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CONTENTS

LEGAL ASPECTS OF THE ENVIRONMENTAL SECURITY

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Abstract

The notion that the greatest threat to the existence of human civilization is an environmental threat is officially recognized at the highest interstate level. In general, environmental security is a phased, multifunctional social and legal phenomenon, and its provision is a very important type of dynamic, and sometimes legally significant activity. Threats to environmental security are always real. Due to the reality of threats to environmental security, we can conclude that the current state of the environmental sphere in most countries is critical. Environmental security is a special social and legal event. However, its identifiable or specific status remains unclear, which complicates its legal assessment and delays the resolution of relevant relations and legal liability issues. Ecological security includes elements of personal and public security, and ecological or public ecological security can be recognized as an element of public security, which is an integral part of a country's national security. Environmental security is ensured through the development and implementation of a set of measures aimed at the prevention of environmental violations. Nevertheless, there is a struggle against threats to the important interests of the individual, society and the state in the field of ecology.

Keywords: *security, environment, international law, climate change, natural resources, legal category, social ecology, energy, biodiversity.*

Scientific and technological progress posed a threat of environmental disasters, and the concept of "development" was called into question. There was a need to revise the table of human values. Since the mid XX century, the degradation of the biosphere has been threateningly increasing: 2/3 of forests have been destroyed, and 2/3 of agricultural land has been destroyed. The bioresources of the oceans, seas and rivers are severely depleted, and the biodiversity of the planet is threatened. Currently, humanity consumes up to 40% of biological resources, of which 10% are used directly, and 30% are destroyed. Only in the last quarter of the 20th century, one third of natural resources has been destroyed. In the XX century, global environmental pollution led to global warming.The average annual temperature increased by 0.3-0.6 degrees, and by 2050 the temperature will increase by 1.5-2 degrees. This will lead to massive melting of glaciers, which will lead to sea level rise of 1.5-2.5 meters, which will lead to flooding of coastal areas and islands. Global environmental pollution is accompanied by a decrease in immunity and a deterioration in the health of people around the world, and new diseases appear. Many regions do not have access to drinking water. For comparison, in 2000, 1.1 billion people, that is, 18% of the world's population could not have access to drinking water [11, 22], by 2050, 2.5 billion people will face this problem [8, 252]. Nowadays, many cities have been deprived of fresh air. Natural disasters flood, earthquakes occur more often.

Over the past two centuries, the vast economic activity of mankind has been carried out without taking into account global environmental interests. Only the United States spends about 25% of world oil production, 40% of gasoline and 30% of fuel every

year. Oil consumption is expected to increase by 33-50% over the next 20 years [7, 484-485]. It is the high quality of the natural environment that is the main wealth of mankind and, undoubtedly, represents a valuable category. According to the World Health Organization, today 80% of all diseases are caused by poor-quality drinking water, 5 million people die from infected and poor water consumption every year [9, 143]. Because of oil is one of the main causes of the current armed conflicts, it is possible that drinking water will lead to armed conflicts in the near future. The quality of the environment as an indispensable resource due to its limitations will soon be more expensive than information technology and know-how. All this indicates the relevance of environmental security on the planet.

In general, environmental security is a phased, multifunctional social and legal phenomenon, and its maintenance is a very important type of dynamic and sometimes legally significant activity. The concept of "environmental security" is itself a synthesis and is reflected in the environmental prism not only in environmental law, but also in other legal issues.

Theoretically, environmental security issues were researched by such prominent lawyers as N. Myers, P. Erlix, W. Svenson, P. Gleick, M. Levy, G. Dabelko, F. Dodds, M. Brinchuk, A.K. Golichenkov. The issue of environmental security is regularly discussed at scientific seminars and conferences. However, environmental security problems are still widely interpreted and understood; there is no single terminology in this area. These conditions are not only inherent in environmental security, but are also characteristic of modern environmental legal doctrine and current legislation.

It is necessary to investigate a number of important features of this area in order to develop the concept of “viable” “environmental security” in a theoretical and practical context, adequate to the realities of modern society, to identify the subject to whom this phenomenon is applied, to avoid existing contradictions and worldviews.

Environmental security is a type of national security of a state. Despite the obviousness of this thesis, there are significant differences between these categories. This is one of the criteria for assessing the reality of a threat. Regarding national security, it is important to note that political speculation about this concept is common. As a rule, threats to national security arise from political motives. Jon Barnett says, Because of some interrelated developments that started in the 1960s, it emerged as an important concept in security studies [6, 190-207]. During this time, various events sparked the development of the environmental movement.

The second significant development that brought about the emergence of the idea of environmental protection was the number of scholars who began to critique the conventional notion of security and mainstream security debates in their research of the 1970s by highlighting their inability to deal with environmental issues at national and international security level. First commentators were Richard Falk who published 'This Endangered Planet' (1971), and Harold and Margaret Sprout who wrote 'Toward a Politics of Planet Earth' (1971) [5, 239]. Throughout their book, these two scholars argued that the notion of security can no longer be focused solely on military power, but that nations should jointly take action against common environmental issues as they pose a threat to national well-being and thus global stability.

Environmental degradation and climate change can sometimes lead to wars and violent conflicts between and within countries, which can significantly undermine national security. Environmental changes can undermine the country's military potential

and its economic prosperity, which plays an important role in its material strength. In some developed countries and in many developing countries, natural resources and environmental services are important factors in economic growth and employment. Agriculture, forestry, fishing, and mining can negatively impact the country's income and employment as a result of environmental security violations. If the natural basis of the economy collapses, it will also affect the long-term capabilities of its armed forces [10, 52-55]. In addition, changes in environmental conditions can pose a threat to human health and undermine human capital and its development. Thus, environmental security is an important factor in the economic development and stability of human society.

Climate change also could, through extreme weather events, have a more direct impact on national security by damaging critical infrastructures such as military bases, naval yards and training grounds, thereby severely threatening essential national defense resources [4, 25]. Thus, the violation of the ecological balance between nature and man poses a real threat to the existence of society. Environmental laws of countries summarize many environmental security requirements, such as requirements for planning, construction, operation of facilities; requirements for the use of chemicals; product requirements, technical requirements, etc.

Analysis of environmental requirements gives reason to conclude that, to some extent, compliance with environmental quality standards is a requirement in the implementation of economic or other activities.

Environmental security is a special social and legal event. However, his identifiable or specific status remains unclear, which complicates his legal assessment and delays the resolution of relevant relations and legal liability issues.

The concept of environmental security is used in many legislative acts and is actively used in political, economic, legal and scientific discussions, which reflects the importance of events reflected in their understanding.

Meanwhile, a single legislative, unambiguous scientific definition of this phenomenon does not exist. Such uncertainty complicates the analysis of the essence and socio-legal status of the phenomenon of environmental security, does not allow to distinguish it from the system of family relations of environmental management, environmental protection, security etc.

In reality, specific phenomena and processes, the contents of which should be indicated by the special term "environmental security", exist, they are organically connected with the phenomena and processes of nature management and environmental protection, they partially follow from them, but do not coincide with them. Already at a conceptual level, it is obvious that we are talking about a "butt-in", borderline between ecology and security phenomenon, not fully explained by either ecology or security, but for an explanation that requires a synthesis of knowledge of both [2, 108-111]. From the position of the epistemological genesis, ecology emerged as a field of knowledge about the relationship of organisms with their environment; she revealed the general, initially primarily biological patterns of life and development of organisms under the influence of changes in the environment, including such changes that are generated by these organisms themselves.

Subsequently, social ecology emerged from general ecology, which singled out human society from organisms and studies its interaction with the natural environment. In the field of social ecology, environmental law is necessarily formed, which solves the problems of regulating public relations arising from the use of environmental objects by

society. Legislation is being created that establishes the order of rational environmental management and protects the natural environment. An in-depth study of the processes of interaction between society and nature has led to an understanding of the exceptional role of an individual person, an individual. There was a need to study the attitude to nature not only of society, but also of man as some relatively independent organismic formation. This is the primary relation on which social ecology and ecology as a whole are built. A sphere of knowledge called human ecology has arisen.

The essence of environmental science created in this way was that at various levels (organism - social community - human individual) to track the negative changes that occur in nature, and take measures to minimize them, since a complete exclusion is impossible. One way or another, the task was reduced mainly to the protection of nature. Although it is obvious that at the same time the presumption of the social was realized, including human good, however, this good was considered in the system of interests only of environmental management.

Environmental security as a legal and scientific category appeared in connection with the need to study the processes of the influence of the natural environment on the security of a person, society and the state, due to the emergence of facts at a statistically detectable level that indicate the transformation of natural objects into a source of social threats.

In a conceptual sense, environmental security integrates in itself both the issues of nature protection and the issues of protecting people and society as a whole from the dangerous effects of natural factors. Environmental security as a theory has as its object the safety of man, society and the state, and the subject is the connection of this safety with changes in the natural environment.

Environmental security does not have security levels. In this case, we are not talking about the levels of territorial spread of danger, for example, local or global. It is about recognizing the absence of any acceptable hazard parameters. Environmental security has a systemic nature of manifestation. This is due to the fact that environmental hazard, as a rule, arises and manifests itself in the system of other dangerous factors: social, economic, technological, organizational and economic, etc. Means of protection of a person (society, state) have a single line, due to certain fundamental socio-economic transformations. There can be no ecological crisis in the absence of an economic crisis, since negative environmental trends are always detected and can be stopped in time if there are material opportunities and political will. Environmentally hazardous situations cannot arise when radiation, chemical, technological and other safety is ensured.

Thus, the hazard system operates comprehensively, in conjunction, which leads to the conclusion that is important for legal regulation about the need for an integrated approach to the organization of activities that counteract the dangers. It is impossible to deal with environmental or other dangers by investing forces and means mainly in one (environmental or technical) sphere. A parallel solution to security issues in many ways. Environmental hazards adversely affect human safety in a system of many factors; the allocation of the share of environmental impact in the overall system of negative forces acting on a person requires a complex factor analysis [3, 32-33].

When assessing the dangers of environmental factors, attention should be paid to the relationship between environmental dangers and more dangerous global processes in society. These processes include those that indicate a decrease in the value of human life.

Insufficiency of natural resources leads to the development of biotechnology, in particular, the increase in the production of transgenic food products, which are based on gene changes, the effect of which on the human body is unpredictable [1, 27].

The same environmental factors lead to dangerous intensification of people's livelihoods, their use of new types of food, and the expansion of their habitat, including at the expense of dangerous territories. Environmental security directly depends on the correct choice of the object of protection. The individualization of natural objects allows us to consider them not only as natural (material) objects, but also as legal objects, which are characterized by the norms and rules of their operation, protection, turnover, which are essentially law and order in environmental legal relations.

Industrial, economic and other types of activities are implemented in the process of interaction between society and nature in the forms of: environmental management, environmental protection and environmental security. They are interconnected and interdependent, the inability of society to organize nature management, which excludes negative anthropogenic impact on the environment, leads to the problem of its protection. In turn, the inefficiency of protection leads to the problem of ensuring environmental security.

One of the most important security facilities is the enterprise. It is an enterprise in the conditions of a market economy and legal reform in the country that becomes the center of concentration of priority problems, including in the environmental sphere. Another important security object is natural objects, the use of which is carried out by the enterprise in the course of its core business. Depending on the object of environmental security, the types of security differ: individual, local, local, territorial, regional, national, interstate (global, planetary).

The concept of "environmental security" is enshrined in the national legislation of most countries. Numerous regulatory acts are devoted to the regulation of this sphere. In our opinion, “environmental security” means the consolidation in legal institutions of such a system of relations regarding the environment, which can serve as the basis for a normal, stable existence of society and create conditions under which the state of all elements of the environment does not pose a danger to human life and health. In the scientific literature, cities and other settlements are referred to the human environment; industrial, agricultural, agricultural zones; green, suburban, forest parks around cities and industrial centers; Resorts recreation areas. The environment is characterized by a predominance of modified (modified) and transformed (transformed) human ecological systems.

The main threats to environmental security are economic or other activities that have a negative impact on the environment, which can lead to an increase in morbidity and mortality among the population. All this poses a serious threat to society and the state.

Despite the risk of environmental pollution, the risk of death due to depletion of natural resources (water, forests, land, minerals and other resources) is less likely at the present stage of community development. But these two problems are interconnected. It is safe to assume that in the future the threat of death due to depletion of natural resources will be more realistic than death from pollution. It is important to consider this factor in ensuring environmental security. The main condition for the implementation of economic or other activities should be their compliance with the requirements of environmental legislation.

If we generalize the whole variety of conceptual constructions of "environmental security", we can distinguish the following main approaches. The first position is based on the essence of environmental security. This approach considers environmental security as a certain state, in particular, as a state of protection of the vital interests of the individual, society and the state, as well as the natural environment from threats arising from anthropogenic and natural influences on them; a situation in which there is no threat of damage to the environment and public health.

The second position is reduced to understanding environmental security as a system of measures, norms; the sum of conditions, which is expressed in the following definition of environmental security, is a system of measures that eliminate the threat of mass death of people as a result of adverse anthropogenic changes in the state of the environment on the planet, in which a person, as a biological species, is deprived of the opportunity to exist, since it will not be able to satisfy its natural-physical and social needs due to the surrounding material world.

The third position of the approaches captures the understanding of environmental security as the degree of protection of its facility (person, state, nature, etc.). A similar position was reflected, in particular, in such a definition of environmental security - this is the degree of protection of the vital interests of the individual, society, state, world community from consequences and threats that are caused by negative changes (degradation) of the environment that is acceptable at this stage of socio-economic development arising as a result of anthropogenic and natural effects on it.

Based on the foregoing, it can be concluded that the concepts of “environmental protection”, “ensuring environmental security” and “maintaining a favorable environment” contain much in common: all three concepts include preserving the natural environment, protecting it from the negative impact of economic and other activities.

As a result of the analysis, we formulate the definition of the desired concept. Environmental security - legal and organizational security of the individual, society and the state, based on a set of measures to predict, prevent or compensate for the onset of negative environmental events and phenomena.

References:

1. Altman Arie, Paul Michael Hasegawa. Plant Biotechnology and Agriculture: Prospects for the 21st Century. Academic Press, Amsterdam: 2012. 586p.

2. Barnett Jon. The Meaning of Environmental Security: Ecological Politics and Policy in the New Security Era. London: Zed Books, 2001. 184p.

3. Beer Tom. Geophysical Hazards: Minimizing Risk, Maximizing Awareness. Dordrecht: Springer Science & Business Media, 2010. 262p.

4. Busby W.Joshua. Climate Change and National Security. An Agenda for Action. Council on Foreign Relations Press, 2007. 40p.

5. Christopher M. Dent. East Asian Regionalism. 2nd Edition, London: Routledge, 2016. 320p.

6. Collins Alan. Contemporary Security Studies. Great Britain. Oxford, Oxford University Press. 2013. 576p.

7. Cowie Jonathan. Climate Change: Biological and Human Aspects. Cambridge, Cambridge University Press, 2012. 570p.

8. McKinney L.Michael. Environmental Science. Burlington, Jones & Bartlett Learning, 2019. 576p.

9. Munian A. Dynamics of Residential Water Demand and Supply in India: A Case Study of Chennai City. New Delhi, Gyan Publishing House, 2010. 364p.

10. Renewable Resources and Conflict. Toolkit and guidance for preventing and managing land and natural resources conflict. 119 p.

11. Water and Agriculture Sustainability, Markets and Policies: Sustainability, Markets and Policies. OECD Publishing, 2006. 480p.

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Shahla Samedova, Maleyka Bayramova. **Differentiation Problem in the Responsibility for International Crimes and Crimes of International Character. International Law and Integration Problems, 2019, №2 (57), pp.11-18**

DIFFERENTIATION PROBLEM IN THE RESPONSIBILITY FOR INTERNATIONAL CRIMES AND CRIMES OF INTERNATIONAL CHARACTER

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Abstract

Several classifications of international offenses have been proposed in international law. In the modern world, international offenses have been divided into three categories: international crimes, crimes of international character and delicts. The article analyzes issues of differentiation problem in the responsibility for international crimes and crimes of international character.

Keywords*: offenses, international law, differentiation problem, international crimes, crimes of international character, terrorism, terrorism financing, war crimes*

It should be noted that the degree of public danger of international crimes and crimes of international character, as defined by international criminal law, was taken into account during the differentiation of responsibilities for these offenses in the national criminal legislation. The differentiation of responsibility for these crimes in the Criminal Code of the Republic of Azerbaijan is defined in the General part as well as in the norms of the Special part. Thus, in the General part, the universal principle of international crimes (article 12.3), non-applicability of release from criminal responsibility in connection with expiration of time limits (articles 75.5, 80.4), as well as the retrospective force of the criminal law (Constitutional law dated May 12, 2006) principles. Only universal principle is referred to the crimes of international character. In this regard terrorism (article 214), financing of terrorism (article 214-1), as well as crimes of international character provided for in section VII of the Criminal Code are exceptions. That is, article 75.5 of the Criminal Code (release from criminal liability in connection with expiration of time limits) states that the provisions of this article shall not apply to persons who have committed crimes against peace and humanity, terrorism, terrorism financing and war crimes as provided for in the relevant articles of the Special part of this Code.

In literature it is noted that terrorism possesses higher degree of international danger among all crimes of international character and corresponding to its status it is equal to international crimes [3, 8]. Western lawyers also pointed out the danger of terrorism and said that the number of these crimes will not decrease in the future. In this case, the mentioned list should include not only financing of terrorism, but alsoattempt on life of the state or public authority (article 277), attempt on life of a person who is carrying out justice or preliminary investigation (article 287), capture of the hostage (article 215), hijacking of airship, ship or railway train (article 219). S.T. Samedova notes that, although not envisaged by international criminal law norms, the above-mentioned

acts of terrorism would be logical to apply the provision of non-release from criminal liability in connection with expiration of time limits against them, since they are considered to be more severe among crimes of international nature [4, 581].

The Council of Europe's 1977 Anti-Terrorism Convention gives a list of terrorist-related crimes. Although Article 214-1 of the Criminal Code extends this list, it is considered that although this list includes attacks against persons or organizations using international protection, and attempt on life of the state or public authority (articles 102, 277 of the CC), but it does not include attempt on life of a person who is carrying out justice or preliminary investigation (article 287 of the CC).

Another problem is in the definitions of terrorism and terrorism-related acts. Sometimes, in literature it refered to genocide, which is a particularly dangerous international crime, under the name of "terrorism." The Turkish author, Cengiz Bardak, describes the massacres against the Muslims during the crusade movements, massacre of Americans, and the colonization of Africa as terrorism [5, 227]. Sometimes, on the contrary, acts of terrorism are marked by another crime. For example, in 2009, the terrorist act against the students and teachers at the Azerbaijan Oil Academy was assessed as a provocation.

Another problem is the definition of terrorism, which is given in international field. Thus, we first noted that we must distinguish understanding of international terrorism, terrorism and terrorism act. However, the approach of states to this problem is contingent in modern conditions in terms of providing legal unity, which is an issue of international legal integration and its essential requirements. In the CIS countries, for example, in the Criminal Codes of the Russian Federation, Turkmenistan, and Azerbaijan Republic, although the norms on terrorism are almost identical, they are different in other states`Criminal Codes: According to the Criminal Code of Uzbekistan Republic, terrorism is an act that aims to impair international relations, threaten to commit war provocation or provocative actions of the state, to force international organization, physical or juridical person to commit certain acts or refrain from them, or threaten to stifle stability in the Republic of Uzbekistan, by taking the property or take personal pledge with threats of killing, attempts to attack the service buildings of foreign states or international organizations under international protection, as well as attacks against them or rented premises. Apparently, this norm refers to the acts of terrorism attacks of individuals and entities that are under international protection (or use of international protection). However, this act was regarded as another criminal offense, not as a terrorist act under article 220 of the Criminal Code of the Russian Federation, article 125 of the Criminal Code of Belarus, and article 170 of the Criminal Code of Turkmenistan. In addition, Uzbekistan Republic`s legislative body, under the norm defining responsibility for terrorism, did not distinguish between international terrorism and domestic terrorism and gave one definition for both acts. Regarding the acts mentioned in the norm, it should be noted that they mainly characterize international terrorism.

According to article 88.1 of the Criminal Code of Latvia, terrorism is the use of explosives, use of fire, the use of nuclear chemical, chemical, biological, bacteriological, toxic or other weapons of mass destruction, mass poisoning, spreading of epidemics and epizootic diseases, kidnapping of persons, taking of hostages, hijacking of air, land or sea means of transport or other activities if they committed for the purpose of intimidating inhabitants or with the purpose of inducing the State, its institutions or inter-

national organizations to take any action or refrain therefrom, or for purposes of harming the State or the inhabitants thereof or the interests of international organizations. The acts mentioned in this article are stipulated in article 28 of the Criminal Code of the Russian Federation, article 60 of the Ukrainian Criminal Code, article 360 of the Belarusian Criminal Code, 173 of the Criminal Code of Turkmenistan Republic and article 161 of the Criminal Code of Uzbekistan Republic as provocation crime.It is noteworthy that there is no norm in the Criminal Code of the Republic of Latvia that defines responsibility for provocation. However, the essence of Article 88 seems to be that the legislator actually identifies terrorism with provocation. In this case, it is not logical to name this article as "terrorism".Because its disposition does not reflect features of terrorism that are fixed in many international legal documents, criminal laws of individual states and scientific works of scholars; especially the purpose of terrorism was not specified in this article.

V.P.Yemelyanov analyzing the norm son terrorism in the Criminal Codes of separate states thinks that the norms on terrorism do not cover the signs of "pure" terrorism by reflecting one or another side of its manifestation, on the contrary, in those norms contains the signs, which "blend" with non-terrorism acts signs. There are. We agree with the author`s opinion that the objective and subjective signs of terrorism should be expressed in such a way that any confrontation with crimes such as provocation, attempt on the state or public figure, taking hostage or banditry has been eliminated [3, 67]. It can be argued that the diversity in the problem is in some ways related to the difficulties in identifying the object of terrorism.

The attitude to the object of terrorism in legal literature is not uniform. For example, V.F.Antipenko asserts that public security can not be the object of terrorism. In his opinion, the main object of terrorism should be national institutions (in different variants).V.P. Yemelyanov suggests that terrorism as a core part of "terrorism-related acts" should have its corpus delcti similar to other terrorism-related acts. In his opinion, at the initial stage, the features of the object of terrorism should be compounded and expressed as a complex compound reflecting the signs of two essential (main and additional) features. From the position of the author it follows that life, health, property should be regarded as signs of the optional additional object of terrorism and the activity of the authorities, as well as the activities of international organizations, individuals and legal entities or groups of individuals should be regarded as signs of necessary additional object. Apparently, in the version proposed by the author, the activity of international organizations was included in the list of objects of the encroachment.

V.V.Maltsev's position on this problem is more logical. In his opinion, regardless of how criminal-legal objects are treated in the law, the fact is that public security (relationships that ensure the security of a large number of members of the society) are extensive than objects of property, life, health and embraces all of them.

One of the difficulties in solving the problem is that some experts oppose differentiation between international terrorism and national terrorism and that international terrorism is not a separate type of terrorism but as a continuation of internal terrorism.

Another issue that attracts attention is the identification of terrorism with a terrorist act. It should be noted that the positions do not coincide in this matter. For example, in the Ukrainian Criminal Code, the features characterizing the crime of terrorism are grounded in the norm that defines responsibility for the terrorist act, and the so-called

social danger of terrorism has been groundlessly grounded in the crime of terrorist act, which is distinguished by certain specific signs and relatively low public danger.

According to G.Minkovsky and V.Revin, the concept of terrorism is a basic understanding towards concrete acts of terrorism, their expression in one crime is unacceptable.

J.O.Kuljabayeva considers the act of terrorism as an act of violence committed by a person (group of persons) against national public figures, people or other objects for the purpose of changing public-social structure, creating international conflicts and wars.

The position of I.P.Blishenko and N.V.Zhdanov on this issue varies considerably from the above-mentioned positions. According to them, the terrorist act is under the influence of international law, as it is committed by the subject of international law, dangerous for international relations, the presence of an international element in it, and so on. In this regard, they consider that "an act of terrorism of an international nature" means the use of force, blackmail, kidnap, murder, and other acts of violence, seizure, damage and destruction of property against the officials in political, economic, technical, transport, trade and cultural relations between states, and their family members, seizure, damage and destruction of property necessary for political, economic, technical, transport, trade and cultural relations among states, damage interstate postal, telegraph, telephone, radio and television communications, acts of violence against air, water, railways and motor vehicles and etc.

V.P. Yemelyanov distinguishing terrorism from the terrorist act which is very close to it, justifies that, in contrast to the terrorist act, terrorism can be expressed not only in acts of violence, but also in the form of threat of committing acts. In addition, terrorism is always accompanied by a common danger method of its committing (fire, explosion, etc.), and a terrorist act is a threat to a particular person. Taking into account the similarity of the above-mentioned deeds, the author combines them with a theoretical perspective, calling it "broadly-term terrorism" [3, 62].

According to the above mentioned facts, it can be concluded that international terrorism, terrorism and terror acts, which are not considered to be international terrorism, are different crimes, and therefore, the scope of their actions and the object of their encroachment should be clarified in relevant norms. It may be that some elements of the first two criminal acts coincide but, although both are similar, they are separate crimes for the differences in the degree of public danger and in the content of the objects directly damaged in the course of these crimes.

Regarding the improvement of the norm on terrorism, V.V. Maltsev notes that in article 205.1 of the Criminal Code of the Russian Federation, the identification of terrorist acts with the threat of committing such acts and the imposition of the same penalty for these acts is unacceptable. In this regard, he proposes the following version of thise article:

1. Terrorism, or any other act that creates a danger of destruction or other dangerous consequences, if such acts are committed to the detriment of the public security, the threat of the public or to influence the decision-making by the authorities - from five to fifteen years is punished by imprisonment.

2. The same actions, which have resulted in grave consequences or committed by an organized group, as well as repeatedly - shall be punished by imprisonment for a term of ten to twenty years.

3. Acts envisaged in the first and second parts of this article shall be punished with imprisonment for the term from fifteen to thirty years, or life imprisonment, if they are related to the killing of a man.

Although it is worth mentioning that the positive aspect of this proposed variant that terrorism, which resulted in negligent killing of a man, should be noted as "related to killing of people", Ch.Mustafayev notes that some of the points below are out of focus [3, 70].

If we take into consideration the relevant provisions of the Criminal Code of the Russian Federation on terrorism and article 214 of the Criminal Code of the Republic of Azerbaijan, it is possible to observe that these norms are not sufficiently optimal for the purposes of the criminal responsibility and the purposes of the crime in terms of legislation. If terrorism (domestic terrorism) is perceived as a crime different from international terrorism, the expressions "adopting of decisions by international organizations" and "foreign state officials" should not be included in those norms in the relevant Criminal Code norms. Because this statements can be incorporated into international terrorism. According to articel 214.1 of the Criminal Code of the Republic of Azerbaijan, Terrorism, that is commitment of explosion, arson or other actions creating danger to destruction of people, causing harm to their health, significant property damage or approaches other socially dangerous consequences committed with a view of infringement of public safety, intimidation of population or rendering of influence to acceptance of decisions by the state authorities or international organizations, and also threat of commitment of a specified actions in a same purposes. The words "terrorist act" were added to the text of Article 214 (Terrorism) by the law of the Republic of Azerbaijan on October 20, 2015, not by taking them from the text of article 277 (attempt on life of the state or public figure, and also representative of the foreign state, committed with a view of a discontinuance of his service or political activity or from revenge for such activity (act of terrorism), but by taking it from its name.

Infringement of public safety, intimidation of population or rendering of influence to acceptance of decisions by the state authorities or international organizations are the aims of this crime. Regarding the actions for its commitment is the commitment of explosion, arson or other actions creating danger to destruction of people, causing harm to their health, significant property damage or approaches other socially dangerous consequences. However, the realization of results, forcing physical or juridical persons to do or refrain from doing any work, and forcing officials to make decisions or to abstain from it are beyond the scope of the criminal law norm.In addition, it is known that terrorism is sometimes committed to "revenge" and "self-confirmation", as a result of terrorist acts people are killed, not only to people, but also to government officials and officials working in them property damage is inflicted or a threat of its infliction occurs. Unfortunately, these aspects are not reflected in the disposition of the norm.

At the same time it should be noted that these defects are also provided in the law of the Republic of Azerbaijan "On Combating Terrorism". According to the requirement of article 1 of that law, terrorism is the commission of acts or the threat to commit acts involving explosives or arson, or other acts which threaten to cause loss of life of human beings, or damage their health, inflict significant damage to property, or other socially dangerous consequences, if these acts are implemented with the aim of undermining public security, spreading panic among the population or forcing State authorities or

international organizations to take decisions that comply with the demands of terrorists.

In the Federal Law "On Combating Terrorism" of the Russian Federation, terrorism has been described as a broader content. According to that law, "terrorism" means the following: the threat of the use or application of explosive, fire, nuclear explosive devices, radioactive, chemical, biological, explosive, toxic, poisonous, potentially harmful substances; destruction, damage or seizure of vehicles or other objects; assassination of the state or public figure, representatives of national, ethnic, religious and other groups of the population; damage to life, health and property of an indefinite number of people by creating conditions for hostages, kidnapping, accidents and man-made disasters; dissemination of threats by any means or form; other acts that threaten people's death, property damage, or other potentially dangerous consequences.

Comparing the relevant articles of the Criminal Code of the Russian Federation and referring to the law, Prof. M.P.Kireyev affirms that the Criminal Code has not been given all the deeds to be regarded as terrorism. The author`s opinion is based on the fact that the broader system of these acts is given in the law "on Combating Terrorism". However, given the essence of the above-mentioned actions, it can be seen that some of them are not related to terrorism and that many countries cover these acts by the relevant norms of their Criminal Codes. For example, the responsibility for the kidnapping, hostage taking, the assassination of a public and public representative, and other acts have been established in the separate norms of the Criminal Code of the Republic of Azerbaijan and other states [3, 73]. As we see, the above mentioned laws also provides for the defects we have mentioned in article 214 of the Criminal Code.

For the purpose of eliminating these shortcomings in the criminal law and in the relevant provision of the said law, the first part of the norm on terrorism is understood to mean the fulfillment of the said consequences, "revenge", "self-confirmation", "for the benefit of the terrorist, or for the benefit of third parties in their will" statements, as well as taking into account the above mentioned about officials of the authorities, the following definition shall be provided:

Terrorism, that is, revenge, self-confirmation, the authority or authority employed by a government official in the interest of the terrorists or in the will of third parties in favor of decision-making or refusal to make decisions, as well as any physical person or group of persons physical or legal persons, state bodies or officials employed therein, or other publicly dangerous consequences, such as explosion, fire, or explosion that threatens to cause harm to physical appearance or physical person, or other social danger, threatening public security or committing such acts.

Bearing in mind that the nature and content of this socially-dangerous act is largely accompanied by the mass killing of human beings, we consider that in article 214.2.4 of the Criminal Code, "... causing negligent human death or other severe injuries" words, it would be more expedient to give it as "causing death".

Difficulties in the identification of the signs, objects of terrorism have also led to the establishment of a different relationship in the criminal law. Legal literature suggests that the norm on terrorism should be placed in any other section, not in the section on crimes against public security. For example, the norm on terrorism in the Latvian Republic was put into the state crimes section of the Criminal Code.

There are 3 norms of terrorism in the Criminal Code of the Republic of Belarus. Two of them are terrorism (article 289) and the threat of committing terrorsim act (article 290) in chapter on crimes against public security, and international terrorism (article 126) in chapter "on crimes against peace and security of humanity."

It would be expedient to refer to the above-mentioned as well as to the experience of the Republic of Belarus for the justification of the current location of the norm on terrorism in the Criminal Code of the Republic of Azerbaijan that defines the responsibility for terrorism and taking into consideration the definition of terrorism, which is proposed by the author. However, it should be taken into account that, as envisaged by article 290 of the Criminal Code of the Republic of Belarus is covered by article 214 of the Criminal Code of the Republic of Azerbaijan, it is unnecessary to prescribe a separate norm in the law.

We believe that international terrorism is a different act of terrorism as envisaged in article 214, which requires the establishment of a norm that defines responsibility for the international terrorism in chapter "On crimes against peace and humanity"of the Criminal Code of the Republic of Azerbaijan.

Another issue, the provisions of articles 75.5 and 80.4 of the Criminal Code of the Republic of Azerbaijan [1, 2424;261] automatically apply to crimes against peace and humanity contained in section VII of the Criminal Code (articles 101, 102, 114, 118 and 119.1). However, the international danger of these acts is less than the threat of international crimes. Obviously, the legislator did not take into account the difference in the legal status of crimes of international character with international crimes. S.Samedova notes that this problem can be resolved in a certain way. 1. To include into articles 75.5 and 80.4 of the Criminal Code other types of terrorissm-related offenses - 215, 219, 219-1, 277 and others; At the same time, as we have noted, it is necessary to exclude the offenses referred to in section VII of the Criminal Code - articles 101, 102, 114, 118 and 119.1. These crimes should be clarified in the Special part of the Criminal Code. For example, articles 118 and 119.1 can be included in the group of crimes against military service. Obviously, in this case, the species object of these crimes will be changed.

By agreeing with S.T.Samedova's opinion, let's note that the Criminal Code should include the definition of international crimes and, in particular, the article which lists this crimes [4, 584]. At this point, it will be necessary to replace the concepts of "crimes against peace and humanity" and "war crimes" in the Criminal Code with the notion "international crimes". It would be expedient to list a specific list of international crimes in the note part of article 100 of the Criminal Code.

As noted in chapter II of this research work, the crimes against peace and humanity are listed in section VII of the Criminal Code of the Republic of Azerbaijan, in chapter I of the Special part, but in other countries, such as the Russian Federation and Ukraine, they are prescribed in the last section XII, and crimes against personality have been instituted in the first chapter of a special part. In our view, it is correct that these crimes were fixed at the very beginning of the Special part due to the degree of public danger and the object, i.e. the scope of public relations. The Criminal Codes of Azerbaijan, Belarus, Estonia and France envisaged in section I of a Special part the international crimes. N.F.Kuznesova also notes that the position of the criminal law of these states is correct. Section 1 of the Special part of the Criminal Code of Turkey is dedicated to international crimes. In Germany, in 2002, an independent criminal code envisag-

ing crimes against international law was adopted. In our view, not just a new Criminal Code, it is possible to define a section in the Criminal Code on "international crimes" as well as prescribe in it separate chapters that can take account of transnational crimes.

Comparison of foreign legislation shows that the Criminal Code of the Republic of Azerbaijan has defined a relatively complete list of international crimes. The provisions of the Rome Statute of the International Criminal Court have been found in the legislation of the Republic of Azerbaijan and have defined 20 types of criminal offenses from the list of 32 crimes. This is higher than in other countries (for example, 8 types of crime in the Russian Federation). This can be regarded as a result of international crimes committed against the population of Azerbaijan and Nagorno-Karabakh problem.

The crimes of genocide and incitement of genocide in the 1999 Criminal Code of the Republic of Azerbaijan were regarded as crimes against humanity, which, in the opinion of most authors, must be considered correct. However, according to the amendment by the law of the Azerbaijan Republic of July 2, 2001, the note part of article 103 passed to article 105, and genocide (article 103) was excluded from the list of crimes against humanity. Thus, it was noted in the note that deliberate acts committed as part of large-scale or systematic attacks against any civilian population during peace or war, as defined in articles 105-113 of this chapter, are crimes against humanity. This is the case in the Rome Statute.

Let's also mention a problem that can be solved. The Criminal Code establishes criminal responsibility for international crimes, as well as for most crimes of international character, at the age of 16. However, according to the Rome Statute, criminal responsibility for crimes against humanity, genocide, war crimes is established at the age of 18. We believe that it would be expedient to determine the age limit of 18 years by making changes in accordance with the position of the Rome Statute on the subject of the offense for these crimes.

References:

1. Comments of the Criminal Code of the Republic of Azerbaijan, Part I, Baku: Law Publishing House, 2018. 704p. (in Azerbaijani)

2. Aliyev AI Azerbaijan for International Crime: Legal Analysis, Baku: NURLAR, 2018. 176p. (in Azerbaijani)

3. Mustafayev Ch.F. Terrorism, Baku: CHINAR-CHAP, 2005. 191p. (in Azerbaijani)

4. Samedova Sh.T. Problems of criminal law: classification of crimes, differentiation of criminal liability and the construction of sanctions, Baku: Ekoprint, 2017. 744p. (in Russian)

5. Bardak C. Açıqlamalı-içtihatlı Terörlə mücadele kanunu və Devlet güvenlik mahkemeleri kanunu. Ankara: Yetkin Basimevi, 1997. 486s. (in Turkish)

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EXPLANATIONS OF THE "WAR CRIMES" FROM AN INTERNATIONAL LEGAL POINT OF VIEW

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Abstract

From the provisions of existing international law it can be concluded that all crimes defined in international criminal law as military are united by the following legal features: 1. These crimes encroach on the procedure for conducting armed conflicts of an international and non-international nature established in the fundamental principles of international law and international humanitarian law. The regulated procedure for conducting military operations in armed conflicts is an integral part of the interests of ensuring peace and security of all mankind. 2. The list of war crimes is established in the documents of international criminal law. In this regard, A criminal breach of universally recognized principles of international law and international humanitarian law committed during an international or non-international armed conflict is a "war crime" which gives rise to a substantial relationship in international criminal law.

All of the above makes it possible to define a war crime under international law as an act which consists in violating the rules for conducting armed conflicts of an international and non-international nature established by fundamental principles of international law and international humanitarian law and the crime of which is defined in an act of international criminal law.

Keywords: *war crimes, Geneva conventions, grave breaches, armed conflicts, international humanitarian law, laws and customs of war, The Hague Convention, Rome Statute.*

The vast majority of authors argue that it is international humanitarian law that criminalizes war crimes. Thus, the responsibility for war crimes, according to this opinion, is established by international humanitarian law. For example, Wolfrum Rüdiger, a prominent figure in German legal doctrine, believes, "war crimes" are violations of the law of war or international humanitarian law, for the commission of which specific individuals are criminally responsible, is very widespread [10, 1307]. The responsibility of states and individuals for violation of the norms on the use of means and methods of warfare, on the protection of the wounded, sick, prisoners of war and civilians is established in international humanitarian law.

In no case do we dispute that the definition of unacceptable means and methods of conducting armed struggle (military conflict), the interests of protecting human rights in an armed conflict are established precisely by international humanitarian law.

At the same time, one cannot but agree with the assertion that the unambiguous recognition that criminal liability for violations of these norms is also established in international humanitarian law mixes the objects and tasks of two emerging branches of international law - international humanitarian and international criminal law.

Indeed, the recognition that international humanitarian law establishes precisely the crime of violations of its own provisions will inevitably lead us to the conclusion that "humanitarian" law, designed to protect the rights and interests of parties and victims of armed conflicts, is itself functionally designed for legal prosecution of violators, and not just for any prosecution, namely, prosecution of a criminal.

However, in the sources of international humanitarian law (in its generally accepted sense), when establishing general principles and particular provisions for the protection of warring parties and civilians, the wording "a person found guilty of a criminal offense related to armed conflict" or "serious violations of these documents (Geneva Conventions and Additional Protocols) are considered war crimes "(for example, part 5 of Article 85 of Additional Protocol I) [9, 167]. Moreover, in Art. 8 of the Rome Statute, a war crime is defined as a "serious" or "other" violation of the Geneva Conventions, a violation of the laws and customs applicable in international and non-international armed conflicts. Moreover, such "violations" must be established within the framework of international law.

Is it possible to say that under international law this document refers specifically to international humanitarian law? It seems that it is possible - after all, it is it that sets the general principles and particular rules for protecting the interests of persons involved in an armed conflict and civilians. But criminal and criminally prosecuted are violations of these rules formulated in the same documents.

Consequently, the same international legal act can act as a source of both international humanitarian and international criminal law. In the second case, it will be such if it establishes precisely the crime of a violation of the law or the custom of warfare. We give an example. If an international document prohibits an indiscriminate attack on a civilian object as such, then in this case we are talking about the humanitarian rule of conducting an armed conflict. If it's a violation of this rule, then we're talking about a war crime. But the concept of "war crime" can hardly be considered a categorical concept of international humanitarian law. The following considerations can be made in favor of this argument:

First, the "rule", "law", and "custom" of conducting an armed conflict are mandatory provisions on how warring parties should behave in an armed conflict. Thus, international humanitarian law establishes certain protected interests, the violation of which is prohibited;

Secondly, attacks on such interests can be very different (accordingly, the type of responsibility of the offender may be different); criminal (by definition) encroachment entails criminal liability;

Thirdly, the basis of the criminal liability of the subject may be the presence of all objective and subjective signs of corpus delicti (as defined in international criminal law) in a specific violation of the provisions of international humanitarian law. Consequently, the provisions of international humanitarian law are a kind of starting point for declaring an assault criminal. But such an encroachment, qualified as a crime, gives rise to a criminal relationship, which in turn is no longer the subject of international humanitarian, but international and (or) national criminal law.

Thus, a violation of international humanitarian law, regarded as criminal, is a legal fact for international and national criminal law, by virtue of which there arises a criminal nature of the relationship, the implementation of which resolves specifically criminal law, and not humanitarian legal conflict.

According to the I Principle of international law, recognized by the Charter of the Nuremberg Tribunal: "every person who has committed any act recognized as a crime under international law bears responsibility for it and is liable to punishment[3, 203].

In order to determine the concept of "war crime" in international criminal law, it is necessary to dwell on the question of understanding international criminal law itself.

The presence of criminal law in international law does not currently raise any serious objections. This is evidenced by a large number of various international legal documents adopted from the middle of the 20th century.

According to the most common point of view, their adoption, as a rule, was determined by the task of interstate cooperation in maintaining world order, in combating international crime, in preventing war crimes committed in the course of international and domestic armed conflicts, as well as in punishing those responsible.

Recently, interest in the problem of the existence of international criminal law has grown significantly, but the approach to defining such a law as a branch of public international law has remained the same.

Larissa van den Herick and Karsten Stan, professors at the University of Leiden in the Netherlands, point out that in international law theory international criminal law is accepted as an area of international law. In this case, there are a few basic doctrines that define the essence of this field [7, 61].

Antonio Casesse, one of the most prominent figures in international law define international criminal law as a branch of public international law, the principles and norms of which govern the cooperation of states and international organizations in the fight against crime [2, 41-45].

There is another, the most common concept (Yoram Dinstein, M. Cherif Bassiouni), according to which international criminal law is a complex industry that includes substantive and procedural rules, which in turn can apply to both international public and private international, as well as national criminal law.

A legal fact giving rise to an international criminal legal relationship is the commission by a person of an act whose criminality is defined in an international legal source. It is the criminal act of international criminal law that is the "starting point" in the understanding of international criminal law as an independent industry.

"An international crime is an act of behavior that is universally recognized as criminal, but in respect of which ... for a number of reasons ... the exclusive jurisdiction of the state is impossible to exercise control in ordinary circumstances"[4, 173].

Thus, international criminal law, establishing the criminality of acts that are not subject to the jurisdiction of only one state, is characterized by the fact that it ensures the international law and order as a whole with the help of specific criminal law methods and means. At the same time, international criminal law is designed to combat crime in the field of international maritime law, international air law, diplomatic law, international economic and financial law and etc.

In other words, modern international criminal law regulates the area of homogeneous relations and interests, while a specific regime of legal regulation that is characteristic of this particular industry is gradually being formed. The circle of such relations and interests certainly includes the interests of protecting humanity from war crimes.

Moreover, of course, international criminal law is an integral part of the system of international law as a whole. There is no contradiction: after all, the system of international law as a whole is precisely a combination of various branches of international law. The task of international criminal law is to protect the international law and order from criminal offenses. Of course, the category "international rule of law" itself is extremely extensive due to the mutual integration of various categories of rule of law provided by international law.

International criminal law defines the crime of the most diverse acts. We share the point of view according to which the objective legal criterion for determining the crime of an act under international criminal law is that a variety of acts in one way or another encroach on the interests of maintaining the global law and order, while each crime does harm (or creates a threat of harm) which or part of the global rule of law. It is this quality of any crime under international criminal law that determines its legal nature.

It should be borne in mind that the interests of ensuring the global law and order as a whole and its constituent parts ultimately relate to the interests of all people, regardless of their place of residence, demographic and other characteristics.

As it turns out, neither in international criminal law, which provides the international law and order, nor in international humanitarian law, aimed at the legal regulation of armed conflicts, it is not possible to find the main elements of war crimes. In our opinion, a violation of the rules governed by these areas of international law will lead to war crimes.

Therefore, we consider it appropriate to study specifically what actions can be attributed to war crimes. In foreign literature usually distinguish several types of war crimes as violations of international humanitarian law

According to the most common opinion, the rules on grave breaches apply only to international conflicts and only to acts committed against so-called protected persons or during military operations. Protected persons are wounded or sick combatants fighting on land and at sea, prisoners of war and civilians caught in the power of a state of which they are not citizens.

Most breaches of the Geneva Conventions and their Additional Protocols are not "grave". But even among those violations that are not on the lists of "grave," many are considered war crimes. However, in this case, the state has no obligation to extradite or prosecute the perpetrators.

Other breaches, also not classified as "grave", are not war crimes, but only unlawful acts, for which, under international law, only the state that allowed them is responsible. For example, if the head of a prisoner of war camp does not keep records of disciplinary punishments (which constitutes a violation of Article 96 of III Geneva Convention), he most likely does not commit a war crime [8, 85].

However, it should be noted that the delimitation of various violations, their classification or non-attribution to the number of serious ones are not absolute. But even if some cruelties committed during the war do not fall under the prohibitions of the Geneva Conventions or Additional Protocol I, they can nevertheless constitute a war crime in the framework of customary law: such a crime is defined as "violation of the laws and customs of war" (namely this formulation was featured at the Nuremberg trials) [6, 167-177].

In relation to interstate conflicts, states have agreed that such crimes include certain violations of the Hague Convention of 1907 and its Regulations on the laws and customs of the land war, such as the use of toxic substances, senseless destruction of cities, not caused by military necessity, attacks on non-defended locality, religious and cultural institutions, the looting of public and personal property.

The Rome Statute among war crimes in international conflicts mentions not only serious violations of the Geneva Conventions, but also 26 serious violations of the laws and customs of war, most of which have been classified as crimes since the Second World War [13].

As for armed conflicts of a non-international nature (civil wars), many authors believe that such conflicts relate exclusively to the internal jurisdiction of states, and accordingly the list of war crimes is much shorter here [12, 116].

Additional Protocol II, the provisions of which mainly govern the actions of the parties in the course of a non-international conflict, does not contain rules defining responsibility, and the definition of war crimes established in customary international law here is far from being as clear as in the case of international conflicts.

The Charter of the International Tribunal for the Prosecution of Persons Responsible for Greve Breaches of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (established by the UN Security Council in 1993) contains a list of "grave breaches of general article 3 of the Geneva Conventions" (single article relating to civil wars), as well as other norms aimed at protecting the victims of armed conflicts, and basic norms regarding methods of warfare. A grave breaches is defined in it as a violation that has grave consequences for the victims and violates the norms that protect important values [1].

This should also apply to actions against life and health (murder, ill-treatment, torture, mutilation, corporal punishment, rape, forced prostitution, obscene claims), summary executions, hostage-taking, collective punishment and robbery. Such a list, although shorter than the list of serious violations given in the Geneva Conventions and Additional Protocol I, and other war crimes in international conflicts, nevertheless covers the most terrifying acts committed in recent conflicts, Such crimes are often committed, especially in conflicts such as Syria, Iraq, Congo, Somalia and Sudan.

The Charter of the International Tribunal for the Court of Persons Responsible for Genocide and Other grave breaches of International Humanitarian Law Committed in the Territory of Rwanda, Responsible for Genocide and Other Similar Violations Committed in the Territory of Neighboring States from January 1 to December 31, 1994 includes the quality of war crimes serious violations of the general art. 3 Geneva Conventions and Serious Violations of Additional Protocol II. The Statute of the International Criminal Court defines four grave breaches of the general art. 3 Geneva Conventions (encroachment on life and physical integrity, encroachment on human dignity, hostage-taking and summary executions) and 12 grave breaches of the laws and customs of war (attacks against the civilian, robbery, rape, mutilation, etc.) [13].

War crimes committed during international and internal armed conflicts fall within the scope of the Geneva Conventions: "Although there are some differences between them, war crimes committed in an internal armed conflict remain war crimes" [5, 224-228]. An internal armed conflict is defined as a conflict between insurgent groups fighting against the government if they exercise control over the territory and population and can conduct military operations.

War crimes are subject to international law. After World War II, only two international tribunals were established - in the former Yugoslavia and in Rwanda, which were able to initiate trials against war criminals. The Rome Statute determines that crimes committed before the establishment of the International Criminal Court are not subject to its jurisdiction [11, 340]. At the same time, the Geneva Conventions suggest that war crimes committed in a country that has signed the Convention should be prosecuted in accordance with international criminal law.

For the above reasons, we believe that the definition of a war crime comes down not only to a criminal violation of international humanitarian law, but also to a violation

in the course of armed conflicts of an international and non-international nature of fundamental principles of international law (jus cogens principles). Moreover, the criminality of such violations is also defined in international criminal law.

This concept does not contradict the concepts and ideas that have already been formulated in the doctrine of international law. The analysis of international legal norms allows to distinguish the following types of war crimes: grave breaches of the 1949 Geneva Conventions in international armed conflicts; violation of other norms and rules for conducting international armed conflicts; grave breaches of the 1949 Geneva Conventions in non-international armed conflicts; violation of other norms and rules for conducting non-international armed conflicts.

References:

1. Bassiouni M. Cherif. International Criminal Law: International Enforcement, Vol. 3. BRILL, 2008, 722p.

2. Cassese Antonio. The Oxford Companion to International Criminal Justice. Oxford University Press, 2009, 1008p.

3. David A. Jenks, John Randolph Fuller. Global Crime and Justice. Taylor & Francis, 2016, 344p.

4. Durrieu Roberto. Rethinking Money Laundering & Financing of Terrorism in International Law: Towards a New Global Legal Order. Martinus Nijhoff Publishers, 2013, 508p.

5. Eve La Haye. War Crimes in Internal Armed Conflicts. Cambridge University Press, 2008, 450p.

6. Ginsburgs George, Vladimir N.Kudriavtsev. The Nuremberg Trial and International Law, Vol. 42. Martinus Nijhoff Publishers, 1990, 288p.

7. Larissa van den Herik, Carsten Stahn. The Diversification and Fragmentation of International Criminal Law. Martinus Nijhoff Publishers, 2012, 734p.

8. Lindsey Cameron, Vincent Chetail. Privatizing War: Private Military and Security Companies Under Public International Law. Cambridge University Press, 2013, 720p.

9. Ronzitti Natalino, Gabriella Venturini. The Law of Air Warfare: Contemporary Issues. Eleven International Publishing, 2006, 340p.

10. Rüdiger Wolfrum, Frauke Lachenmann. The Law of Armed Conflict and the Use of Force: The Max Planck Encyclopedia of Public International Law. Oxford University Press, 2017, 1400p.

11. William A. Schabas. The International Criminal Court: A Commentary on the Rome Statute. Oxford University Press, 2016, 1589p.

12. Yearbook of the International Law Commission 1996. United Nations International Law Commission United Nations Publications, 1999, 278 p.

13.http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalCriminalCourt.aspx

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THE RIGHT TO GOOD ADMINISTRATION: AS A NEW TREND IN PUBLIC ADMINISTRATION

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Abstract

Good administration issues can also be found in legal documents adopted prior to the formation of the European Union. Improving management is an ongoing responsibility of any state. Today's decisions make it possible to identify the correct vector for the further development of the system of state and municipal government. The consistent implementation of the idea of "good administration" is, of course, a priority for the development of states and demonstrates the authorities' desire to establish clear and harmonious relations within the framework of the system of legislative acts. The experience of the constitutional development of European countries shows that the implementation of this idea will enrich human rights with the quality of participation in government, expand the mutual obligations of the parties to create an open and democratic state. The right to good administration set forth in the Charter of Fundamental Rights is a clear and open confirmation of the existence of the obligation of state bodies to be in the best position to make the necessary decisions. Thus, this task provides significant support for procedural issues, which currently occupy a higher position.

Keywords: *good administration, EU Law, no instrumental and instrumental functions, administrative procedure, discretionary powers, the quality of decisions, maladministration, European Ombudsman, Treaty on the European Union.*

The functioning of the mechanism of executive power in a modern state is based on the mandatory recognition of the highest value of the rights and freedoms of man and citizen, understanding of the productivity of managerial activities from the needs of the population and their needs in the realization of rights and legitimate interests.

The indirectness of administrative power clearly determines the focus of modern management science and practice on the development of transparent democratic models of interaction between people and authorities in order to create an effective, fast and affordable way to exercise legislative rights and obtain the necessary public services.

An important component of the openness of the executive branch is not only the normatively secured opportunities for obtaining information about the activities of the authority in relation to the citizen, but also technical communication tools that allow you to quickly monitor the procedure for performing administrative procedures. Such an orientation toward satisfying the needs of man and citizen by executive authorities is justified by the implementation of one of the most important political rights of a modern cultural society - the right to good administration.

For many years, the European Law School of Public Administration has been among the basic principles of administrative activity the principle of "good governance" reflecting such governance that meets the requirements of an open, democratic and fair society. The concept of "good governance" consists of the following

components: participation; the rule of law; transparency; sensitivity; orientation to consent; justice; effectiveness and efficiency; accountability; strategic vision.

For the real realization of these ideas in the Charter of the European Union on Fundamental Rights, the draft Constitution of the European Union enshrines the citizen's right to "good administration", which is as follows. Each person has the right to the consideration of his case by the institutions and bodies of the Union impartially, fairly and within a reasonable time. This right, in particular, covers: 1) the right of every person to be heard before taking individual measures against him that entail adverse consequences for him; 2) the right of each person to access the information dossier affecting him, subject to legal interests in the form of confidentiality, professional and commercial secrets; 3) the obligation of the administration to motivate its decisions. Each person has the right to compensation by the Community for losses incurred by institutions or their employees in the exercise of their duties, in accordance with the general principles inherent in the legal systems of all Member States. The recognition and legislative reflection of the right to good administration in the Charter of the European Union on Fundamental Rights and the draft Constitution of the European Union was the highest achievement in the evolution of the citizen's right to participate in the management of state affairs. It should be noted that the implementation of the idea of "good administration" has certain constitutional traditions; in one form or another, it was embodied in the texts of the existing constitutions of European states.

For example, Art. 10 of the Constitution of the Hellenic Republic of June 11, 1975 establishes a provision according to which each individually or jointly with others has the right, subject to the laws of the state, to contact the authorities in writing, who are obliged to take urgent action on the basis of existing provisions and give the applicant a reasoned written response in accordance with the provisions of the law. Harassment of the applicant for violations contained in the application, if any, is allowed only after the final decision of the authority to which the application is addressed is made public and with his permission. The request for information obliges the relevant authority to provide an answer in the conditions stipulated by law [10, 307].

Analyzing this norm, indicates that "the content of the right to appeal and the corresponding obligation to ensure the realization of this right is expressed in the constitutional norm in a concentrated form - without specifying the subject, order and methods of action of the subjects." Moreover, "its further development and implementation is carried out by the norms of administrative law, and the right to appeal takes on an administrative-legal character".

Over the past decades, scientific studies addressing the problems of production at the request of citizens have passed "under the sign" of the need to improve the regulatory framework of the right to appeal. At the same time, scientists unanimously determined the guidelines that should be observed in the legal regulation of production at the request of citizens.

1. The definition of the subject of legislative regulation. The law should regulate the procedure for sending, considering, and resolving citizens 'appeals to state authorities, local governments, and organizations of all forms of ownership.

2. Structural content of the law. The law should have a clear internal structure that reflects the content of proceedings on citizens 'appeals: preamble, terminology base, principles, procedure for resolving appeals not related to administrative jurisdiction,

procedure for resolving complaints, rights and obligations of subjects of production, enforcement of decisions on appeals, etc.

3. The consolidation of democratic principles that meet the requirements of the Constitution. The proceedings on citizens appeals should be based on the principles of legality, equality, accessibility and many other principles that will allow the formation of a new basis for the "man-state" relationship, based on the recognition and possibility of actual realization of the rights and freedoms enshrined in the legislation, for example, the right to personal participation in consideration of the appeal.

4. Consideration of the federal nature of the state. The formation and development of administrative procedural law should take into account the independence and rights of the regions in the field of regulation of certain aspects of the analyzed production.

5. The need to establish liability measures for violation of the law on citizens appeals.

The adoption of the law should be accompanied by the development and implementation of administrative and, possibly, criminal liability for violation of the requirements of the law on citizens 'appeals in order to further guarantee the inviolability of citizens' rights and freedoms. However, none of these provisions was used in the regulation of this social and legal sphere. Many problems requiring a valid legislative resolution remained undetected and unlit.

From the point of view of good administration, the administrative procedures among the most important elements of public administration should be particularly mentioned. Differences between instrumental and non-instrumental functions may also be different:

1. Noninstrumental functions include a) protection of personal dignity; 2) promotion of citizens participation; 3) enhancing transparency and accountability; 4) improvement of legitimacy [6]. 2. Instrumental functions are administrative procedures, which guarantees the precision of the applicable result. Administrative procedure is convenient for: 1) the protection of rights and interests and 2) the promotion of good administration and thus, the worth of concluding decisions [7, 309]. The specific recommendation of the Committee of Ministers is of particular interest to European Union law. In addition to this recommendation, "discretionary powers" are those powers that give the administrative authority a certain degree of freedom to make decisions and allow it to choose one of the few legally acceptable decisions [8].

The essence of discretionary law, that is, the choice between alternatives, is a new line that is different from traditional administrative law. The choice is not a legal issue, but a political one. In the traditional paradigm, administrative law provides, above all, protection for individuals and protection against arbitrary decisions. From this point of view, tyranny begins where laws cease, and judicial review is the only effective way to protect against tyranny. Therefore, traditional administrative law is not interested in good administrative decisions; rather, it is interested in controversial illegal decisions in court and in protecting citizens from public arbitrariness. This is a negative approach in the sense that it is an approach against arbitrariness that does not favor good administration [2].

But from a new point of view, it already exists throughout Europe. This new approach is related with the quality of solutions. We also note that the tradition of good administration has long existed in the United States. Discretionary choice itself is relevant for administrative law, as it is related to the good decisions and with good

administration. It is important that the state administration makes both legal and correct decisions, confirming them with the necessary arguments. G.Braibant mentioned, "even when public authorities are allowed to do what they want, they cannot do whatever" [5, 53], or, the suitable use of discretion is significant to public law. The suitable use of discretion is ordered by the concept of good administration.

But, what does good administration mean? As a first idea, we can say that good administration is the opposite of maladministration. But then what does maladministration mean?

We can turn to the British system for to define maladministration. The British Ombudsman has been fighting against it since the 1960s. There is no definition of maladministration in the British legal system, although the so-called Crossman's catalogue is frequently used, which defines maladministration as "prejudice, ignorance, delay, incompetence, incompetence, confusion and self-discipline." The Ombudsman focused on ensuring that the public administration followed the necessary procedures before exercising his powers. As Greenwood and Wilson note, "in essence, maladministration concerns defects in administrative procedures, not the merits or substance of decisions" [4, 313]. As regards the European Ombudsman, the Treaty on the European Union created this position and defined its responsibility as a fight against maladministration of EU institutions [3, 337]. But there are certain questions. What is maladministration? As we have seen, this is contrary to good administration. But it is not so easy to determine. The Ombudsman of the European Parliament, Jacob Soderman, who was appointed by the European Parliament in 1995, emphasized that "it is not a good idea to define maladministration because one needs flexibility to carry out one's function properly". But there are a number of ideas that can help identify maladministration. The European Ombudsman found that "maladministration occurs when a public authority does not act in a mandatory manner". We can analyze some of the most advanced European legal systems to provide a more detailed explanation of this problem.

The 1947 Italian Constitution establishes' 8 that Italian agencies must be organized so as to achieve administrative impartiality and buon andamento [11]. The last words have been considered by many Italian scholars to be a duty of good administration (buona amministrazione). The Corte Costituzionale has declared that this duty obliges legislators to design proper administrative structures and procedures to carry out administrative functions. On the other hand, the principle imposes on public administration the duty of making sound decisions by gathering necessary information and balancing the relevant factors in each case before deciding

The current Spanish Constitution of 1978 is especially interesting. It provides in Articles 31 and 103 that public administration must act with objectivity and impartiality, in accordance with the principles of effective action, efficiency, economy and coordination; it also establishes a prohibition of arbitrariness [1, 353-355]. Good administration issues can also be found in legal documents adopted prior to the formation of the European Union.

First, is the Resolution of September 28, 1977 of the Council of Europe, entitled, On the Protection of the Individuals in Relation to the Acts of Administrative Authorities. Although this legal text does not actually use the words "good administration," its spirit may be found therein. This Resolution sets out five principles: (1) the right to be heard, (2) the right to access information, (3) the right of assistance and representation, (4) the

administrative obligation of stating reasons, and (5) the administrative obligation of indicating available remedies.

As far as the European Court of Justice is concerned, it uses the words "good administration" but fails to define them. As General Attorney Simon Rozes's conclusions highlighted in the decision of October 29, 1981, there is a duty of good administration in Community institutions. But what does this mean? The study of case law shows that a general idea exists concerning good administration. Basically, before reaching a decision, Community institutions must follow proper procedure: hearing the people concerned; taking into account all the relevant factors and rejec-ting the irrelevant; weighing the interests involved; andexplaining why they chose one alternative over another.

In this sense, the European Court of First Instance (CFI) has been active in the implementation of a number of procedural obligations, as different European scholars have noted [9, 146]. Actually, the CFI's case law has imposed a set of principles guiding European Institutions: the right of access to information, the right to be heard, the principle of care, and the duty of giving reasons. On the other hand, from a broader and more political point of view, the Commission's White Paper on European Governance was published in July 2001, after an intense process where European, national, and regional actors, as well as academics and European citizens, were consulted. This document identifies five principles of good governance: openness, participation, accountability, effectiveness, and coherence.

This background has finally crystallized in the legal consecration of a right to good administration, now established in Article 41 of the Charter of Fundamental Rights of the European Union, which has been already applied by European case law and even national case law.

Article 41 refers to the right to a diligent performance as part of good administration in the first section, and in the second, specifies a number of rights stemming from this right to good administration. Three of these rights include the right of access to information contained in the file, the right to be heard (the audi alteram partem rule), and the duty of giving reasons for the decisions made. The text from Article 41 presents few novelties regarding what is set out in the Treaty, or in case law, and contains a number of loopholes. Another important aspect is the individualistic perspective of Article 41 regarding procedural participation, which boils down to a hearing "before any individual measure which would affect him or her adversely is taken. Thus, public participation-through public hearings or similar devices-in procedures for elaborating general decisions (e.g., regulations) is not considered. This is a disappointing loophole because participation is a sensitive issue with regard to the development of the EC's public policies, which include transparency, equality, objectivity, democracy, and accountability. As some authors have underlined, the European and U.S. trajectories diverge notably in relation to this aspect, and a more detailed regulation should be established.

References:

1. Balduzzi Renato. Annuario DRASD 2011. Dottorato di ricerca. Autonomie locali, servizi pubblici e diritti di cittadinanza. Giuffrè Editore, 2011, 544p.

2. Cassese Sabino. Las bases del Derecho Administrativo. Instituto Nacional de Administración Pública, 1994, 381p.

3. Chalmers Damian. European Union Law: Text and Materials. Cambridge: Cambridge University Press, 2006, 1235p.

4. Greenwood R. John & David J. Wilson. Public Administration in Britain Today. London: Unwin Hyman, 1989, 362p.

5. Lambert Sieur, Braibant's Conclusions "CE," 27 L'actualita Juridique: Droit Administratif. 1971, 53p.

6. Luhmann Niklas. Legitimation durch Verfahren. (suhrkamp taschenbuch wissenschaft). Frankfurt am Main: 1969, 261p.

7. Millet Lord. The Right to Good Administration in European Law,. London: 47 PUB, 2002, 309p.

8. Recommendation of the Comm. of Ministers No. R (80) 2 Concerning the Exercise of Discretionary Powers by Administrative Authorities, 316th Mtg. (1980).

9. Schwarze Jurgen. Judicial Review of European Administrative Procedure. London: 49 PuB, 2004, 146p.

10. Spyropoulos K. Philippos. Constitutional law in Greece. Kluwer Law International, 2009, 392p.

11. https://www.quirinale.it/allegati_statici/costituzione/costituzione_inglese.pdf

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PROTECTION OF FOREIGN INVESTORS IN OTC DERIVATIVE TRANSACTIONS: WAY TO GO?

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Abstract

In light of the recent amendments in legislation it may be concluded that the legislator is seeking to establish robust regulatory framework for capital markets. Despite remaining lack of regulation, the derivative transactions are being concluded in Azerbaijani market. Such agreements are concluded with Azerbaijani counterparties or with foreign counterparties. This tendency raises certain questions pertaining not only to legislation directly governing such transactions but also leads to a thought what kind of protection apart from contractual protection is offered to foreign counterparties of derivative transactions. The Article seeks to identify whether over-the-counter ("OTC") derivative transactions in particular, may fall under category of foreign investment, what are the threats for foreign investors entering into OTC transactions and what kind of protection are they offered should there be lack of protection envisaged by a given Bilateral Investment Treaty.

For addressing the issues raised above, the Article offers two perspectives: protection offered by international agreements (namely Bilateral Investment Treaties) and arbitration or protection offered by national legislation of the Republic of Azerbaijan. Speaking of first perspective, the Article analyzes tendencies in drafting of Bilateral Investment Treaties, in particular definition of investment provided in Bilateral Investment Treaties. In addition, applicable court practices, namely rulings of International Centre for Settlement of Investment Disputes are also being analyzed.

Speaking of second perspective, the Article refers to applicable legislation of the Republic of Azerbaijan in order to identify whether the rights of a foreign counterparty to OTC derivative transaction may qualify as foreign investment and enjoy respective level of protection.

Keywords: *foreign investment, portfolio investment, derivatives, OTC, bilateral investment treaties, international investment law, ICSID, capital markets, national legislation, the law on protection of foreign investment, definition of investment, international law*

Past few years marked adoption of provisions governing derivative transactions into the Civil Code together with adoption of the new Law "On securities market". Establishment of regulatory framework for derivative transactions was considered as a measure for enhancement of such transactions in domestic market. A derivative itself may be defined as a "an asset whose value is derived from that of some other asset known, as the underlying" [1, 1]. Azerbaijani legislator in Article 403-1 of the Civil Code upholds this approach by defining derivative as an agreement aimed to acquire, sell or change any underlying asset. It is also worthwhile to mention that securities, currency, credit risk, and others qualify as underlying asset pursuant to the Civil Code.

While Azerbaijani capital market is emerging, the companies in Azerbaijan are looking to secure their risks by concluding over-the-counter ("OTC") transactions with foreign counterparties. At this point it should be clarified that OTC transactions are derivative transactions concluded directly between counterparties i.e. without

involvement of exchange or other intermediaries. However, it should be noted that relevant articles of Azerbaijani legislation do not deal with OTC derivatives rather governing those concluded in exchanges.

Nonetheless, given the risky character of derivative transactions by their nature, parties of OTC transactions bear even more risks in comparison to those associated with trading in exchange. That eventually leads to analysis of existing mechanisms aimed to protect parties of such transactions.

For the sake of clarity, it should be noted that in this paper protection of parties of OTC transactions from perspective of international investment law will be observed. That is, contractual arrangements such as, for instance, title transfer shall not be observed in this paper as they solely relate to measures undertaken directly by the parties to a particular agreement. Precisely speaking, this paper seeks to identify whether a foreign counterparty to an OTC transaction may be regarded as foreign investor and which protection mechanisms are offered to such foreign investor should such transaction fall under the definition of investment. For this purpose, the applicable laws of the Republic of Azerbaijan as well as literature in this regard should be observed.

At this point it is worthwhile to note that international investment law is mostly comprised of bilateral investment treaties (the "BIT"). Furthermore, considering that no global investment treaty has been adopted till date, most relations between the state pertaining to investment are governed by respective BITs. In addition, some states also opt for protection of foreign investors by adopting specific laws or even Investment Codes. In the absence of BIT with a particular state, national laws may be also referred to. Azerbaijan is not an exclusion from this tendency and also aims to protect foreign investors either by means of BITs (or, as the case might be, other international agreements) or the laws. With that being said, for addressing of issues raised in the current paper BITs and applicable laws should be observed. In the meantime, the nature of risks that foreign investors may face should be also observed. Analysis of risks is crucial since it gives allows to understand whether OTC derivative transactions should be protected at all. In other words, if the host state cannot somehow violate rights of a foreign counterparty to OTC derivative transaction – is there any need to protect them?

The risks for foreign investors are mainly associated with either changes in regime or changes in existing political and economic policies of the host state. [4, p. 69] It is beyond any doubt that each state is entitled to exercise its sovereignty to which the above matters explicitly pertain. In my view, changes in economic policy may result in hostility to foreign investors, nationalization and certain changes in industry. While the first two do not directly affect parties of OTC transactions, the third factor is noteworthy. Namely, changes in industry influenced by the host state may require parties to re-negotiate existing agreements which will eventually lead to loss of anticipated gains or even termination of existing agreements. Speaking of anticipated gains, it should be noted that according to arbitral awards investors are entitled to have their legitimate expectations as to the operation and return on their investment respected by the host state [5, 39].

At this point it should be noted that literature on the matter distinguishes foreign direct investment and portfolio investment. As such, while foreign direct investment contemplates physical transfer of tangible or intangible assets from one country to ano-

ther for the purposes of wealth generation, portfolio investment involves movement of funds for acquisition of shares or financial instruments. Given these categories it should be outlined that a foreign party to OTC derivative transaction would rather fall under definition of portfolio investor, rather than foreign direct investor.

Such contrast between the categories leads to a question whether both types of investment should enjoy the same level of protection or whether portfolio investors should be protected at all. Obviously, investors assume certain risk by investing into foreign state. However, when it comes to portfolio investment, suffering loss is an ordinary commercial risk taken by investor. Consequently, should a portfolio investor sue stock exchange for such loss there will be few chances to succeed. Despite all arguments for difference in treatment the recent tendency shows that portfolio investments are included into the scope of foreign investment in bilateral investment treaties. If portfolio investments after all ensure capital flow to the state concerned why wouldn't it be regarded as foreign investment?

Furthermore, as noted in literature, when developing states realized effect of foreign investment they started competing each other for foreign investment which eventually ended-up in defining investment as broadly as possible and including portfolio investments in definition of investment [6, 100].

Taking the above into account, it is suggested to analyze legal standing of OTC transactions from the following perspectives:

I. OTC derivative transactions in BITs and court practice

Study of bilateral investment treaties conducted by the United Nations shows that bilateral investment treaties have developed to more complex documents and their application is extended so that more issues now fall under their scope [7, 11].

While it is obvious that most of the BITs have similar structure and deal with more or less same issues it still cannot be said that they are identical. That's to say, conclusion that every BIT provides protection of specific type of investment cannot be regarded as completely true. On the contrary, the details of each BIT represent broad variety of approaches with regard to individual provisions [7, 13]. That is, each particular BIT applies only in relation to those investments qualifying as investment as defined by that BIT provided that the mentioned investment is made by persons enjoying protection under the BIT. However, despite ever-growing numbers of BITs it still possible to highlight certain tendencies in drafting of BITs. As such, most of BITs provide broad and open ended definition of investment with non-exhaustive list of assets illustrating which forms and investment may take (usually such lists embody both direct and portfolio investment) [8, 49-51]. Considering constantly changing forms of investment such approach seems even more reasonable as it mitigates the risk of certain new form of investment not falling under the scope of BIT. It is notable that most BITs define investment from the following perspectives:

1) Form of investment;
2) Area of investment's economic activity;
3) Time when investment is made;
4) The investor's connection with the other contracting state [9, 37]

Following this approach broad definition of investment in most instances includes claims to money and claims under a contract having financial value. It is evident from such wording that treaty-makers intend to protect not only property but also contrac-

tual rights. Should such wording be present in given BIT, then OTC derivative transactions may without any doubt fall under such definition of investment. As it is evident from court practice, it is not the only wording allowing OTC derivative transactions to qualify as an investment.

Court practice may as well serve as an additional argument in favor of recognition of OTC derivative transactions as foreign investment under BITs. In this regard the ruling of International Centre for Settlement of Investment Disputes ("ICSID") on *Deutsche Bank AG v Democratic Socialist Republic of Sri Lanka* is particularly notable. In the mentioned case, the Tribunal considered the hedging agreement concluded by Deutsche Bank with counterparty from Sri Lanka to be an investment as defined by BIT. As such, in the opinion of the Tribunal, hedging agreement fell under category established by the BIT, namely, it represented "a claim to money which has been used to create an economic value" [10, 57].

Another issue raised in the mentioned dispute was territorial nexus of Sri Lanka. Speaking of territorial criteria of investment, the Tribunal has referred to *Abaclat* case wherein it was stressed that criteria for determination of place of investments of financial nature is where the funds were made available to the host state and did they support economic development of that host state [9, 145]. Taking into account global character of financial instruments it is not essential where exactly the paperwork was done. It is rather crucial to understand where the engagement took place and where it had its impact. With reference to the perspectives from which investment is being defined in BITs listed above, it may be concluded that the ruling of ICSID covers perspectives that are the most crucial for this study.

In the meantime, it should be also noted that back in times when ICSID Convention was drafted, the parties were not able to reach consensus on definition of "investment dispute". Furthermore, it was considered that limitation of the ICSID's jurisdiction may lead to unintended consequences and for this reason ICSID Convention does not define investment, leaving it for the parties of particular treaty to decide [12, 70]. However, this does not mean that any definition may be regarded sufficient for instituting proceedings in ICSID. Namely, a line between an ordinary commercial transaction and investment should be drawn. It should be also noted that absence of definition in ICSID Convention leads to certain difficulties in application. Precisely, it is not clear whether the tribunals should apply "a double-barreled" test (*i.e.* meeting criteria of both ICSID Convention and given BIT) or does the consent of contracting states in BIT prevail? [2, 2] In this regard, reference to ICSID Convention may be challenged as it does not clearly define investment. To address this issue, in *Salini Costruttori SpA and Italstrade SpA v Kingdom of Morocco* the Tribunal defined that investment contemplates (i) contributions (ii) certain duration of performance (of the contract), (iii) participation in the risks of transaction and (iv) contribution to the economic development of the host State of investment [3, para 52]. Despite being challenged in further court practice, these criteria nonetheless shed some light on definition of investment. That is, when speaking of protection offered to foreign participants of OTC derivative transactions from standpoint of court practice these criteria should be also regarded.

Coming back to BIT coverage of OTC derivative transactions it should be added that ever increasing BIT practice resulted in drafting of Model BITs concluded by

certain states. As an example, 2012 US Model BIT expressly defining futures, options and other derivatives as investment may be mentioned [13, 3].

On the other hand, different types of investments have different economic implications. With that in mind contracting parties may opt to promoting specific types of investment by means of BIT. That is, certain types of investment may be protected by BIT while the rest shall fall out of its scope. To achieve this goal parties to a BIT opt for close-ended definition of investment and list exhaustive types of assets regarded as investment [6, 10]. In this case protection of OTC derivative transactions depends on provisions of particular BIT.

II. OTC derivative transactions in legislation of the Republic of Azerbaijan

Based on the above, it may be outlined that OTC derivative transactions are or may be protected by BITs. However, despite growing number of BITs there are still countries which have not signed a BIT with the Republic of Azerbaijan. Relations with such investors should be governed by general rules established by the Law No. 57 "On protection of foreign investment" dated 15 January 1992 (the "Law"). Article 3 of the Law lists forms of investment which also includes conclusion of agreements with nationals and legal entities of Azerbaijan envisaging other forms of foreign investment (*i.e.* other than those listed in Article 3 of the Law). This subparagraph refers to definition of foreign investment provided by the Law. As such, the Law defines foreign investment as any kind of property and proprietary rights, including for results of intellectual activity and other immaterial rights being contributed by foreign investors to the objects of business activity and other kinds of activity with the objective of obtaining the profit [14]. Given this definition and general wording it may be concluded that the Law provides certain level of protection to foreign investors concluding OTC derivative transactions with Azerbaijani counterparties. However, lack of regulation and practice on the matter would suggest that every particular transaction should be reviewed on case-by-case basis.

In the meantime, as noted above, BITs may provide certain protection for foreign investors concluding OTC derivative transactions. With that said, it should be noted that BITs concluded by the Republic of Azerbaijan do not fall under certain model and therefore it may not be said that every BIT provides same or almost the same level of protection. It should be also noted that BITs are subject to negotiations between the states and therefore they may not be all regarded under the same approach. However, most of the BITs include claims to money in definition of investment and therefore suffice for protection of foreign counterparties to OTC derivative transactions.

References:

1. Chisholm A., Derivatives Demystified: a step-by-step guide to forwards, futures, swaps and options, Second edition, John Wiley & Sons, 2010, 267p.

2. Levesque C., Case Comment: Abaclat and Others v Argentine Republic The Definition of Investment, The ICSID Review, 2012

3. Salini Costruttori SpA and Italstrade SpA v Kingdom of Morocco, 2003 ILM 609p.

4. Sornarajah M., The International Law on Foreign Investment, Third Edition, Cambridge University Press, 2010, 523p.

5. Sauvant K., Yearbook on International Investment Law & Policy, Oxford University Press, 2009, 698p.

6. Subedi S., International Investment Law Reconciling Policy and Principle, Hart Publishing, 2008, 229p.

7. Bilateral Investment Treaties 1995 – 2006: Trends in Investment Rulemaking, United Nations Conference on Trade and Development, New York and Geneva, 2007, 173p.

8. Organization for Economic Co-operation and Development, International Investment Law Understanding Concepts and Tracking Innovations, OECD, 2008, 340p.

9. Salacuse J, Sullivan N., Do BITs really work? An Evaluation of Bilateral Investment Treaties and their Great Bargain, Harvard International Law Journal, 2005, 67p.

10. Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka, ICSID Case No. ARB/09/2, Award (Oct. 31, 2012)

11. Abaclat and Others v. The Argentine Republic, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, (Aug. 4. 2011)

12. Delaume G., Convention on settlement of investment disputes between states and nationals of other states, International Law 64, 1966, 80p.

13. 2012 United States Model Bilateral Investment Treaty

14. The Law of the Republic of Azerbaijan No. 57 "On protection of foreign investment" dated 15 January 1992

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INTERNATIONAL FRAMEWORK FOR THE PROTECTION OF CHİLDREN'S SOCIAL RIGHTS

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Abstract

After the Second World War, significant progress was made in the international recognition and protection of children's rights. It should be noted that the international system for the protection of children as an integral part of the protection of human rights was created only within the United Nations after the Second World War. One of the main principles of this system is the declaration of respect and observance of human rights and freedoms without any discrimination. The main international legal mechanism for the protection of children's rights is the 1989 Convention on the Rights of the Child. This document is a universal international agreement defining the obligations of states to protect and ensure the rights of children. Under the Convention, in States parties, children enjoy equal rights with adults in the exercise of their rights. However, it is important to recognize that a child is a person who needs special care. Features of the legal status of children as a separate category in international human rights law determine the specifics of the subject of these rights. In most national laws, children belong to a separate social group. Up to a certain age, a child needs special care, care and special protection. Children are more susceptible to the negative consequences of the world around them, because children cannot independently provide their safety and protection for objective reasons.

Key words: *child rights, social rights, maintenance, state obligations, armed conflicts, age limits.*

The 1924 Geneva Declaration, considered the first international legal instrument to protect the rights of children in the modern sense, does not oblige the state because of its advisory nature. The 1948 Universal Declaration of Human Rights was an important step in the development of the human rights system as a whole. Although the 1948 Declaration does not establish a separate rule on the protection of children, it declares the need for special care and assistance for motherhood and infancy, proclaims the right of all children born in or out of wedlock to enjoy the same social protection (Article 25.2) [5, 70].

Note that the contribution of the Universal Declaration of Human Rights is so great that its norms can be applied to various categories of people, including children. Therefore, the Declaration addresses issues of human life, health, safety, education, social security and so on. These provisions apply to children. It should be noted that while in the Declaration of the Rights of the Child in 1924, children were considered as a special object of protection, then after the adoption of the Universal Declaration of Human Rights, there was already a tendency for children to be recognized as subjects of human rights.

In the 1950s and 1970s, the problems of protecting the rights of children, especially in the field of social security, began to escalate.The problem of paying child maintenance in different countries was of particular importance due to the growing

number of marriages with foreigners and stateless people at that time. In general, cross-border maintenance relations are governed by international conventions and legal assistance treaties, and secondly, by conflict of laws rules of national law. Among the most important international regulations governing cross-border maintance relations are The New York Convention on the Recovery Abroad of Maintenance (1956), The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations towards Children (1958), The Hague Convention on the Law Applicable to maintenance obligations (1973), The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (2007).

The New York Convention on the Recovery Abroad of Maintenance provides for the establishment by the countries that have acceded to the Convention of transmitting and receiving agencies. In accordance with the Convention, the sending and receiving agencies should not require any fees for the services provided [10]. The Convention also sets out procedural rules for litigation of maintance disputes. Unlike the 1956 Convention, the conflict of laws provisions of the 1973 Convention apply to both maintenance obligations for children and maintenance obligations for adult family members. By virtue of Art. 3 the right defined by the Convention applies regardless of any requirements of reciprocity and whether it is a right of a state party [7, 224].

The Convention envisages some collateral provisions regarding the scope of maintenance, the right to sue, the amount of maintenance, the duration of the maintenance and compensation. After the adoption of the Universal Declaration of Human Rights, it took a long time to develop, sign and enforce an international legal act specifically designed to protect the rights of children. Such an act was the Declaration on the Rights of the Child, adopted by the UN General Assembly in 1959. This document sets out ten principles that relate to the most important aspects of children's lives. The preamble of this document refers to the UN Charter and the Universal Declaration of Human Rights, it states that "the child, due to his physical and mental immaturity, needs special protection and care, including appropriate legal protection, both before and after birth" [8, 112].

The 1959 Declaration improved the provisions of the 1924 Geneva Declaration. The Declaration states that children should be provided with special protection in accordance with the law and other means, as well as by creating favorable conditions for their physical, mental, spiritual and moral development. In addition, the Declaration also contains provisions regarding persons responsible for adopting laws and for raising and educating children, and above all, for ensuring a higher level of interest for children. The most important point of the 1959 Declaration was that the phrase “have the right” was included in its text. For example, the Declaration states that a child receives the right to a name and citizenship from birth (p. 3), the child must have the right to healthy growth and development, the right to adequate food, housing, recreation and medical care (p. 4) and the right on education (p. 7) and etc. [3, 310].

In general, the 1989 Convention on the Rights of the Child is the main international legal mechanism for protecting the rights of children. This document is a universal international agreement defining the obligations of states to protect the rights of children and ensure their rights. The authors of the Convention emphasized the phased development of children and the need to provide them with the necessary physical, material, moral and psychological support. The development of the convention was based on the idea that raising a child as a normal, socially significant citizen and as the

future of every society and state is a priority not only of parents, but also of the state.

Under the Convention, in States parties, children enjoy equal rights with adults in the exercise of their rights. However, it is important to recognize that a child is a person who needs special care. The participating States undertake to adhere to the principle that the realization of the rights of the child does not depend on physical or mental health, national or social origin. According to Convention the term of "child" means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier [4, 184]. However, there are different approaches to understanding adulthood. Different countries have different approaches to this issue.

It should be noted that all countries of the world, except the USA, have ratified this Convention. Although the United States signed the Convention on February 16, 1995, they have not yet ratified it. There are many reasons for this step. There is an opinion in US society that this document limits the rights of parents to raise their children, especially authors who comment on articles 13-16 of the Convention. Another reason is that the Convention contains provisions that are contrary to US criminal law. For example, in the United States there is no rule that sets a minimum age limit for capital punishment at 18. Even in 18 states, the age limit is 15 years.

The 1989 Convention enshrines children's rights in various fields. The text of the Convention lays down such important rules as the obligation of the state to take care of children (Article 3.3; 4; 5), the right to life (Article 6), the right to a name and citizenship (Article 7). were made. The Convention provides for the rights of children, including the right to health (24), social security (article 26), the right to an adequate standard of living (article 27), education (article 28) and cultural law (article 30) social rights such as the right to rest and leisure (Article 31) and the right to protection from economic exploitation (Article 32).

One of the main points of the Convention is the determination of the age of involvement of children to armed conflicts. The age limit of 18 years could not be determined as a result of negotiations held on the eve of the adoption of the Convention. Only article 38, paragraph 3, states that States parties should refrain from conscripting any person under the age of fifteen into their armed forces. States Parties shall endeavor to give high priority to the recruitment of persons who have reached the age of 15 but have not yet reached the age of 18.

However, over time, the problems of increasing the participation of children in armed conflict became more relevant, and this problem began to attract the attention of the wider international community. Thus, at the 3rd session of the Committee on the Rights of the Child, the development of an optional protocol on this issue began. The main innovation of this document, adopted in 2000, was an increase in the age of participation in armed conflicts from 15 to 18 years. Articles 1 and 2 of the Protocol state that States parties shall take all possible measures to ensure that their armed forces under the age of 18 are not directly involved in hostilities. States Parties shall ensure that persons under the age of 18 are not required to be recruited into the armed forces of these States [1, 118].

Currently, 166 countries have ratified the Optional Protocol, while Iran, the Central African Republic, Fiji, Haiti, The Gambia, Lebanon, Liberia, Myanmar, Nauru, Somalia, Suriname, Zambia and the Solomon Islands have not yet ratified [9].

Along with the conventions that have brought legal force and the obligation of states to protect the rights of children, declarations of recommendation and other relevant documents have been adopted. One such legal act is the Universal Declaration and Plan of

Action adopted by UN General Assembly resolution S-27/2 in 2002. This document states that world leaders strive to provide a better future for every child. The Declaration sets out recommendations for identifying particular cases of international legal protection of children [2, 214].

As mentioned in the previous paragraphs, one of the main problems of children in the social sphere is the payment of maintance. One of the main international legal acts recently adopted in this area is the The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The adoption of the Convention is necessitated by the existence of procedures to ensure the prompt, effective, economical collection of maintance in cases where the recipient and payer of maintance reside in different countries. The Convention applies to the maintenance obligations of parents in relation to children under the age of 21. In addition to the maintance obligations of parents in relation to children, the Convention also applies to maintance obligations of spouses, as well as with the relevant reservation of a contracting state and an agreement, and in other cases where it is possible to recover maintance. A state party to the Convention is entitled to make a reservation on the collection of maintance only for children under 18.

The fifth chapter of the Convention is devoted to the recognition and enforcement of decisions of judicial, administrative authorities or alimony agreements. Enforcement of decisions is made in accordance with the domestic law of the debtor state [6, 302].

One of the main elements of the 2007 Hague Convention is the determination of the age limit for the collection of alimony at the age of 21 years. The scientific literature has repeatedly stated that the definition of 18 years of age as the basis for suspension of child support obligations is incompatible with existing realities. Currently, an 18-year-old can rarely support himself.High technology requires special knowledge and education from employees. The opportunity to receive free higher and secondary vocational education is no longer publicly available. In the absence of a desire to provide assistance from a separately living parent, the entire burden of the material content of an adult student, the costs of his education are borne by the parent with whom he lives. Obvious is the need to allow the collection of alimony for the maintenance of a child studying full-time in an educational institution of higher and secondary vocational education for the period of study, but not later than 23 years or, as provided for in the Convention, up to 21 years.

Recently, stagnation has been observed in the process of adopting international legal documents to protect the rights of children. The most recent change in this area is the adoption of the Optional Protocol to Convention on the Rights of the Child. On November 19th 2011.

The Optional Protocol allows the Committee on the Rights of the Child to receive complaints of violations of children's rights. The term “information” is used in the protocol to refer to such complaints. The protocol does not include any new rights, but the Committee on the Rights of the Child is authorized to consider cases related to violations of the rights of the child in accordance with the following documents: Convention on the Rights of the Child; The Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography. This protocol, which entered into force on April 14, 2014, is currently ratified by 32 countries and 25 countries have signed but not ratified [9]. People under the age of 18 make up about thirty percent of the world's population. In most

cases, they cannot exercise their rights on their own, much less ensure their protection. Decisions for the child are made by parents or guardians, and the well-being of the child depends on them. There are even more vulnerable children in situations of armed conflict, refugee children, children of migrant workers, stateless children, children with disabilities, and so on.

The 1989 Convention on the Rights of the Child can be regarded as the largest regulatory mechanism for protecting the rights of children both in peacetime and in armed conflicts, at least in terms of the number of countries that it has ratified. First Optional Protocol to the 1989 Convention sets the age limit for 18 years old, which is one of the most important rule in armed conflict. The ratification of this protocol by most countries of the world already indicates that the international community has a tendency to reduce the number of children involved in armed conflicts.

References:

1. Bruce Oswald, Helen Durham, Adrian Bates. Documents on the Law of UN Peace Operations. Oxford University Press, 2010, 608p.
2. Buck Trevor. International Child Law. Psychology Press, 2005, 331p.
3. Daniela Carpi, Marett Leiboff. Fables of the Law: Fairy Tales in a Legal Context. Walter de Gruyter GmbH & Co KG, 2016, 463p.
4. Jančić O. Cvejić. The Rights of the Child in a Changing World: 25 Years after The UN Convention on the Rights of the Child. Springer, 2015, 410p.
5. Julie L. Drolet. Social Development and Social Work Perspectives on Social Protection. Routledge, 2016, 310p.
6. Noronha F.E. Private International Law in India: Adequacy of Principles in Comparison with Common Law and Civil Law Systems. New Delhi, Universal Law Publishing, 2010, 327p.
7. Recueil Des Cours - Collected Courses, 1992-II. Academie de Droit International de la Haye Martinus Nijhoff Publishers, 1993, 416p.
8. Rita Joseph. Human Rights and the Unborn Child. BRILL, 2009, 368p.
9. http://indicators.ohchr.org/
10. https://assets.hcch.net/docs/30c3a5d7-4a53-4a6c-aef5-226600585cc3.pdf

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THE RIGHT TO SOCIAL SECURITY IN INTERNATIONAL ACTS

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Abstract

The right to social security, including the right to social insurance, pensions and social protection, medical care, is recognized as an important guarantee of social status and the realization of the fundamental rights and freedoms of every person. It is contained in all international documents enshrining fundamental human rights and freedoms. Moreover, in these documents only the minimum level of social security and social protection is fixed, which the state, which claims that it is democratic, social, must provide its citizens. Unfortunately, the provisions that are not always enshrined in international acts, even if the state has ratified them, are practically implemented, sometimes remaining only a declaration By its nature, the human right to social security has two aspects: firstly, it is the right of everyone to help and support from society and the state, who, due to objective circumstances, cannot provide for themselves, and secondly, it is the state's obligation to guarantee the provision of sufficient funds for a decent existence for persons objectively deprived of the ability or ability to earn income, as well as helping the family in connection with the birth and upbringing of children. The state should develop a social insurance system so that everyone can ensure their social and material well-being, and in every way promote and encourage charitable activities in the form of donations to extrabudgetary social funds, disabled people's and veteran societies, social service institutions, etc.

Keywords: *social security, human rights, social insurance, pension, social protection, ILO, convention, CIS, adequate standard of living.*

The leading place of the human right to social security in the system of socio-economic rights is confirmed by the fact that it is enshrined in all major international acts, both universal and regional, concerning human rights.

In Art.22 of the main international human rights document, The Universal Declaration of Human Rights, it is established that, «everyone, as a member of society, has the right to social security». The declaration also states that, everyone has the right to a standard of living adequate for the health and well-being of himself and of his family [1, 812]. This article also indicates the need for special care and assistance in case of motherhood and infancy.

Thus, the Universal Declaration of Human Rights enshrines not only the right to social security, but also the right to a decent standard of living, which guarantees a person and his family the opportunity to satisfy their basic needs, and also indicates the list of social risks upon which the right to social security (unemployment, illness, disability, the onset of old age and other cases of loss of livelihood due to circumstances beyond the control of a person). In this case, it should be noted that the above list is open. It presents only the most widespread social risks and any state can, if there are economic opportunities, supplement it with other social risks.

Another universal act entirely devoted to economic, social and cultural human rights is the International Covenant on Economic, Social and Cultural Rights. The preamble of this document recognizes that the ideal of a free human person, free from fear and need, can only be realized if such conditions are created under which everyone can

enjoy their economic social and cultural rights, as well as their civil and political rights [2, 69]. Special protection must also be provided to mothers for a reasonable period before and after childbirth, and paid mothers or leave with sufficient social security benefits should be provided to working mothers during this period. Article 11 recognizes the right to an adequate standard of living for himself and his family [6].

Among the goals and objectives enshrined in the Declaration on the Goals and Tasks of the International Labor Organization (annex to the ILO Constitution), an obligation to promote the adoption of programs by countries of the world is recognized; aimed at improving living standards, expanding the social security system, in order to provide basic income for all those in need of such protection and full medical care, protecting the welfare of children and mothers, providing the necessary food, housing. The right to social security is most fully secured by acts adopted by this organization.

The necessity of observing the right to social security and taking measures to implement it is indicated in ILO Recommendation 1944, No. 67 "On income security". This paper notes that an essential element of social security is to provide income in order to reduce poverty and prevent poverty by restoring to an acceptable level income lost due to disability (including old age) or due to the inability to get paid work, or due to the death of the breadwinner [3, 49].

It is also recommended (if possible) the organization of compulsory social insurance. The provision of certain categories of persons, in particular dependent children, and persons with disabilities, elderly people and widows in need, should be provided by the system in the manner of social assistance: they should be entitled to allowances in reasonable amounts.

Recommendation No. 67 sets out the totality of cases and the circle of persons who should be covered by the social insurance system, the size of benefits and the conditions for paying contributions. At the same time, the Recommendation refers to insured events those whose occurrence prevents the insured from earning livelihoods due to disability or inability to obtain paid work, as well as the death of the insured who left his family who was dependent on him. These are also certain cases of extreme necessity, causing extreme tension related to the restriction of income, the compensation of which is not provided for in any other way.

In Art.7 Recommendations give a specific classification of insured events: illness, motherhood, disability, old age, death of a breadwinner, unemployment, expenses due to emergency situations, work-related injuries. It is envisaged that benefits should not be paid simultaneously in connection with more than one of the following cases: disability, old age and unemployment.

Regarding the amount of benefits in Art.22 says that "benefits must correspond to the previous earnings of the insured person, on the basis of which the latter paid contributions. Persons working for remuneration must be insured against the totality of cases covered by social insurance. Individuals providing themselves with work must be insured in case of: disability; old age and death. This act defines the main directions in the field of providing, welfare, children and the maintenance of needy invalids, elderly people and widows.

ILO Convention No. 117 "On Basic Norms and Purposes of Social Policy" is also directly related to social rights, since it indicates that all policies should, first of all, be aimed at achieving welfare and development of the population, as well as at encouraging its aspirations to social progress. The Convention considers raising the living standards of the population as the main goal in planning economic development.

Other ILO acts that reveal specific ways to realize the right of citizens to social security include:

Convention No. 102, On Minimum Standards of Social Security (1952);

Convention No. 118, On Equal Rights of Citizens of the Country and Foreigners of Stateless Persons in the Field of Social Security (1962);

Convention No. 157, On the Establishment of an International System for the Preservation of Rights in the Field of Social Security (1982);

Recommendation No. 167, On the Establishment of an International System for the Preservation of Rights in the Field of Social Insurance (1983).

One of the most important regional sources enshrining the right to social security, as mentioned above, is the Council of Europe Act of the European Social Charter of 1961 (revised in 1999), which, along with the European Convention for the Protection of Human Rights and Fundamental Freedoms, forms a single mechanism for protecting rights person in Europe.

The Charter guarantees a number of fundamental rights related to housing, healthcare, education, employment, social protection, as well as a non-discriminatory approach, which can be classified on two grounds: conditions, labor and social cohesion (this concept includes the right to social security, the right to social and medical care, the right to enjoy social benefits).The right to social security is included in the list of the most important fundamental human rights and is included in the minimum obligation that the state must take upon itself upon ratification of the Charter. In addition, paragraph 3 of the article 12 of the Charter obliges states to constantly strive to bring the social security system to a higher level [4, 157].

A significant place in the system of European acts on social human rights is occupied by the European Social Security Code of 1964. The Preamble of the Code states that its adoption will contribute to raising social security standards in Council of Europe member states to a higher level than is enshrined in the ILO Convention. No. 102 "On the minimum standards of social security." The Code establishes obligations in the field of medical care (including any painful condition, regardless of its cause, as well as pregnancy, childbirth and their consequences), disability assistance, unemployment, old age (including the establishment of retirement age), in cases of industrial injury, pregnancy and childbirth, disability, loss of breadwinner, assistance to families.

The minimum percentage of citizens that must be protected in each case is fixed. Part XII of the Code contains standards to which periodic cash payments must meet. The amount of benefits for workers is set as a percentage of wages (from 40 to 50%), and for non-workers, the amount of benefits should be sufficient to adequately support the family of the recipient, which should not be less than the corresponding assistance for employees [9].

The right to social security is also enshrined in acts adopted by the Commonwealth of Independent States. In Art. 16 of the CIS Convention on Human Rights and Fundamental Freedoms of 1995 stipulates that everyone has the right to social security, including social insurance by age, in case of illness, disability, loss of a bread-winner, parenting and in other cases established by national legislation.

As mentioned above, in the CIS, there is an Inter-Parliamentary Assembly (an advisory body for the preparation of draft legislative documents of mutual interest),

with a constantly working commission on social policy and human rights. The following documents were prepared and adopted within the framework of the Assembly: the Concept of the formation of the legal framework and mechanisms for the implementation of the social state in the CIS countries, the Main directions of the formation of social policy in the CIS member states, the Law on the social protection of disabled people, etc.

In 1994, the Inter-Parliamentary Assembly approved a document of great importance in the field of social rights of citizens of member countries - the Charter of Social Rights and Guarantees of Citizens of Independent States. In Art. 40 of the Charter states that states guarantee the right to social security for people living in: their territory and that it is important to have full pension in old age in case of illness, disability, loss of breadwinner, in other cases provided for by national law, regardless of the territory of which state the right is acquired for retirement benefits, as well as the payment of state benefits to families with children. The minimum level of pension provision is established within the framework of providing a living wage and taking into account inflationary processes in the state of permanent residence of citizens [7]. The provisions set forth in this article; guarantee the citizens of the once united state the observance of the principle of social justice

The purpose of the concept of pension provision for the countries of the Commonwealth is not to bring the legislation of all the countries included in it to a common denominator, but to solve the issues of harmonization of legislation in the field of pension systems, to coordinate their activities in the social sphere and, above all, in relation to to migrant workers.

For CIS member states, the problem of harmonizing legislation taking into account the experience of legislative activity of the European Union is very relevant. Within the CIS, it is advisable to develop and adopt model laws and recommendations in the field of social security and insurance, with the subsequent submission of such documents to the parliaments of the Commonwealth countries for use in national laws.

The international community must treat all human rights globally, on a fair and equal basis, with the same approach and attention. As Kofi Annan noted, speaking at Tehran University on the occasion of the 50th anniversary of the Universal Declaration of Human Rights, "one cannot choose from among human rights, ignoring some and insisting on others. Only equal application of rights can ensure their universal recognition. They may not be applied selectively or relatively or as a limitation of others" [8].

States have a duty to promote and protect all human rights and fundamental freedoms, both civil and political, as well as economic and social. The duty of states to protect socio-economic rights is to implement progressive economic and social reforms, to ensure the full participation of their people in the process and benefits of economic development, to use their resources to provide everyone with equal opportunities to use these rights. One cannot but agree that the results achieved by the international community on the implementation of socio-economic rights are less impressive than in the field of realization of civil and political rights.

The formation of social statehood is a constant and continuous process, requiring a response to new situations in the economy, and in politics and in morality. Factors such as economic instability, population growth and others impede the widespread provision of socio-economic rights. Nevertheless, in numerous studies conducted by the UN, it is concluded that these rights are legally binding and economically feasible for their implementation. States must develop appropriate plans and take specific measures.

First of all, it should be noted that modern international law is developing to a large extent under the influence of the United Nations. Largely due to the ongoing work of the UN, the universal nature of human rights has been clearly defined and recognized in international law. Although most people associate the UN with the problems of peace and security, a huge part of its resources actually goes to fulfillment contained in. The Charter pledges to promote "raising the standard of living, full employment of the population and. conditions of economic and social progress and development".

In its actions, the UN is guided by the conviction that lasting peace and security are possible only if the economic and social well-being of people is ensured everywhere. The debate in recent years on economic and social problems increasingly reflects the commonality of interests between rich and poor countries, in solving many problems that go beyond national borders. Permanent poverty and unemployment in the opening region can quickly affect others, not least through migration, social explosions and conflicts. In recent decades, the world has witnessed tremendous progress in economic development, but acquiring wealth and achieving prosperity is so uneven that distortions in economic development exacerbate already serious social problems and political instability in virtually all regions of the world.

International human rights standards have been developed. A common objective is the implementation of these standards. And they must be implemented in a way that would have the basis of human rights themselves.

Poverty deprives people of the enjoyment of human rights. Extreme poverty is a humiliation of human dignity, and often a violation of human rights. Poverty is a worldwide phenomenon affecting all countries, including developed countries. Human rights are an accepted set of norms and principles that define and evaluate strategies for economic growth in terms of ensuring an even and sustainable reduction in poverty. In their context, policies should be put in place to increase the effectiveness of poverty reduction strategies and at the same time establish the responsibility of different actors for the content and implementation of such strategies.

The Millennium Declaration, approved by UN General Assembly resolution 55/2, does not contain a section specifically devoted to social security. However, section III of the Declaration on "Development and the Eradication of Poverty" states, "we will make every effort to save our fellow tribesmen, men, women and children from degrading poverty in the conditions of which more than a billion of them are currently forced to live" [5, 19].

Undoubtedly, ensuring the dignity of the least protected sections of the population is the fight against poverty. And here it is argued that success in achieving these goals depends, in particular, on each specific country that recognizes itself as part of the world community. Ensuring the relevant rights requires both international and national action. At a time when poverty exists in all parts of the world, including developed countries, a gap continues to exist between civil and political rights, as well as economic, social and cultural rights. The holistic vision of the Convention on the Rights of the Child, which has been ratified by the largest number of States and is the only treaty combining civil and political as well as economic and social rights, should be further disseminated.

Independent UN experts on human rights and extreme poverty argue that development results should benefit all people, and especially the most vulnerable and socially disadvantaged categories. Actors who play an important role in ensuring the protection of human rights are considered as bearers of obligations whose obligations are to seek the realization of these rights. The state is the main bearer of these responsibilities, although the international community also has a responsibility to protect human rights.

References:

1. Bantekas Ilias, Michael Ashley Stein, Dimitris Anastasiou. The Convention on the Rights of Persons with Disabilities: A Commentary. Oxford: Oxford University Press, 2018, 1376p.

2. Drolet L.Julie. Social Protection and Social Development: International Initiatives. Dordrecht: Springer Science & Business Media, 2013, 163p.

3. Diller M.Janelle. Securing Dignity and Freedom Through Human Rights: Article 22 of the Universal Declaration of Human Rights. Leiden: Martinus Nijhoff Publishers, 2012, 232p.

4. Pennings Frans, Gijsbert Vonk. Research Handbook on European Social Security Law. Cheltenham: Edward Elgar Publishing, 2015, 628p.

5. Hasan Rumy. Religion and Development in the Global South. Brighton: Springer, 2017, 225p.

6. https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

7. http://constitution.garant.ru/act/right/megdunar/1155307/

8. http://www.un.org/russian/topics/liumanrts/annivers.htm

9. https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168006b65e

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OIL POLICY OF THE MIDDLE EAST COUNTRIES IN THE GLOBAL OIL MARKETS AFTER IRAQ WAR

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Abstract

Our assessment is that the immediate terrorist effects Iraq has generated are not as dramatic as commonly supposed but that the long-term effects have yet to be determined. In years to come, training and tactical development in Iraq will likely be one of several factors contributing toward the growth of terrorist movements, the others being determined primarily by domestic circumstances.

One of the most significant is what can best be termed a sense of Iraq fatigue among neighboring states the belief that, while the conflict and Iranian influence in Iraq are certainly alarming, they have been superseded by more-pressing "local" concerns, particularly in the Levant. Threat perceptions of Iran also vary significantly, both across different subregions and countries and between governments and their publics.

Taken in sum, these dynamics present both challenges and opportunities for U.S. regional policy. Understanding gaps between U.S. and regional views of the conflict's consequences and implications will therefore be paramount particularly for gauging the willingness of neighboring states to cooperate on U.S. objectives. Similarly, the United States must be attentive to how the post-Iraq environment, especially altered views of U.S. power and credibility, have opened up possibilities for new paradigms of regional security cooperation, involving traditional Middle East allies but also extra regional states, such as Russia or China.

Keywords: *Middle Eastern states, Iraq War, U.S. efforts, Gulf Investment Corporation, Economic Agreement, Gulf Cooperation Council.*

Introduction. Close to seven years after the invasion of Iraq, the Middle East is a region in flux. Regardless of the outcome in Iraq, the ongoing conflict has shaped the surrounding strategic landscape in ways that are likely to be felt for decades to come.

The Iraq War's reverberations in the region are broad ranging, affecting relations between states, political and societal dynamics inside states, the calculations of terrorists and paramilitaries, and shifts in public views of American credibility. The balance sheet of these changes does not bode well for long-term U.S. objectives in the Middle East. That said, a better understanding of how Middle Eastern states and no state actors are responding to the war's aftermath can help contribute to U.S. policies that may better contain and ameliorate the negative consequences of the conflict and perhaps even increase U.S. advantage. Until the 2003 Iraq War, the regional balance of power has always involved Arab powers and Iran. Today, that balance has shifted toward Iran, although the internal unrest within Iran following its 2009 presidential election may significantly constrain Iran's maneuverability abroad. Still, the perceived removal of the Iraqi buffer to Iran following the Iraq War led to widespread concern among Arab states that Iran can more easily maneuver in the core of the Middle East, from Lebanon to Gaza. The ousting of the Iraqi leader created the perception of increased vulnerability on the Arab side, resulting in a tendency to exaggerate the specter of Iran and its associated nonstarter allies.

Statement of the task. The aim of our work is to determine how the states should develop its foreign policy after Iraq War. Encourage Arab regimes to adopt incremental yet meaningful political reform as part of a long-term push to counter radicalization and ensure the viability of key U.S. partners. To mitigate the war's effects inside key regional states, U.S. policy should focus both on ensuring that governing regimes do not abuse their newly entrenched power to crack down on domestic opposition and should take measures to prevent weakening state conditions from evolving into failed states (with all the accompanying problems that involves: shelter for extremists, a magnified proliferation danger, greater potential for massive human rights abuses). This suggests that U.S. policy should recognize the long-term security implications of continued repression and should avoid putting regional reform on the back burner, even if the focus shifts from holding elections to strengthening democratic institutions and practices.

Results of the study. This work has surveyed the implications of the Iraq conflict for the Middle East strategic landscape, showing how the full effects of the conflict are more expansive yet also more nuanced than is commonly assumed. Previous analyses of the "Iraq effect" have used a conventional balance-of-power lens that divides the new regional map too neatly between an ascendant Iran and an opposing bloc of Sunni Arab states. Others have overstated the potential for a contagion of sectarian conflict and increased terrorist incidents resulting from the conflict. We found that, while elements of these trends are certainly present, they do not reveal the full complexity of regional developments. They also at times miss more-subtle perceptual shifts among neighboring regimes, Arab publics, and nonstate actors.

Analysis of research and publications. In this work was bringing reference from foreign authors' books, articles, and reports and from internet resources. In addition, was benefited from the materials which mentioned end of the paper. A comparative analysis of regional and international situation after Irag War was studied by scientists: Askari H.T. "Collaborative Colonialism: The Political Economy of Oil in the Persian Gulf", Fishman B.A. After "Zarqawi: The Dilemmas of the Future of Al Qaeda in Iraq", Mohamed A.T. "The GCC Economies: Stepping Up To Future Challenges", Roderic H. D. "Where is the Middle East", Gaballah K.A. "Experts: Iran Mapping the Future of the Region Together with Saudi Arabia in the Absence of an Egyptian Role".

Because of the richness in oil and gas resources, the GCC states have not developed much in the non-oil sector of their economies. Industrial development, particularly outside the oil sector, is vitally important for independent, sustained, and productive growth. The Economic Agreement sets forth the aspirations of the six members for development in industry and agriculture.

The best place to start this discussion of industrial development is with the Gulf Organization for Investment. Over the years, it has been called by such other names as Gulf Investment Authority and Gulf Investment Corporation. The basic statue of the GOI was approved on 19-20 June 1982 in Riyadh by the GCC finance and economic ministers. At the time, it was mistakenly reported that the Bahrain finance minister had said that the capital of organization would be 200 million shared by the six member states that the each state was entitled to offer 49 percent of its share to its own citizens [1, 21]. Other sources reported that no final decision on capital had been made.

Reviews the role and extent of oil revenue recycling and its implications for global financial stability. It identifies a number of policy issues relevant to the international de-

bate on current issues in money and finance relating to the six member states of the Gulf Cooperation Council. One of the distinctive features of the world economy in recent years has been the ongoing and marked increase in oil prices. The nominal price of Brent crude oil reached a historical peak in the first quarter of 2008, while its real price has roughly quadrupled since early 2002, exceeding the record level reached in 1974, though still falling short of its maximum in 1979. Hence, the scale of the present price hike is in many respects comparable to the oil price shocks of the 1970s, even if it is taking much longer to unfold. Moreover, the hike in oil prices coincided with a rise in global oil production by 9.6% and an increase in global oil consumption by 7.7% from 2002 to 2006. As a result, oil-exporting countries have experienced substantial windfall gains. It is important to note that the main beneficiaries of these windfall gains are just a handful of countries, among them the six economies of the GCC, which together hold roughly 22% of world crude oil production [2, 21].

Taking cumulative current account surpluses as a rough benchmark for measuring the pool of petrodollars available for recycling is common practice. The upswing in these balances has been remarkable. Whereas many GCC countries exhibited current account deficits during the 1990s, sizeable current account surpluses have been recorded since 2003, ranging from an estimated 7.1% of GDP in Oman to 35.7% in Qatar in 2008. The total current account surplus of the GCC region is expected to increase from USD 25.5 billion in 2002 to USD 207.3 billion in 2008. Taking a broader perspective, the rapid rise in oil-exporting countries' current account balances is even more impressive. The joint current account surplus of Norway, Russia and the OPEC member states is forecast to surge from USD 88.2 billion in 2002 to USD 412.5 billion in 2008 [3, 18].

The flipside of these huge current account surpluses is a significant redistribution of income from oil importers to oil exporters. This has contributed to the current configuration of global current account imbalances. As depicted in, external positions have widened on an unprecedented scale in recent years, with world deficits mainly concentrated in the United States and world surpluses spread across a larger number of economies, including many emerging market countries [4]. In particular, within less than a decade, oil-exporting countries have emerged as a major net supplier of capital, even outpacing the overall current account surplus growth posted by emerging Asian countries from 2004 to 2006. In the medium term, however, oil exporters are not expected to keep up with the rapidly growing Chinese position – as already corroborated by the 2007 and 2008 forecasts. If oil exporters want to deploy their oil revenues, they have two options: oil revenues can be used either for the import of goods and services (trade channel or absorption channel) or for the purchase of foreign assets in international capital markets (capital account channel). In the first case, some of the oil revenues are re-directed towards goods and services markets in other (often oil-importing) countries, which lowers the GCC countries' current account surpluses and reduces the negative effects that higher oil prices have on purchasing power (and thus growth) in oil-importing countries.

All in all, this balance of payments data evidence suggests that GCC countries currently invest roughly half of their oil revenues in financial assets. Traditionally, financial investment has been channeled through central banks and monetary authorities. Particularly in recent years, however, the fairly stable increases in the official foreign exchange reserves of the GCC region, whose stock totaled USD 76 billion in 2006, have not kept pace with the surge in its current account surpluses. Instead, there has been a

proliferation of SWFs. These funds are nothing new – one of the world's first SWFs was founded in Kuwait as early as 1953 – but only in recent years has their rapidly growing size attracted public attention [5]. None of the GCC region's SWFs disclose detailed figures on their assets under management, but rough market estimates corroborate that their assumed overall size already forms a multiple of recorded foreign exchange reserves, from USD 750 billion to USD 1,500 billion. It should be noted, however, that the lines of demarcation between investment by a SWF and a central bank might be blurred – as in the case of the Saudi Arabian Monetary Agency. As of 31 December 2007, SAMA reported USD 335 billion in non-reserve holdings of international assets on and off its balance sheet. Consequently, in its recent Global Financial Stability Report, the IMF included these assets in its analysis of SWFs.

When analyzing financial petrodollar investment it is essential to keep in mind the governments motives. Although the GCC countries disclose very little on that issue, three possible motivations can be identified. First, traditional foreign exchange reserves, which are generally managed by a central bank. The management is required to focus on highly liquid assets and to follow a relatively conservative investment policy. Second, stabilization funds, the purpose of which is to smooth government expenditure and decouple it from the short-term volatility of oil revenues so as to avoid boom-and-bust cycles. Though stabilization funds have a medium-term horizon, considerations of liquidity and low risk remain important because the funds may be drawn upon at relatively short notice. Last, petrodollars are "genuinely" saved, i.e. handed on to future generations [32, 199]. These funds are particularly relevant in countries where the life-span of the known oil resources is relatively short, i.e. namely in Bahrain and Oman. Their long-term horizon means that savings funds can afford to invest in a much broader range of assets and to take on more risk. Basically, both stabilization and savings funds can be managed by central banks or SWFs, but they are usually associated with the latter.

Analyzing financial petrodollar recycling in detail is much trickier than assessing trade aspects, because the related disaggregated capital flows are reported only sketchily by the GCC countries central banks, monetary authorities and SWFs. As consequence, the analysis mainly relies on counterparty information – which is rather thin on the ground owing to the limitations of official statistics [3, 13].

The BIS locational banking statistics are an important source of counterparty information. These report on international commercial banks net liabilities vis-à-vis individual countries. The GCC countries net claims against the international banking sector, worth USD 65 billion in the third quarter of 2007, amount to only half of their historical peak in 1990 [6]. Moreover, against the benchmark of the regions cumulative current account surplus, it becomes evident that the GCC economies claims reported to the BIS represent a rapidly declining percentage of their overall financial resources invested abroad – or, in other words, that the recent additional oil export revenues have mostly been invested in other asset classes. Further evidence provided by the BIS shows that of the roughly USD 450 billion stock of gross deposits made by OPEC member states in the fourth quarter of 2006, 11% was placed in BIS reporting banks in the United States, 20% in offshore centers and the lions share in Europe. These figures hint at oil exporters having a geographical preference for London as an international financial center. It can also be deduced from the data that geographical preferences seem to be unrelated to considerations of currency composition, since OPEC member states hold 70% of their

European deposits in US dollar accounts. Nevertheless, there is evidence that the currency composition of OPEC deposits in BIS reporting banks has recently been more sensitive to changes in interest rate differentials than in the past.

A second source of publicly available counterparty information is the US Treasury International Capital data, which provide a geographical breakdown of foreign portfolio holdings of US securities. The GCC regions investment in US securities has risen noticeably in past years. In a worldwide comparison, the holdings of GCC countries showed the most rapid growth during the period from June 2005 to June 2006 on a percentage growth basis, increasing by just over 50% from USD 161 billion to USD 243 billion. Thus, a considerable part of the recent additional oil export revenues has been invested in the US financial market. A more in-depth look at the breakdown of the TIC data suggests that GCC countries have diversified their reported assets over the full range of US securities [7].

Since 2002, the share of US equities has hovered at around 50% of the GCC region's US securities portfolio, while its demand for short-term US government debt has – most notably – increased from 4.4% to 14.5% during the same period. But an important caveat must be added: the TIC statistics do not track the original source of funds entering a country so that third-party purchases cannot be identified. In view of the enormous size of recent UK purchases of long-term US securities and the apparent correlation between these purchases and the oil price, it may be assumed that securities purchases via the United Kingdom represent a key channel for petrodollar investment [8]. As a consequence, the true extent of oil exporters' investment in the United States may be significantly understated in the official statistics.

A third source of counterparty information is the Zephyr database, distributed by the Bureau van Dijk, which contains flow data on M&A, IPO and venture capital deals on an international basis. Reliable data are only available from 2003 onwards, but it can still be seen that the GCC countries' appetite for these transactions is strong and picked up considerably in 2006 and 2007, with total deal values amounting to USD 37 billion in 2006 and USD 51 billion in 2007 [8].

Piecing together the information obtained from these three sources leads to the following conclusions. First, GCC countries have diversified their international investment portfolios. In contrast to the 1980s and 1990s, the importance of international bank deposits has declined. Instead, US securities and M&A make up a more significant share of the GCC regions identified net foreign assets. This rise in risk propensity is corroborated by anecdotal evidence. According to this, the regions SWFs make use of their more progressive investment mandates and of today's broader investment opportunities in order to hold instruments ranging from fixed income, shares and real estate to hedge funds, private equity and other high-yield product classes. It is also felt that GCC countries currently tend to invest in a more profit-oriented way than other major oil-exporting countries, such as Nigeria, Norway, Russia and Venezuela. Second, as indicated by both the TIC data and the currency decomposition of the BIS data, the United States is still the main recipient of GCC countries funds. Third, and in contrast to the previous episodes of higher oil prices, growing risk appetite seems to be resulting in an increasing role for emerging market investment – which is not captured in the above mentioned third-party statistics.

Gulf Cooperation Council countries have seen impressive economic development in recent years, making the region one of the most prosperous in the world. Based on

surging hydrocarbon revenues, these countries as a group have nearly doubled their nominal GDP since 2003 to an estimated USD 791 billion in 2007. The tripling of oil prices over this period has further strengthened the already prominent role played by the hydrocarbon sector, which accounted for nearly half of the aggregate GDP in GCC countries in 2006. The main export good is oil, representing, on average, 70% of GCC countries total exports over the period 2003-2007. In 2006 the GCC region accounted for more than one fifth of world oil production. Moreover, 40% of proven world oil reserves and about 23% of proven world gas reserves are located in the GCC area.

Three GCC countries are among the top ten countries in terms of proven oil reserves. On current production levels, Saudi Arabia's oil reserves are expected to last for 77 years focuses on GCC countries role as energy suppliers and trading partners from a global and regional perspective. It provides facts and figures on issues related to energy and trade and complements, which deals with economic structures and developments in the GCC region and on current issues in money and finance.

Energy requirements for water desalination and power generation are expected to raise one-and-a-half-fold. In addition, energy demand for transport, as well as for industrial use will approximately double the latter also reflecting rising energy consumption by the newly established energy-intense aluminum industry in some GCC countries. Dependency on oil imports is high in the EU, the United States and China, and is projected to rise even further. In 2004, the oil dependency rate of the EU was 79% [9, 80]. Oil, including oil derivatives, and gas accounted for 37% and 24% of energy consumption in the EU, respectively, followed by coal, nuclear energy, and renewable energy. The EU's oil-import dependency rate is expected to reach 92% in 2030, mainly reflecting the depletion of oil reserves in the North Sea, while demand is expected to remain virtually constant. In the United States, 64% of oil consumption was imported in 2004; in 2030, this share is expected to rise to 74%, reflecting both increased demand and lower domestic production. IEA estimates also suggest that China's oil import dependency rate will climb to 77% in 2030, up from 46% in 2004. As in other dynamic emerging market economies, the increase in China's dependency on oil imports is mainly caused by a strong increase in fuel consumption.

The tripling of crude oil prices since the beginning of 2003 may necessitate a reassessment of demand and supply projections. In early 2008, the oil price hit USD 100 per barrel, bringing it close to its all-time high of 1979 in real terms. While OPEC's oil supply assessment is based on an implicit price target in the range of USD 60-70, most observers expect that the price of oil and oil derivatives will remain at an elevated level and may increase even further both in nominal and real terms [10]. This could lead to significant changes in future demand and supply patterns. At the same time, experience suggests that the price of oil, like the price of other commodities and raw materials, has a strong cyclical component. Moreover, the oil price has frequently been subject to various shocks on the supply side, including natural disasters, political developments in major oil-producing countries and geopolitical tensions.

As a result, further technical progress in energy efficiency remains key to reducing the use of crude oil, in particular, in the automotive sector. Unlike energy consumption for industrial purposes, energy demand in the transport sector is still nearly exclusively covered by oil. The IEA estimates that oil demand for transportation purposes will grow at an annual rate of 1.7% over the period 2005-2030. Since oil demand grows with higher rates of motorization, the IEA expects nearly half of the increase in oil demand

for transport purposes to come from China and India, where rates of motorization are still relatively low.

Existing oil reserves place GCC countries in a unique position in terms of covering future oil demand. According to BP, proven oil reserves comprised 1.2 trillion barrels worldwide in 2006, of which the Middle East holds 61%. Two-thirds of Middle Eastern reserves are located in GCC countries. Hence, the GCC countries own approximately 40% of the world's oil reserves. In addition, Qatar holds 14% of world proven gas reserves. While oil reserves, as well as their projected depletion rates, differ significantly among GCC economies, GCC countries as a group have by far the largest share of the world's proven oil reserves. However, these oil reserves are of lower quality and are therefore more costly to process.

GCC countries investments in the exploration and development of oil are estimated to grow significantly. The IEA projects an increase in GCC oil producing countries' investment from USD 39 billion for the period 2004-2010 to USD 90 billion between 2010 and 2020, climbing to USD 131 billion between 2020 and 2030. However, the comparatively low costs of oil exploration and development mean that the GCC countries' total investments will represent less than one-tenth of global investment over the period 2004-2030. As a result, GCC countries share in global oil supply should increase to 24% by 2030. Approximately one-fifth of GCC countries oil production in 2030 is expected to come from fields currently awaiting development; about another fifth is projected to come from reserve additions and new discoveries (IEA, 2005). The aggregate market share of the Middle Eastern oil producers is estimated to increase to 39%. This results partly from an expected strong increase in Iraq's oil production.

On a global scale, there is currently a significant lack of refinery capacity. Increasing refinery capacities are pivotal to meeting the growing demand for gasoline and other oil derivatives. In addition, existing refining capacities must be upgraded in order to meet demand for higher quality oil derivatives as China and India – among other countries – are progressively tightening their fuel quality standards and adopting Euro-standards for transport fuels. Furthermore, available crude oil is becoming heavier and sourer, while demand for light and middle distillates is on the increase. At the same time, current refinery bottlenecks are likely to remain in place for some time to come:

- Expanding distillation capacity takes time and is uncertain. The lead-time for a refinery project is from four to five years. Additionally, not every announced capacity expansion actually takes place. The Middle East is seen by OPEC to account for 2.6 mb/d out of 7.4 mb/d in distillation capacity additions over the period 2006-2012. These overall additions equate to one-tenth of current global distillation capacity.
- Implementation of planned projects to alleviate refinery shortages is subject to some degree of uncertainty. A lack of skilled labor and rising material costs could delay projects, while environmental concerns can raise investment costs significantly. Moreover, uncertainty about future returns can discourage investors as margins in the refinery business have been low in recent decades and have only recently been improving.
- The US refinery bottleneck is expected to continue. In the United States, no new refineries have been built since the late 1970s, reflecting environmental restrictions, while local demand is growing.

While the GCC countries as a group own about 23% of global gas reserves, their gas production is significantly less than one-tenth of current global production. Qatar is

the only GCC country with significant gas reserves on a global scale, accounting for 14% of the world's natural gas reserves. Saudi Arabia has a share of 3.9% of global gas reserves, the UAE account for another 3.3%. Bahrain, Oman and Kuwait together have a share of less than 2%. Annual growth in world gas production is projected to be 2.1% between 2005 and 2030, reaching nearly 4.8 trillion cubic meters in 2030, up from less than 2.9 tcm in 2005 [11, 11]. Over the period 2004-2030, GCC countries are expected to invest around USD 120 billion in gas exploration and development, with Qatar being the main investor, contributing more than half of total GCC investments. Qatar is expected to be the only net gas exporter among GCC countries in 2030; net gas exports are estimated to increase from 19 billion cubic meters in 2003 to 152 bcm in 2030, accounting for nearly 5% and 16% of world gas trade, respectively [4].

Gas is expected to withstand the worst of the rise in primary energy demand within the GCC countries. This is partly caused by the GCC economies' efforts at strengthening their position in the world aluminum market by taking advantage of their comparative cost advantage in the energy-intensive aluminum production business. While energy represents 38% of total costs for a smelter in China, the equivalent figure for Saudi Arabia is 7% given cheap domestic gas, which is mainly conveyed as a by-product Saudi British Bank as reported in FT, Special Report. In addition, gas is used for domestic power generation and water desalination.

References:

1. Fishman B.A. After Zarqawi: The Dilemmas of the Future of Al Qaeda in Iraq// Washington Quarterly, autumn 2006, p.19–32.

2. Kemp G.S. The U.S. and Iran: The Nuclear Dilemma: Next Steps. Paper, Washington D.C.: The Nixon Center, April 2004, 156p.

3. Russell J.A. Regional Threats and Security Strategy: The Troubling Case of Today's Middle East. Carlisle, Pa.: U.S. Army War College, Strategic Studies Institute, November 20, 2007, 33p.

4. Socor V.S. Russian Energy: Toward a Russia-Led "OPEC for Gas"?, Jamestown Foundation, April 25, 2007. As of October 23, 2009.

5. Ottaway M.A., Nathan J.B., Amr H.S., Karim S.A., Paul S.E. The New Middle East, Washington, D.C.: The Carnegie Endowment for International Peace, 2008.

6. http://www.jamestown.org/media/events/single/?tx_ttnews[tt_news]=124&t x_ttne ws[backPid]=19&cHash=5210bbf1b3

7. http://www.merip.org/mero/mero072805.html

8. Wilson S.O. Iraqi Refugees Overwhelm Syria // Washington Post. Washington, 2005.

9. Rougier B.K. Islamismes Sunnites et Hezbollah. Le Monde Diplomatique., January 2007, 301 p.

10. http://www.usip.org/resources/turkey-and-iraq-perils-and-prospects-proximity-0

11. Officials: Teens Trained for Suicide Bombings in Iraq. Cable News Network, May 26, 2008. As of July 20, 2008, 13p.

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PRIVACY AND WORKPLACE MONITORING – PERSPECTIVES OF AZERBAIJANI DATA PROTECTION LAWS

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Abstract

Rapid expansion of information technologies nowadays, collection and processing of personal data through the use of new technologies makes inevitable to ensure the protection of the personal data on the international and regional levels. One of the main activities which comes into a conflict with personal privacy is workplace (employee) monitoring. Workplace monitoring is the act of employers surveying employee activity through different surveillance methods for different reasons, such as to track performance, to avoid legal liability, to protect trade secrets, and to address other security concerns. Since monitoring can put the personal privacy of employees in jeopardy, the main purpose of this article is to analyze legal basis and requisite safeguards of this activity.

Keywords: *Data protection, personal data, data subject, monitoring, surveillance, workplace.*

Roots of personal data protection

The 21st century has emerged within a globally connected world where geographical borders are becoming more blurred day by day. At the heart of this new era is the liberalization of trade, which allows greater access to goods, services and knowledge, fostering constant innovation [1, 122].

Through the development of new technologies and the democratization of the internet, the concept of "digital economy" has evolved. Using communication services as the platform and computer services as the enabler, almost any type of good or service can be instantly traded online [2, 357]. This digital trading system is built on the exchange of data, as a consequence of which information becomes a tradable and valuable commodity [3, 1].

Tensions between the global economic benefits derived from the transfers and processing of personal data, and the adverse impact these activities represent with regard to citizens privacy will always be at the core of personal data protection laws. Currently, almost all online activities involve the collection of data intended for purposes of processing. However, there is a tremendous lack of awareness, or perhaps of interest, about the extent to which our personal information is collected, stored and used. Although individuals are keen on stating that they believe their personal information should be protected, it is doubtful whether many would sacrifice the services they enjoy for greater privacy [4, 9].

What is privacy at work?

Any person has the general right to privacy under various normative legal acts. However, respecting the privacy of employees and protecting their personal data is equally important.

As most people spend a significant amount of their time at work, and the right to privacy is recognized as a fundamental right that is essential to the well-being of every human being, it is crucial to maintain a reasonable level of privacy at work. While new (digital) technologies offer tremendous capabilities to help organizations and their employees improve work performance, and also enable opportunities like working from home, they can also blur the line between work and private life, creating significant challenges to privacy and data protection.

Every employer processes personal data of all employees, such as names, contact details, bank account numbers, social security payments and salary data. The need to process such data is self-evident, and processing such data is often mandatory for employers.

Besides such minimal mandatory data processing, employers may process a substantial amount of personal data of their employees. For example, personal data can be accrued automatically every day, as a by-product of employees' every-day use of digital equipment and applications provided by the employer (e-mails, calendars, special software). Some employers even process personal data using specific monitoring or surveillance technologies. These may include installation of video surveillance cameras at workplaces, special software allowing control and analysis of internet traffic, collection of location data via special equipment.

What are the legal boundaries of workplace monitoring? Is the employer entitled to monitor or intercept all the means of communication and correspondence of the employees without any safeguards?

The answer is no. Existence of these technical possibilities for monitoring employees, and storing and analyzing information, does not automatically endorse the legality of these activities. A valid legal basis is required for all processing of personal data. This article is set to examine general legal basis of privacy, including privacy at work, evaluate competing interests of employer and employee and define the legal framework of monitoring activities.

Legal basis of privacy at work

In general, the primary legal source of individual's (including an employee's) right to privacy stems from the Constitution of the Republic of Azerbaijan [5]. The Constitution provides that "[e]veryone shall have the right of inviolability of private life, personal and family secrets [5, art. 32]. Except in cases specified by law, interference with a person's private or family life is prohibited. Everyone has a right to protection against unlawful interference with his or her private or family life."

Moreover, the State guarantees everybody's right to secrecy of correspondence, telephone conversations and information transmitted by mail, telegraph or other means of communication, except in cases prescribed by law (when interference with such information is reasonably required for criminal law purposes). It is also prohibited to obtain, keep, use and disseminate information about a person's private life without his or her consent. With the exception of cases envisaged by law, no one may be subject to being surveilled, videotaped or photographed, tape recorded or subjected to other similar actions without being informed or despite his/her objection [5, art. 32].

A more comprehensive and detailed regulation of the discussed matter is provided in the Law of the Republic of Azerbaijan "On Personal Data" [6], which deals with the issues of collection, processing, storage and protection of personal data.

Under the Personal Data Law, personal data is any information allowing direct or indirect identification of a person, whereas the Law of the Republic of Azerbaijan "On Obtaining Information" [7] further provides that personal data is an aggregate of private life and family life information and clarifies what information shall be considered as such, and thus be subject for special regulation. In particular, (i) information on ethnic and racial identity; (ii) information on special traits, skills and other features of the character; (iii) tax related information, except information on tax debts; (iv) information on financial transactions shall be also considered as personal data [7, art. 38.2]

Legal basis of monitoring activities

As mentioned above, employers might wish to monitor or intercept email content, email traffic, internet use and telephone use. This could include checking the number, destination, source and content of emails, websites visited and destination, duration and content of phone calls. Types of monitoring can also include one off spot checks, which look at communications across an organization but which do not refer to individual usage, spot checks on individual employees and more continuous monitoring of organizational or individual usage, either on a targeted or random basis [8, 213]. These processing and monitoring activities, however, are not arbitrary – the processing has to have a legal ground/basis in order to be legitimate.

Articles 8.2 and 11.2 of the Personal Data Law provide that except in a limited number of cases, collection and processing of personal data is only permitted upon (i) written notice of the controller or operator collecting personal data (i.e. an employer) to the personal data subject (e.g. an employee), and (ii) written consent of the personal data subject. Although the Personal Data Law is silent on the legal elements of consent, one of the most crucial conditions of a valid consent is the exercise of "free will". In other words, the consent has to represent the will of the data subject – no duress, force or coercion has to affect the will of the data subject.

With these considerations, while consent generally may be the most important and most widely used legal ground for the processing of personal data, this is not the case at the workplace. Because the employer has authority over the employee and the employee is financially dependent on the employer, permission from an employee to an employer in principle cannot be considered as freely given.

As such, since employers cannot justify processing of personal data of employees on the ground of consent, another legal ground must apply.

Without consent, there are only a number of other ways an employer can process data, which include legal obligations of the controllers and protection of vital interests of data subjects [6, art.9.6].

Since the latter only applies where processing of personal data is necessary to protect someone's life, for example where medical treatment is required and the data subject is incapable of providing it or of giving consent to the processing, the only legal basis of lawful protection is legal obligation of the employer.

Article 222.1 of the Labor Code of the Republic of Azerbaijan [9], among others, provides that employers shall organize monitoring (supervision) of healthy and safe working conditions at workplace and shall provide employees with information on any changes concerning work conditions in a timely manner.

The Labor Code neither specifies the means of monitoring nor puts any restrictions in this respect. Therefore, in order to fulfil such monitoring obligation, an employer may, for instance, videotape the workplace or hold out a separate employee who would in person monitor health and safety conditions at the workplace.

Save for monitoring of health and safety conditions at workplace, neither the Labor Code, nor any sector-specific legal act provide for any other statutory requirement for private companies to carry out monitoring of the workplace.

When it comes to sector-specific laws, Article 14 of the Law of the Republic of Azerbaijan "On Freedom of Information" [10] prohibits (i) the use the technical devices intended for hidden collection of information, (ii) examination of postal and telegraphic correspondence, and (iii) interception of phone calls, except for the circumstances envisaged in law. These exceptions are primarily established in the Criminal Procedure Code of the Republic of Azerbaijan [11] and the Law "On Detective-Search Measures" [12].

Likewise, under Article 14 of the Law "On Freedom of Information", except when detective-search measures are conducted, it is prohibited to (i) to surveil, (ii) videotape, (iii) photograph, (iv) tape-record a person, or (v) subject such person to other similar actions without informing him or despite his objection.

It is safe to conclude that workplace monitoring does not fall into the scope of police or investigative measures under the Code of Criminal Procedure or Law on Detective-Search Measures, nor could it be justified on the basis of employees' valid consent. Since there is not any legal obligation or basis for employers to monitor or intercept employee data, employers can only resort to Article 222.1 of the Labor Code as their "safe heaven"– organization of monitoring (supervision) of healthy and safe working conditions at workplace.

Thus, under Azerbaijani law, employers are absolutely prohibited to:

a) to monitor or intercept communications of its employees through technical devices intended for hidden collection of information;

b) to check private postal and telegraph correspondence of its employees, including private e-mail correspondence;

c) listen to private phone calls of its employees;

d) conduct hidden surveillance, video recording, photographing, and audio recording of employees;

e) conduct open surveillance, video recording, photographing, and audio recording of employees despite their objection.

Requirement of prior registration

Under the Personal Data Law, personal data information systems shall be registered with the Ministry of Communications and High Technologies of the Republic of Azerbaijan (the "MCHT"). Collection and processing of personal data shall be prohibited without registering the personal data information systems.

Registration of personal data information systems shall be carried out by MCHT within 1-month period based on the application of the owner of such system (e.g. the employer) [6, art. 15.4]. However, certain personal data information systems are exempt from registration requirement. Among others, the exemption relates to the information systems of (a) personal data related to personal data subjects who are in employment relations with the owner or operator of the personal data information base or (b) the

personal data necessary for providing access to work premises of personal data owner or operator [6, art. 15.3].

Therefore, in an employment context, private companies in Azerbaijan are not required to notify or obtain approval from any third party (e.g. a financial regulator or data protection authority) in order to monitor their employees or intercept communications of employees.

Conclusion

With no doubt, surveillance of employee data presents several benefits to employer: it may promote safe working environment, enhance protection of know-how and commercial secrets of employers, address security concerns, along with detection of unacceptable behavior at workplaces. On the other hand, as the line between employee information which is of an exclusive proprietary interest of the employer, and the personal data of employees is becoming increasingly vague, monitoring and interception of emloyee data has to take competing interests in account and commit to principle of lawfulness.

Employee and employer relationship has always been reflective of disproportionate allocation of power. Employee, being financially dependent and "inferior" to the employer, does not exercise free will when consenting to videosurveillance or correspondence interception. Therefore, consent, as a legal basis for processing of personal data, is a shaky basis for processing of employee data.

Sector-specific laws, such as Freedom of Information Law, Law on Obtaining Information also establish absolute prohibitions with regard to covert collection of information, including examination and interception of correspondence and phone calls. To this end, the only provision employers resort to is "organization of monitoring of healthy and safe working conditions" under article 222.1 of the Labor Code. Absence of means of monitoring in this article makes it diffuclt to assert the legality of certain means of surveillance and monitoring. However, this provision has to interpreted strictly in the light of "healthy and safe working environment".

Finally, employers are not legally required to go through prior registration procuders, as the collection, storage and monitoring activities fall into the exception of employment relations under article 15.3 of Personal Data Law.

References:

1. "GDPR adequacy decisions vs GATS: how may the EU's privacy and digital trade commitments be conciliated within a GDPR adequacy decision on cross-border personal data flows?" Jessica Lauren Koffel, International Trade Law & Regulation 2018.

2. L. Tuthill, "Cross-Border Data Flows: What role for Trade Rules?" in P. Sauve and M. Roy (eds), Research Handbook on Trade in Services (Cheltenham: Edward Elgar Publishing, 2016).

3. S. Aaronson, "The Digital Trade Imbalance and Its Implications for Internet Governance", Global Commission on Internet Governance No.25, (2016).

4. Mitchell and Mishra, "Data at the Docks: Modernizing International Trade Law for the Digital Economy" (2018) 20 Vanderbilt Journal of Entertainment and Technology Law.

5. Constitution of the Republic of Azerbaijan dated12 November 1995, № 00, available at: http://www.e-qanun.az/framework/897

6. Personal Data Law of the Republic of Azerbaijan dated 11 May 2010, № 998-IIIQ, available at: http://www.e-qanun.az/framework/19675

7. Law of the Republic of Azerbaijan on Obtaining Information dated 30 September 2005, № 1024-IIQ, available at: http://www.e-qanun.az/alpidata/framework/data/11/c_f_11142.htm

8. "Monitoring employee communications: data protection and privacy issues", Anthony Sakrouge, Kate Minett, Daniel Preiskel and Jose Saras, Computer and Telecommunications Law Review 2011, p. 213

9. Labor Code of the Republic of Azerbaijan, was approved by the Law of the Republic of Azerbaijan on "Approval, enforcement of Labor Code of the Republic of Azerbaijan and regulation of legal issues in this respect" dated 1 February 1999, №618-IQ (Legislation compilation of the Republic of Azerbaijan dated 1999, № 4, Section 213), available at: http://www.e-qanun.az/code/7

10. Law of the Republic of Azerbaijan on Freedom of Information dated 19 June 1998, № 505-IQ, available at: http://www.e-qanun.az/framework/3420

11. Criminal Procedure Code of the Republic of Azerbaijan dated 14 July 2000, № 907-IQ, was approved by the Law of the Republic of Azernaijan on "Approval, enforcement of Criminal Procedure Code of the Republic of Azerbaijan and regulation of legal issues in this respect" (Legislation compilation of the Republic of Azerbaijan dated 2000, № 8 (second edition), Section 585), available at: http://www.e-qanun.az/code/14

12. Law of the Republic of Azerbaijan on Detective-Search measures activity dated 28 October 1999, № 728-IQ, available at: http://www.e-qanun.az/framework/2938

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EURASIAN ECONOMIC UNION: CHALLENGES AND PROSPECTS

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Abstract

The article deals with the modern integration processes. The countries of the post-Soviet space are the center of attention. The main motivations and obstacles to integration are analyzed. As the main example of integration, the activities carried out within the framework of the Eurasian Economic Union are described. It is asserted that along with the positive features of the organization's activities, the clash of the national interests of the participating countries is one of the main problems on the way to completing the integration process.

Keywords*: integration, stages, post-soviet, rivalry, EAEU, freedom, movement, barriers, competition, customs, trade, Eurasia*

Integration, as the process of uniting into a whole, has been and remains the main trend of the modern international relations. Nevertheless, this process, which calls for the unification of countries based on the development of deep interrelations and division of labor between national economies, as well as the implementation of an agreed interstate economic policy, causes many disagreements. The point is that, despite the fact that international economic integration is aimed at forming an effective structure of national economies, gradual rapprochement and leveling of their economic development, potential participants, first of all, are afraid of limiting their sovereignty. After all, it is generally known that integration goes through certain stages, which, in fact, form a single economic space from isolated economic spaces. This, in turn, leads to the fact that economic entities of these spaces are forced to interact, namely, to compete.

For example, the first stage of integration, which is called a free trade area, assumes that the countries participating in the zone abolish customs barriers and quantitative restrictions in mutual trade. A conflict-free, at first glance, process causes dissatisfaction among local market participants in the event of their non-competitiveness. For example, in 2006, thousands of winemakers took part in demonstrations in the southern cities of France. In protest they poured wine onto the streets and demanded state support because of the loss of part of the market because of increased competition with the winemakers of Chile and Australia [4]. As we see, the search for alternative routes and the possible adaptation to the changed conditions do not seem attractive, and local economic entities require the government to review the terms of the integration project, namely, to protect them from more competitive participants. State's set of methods of protection, in fact, is not so great. Protection (read protectionism) provides for tariff and non-tariff methods. The most common instrument of protectionist policy is the tariff, or duty, - the state tax applied at import (import duty), export (export duty) or transportation of goods through the country. Non-tariff barriers include restricting international trade through quotas, a licensing system, voluntary export restrictions, subsidies and countervailing duties, standards, etc. An example is the introduction in the United States of quotas on the import of cars from Japan in the 1980s. Then US automobile industry was experiencing great difficulties

under the influence of imports from Japan. The introduced quotas limited the number of imported goods and, consequently, created more opportunities for the local producer, artificially increasing the consumer demand for it.

The next stage of integration is the customs union, which along with the free movement of goods within the grouping is complemented by a single customs tariff and a single foreign trade policy towards third countries. The formation of such a policy requires the creation of a supranational regulatory body and the partial transfer of authority on foreign trade regulation from national governments. The third stage of integration, called the common market (single market), eliminates barriers between countries not only in mutual trade, but also in the movement of labor, capital and services. At this stage, the policy is designed for the development of industries and sectors of the economy common to all integrating countries. The stage called the economic and monetary union supposes, on top of all the above, the existence of supranational bodies of governance and the conduct of a single macroeconomic policy. To date, as an example of an organization that has gone through all the stages can only be called the European Union. But even it, despite the long journey since 1957, is going through a crisis due to the process of Britain's withdrawal from the integration group.

Nevertheless, despite the above-mentioned contradictions and disagreements, the creation of multilateral integration groups is the main trend of both the world economic and political process. Post-Soviet space is no exception. Integration in the CIS relies on such objective factors as the division of labor that formed in the past, technological interdependence, elements of a common cultural and civilizational space. In the post-Soviet space, a certain number of economic, political and humanitarian alliances have emerged between individual CIS member countries whose goal is to develop intra-regional cooperation, the forms of which are sometimes referred to as integrations of "different speeds".

Thus, Y.Kosov and A.Toropygin in 2012 singled out several models and, correspondingly, several speeds of integration in the post-Soviet space: the Commonwealth of Independent States ("low speed") is an "international organization of a politico-consultative type with certain military and political obligations within the framework of collective security" and the Eurasian Economic Community ("the second speed ") - economic integration within a narrower group and, finally, the Customs Union of Eurasian Economic Community and the Union State of Russia and Belarus ("maximum speed"). It is no coincidence that the first supranational body in the post-Soviet space (the Commission of the Customs Union) emerged precisely within the framework of the "maximum speed" of integration [6, 47].

It should be noted that the Eurasian Economic Community was created to effectively promote the process of forming the Customs Union and the Common Economic Space. The organization was abolished due to the creation of the Eurasian Economic Union, in which the above-mentioned Customs Union and the Common Economic Space were continued. Thus, using the terminology of Russian scientists Kosov and Toropygin, one can say that today integration in the post-Soviet space is at the maximum stage of development as represented by the Eurasian Economic Union. In fact the history of Eurasian integration is actually an attempt to build something similar to the EU according to Tatiana Valovaya, minister of the Eurasian Economic Commission [14, 42].

The Eurasian Economic Union, established in 2015 by Russia, Kazakhstan, Kyrgyzstan, Belarus and Armenia, claims to be the first successful initiative in the post-So-

viet space designed to remove trade barriers and ensure the integration of a fragmented, economically backward region. Supporters of the union insist that it can become a mechanism for dialogue with the European Union (EU) and other international partners. Critics see it as a destabilizing project that strengthens Russia's dominance in the region and limits the ties of its other participants to the West. The EU believes that because of the project, the EU's eastern neighbors will find it more difficult to maintain their sovereignty in decision-making. The positions became tougher after Armenia refused in 2013 to sign an association agreement with the EU and an in-depth and comprehensive free trade zone, as well as after the events in Eastern Ukraine. In this regard, it is necessary to recall the opinion of a number of scientists who believe that regional cooperation projects should not be mutually exclusive, but complementary. This principle is very important to apply to integration in the post-Soviet space [15, 8].

So, the Eurasian Economic Union was created on the basis of the Customs Union of Russia, Kazakhstan and Belarus and the Common Economic Space as an international organization of regional economic integration, which has international legal personality. Within the framework of the Union, the freedom of movement of goods, services, capital and labor is ensured, and a coordinated or unified policy in key sectors of the economy. The idea of creating the EAEU was laid down in the Declaration on Eurasian Economic Integration adopted by the Presidents of Russia, Belarus and Kazakhstan on November 18, 2011. It fixed the goals of Eurasian economic integration for the future, including the creation of the Eurasian Economic Union by January 1, 2015. The agreement on the Eurasian Economic Union (EAEU) was signed on May 29, 2014 in Astana (Kazakhstan) by the presidents of Russia, Belarus and Kazakhstan. Entered into force on January 1, 2015. The highest body of the EAEU is the Supreme Eurasian Economic Council (SEEC), which includes the heads of the Member States. SEEC considers the principal issues of the Union's activities, determines the strategy, directions and prospects for the development of integration and makes decisions aimed at realizing the goals of the Union. The Eurasian Economic Commission (EEC) is a permanent supranational regulatory body of the Union headquartered in Moscow. The main tasks of the Commission are to ensure the conditions for the functioning and development of the Union, as well as the development of proposals for economic integration within the Union. The main objectives of the Union are: to create conditions for the stable development of the economies of member states in order to improve the living standards of their populations; to form a single market for goods, services, capital and labor resources within the Union.

As we see, the creation of the EAEU, which involves the free movement of not only goods, but also labor, services and capital, means a transition to the next stage of integration after the Customs Union, namely the third stage of integration - the Single Market.

For example, in the Treaty on the Eurasian Economic Union, a separate section deals with the labor migration. According to the document, the member states agree on the policy in the field of labor migration regulation within the framework of the union and provide assistance to the organized recruitment and involvement of the workers of the member states. Employers of a member state may involve in the work activities of workers of the member states without taking into account restrictions on the protection of the national labor market. It is also important that the workers of the member states are not required to obtain a permit to work in the state of employment. For employment

within the EAEU, education certificates are recognized without the special procedures for recognizing education certificates. True, teachers, medical workers and pharmacists must go through the procedure of recognition of education certificates. Thus, the territory of employment has expanded significantly.

In international relations the Union signed two significant documents: the interim agreement with Iran leading to the creation of a free trade zone and the agreement on trade and economic cooperation with China. Negotiations are underway on preferential trade agreements with Singapore, Israel, Serbia, Egypt and India. Moldova became the first observer state in the EAEU.

According to the researchers from International Crisis Group developments in certain key areas will decide whether the EAEU becomes a successful regional body [12, 22]. Areas such as openness to the outside world and an emphasis on social welfare and migration, as we can observe in abovementioned examples are developing. Another EAEU's strong point is its redistribution mechanisms, e.g. "regarding customs duties, the EAEU has introduced the allocation to each country of a fixed proportion of the overall revenue from customs duties, irrespective of how large each country's imports actually were" [8, 1043].

Nevertheless, despite the presence of optimism regarding Eurasian integration, the so-called "Eurasian skepticism" is worth mentioning. For comparison, the origins of European integration were six states, three of which - West Germany, Italy and France - had a comparable economic, territorial, resource and demographic potential. For example, their share in the aggregate GDP of the future European Coal and Steel Community in 1950 was 31.7, 23.9 and 29.6%, respectively, and Russia's share in the aggregate GDP of the three countries participating in the Eurasian Economic Community's Customs Union in 2010 was 88.2%, that is, it exceeded the share of the three countries of the "core of European integration" combined. Kazakhstan accounted for 8.5, and Belarus accounted for 3.3% [13, 33]. This apparent economic dominance makes the rest of the partners dependent on Moscow's willingness or unwillingness to make political and economic concessions. In addition, in structural terms, the deeper the integration, the more dependent on the quality of the Russian economy (including its raw materials) the economies of other countries participating in the Eurasian integration become. Some scholars also agree with the above-mentioned by going further and saying that "Russia's main benefits from the EAEU are political rather than economic. The EAEU accounts for only 5 per cent of Russia's trade – the bulk of the country's exports go to the rest of the world. Russia's original plan for integration was essentially political rather than merely economic. At the outset of the EAEU, the Kremlin aimed to establish a comprehensive union, encompassing monetary union and political and defence integration. However, this far-reaching agenda was rejected by other states, particularly Kazakhstan, which succeeded in its efforts to limit the EAEU to economic integration [1, 7]." Also one of the main obstacles to further integration is the national egoism of the participating countries.

Considering the abovementioned, and the words of Alexei Kudrin [7], the head of the Center for Strategic Research that it is necessary to remove all numerous exemptions from the general rules of trade within the Union and remove non-tariff barriers, it is worth noting that the Eurasian Union is nevertheless trying to escape from the image of a political project and becomes economically profitable. Thus, the accumulated volume of foreign direct investment (FDI) increased by 61% - to $ 6 billion. [2] Commodity

turnover in the EAEU is also recovering, inflation is decreasing in all member countries of the Union, and other macroeconomic indicators are improving. Since the beginning of 2017, there has been a recovery in economic activity in the CIS countries. In particular, the volume of mutual trade grew by 25% and reached $ 75 billion. President of the Russian Federation Vladimir Putin at an expanded meeting of the CIS heads of state noted that in order to ensure further stable growth of commodity exchange, it is necessary to further improve the free trade regime in the commonwealth, consistently remove barriers to the movement of goods and services, simplify customs procedures including through interaction with the Eurasian Economic Commission [11].

In the first half of 2018 the volume of intra-union trade increased by 12 percent, reaching 44 billion dollars [10]. By the end of 2018 mutual trade has increased by 11 percent and amounted to 49 billion dollars. At the same time, the share of mutual trade in the total trade volume was 8%, showing an increase of 0.6% [5]. During 2018, drafts of important decisions were prepared: on the creation of common markets for oil, petroleum products, and gas. In September 2018, representatives of central banks signed an agreement on the harmonization of legislation in the financial market. This is a big step towards the formation of a common financial space. Also in 2018, the customs code came into force. In the future, it is planned to create common markets for electricity, oil and petroleum products, gas and transport services, as well as a common financial market on the territory of EAEU [3, 89].

However there are still several potential risk areas for the further development. Firstly, for all EAEU member countries, the main export goods are natural resources or products of their primary processing. Some scholars believe this suggests that for the states the market of third countries is more interesting due to the identity of this type of goods and the demand for natural resources in the EU countries and China. Also the small number of common production projects, as well as the lack of a detailed program for the development of production capacity, leads to inhibition of mutual trade within the EAEU. The lack of specialization of countries in the manufacturing sector also does not contribute to the growth of trade due to the presence of identical goods in the common market. A significant problem is increasing competition, not complementarity. The sharp drop in world oil prices at the end of 2014 and foreign exchange earnings from energy exports reduced the ability to import finished industrial products from third countries. This reinforced the need to meet the needs of the EAEU member states with their own industrial products. Import substitution of products from third countries is becoming a priority area of cooperation within the Union. But an assessment of the national industrial development programs of the EAEU member states revealed that countries consider a single economic space only from the standpoint of additional export opportunities for national economies. At the same time, their domestic markets are supposed to be saturated only with their own products through the import substitution. The sectorial development priorities of the industrial complexes of the EAEU countries have a high degree of coincidence, as well as the nomenclature of export industrial goods, which leads, as it was mentioned above, to their competitiveness, and not complementarity. A serious problem for the development of the Union is the insufficient development of transport and other types of infrastructure, an insufficient level of logistics. Although the development of transport infrastructure in all countries today is proceeding at a rapid pace, the integration of national transport systems into a single transport and logistics space is still a fairly distant prospect.

However some scholars strongly believe that today, one of the key integration dividends for all EAEU member countries is precisely the reduction of spatial and inter-country barriers to reduce costs from the continental isolation of countries and access to world markets through access to seaports [9, 16].

Thus, decisive importance for further integration will be the ability of statesmen of the EAEU member states to display political will to overcome obstacles to the creation of a single economic space built on the basis of the principle of reciprocity and equality.

References:

1. Dragneva R., Wolczuk K. The Eurasian Economic Union: Deals, Rules and the Exercise of Power. Chatham House, Research paper, Russia and Eurasia Programme, May 2017, 25p.

2. EADB: Russia increased investment from the CIS countries by 61% // Oil and gas vertical,13.10.2017http://www.ngv.ru/analytics/eabr_rossiya_uvelichila_privlechenie_investitsiy_ot_stran_sng_na_61/ (in Russian)

3. Eurasian Economic Union: Figures and Facts. Eurasian Economic Commission, 2018, 94 p. (in Russian)

4. Growing resentment // the Guardian, 07.03.2006, p.7

5. Infographics. 5 key events in the EAEU in 2018. http://eurasia.expert/infografika-5-klyuchevykh-sobytiy-v-eaes-v-2018-godu/ (in Russian)

6. Kosov Yu.V., Toropygin AV Commonwealth of Independent States: Integration, parliamentary diplomacy and conflict. M .: Aspect-Press, 2012, 296 p. (in Russian)

7. Kudrin A. Non-tariff barriers and trade exemptions within the EAEU should be excluded, although this is not beneficial for everyone. https://www.belta.by/opinions/view/netarifnye-barjery-i-torgovye-izjjatija-vnutri-eaes-nuzhno-iskljuchit-hotja-vygodno-eto-ne-vsem-5839/ (in Russian)

8. Libman A., Obydenkova A. Regional international organizations as a strategy of autocracy: the Eurasian Economic Union and Russian foreign policy //International Affairs, 2018, №94: 5, p.1037–1058

9. Lisovolik Y., Sutyrin V. Geography of the countries of the Eurasian Economic Union: from challenges to opportunities. Report of the Valdai International Discussion Club, Moscow, 2017, 18 p. (in Russian)

10.Session of the Supreme Eurasian Economic Council. Website of the President of Russia.06.12.2018.http://kremlin.ru/events/president/news/59319 (in Russian)

11.Sozaev-Guryev E. The post-Soviet space has embarked on the path of integration // Izvestia.11.10.2017. https://iz.ru/657355/postsovetskoe-prostranstvo-stalo-na-put-integratcii (in Russian)

12.The Eurasian Economic Union: Power, Politics and Trade. International Crisis Group. Europe and Central Asia Report N°240 | 20 July 2016, 26 p.

13.Treschenkov E. The European and Eurasian models of integration: limits of commensurability. // World Economy and International Relations, 2014, №5, pp.31-41 (in Russian)

14.Valovaya T. Eurasian Economic Integration: Origins, Patterns and Outlooks // EBD Eurasian Integration Yearbook, 2012, p.42-61

15.Vinokurov E., Libman A. Eurasian Continental Integration. St. Petersburg: Center for Integration Studies, 2012, 224 p. (in Russian)

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MODERN TRENDS IN THE WORLD ECONOMIC DEVELOPMENT: A POLITICAL-ECONOMIC APPROACH

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Abstract

This article examines the trends in the world economic development, including the fight for a new trade and economic division of the world, the counter- cyclical and debt nature of the movement of the world economy. In the context of these trends, the article discusses the formation and development prospects of the EAEU, and the impact of global economic trends on the national economy.

Keywords: *economic model, competitiveness, institutions, national interests, national model of economy, the trade-economic repartition of the world, contra-cyclist of the world economy development, economic integration, TRACECA.*

The world leading centers of economic development (the US, EU and China) have launched a new trade and economic division of the world in the twenty-first century. It is accompanied by the deployment of a new type of competition between countries and their associations. It is manifested in the formation of new economic alliances of states. This is not a comparison of their economic strength and competition of multinational companies and global networks, although they are involved in this. It is a competitive fight of the economic unions of the countries, the total potential of which allows them to influence the global economic environment. In fact, there is a new global trade and economic division of the world. USA, who created numerous interstate associations and actively participates in them, dominates here. The latest global initiatives in this area are projects of Trans-Pacific Partnership (TPP) and US Atlantic economic partnership with the EU. The realization of these projects has aimed at changing the trade and economic picture of the world that affects the economic interests of a number of post-Soviet

countries, as well as, intergovernmental organizations, including EAEU. Collapse of Bretton-Woods system took place because of the appearing and parallel functioning of new forces and mechanisms of international economic relations and institutions.

On the Saint Petersburg International Economic Forum (SPIEF) that took place in 2016 a huge attention was dedicated to the problem of forming the global intergovernmental economic unions and the perspectives of EAEU. At the same time, SPIEF has revealed the necessity of the scientific researches in this direction.

The above-mentioned economic division of the world is not only related to the tensions around the commodity markets, but also to the uneven distribution of basic resources. In the recent decades, the developed countries, especially the United States have been developing due to the world economic space vacated by the collapse of the Soviet Union. This "reserve" for the development of the leading countries exhausted, partly due to China's transformation into one of the centers of the global economy. In this context, a new trend develops in the world economic dynamics. Its study will help to forecast the impact of global trends on the economy of EAEU member countries and allow taking appropriate decisions.

In this connection, one should take into account the specifications of the global economic crisis that originated on the roots of modern capitalism. Previously the world economic crises would start in developed countries and developing countries used to follow the "locomotives", now the world economic dynamics are increasingly showing signs of "counter-cyclical swing", which indicates that the world's resources have been distributed and redistributed and capital no longer has the opportunity to develop at the expense of the colonial space. If one looks closely at the world hot points, can see that all local wars are accompanied by redistribution of resources. Counter-cyclical nature of the global economic dynamics should be taken into account in the design and implementation of the objectives and specific programs of the EAEU and other international organizations. In particular, if developed countries monopolize their tech-no logical advantages for their own sake by preventing their distribution, EAEU countries should use their resource advantages, gradually turning them into a competitive advantage. The monopolization of the technological advantages of the industrialized countries takes the form of integrated partnership under the auspices of the United States as evidenced by the actual target setting of TPP. Later, in 2017, the United States withdrew its signature. Agreement on establishment of the Trans-Pacific Partnership was signed on February 4, 2016 in Auckland (New Zealand). According to forecasts, the share of TPP countries (along with Japan) in the world GDP may reach 38-40% and a quarter of world trade, with the leadership in terms of share of GDP, but staying behind the ASEAN + 6 trade block, in terms of the share in the world trade if China participate in ASEAN.

TPP pushes free trade goals in the Asia-Pacific region at the first glance. However, it is a glossy side of the project. The main motive for the creation of this organization is to create an alternative to the ASEAN and APEC to counter their growing influence. The great problem is not only the direction but also the means of struggle, which is planned to involve the assistance of international organizations. Not all materials of the new association had made publicly available, and nevertheless, it is possible to make some conclusions and forecasts to guide both individual (national), and joint economic policy within the EAEU based on information already leaked into the public space.

Many years of preparation in conditions of secrecy have hidden the preparation of new methods of global competition by TPP. We think these methods cover the main danger, which expressed in the following points:

1. The agreement provides the regulation of a large range of issues related to the legal protection of intellectual property rights (Internet domain names, registration and protection of trademarks, protection of copyright and related rights; restrictions in the production of cheap analogues of patented drugs) associated with agriculture, telecommunications, financial services, customs cooperation and tariffs, mutual investments. These measures seem aimed at monopolization of innovations and R&D objects to limit access of competitors to the facilities of technological development. The danger lies in the monopolization of the benefits of technological progress, the creation of closed regulatory spaces, barriers to overflow of technology, strict control of process flows, and control of technological rent. As China's economic potential is based on the effecttive use of technology and the secondary commodity counterparts, the introduction of the TPP plans will be a heavy blow to the Chinese economy and could lead to serious conflicts of international level.

2. More substantial seems the means of struggle through "labor and environmental standards," raising them up to a certain "international" level. The pressure of USA and its allies is anticipated on competitors through the "export" standards of the developed countries that were created partly at the cost of the debts of developing countries, which will be discussed below.

3. Anticipated regulation of disputes between transnational corporations and the governments of sovereign states would lead to the rule of the US transnational companies over national governments.

Complete information about the content of the TPP does not exist, because not all the documents of its establishment disclosed, however, we know the main goal - the struggle for dominance in the region and in the world economy. For this reason, the role of international organizations with their control and legal functions becomes more important.

Another global trade and economic project pursue the same political and economic objectives too. In July 2013, the United States and the European Union began to prepare an agreement on the establishment of Transatlantic Trade and Investment Partnership (TTIP). Theoretical justification of this project is more than modest, however, the promise of practical benefits are impressive. According to them, a free economic zone of TTIP should bring benefits to both sides of the Atlantic countries. The US economy should annually receive an additional 90 billion Euro and the EU budget will be supplemented by additional 100 billion Euro. According to the calculations of the European Commission, if the zone works Europe will gain 400 thousand new jobs, and each European family would receive an increase in their income for 545 Euros. Rest of the world should also not suffer. Due to the transatlantic customs union, the volume of the global economy must grow by 100 billion Euros as European officials promise.

There is also a glossy side of the project. There is a simple question: where and by what means these additional benefits will spill over to the whole world, if this project is for trade, rather than production and technology? The answer is obviously, based on the fact that the participation of Eurasian countries is not expected in this Union, their

displacement from the world trade promises outlined benefits [4]. It is yet another project with a potential of global economic struggles.

If they manage to create the second transatlantic alliance, the simultaneous and parallel launch of these two projects will cover a large part of the world economy. Beside the already mentioned points, it will lead to the transformation of the WTO into a nominal organization as its main condition for a preferential movement of goods, services and resources between countries coincides with the regulation of foreign trade relations rules in the TPP and TTIP. Covering almost all industrialized countries of the world, these countries have created a new mechanism for unfair competition and exploitation, where the integrated structure of the TPP and TTIP essentially designed to block the rest of the world that cannot leave the WTO without falling into isolation. For example, in WTO there is a competitive ability of countries with weakened economies from a transformational crisis. These countries were invited to the movement towards the integration of all global unions into a single space of the WTO based on the depoliticized principle of pragmatism. However, there are realities that threaten the functioning of the WTO and anticipate global trends of modern neo-colonial type.

Several authors have openly questioned the role and functions of international organizations. T.Pugel notes on this issue that the global economy does not have a global government. Therefore, although it is true that there are international organizations that are trying to manage the parties of global economy (in particular WTO, IMF, UN, World Bank), each country has the right to ignore or neglect these global institutions, if deems it necessary [2]. One could agree with this opinion by adding only that the contradictory effects of the activities of global institutions is the lack of assessment of the national factors of economic development in individual countries and regions of the world. This "assessment" in other formulations has existed before too. However, if in the past century it was accompanied by colonial conquests and political subordination of the national resources of another national space, under current conditions, this goal is achieved by intervening into the external resource environment through economic methods. The principal conductors of these methods are the TNCs, which integrate the national economic interests of their representing states into the global system of economic interaction.

According to our opinion, two Trans-Oceanic projects that initiated by the USA, are the head of an ideology of dominating in the world trade. They were launched by the previous government of USA and are absolutely conformed to the politics of achieving the absolute dominance in the world. In fact, it was an attempt to interchange the political colonialism by the economic colonialism, taking refuge in the values of a free trade and a market. However, both projects have faced valuable dangers. The newly elected president of the USA Donald Trump has declared that the USA will abandon this project. This statement is radical, even shocking, though it follows his strategy of concentrating on the inner problems of economic development, throwing ambitions of the external world dominating greatly into the shade. A new question arises, does Trump deal with the resistance of the political elites that support these projects, concerning not only the political ambitions, but also the time and sources spent to launch this project and lead it to the stage of completion.

The other project that concerned with EU has much more problems. Even before signing this project, Europe has suffered many internal problems: Brexit, centrifugal tendencies, migration problems and terrorism.

In this situation the role of China steps forth, this country has all the prospective of dominating in the region, especially if partners would be EAEU countries. The most significant role in these processes belongs to Japan, which reacts in an adequate way to the changing situation in the position of a main partner on the project-USA and takes active steps to develop the economic collaboration with Russia.

Another form of economic pressure on developing countries is the debt outstanding between the two countries. The modern world economy can be characterized as of debt nature in general that may be indicated by the following data on the state debt of developed countries in relation to the annual GDP [1]. On average, the developed countries have debt (only governmental), "going beyond" for the annual GDP. If before the middle of the last century, the debt crisis was expressed in developed countries being creditors of developing countries, now it is reversed. China, for example, holds a quarter of the US external debt. Developed countries at the expense of others gained leadership, both in the development of technology and the level of social security. By raising social standards and by creating an attractive environment for working and living, developed countries have concentrated the highest quality of human capital and leadership support at the expense of attracted intellectual resources of developing countries, i.e., creditor countries. Exploitation of the developing countries has become of more subtle and sophisticated nature today. At the expense of creditors, the developed countries concentrate intellectual resources of developing countries who contribute to working out debts of their countries of origin.

To summarize the above mentioned the following global contradiction is composed: in one hand, the United States as one of the centers of the world economy is struggling with the growth of China's influence on the world economy. On the other hand, China is a creditor of the United States. It is yet the "dormant" contradiction. However, the trade wars are started with the launch of sanction mechanisms against China, that as we have shown above, follow directly from the strategic objectives of TPP, the stated contradiction can go to a more "hot" phase of development and resolution. Russia and Kazakhstan are directly involved in the orbit of economic relations with China and they are directly related to the effects of predicted processes and contradictions of the world economy within the framework of the dominant triangle US-EU-China.

From the above you can make the first conclusion: in the XXI century, a new stage of the struggle for trade and economic division of the world has begun for its resources and markets. History witnessed the tragic experience, when the world economic war developed into the world's armed conflicts. In this situation, the individual countries and international organizations, alternative trends of global dominance face two challenges: the fight for their national economic interests and a proactive nature of the struggle for the prevention of political conflicts that arise based on economic and trade conflicts. In this regard, it should be noted the urgency and the need for individual and collective efforts of the member countries of EAEU, other countries and organizations in the following areas:

First, the use of the experience of protection of self-interests through cooperation with international organizations and focus on the strategic objectives of symmetric

responses to threats originating from the new initiatives on the economic division of the world.

Second, together with partners and allies to start a promising development projects of the global organizations by expanding the contours of integration and the creation of Greater Eurasian Partnership with the participation of the CIS countries as well as China, India, Pakistan, Turkey, Iran and other states and integration alliances (ASEAN). As a first step, it is offered to start consultations with expert groups for the unification of cooperation in the areas of investment, customs administration, intellectual property protection, non-tariff measures. In the future, to reduce or cancel the tariff restrictions, to develop a network of bilateral and multilateral agreements with the differing depth and speed, level of communication and market opening. It should be a flexible integration of a cooperative structure that encourages competition in the field of science, engineering solutions, where the participants can fully realize their potential and competence. At the same time, EAEU can speak as an integration nucleus.

In this situation the EAEU, interacting with other countries and organizations, especially in the Asia-Pacific region can withstand the competitive unipolar world trade and economic dominance. As a new entity, it should use the experience of the experience of phased development of economic cooperation of other organizations, in particular ASEAN organization. Experience of ASEAN is also important because together with trading partners (ASEAN + 6) the organization is not inferior to the TPP in terms of world trade. Two important circumstances cause particular attention to the ASEAN today. Firstly, the association or partnership of EAEU and ASEAN would constitute an alternative TPP in the region. Second, the experience of almost all stages of the ASEAN development and application of policy tools is useful for a relatively young organization, as is the EAEU.

The process of transformation of ASEAN into one of the world's political and economic centers of the multipolar world has stimulated this regional grouping of countries to actively address a number of critical tasks. These include the formation of a free trade zone and investment zone; the introduction of the single currency and the creation of deployed economic infrastructure, formation of a special management structure. Even today, the ASEAN Free Trade Area - AFTA is the most consolidated economic group in Asia. The main instrument for the creation of a free trade area agreement is an agreement of the Common Effective Preferential Tariff (CEPT). CEPT also provides steps to harmonize standards and quality certificates for products, the production rules of fair competition, simplification of internal investment and customs legislation, promoting the process of creating joint regional enterprises, etc. In order to achieve these goals, the ASEAN Consultative Committee on Standards and Quality was created.

In order to increase the competitiveness of goods produced in the ASEAN region, as well as to create conditions for attracting investments in the region the search have begun for new forms of industrial cooperation. In accordance with the Basic Agreement on ASEAN Industrial Cooperation Scheme – AICO, the condition for the creation of a new company is the participation of at least two companies from different countries of ASEAN and the presence of at least 30% of the national capital. The objectives of AICO are: growth of industrial production; growth investment in the ASEAN states from third countries; expansion of the domestic trade; improving the technological base;

improving product competitiveness in the world market; increasing the role of the private sector. Furthermore, it provided a number of non-tariff preferences, including advantages in obtaining investment.

The agreement on the Common Effective Preferential Tariff (CEPT) creates leverage on the structure of production through mechanisms of reorientation of enterprises from production of raw materials and semi-finished products to the production of the final product. AICO, in turn, introduces further incentives for this purpose. In particular, with regards to the import of finished products, semi-finished products (intermediate products) and materials use of preferential tariff rates is intended, whereas, the final products have unlimited access to ASEAN markets, and access of intermediates and raw materials to these markets is limited. This experience is very important to overcome raw material orientation of the economies of a number of post-Soviet states, diversification and restructuring with a focus on building the value-added.

The experiences of stimulating investments are also important. In October 1998, the Framework Agreement on the establishment of the ASEAN Investment Area (AIA) was signed, which covers the territory of all member states of the association and is one of the main tools to attract domestic and foreign investment through the provision of national treatment to investors, tax incentives, the abolition of restrictions on the share of foreign capital. In March 1999, a decision was made on extension of the national treatment to the investments in services directly related to the manufacturing industry. An important feature is that these decisions covered only direct investments, leaving outside the portfolio investment.

We believe that all the subjects related to the development of ASEAN have relevance to the EAEU. Accounting for this experience will enable faster and more efficient passing the stages of formation and development of a relatively new organization. While using the experiences of integration of different regions of the world one must take into account both their positive and negative points. It is especially true about the inclusion of political factors in the processes of economic integration. Haste in this respect can put hold on the extension of boundaries and deepening economic integration. The emphasis on the political component in the process of economic integration is fraught with opposite effect. In this respect, centrifugal trends are characteristic emerging even in the most developed conditions of integration. It is no coincidence that the attempts to transform EU into a political union, a kind of supra-government served as one of the main reasons of Brexit.

It is extremely important in this context to proceed from the fact that the economic development of each country should, first and the foremost, "closely follow the contour of its global interests," to be able to optimize the external economic relations in a unipolar exploitation of a cultivated "open economy". It implies both a realistic assessment of own capabilities, and the development of methods of most effective use of integration ties on the international arena. They, in turn, are largely designed to weaken the intensity of the negative impact of global conflicts on the development of the national economy.

The modern world economic space is characterized by a variety of tendencies; one of them is the regional economic integration. The main premises of the economic integration are the relatively identical level of economic development of countries, their geographical closeness, the commonness of economic problems and the regional divi-

sion of labor. At the same time, practice shows that for the economic integration the same importance has the cultural, religious, ethnic sameness of nations, i.e. those informal institutions have been described before. In fact, the matter concerns the inter-civilizational differences between countries and nations, that form the format of future world integration structures, but their frames are becoming evident today. We cannot consider this tendency to be the ideal alternative to the globalization process, but it is necessary to take into consideration that the intergovernmental integration is not only the economic, but also a social phenomenon, that is accompanied by the cross-cultural interaction of people with different behavior stereotypes, traditions and values. Obviously, it is impossible to integrate the countries that were not same in a sense of ethno cultural similarity. For example, the former president of France Valéry Giscard d'Estaing has roundly declared that "Turkey must never be a member of the European Union as it has a different culture, a different approach, a different way of life" [3]. These days the more and more clear pushback of Turkey's possibilities to enter the European Union is going on under different pretexts. One of the variants of the so-called "clash of civilizations", in which the economic factor influences not that much as the informal institutions of counteraction to Turkey, which start dominating in a relation to one of the countries of the other social-cultural space. However, a question arises – is it that much important to penetrate the foreign economic environment, in which the realization of national economic interests is not guaranteed? The thing is that to provide the effective determination of the national market mechanism with leading methods of an economic growth the integration itself is not that much important as a combination of the progress stimulus with the special features of an ethno genetic evolution. Integration is one of the methods of this type of development with a condition that this evolution code would not get lost. I.e. integration as a globalization should not dissolve the national economy in it, but lead to the development of its potential – both industrial and social-cultural. Losing the properties of self-identification, the economy will lose its ability for self-development and resistance for the attempts of its disruption. The economy that is not associated with the history, the structure of the social consciousness, the moral principles is doomed to the backwardation and degradation, in spite of the global schemes, including integration ones. I.e. it is important to create, develop and protect the national component or a certain share of expressing the national interests in the global vectors of countries' development.

One of the most important directions of activities in this plan is the economic diplomacy. A variety of tasks that has an economic diplomacy can be divided into three levels of realization: micro-, macro- and mega- economic. To take the microeconomic diplomacy, it implies the support of separate enterprises, individual actions of the economic operators; while the macroeconomic level covers questions of governmental policy in the field of logistics, reproductive performance of cycles, fiscal field. Mega-level covers questions of drawing-up and defending the nation-wide positions at solving problems concerning entering by a certain country the integration units. The difference in methods of implementing the economic diplomacy can be traced on an example of different countries – developed and developing. Each of them has its own approach for the understanding of economic interests and economic diplomacy. Some countries while determining these interests and the methods of its achievement proceed from the ideological imperatives, the others are aimed to save and achieve the leader-

ship. The most efficient seems the choice, in which the main reference point of diplomacy and a completely external politics is the growth of a national production and the level of living standard. Some periods or other practice actions of countries should be estimated in the prism of prediction and taking into consideration all the changes of competition conditions on the world markets, the most resulting today and tomorrow; in the short and long term expanding the diapason of national economic interests' realization. Azerbaijan with huge practice in economic diplomacy is capable to achieve social-economic successes on the international arena. With substantial oil and gas resources, taking into consideration their high liquidity on the world markets, the strategic course of a country's development can be characterized by the utilization of absolute advantages in the environmental factors in order to modernize all the components of an economy. As a result, Azerbaijan gained the position of a leader-country in a rather significant in territory and weighty in the aspect of a mega-economic region (3/4 of South Caucasus gross product is manufactured in Azerbaijan). New areas of expressing national economic interests have shown up in the Caspian Sea basin, on the Caucasus, Middle East and Mediterranean region. The leading energetic and transportation corridors that go through the country on the axis West-East and North-South have strengthened the sovereignty and expanded the integration prospects of Azerbaijan.

One of the most significant global intercontinental projects, in cloth of which the interests of national Azerbaijan economy has been interlaced with, is the newly born Silk Road – TRACECA (Transport Corridor Europe-Caucasus-Asia) that has developed on new conditions. TRACECA program has been initiated on the conference in Brussels in May 1993, with participation of ministers of trade and transport of 8 countries: Azerbaijan, Armenia, Georgia, Kazakhstan, Kirgizstan, Turkmenistan and Uzbekistan. In future, Moldova, Mongolia and Ukraine have joined the program; in 2000 – Turkey, Rumania, Bulgaria; in 2009 – Iran. The participants of the above-mentioned conference have signed the Brussels Declaration, which launched the TRACECA program, but the real organizational frames the project gained with holding an international conference by our country in September 1998, that was dedicated for the reconstruction of Silk Road with a participation of heads of 9 countries (Azerbaijan, Bulgaria, Georgia, Kirgizia, Moldova, Rumania, Turkey, Uzbekistan, Ukraine); 13 international organizations and representatives of 32 countries. Here also it was established an intergovernmental commission TRACECA with the headquarters in Baku. The important achievement of the conference was the signing of "the Basic Multilateral Agreement on International Transport for Development of the Corridor Europe-the Caucasus-Asia". During the past years, a huge positive progress has taken place in the direction of enhancing the efficiency of the transportation corridor Europe-Caucasus-Asia. As a result, TRACECA has become one of the most reliable among all the existing transit bridges between Europe and Asia with a high security and safety of the loads transported. The volume of carriage is steadily increasing: in 2007 it was 53 million tons, in 2009 – 64 mln, 2011 – 72 mln, 2013 – 78 mln, 2014 – 80 mln. July-August 2015 it was the 1st container transportation through Baku according to TRACECA from China to Europe. Playing the key role in realization of carriages on TRACECA, Azerbaijan gives a priority for its development. The most significant role in the circumstances of transportation project TRACECA plays the compliant to international standards Baku

Cargo Terminal. It was the first terminal among all the post-soviet union countries that was provided with the modern equipment and mechanisms; this terminal is considered one of the best cargo complexes. A commissioning of Baku cargo terminal has provided favorable conditions for the growth of its authority as a transit point of a country. Contemporary building International Trade Port Complex (near Baku at Alat settlement) will be the biggest on the coast of Caspian Sea. It is planning annually to transport through it 25 mln tons of carriages, and more than a million of containers. The project of developing multimodal transport services covers the railroad transport too; in particular, the main track Baku-Tbilisi-Kars that launched in 2017. After joining with the underground tunnel "Marmaray" under Bosporus, it will emphasize the forthcoming of a largest through-passage of railroad carriage on the Euro-Asian route.

In general, it is needed to point out that one of the most successful achievements of our republic in the global economic and political scale is the expanding of the economic relations with the local countries through the transportation corridor Europe-Caucasus-Asia. The participation of our country in the TRACECA program has a very important strategic meaning for the multi-vector expansion of economic relations of Azerbaijan with Asian and European countries; it sets up very advantageous possibilities for integration of our country into the world economy. During the recent years the transportation corridor Europe-Caucasus-Asia, being in a state of serious competetion with a regional transport corridors, has become one of the key factors which play a serious role in achieving the economic growth's tempos in all fields of national economy; the formation of a national transportation complex in all fields of national economy, the formation of national transportation complex that will comply with the contemporary world standards; the directing of investments from the inside and outside sources on the development of transportation infrastructure which would have an important transit meaning. For example, in the frames of TRACECA program lots of projects were carried out, including "An application of the unique tariff policy in the transport corridor TRACECA", "Simplifying the procedures of border crossing", "A restoration of Caucasus railway roads", "Juridical and regulating frames of transport " and dozens of other investment projects. In all these project – their amount is close to 85 (14 investment projects and 71 project of technical assistance) participate international financial institutions including the European Bank of Reconstruction and Development, the World Bank, Asian Development Bank, Islamic Development Bank, Kuwait fund for Arab Economic Development with the volume of investments almost 2 billion euro's.

There are 2 huge transport corridors that pass through Azerbaijan – TRACECA and North-South. The length of TRACECA, Azerbaijani part, is 503 km [6, 28] while the second one, covering the route Russian border-Baku-Astara-Iran border – 521 km [7, 2]. They do not compete with each other, but if the former connects Azerbaijan in the axis West-East, the latter opens possibility for the economic connections with countries of Persian Gulf, and Indian Ocean. Both these directions of transport communications lead to the realization of national economic interests of Azerbaijan, expanding the horizons of integration for a country into the world economy. This takes places through the usage of advantages, which are sacred in the profitable geo-economic positions of a country, which, of course, plays a significant role in the economic development. Besides the participants of TRACECA, the number of adherents of this corridor can be mentioned the European Union, countries of Asian- Pacific Ocean region, such as

China, Japan, the Republic of Korea. In the development of TRACECA the similarity of interests can be observed, it includes not only intergovernmental, but also interregional types. The creation of joint forces the system of a cheap fast transportation of goods and services can lead to the economics' mutual complementarity; even for a more close integration between countries. The modern tendencies of development of the world economy show to the prospective of intergovernmental transportation web as one of the possible motives for economic integration. The participation of this type is more beneficial comparing with the self-contained integration groupings, which are capable to renew the former dependencies, adding political ambitions or ideological dogmas into the international economic relations. We can assume the following steps of a systematic integration process on the base of TRACECA:

- Developing the transport communications between countries;
- Forming a suitable organization for coordination of development of transportation complexes within countries;
- Signing agreement on the free trade zone for development of external trade connections;
- Creating the TRACECA Bank of Development.

It is quite possible that the above mentioned seems to be unreal nowadays, but the science should have its destination, as K.Polanyi said, "advancing the 'theory' or 'hypothesis' which would give the right and significant (not truisms), predictions concerning the events that didn't yet take place" [5].

The integration motivation appears where it forms the objective (economical, technological, communicational) premises for its practical application: when a certain national or corporative aims (for example, providing economic safety, expanding the production, lessening of costs) can be achieved more effectively at integration interaction with the other countries or corporations. The thing is that the global integration as a stimulating reason for a concrete actions is not evident. This comes from the fact that the consequences of globalization for different countries are not same. As a result, the "glob philia" or "glob phobia" comes out as a reaction for the positive and negative sides of globalization. It gains different shades in different countries, regions, different regions, and even humans. It is connected with the act that, most often, the global web of economic relations provides the one-side benefits for countries, provides incomes of a separate spheres of production or local groups of population in a globally integrating country. The concentration of an attention on the national economic interests as a primary aspect should form a contextual approach to the processes of globalization for each national economy. The context of the problems of globalization mentioned above consolidated the economy, leads to forming interests and values, putting forward aims and tasks, the realization of which will provide the whole approach to a world economy connections through the prism of development the potential of national production and to increase the level of social prosperity of citizens.

Conclusions

1. The current stage of development of the international economy takes place in the new global re-division of the world market, associated with the creation of integrative associations directed against the growing influence of emerging economies in the Asia-Pacific region. The US dominance in the World Economy is supported by the ac-

tive promotion of the transatlantic project agreements between the US and the EU. In addition, the implementation of these projects will lead to the weakening and even the threat of actual existence of the WTO.

2. The Russian Federation is a member of numerous largely overlapping associations. The dispersal of efforts and resources creates a tendency of bureaucratization of supranational administrations, hampers the efficiency of their operation. Several organizations need to be reformatted to focus and concentrate the efforts on the new tasks and challenges.

3. Growing limitations of the world's resources and the inability of the development in neo-colonial space generate counter-cyclical trends in the world economic dynamics between developed and developing countries, which should be considered in the functioning of EAEU.

4. EAEU will be affected by the trends in the debt economy and its feature that in contrast to the 60s of the last century indebted are developed countries, and creditors are developing countries.

5. EAEU must take into account the experience of going through other associations through similar stages of development in its formation. Experience of ASEAN seems to be extremely useful.

6. The macroeconomic situation in Russia is characterized by a trend of stabilization of the main macroeconomic parameters and the most volatile markets. The country's leadership is planning to move through the expansion of favored conditions for the business environment. On the other hand, it continues to institutionalize the restructuring and re-industrialization of the economy. This strengthens the incentives for international cooperation.

7. One of the main strategic objectives of EAEU is the transformation of resource advantages of national economies into competitive advantages. It can be implemented in a number of areas. The paper discusses the problem developing the production chains to deepen the processing of hydrocarbons and petrochemical industries.

8. Economic diplomacy serves the most effective method of finding a balance of interests in the global economic environment, achieved at the intersection of the objectives of individual states and their economic integration. Economic and diplomatic steps towards the development of integration ties of Azerbaijan can be characterized as the most pragmatic in difficult conditions of formation of a multipolar world economic space.

Referances:

1. Japan - 242.3%, Greece - 174%, Italy - 133.1%, Portugal - 125.3%, Ireland - 121.0%, USA - 107.3%, Singapore - 106.2%, Spain - 99 , 1%, Great Britain - 95.6%.

2. Pugel, Thomas A. International Economics.15th ed., N.Y. University, McGraw-Hill, 2011.

3. Turkey in Europe. Second Report of the Independent Commission on Turkey. September 2009.

4. Upon in late 1990, the EU has decided to tighten the requirements for imported products, exported to Europe, cereals, dried fruits and nuts from Africa declined by as much as $ 670 million. For companies with emerging market requirements outweigh the negative effect of the positive impact of open borders. According to experts, if the

transatlantic alliance, the most vulnerable will be the products of the developing countries will create.

5. Postmodernism and the integrity of the modern world (in Russian - translated) // Philosophy Issues, 1995, № 4, p.24.

6. Logistics Processes and Motorways of the Sea II, LOGMOS Master Plan – Annex 9.1 Country Profile AZERBAIJAN, April 2014 (http://www.traceca-org.org/fileadmin/fm-dam/TAREP/65ta/Master_Plan/MPA9.1AZ.pdf)

7. WTO, AID-FOR-TRADE: CASE STORY, ISLAMIC DEVELOPMENT BANK, Country Azerbaijan, Type Economic Infrastructure – Transport Corridor (https://www.oecd.org/aidfortrade/47720787.pdf)

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