SWITZERLAND'S INTERNATIONAL LEGAL STATUS AS A PERMANENT NEUTRAL STATE

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Abstract

This article presents a system-wide analysis of the Switzerland's legal status as a permanently neutral state. It is especially emphasized that this specific legal personality of the Central European state is considered in international legal science and practice to be more regulated and, therefore, well-established. In determining the relevance of the issue under consideration, an important conclusion can also be drawn that, from the 1990s to the present, Switzerland has been engaged in a certain “evolutionary process” in the political and legal understanding of permanent neutrality as a means of ensuring national and international security. The main objective of the authors is to study the main aspects of the legal nature of this phenomenon through doctrinal views, the current constitution and international legal instruments that recognize and guarantee the permanent neutrality of Switzerland. At the same time, the article notes that the normative content of this special international legal status, observed by the state both in peacetime and during the war, not only arouses great interest among scientists, experts, practitioners, but also requires further comprehensive constructive analysis in the light of the ongoing processes of globalization, integration, and, sometimes, nationalization of the state's approaches to the essence of its obligations.

During the development of the topic, authors used such general scientific and special methods of scientific cognition as synthesis, structural and formal-logical methods, as well as modeling and system analysis methods. In the conclusions, the authors emphasize the need for real respect and observance by third States of Switzerland's continuous neutrality, as a significant component in the modern functioning system of pan-European security.

Key words: continuous neutrality of Switzerland, security, scientific views, international treaties, constitution, recognition, guarantees, European Union, NATO.

Historically, it is widely known that the formation of Switzerland as a state took place at the end of the 13th century. The first attempts to embark on the path of permanent neutrality were made by some cantons of the country at the beginning of the 16th century, however, only by the end of its first half - in 1546 the Declaration on Neutrality was adopted. But it was neutrality, based only on the fact of proclamation and which subsequently did not receive international legal recognition in the full sense of the word. In the future, Switzerland seeks to conclude international treaties with other more influential states in international
relations and, as a result "... in 1713 seeks official recognition of his neutrality in the Utrecht Peace Treaty, signed by France, Spain, England and the Netherlands" [1, p.110]. However, "... until 1815, one can only talk about the neutrality of Switzerland in most wars of that time and about Switzerland's desire to become a constantly neutral country" [1, p.111, 112]. This statement is based on the fact that in the period from 1798 to 1815 Switzerland's neutrality was practically false, since the country was involved in the "Napoleonic Wars" and even concluded a friendship treaty with France on September 27, 1803. According to this treaty, Switzerland did not have the status of a permanently neutral state, on the contrary, the neutrality of the country, "...under this Treaty was limited only by its territorial inviolability during hostilities" [2, p.29]. "Consequently, the status of permanent neutrality of Switzerland, developed in 1815, was a qualitatively new legal status that did not exist before that time in the practice of States." [2, p.112]

The year 1815 is significant in that it was in this year that international treaties were signed for the first time, thus securing the permanent neutrality of Switzerland in the international legal order. So, according to the first of them - the Chaumont commitment to restore and guarantee the independence of Switzerland, which was actually violated by France. "The last circumstance is especially important to note, since it was in the Chaumont Treaty that the guarantees of the great powers provided to Switzerland were first mentioned" [2]. For the first time the term "permanent neutrality" itself was used in international law in the Protocol of the Committee of the Vienna Congress on Swiss affairs, signed on January 16, 1815 [2]. Another scientist who investigated the history of the emergence and development of Swiss Neutrality O. Afanasyeva adheres to the point of view according to which the term "permanent neutrality" was first used in another document signed on March 8 (20) of the same 1815 - the Declaration of the Member States of the Vienna Congress [3, p.77]. In this document, the Allied Powers, which were Austria, Great Britain, Spain, Portugal, Prussia, Russia, France and Sweden, recognized Switzerland's permanent neutrality in the form of the integrity and inviolability of its territory. Illustrative in this regard is Article 74 of the Declaration, which states that "... the integrity and inviolability of the nineteen cantons of Switzerland in the form and political state in which they were at the conclusion of the convention on December 17 (29), 1813, is recognized as the foundation of the Helvetic Union" [4, p.75]. As Y.M. Prusakov emphasized, "in Article I of the Declaration of the Allied Powers on the Affairs of the Helvetic Union of March 8 (20), 1815, the effort to preserve the integrity and inviolability of the Swiss cantons was also confirmed" [2, p.28,29].

Thus, it can be noted that this Declaration confirms not only the fact of recognition, but also the fact of affirming the recognition of the permanent neutrality of Switzerland. True, the term "guarantee" is also used in it is interpreted in the sense of the obligation of the powers "to make them recognize Swiss neutrality."

After the final victory over the "Napoleonic" France, the interested allied powers, with the exception of Spain and Sweden, again returned to the question of the need to establish the neutrality of this country, and on November 8 (20), 1815, they signed the Declaration (Paris Act) on the recognition and guarantee of the permanent neutrality of Switzerland and the inviolability of its territory. The signatory powers of this act - Austria, Great Britain, France, Russia, Prussia and Portugal in paragraph 2 of the document "... they solemnly recognize the everlasting neutrality of Switzerland and vouch for the integrity and inviolability of its possessions within the new limits, which are indicated by the act of the Congress of Vienna, the Paris Treaty of this day and will be designated subsequently, in accordance with the minutes attached to this in the extract on October 22 (November 3)" [5, p.142]. In 1817, following the call of the states that first signed the act to all other "European powers" to join it, Spain and Sweden became parties to this international treaty. The words used in the Act that the Allied Powers "vouch for the integrity and inviolability of possessions within the new limits ..." cannot be interpreted in the sense that only the territorial integrity and inviolability of Switzerland is guaranteed, and its neutrality is only recognized [1, p. 113,114]. "The very title of the act of November 8 (20), 1815 shows that we are talking about the recognition and guarantee of both the permanent neutrality of Switzerland and the inviolability of its territory" [1, p. 114]. Another rule, enshrined further in paragraph 3 of the Act, considers the guarantee of the country's neutrality as a stable factor, indicating that "the Powers that signed the declaration on March 8 (20), solemnly recognize through this act the benefits of European politics require the neutrality, inviolability of Switzerland and its independence from any alien influence" [5, p.142]. This provision of the Act, according to expert A.V. Kondakov, on issues of neutrality should be understood in such a way that the powers that signed it "...authorized permanent neutrality and guaranteed it in the form of the territorial integrity of the State "[6, p.21]. This opinion of the author is difficult to fully accept because, as emphasized by another researcher of neutrality, B.V. Ganyushkin, the Paris Act of 1815 guarantees Switzerland's permanent neutrality, which is a broader concept than its territorial inviolability [1, p.114]. In other words, this statement can be expressed in such a way that paragraph 3 of the Act refers not so much to the sponsorship or assurances of the protection of the territorial integrity of the country as to the need to ensure its permanent neutrality in general.

In the above norm, it is important to pay attention to the fact that Switzerland's permanent neutrality is established taking into account the interests of "European politics" and proceeding from the fact that the country should be independent "from any alien influence." It can certainly be said that in the first case, the Allied Powers, in signing the Act, took into account Switzerland's very significant strategic position in Europe, and therefore understood the need to prevent the interests clashing of the States of this part of the
world with each other; in the second case they legally conditioned permanent neutrality on the country's independence from any foreign influence in order not to subordinate the country to the permanent interests of other states.

Finally, we cannot fail to note another norm reflected in paragraph 4 of the Act of 1815. Within its framework, the Allied Powers specifically enshrined the clause that "...no conclusion contrary to Switzerland's rights, neutrality and inviolability of its possessions should be withdrawn from the incidents that forced the Allied forces to pass through some part of Switzerland." [5, p.142] Here they meant those circumstances according to which in the past the territory of the country was repeatedly provided for the passage of troops of the Allied Powers.

Summarizing the above regarding the Act on the Recognition and Guarantee of Switzerland's Permanent Neutrality of November 8 (20), 1815, one can also formulate a very important conclusion that it "...established the following set of legal relations: Switzerland was obliged not to participate in wars between other states; had no right to fight with another power and any other power was deprived of the right to fight with it" [2, p.30]. Legally recognized and guaranteed on November 8 (20), 1815, the international legal status of Switzerland has not changed for a long time and remains so to this day. As experts note, the guarantee act formed the international legal basis of neutrality, which Switzerland has been maintaining for more than 200 years [7]. Small changes took place only in the composition of the guarantor states that signed this Act: Prussia was excluded from the list of participating states due to the fact that on March 5, 1947, it ceased to exist; Austria, which itself officially proclaimed permanent neutrality on October 26, 1955, could no longer remain among the guarantor states.

Based on the above, we can say that the beginning of the 19th century was marked by significant events, which, embodied in international legal acts, not only established the permanent neutrality of Switzerland, but also filled the concept of neutrality in general with new content. In order to further strengthen its already confirmed status in the international legal order, the Swiss Confederation enshrines this fact in 1848 in the Constitution of the country. The Confederation repeats this step in 1874, when on May 29 of the same year the preservation and protection of the country's permanent neutrality is recognized as the main priority in another (new) Constitution.

After the end of the First World War, Switzerland's permanent neutrality receives another confirmation in an international treaty; this time it is mentioned in Article 435 of the Treaty of Versailles of July 28, 1919. "Thus, the permanent neutrality of Switzerland and the guarantees of this neutrality were recognized by the states that signed the Treaty of Versailles" [8, p.87, 88].

At the beginning of the 19th century, more precisely in 1919, in connection with the creation of the League of Nations, was positively resolved the aroused question of Switzerland's entry into this international universal organization. On this occasion, the Council of the League of Nations, in its resolution of February 12, 1920, stated: "The Council recognizes that Switzerland's eternal neutrality and guarantees of the inviolability of its territory, incorporated into international law, particularly in the treaties and the 1815 Act, are justified by the interests of common peace and as such are compatible with the Charter of the League of Nations" [9, p.216]. After the end of the First World War, Switzerland's permanent neutrality receives another confirmation in an international treaty; this time it is mentioned in Article 435 of the Treaty of Versailles of July 28, 1919. "Thus, the permanent neutrality of Switzerland and the guarantees of this neutrality were recognized by the states that signed the Treaty of Versailles" [8, p.87, 88].

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taken by the country’s highest legislative body, confirms the inviolability of its position regarding its permanent neutrality.

At the same time, since the 90s of the last century, the country is gradually gaining strength in the direction of departure from the "classic neutrality" in the full sense of this word "...in favor of strengthening interaction with international organizations, international cooperation in the field of security, arms production and training of military personnel...", that is, as V. Kruzhkov and O. Markov note, "...in the areas until recently "reserved" for neutrals" [12, p. 95], including peacekeeping. "In 1993, the Bundesrat of the Swiss Confederation adopted the Foreign Policy Report of the country, in the appendix to which - the Report on Neutrality - it was noted that earlier “classical neutrality” was a measure largely associated with the constant expectation of war, both before World War II and after it” [13, p.93, 94]. At the same time, it is emphasized in the Report, based on the experience of the entire twentieth century, the principle of European solidarity should now be taken as the basis for Switzerland’s permanent neutrality [13, p.95]. At the same time, the main directions of the general course of the state in international relations, in addition to ensuring national security and, in its context, permanent neutrality itself, should be the solution of issues of integration with the European Union and the development of a position regarding its accession to the sanctions of both the EU and the UN Security Council.

On the first aspect, it should be noted that on December 6, 1992, a referendum was held in Switzerland, during which the citizens of the country who had the right to vote had to determine: how justified and expedient was the start of negotiations on its accession to the EU? Then, “...50.4% of the population voted against, the preponderance was only 23.3 thousand votes, but behind this slight preponderance is the fact that 16 out of 26 cantons opposed the country’s inclusion in European integration” [14, p.75]. In May 2000, another referendum is held in Switzerland, depending on the results of which the country had to decide whether it should conclude a bilateral agreement with the EU on partnership and cooperation on trade and economic issues. Despite the fact that the majority of the population (67.2%) approved this step, and the very need to sign the agreement was considered by the official leadership of the country as a necessary measure for rapprochement with the EU, many analysts then thought differently: "...in fact, this is not only not increases the chances of the population's approval of joining the European Union, but even decreases them" [14, p.76]. This expert opinion was confirmed at the next nationwide referendum, which took place on March 4, 2001, regarding the start of accession negotiations with the EU. “The majority of the population (76.6%) spoke out against” [15] this time too. As Marc-André Mizère notes, "it should be admitted that if such a referendum were passed again, the negative vote of the people would have been much more obvious."

Summarizing the above, it should be noted that Switzerland's permanent neutrality has also become a tradition, which, as shown by surveys of the population of this state in recent years, it wishes to preserve in the future. In a strict international legal sense, this legal position of this state could be called the preservation of the status quo.

The Swiss leadership has always emphasized that "... it does not act ... against integration, but believes that the necessary prerequisites for this have not yet emerged in the country" [14, p.76]. However, the former head of the association "Swiss New European Movement" S. Neble back in 2002 believed that a positive solution to this problem could hardly be achieved before 2012 [14, p.77]. And the head of the Swiss People's Party K. Blocher, that constantly opposes the country's accession to the EU, argues that in the next decade the problem of “European integration” is unlikely to become relevant [14, p.77]. Meanwhile, the aforementioned Swiss Foreign Policy Report, adopted in 1993 by its supreme legislative body, although no dates were named, it definitely supported the country's accession to the EU. At the same time, it also emphasizes that Switzerland's membership in this supranational integration organization will not mean a refusal or "retreat" from the "classically established" permanent neutrality for the following reasons.

“Firstly, since the European Union will not be able to create an effective security system in the near future, Switzerland, as before, will have to ensure the security of its territory by its own means, regardless of foreign participation.

Second, Switzerland's participation in the EU sanctions regime appears to be compatible with the status of permanent neutrality, since they are aimed at maintaining international peace and security, and, as a result, meet the main objectives of Swiss foreign policy.

Thirdly, Switzerland's participation in the implementation of a common foreign and security policy (GASP - Gemeinsame Aussen - und Sicherheitspolitik) does not contradict the country's neutrality, since within the framework of the GASP decisions are made by consensus and defense issues are not touched upon” [13, p.96, 97].

S. Bondolfi and I. Petrov also proceed from the essence of these approaches. In their article published on September 28, 2020, they stressed that Switzerland's accession to the EU, unlike NATO, would be quite compatible with the modern interpretation of the principles of its neutrality.

As for the sanctions imposed by both the UN and the EU in general, in 1998 "... Switzerland, due to its direct interest in resolving the hotbed of tension in the Balkans, joins not only the UN sanctions regime on Belgrade for the supply of weapons, but also the comprehensive EU sanctions (diplomatic and economic)” [16]. This meant that the country for the first time joined the economic sanctions imposed without a decision of the UN Security Council [13, p. 101]. This possibility, as noted above, “is provided for in the country's Foreign Policy Report of 1993.
according to which Switzerland can join economic sanctions imposed outside the UN framework if they are undertaken by a group of states of a certain region against a state that violates peace and security, that is in this case Yugoslavia" [13, p.101]. Hence, the conclusion follows: the goal of maintaining international peace and security is thus the basis for Switzerland’s discretion to participate in non-military sanctions. The 1993 foreign policy report of the country, based on this, in Switzerland’s opinion, an important circumstance, considers it permissible for a permanently neutral state to participate in military sanctions "... provided, however, that there is a mandate from the UN Security Council for this" [13, p.101] and that these sanctions are limited only to sending representatives of civilian (technical, medical) personnel to areas of armed conflict. "At the same time, a permit for overflight or transit through the territory of the country is issued regardless of whether the mandate is issued in accordance with Chapter VI (peaceful settlement of disputes) or VII of the UN Charter" [13, p.105]. Analyzing the above statements of A.V. Kondakov believes that the Swiss leadership managed to successfully adapt the foreign policy course to the new international realities [13, p.105].

At the same time, there is another: does the participation of Switzerland in the UN and EU sanctions regime, even if not of a military nature, mean a gradual, implied involvement of the country in the military-political activities of these organizations and possible membership in the North Atlantic Treaty Organization? If, within the framework of international law, the general compatibility of the obligations of a permanently neutral state with the obligations of a UN member has been proved, then from the point of view of the concept and structure of the EU, the strengthening of the military component has recently been noticeably visible, which includes, in particular, the joint production of weapons and the collective protection of any an individual EU member state in the event of an armed attack on it. In this regard, the founding treaties of the EU: The Treaty on the European Union and the Treaty on the Functioning of the European Union, provide for a concession to neutral member states in the form of a given opportunity to "constructively abstain" in the implementation of a common foreign and security policy, and in the long term - and defense. This circumstance should be viewed, most likely, as granting such states only the semblance of a certain "independence". Switzerland's accession to NATO, according to the authoritative newspaper "International Herald Tribune", noted by it back in 2000, is excluded, since it is incompatible with the principles of internationally recognized neutrality [17]. "The country cooperates with this organization in the framework of the Partnership for Peace, which can be considered a good solution to the problem," the newspaper noted [17]. This is confirmed, in particular, by the fact that on January 24, 2017, the Swiss Foreign Ministry confirmed the country’s intention to cooperate more closely with NATO in countering cyber threats.

The foreign policy aspect in Switzerland's activities has been most successfully implemented since the end of the XX century, and finds its logical continuation in the XXI century. During this period of time, the country has become a full member of such international organizations as the WTO, OSCE, Council of Europe, EBRD. Today, such important meetings in the global understanding of modern processes as the Davos Economic Forum, meetings of the sessional and working bodies of various specialized divisions (agencies) of the UN are regularly held in the country, including in the context of the current COVID-19 pandemic, the activities of the World Health Organization are constantly covered as well as other international organizations, namely the EU and the OSCE. In 2018-2020, Switzerland offered its mediation services in the conflict between Russia and Georgia, as well as the tensions around North Korea and Catalonia. Separately, we should talk about another legal fact - Switzerland's membership in the UN in September 2002. According to Article 4 of the UN Charter, all other peace-loving states "which will assume the obligations contained in this Charter and which, in the judgment of the Organization, can and wish to fulfill these obligations" can be members of the organization [18, p.10]. Moreover, "the admission of any such state to the Members of the Organization is carried out by a resolution of the UN General Assembly on the recommendation of the Security Council" [18, p.10]. Switzerland's accession to the UN was legalized in accordance with the UN General Assembly Resolution A/Res/57/1 of September 10, 2002 at its 57th session. The text of this resolution reads: "The General Assembly, having received the recommendation of the Security Council of July 24, 2002 on the admission of the Swiss Confederation to membership in the United Nations, having considered the application of the Swiss Confederation for membership in the Organization, decides to accept the Swiss Confederation as a member of the United Nations ..." [19, p.67]. Of course, the content of the text of this resolution of one of the main UN bodies, neither in a direct or even indirect form, does not determine the position of both the UN itself and Switzerland itself regarding the compatibility of the country's permanent neutrality with membership in the Organization. The answer to this question, which "put an end" on the many years of discussions and the corresponding referendums on the necessity or expediency of the country's joining the UN, is contained in the official statement of Switzerland on its admission to the Organization. It is based on the results of the referendum held in the country on March 3, 2002. Compiled in the form of a joint letter from the then President of Switzerland K. Villiger and the then Chancellor A. Huber-Hotz and sent on behalf of the Federal Council of the Swiss Confederation on July 20, 2002 to the UN Secretary General (A/56/1009-S/2002/801) such a document unambiguously proceeds from the fact that "Switzerland is a neutral state, the status of which is enshrined in international law" [19, p. 68] and as further emphasized in the document: "In the opinion of the United Nations, the neutrality of any member state is compatible with the obligations arising from the Charter, contributes to the achievement of the goals of the Organization" [19, p.68].
Conclusion

It was found that the special legal obligation of Switzerland’s permanent neutrality is the result of its origin precisely from an international treaty, the operation of which, in principle, is not limited in time. At the same time, it should be emphasized that agreements on permanent neutrality, in order to be binding, should be concluded only between sovereign states. It follows that the legalization of the status of permanent neutrality of Switzerland through the conclusion of an international treaty not only creates the scope and quality of the mutual rights and obligations of the parties to the agreement, but also determines the nature of the latter. In this case, one can additionally speak of such a special character of the international treaty on the permanent neutrality of Switzerland, as of its indefinite duration and continuity of operation.

It was revealed that, having such a unifying feature with recognition as ensuring permanent neutrality, the guarantee of Switzerland, at the same time, has a collective legal form. The written guarantee of the country obliges the states that have adopted it not only to respect, but also not to violate the recognized status of this permanently neutral state. In this regard, it can be concluded that Switzerland, in contrast to modern permanently neutral states, is in a more “advantageous position”, since its analyzed status is simultaneously recognized and guaranteed by the states concerned in the Paris Act of November 8 (20), 1815.

It was proved that, in accordance with the Paris Act of 1815, it should be not so much a surety or assurances to protect the country’s territorial integrity, but rather the need to ensure its permanent neutrality in general. We can definitely say that the Allied Powers, signing the Act, took into account the very significant strategic position of Switzerland in Europe, and, therefore, understood the need to prevent the collision of interests of the states of this part of the world with each other, and, in addition, they legally conditioned permanent neutrality independence of the country from any foreign influence in order not to subordinate the country to the permanent interests of other states. It was revealed that, taking into account these circumstances, the legally recognized and guaranteed on November 8 (20), 1815, the international legal status of Switzerland did not change for a long time and remains so to this day.

Considering the fact that in modern conditions there is a process of adaptation of permanent neutrality to changes in international legal relations, it should be considered correct to preserve the legally recognized and guaranteed status of Switzerland in relations with the UN, EU and NATO within the framework of an alternative path - establishing cooperation and partnership with these international institutions on the basis of special bilateral and international treaties in various areas, including on purely military-political issues. This means that in protecting the national interests of the country, the consistent implementation of the right to maintain and strengthen stable economic, cultural, informational and other relations with all states, including with the belligerent states and with those who recognized and guaranteed in the international legal order its permanent neutrality.

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ДОГОВОР ФИНАНСИРОВАНИЯ ПОД УСТУПКУ ДЕНЕЖНОГО ТРЕБОВАНИЯ В РОССИЙСКОМ ГРАЖДАНСКОМ ПРАВЕ

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FINANCING AGREEMENT FOR THE ASSIGNMENT OF A MONETARY CLAIM IN RUSSIAN CIVIL LAW

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АННОТАЦИЯ

В данной статье рассматривается договор финансирования под уступку денежного требования (факторинг). В рамках данной темы были проанализированы изменения главы 43 ГК РФ о договоре финансирования под уступку денежного требования, который с 1 июня 2018 года стал тождествен чему договору факторинга. В статье был проведен анализ, вступившему в силу изменениях, выявлены нерешенные вопросы, а также возможные пробелы и перспективы применения данных положений о факторинге.

ABSTRACT

This article discusses the financing contract for the assignment of a monetary claim (factoring). Within the framework of this topic, we analyzed the changes in Chapter 43 of the Civil Code of the Russian Federation on the financing agreement for the assignment of a monetary claim, which from June 1, 2018 became identical to the factoring agreement. The article analyzes the changes that have entered into force, identifies unresolved issues, as well as possible gaps and prospects for the application of these provisions on factoring.

Ключевые слова: договор финансирования под уступку денежного требования; факторинг; клиент; финансовый агент; фактор; существующее и будущее требование

Keywords: financing agreement for the assignment of a monetary claim; factoring; client; financial agent; factor; existing and future claim

Институт договора финансирования под уступку денежного требования известен уже давно и его история становления насчитывает не одно тысячелетие. Предшественниками по договору факторинга, можно считать, различные посреднические соглашения, которые стали развиваться с того момента, как появилась торговля. Первые упоминания о подобных сделках можно заметить еще с древних времен у вавилонян, халдеев и римлян. Но первоначальные отношения можно назвать квазифакторинговыми, так как с договором факторинга в современном его понимании они имеют лишь косвенную связь из-за схожести субъекта.

Таким образом, первые упоминания договора факторинга послужили предпосылкой для становления и развития института финансирования под уступку денежного требования.

В России факторинговые операции стали осуществляться с 1988 года в качестве эксперимента ленинградским Промстройбанком СССР. Но слабая методическая подготовка работников, нехватка соответствующей справочной и научной литературы и отсутствие адекватного правового регулирования привело первую попытку к провалу. Поэтому в начале девяностых, данный договор остался слабо развитым и малопопулярным среди гражданского оборота.

Но интерес, к не изученному в должной мере институту российского договорного права, вновь проявился в связи с принятием части второй Гражданского кодекса Российской Федерации¹ (далее - ГК РФ), где общим положениям и его юридическим характеристикам,

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