 2) it is possible only when there is a real threat of infringing the right at its actual implementation and at correcting infringement of right; 3) the person discreetly makes a decision about means and ways of self-defense; 4) self-defense does not exclude the possibility to address to competent authorities and people for defending the infringed right; 5) it must be implemented within the limits established by law with observing these limits and requirements for its implementation; 6) self-defense may be accompanied by infliction of the harm to the subject the nature and the size of which should be equal to the harm inflicted by the offender.

As a specific legal remedy, self-defense is an instrument which allows efficiently implement and defend other rights, freedoms, and obligations when using it potentially or actually. In this capacity, legal self-defense allows achieving the aims of mechanisms of legal regulation and security in rights, and is a special legal guarantee of a legal status of a personality (Snezhko, 2013). To implement the right to self-defense a person may use all the means not prohibited by law. Some of them are specified in a sector-specific legislation.

Finally, we have come to discussing self-defense as a complex legal institution. As a complex legal institution it is a system of legal provisions regulating homogeneous groups of public relationships in which "the norms of various branches of law are concentrated (constitutional, civil, labor, land, administrative, criminal etc.)" (Fomin, 2006).

For instance, in Russian legislation major constitutional way of implementing this right is the right of the citizens to association (Article 30 of the Russian Federation Constitution), to complain (Article 33 of the Russian Federation Constitution), to strike (paragraph 4, Article 37 of the Russian Federation Constitution) and others. In administrative and criminal legislation self-defense is regulated as a case of urgency and necessary defense. In civil law among the means of self-defense usually are restoration of the situation, which existed prior to the violation of the law; suppressing the actions, which break the law or posing a threat to break it; discontinue or modify legal relationships and some others. In compliance with labor legislation an employee can refuse to perform work not specified in the labor contract in self-defense and to perform work which threatens his life and health (Article 379 of the Russian Federation Constitution) and others.

History of legal self-defense. How was legal self-defense regulated? In a primitive society self-defense was implemented by the principle of blood feud (an eye for an eye) which was also acknowledged by ancient states as well. The essence of this principle is that a person who injured another person is penalized to a similar degree. An illustrative example is blood feud. A person who did not want to follow the principle, primitive people might forcefully drive him out of the community, hit with sticks etc. That was a collective self-defense.

In state-organized societies, especially on its early stages of development, this principle was also used. For example, the laws of the Twelve Tables (Ancient Rome) for security of a debt allowed taking possession of a thing, killing of a theft who was overtaken in a fault (Table 7, Article 3.3). A person who has caused damage to the other person's health must make peace with the injured person. Otherwise, he must have expected the same injury (Table 8, Article 1b). We should note that a criminal was accountable before the injured person for his actions but not before the state.

In the 4^{th} – 6^{th} centuries B.C. self-defense was implemented through facilitators. Those were public judges which knew customs and traditions well and commanded great credibility. Community chose them for approving a dealing accomplished. If necessary, they also found a debtor and enforced him of performing his obligations. Actually, such facilitators were the means of public arbitrary behavior. At the same time, it was in that period that social control was becoming to arise. Later the functions of public self-defense were performed by flamens-pontifex (6^{th} century B.C.) and then by magistratus and praetors (4^{th} century B.C.).

Soon (since the 2^{nd} century A.D.) self-defense was actually eliminated by the public power. Coercion in the treatment of offenders became prerogative of the state. Since the 4^{th} – 5^{th} century any arbitrary behavior was forbidden and was allowed only in exceptional cases. During that period the notion of self-help was being recognized.

We may find the mentions about self-defense in the legislation of the Middle Ages. It also allowed arbitrary actions. There was a common tendency that to the debtors

were applied only property-related but not personal measures even if a creditor was outraged by the decision. Compensation of harm was directly associated with the extent of damage. It was forbidden for a creditor to demand from the debtor anything but money. Thus, if he "takes the children of his debtor and makes them the victims of slavery" he would be deprived of a right to demand the payment of a debt and was imposed a fine (Article 3, Title 10). Pursuant to Japanese criminal legislation concerning rebellion, robbery with violence and stealing ("Zokutoritsu") (702-718) creditor for such actions was decapitated (Article 11).
Criteria of evaluating degree of guilt (consequently, responsibility) of a theft and bona fide possessor. Pursuant to the medieval law of Germany if a person acquired movable property on behalf of a person who was not holder of the right to perform such actions, received it voluntarily (for example, under a lease), then the owner lost the right to compensation on the part of a new owner.

During that epoch the function of protecting infringed rights was almost completely given to courts, and their work fall under the sphere of legal rules of procedural nature. A huge number of procedural rules restricting vigilantism is found in Coutumes de Beauvaisis of the 13th century and the orders of King Louis XII of France "On the court and maintenance of order in the kingdom" of 1498 and others.
Medieval law was acknowledged with the institution of necessary defense. For example, according to the Saxon Mirror a man who injured his master or beat him to death for the sake of necessary defense, was not considered as violated the oath of loyalty (part 3, Article 78, paragraph 6). In Carolina 1532 (Germany) legal necessary defense is characterized as a justifying circumstance (Article CXXXIX).

During the post medieval period separate types of self-defense were regulated. In the American Bill of Rights of 1789-1791 the rights were enshrined which was the means of self-defense: the right of the people to assemble peacefully, to submit a petition to the government to repair damage, the right not to incriminate oneself, store and carry weapons etc. In the Constitution of France 1793 natural human rights were enshrined to equality, freedom and security (Article 2), right to express thoughts and opinions (Article 7), right to submit petitions (Article 32), right to resist the oppression (Article 33) etc.

Saxon Civil Code 1863 allowed for civil necessary defense (Article 180) (Saxon Civil Code, 1863) as well as German Civil Code 1896/1900 (necessary defense (§ 227), urgent necessity (§ 228) and self-help(§ 229)). Necessary defense were the actions to prevent "actual illegal attempts" at oneself or the others. Urgent necessity was considered to be a damage or destruction of the thing belonging to the other person in an attempt to avoid danger and the damage is not comparable with the danger. When the danger was removed, it was necessary to redress the damage done.

Self-help suggested that in exceptional cases when there is no opportunity to immediately apply to court for legal aid, the owner of the thing might take it from the other person withholding the thing and having intention to leave the country (fist

law).

Portuguese Civil Code 1966 also allows for self-help (Article 336, 1277).
In the USA Uniform Commercial Code 1962 there are provisions about self-defense of the rights. They concern an agreement of sale and purchase and resulting from it relationships between a seller and a buyer. For instance, if a seller learnt about the inability of a buyer to pay, he can stop delivery of the product which is already on its way or revoke a product within 10 days. A buyer can withhold the product which he rejected for a good reason or buy other products and lay damage at a seller (Articles 2-702, 2-704, 2-711).

At present legal regulation of self-defense under legislation of foreign countries is permissible but within strictly defined limits. The prevalent form of defense (and in our view this is absolutely fair) is the state defense. The right to self-defense is recognized not as the main right but additional which is used subsidiary and only in exceptional situations when the subject of self-defense cannot act otherwise because he can lose his life, health, good reputation, property etc.

Self-defense in the international law. Both international and national documents contain few provisions concerning self-defense. The main tendency here is different interpretation of public and private self-defense. Self-defense in public law is associated with the right of the subjects of public power (first of all, the state) to self-protection.

Recognition of self-defense in international law is, primarily, recognition of the state's right to self-protection. Self-defense here is a natural attribute inherent to any state. It implies maintenance of public order and stable functioning of governmental institutions and is possible only in situations posing a threat to its existence. It may be internal and external threats. Internal threats are associated with national and intra-system processes (i.e. mismatch of life activity patterns, political conflicts, financial and economic and demographic threats and dangers etc.). External threats destabilize the state as the subject of international law (military, economic, cultural, informational expansions etc.) (Garanin, 2004).

Article 51 of the Charter of the United Nations gives the state "the inherent right of individual or collective self-defense if an armed attack occurs against it… to take at any time such action as it deems necessary in order to maintain or restore international peace and security" (United nations Organizations. 1945).

The aim of self-protection is to restore the sovereignty and maintain political stability of self-protecting state from the armed intervention of other states. However, we should not forget that the ground for self-defense is not struggle for independence and today international political practice separation from the state is not considered to be the grounds for terroristic activities on the pretext of self-defense and these activities are severely punished. International law also uses the

notion of preventive self-protection (actions performed for neutralization of terrorists and prevention of planned attacks to disrupt and intercept illegal shipment of weapons and money for terroristic acts).

The state may use force in self-defense to protect its citizens in another state as it is not prohibited by international law and cannot be regarded as force against territorial integrity and political independence of the state. In all situations the force must be used only for intended purposes and only when there are no other ways of saving the lives of the citizens (humanitarian intervention).

Speaking about national legislation, self-defense, its forms and means are not clearly defined. In general terms, the right to state's self-defense on its own territory is implemented through the capacity to use state coercion measures to people who violate the law. The state applies punishment as means of self-defense if it does not have any other ways to make a person non-dangerous for society.

Another means is restriction of the right of citizens and other participants of political process to perform actions aimed at inciting racial, national, and religious intolerance (paragraph 5, Article 13 of the Russian Federation Constitution). In self-defense the state specifies conditions of organization and holding public events (meetings, marches, demonstrations etc.).

To ensure its status the state also have certain prohibitions in the system of state and municipal service (i.e. prohibition for state and municipal employees to make use of their official capacity to promote interests of political parties, public associations, religious organizations etc.; nonpartisan status of state and municipal service as a prohibition of creating branches of political parties within the state structures etc.).

The aim of all these actions is to provide adequate is to promote public interests in society (Terekhin V.A. and Vershinin V.B., 2013).

As we can see, self-defense in the public law is allowed in order to provide public security, security of a person and his free development on the territory of the national state. An important issue here is the use of various types of weapons by the armed forces of a state and other state security forces (The United Nations Secretary-General. 2008). To provide security in this regard is not only a sovereign right but the responsibility of the states. The most acute problem is the use of weapons (primarily, small arms) and ammunition. These weapons are cheap and light, easy to use and transportation, widely available and is used in civil wars and interstate conflicts.

The regulatory framework of the work of the states in this sphere is the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (the United Nations General Assembly,

2001).

This Protocol commits its members to establish as criminal offences the following conduct, when committed intentionally: (a) Illicit manufacturing of firearms, their parts and components and ammunition; (b) Illicit trafficking in firearms, their parts and components and ammunition; (c) Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms… (the United Nations General Assembly, 2001).

On summer 2006 was adopted the Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects: a strategy for further implementation (the United Nations General Assembly. 2006). In the Program it was recommended to start negotiations on a separate international instrument to enable States to promptly and reliably to identify and trace illicit small arms and light weapons. Also, «states are encouraged to support action-oriented research aimed at facilitating greater awareness and better understanding of the factors fuelling the supply of and demand for illicit small arms and light weapons». Due to this, Member States began to pay more attention to the problem of illicit brokering activities in the sphere of small arm trading. The Program of Action contains concrete proposals concerning improvements of national legislation and national mechanisms of control as well as international assistance and international cooperation. The program appeals to the states to pay attention to answer specific needs of children in armed conflicts.

Implementing the Program of the territory of the states, some of them improved their legislation oriented towards prevention of uncontrolled spread of small arms on the national level. Besides a number of other programs were developed and implemented concerning disarmament, demobilization and reintegration. In some countries the plans of actions concerning small arms were included into national development strategies. However, many requirements under this document are still not fulfilled. It is explained by the fact that the Program is not mandatory but advisory.

International standards concerning import, export and transfer of conventional arms have been developed to change the situation. Current Resolution No. 63/240 "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms" was adopted by the United Nations General Assembly on January 8, 2009 (the United Nations General Assembly, 2008). Arms control, disarmament and non-proliferation play a critical role for maintaining international peace and security.

In the report of the Group of Governmental Exports for further steps to reinforce international cooperation for prevention, combating and eradicating illicit brokering in small arms and confirmed by the Resolution "Promotion of peace as a vital requirement for the full enjoyment of all human rights by all" criteria were defined to describe certain activity with small arms as illicit. Transportation and financing

are also among illicit activities (the United Nations General Assembly, 2007). At the same time, the United Nations General Assembly draws attention to the fact that the right to individual or collective self-defense can be denied in no case under the Article 51 of the Charter of the United Nations. Each state has a right to produce, import and store small arms and light ammunition for satisfying its own needs in self-protection and providing security as well as for participating in peace-keeping operation under the Charter of the United Nations Organization.

Finally, in April 2nd, 2013 the United Nations General Assembly approved Arms Trade Treaty (the United nations Conference on the Arms Trade Treaty, 2013). The Treaty confirmed the right of the states to individual or collective self-protection, practicability of resolving disputes peacefully in such a manner that international peace, security and justice are not endangered. Also the Treaty confirms non-interference in the internal affairs of states. The Treaty respects legitimate concerns of states "to acquire conventional weapons to exercise their right to self-defense and peacekeeping operations, as well as to manufacture, export, import and transfer conventional arms". However each state has a responsibility "for the creation and use of their respective national systems of control".

In international acts of private law nature there are the norms concerning self-defense and of a recommendatory nature. A good example is a model Civil Code of the Commonwealth of Independent States 1994 which allows using self-defense to which are related "direct actions of a person to defend infringed right" (Article 14). It is clearly defined that the measures of self-defense must be equal to the offense and cannot go beyond the limits of the actions necessary for its prevention or interception.

The Treaty on European Union (European Union, 1992) provides measures of self-defense companies and firms of member-states to the degree which is necessary for protecting the interests of the members and other persons. Among the latter are "companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making" (Article 48 of the Treaty). The main rule for applying such measures is equivalence.

Individual self-defense in international documents was also approved only some time later. First, only some of its forms were regulates. For example, by Convention No. 87 "On freedom of Association and protection of the right to organize" (International Labor Organization, 1948) the right of the working people and organizations to establish associations and participate in them without prior improvement was established.

The International Covenant on Economic, Social and Cultural Rights (the United Nations General Assembly, 1966). The Covenant 1948 confirmed the obligation of the member-states to ensure the right of each person to form and join trade unions to

promote and protect their economic and social interests as well as the right to strikes providing that it was implemented in accordance with the laws of each country.

The International Covenant on Civil and Political Rights (the United Nations General Assembly, 1966) proclaimed the right to everyone who was filed criminal charges to defend himself personally or through legal assistance of his own choosing; the right to peaceful meetings, freedom to establish and join associations and trade unions to protect his interests.

Convention for the Protection of Human Rights and Fundamental Freedoms (European Union. 1950) confirmed the provision concerning that deprivation of life is not illegal if it was a result of using of necessary force to protect any person from illegal violation (Article 1) which corresponds to the means of self-defense as the right to necessary self-protection. The document also implies the right of the accused person to defend himself personally or through legal assistance of his own choosing (Article 6); the right to peaceful meetings, freedom to establish and join associations and trade unions (Article 11).

The European Social Charter (European Union, 1961) confirms the right of the working people to free national or international associations to protect their economic and social interests; the right of the employers and employees to collective actions in case of collision of interest including the right to strikes.

Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States 1995 established the right for any person regarding whom proceedings are brought to defend himself personally or through legal assistance of his own choosing (Article 6); the right to peaceful meetings, freedom to establish and join associations and trade unions to defend their interests.

In Concluding Document of the Vienna meeting 1986 of representatives of the participating States of the conference on security and co-cooperation in Europe the right of the person protect his rights personally or in cooperation with the others is also acknowledged (Conference on security and co-cooperation in Europe, 1986).

Self-defense here is part of the right to legal defense. Both the right to legal defense and the right to self-defense are regarded as inherent to each person since his birth regardless of whether he is or he is not the citizen of a certain state. When implementing this right a person should realize its reasonability, necessity and his responsibility for his actions in this sphere (Lipinskiy, 2014).

The guarantee of the right to self-defense under international documents is critical for Russia. Acknowledging it and other rights proclaimed on the international level, Russia enshrine them in the Russian Federation Constitution giving them supreme legal force. The Russian Federation Constitution confirms self-defense and the right of anyone to apply for international protection of human rights and freedoms

(paragraph 3, Article 46 of the Russian Federation Constitution).
In international law there are two systems of legal defense.

The first is the system of treaty bodies which acts within the United Nations Organization and includes the Human Rights Committee, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination against Women and Committee against Torture. Treaty bodies of the United Nations Organization accept individual requests if a member-state ratified relative international document.

Russia is a participant of many documents aimed to creation of treaty bodies, having the right to receive and examine applications from individuals within the jurisdiction of the state Party. These documents are the International Covenant on Civil and Political rights 1969 and a Protocol to it (envisaged by the Human Rights Committee), Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment of December 10, 1984 (established Committee against Torture), the International Committee on the Elimination of Racial Discrimination of December 21, 1965 (established Committee on the Elimination of Racial Discrimination) etc. Russia recognizes the competence of these bodies as successor of the USSR. Consequently, any individual may file a complaint to any of afore-mentioned Committees acting on his own initiative.

In July 1998 in Rome 120 countries from the whole world agreed to establish the International Criminal Court acting on a permanent basis. The legal foundation for its work was Rome statute (took effect on July 1st, 2002). 60 states ratified it so far (Russia is not included). The International Criminal Court is an independent international body.

The main arguments for its establishment are described in the preamble to Rome statute. Among them is realization of the fact that "All peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time", that in the 20th century "millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity"; recognizing "that such grave crimes threaten the peace, security and well-being of the world" and "that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation", in order to "to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes" (Diplomatic Conference in Rome, 1998).

The second is the system of protection of human rights. Its normative foundation is the Convention for the Protection of Human Rights and Fundamental Freedoms (European Union. 1950). The Russian Federation ratified it with amendments by the Protocol thereto by the Federal law No. 54-FZ of March 30, 1998 "On the

ratification of the Convention on the Human Rights and Fundamental Freedoms and the Protocols thereto". The Convention took effect on March 5, 1998.

Pursuant to the Convention the Russian Federation recognizes the jurisdiction of the European Court of Human Rights (headquarter is Strasburg) in receiving and reviewing complaints from the individuals, non-governmental organizations or groups of people under Russian Federation jurisdiction who claim to become the victims of violation of the rights by Russia listed in the Convention.

The European Court works on the basis of case law which they create themselves when reviewing certain complaints. Their decisions are binding only for the defendant state. However when reviewing certain cases, the Court follows teleological interpretation of human rights and fundamental freedoms recognized by the European Convention, defining their targeted and value orientation in compliance with the objectives which, in its opinion, can and must be resolved in a modern democratic society. In its decisions the Court gives interpretation to many norms and notions, developing general guidance necessary for implementing the European Convention and thus determines important initial positions for the entire judicial practice in the future. For this reason, the significance of the Court's decisions goes beyond the national borders affecting law and judicial practice of other states the members of the Convention.

The role of non-governmental organizations in implementation of the right to self-defense. Today non-governmental organizations play a critical role in the mechanism of international legal defense. Among them are voluntary, autonomous, non-commercial entities of non-political nature on the national, regional and international levels as the result of free will and initiative of individuals united on a basis of a shared interest to protect rights, freedoms and legal interests acknowledged by the international community (organizations with common status: International Trade Union Confederation, International Council of Women, International Red-Cross Societies; organizations with consultative status: International league of Human Rights, Salvation Army and others). Due to the international non-governmental organizations, individuals now have the opportunity to directly communicate with the United Nations bodies, and participate in the international system of human rights protection. These organizations report to the governments of different states in the world about the needs of people, their everyday problems, examine political situation in the states, perform public control of the work of the police etc.

Among the Russian most known non-governmental organizations are the Moscow Helsinki Group, Federation of Independent Trade Unions, Confederation of Labor of Russia, Women's Union, Russian Red-Cross and others.

Our proposals about legal regulation of self-defense.

Legal self-defense is relevant and much in demand in real life. But as we can see its complex regulation is performed neither on the international nor on the national levels. We assume that solution of this issue must not be delayed. Self-defense regulation should be unified for many reasons: to establish an adequate hierarchy in relations "private interest" – "public interest", or "public interest" – "public interest", or "private interest" – "private interest" so that none of the collided interests immersed the other; to determine initial conditions and parameters of self—defense; to stimulate the subjects of law to use self-defense without fear of being prosecuted for violating its parameters etc. Provisions of such act may be developed in sectorial regulation of the domestic legislation, and if the same regulation is adopted on the international level - then provisions may be developed in national legislations of different states. We believe that our suggestions are relevant not only for Russia and the international community but also for other states regarding themselves a civilized participants of the international communication.

When formulating the concept of a certain document, we will use the method by A.V. Malko and V.V. Nyrkova (Malko A.V. and Nyrkov V.V., 2014).

The working title of the document is Declaration of legal self-defense.

We believe that it is reasonable to start the Declaration with the introduction (preamble) in which all the circumstances of its adoption will be specified. Here we may mention the right of every person to defend his or her rights and freedoms by the means not prohibited by the law and the status of these rights as having the highest social value. It would be relevant to mention the provisions of the Universal Declaration of Human Rights 1948 acknowledging the dignity of all members of the human family, equality and inalienability of fundamental rights as an essential condition for freedom, justice and universal peace. It should be emphasized that it is impossible for the state and its bodies to provide ongoing and universal protection of its own citizens.

Article 1 of the Declaration should enshrine the right of every person regardless his social and legal status to self-defense, underline its legal provision (to provide security to a holder of a right and capacity to exercise other rights, freedoms and legal interests).

Article 2 of the Declaration should specify legal power of the subjective law to self-defense (ability to defend rights, freedoms and legal interests independently without addressing to jurisdictional authorities by performing actions aimed at prevention or elimination of the breach and restoration of infringed rights) and conditions of its legal implementation (compliance with the limits of necessary self-protection, unconditional belonging of defended rights to the subject, real breach or threat of a breach).

Article 3 enshrines the unrestricted number of the subject of law to self-defense.

The following Articles of the Declaration confirm the natural character of this right (Article 4), its unconditional character and inalienability (Article 5), ability to address to other individuals or authorities for help concerning infringed rights, freedoms and legal interests regardless if a person has this capacity or not, and to retain the right of any individual to address to jurisdictional authorities in future (Article 6). The Declaration should especially underline inadmissibility of restricting the right to self-defense regardless political regime (Article 7).

Despite a typical interpretation of self-defense as an active behavior of a person, the Declaration should also include a reference to passive self-defense as well (Article 8).

Article 9 may confirm inadmissibility of state intervention into implementation of self-defense and the autonomy of a subject in choosing means and ways of self-defense.

In Article 10 we will determine that self-defense for the benefit of the interests of the others it is preferable to receive explicit consent of the persons whose rights, freedoms and interests are being defended as well as the responsibility of the subject to act reasonably and in good faith.

Article 11 may contain a provision about contractual regulation of self-defense in private law and Article 12 may contain a provision about inadmissibility of implementing it not for the purposes intended and using resources and capabilities of the others.

A special attention should be paid to ruling out the possibility to infringe rights, freedoms and legal interests of other people (Article 13), use the means of legal control prohibited by the current law and the rules of international law in self-defense, to force people to self-defense, to defend rights, freedoms and interests if the person is not the holder of them (Article 16).

Article 17 specifies the reasons of self-defense (encroachment on the rights, freedoms, legal interests or threats; explicit evidence of such encroachments or threats; impossibility to eliminate them by a peaceful resolution).

In Article 18 it is important to mention a personal responsibility of the subject of self-defense for going beyond the limits and impossibility of the prosecution if self-defense was realized within the law. The boarders of self-defense are determined in the Article 19.

In case self-defense is specified in legislation, we will make a provision about obligatory compliance to this order (Article 20).

It is interesting that means and ways of self-defense cannot contradict the purpose of

defended rights, freedoms, legal interests and current legislation (Article 21).

A special mention can be made about the possibility of self-defense with guns (Article 22) and about prosecution of the subjects who prevent self-defense (Article 23).

A ban should be imposed on self-defense provocation (Article 24) and its abuse (Article 25).

Article 26 of the Declaration is very important because it allows causing of harm to a person infringing rights, freedoms and legal interests of the holder of the rights.

Public self-defense is declared as self-defense of public officers (Article 27) and the state itself (Articles 28-29).

In the final provision of the Declaration we should mention that some ways of self-defense may have restrictions but only if they contradict major standards of the society.

4. Conclusion

Our researched proved the relevance of the problems of legal self-defense.
We confirmed the need of using self-defense by different subject of social and legal cooperation, starting from an individual and associations established by him or her and the state, groups of states and international community, in general. It was interesting to study the use of self-defense in the past as now we can use more civilized experience of legal regulation in this sphere. We also came to conclusion that it is important to formalize the right to self-defense in present situation as on the national and on the international levels. This conclusion is supported by the efforts of some states and leading international organizations to regulate some manifestations of self-defense. However, this work is very diverse, time-consuming and require a lot of organization. We suggest start such regulation from adoption of the Declaration of legal self-defense as an initial document.

References

The United Nations Organization, 1945, Charter of the United Nations. The United Nations Organization (1945). Charter of the United Nations. http://www.un.org/en/documents/charter/chapter7.shtml

The United Nations General Assembly, 2001, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/574/45/PDF/N0057445.pdf

The United Nations General Assembly, 2006, Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects: a

strategy for further implementation. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/412/87/PDF/N0641287.pdf

The United Nations General Assembly, 2008, "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms". http://daccess-ods.un.org/TMP/3168243.16978455.html

The United Nations Conference of the Arms Trade Treaty, 2013, Arms Trade Treaty. http: un.org›disarmament/ATT/docs/Draft_ATT…27_Mar_2013…

European Union, 1992, The Treaty on Europian Union. http://europa.eu/eu-law/decision-making/treaties/index_en.htm

Diplomatic Conference in Rome (1998). Rome Statute of the International Criminal Court. http://www.un.org/law/icc/index.html

European Union, 1950, Convention for the Protection of Human Rights and Fundamental Freedoms. http://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=#n1359128122487_pointer

The United Nations General Assembly, 2007, Promotion of peace as a vital requirement for the full enjoyment of all human rights by all. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/473/57/ PDF/N0747357.pdf?OpenElement

The United Nations Secretary-General, 2008, Report "Small arms". http://sartraccc.ru/print.php?print_file= Pub_inter/unsmallarms.htm.

International Labour Organization, 1948, Convention № 87 "On freedom of Association and protection of the right to organize". http: ohchr.org›EN…Pages/FreedomOfAssociation .aspx

The United Nations General Assembly, 1966, International Covenant on Economic, Social and Cultural Rights. http: ohchr.org›Documents/ProfessionalInterest/cescr.pdf

The United Nations General Assembly, 1966, International Covenant on Civil and Political Rights. http: ohchr.org›documents/professionalinterest/ccpr.pdf

European Union, 1950, Convention for the Protection of Human Rights and Fundamental Freedoms. http: conventions.coe.int›treaty/EN/treaties/html/…

European Union, 1961, European Social Charter. http://www.generali.com/Generali-Group/Careers/human-resources/European-Social-Charter/

Conference on Security and Cooperation in Europe, 1986, Concluding Document of the Vienna meeting 1986 of representatives of the participating States of the conference on security and co-cooperation in Europe. http://fas.org/nuke/control/osce/text/ VIENN89E.htm.

Arabuli D.D., 2010, Self-defense as a form of defending civil rights in the Russian Federation Civil Code. Law and Education, 7, 104-113.

Braginskiy M.I. and Vitryanskiy V.V., 2000, Contractual law. Book One. General Provisions. 3d edition http://base. consultant.ru/cons/cgi/online.cgi?base=CMB&n= 4061&req=doc.

Bratus S.N., 1976, Legal responsibility and law (215 p.). Moscow: Law literature.

Burgental T., 1999, International human rights: review (352 p.). Almaty: Sylym.

Garanin M.J., 2004, Self-defense as a social and philosophical problem: thesis for PhD in legal Sciences (Unpublished doctoral или PhD dissertation). (181 p.). The Academy of the Ministry of Internal Affairs in Nizhniy Novgorod, Russian Federation.

Goncharov E.I., 2006, The issues of implementation of self-defense of human and civil rights and freedoms in civil legislation of the Russian Federation. Civil law, 3, 13-17.

Kazakova E.B., 2012, Relevant issues of self-defense in different segments of the Russian law in modern conditions. Russian jurisdiction, 6, 67-69.

Lipinskiy D.A. The concept of positive legal liability in Russian legal studies, 2014, The Journal of Russian Law, 6, 43-45.

Malinovskiy A.A., 2005, Limits of the subjective law. The Journal of Russian Law, 11, 95-100.

Malko A.V., Subbochev V.V. and Sheriev A.M., 2010, Rights, freedoms, legal interests: problems of legal support (192 p.). Moscow: Norma.

Malko A.V. and Nyrkov V.V., 2014, On the Project of the Concept of the Human Rights Policy in the Russian Federation. Materials of the Round table "Human Rights Policy in Modern Russia. 20 years of the Basic Law". Uljanovsk: Publishing House of Uljanovsk State University. 90-104.

Matuzov N.I., 1972, Personality. Rights, Democracy. Theoretical Problems of subjective law (292 p.). Saratov: Saratov University.

Sidorenko E.L., 2011, The right of a personality to self-defense and its logical and structural analysis. Bulletin of Adygea University. Series 1. Regional studies, philosophy, history, sociology, legal studies, politology, cultural studies, 1, 166-175.

Snezhko O.A., 2013, Modern Policy in Defending Human Rights. Law and Politics, 5, 642-646.

Terekhin V.A. and Vershinin V.B., 2013, Judicial defense as a complex institutions of the Russian law (236 p.): Penza: Publishing House of Penza State University.

Usanova V.A., 2003, Constitutional right of a human to self-defense in the Russian Federation (Unpublished doctoral или PhD dissertation. (231 p.). Volgograd Academy of the Ministry of Internal Affairs of Russia, Volgograd, Russian Federation.

Fomin A.A., 2006, Self-defense of the citizens as a means of providing legal security. Russian Judge, 2, 35-38.

Tsybulevskaya, O. I., 2014, State Authority: moral aspect. Legal Culture. 2. 21-30.