Man In India, 97 (9) : 171-191

PUBLIC-PRIVATE PARTNERSHIP TO ACHIEVE SUSTAINABLE DEVELOPMENT GOALS: CONCEPTUAL ANALYSIS OF THE CREATION OF AN INTERNATIONAL LEGAL FRAMEWORK

Svetlana V. Maslova[1] *, Maxim Y. Sokolov[1]

This article is about Sustainable Development Goals (SDGs) and Public-Private Partnership (PPP) in their cohesion. Its focus is on the PPP legal framework in an international environment. The analysis of international and regional organizations as well as existing and potential international legal instruments allows understanding key problems and prospects for the establishment of the international legal framework of PPP. The results of this paper show both strengths and weaknesses of harmonization and unification of the PPP legislation and outline the path of international PPP legislation from soft law to hard law to achieve SDGs and contribute to further PPP development.

Keywords: Sustainable Development Goals, Public-Private Partnership, International Legal Framework of PPP, PPP international standards

INTRODUCTION

Public-private partnership (hereinafter referred to as PPP) first appeared just 25 years ago, and was soon recognised as a mechanism for solving national issues in the construction and operation of public infrastructure and rendering services to the general public (Kwak, Chih & Ibbs, 2009; Martimort & Pouyet, 2008). Initially, PPP was only applied in one country – the UK (Navarro-Espigares & Martín-Segura, 2011; Smyth & Edkins, 2007), and then gained increasing demand in other developed countries (Wall, 2013). Later, PPP was used with greater regularity around the world including in developing countries (Sharma, 2012). After a while, many states started creating their own national legal framework for PPP and concessions. The issues surrounding the development of PPP and the PPP national laws of various states have become the subject of focused attention and scientific discussion (European Bank for Reconstruction and Development, 2008; Tièar & Zajc, 2010; Maslova, 2015). However, the problems associated with the PPP international legal framework have thus far not been addressed or spotlighted.

The United Nations Sustainable Development Goals (hereinafter referred to as SDGs), in September 2015 adopted by the UN General Assembly (the 70th session), identify PPP as the key implementation for its achieving (UN, 2015). The same is specified in the final communiques of numerous representative international conferences and forums, (Ban Ki-Moon's, 2015; UN, 2012) and in

[1] Graduate School of Management, Saint Petersburg State University, Saint Petersburg, Russia. *E-mail: maslova@gsom.pu.ru*

the General Assembly Resolution A/70/L.1 (2015), which has approved the SDGs. On January 1, 2016, SDGs have become the benchmark for all member states. According to the Goals 17 and objectives 17.16, 17.17 of the resolution is necessary to enhance the Global Partnership for Sustainable Development, complemented by multi-stakeholder partnerships that mobilize and share knowledge, expertise, technology and financial resources, to support the achievement of the SDGs in all countries, in particular developing countries; encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships.

SDGs are of importance for the community in general, but not for the individual country. Their achievement will not be isolated by activities within a state, will not be limited by its territory. SDGs are of an extraterritorial nature, they are universal. Their achievement is the task of the entire global community. «The Goals and targets will stimulate action over the next 15 years in areas of critical importance for humanity and the planet... All countries and all stakeholders, acting in collaborative partnership, will implement this plan» (UN, 2015). This indicates that PPP is gaining an international dimension and becoming part of international relations, which are regulated by international conventions, international customs and other sources of international law (Kennedy, 1987). Therefore, it is the perfect time to discuss PPP not only within the national legal context but also within the legal framework in which PPP must operate within the international environment. This discussion may be wide-ranging and vary from the development of recommended basic PPP standards, which may become the basis for efficient project implementation, thereby facilitating the achievement of sustainable development goals to the development of legally-binding documents, for example, "an international agreement to: distinguish PPPs from a range of other projects; and describe what is needed for PPP development, including during the procurement and bidding stages" (Economic Commission for Europe, 2014). Furthermore, since the question has recently moved beyond mere discussions of these issues – several steps towards the formation of PPP legal framework at the international level have already been taken. International and regional organisations are mainly involved in this process. Their activities, depending on available mandates and powers, generate different results: from legislative guides and legal recommendations in respect of the general terms of the implementation of PPP projects and PPP agreements to model laws and standard regulations.

The participation in this process of primarily international legal subjects, such as international organisations, hardly provides sufficient grounds to consider it genuine international law-making. Research on the issue of PPP legal framework in the international environment, however, is becoming no less relevant or interesting as a result. We believe it is the other way around, because the research done under the given circumstances inevitably touches upon numerous pressing

theoretical and practical problems of modern international law, including international law sources, "soft" law and "hard" law, the legal capacity of international organisations when formulating rules of international law, unifying and harmonising laws, etc. This article provides a systematic examination of these very issues.

RESEARCH METHODOLOGY

Sustainable development goals and public-private partnership

On the face of it, the interconnection between SDGs and PPP is not obvious.

While PPP is primarily associated with the solution of national infrastructure problems, SDGs are associated with the solution of the most important economic, social, environmental and managerial problems of the entire world community: end poverty and end hunger; achieve food security; ensure healthy lives and promote well-being for all; ensure inclusive and equitable quality education; gender equality; sustainable management of water and sanitation for all; access to affordable, reliable, sustainable and modern energy; sustainable economic growth, full and productive employment and decent work for all; build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation, reduce inequality within and among countries; make cities and human settlements inclusive, safe, resilient; ensure sustainable consumption and production patterns; conserve and sustainably use the oceans, seas and marine resources for sustainable development; protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss; provide access to justice for all and build effective, accountable and inclusive institutions at all levels; strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development.

However, this interconnection is not illusory.

Firstly, it becomes visible upon the achievement of Goal 17, which describes PPP and its key characteristics precisely. PPP simply means interaction between the public and private sectors, in which each partner makes its own contribution to a common PPP project. Specifically, the private business provides financial resources, professional experience, efficient management, flexible and rapid decision-making, capacity for innovation and know-how. Therewith, more efficient work methods are usually implemented, while equipment and technologies are perfected. The public partner makes its contribution in the form of property, benefits and guarantees to the private partner.

Secondly, obvious interconnection between PPP and SDGs can be traced upon the achievement Goal 9 – build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation. PPP first and foremost means

the creation of infrastructure in different sectors through its construction, reconstruction and retrofitting (Delmon, 2011).

Thirdly, thorough examination of SDGs indicates that their concept is intended to provide generally-accessible transport, utilities, educational and health services to the general public, which are of crucial importance for the people to be able to live a productive life under the respective conditions. For instance, through Goal 3 "Ensure healthy lives and promote well-being for all at all ages" it is necessary to achieve access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all (item 3.8). In the achievement of the other Goals, it is necessary to provide access to education (items 4.2 and 4.3), to an affordable, reliable and modern energy supply (item 7.1), adequate, safe and affordable housing and basic services (item 11.1) and transport systems (item 11.2), etc. There is broad consensus that PPP implies not only the creation of public infrastructure facilities but also their operation with a view to delivering public services. It is interpreted as a contractual agreement between the public and the private sectors, whereby the private operator provides services that have traditionally been executed or financed by a public institution (Renda & Schrefler, 2006). As it appears from international experience, special-purpose tools exclusively intrinsic to PPP, which cannot be applied in public procurement, enable the public authorities to obtain higher and guaranteed results. A perfect example of such special-purpose tools is risk-allocation between the public and private partners, implying the transfer of PPP project risks to the partner best suited to ensuring their efficient management. Practically adequate risk allocation is essential to reducing project costs and to ensuring the successful implementation of the project. The government frees itself entirely from asset-based risk (including design, construction, operation and possibly residual value risk), and becomes the purchaser of a product that is risk-free in the sense that government does not pay if the service is not delivered, or is not delivered to the specified standards. That is, the public sector purchases the long-term provision of a service of a guaranteed standard, along with the security that if the service is not provided at the right time or to a satisfactory quality then reduced payments are made or compensation is received (Grimsey & Lewis, 2004).

Therefore, though SDG achievement is significantly affected by various factors (behaviour of governments, economic, political, social situations), which cannot be directly affected by the private partner within the PPP framework, its activities may significantly shorten the road to SDG achievement and improve results. The private financing arranged by the private partner for PPP makes it possible to avoid budgetary restrictions and to use the latest and best technologies of design, maintenance, operation and equipment of public infrastructure facilities, and to create a competitive environment, which will eventually have a favourable impact on the achievement of SDGs.

Today, when the correlation between SDGs and PPP is obvious, it is also important to have a sharp view of the PPP legal framework in the international environment, on which the states and other subject international law will rely when attaining SDGs. To regulate PPP in their national legislation, states must have an international law benchmark – a body of clear, predictable and stable standards and rules enshrined in a form stipulated for this purpose in international law.

RESULTS AND DISCUSSION

International and regional agencies for the creation of PPP international legal framework

The numerous bodies currently involved in attempting to formulate harmonized or unified legal regimes for PPP. Among them are universal international organizations and regional unions, as well as non-governmental institutions, including United Nations (UNIDO, UNCITRAL, UNECE), Organisation for Economic Cooperation and Development, European Bank for Reconstruction and Development, European Union, Commonwealth of Independent States, as well as the International Association of Project Finance, Public-Private Infrastructure Advisory Facility, etc. This article analyzes the activity of governmental organizations and their units only.

The United Nations

The process of the formulation of general rules and principles for the preparation and implementation of PPP projects was commenced by the United Nations Industrial Development Organisation (UNIDO), founded in 1966 and since 1985 – a specialised UN agency mandated to promoting sustainable industrial development in developing countries and economies in transition.

The UNIDO Guidelines for Infrastructure Development through Build-Operate-Transfer (BOT) Projects (hereinafter referred to as UNIDO Guidelines) (United Nations, 1996), adopted in 1996, are actually the first attempt to internationally formulate PPP organisation principles. The UNIDO Guidelines are devoted to one of the most common PPP models – BOT. The UNIDO Guidelines cover not only the legal but also the financial issues that the public authorities and project participants have to face during the development of BOT projects. They describe the project structure and PPP agreements, the procedures and stages that are required to implement the project, including project selection, choice of private partners and sponsors.

In our opinion, the narrow focus of the UNIDO Guidelines on one PPP model (BOT only) and wide range of related issues (not purely legal) make it difficult to qualify the document as an act that formulates the PPP legal framework in the international environment. However, this does not undermine the significance of

the UNIDO Guidelines, which have laid the international basis for PPP activities and a balanced model for combining public and private interests. This is important for the states and the other participants in the course of SDG achievement.

Thereafter, this process was continued by the UN, represented by the United Nations Commission on International Trade Law (UNCITRAL). The work conducted by UNCITRAL is more goal-oriented in legal terms, and provides legal support for the creation of a flexible and favourable legislative environment for PPP projects. UNCITRAL's activities result in international documents with legal content: Legislative Guide on Privately-Financed Infrastructure Projects, 2001 (hereinafter referred to as the UNCITRAL Legislative Guide), and Model Legislative Provisions on Privately-Financed Infrastructure Projects, 2003 (hereinafter referred to as the UNCITRAL Model Legislative Provisions), in addition to the UNCITRAL Legislative Guide (United Nations Commission on International Trade Law, 2004). The UNCITRAL Legislative Guide contains 71 recommendations for the legislative authorities of states, while the UNCITRAL Model Legislative Provisions contain 51 provisions, which may become part of national PPP legislation.

In our opinion, these breakthrough results can be explained by the mandate and powers of that body. The point is that UNCITRAL was established by the UN General Assembly in 1966 with a view to developing a legal framework for international relations, legal, regulatory and non-regulatory legal documents for a number of key areas, and promoting their application and adoption. Those documents are approved within the international process involving many different participants. UNCITRAL membership is structured so as to be representative of different legal traditions and levels of economic development. Therefore, UNCITRAL model laws, recommendations and regulations are becoming widely recognised, since they propose solutions suitable for many countries with different levels of economic development. UNCITRAL's core activity is focused on international trade. But UNCITRAL has also done a lot for PPP, as we can see.

The UNCITRAL Legislative Guide and UNCITRAL Model Legislative Provisions are of key importance for the establishment of the PPP legal framework, since they formulate the customary international principles of private sector participation in infrastructure projects, and provide important criteria for legal reforms in this area. The application of these modern and globally-recognised guidelines has made it possible to ensure a more consistent approach to PPP legislation and concession laws. It would also be appropriate to define the UNCITRAL Legislative Guide and UNCITRAL Model Legislative Provisions as detailed instructive documents on legal regulation for the national legislative bodies and governments of different countries. These international legal documents have for the first time revealed and shaped the relations to be governed by national legislation, and proposed the best solutions for legislative bodies. Thereby,

legislation must govern the competence of the public authorities as regards decision-making on project implementation and entering into contracts, specify the public authorities of the host country that can render economic and financial support for project implementation, and the forms of support that they are authorised to provide; determine the facilities in respect whereof a PPP project may be implemented; establish the principles, procedures and tools for the selection of a concessionaire and related prequalification requirements; establish procedures for unsolicited proposals; rules on the participation of project companies in competitive tendering and project implementation; determine the essential conditions advisable for inclusion in PPP agreements; prohibit concession assignment, and specify the conditions under which the grantor may agree to assignment of the concession, etc. They also enumerate the issues in respect whereof it is not advisable to establish excessive legislative or regulatory restrictions: risk allocation, applicable law, dispute-settlement mechanisms, etc. So, the UNCITRAL Legislative Guide and UNCITRAL Model Legislative Provisions have structured potentially the content of PPP national legislation, formulated fundamental provisions governing PPP. Consequently, in our opinion, their significance is manifested by the fact that they present a sort of universal model for national legislation or international treaties, by which the states, public authorities and PPP project participants can be governed in their usual practice, guaranteed that their behaviour in related legislative activities or PPP project implementation will be recognised by the respective partners as legitimate and bona fide.

General Assembly Resolution 58/76 (2003) should be noted among the UN activities by whose implication national legislation related to participation of the private sector and operation of public infrastructure (i.e. PPP – authors) must be adopted or revised consistent with the provisions contained in the UNCITRAL Legislative Guide and UNCITRAL Model Legislative Provisions. Hence, it follows that in spite of their nonbinding nature; those international documents are considered to be the legal framework for PPP national legislation in different countries (UN, 2003).

Proceeding from the topic of this article, we would highlight the UN Economic Commission for Europe, which is the initiator and leading organisation engaged in the development of PPP international standards within the UN system. Since many states, especially developing ones, still face difficulties in launching PPP projects, international PPP standards are intended to help the states in PPP development (public policy, statutory regulation, institutional environment), and in the structuring and implementation of PPP projects. Their purpose is to promote PPP development at the international and national levels; to raise and align the quality level of PPP projects in different countries; to promote the mutual exchange of PPP information, and accelerate the development of this form of interaction between governmental and business at different levels; to establish minimum requirements binding on

PPP project preparation and implementation stages and procedures, which may result in successful implementation of the project, and heighten the interest and motivation of the private sector for participation in PPP projects. Their more important goals are the development of unified PPP legislation; development of unified tender documentation for PPP projects; adoption of uniform PPP terminology, etc. It is planned to accomplish the specified tasks as follows: each PPP international standard, apart from a review of the experience of successful and failure PPP projects in a specific area or sector, will contain recommended PPP forms and a justification of their use in a specific industry; recommended financial models and a justification of their use in the respective PPP model and in a specific sector; recommendations on the practical feasibility of PPP projects under various legal, institutional, financial, socio-economic conditions; risk-allocation matrix.

International PPP standards are not the first international standards being developed by the UNECE. It has already covered many important sectors: public health; nuclear energy, radiation safety; fire prevention; metrology; energy; electrical and electronic equipment; environmental protection; mechanical machinery; information processing; materials; quality assurance and assessment, and others.

It is expected that the international PPP standards, like any other UNECE standards, will be comprehensive and rather flexible to make them usable in countries with different levels of economic and political development; what we mean here is the elaboration of globally-applicable standards. It is also recognised that international PPP standards should be adapted to the specific conditions in each UN member state, consistent with their legal and regional specifics. According to the established procedure, the development of a PPP international standard must be received explicit support of at least by three governments (Economic Commission for Europe, 2014).

The following international standards are currently being developed: "Principles on Zero Tolerance in PPP Procurement", "PPPs in Health Policy," as well as PPP international standards for roads, railways, airports, seaports and river ports, water and sanitation facilities, renewable energy, etc.

The standards to be developed for the achievement of SDGs, in our opinion, are important, because they make it possible to accelerate the PPP process in individual countries and will become a guideline for the public authorities in the implementation of successful PPP projects.

We see the importance of standards to be developed for the creation of a PPP international legal framework for the present and for the future. Presently, they facilitate the creation of a legal scope favourable to private investments in transport, social infrastructure, utilities, promote the most advanced legal and financial PPP instruments, and a balance of public and private interests in the implementation of

PPP projects. In the future, just as is the case with many other international standards, they could transform into legally-binding rules of universal or regional significance. For example, the elaborated International Accounting Standards, similar in nature to the International PPP standards, were subsequently included in the EU legal framework by the European Commission Regulation. Some multilateral international treaties provide variously for the right or obligation of the participating states to apply generally-accepted regulations and standards, established via the competent international organisation or general diplomatic conference. For example, according to Article 207 of the UN Convention on the Law of the Sea (UNCLOS) "States shall adopt laws and regulations..., taking into account internationally-agreed upon rules, standards and recommended practices and procedures"(UN, 1982) etc.

The Organisation for Economic Cooperation and Development

The Organisation for Economic Cooperation and Development (OECD), simultaneously with the UN, is engaged in the systematisation of best global practices and the creation of a PPP legal template for the states, in particular, concerning concessions. The mission of the OECD is to promote policies that will improve the economic and social well-being of people around the world. This international organisation has not taken the way of creating a model PPP law or legal recommendations on legal regulation. Rather, the OECD has focused on a legal description of concession structure and content, as well as on the most popular and specific legal and financial instruments and mechanisms applicable in concession agreements and PPP agreements based on other models. That work resulted in the OECD Basic Elements of a Law on Concession Agreements, 1999-2000 (hereinafter referred to as the OECD Basic Elements) (OECD Basic Elements Of A Law On Concession Agreements, 1999). Their content consists of legal recommendations on the application of generally-accepted approaches to direct agreements with sponsors, the step-in rights of creditors and grantors, stabilisation clauses, as well as the exercise of powers of the concession grantor and the concessionaire, expert examination of the decision to conclude a concession agreement with a view to verifying and certifying its validity in terms of corruption and fraud prevention. In addition, the OECD Basic Elements offer successful procedures and patterns for the selection of concessionaires, holding negotiations and the implementation of agreements. So, the OECD Basic Elements are a useful aid for the states in the competent conclusion of PPP agreements and concession agreements, whose content includes internationally-recognised elements and mechanisms.

The European Bank for Reconstruction and Development

The EBRD, an international financial organisation established in 1991, primarily provides direct financing for the private sector, structural reconstruction and

privatisation, and is engaged in the financing of infrastructure that supports private sector activities. In addition, the EBRD assists the states in better aligning their legal and regulatory frameworks with international standards and best practices, including support for the law-making and measures required to implement the same. This activity is carried out, because EBRD experience shows that effective implementation of PPP structures for infrastructure developments, particularly in developing countries, is impossible without efficient and transparent policy, legal/ regulatory and institutional frameworks encouraging private sector participation, including foreign capital, on sustainable terms and with appropriate allocation of risks between the public and private sectors.The EBRD contributes to identification and promotion of sound practices in the PPP/concessions, including by way of participating in setting, reviewing and updating international standards in the sector.

A prime example of this is the developed EBRD Core Principles for a Modern Concession Law, 2006 (hereinafter referred to as the EBRD Core Principles) (EBRD Legal Transition Team, 2006). They are concise, precise and cover the most important issues of concessions and concession laws. Thereupon, they are absolutely applicable and adapted to other models of contractual PPPs.

Their content presents a body of basic initial fundamentals and core ideas reflecting the essence and specificity of concession/PPP relations. The EBRD document specifies the following as fundamentals. Concession/PPP legislation should be based on a clear policy for private sector participation and consistent with the country's legal system and particular laws. Concession/PPP legislation should create a sound legislative foundation for concession, provide clarity of rules and a stable and predictable concession legal framework, promote fairness, transparency and accessibility of concession rules and procedures, allow for negotiability of concession agreements, allow for enforceable court or arbitral determinations, allow for state undertakings and guarantees accommodate security interests. Also it is should provide for the availability of reliable security instruments on the assets and cash flow of the concessionaire in favour of lenders, including "step in" right. Proceeding from their legal description and content, we should say that the EBRD Core Principles present good-quality international standards of legal regulation and law-making principles as regards concession agreements and PPP.

Other examples of the some of the recent standard-setting activities in the PPP/concessions sector include: cooperation with UNCITRAL with respect to potential future work in the PPPs sector, including participation in the International Colloquium on Public-Private Partnerships; Cooperation with UNECE with respect to finalization of two training modules of the PPP Toolkit, "PPP Frameworks" and "How to Negotiate a Concessions Agreement"; Providing assistance to the Inter-Parliamentary Assembly of the CIS Member States with the development of the Model Law on Public-Private Partnerships for the CIS Member States and related legislative support documents. The analysis of this Model law will be below.

It is now high time to turn to the experience of the creation of a PPP legal framework at the regional level within integrated structures. The results we have sought can be more easily attained in conditions of the economic integration of a limited group of states.

The European Union

The current trend towards comprehensive integration processes has become most pronounced within the European Union (EU), established on the basis of the Maastricht Treaty of 1993, which has formed the common internal market of 28 states. The elimination of administrative barriers hindering the normal functioning of the common market, and differences in the national legislation of the European states complicating the process of cross-border relations, preconditioned the necessity of the uniform or similar legal regulation of numerous relations. Today, for that very purpose, the European Union legal framework has international treaties and its own legal instruments of various significance and effect. The Regulations are binding and subject to direct application in all member states. In other words, the Regulations are analogues of national laws. The Directives are a softer means of general policy implementation. Unlike Regulation, the Directive is not universal, since it has specific addressees — one or several member states (although it is often addressed to all EU member states). The Directive's content is less detailed than the Regulation's content. The Directive defines only the goal or results that the member states are obliged to achieve. Therewith, the national authorities may independently select the specific methods for solving the problems set in the Directive. The Decisions, like the Directives, have specific addressees – they can be not only member states but also legal entities and individuals. Recommendations and Opinions are not mandatory. They are nonbinding acts, which state the position of EU institutions on a certain issue. The Green and White Papers published by the European Commission are also advisory in nature (Lando, 2003; Olsen, 2005).

The EU currently has no PPP Regulations. However, some other documents have been adopted and are effective, such as the European Commission Interpretative Communication on Concessions under Community Law, 2000 (hereinafter referred to as the EU Interpretative Communication on Concessions), the European Commission Interpretative Communication on the Application of Community Law on Public Procurement and Concessions to Institutionalised PPP, (2008) (hereinafter referred to as the EU Interpretative Communication on Procurement, Concessions and IPPP), Guidelines for Successful Public-Private Partnerships, 2003 (hereinafter referred to as the EU Guidelines for Successful PPPs) (Guidelines for Successful Public – Private Partnerships, 2003), the Green Paper for Public-Private Partnerships and the European Union law on public contracts and concessions, 2004 (hereinafter referred to as the Green Paper on PPPs). These documents are of an advisory nature only. But this fact does not

make them any less important. Indeed, Green Papers are documents published by the European Commission to stimulate discussion on given topics at European level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Green Papers may give rise to legislative developments that are then outlined in White Papers.The EU Green Paper on PPPs is already available. Following the logic of rule-making within the European Union, the comprehensive legal regulation of PPP has real prospects. That road is well-known in European practice. The shaping of EU energy-efficiency policy commenced in the early 1990s, when a number of Green Papers on energy were adopted. The Green Papers were followed by the adoption of the EU White Papers, containing specific proposals on changes to EU legislation on energy efficiency. A considerable number of Regulations and Directives on implementation of the provisions set forth in the Green and White Papers are presently operating in the EU. The EU member states have effective regulatory legal acts containing provisions that facilitate compliance with the Directive's requirements. Specific requirements, norms and rules are established in the standards, which are applied on voluntary basis in order to ensure the compliance of products and processes with EU legislation (Green Paper on Public-Private Partnership and Community Law on Public Contracts and Concessions, 2004).

The analysis of European PPP acts shows that there is no uniform statutory term of PPP at the Community level. PPP conception is understood as forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service. However, features allowing for the explicit identification of PPP have been determined: the relatively long duration of the relationship, the means and sources of funding the PPP project, the especially important role of the economic operator, the allocation of risks between the public partner and the private partner. In the EU documents, PPPs are divided into contractual and institutionalised PPPs. Within the scope of contractual PPPs, it is proposed to distinguish between concession agreements and non-concession contracts. The difference between them is determined by the private partner's investment repayment mechanism (payments from the service user or from the public partner). Therewith, EU acts of PPPs distinguish between public contracts and concession agreements. They differ in terms of risk allocation and by the nature of consideration/remuneration payment. Therewith, the Green Paper on PPPs specifies that application of the EU Directives shall not depend exclusively on national approaches to the definition of "remuneration payment." Remuneration may be in the form of any consideration, and the application of EU standards in such cases shall not be excluded because of the specificities of the classification of legally-valid concepts in individual states. The Green Paper on PPPs installs that

the differences give rise to legal uncertainties, and as a consequence, to a wide field for abuse in contract classification (both public contract or concession agreement) with a view to avoiding complicated tendering procedures. Tremendous emphasis in the European PPP documents is placed on the application of tendering procedures and basic economic principles of the EU as regards the selection of a private partner, for example, the freedom of economic activity and freedom of services principle, which entails the principle of non-discrimination, equality in treatment, mutual recognition, transparency and proportionality.

Two forms are understood as institutional PPPs according to the Green Paper on PPPs: incorporation of a legal entity whose participants are public and private partners, or transfer of control over an existing public organisation to a private entity. Neither of the two forms falls within the scope of the European regulation of public contracts and concessions; however, if such an organisation contemplates the fulfilment by the operator of tasks falling within the above-listed criteria of public contracts and concessions, the EU Explanatory Memorandum on Procurement, Concessions for Institutional PPPs requires application of the EU Directives on public procurement or the European basic principles of transparency and equal treatment when choosing a private partner.

The Guidelines for Successful PPPs are mainly focused on a set of recommendations and best practices for the efficient management of PPP. They underscore that there is no best or optimal PPP form and structure, and the EU authorities do not give recommendations on the advisability of specific PPP models in certain specific situations. At the same time, depending on the degree of the private sector's involvement in the PPP project, on the scope of its responsibility, and, respectively, on the scope of risk to be transferred to the private partner, the PPP models are divided into service contracts, M&O contracts, BOT contracts, and life-cycle contracts – DBFO and concessions. One of the important merits of the Guidelines for Successful PPPs is the fact that they present the key principles of PPP agreements that should be taken into account when preparing a specific project, and de lege ferenda within the context of the improvement of national PPP legislation: the need for safeguarding the public interest (the contract must secure and guarantee effective and continuous public services in a manner that addresses the public's needs as much as possible); ensuring the fairness of contract terms (equal distribution of risks and benefits, transparency and justification of the financial terms of the contract, effective and equitable dispute resolution); promoting effective regulation and monitoring on the part of partners; ensuring contractual flexibility to meet changing circumstances (a practice is used whereby the property and financial terms of participation of the contract's private partner can be changed if material changes to the status of the project occur). Another merit is the identification of certain types of risks within PPP, methods of their analysis, their mitigation and distribution, and justification of risk allocation applicable to each

model depending on the financial and operational participation of the private partner.

The EU Interpretative Communication on Procurement, Concessions and IPPP emphasises the necessity to comply with EU regulations on public procurement and concessions; in particular, the requirement for an equitable and transparent procedure for the selection of a private partner to participate in an IPPP. At the same time, the use of doubled tendering procedures (the first is to select a private partner for participation in the PPP company, the second is to award the public contract or concession to the given joint company) is found to be impractical. In order to prevent the complication of competitive selection, it is recommended to choose a private partner using a uniform tendering procedure that meets all European requirements and implies the simultaneous selection of a private partner for participation in the PPP company and awarding the public contract or concession to that company.

Special emphasis should be placed on the new EU Directive on the Award of Concession Contracts adopted by the European Parliament on 15.01.2014 (hereinafter referred to as the PPP Directive). The PPP Directive is not an advisory document similar to the above-described ones. For the first time, it sets uniform European standards of awarding concession contracts and introduces a new criterion for the assessment of tenders, which to a greater extent takes into account ecological, social and innovative considerations. The main novelties of the PPP Directive are the introduction of a clearer and more understandable definition of concession based on the practice of the EU Court of Justice; ensuring the mandatory publication of concession notices in the Official Journal of the European Union; it proposes an adequate solution to the problem of changes in concession contracts, in particular, in case of unforeseen circumstances; introduction of the definition of material changes to the contract, and a description of the cases in which changes may be made without the need to carry out a new tender; introduction of certain obligations of the customers related to the selection of concessionaires and award criteria (a new criterion for the most economically-advantageous tender), which will make it possible to retain the price and general-costs criteria during the lifecycle of the facility, simultaneously placing greater emphases on quality, environmental impact, social aspects and innovations, etc (Bovis, 2011; Directive of the European Parliament and of the Council on the award of Concession Contracts - Frequently Asked Questions, 2014).

In our opinion, the PPP Directive and other above-mentioned PPP documents mark progressive steps towards a comprehensive binding PPP act, the purpose where of is to discuss and approve it stage by stage, and to focus the EU member states on the development of national legislation in line with the given recommendations. Such regulation within the EU is preconditioned primarily by the fact that the key condition of integration – creation of the common economic

space needed for the cross-border operation of companies – is the unification of legislation; that is, the creation of a common legal framework.

E. The Commonwealth of Independent States

Similar processes are in place within another integration body – the Commonwealth of Independent States (CIS). The constituent instruments do not expressly define the legal nature of the CIS and its legal status. The Alma-Ata Declaration (1991) confined itself only to the thesis that "the Commonwealth is neither a state, nor a super-state structure." The same wording was included in the CIS Charter (1993): "the Commonwealth is not a state and does not hold supranational powers." This leads us to the conclusion that the CIS is an intergovernmental structure with coordinating powers. According to another, no-less widespread viewpoint, the CIS is an intergovernmental organisation (Voitovich, 1993). Its qualification, however, is not that important for the purposes of this article. The important point is that CIS member states are entitled to cooperate within the law sphere and facilitate the approximation of national legislation. The factors motivating the creation of a uniform legal PPP framework for member states are also important and interesting.

As a result of longstanding economic, legal, cultural, social and historic coexistence within the USSR, the CIS member states have common characteristics of economic, as well as legal systems, similar principles of government of the state and system of public authorities. In spite of currently-different levels of economic development, an economic process is in place among CIS countries, and a common economic space has been formed (Noren & Watson, 1992; Libman & Vinokurov, 2012).

In general, for CIS countries, Soviet legislation failed to contain the PPP concept, as well as the relevant legal regulation of the participation of business structures in the creation, financing and operation of public infrastructure. Participation of the private sector in those relations was excluded, and all functions were performed by the public authorities. Today, CIS member states are badly in need of infrastructure development. The demand for PPP has appeared as an alternative to government monopoly in this area. Some CIS member states have their own national PPP legislation. The PPP regulations in those national laws have much in common – and significant differences as well. The response to this challenge was the development of the Model Law on Public-Private Partnerships for CIS Countries, 2014 (hereinafter referred to as the CIS Model Law) (Report of the Team of Specialists on Public-Private Partnerships on its Sixth Session, 2014).

In our opinion, three features in the legal characteristics of the CIS Model Law on PPP should be highlighted. Firstly, the CIS Model Law on PPP is a nonbinding legal act. Secondly, it is a harmonising act intended to bring together the legislation of CIS member states and provide for the uniform government regulation of PPP, elimination of any gaps and deficiencies in national PPP

legislation. Thirdly, its content complies to a high degree with the above described international recommendations and international standards concerning the legislative regulation of PPP and legal conditions for the implementation of PPP projects. We would add the analysis of its content to this characteristic. The CIS Model Law on PPP is a framework law. It includes a universal conceptual framework; a comprehensive PPP concept enabling the use of PPP in various areas; PPP forms – contractual and institutionalised, as well as a great number of PPP models; detailed regulation of the powers of the public authorities; possible plurality of parties both on the part of public and private partners; principles and list of required procedures to assess the efficiency of PPP projects and select a private partner; various terms of PPP agreements; corporate relations and structure of a PPP company in case of institutional PPP; principles of organising the effective public administration of PPP, etc. In addition, the CIS Model Law on PPP contains a wide range of PPP agreement terms, and legal instruments and guarantees, needed by all PPP project participants. These include the legal regulation of the activities of foreign legal entities; possibility of pledging a PPP facility and other encumbrance or divestment under suspensive conditions; procedure for giving consent to the transfer or assignment of rights to the private partner; control of the public partner; the step-in right of the public partner and sponsors to interfere and replace the private partner; compensation in the event of early termination of a PPP agreement; the possibility of dispute consideration using mediation and the courts, including international commercial arbitration; entering into a direct agreement with the financing organisation; methods of ensuring the discharge of obligations under a PPP agreement. However, the CIS Model Law on PPP does not regulate in detail the forms and procedure of PPP project financing by the public partner, procedure for allocating land plots and other property to the private partner, etc. The specified issues have their own national features, and are regulated differently in compliance with the national legislation of the CIS member states.

The opinion of its developers as regards the significance of the CIS Model Law on PPP is rather interesting. First, they believe that "Approval of the Model Law is certainly an important step towards the harmonization of PPP regulation and its development was appropriate and timely. Its approval has marked the establishment of a solid ideological and methodological platform for enhancing PPP legal, regulatory and institutional frameworks in the CIS countries on the basis of internationally recognized principles and sound practices, and not only so… The Model Law can be useful for the other regions (or groups of closely related countries) as a model legislative experience, in the PPP and related sectors, as well as for the purposes of comparative analysis among the regions of the preparedness of their legal, regulatory and institutional frameworks for the development and implementation of PPP projects" (Zapatrina, Zverev & Rodina, 2015). Their position proves to be close to fatidic. In fact, regional harmonisation

of PPPs within regional organisations and economic groups is already underway. One example of this process is the fact that the provisions of the CIS Model Law on PPP are currently considered to form the basis of the PPP Model Law for the Eurasian Economic Community. According to the Strategy for BRICS Economic Partnership, the member states are put to the task of PPP development, and one of the first steps towards the attainment of that goal will be the regional harmonisation of the PPP laws of BRICS members, where certain provisions of the PPP Model Law may be useful.

Secondly, they foresee global prospects. "We believe that this document can have a greater impact in the context of international harmonization of approaches towards PPP regulation … We expect the Model Law to play a role in the harmonization of PPP legislation in the worldwide context, including in the efforts initiated by the UNICTRAL Secretariat (currently in the exploratory phase), one option of which is that it is executed through a universal model law on PPPs". This assertion of the global context of PPP-law harmonisation inevitably mingles our own ideas with the problems discussed in this article. The conducted analysis of the documents of international and regional organisations, and arrangements on their creation, has entailed an obvious question. Striving for the creation of international standards of legal regulation and law-making principles in respect of PPP and concessions: what does it mean? At the given research stage, we can hardly get an unambiguous correct answer. On the one hand, it may imply the commencement of the international legal regulation of PPP, creation of a uniform international legal basis, while on the other, it may imply an attempt at the unification and harmonisation of PPP, concession laws in compliance with best international practices in the given area, or something completely third option.

Unification and harmonisation of PPP legislation: Are the solutions correct, and which solution is correct?

This statement of the question is based on our opinion that not all areas of public relations may be and must be subject to unification – the process whereby two or more different legal provisions or systems are supplanted by a single provision or system. (Kamba, 1974). Today, successful unification has affected many areas. Intellectual property, relations in the area of transportation of passengers, cargo and luggage by different means of transport have become the subject of international legal regulation. In some areas, the unification process has been unsuccessful (Dearborn, 2009). There are also some areas under discussion. For example, uniform international trade law. Currently, some researchers believe that already widely recognized that the legal diversity causes transaction costs and lowers economic trade and welfare, in particular by creating legal uncertainty. However, there are experts with a different opinion: "The analysis shows that there is no conclusive evidence that unification of law enhances international trade. Empirical, economic and behavioural analysis confirms that it is difficult to establish

the exact relationship between legal diversity and the enhancement of the economy through transfrontier contracting" (Smits, 2007).

Are these pros and cons in respect of PPP topical? In our opinion, in the current international relations and international law, there are objective preconditions and a necessity for approximating the legal regulation of PPP. The first reason is the existing substantial controversy in national PPP laws. The second reason is the existence of a cross-border element in the PPP relationship. The third reason is the absence of legal instruments and mechanisms in the national legislation of many states, which are required for the efficient implementation of PPP projects. Finally, using PPP for the achievement of SDGs is an additional incentive to arrange for the uniform or similar legal treatment of PPP in different countries. At the I International Forum on Achieving the Sustainable Development Goals through Public Private Partnerships held on October, 2015 in Annemasse (France), special emphasis was placed on the international standardisation of PPP: "International PPP standards and model project templates that can be used by local au-thorities and which can "scale up" and make PPPs mainstream around the world at local levels are urgently needed. There is a clear correlation between PPP standardization and the acceleration of PPP in countries".

The second doubt as regards the correctness of the unification of PPP rules is associated with the varying level of development of many states. Long ago, C. Montesquieu in his work "The Spirit of the Law", noted that laws must be adapted for the country for which they were established and correlated to its governmental arrangement, territory, climate, population, religion of the inhabitants, their inclinations, riches, numbers, commerce, manners, and customs (Secondat & Montesquieu, 1955). The same is very relevant to PPP relationships. Guarantees to the private partner, governmental support, benefits and property, interest on loans cannot be provided in the same volume and through a uniform procedure in each country, since this is preconditioned by different levels of economic development, judicial protection, corruption combating procedures, transparency of public processes, human well-being. However, this doubt may be dispelled by using the practice of special provisos on non-application or the special application of a certain provision of the convention in international unification treaties. This may provide for the required flexibility of regulation. Some conventions stipulate that the parties to commercial contracts may exclude the application of any of their provisions (for example, Art. 6 of the United Nations Convention on Contracts for the International Sale of Goods, 1980). Another option may be the unification of PPP regulations not globally but at the regional level of states united in a common economic space or having similar economic, legal, social-development levels.

Apart from doubting the expediency of unification, the international law doctrine has also formulated critical viewpoints as regards the ponderousness, expensiveness and extreme formality of that process. "International unification

of law is complex. States differ from one another, conceptions of law and of legal techniques diverge, relations among men vary in nature, and like treatment is not possible for the diverse branches of law. Unification of law should not be regarded as a simple task that can be accomplished conveniently with the help of some theorist's prescription. This endeavor is political in nature, and must therefore be approached in a spirit of refinement and conciliation. The temptation must be resisted to employ general formulas; such a method may be appropriate in one case but will only lead to disappointment in another. In one case, it may be appropriate to strive for the elaboration of a world law; in others it may be wiser not to cling to that idea but merely to reduce instead the variety of legal orders on a regional or other level" (David, 1968). We also believe that unification is a complicated two-phased process, and each stage is accompanied by spending considerable time, intellect and finances, the investment of legal and political resources. At the first stage, the operations are linked to a search for compromise with a view to accommodating the positions of different states as regards the concept of future legal regulation, and the content of each specific provision. The second stage – the perception of unifying provisions by national law – is also complicated, lengthy, and often unpredictable. Many unifying international treaties are ineffective or only effective in a limited number of states. For example, the Convention on Jurisdictional Immunities has been developed over the course of nearly 30 years, but is not yet effective. The decision of states on joining an international treaty is affected not only by the specificities of their national legal framework but also by political, socio-economic, historical, cultural and other national interests.

It would be rather hasty to assert or even suppose that it would now be easy for the states to assume immediately the legal obligations to pass to a uniform PPP legal framework.

Under the given conditions, the harmonisation of PPP legislation is a prospective alternative to unification. Uniform law is not required for harmonisation. PPP legislation may retain differences, but should delete the differences that materially prejudice international relations in the given area. Through this process, harmonisation may obtain the same results and solutions as through unification, albeit in a more painless manner.

In the theory of international law harmonisation is defined as "a process whereby the effects of a type of transaction in one legal system are brought as close as possible to the effects of similar transactions under the laws of other countries" (Goldring, 1978). In practice, the harmonisation of laws is realised through the application of model laws, legislative guides, and bodies of general legislative principles. Upon the adoption of national laws, they make it possible to take into account the national specificities and allow for a wide selection of means to reach the objectives of the legal regulation specified therein.

In the current conditions, which still prevent the agreement of states on unified standards for PPP projects and uniform legal treatment of PPP, harmonisation of the PPP laws of different countries may facilitate the achievement of SDGs via PPP, and retain the specificities in the legal regulation of PPP with due regard to the given intrastate financial and political situation and other circumstances.

This part of the article touches only upon the basic aspects of PPP unification and harmonisation. The main consideration is the fact that unification and harmonisation are not the goal in and of itself, but merely legal instruments. The most reasonable of them must be selected on the basis of a favourable balance of costs and benefits from unification or harmonisation. The selection must be made by the states or other international subjects. Without trying to do it for them, we would like to highlight the advantages and disadvantages of unification and harmonisation, which could make the choice easier.

Reduction of transaction costs during the development and implementation of PPP projects, in our opinion, may be provided both by the unification and harmonisation of PPP laws. However, uniform legal regulation, which is a result of unification, will certainly provide the same more clearly. Unification results in establishing similar rules in the national law of different states, that is, rules having similar wording. Harmonisation results in establishing analogous, substantively-similar rules in the national laws of different states, but allows for differences between them, including material ones. Therefore, the legal certainty and predictability of results, which is needed by private partners, will be certainly higher in the case of PPP law unification than in case of harmonisation.

At the same time, unification difficulties do not always result in the planned and expected outcome of that process. It may happen that the unified rules developed for PPP projects will not be transferred into national laws, remaining forever the rules of a draft PPP convention or PPP conversion that has not come into effect, and may retain that status for a long time. The harmonisation process is not that difficult, and does not have such deplorable prospects. According to the international and national practice of PPP regulation, the results are real and quickly meet expectations.

Only the states and indirectly international interstate organisations (under whose aegis international unifying treaties may be developed and adopted) may be participants of the unification process. Under conditions of the universal institutionalisation of modern international relations, this may be viewed as a constraining factor. Harmonisation, on the contrary, allows for the involvement of a maximally-wide range of factors, including non-state organisations and private persons, thus enriching the content of legal documents and enhancing their practicability.

International legal framework of PPPs: a long way to go and intricate choice to make

This research began with the idea that successful PPP development in all countries and effective use of this mechanism with a view to reaching the SDGs requires the creation of a PPP legal framework within the scope of international law. The conducted research has thus far failed to prove the inadequacy of this idea. Now, it is required to choose the suitable legal source.

The concept of the division of international law into hard law and soft law has been formed in the modern legal literature (Joost, Wessel & Wouter, 2012). The rules of hard law imply obligatory rules, which comprise the legal systems in a traditional sense. The rules of soft law imply advisory norms and rules of conduct that are generally non-binding but may have a practical effect (D'Aspremont, 2008; D'Aspremont & Aalberts, 2012; Abbott & Snidal, 2000; Baxter, 1980). It should be noted that this concept is not accepted in full by all experts in international relations for specific reasons. Firstly, it is noted that while such a division reflects real processes in international relations, it is hardly justifiable with regard to international public law in general. Secondly, whether the content of an international treaty provision is soft or hard, it never stops being a legal rule. Therefore, the resolution's rules may not be viewed as legal rules (even in terms of desirable or constituent law) because they cannot be legally binding without rejecting a difference between lex lata and lex ferenda (Weil, 1983). Thereat, the legal forms of hard law rules are international treaties, international customs and other official sources of international law, whereas the legal forms of soft law rules are the decisions and recommendations of international organisations, and declarations adopted at international conferences, etc.

Let's apply some of these theoretical arrangements to this research. In order to frame the argument, we first must look at the difference between rules of soft law and rules hard law. Subsequently, we will address the relationship between both rule categories and, finally, show how legal source may be identified in international legal discourse. Therewith, we should note the contact points between the completed part of this research and the part that has just been started, namely, between unification/harmonisation and hard/soft law. It is obvious that they are directly interconnected and interrelated as follows: the unification process results in the rules of hard law in the form of international conventions, while harmonisation results in soft law in the form of legislative guides of international organisations or model laws. We have considered PPP law unification and harmonisation processes and their merits and demerits, and now we referring to their legal results, which will have similar strengths and weaknesses in many respects. However, they require separate consideration to get a complete overview.

Soft and hard laws have a massive body of arguments in their favour and symmetric arguments against each other.

Certainly, the first and foremost argument in favour of hard law is the validity of the rules, and consequently, the guaranteed result of PPP legal regulation. The rules of soft law lack that binding power. However, that weakness of soft law is transformed into its strength in practice. When establishing the rules of soft law, international subjects can more easily reach agreement on certain issues of cooperation in PPP, provided they don't impose on the parties any specific obligations to act within strictly a defined framework or to refrain from certain actions. Soft law will make it possible to elaborate more detailed and precise regulations, though not binding, as regards PPP project implementation, because the imposed obligations and the consequences of their non-observance are rather limited.

In addition, the lengthy process of the adoption and enactment of legally-binding convention provisions, and, of course, customs, reduce to nought the triumphal argument in favour of hard law. The development of some conventions, as well as their enactment, still requires a lot of time, takes several years or decades, or never occurs. For their own reasons, many states never hurry to join the international documents, even when they have participated in their development, preferring instead to observe their application by other states. Such a destiny is not desirable for the international PPP convention.

It should also be noted that PPP relations, which are subject to international legal regulation, are not static, but keep developing continuously. The conservative legal instruments of hard law would hardly catch up with the accelerating changes in PPPs. Therefore, striving for the legal regulation of international relations using these customary methods may fail to have the desired effect. However, soft law is able to meet such challenges. The rules of soft law are really very flexible, easily and quickly adaptable to various conditions. Unlike the rules of hard law, soft law rules do not need any formalised or lengthy procedures for development, introduction, adoption, ratification, publication. The same is happening with PPP. It was the soft legal nature of the existing international PPP acts that enabled their emergence as an adequate cure for legal gaps in the international areas that lack international legal regulation of PPPs. Now they rapidly respond to changes. In other words, the choice was and is not between the rules of soft and hard law for PPP, but rather between the rules of soft law and the absolute absence of any legal regulation of PPP in conditions where the objective need for the regulation of those relations is obvious.

Having combined characteristics of the process and the result, we would note that when participating in the unification of PPP legislation, hard law acts guarantee uniform PPP regulation in national jurisdictions. The uniform rules of hard law enshrined by the international PPP convention will become legal statutory liabilities of the states, and will be reliably applied in the implementation of PPP projects. Therefore, we assess the unification and the hard law rules related to PPP as highly

efficient mechanisms in the establishing of an international legal framework for PPP and using the latter for the achievement of SDGs. However, due to the disadvantages of unification, as well as due to objective reasons existing in current international relations, the unification of PPP legislation and the uniform rules of hard law established as a result of such unification are hardly probable.

Participating in the harmonisation of PPP legislation, soft law acts reduce ambiguity in the law, thereby making PPP legal relations predictable and somewhat stable, providing similar and universally-acceptable benchmarks for the lawful and good-faith behaviour of partners during the preparation and implementation of PPP projects. Therefore, we assess soft law acts related to PPP as efficient instruments for reducing the general level of uncertainty in the legal regulation mechanism for PPP and actual assistance in the achievement of SDGs.

We would like to underscore that the sheer fact of the creation of such rules is very valuable, since it confirms the desire of international law subjects to implement them in order to regulate international cooperation in PPP. Using the approach formulated by A. Boyle (1999), we propose considering soft law rules for PPP not merely as an alternative, but as the most reliable option for regulating PPP international relations, on one part, and as one of the steps towards the formation of international law rules, on the other (Boyle, 1999). In fact, the results of many scientific studies and international practice show that soft law rules may be a convenient platform for testing the official sources of international law. Here are some examples of such transitions: Declaration and subsequent Treaty on the Non-Proliferation of Nuclear Weapons, Declaration and subsequent Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Declaration and subsequent Convention on the Rights of the Child, etc. Such cases of the transformation of soft law provisions into legal rules of hard law are so widespread and numerous that this practice may be regarded as established and common. Another possible way for the PPP soft law rules to become hard may be the recognition of soft law rules of conduct as custom (compliance with soft law rules may be evidence of opinion juris, which is required for the assertion of available legal custom). The other one is the subsequent consolidation or recognition of the rules of conduct in local contracts and in the respective national legislation, which is actually happening.

However, we are proceeding from the assumption that the most stable and applicable form by which the rules of international law are consolidated is the international treaty, which is a desirable prospect for the international legal regulation of PPP.

The identified specificities in the formation of the PPP international legal framework, the advantages and disadvantages of unification/harmonisation, and rules of hard/soft law have prompted me to simulate a way of creating international PPP law-making combining all possible processes to include the most burning and preferable mechanisms and to soften any ‘sharp corners.’

To this end, it is required to divide PPP relations into two conventional groups. The first group includes the relations and categories that are non-contentious and that prospectively may be accepted by the states as statutory liabilities. This group may include: PPP forms and models, PPP participants, PPP scope of application, basic principles of PPP project preparation and implementation, preliminary assessment of project efficiency, main principles and key stages of private partner selection, essential conditions of PPP agreements, main forms of governmental support, etc. The rules of this first group may be included in the International PPP Convention. The second group includes the relations in respect whereof no agreement of the states can be reached so far as regards their assuming relevant statutory liabilities and approval of unified rules concerning certain PPP aspects. This group may include: the scope and procedures for the provision of property and governmental support, types and scope of guarantees for the private partner, legal regulation of activities of foreign persons, conclusion, modification and termination of PPP agreements, replacement of the private partner in a PPP project, and the rights of sponsors, liabilities of the parties for default or improper performance of obligations, scope of compensations in case of termination, powers of the public partner, PPP supporting institutions at the national level, etc. The rules of this second group feature some elements of current and future advisory PPP acts of international organisations. So, to our mind, the PPP international legal framework is the alliance of international PPP conventions and international PPP recommendatory acts of international organisations of differing but complementary substance. Therewith, the international advisory acts containing the rules of soft law, apart from regulation, shall be instrumental in the interpretation of convention rules of hard law, in their amendment and itemisation.

Considering the complexity of both the unification and creation of hard law rules, these processes seem to be at least premature at this stage. Presently, they will be more of a hindrance than a driver for SDG achievement and PPP development. However, they are necessary, and we optimistic about them as long-term objectives. They may be triggered rather soon at the regional level or within bilateral relationships. Therewith, they can use the available results of harmonisation, for example, the CIS Model Law on PPP, or EU documents, since they have been approved at least by the states of those integrated structures.

CONCLUSION

Creation of a PPP legal framework in the international environment is necessary for the efficient use of PPP with a view to SDG achievement, as well as for the even and efficient development of PPP in all countries in general. The aim of creating a PPP legal framework is to significantly enhance the interest of private businesses in PPP projects and the productivity of PPP, to ensure the proper balance of public and private interests, to employ the best existing PPP practices and to

engage all advanced PPP instruments. The framework, however, must be acceptable both for countries with highly-developed PPP and for the countries at an early stage of PPP development; that is, it must fit it with various legal systems, legal traditions and realities.

Review of the activities of international subjects, analysis of existing international and regional PPP acts, as well as legal remedies and their creation processes has proven that the international legal regulation of PPP has already started. However, the above-described requirements and goals of the PPP international legal framework have obviously preconditioned the specificities of its creation process. The essential ones are listed here. This process has resulted in recommendatory rules of soft law only, and the process is vividly institutional, since it is carried out within international organisations.

So, here are the author's main findings described in this article one by one. The existing legal PPP framework in the international environment is an aggregate of soft law rules at the universal and regional level. It includes PPP legal guides and legal recommendations, model laws, resolutions and PPP international standards adopted within international universal and regional organisations. Among them: the UNIDO Guidelines, the Guide, the UNCITRAL Model Legislative Provisions, OECD Basic Elements, EBRD Core Principals, EU Interpretative Communication on Concessions, EU Interpretative Communication on Procurement, Concessions and Institutional PPPs, EU Guidelines for Successful PPPs, EU Green Paper on PPPs, CIS Model Law on PPP. Those advisory documents cover almost all relations subject to regulation: concept, key PPP features and principles, PPP participants, main forms and models, requirements binding on tendering procedures and terms of PPP agreements. The majority of them have been enshrined in the national legislations of different states. But since this process was implemented through harmonisation, rules that are similar in terms of meaning and content but not uniform and featuring different wording prevail mainly in national jurisdictions. The existing legal differences in the national PPP laws of different states could be smoothed out via the international legal unification of PPP. However, the research revealed that while a soft law approach is available, it is probably the only real option for starting the process of the international regulation of PPP.

The concept of international acts based on soft law is a reliable platform for obtaining positive results in the creation of legally-binding PPP rules in the future. At the same time, the unification of PPP legislation, in our mind, remains a desirable strategic objective in the context of the creation of a PPP international legal framework. The author proposes the following model. It seems advisable to make up the shortest possible checklist of general law matters concerning the preparation and implementation of PPP projects on which political and legal consensus has been reached and which could be enshrined in the international PPP convention with little problem. We would safely include in the convention's content the

following: concept and features making it possible to distinguish PPP from other forms of interaction between the state and business; areas of PPP project implementation; basic rights and obligations of PPP project participants; PPP principles providing the right balance of public and private interests; possible contractual and institutional forms, as well as PPP models and their structural elements (design; building; reconstruction; maintenance; leasing; funding; ownership transfer, etc.); private partner selection principles and basic procedures, including tender (prequalification and bids) and unsolicited proposals; key terms of PPP agreements and conditions precedent for their effectiveness; main forms of state support; main dispute resolution methods and determination of applicable law.

As regards other relations arising during the preparation and implementation of PPP projects, in which the differences are too daunting, we defend another thesis, that it is best to adopt a step-by-step approach, and the time is not ripe for grand projects in the field of PPP international legal regulation. It is necessary here to continue the harmonisation of PPP legislation, gradually seeking the recognition and adoption of as many PPP mechanisms by the states as possible. In this respect, we pin our hopes on PPP international PPP standards.

One more important step must be made for the creation of a PPP international legal framework, though it is indirectly related to PPP law-making. It is necessary to improve the activities of international organisations in this area. Presently, each of the international bodies participating in the development of advisory PPP rules is operating within its own limited area, disconnected from the others, i.e. their activities are uncoordinated. In many cases, this entails duplication or inconsistent results. In our opinion, a special PPP body is required. It need not necessarily be an entirely new international body – one of the existing ones may be involved through the specification and enhancement of its powers. UNCITRAL or UNECE, for example.

Yet one more conclusion is of importance. The use of structures and mechanisms of international organisations facilitates and accelerates the process of the preparation and adoption of international PPP documents. We should emphasise that while this facilitates and accelerates the process, it does not replace it. Therefore, in order to promote PPP at the international and national level and to use the same for the achievement of SDGs, the dominant role must be given to the states. But the adoption of only similar or even the same rules of national legislation and the international PPP convention by the states it not enough. Much more is required. Namely: coordinated international legal and national regulation of PPP, as well as interconnected development of PPP-related national legal systems, and due account for jointly-elaborated law-making principles in their respective legislative and law enforcement activities in this area.

Acknowledgements

The article was supported financially by Russian Foundation for Basic Research (Project No. 17-03-50134).

References

Abbott, K.W. & Snidal, D. (2000). Hard and Soft Law in International Governance. *International Organization*, 54(3): 421-456.

Ban Ki-Moon's. (2015). *Secretary-General's remarks to informal meeting of the General Assembly on the Year Ahead*. URL: <http://www.un.org/sg/statements/index.asp?nid=8312>.

Baxter, R.R. (1980). International Law in «Her Infinite Variety». *International and Comparative Law Quarterly*, 29: 549–566.

Bovis, C. (2011). Where Does the Regulation of Public Procurement and Public Private Partnerships take the Member States of the EU. *European Procurement and Public Private Partnership Law Review*, 6(2): 53-60.

Boyle, A.E. (1999). Some Reflections on the Relationship of Treaties and Soft Law. International and Comparative Law Quarterly, 48: 901-913.

Burnham, J. (2001). Local Public-Private Partnerships in France: Rarely Disputed, Scarcely Competitive, Weakly Regulated. *Public Policy and Administration*, 16(4): 47-60.

Concession Laws Assessment 2007/8: Cover Analysis Report. (2008). European Bank for Reconstruction and Development. URL: <http://www.ebrd.com/downloads/legal/concessions/conces08.pdf>.

David, R. (1968). The Methods of Unification. *American Journal of Comparative Law*, 16(1-2): 13-27.

D'Aspremont, J. (2008). Softness in International Law: A Self-Serving Quest for New Legal Materials. *The European Journal of International Law,* 19(5): 1075-1093.

D'Aspremont, J. & Aalberts, T. (2012). Symposium on Soft Law. *Leiden Journal of International Law*, 25(2): 309–372.

Dearborn, M. (2009). Enterprise Liability: Reviewing and Revitalizing Liability for Corporate Groups. *California Law Review*, 97: 195-260.

Delmon, J. (2011). *Public-Private Partnership Projects in Infrastructure: an Essential Guide for Policy Makers*. Cambridge University Press.

Directive of the European Parliament and of the Council on the award of Concession Contracts - Frequently Asked Questions. (2014). European Commission Memo.

EBRD Legal Transition Team. (2006). *EBRD Core Principles for a Modern Concessions Law – Selection and Justification of Principles*. URL: <www.ebrd.com/downloads/legal/concessions/coreprin.pdf>

Economic Commission for Europe. (2014). *Report of the Team of Specialists on Public-Private Partnerships on its Sixth Session*. United Nations Organization. URL: <http://www.unece.org/fileadmin/DAM/ceci/documents/2015/CECI/ECE_CECI_PPP_2014_2_report_for_website.pdf>

Goldring, J. (1978). Unification and Harmonization of the Rules of Law. *Federal Law Review,* 9: 283-294.

Green Paper on Public-Private Partnership and Community Law on Public Contracts and Concessions. (2004). European Commission. Brussels.

Grimsey, D. & Lewis, M. (2004). *Public Private Partnerships: The Worldwide Revolution in Infrastructure Provision and Project Finance*. Edward Elgar.

United Nations. (1996). Guidelines for Infrastructure Development Through Build-Operate-Transfer (Bot) Projects (General Studies Series). United Nations.

Guidelines for Successful Public – Private Partnerships. (2003). European Commission. Brussels.

Interpretative Communication on the Application of Community Law on Public Procurement and Concessions to Institutionalised. (2008). European Commission. Brussels.

Joost, P., Wessel, R.A. & Wouters, J. (2012). *Informal International Lawmaking*. Oxford: Oxford University Press.

Kamba, W.J. (1974). Comparative Law: a Theoretical Framework. *International and Comparative Law Quarterly*, 23: 485-519.

Kennedy, D. (1987). The Sources of International Law. *American University International Law Review*, 2(1): 1-96.

Kwak, Y.H, Chih Y. & Ibbs, C.W. (2009). Towards a Comprehensive Understanding of Public Private Partnerships for Infrastructure Development. *California Management Review*, 51(2): 51-78.

Lando, O. (2003). Principles of European Contract Law and Unidroit/Principles: Moving From Harmonisation To Unification? *Uniform Law Review - Revue de droit uniforme*, 8: 123-133.

Libman, A. & Vinokurov, E. (2012). Regional Integration and Economic Convergence in the Post-soviet Space: Experience of the Decade of Growth. *Journal of Common Market Studies*, 50(1): 112–128.

Martimort, D. & Pouyet, J. (2008). To Build or Not to Build: Normative and Positive Theories of Public–Private Partnerships. *International Journal of Industrial Organization*, 26(2): 393-411.

Maslova, S. (2015). The New Russian Law on PPP: Breakthrough or Throwback? *European Procurement and Public Private Partnership Law Review*, 10(4): 298 – 309.

Navarro-Espigares, J.L. & Martín-Segura, J.A. (2011). Public–Private Partnership and Regional Productivity in the UK. *The Service Industries Journal*, 31(4): 559-580.

Noren, J.H. &Watson, R. (1992). Interrepublican Economic Relations After the Disintegration of the USSR. *Soviet Economy*, 8(2): 89-129.

OECD Basic Elements Of A Law On Concession Agreements, (1999). OECD URL: <http://www.oecd.org/LongAbstract/0,3425,en_33816563_33816964_33959803_1_1_1_1,00.html>.

Olsen, J.P. (2005). *The political organization of Europe: differentiation and unification*. Oslo: European Studies, URL: < https://www.ciaonet.org/attachments/9699/uploads>.

Renda, A. & Schrefler, L. (2006). Public - Private Partnerships Models and Trends in the European Union. *European Parliament's committee on Internal Market and Consumer Protection.* URL: <http://www.europarl.europa.eu/RegData/etudes/note/join/2006/369859/IPOL-IMCO_NT(2006)369859_EN.pdf>.

Report of the Team of Specialists on Public-Private Partnerships on its Sixth Session. (2014). *United Nations Organization.* URL: <http://www.unece.org/fileadmin/DAM/ceci/documents/2015/CECI/ECE_CECI_PPP_2014_2_report_for_website.pdf>.

Secondat, C. & Montesquieu, B. (1955). *The Spirit Of Laws.* New York: Batoche Books.

Sharma, C. (2012). Determinants of PPP in Infrastructure in Developing Economies. *Transforming Government*, 6(2): 149-166.

Smits, J. (2007). Economic arguments in the harmonization debate: the practical importance of harmonization of commercial contract law. *Modern Law for Global Commerce. Congress of the UNCITRAL*, 9-12: 46-52.

Smyth, H. & Edkins, A. (2007). Relationship Management in the Management of PFI/PPP Projects in the UK. *International Journal of Project Management*, 25(3): 232–240.

Tièar, B. & Zajc, K. (2010). Public-Private Partnerships in Slovenia: Recent Developments and Perspectives. *Review of Central and East European Law*, 35(2): 191-215.

UN. (2012). Conference on Sustainable Development. Outcome Document 'The Future We Want'. URL: <http://www.unosd.org/index.php?menu=242>.

UN. (2003). Model Legislative Provisions on Privately Financed Infrastructure Projects of the United Nations Commission on International Trade Law RES 58/76 (9 December 2003). *United Nations publication* URL: <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/58/76>.

UN. (2015). *UNGA RES 70/1 Transforming our world: the 2030 Agenda for Sustainable Development United Nations Organization*. URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/92/PDF/N1529192.pdf?OpenElement>.

UN. (1982). United Nations Convention on the Law of the Sea (with annexes, final act and procès-verbaux of rectification of the final act dated 3 March 1986 and 26 July 1993). *United Nations publication*. URL:<https://treaties.un.org/doc/publication/unts/volume%201833/volume-1833-a-31363-english.pdf>.

United Nations Commission on International Trade Law. (2004). Model Legislative Provisions on Privately Financed Infrastructure Projects. *United Nations publication.* URL: <www.uncitral.org/pdf/english/texts/procurem/pfip/model/03-90621_Ebook.pdf.>

Voitovich, S.A. (1993). The Commonwealth of Independent States: An Emerging Institutional Model. *EJIL*, 4: 403-417.

Wall, A. (2013). *Public-Private Partnerships in the USA*. New York: Taylor and Francis.

Weil, P. (1983). Towards Relative Normativity in International Law? *American Journal of International Law*, 77(3): 413-442.

Zapatrina, I., Zverev, A. & Rodina, A. (2015). Harmonisation of Public-Private Partnership Legislation: Regional and International Context of the Model Law on Public-Private Partnerships for the CIS Countries. *European Procurement and Public Private Partnership Law Review*, 10(1): 3-16.