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INTERNATIONAL ASPECTS OF THE EUROPEAN SOCIALIST COMMONWEALTH'S COLLAPSE IN THE 1980s AND 1990s

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The article is devoted to the analysis of decrease in bloc confrontation between the two social systems in the second half of the 1980s. This process brought "cold war" to the end. The circumstances surrounding the process inspired hopes and desires to enhance global cooperation and strengthen common security. The European region played a key role in this process. The development of international relations in the European context contributed to devaluation of classical examples of threats to Europe's security and weakened socialist countries dependence from the Soviet Union. These changes were also stipulated by the Soviet leadership's refusal to adhere to the Brezhnev Doctrine. The countries of the socialist commonwealth needed to embrace radical reforms, while conservative Eastern European leaders were rejecting any attempts to introduce changes. As a result of series of velvet revolutions those leaders were deposed. That led to collapse of the real socialism. The Soviet leaders and next Russian authorities didn't manage to preserve allied relations with post-socialist countries guided by pro-Western values. At the same time, the stability in Europe was under threat. Internal political imbalances in the new democracies were creating impediments to security in Europe.

Key words: "cold war"; Brezhnev Doctrine; velvet revolutions; European socialist commonwealth's collapse; dissolution of the Council for Mutual Economic Assistance (CMEA) and the Warsaw Pact military alliance (WAPA); post-socialist countries; Newly Independent States; Central Europe; post-socialist transformation; post-cold war Europe.

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МЕЖДУНАРОДНЫЕ АСПЕКТЫ РАСПАДА ЕВРОПЕЙСКОГО СОЦИАЛИСТИЧЕСКОГО СОДРУЖЕСТВА НА РУБЕЖЕ 1980–90-х гг.

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Анализируется ослабление блоковой конфронтации двух общественных систем во второй половине 1980-х гг., которое привело к окончанию холодной войны. Отмечено, что в тех условиях строились планы на укрепление глобального сотрудничества и всеобщей безопасности и ведущую роль в том процессе играла Европа. Эволюция международных отношений на европейском пространстве девальвировала классические угрозы безопасности, ослабила зависимость социалистических стран от СССР, что оказалось прямым следствием отказа советского руководства от доктрины Брежнева. Показано, что страны социалистического содружества нуждались в радикальном реформировании, но консервативные восточноевропейские лидеры отторгали назревшие перемены. Серия бархатных революций смела этих лидеров и похоронила реальный социализм. Обосновывается мысль о том, что надежды советского (позднее – российского) руководства сохранить союзнические отношения с постсоциалистическими странами не сбылись, последние выстраивали на Запад векторы внешних интересов, что не укрепило стабильность в Европе. Внутриполитическая разбалансированность в новых демократических государствах провоцировала возникновение проблем европейской безопасности.

Ключевые слова: холодная война; доктрина Брежнева; бархатные революции; распад европейского социалистического содружества; ликвидация СЭВ и ОВД; постсоциалистическое пространство; Новые независимые государства; Средняя Европа; постсоциалистическая трансформация; «постхолодновоенная» Европа.

Both internal and external aspects of the European socialist commonwealth's collapse continue to be the subject of scientific researches undertaken by historians and political scientists from post-socialist countries and major Western countries[1]. This article mainly analyses causes of maturation and scenarios of velvet revolutions [1–7], changes into doctrinal clauses of the Soviet foreign policy in the second half of the 1980s which resulted into the collapse of real socialism [8–17]. Thus, "retroactively" the article fills up the deficit of concepts of transition from socialism to capitalism at that time.

Special attention must be given to the publication by E. Vyatr [18] (famous Polish Scientist and Public Leader, former Chairman of the Seym of the Republic of Poland). He questioned the objective inevitability of refusal from socialism and hypothetically assumed the following development of scenario for satellite states overcoming the consequences of the Soviet system: a reforming path or collapse of real socialism.

There are a lot of publications by foreign authors, which reveal peculiarities of post-socialist transformations in European countries in the early 1990s [19–31]. As a result of those transformations, many countries substituted their Eastern foreign policy priorities for Western [32–48]. Such articles constitute scientific value because of inclusion of summaries of evidence-based materials.

Only few researches undertaken by domestic historians and political scientists [49–53] investigate the relationship between the collapse of socialism and the changing course of international relations in Europe. At the same time, better understanding and interpretation of sources and regional characteristics of the collapse of bipolar world system at the turn of 1980–1990s may shed light on some problematic issues of modern development tendencies. The above mentioned facts clearly define the objective of this article.

Collapse of the socialism system in Europe: prerequisites, process and external factors

The system established by the Russian Revolution of 1917 spread to significant amount of Eastern European States. However, one can observe its fast collapse in less than three years (1989–1991). It was not an outcome of a lost war or failed revolution, that's is why the process and the pace of the decline did surprise a lot of experts.

In recent years many experts have been claiming that they predicted such an outcome. However, the analysis of literature sources proves the opposite tendency. Archie Brown, British political scientist, historian and author of the book about M. Gorbachev, noted: "in 1985 no scientist was able to predict the reforming, restructuring and global collapse of the Soviet system" [14]. Many of them claimed that the flaws of socialist system will create instability as a result of insufficiency of the system, but no one assumed that between 1989 and 1991 this system will completely cease to exist in the USSR and all European socialist states. In fact no one expected such an outcome.

[1]This article is based on the findings of analysis of Belarusian, Russian, Polish and German literature sources.

The reforms initiated by M. Gorbachev spurred a lot of discussions among Western analysts. Some of them believed that serious changes might occur soon, while others thought that the leadership wanted to pretend that they were introducing changes. In the mid-1980s Zbignev Bzhezinski was discussing the prospects of American-Soviet rivalry and assumed that it would continue existing because of stability of the socialist system within the USSR and communism system in the West. Later on, he was among those experts who were certain that the socialism system would collapse [32]. Such type of opinion was initially expressed only in the 1990s – the period of substitution of the former systems in the majority of Eastern European States. At the same time, the majority of Western analysts considered that the socialist system copes well with all emerging problems and despite attending difficulties it will be preserved. For example, Samuel Phillips Huntington – famous American geopolitician, socialist and theorist argued that the problems faced by the Soviet system did not fundamentally differ from those which the system had to overcome earlier [9].

European attitude to decline of the socialist system resembles conclusions of the Soviet experts. However, one may examine this issue from another perspective: did the course of history determine the inevitability of collapse of the socialist system in Europe at the turn of the 1980–1990s? In such case the science just needs to recognize the fact. Moreover, it is also possible to assume that the events were developing according to another scenario. Probably, the system was at a crossroads and it was necessary to choose between the road envisioning new changes through reforming or the road leading nowhere.

On the other hand, there were assumptions that it was possible to prevent the collapse of the socialist system. It is considered that the leaders, who wanted to preserve the system despite its radically changed structure, initiated their reforms too late. It was possible to save the system by copying the Chinese model which didn't collapse because of timely reforming. Contrary to common views, China proved that the state is able to reform the socialist system by introducing changes into the economic system and social structure [18]. Those reforms were initiated and implemented under the supervision of the Communist Party.

Let's consider the reasons and consequences of collapse of the socialist system in the USSR and European States and the path to democracy and market economy.

The first most prominent external reason which preconditioned the collapse is considered to be a *heightened confrontation between the USSR and the West.* In 1980 Ronald Reagan, elected president of the United States, intensified confrontation with socialist states, particularly with the USSR. His political views were different. Unlike his predecessor, Jimmy Carter, he was against military intervention of the USSR to Afghanistan announced in December, 1979. This intervention was considered to be a new phenomenon. It completely differed from the intervention in Hungary or Czechoslovakia. At the same time, Western powers recognized these countries as the area of the Soviet influence.

During Carter's presidential term the Soviet Union still held a strategic initiative. Everything changed after Regan came to power. His reaction to the imposition of martial law in Poland in December, 1980 was rather sharp and categorical. Reagan constantly opposed Soviet strategies. His policy combined with public attacks against the Soviet "evil empire", was considered to be the highest point of the confrontation. The USSR was not able to withstand a new arms race and adopted a defensive posture. Only when M. Gorbachev came to power and called for a dialogue and actual easing of international tension, Washington introduced confrontation elements into its political course and initiated a mutual dialogue. It was evident that Washington retained the initiative in the final phase of the "cold war". Using its strategic advantage Washington managed to resolve the war in its favor.

The second reason which preconditioned the collapse of the socialism in Europe is considered to be the following: the impact of internal situations within socialist countries affecting the strength of ties with the USSR. In the 1970s they were in crises situation because of inefficiency of economic system, lack of democracy and an adherence to confrontation with the West. The crisis manifested itself through a weakening growth, increasing technological gap in comparison with developed Western states and the absence of strategic prospects for further internal development and building relations with the outside world. The period from the 1970s to the 1980s is referred to as "Stagnation Period". During that period the countries of the socialist commonwealth were gradually losing their trust in the USSR [16]. They were disappointed about by the lack of former Soviet power exercised immediately after the war. The fact that the USSR took the leading position in the initial phase of space exploration also worried them. The confrontational approach exercised by the United States influenced public mood and encouraged changes originating in socialist countries.

The third reason which made European socialist countries choose democratic path was the policy of M. Gorbachev (General Secretary of the Central Committee of Communist Party of the Soviet Union) elected in March, 1985. Considering hegemonic tendencies of this superpower in Eastern Europe, it is possible to conclude that *changes within the USSR served as an inevitable accelerator of other systematic transformations in socialist states.*

M. Gorbachev did not have a clear reforms project, but he realized the inevitability of changes. He was confused between favoring radical reforms and complete refusal from them. He was afraid (not without

a reason) of possible counterattacks by conservatives. He was also opposing the increasing attempts of democrats to support radical reforms. Such kind of maneuvering exacerbated splitting in the Soviet leadership structure; in summer 1991 there was even an unsuccessful attempt to carry out a coup d'état. In a short time period in December, 1991 M. Gorbachev stepped down. This was the year of the USSR dissolution.

Gorbachev's policy (perestroika) only resembled a series of improvised attempts. It's main goals were the following: reforming the Soviet Union and ending conflict with Western powers (within the domestic policy domain that meant ensuring glasnost ("openness" or "publicity"). Authorities planned to expand the freedom of speech and association, reform the economy (preserving command-administrative system), increase authorities of State power bodies (supervised by the established institution of the presidency) and push communist party into the background. On the international arena M. Gorbachev carried out talks aimed to reduce the amount of arms, withdraw troops from Afghanistan, renounce Brezhnev Doctrine and provide limited sovereignty to several socialist States [39]. The last point became crucial and inspired rapid changes in socialist European states.

Each reform step could improve the foreign policy of the Soviets and internal and external situation within the socialist camp. However, they were initiated too late. In the late 1980s the process of their adoption was rather accelerated because of the crises. The outcome of these reforms didn't meet the expectations, while there was no constant supervision over their consistency and mandatory implementation. M. Gorbachev intended to undertake reforms and preserve the socialist Soviet Union. He considered that a new commonwealth of sovereign socialist countries would be headed by Marxists-reformers. In any case, he failed to achieve his goals because of underestimation of many factors.

He did not take into account the weakness of regimes in the socialist bloc states. In 1968 refusal from Brezhnev Doctrine could allow Czechoslovak reformers (similar situation occurred in Hungary and Poland) led by Alexander Dubček carry out a program titled "socialism with a human face". Twenty years later Dubček could possibly be considered a symbolic figure of velvet revolution aimed at overthrowing rather than reforming the socialist system [25]. In other words, Gorbachev's reforms were initiated too late to save the socialist system. They did establish democratic character and partially transformed the system by reforms initiated at a high level in order to establish social-democratic state with mixed economy.

Radical critics of social systems claim that the economy of that period was not prone to reforming and each attempt to reform it was destined to fail. It is difficult to support or refute such a diagnosis. The collapse of socialism in Europe confirms that statement, but modified form of socialism still exists in China. It is still unclear if reformers in the USSR were in obviously losing position or were defeated by conservative forces opposing the regime because of delayed reforms [14]. We also have to understand that the Chinese experiment still has not been completed and we have to wait for its outcomes. The price paid by the regime for the delayed initiation was rather high. It became impossible to prevent accelerated decline of socialism. As a consequence, this process accelerated the collapse of conservative regimes in socialist European states.

Gorbachev's team lived in the past era, although considered the opposite. The team had an opinion that refusal from Brezhnev Doctrine would improve the relations between European reformers and Soviet leaders. In fact, all those measures were implemented too late. The positions of the ruling reformers were rather weak. Even in such states as Hungary and Poland they were not able to maintain popularity. Local communities were not ready to entrust their destiny to them at a time when it was possible to shape the destiny without their guidance. In the first phase of reforms M. Gorbachev also was suspicious about "reformers" from Eastern Europe. He doubted that conservative communist leaders denying any changes would support perestroika. Gorbachev's team never assumed the possibility of dissolution of the USSR that is why it was unable to control this process [14].

Thus, introducing democratization of political structures of the USSR, allowing political pluralism and open elections, weakening positions of the communist party and denying Brezhnev Doctrine Soviet reformers in a course of restructuring period (perestroika) accelerated the collapse of the socialist system despite their intention to introduce reforms and democratization principles.

External motives of velvet revolutions in Eastern European countries were based on a mixture of two processes: negative reaction of conservative Eastern European leaders to an introduction of any changes into the system and refusal of the Soviet leaders from the policy aimed at restricting the sovereignty of member-states.

The majority of socialist leaders within the Warsaw Treaty Organization of Friendship, Cooperation, and Mutual Assistance (WAPA)[1] didn't share the Western approach towards civil rights issues, cultural ties, freedom of movement, free information and ideas

[1]The Council for Mutual Economic Assistance (CMEA) was an economic organization established in 1949. It comprised the following countries: USSR, Bulgaria, Hungary, German Democratic Republic, Poland, Romania, Czechoslovakia, Albania (joined in 1961), Mongolia (since 1962), Cuba (since 1972), Vietnam (since 1978); since 1964 Socialist Federal Republic of Yugoslavia participated in work of separate bodies of the organization.

exchange prescribed by the Helsinki Final Act in 1975. At meetings organized by the Council for Mutual Economic Assistance (CMEA)[1] and the WAPA they expressed worries related to potential inability of the Party and the State to exercise control over the population as result of harmful effects of the Helsinki process [45]. M. Gorbachev, implementing his democratization policy course and introducing glasnost, had an opposite opinion. The enforced adoption of norms and mechanisms approved at meetings of the Conference on Security and Cooperation in Europe (CSCE) and especially at a meeting in Vienna in late 1989 [33] increased political and ideological corrosion of the state socialism[2].

The Soviet leaders encouraged conservative leaders of communist parties in Czechoslovakia, German Democratic Republic, Romania and Bulgaria to initiate reform policies of glasnost and perestroika. They even sympathized with Poland and Hungary, which initiated a series of reforms in 1988–1989s [30]. It is considered that the Kremlin's refusal to follow Brezhnev Doctrine sparked a series of internal changes. The formal rejection of the Doctrine providing the USSR with a right to intervene into the internal affairs of other Soviet bloc states occurred in July, 1988 during Gorbachev's visit to Warsaw. A month later, leaders of the Polish People's Republic agreed to enter into negotiations with Lech Wałęsa, the leader of illegal organization entitled "Solidarnosc". It was not a matter of pure chance. There was no doubt that the Soviet leader had already informed his European allies about such kind of policy changes. On 6 July, 1989 at a meeting of the Council of Europe M. Gorbachev formally declared renunciation of the Brezhnev Doctrine and the principle of "spheres of influence". "The social and political systems earlier were subject to changes. It means that they might also change in the future". M. Gorbachev also considered that the citizens of a country shall be entitled to make their own choices as for the adoption of these changes. Any interference in internal affairs and any attempt to limit friendly, allied or any other type of sovereignty were considered unacceptable [8]. At the same time, the opposition in Eastern Europe viewed this statement as a symbol of freedom.

Resolutions approved by the 1st Congress of People's Deputies of the USSR (the session was held on 25 May, 1989) served as an immediate impetus for revolutionary changes in European socialist states. The Congress admitted the inevitability of political system reforming within the Soviet Union. In a course of implementation of reforms it was possible to observe the formation of institutional structures of the opposition which were gradually splitting the leadership within the Communist Party of the Soviet Union (CPSU). Echo of these events immediately reflected in the countries of the socialist commonwealth. Starting from spring 1989, opposition representatives both inside of ruling parties (Hungary) and outside of them (Poland) intensively began claiming significant share of power. Their principles guided the actions of the Soviet opposition. Opposition and some leaders of the CPSU (including its General Secretary M. Gorbachev) approved the reform path but didn't consider their consequences [8].

In compliance with round-table discussions in 1989, Poland held elections in which participated several candidates (alternative elections). They brought victory to "Solidarnosc" [25] and laid the foundation to a wave of radical transformations in the countries abandoning socialism. The process was spreading from north to south. It manifested through different forms and aimed at renunciation of such social order as state socialism.

The outcomes of negotiations between Hungarian Socialist Workers' Party and the united opposition (22 March – 18 September) determined the evolutionary path to the regime change. The pro-Soviet leaders had to resign and on 23 October Hungarians declared Hungarian Republic. Hungarian People's Republic ceased to exist. Hungarian Socialist Workers' Party was renamed to Hungarian Socialist Party with a clearly defined social democratic program.

On 9 November, the world witnessed the fall of the Berlin Wall accompanied by overthrowing of former rulers of German Democratic Republic; less than in a year, on 10 October, 1999 both German states reunited.

On 17 November, 1989 there was velvet revolution in Czechoslovakia. This term appeared during the November events which started with a large student demonstration [3]. Initially the term was introduced by Western experts and then it was picked up by V. Gavel and Slovak opposition leaders who also used a synonymic term "delicate". The term "velvet revolution" was coined to describe the 10-day events of November, 1989. The term is also applied in a broader context to describe the changes that took place in 1989 in other Eastern European countries as result of which the region was renamed into Central Europe.

In November, 1989, pressure against T. Zhivkov started to emerge at the plenum of the Central Committee of the Bulgarian Communist Party. He was

[1]Warsaw Pact military alliance (WAPA) was established in 1955; Warsaw Treaty of Friendship, Cooperation and Mutual Aid was signed on 14 May, 1955. Signatory States: Bulgaria, Hungary, German Democratic Republic, Poland, Romania, USSR, Czechoslovakia and Albania (since 1962 ceased taking part in the activities of the Organization, in 1968 ceased to be a member), entered into force on 5 June, 1955).

[2]Different terms are used in order to define the structure of society, which existed till the end of 1980s: "proto-socialism" (a term coined by Marxist theorists), "real socialism", "bureaucratic socialism", "Soviet-type socialism" and even "totalitarian socialism" (referring to a totalitarian state and its repressive regime).

forced to resign from all senior posts. On 18 November, hundred thousand oppositioners took part in a rally in Bulgaria after which the majority of the pre-war political parties were restored.

On 22 December, 1989 as a result of uprising in Romania N. Ceaușescu was ousted. His regime was replaced for a new one. The Parties representing the National Salvation Front (NSF) came to power and on 29 December the Socialist Republic of Romania was renamed to Romania. The uprising was followed by bloodshed. I. Iliesku (ex-communist and then NSF leader) believed that there was a necessity to initiate a trial against Ceaușescu and his wife by special military tribunal. Indeed, their execution by firing squad on 25 December marked the end of shootings in Bucharest. According to Iliescu then Washington was not against military intervention of the USSR in Romania in order to restore the order. However, Soviet leaders decided not to intervene into socialist countries affairs [44].

From spring 1990 communists in the Republic of Yugoslavia were suffering constant defeats at elections. The slow spread of the revolutionary wave was also typical to that region. It was spreading in north-southern direction from Slovenia and Croatia to Serbia and Macedonia.

At the end of 1988, almost simultaneously, people's fronts in the Baltic States expressed intention to withdraw from the USSR. Post-socialist development of these republics was based on a principle of refusal from the recent Soviet past and substitution of former geopolitical priorities to Western values [22]. By the end of the 1990s the territory occupied by these states became known as "Baltic states" and an integral part of the Central European Subregion.

Loyalty to changes in the social structure in Eastern Europe demonstrated by M. Gorbachev's team created hope that the Soviet Union would be able to preserve allied relations with Eastern Europe after a series of velvet revolutions. Mainly they were concerned about the proper functioning of the CMEA and the WAPA.

The assumption that the modified CMEA would continue to operate turned out to be wrong. New authorities of allied countries didn't intend to be dependent from the USSR in politico-military and economic aspects. Further coexistence of institutions of international socialist integration was questioned. At 45th session of the CMEA (January, 1990, Sofia) Czechoslovak representatives demanded radical transformation of the structure of this international organization. The outcome of these negotiations turned out to be rather complicated: transformation didn't take place, but in any case, the CMEA was liquidated in compliance with the Protocol adopted at the end of June, 1991 at a session in Budapest [29].

The Soviet diplomacy still tried to preserve the modified WAPA, but its attempts were not successful. Only Romania and partially Poland supported the USSR. Czechoslovak and Hungarian diplomats were insisting on liquidation of military establishments within the WAPA and modification of its political structure for the purpose of establishment of a full-fledged security institution. This project was discussed at the WAPA session in Moscow in early June, 1990. In autumn 1990, the Agreement on Military Structures Liquidation was reached. The Agreement was signed in February, 1991. The WAPA's military structures were fully liquidated by 31 March [29].

Further events: attempts by the Soviet leaders to suppress liberation aspirations of the Baltic Republics, intervention of the Soviet troops in the Baltic States in January, 1991, polarized positions of Gorbachev's team and power elites of former socialist countries (satellites of the USSR). The positions of some WAPA members have been radicalized. Some of them were demanding to terminate the Pact. This demand was firmly supported by diplomats from Czech and Slovak Federal Republic, Poland and Hungary. On 1 July, 1991 a Protocol on WAPA liquidation was signed in Prague [29].

It was evident that loyalty of the Soviet leadership to democratic changes in socialist European states aroused a lot of controversies among conservative leaders in the European region. This loyalty could be classified as a prerequisite of a series of velvet revolutions. Anti-communist political elites, which came to power after revolutions, didn't approve the positions of the USSR as for perestroika (restructuring) of the Soviet system. Their desire not to develop close foreign policy partnership with the USSR resulted in collapse of the CMEA and the WAPA. At the same time, post-socialist leaders welcomed Moscow's refusal from an adherence to Brezhnev Doctrine and the principle of "spheres of influence". In February, 1990 in his address to the US Congress, a new president of Czechoslovakia V. Havel noted that velvet revolutions became possible only after the proposal of changes by the Soviet President M. Gorbachev. Due to his proposal the following purposes have been achieved: denationalization, desovietization and desatellization [33].

Peculiarities of security maintenance in the European region

In the early 1990s, when bloc confrontation ceased to exist, (known as "cold war") there was a feeling that there would be no repeated ideological confrontation in the world. These turbulent processes adjusted the role of Europe on international arena. Again, it was viewed as a model of international security. At the same time, despite the loss of control over considerable amount of leverages that could impact the world situation, European countries were building up equally important potential: other world regions viewed them

as a model for *integration processes development* which were manifested through the ability to renew itself, expression of shared responsibility, genuine partnership and mediation in a course of global issues solving. It is considered that Europeans made significant progress in the first half of 1990s. They were inclined to believe that military conflicts and ideological intolerance were vestiges of the past. They were hoping for a new and peaceful era of prosperity which would offer new opportunities for resolution of international, regional and bilateral crises in a manner of civilized mediation and respectful dialogue between States [49].

The second encouraging factor within the framework of international context is considered to be the desire to ensure security within the entire international community with a special focus on the peoples living in Continental Europe. Political leaders realized that their peoples are not secured against contemporary challenges destabilizing the security situation in global world. However, pure awareness of that problem didn't considerably change national, regional and global policies. The emerged concept of universal and inclusive security didn't contribute to profound transformation of public consciousness and comprehensive restructurings within national and international institutions.

The end of the "cold war" couldn't prevent the occurrence of inter-state conflicts and it didn't indicate a return to the former system of international relations based on the balance of forces and changing alliances. Nuclear weapons and an increasingly growing strength of conventional weapons have become deterrent factors limiting the possibility to use a war as policy tool. The new international situation created opportunities to ensure effective collective security and establish the rule of international law under which an application of military force for resolution of conflicts between states loses any meaning [49].

Possession of nuclear weapons viewed as deterrent of potential aggressors did cross out any attempts to maintain peace based on nuclear powers' refusal from their destructive views. Each of the five countries officially possessing nuclear weapons expressed an intention to keep an adequate amount of weapon throughout the period during which either their partners or rivals would preserve it. They all proved the necessity to preserve it in case of new nuclear weapons deployment by one or several other States. However, for this purpose it was enough to keep no more than one fifth of the current volume (probably even less) [49].

The security of Europe was mainly endangered not by potential confrontation between states, but by emerging conflicts within them. This is one more distinctive feature of post-socialist Europe. In 2–3 years after the collapse of the USSR it was possible to witness a variety of local (regional) episodes in which the leading international actors (Soviet and Western blocks) were trying to establish their spheres of influence. New challenges were substituting the previously prevailing threat of global nuclear catastrophe. Among them were the following: internal strifes, armed clashes and even civil wars [49].

In these conditions, there was an increasing conviction that both principals and procedures for security provision should be considerably changed. The international community should be entitled to intervene into internal affairs of conflict-affected countries in order to ensure safety of the population suffering from such conflicts. Europe recognized the need for a new security system based on mutual assurances and refusal from an old horrification practice. These steps were undertaken in order to encourage the sovereign States to cooperate in solving national security issues.

An implementation of multilateral warranties is considered to be the major prerogative of international organizations acting on a local level. They were supposed to be charged with a task of problematic issues tracking instead of solving them. That meant that all the functions hypothetically performed by a single European organization were supposed to be delegated to the UN Security Council. Instead of creating a hierarchy of regional security institutions, Europe had to introduce and recognize pluralist democracy, the rule of law and respect for civil rights (including minorities' rights) as main prerequisites of security on the continent.

In the early 1990s it was also possible to observe another distinguished feature of European security mechanism*: depreciation of classical types of threats* mainly related to an accumulation of weapons and block confrontation; *emergence of new problems (rooted to the old types of problematic issues)* such as international terrorism, organized crime, drug trafficking, unsupervised proliferation of weapons of mass destruction, financial, economic and environmental crises as well as massive epidemics. Separatism and other manifestations of national and religious extremism provoked a serious of regional conflicts in the territory of post-socialist Europe. It is considered that hundreds of thousands residents of Newly Independent States became victims of these regional conflicts.

New threats and challenges in Newly Independent States could be classified into four groups:

- ethnic and religious conflicts stipulated by lack of democratic and public institutions. It is not a secret that many Western European States in comparison with Newly Independent States were demonstrating higher efficiency while dealing with separatist movements. Protests and demands of ethnic, national, religious and linguistic groups in the West are considered to be an integral component of the legal framework of deterrence policy;
- political instability related to transformation of single-party totalitarian systems in pluralistic democracy;
- social tensions as a result of transition from directorial economic models, controlled by central authorities, to market-based economic models;

• environmental risks mainly resulted from poor designing and nuclear power and chemical plants operation [49].

The presence of tension within the post-socialist region determined the direction of the evolution of geopolitical processes and neglected any consolidation attempts; evolution divided Newly Independent States into two groups based on their overseas interests. Loss of geopolitical influence within the group of post-Soviet countries (CIS) has simplified the formation of European security system in which NATO played the central role. The intention to build single Europe and transfer powers to the UN Security Council finally failed. New dividing lines appeared in Europe. They were shifted to the east from the former lines existing during the "cold war". The majority of countries of the second group (Middle Europe) sub-delegated their security and defense problems to the NATO, their main objective was an entry into the NATO.

It should be noted that the continent was not doomed to pass through the system of new world order formation based on "winner takes all" principle. During the unification of Germany, the Soviet leadership missed an opportunity to limit the NATO expansion to the territory of German Democratic Republic and further to the East. Later, in the early 1990s, the CIS expressed an intention to establish a comprehensive security system on the basis of the OSCE, but their intension didn't find support [49]. As a result, they were disappointed by the changes occurred and advocated for the review of accepted decisions. The OSCE was also losing its former positions and in the end it became rather marginalized.

By the end of the 1990s, due to reinforced globalization, the area of tension considerably increased. On the one hand, the States have become interdependable because of regional conflicts posing a threat to European security and stability. In this regard, it is worth to mention Yugoslavian crisis. On the other hand, uneven economic development led to crisis capacities accumulation in the majority of countries on the continent. These capacities gave rise to different extremist political organizations using terror and violence as the main tool for achieving their objectives.

It is worth to mention the following aspect of European security after the end of the "cold war": *impact of consequences of global formational and ideological confrontation* upon the collapse of the socialist system. It was possible to witness the reunification of Germany, collapse of Czechoslovakia, the USSR and Socialist Federal Republic of Yugoslavia. New 21 states appeared on a map (Newly Independent States). The WAPA ceased to exist and was substituted by new institutions for military and political cooperation: North Atlantic Cooperation Council (currently Euro-Atlantic Partnership Council (EAPC) and Partnership for Peace (PFP). Until the end of 1995, the new European order was founded on adherence to provisions of the Treaty on Conventional Armed Forces in Europe by all 30 member-states. As a result, heavy weapons cuts were initiated on the territory from the Atlantic to the Urals (reduced at least by 50 thousand units). Moreover, the withdrawal of the former Soviet troops from Central Europe and the Baltic States prompted establishment of military stability and political predictability. The meeting of the OSCE in Paris and conclusion of the Stability Pact for Europe regulating political-military aspects of security, laid the foundation for a new type of relations among all member-states. Implementation of decisions and recommendations worked out at OSCE Conference on Confidence- and Security-building Measures in Vienna encouraged greater mutual openness. Common values and international policy approaches have become stronger and spread across the whole Europe [49].

Almost all post-socialist countries committed themselves to principles of democracy, political pluralism, market economy and the rule of law. Their agreement to respect international standards established in the West and covering the areas of civil rights and fundamental freedoms has granted an opportunity to many countries (with a few exceptions) to become full-fledged members of the Council of Europe. The majority of Newly Independent States expressed an intention to join the NATO and the EU. They were referred to as Central Europe. This region comprised small and medium-sized countries. Currently it comprises 16 states. Today the term "Central Europe" is used to describe common historical past, similar social, ideological, political, cultural, psychological and other components of the former socialist camp. It is also applied with a reference to geopolitical sub region expressing an intention to be integrated into the western structures.

Thus, it is possible to conclude than in early 1990s after the "cold war" states had an unprecedented opportunity to strengthen their global cooperation. New context decreased the amount of disputes and tensions. The international climate was getting warmer, new disarmament opportunities were established. It is considered that disarmament became possible because of crucial transformations on the territory of the former Soviet Union and its European partners from the socialist camp. However, the future reality significantly differed from the above mentioned expectations. The collapse of the socialist system in Europe and the end of the "cold war" did not eliminate security issues on the Continent. Throughout XX–XXI centuries a number of confrontational factors defining the power and strength of a certain European state have been considerably increasing due to the following factors: growing meaning of financial power, diversity of banking systems, promptness and efficiency of communications, introduction and provision of access to information infrastructure. At the same time "classic" political and military tools of foreign policy retained their significance. As a result, security situation in Europe has not become lasting and more predictable.

Laying the foundations for a new European order

The collapse of European socialism system gave an opportunity to undertake the third attempt of world policy transformation in the XX century. As a common practice, the new model of European order has become an example for the whole world.

The search for a new model of European security once again has been initiated after the end of the "cold war". Initially, the confrontation strategy did ensure certain order. Dangerous situations did occur, at the same time it was considered that they were initiated and later on resolved by two opposing parties: the NATO and the WAPA. At these periods both blocks realized that an extensive tension may provoke a new world war with an application of nuclear weapons [39].

After the "cold war" and the collapse of the Eastern military-political bloc, the countries were ensuring balance on the continent by themselves. Powers, granted to the countries, have completely changed the security situation. Guided by national priorities they were not able to ensure stability (even in the future prospect such attempts are destined to fail). The system of European order was taking into account national sovereignties and the interests of each state on the Continent. This was rather unpredictable and potentially dangerous. "Parades of sovereignties" in 1989 and 1991 sparked a lot of national conflicts, which potentially could result in inter-state military tensions. In accordance with the worst case scenario these military tensions could even escalate into a nuclear catastrophe.

National and state interests didn't form the basis of European security. One more time it was possible to witness attempts to find an alternative ensuring relative balance. It seemed that the system of multilayer order could ensure balance on the continent. That meant that major decisions were supposed to be taken at European level, while others – at the regional. Remaining issues were supposed to be addressed at national state level. In such case certain states would be deprived of sole sovereignty because of its distribution at European, regional and national levels. Thus, the new European order assumed transition of equal parts of national sovereignty of each state to the highest (supranational security and cooperation structures) and lowest levels (sub-regional interaction forms). Nation states were playing an important role, while large-scale issues were resolved at European and regional levels. The cooperation on security issues was established on three levels in order to ensure a balance of interest of all states, thus contributing to lasting European order [49].

Three levels format of the European order was supported by the majority of countries of the Continent and by major intergovernmental institutions, including the Conference on Security and Cooperation in Europe. The European Union has become a prototype of such system. In addition to national and state cooperation the union envisages regionalization (functioning of euro-regions) and supranational integration processes (rights of the EU bodies to approve decisions binding for all member-states). It is clear that the EU represented a simplified model in the context of European security system.

Authors of a new security model took into account the fact that in comparison with other world regions, Europe significantly benefited from the end of the "cold war". Milestone decisions were taken in this region and they managed to cease the global confrontation between the blocks. The collapse of the iron curtain opened unpresented opportunities for cooperation and convergence of states and peoples on the basis of shared democratic values. In these conditions the new European order for security and stability maintenance could become a prototype of post-cold war world order where the UN Security Council would act as supranational guarantor and safety regulator.

In the first half of the 1990s politicians and experts were convinced that because of geopolitical diversity of world regions the international order after the end of the "cold war" would depend on a number of factors, including:

- Europe's success in promoting its political and military unity;
- sovereign status preservation in case of states emerged on the former Soviet territory;
- establishment of democratic order in Russia, which will prevent imperial aspirations and return to centralized dictatorship and an application of violence.

Many analysts were convinced that Europe would be a center of a new world order formation, but the USA was supposed to play a crucial role in each of these regions in the near-term perspective. At that time the USA was the only remaining superpower. No other state had similar levers to control economic and social aspects in the world community. In fact, the special status of the USA was already affected by domestic issues. Thus, Z. Bzhezinski considered that Washington should focus more on domestic affairs, otherwise dynamic Japan and the unified Europe might undermine its leading positions and assume significant share of political and military aspects at the very beginning of the XXI century. People's Republic of China adhered to the same foreign policy strategy [32].

The above-mentioned factors contributed to the maintenance of peace in Europe. Post-socialist countries played a crucial role in further deepening and expansion of European stability and integration processes. European order became dependent on deliberate adherence to western values and controversial Russian attempts to establish close ties with Europe, the USA, the NATO and the EU.

However, this movement quite differed from the Pan-European process of security provision because of activities of the Conference on Security and Cooperation in Europe (supervised political integration processes on the Continent). Generally speaking, the organization pursued the following goal: minimization of possible negative consequences upon an acquisition of the remaining part of the Continent by civilized Western Europe.

In fact, a lot of complications arise on the way of conflict-free Europe formation. In the early 1990s the Conference on Security and Cooperation in Europe strengthened its positions and was recognized as Pan-European Organization. Starting from the middle 1990s, the NATO acted as a single political and military organization charged with security preservation task. The NATO and the CSCE were competing between each other offering different security concepts to Europe (pro NATO and Pan-European concepts). This competition could result in potential conflicts on the territory of Europe as well as could create obstacles on the path to stability on the Continent. In reality it was possible to observe the weakening of cooperation processes in Europe, halted cooperation between numerous European and Euro-Atlantic structures tackling vital security issues on the Continent.

Thus, in the 1980s and 1990s the foundations of international order have been considerably modified. Those changes were triggered by collapse of European socialist system which, according to majority of Western political scientists and experts, changed the pattern of international relations. The term velvet ("decent") revolutions was coined to describe the process of collapse of socialism. Velvet revolutions not only changed the system but also modified the direction of social and political development of Eastern Europe. They also marked a tectonic shift in global geopolitics. The events lead to the collapse of bipolar Yalta-Potsdam system. The security vacuum after the collapse of Eastern block was filled by the NATO.

The revolutions gave rise to a new social development paradigm. They were also followed by profound system processes, new socio-political regimes introduction, proclamation of democratic development principles and revision of identities by the affected states. Peoples of the former socialist republics no longer wanted to be associated with the "real socialism". Velvet revolutions were also accompanied by glocalization – the idea that in globalization local conditions must be considered.

At the same time, as a result of dissolution of the USSR, interstate military, political and economic institutions ceased to exist. Previously they were associated with socialist way of life (the WAPA and the CMEA were referred to as the main institutions). Former socialist countries were no longer subordinate to the USSR and were forced to find the means to preserve their sovereignty. They were establishing new foreign policy priorities and development strategies. In some regions it was possible to witness the application of military means (Yugoslavia). Post-Socialist reorientation of Newly Independent States was accompanied by complex imbalance in internal political life, economic and social relations. This reorientation led to new challenges and risks. Dreams about stability were not fulfilled. In terms of security ensuring, Europeans gave preference to the NATO. This choice ruined the dream about unified Europe and a "common European house". The lines splitting Europe didn't disappear. They have just been shifted to the East, closer to the Russian borders.

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THE REPUBLIC OF BELARUS AND THE EUROPEAN UNION: THE MAIN STAGES OF THE RELATIONSHIP

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The article discusses the relationship between Belarus and the European Union, the author distinguished stages, characterized by their features and problem fields. The author analyzed the existing EU instruments and initiatives in relation to Belarus, emphasized the importance of implementing the idea of "integration of integration", namely non-opposing of Belarus' membership in the Eurasian Economic Union (EAEU), the Union State of Belarus and Russia, to cooperation with the European Union.

Key words: European Union; Republic of Belarus; stages of relations; economic cooperation; "integration of integration".

РЕСПУБЛИКА БЕЛАРУСЬ И ЕВРОПЕЙСКИЙ СОЮЗ: ОСНОВНЫЕ ЭТАПЫ ВЗАИМООТНОШЕНИЙ

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Рассматриваются этапы взаимоотношений Республики Беларусь и Европейского союза. Характеризуются особенности и проблемные поля данного взаимодействия. Анализируются действующие инструменты и инициативы ЕС в отношении Беларуси. Подчеркивается значимость реализации идеи интеграции интеграций, а именно непротивопоставление членства Беларуси в Евразийском экономическом союзе, Союзном государстве Беларуси и России развитию сотрудничества с ЕС.

Ключевые слова: Европейский союз; Республика Беларусь; этапы взаимоотношений; экономическое сотрудничество; интеграция интеграций.

Diplomatic relations between the European Communities (EC) and the Republic of Belarus were established in August, 1992, Partnership and Cooperation Agreement (PCA, 1995) and the Interim Trade Agreement (ITA, 1996) have been signed and ratified by Belarus [1]. PCA was ratified by seven EU member-states, but the ratification process has been suspended since 1997 [2]. Trade and Cooperation Agreement concluded by the European Economic Community and European Atomic Energy Community with the USSR (1989) covers bilateral economic relations [3], and the Framework Agreement between the European Communities and the Government of the Republic of Belarus signed on 18 December, 2008 regulates technical cooperation. The Agreement on trade in textile products between the EU and Belarus imposing quotas on Belarus textile export was signed in 1993, then extended in 1995, 1999, 2003–2007, and cancelled in 2009[1].

[1]Delegation of the European Union to Belarus. URL: http://eeas.europa.eu/belarus/index_en.htm (date of access: 10.02.2017).

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The following EU key initiatives apply to Belarus:

• *European Neighborhood Policy* (ENP, 2004), which is not active as the coordinated action plan with the European Commission for Belarus is not signed;

• *Eastern Partnership* (EaP, 2009), consisting of multilateral (four platforms plus six flagship initiatives) and bilateral (the signature of action plans, association agreements) formats. Belarus cooperates only within the multilateral format;

• *Northern Dimension*, Belarus takes part in Partnership on Environment;

• International technical assistance and cross-border cooperation projects within the *European Neighborhood Instrument (ENI)*.

For certain periods the European Union formulates the Strategy Paper and Indicative Programme identifying priority sectors for technical cooperation between the parties [4–6].

The relations between the EU and Belarus may be categorized into the following stages (somewhat conventionally):

• 1994–1996 (active phase, signature of PCA, ITA);

• 1997–2007 (ratification of the agreements is suspended, "frozen" political relations and the simultaneous development of economic cooperation);

• 2008–2010 (normalization of relations, high-level visits to Belarus by the EU representatives, the European Commission opened its Delegation in Minsk, accession to EaP);

• 2011–2012 (imposition of restrictive measures as the response to the 2010 presidential election events, decrease in the level of political contacts);

• 2013 – till present (intensification of contacts, negotiations on visa facilitation and readmission agreements, consultations on the modernization, cancelation of the most of the restrictive measures).

EU – Belarus relations stages

1994–1996

The procedure of PCA preparation was launched on 1 October, 1994 when the EU Council invited the EU Commission to submit proposals for the directive changes in the negotiations with Belarus. In November, 1994 the EU Council approved for the European Commission the changed directives on the negotiations on PCA, which allowed EC to negotiate similarly with Ukraine and Moldova. PCA (109 articles and 8 appendixes) was initialed in December, 1994 and signed in March, 1995 [1]. It allowed to establish a comprehensive political dialogue, the inclusion of the article on development in PCA gave further possibility to transform PCA into the Free Trade Agreement.

In March, 1996 the Interim Agreement, comprising the most important provisions of PCA which do not require ratification by the EU member-states' parliaments, was signed. In April, 1995 the European Parliament adopted the resolution stating that respect for human and minority rights is the condition for PCA implementation. In October, 1996 the European Parliament adopted the resolution on the suspension of PCA ratification process and the enactment of the Interim Agreement. The reason for this was undemocratic, from the EU perspective, procedure governing the composition of the National Assembly of the Republic of Belarus. After the EU delegations visits in January – March, 1997 the report on the situation in Belarus was presented, based on which in September the EU Council made a decision that "the EU and its member-states will conclude neither Interim Agreement nor PCA" which is actual till present [2; 7].

1997–2007

This period is characterized by the low level of political contacts and the simultaneous development of bilateral economic relations: during the whole period of the existence of independent Belarus the EU has been ranked the 2nd after Russia in the country's turnover. Political relations were justified by the level of implementation by Belarus of the following EU, OSCE and the Council of Europe's requirements: the extension of Parliament's powers; representation of the opposition in the election commissions; to ensure equal access to state mass media; to bring electoral law closer to international standards. 2006 presidential elections, 2000 and 2004 parliament elections failed to meet key international standards for democratic elections according to OSCE missions. "Value" pressure approach underlined the EU policy towards Belarus: at the 2002 December summit in Copenhagen the EU reaffirmed its intention to build relations with the neighbouring countries on the basis of common European values.

On 11 March, 2003 the EU presented the document titled "Wider Europe – Neighbourhood: A new Framework for relations with our Eastern and Southern Neighbours" which became the framework for the formation of the European Neighbourhood Policy declared in 2004 as the instrument of cooperation with the neighbouring countries after Eastern Enlargement (2004) [8]. It should be noted that at that time the EU did not have any proposal as an alternative to the existing EU – Belarus relations. The major EU aim was to "bind the Republic of Belarus on the threshold of parliamentary elections 2004 to commensurate gradual process which should be focused on creating conditions for free and fair elections and, if to do so, on the involvement of Belarus in the neighbourhood policy, without compromising the position of the EU regarding the protection of shared democratic values" [8; 9].

In its official position, Belarus evaluated positively the initiative on the EU Neighbourhood Policy estab-

lishment as consistent with national strategic priorities in terms of convergence with the EU and the formation of the zone of "neighbourhood". It's necessary to note the activity of the Ministry of Foreign Affairs of the Republic of Poland: the Polish side initiated the development of the EU "Eastern Dimension", covering four countries – Russia, Belarus, Ukraine and Moldova, proposed to institutionalize it in the form of Eastern European Regional Forum, and to create of the European space of political and economic cooperation in the mid-term perspective (as set out in non-paper).

However the European Union made a range of new tough decisions in relation to Belarus: the results of Parliament elections and referendum of 17 October, 2004 were not recognized, the visa ban for high-ranking Belarusian officials was introduced. Formally Belarus was included in the European Neighbourhood Policy (2004), but its participation was once again subject to the requirements to carry out significant political and economic reforms. During this period, international technical assistance was provided to Belarus through the implementation of projects in the framework of the European Neighbourhood Instrument, regional programmes of the Baltic Sea, "Poland – Ukraine – Belarus", "Latvia – Lithuania – Belarus".

In whole, this period is characterized by the absence of the balanced EU strategy towards Belarus, it was more of a set of short-term tactical actions which did not defuse tensions in the political sphere; the conditional involvement of Belarus in the European Neighborhood Policy; taking a decision to expel Belarus from the Generalized System of Preferences since June, 2007 resulting in financial losses for Belarus in trade relations with the EU; the beginning of the transition from the isolation policy to "step-by-step" strategy. The latter is reflected in the non-paper document representing a new, from the EU viewpoint, vision of the development of the relations with Belarus: "What the EU could bring to Belarus?" [9].

2008–2010

There was a new positive momentum caused both by the internal (parliamentary elections of September, 2008 and presidential elections of 2010) and external (Georgia – South Ossetia conflict in August, 2008, global economic crisis, non-recognition of independence of Abkhazia and South Ossetia by Belarus) political developments.

The EU Council decision of 13 October, 2008, which regulated the relations between Belarus and the EU till January, 2011, stated that 2008 parliamentary elections failed to meet OSCE standards for democratic elections [10]. Nevertheless, some progress was observed during the electoral campaign compared to the previous elections, in particular cooperation with OSCE/ODIHR and the broad access of opposition to the media, as well as the release before the elections of the last political prisoners recognized as such internationally. It was also reported about the resumption of contacts with the Belarusian authorities and the 6-month suspension of the ban on entry into the EU countries of Belarusian officials subject to the restrictions. The list of 41 banned officials was narrowed to five people. The EU Council decision about the 6-month probationary period for our country was announced.

During this period a series of visits of high-level EU delegations and representatives took place, the toughness of EU institutions official documents rhetoric in relation to Belarus decreased [11].

Luxembourg held the first in 3-years' time meeting of the EU "ministerial troika" (Foreign Minister of the EU French Presidency B. Kouchner, European Commissioner for External Relations and European Neighbourhood Policy B. Ferrero-Waldner and the EU High Representative for the Common Foreign and Security Policy J. Solana) with Belarus Foreign Minister S. Martynov. On 5 November, 2008 during the visit of the EC delegation headed by the Deputy Director-General of the Directorate-General for External Relations of the EC H. Mingarelli there were discussed the issues about the activation of cooperation between Belarus and the EU and the initiation of the three new and important for Belarus areas of cooperation: products quality control, in the fields of standardization, the interaction of financial institutions both in the field of agriculture and food security.

On 18 December, 2008 the first visit to Minsk of the Head of the Delegation of the European Commission to Belarus and Ukraine J. M. P. Teixeira took place. The EC Delegation was opened in Minsk. On 19 February, 2009 there was the first visit of the EU High Representative for Common Foreign and Security Policy Javier Solana, during which he met with the President of the Republic of Belarus A. Lukashenko [12].

On 17 and 22 April, 2009 the meetings of the Minister of Foreign Affairs of the Czech Republic (the EU Presidency in the first half of 2009) K. Schwarzenberg and the EU Commissioner for External Relations and European Neighbourhood Policy B. Ferrero-Waldner with A. Lukashenko took place. On 7 May, 2009 the Belarusian delegation took part in the inaugural Summit of the EU Eastern Partnership programme [13]. On 27 October, 2009 in Luxembourg during a joint meeting the representatives of the Council of Europe and the European Union reaffirmed EU commitment to cooperation within Eastern Partnership and underlined the intention of Belarus to take further steps forward (such as the opening of the Council of Europe Information Point in Minsk) [14].

EU Council Decision of 13 October, 2008 was the beginning of a new stage of relations between the EU and Belarus: after a long-term period of limited

contacts at the highest level the principal decision on the resumption of dialogue with the Belarusian leadership was taken. However, these solutions were temporary, EU did not give up "value pressure" approach in relationship with the Republic of Belarus [13].

2011–2012

The European Union gave a negative assessment of the 10 December, 2010 presidential elections as well as the events around them. It was reflected in the EU Council decision of 31 January, 2011, which introduced restrictive measures (visa ban for a group of officials, the prohibition of a certain economic activity for some Belarusian companies) against Belarus. By the decision of 20 June, 2011 the EU Council imposed an embargo on arms and frozen the assets of a number of Belarusian companies. By the EU Council decisions of January and 15 October, 2012 the implementation of restrictive measures was prolonged [15].

2013 – till present

During this period till February, 2016 the EU policy toward Belarus was due to the Council's decision of 15 October, 2012 and defined as the policy of critical interaction and directed restrictive measures [15]. Restrictive measures against a number of citizens and companies were lifted, and since the end of 2012 there has been the recovery and intensification of contacts between the EU and Belarus at a high level. On 15 February, 2016 the EU Council decided to cancel most of the restrictive measures against Belarus, thereby creating new conditions for the development of bilateral cooperation [16].

For the Republic of Belarus in the framework of the European Neighbourhood Instrument (2014–2020) there was formulated the Strategic Paper and Indicative Programme for the support of Belarus by the European Union in 2014–2017 which defined only technical cooperation. The document recognizes Belarus determination to participate in the Eurasian integration processes (membership in the Eurasian Economic Union), and the interest in supporting and strengthening of cooperation with the EU despite the difficulties in the political sphere. In 2014–2017 in the framework of the European Neighbourhood Instrument 71–89 mln euros is allocated to Belarus for funding the projects in three key sectors: social inclusiveness (30 %), environment (25 %), local and regional economic development (25 %) [6].

At the beginning of 2014 there were initiated negotiations on signing visa facilitation and readmission agreements, as well as consultations on the issues of modernization for the cooperation between Belarus and the EU in this sphere [17]. The economic component of bilateral cooperation during the whole period of EU – Belarus relations developed actively: thus in November, 2014 the share of Russian Federation in the total turnover of the Republic of Belarus amounted to 48.5 %, the EU – 26.6 %, Ukraine – 7.8 % [18]. Both Belarus and the EU on the official and expert levels stress that there are areas of unconditional mutual bilateral interest. It is trade and economic cooperation, cooperation on customs matters, transit infrastructure development, energy security, products quality control and the adoption of appropriate standards, the interaction of financial institutions in the field of agriculture and food security and, of course, cooperation on countering human trafficking and illegal migration. The development of sectoral cooperation can be the very essence of the mid-term cooperation between Belarus and the European Union. A Belarus – EU Coordination Group was set up providing a new consultative format for a structural political dialogue between Belarus and the European Union.

Both the EU and Belarus recognize the importance of comprehensive cooperation, but the ways to achieve this objective depend on a number of conditions: from the EU – political, related to human rights area, from Belarus – mainly economic (lifting of restrictive measures). The principle "less for less, more for more" applicable by the EU is ineffective both in bilateral relations and in the framework of Eastern Partnership. The integrity of the initiative itself is broken, the significant differentiation of EU relations with EaP countries in bilateral and multilateral formats is obvious. Within the multilateral format which Belarus partly takes part in, the major events from 2011 are the summits of Heads of States, annual meetings of foreign ministers, the creation of additional panels to four thematic platforms (economic integration and EU policies, democracy, governance and stability), NGOs took part in the Euronest meetings and in the activities of the Civil Society Forum.

Significant impact on the implementation of the Eastern Partnership initiative had the creation of the Eurasian Economic Union of Belarus, Russia and Kazakhstan; Russia's countering to the EU value and political-economic pressure and, as a result, activation of Russia's position in the post-Soviet space (entry into EAEU of Armenia on 10 October, 2014 and Kyrgyzstan on 8 May, 2015, trade disputes with Ukraine, Armenia, Moldova, Georgia in 2013–2014, the accession of the Republic of Crimea into the Russian Federation); events in and around Ukraine 2013–2016. With the exception of Belarus the other five EaP countries have unresolved conflicts of different kinds.

The results of the survey carried out by the Institute of Sociology of the NAS of Belarus in October, 2013 show that 62.5 % (73.7 % in Brest region) are positive about the improvement of relations between Belarus and the EU. The results of July, 2014 survey showed that 12.2 % of the respondents would like to see Belarus as the member of the EU (this opinion is most

common among the young aged 23–39 – 24 %) [19]. The results of 2015 survey, carried out by non-governmental Independent Institute of Socio-Economic and Political Studies, showed that 58 % of the respondents did not support "Belarus' accession to Russia", 50 % had negative attitude to the entry into the EU [20].

Belarus has always been a consistent supporter of integration processes. The idea of "integration of integration" initiated by the Head of the State, namely non-opposing of Belarus' membership in the Eurasian Economic Union (EAEU), the Union State of Belarus and Russia to cooperation with the European Union, is implemented.

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LOCAL GOVERNMENTS AND NGO'S NETWORK COOPERATION: LITHUANIAN EVIDENCE

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The article analyses the cooperation between municipal administration and NGO's. The methodology of the present research is based on the combination of qualitative and quantitative research methods. During the current research, the municipal administration and NGO's representatives were interviewed and surveyed. The questionnaires were developed based on Mandell and Keast's characteristics of network collaboration. According to the research findings the difference between the Kretinga district municipality and the Klaipėda city in a network coopeation is not so great. Both municipalities reveal to be the less than the average coordination network type.

Key words: governance; Lithuania; local government; network cooperation; non-governmental organization.

СЕТЕВОЕ СОТРУДНИЧЕСТВО МЕЖДУ ОРГАНАМИ МЕСТНОГО САМОУПРАВЛЕНИЯ И НЕПРАВИТЕЛЬСТВЕННЫМИ ОРГАНИЗАЦИЯМИ: ЛИТОВСКИЙ ОПЫТ

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Анализируется вопрос сотрудничества между местными самоуправлениями и неправительственными организациями. Методология исследования основывается на комбинации количественных и качественных методов. Изучение проведено посредством опроса и интервьюирования представителей местного самоуправления и неправительственных организаций. Анкеты количественного исследования подготовлены на основе характеристик сетевого сотрудничества, установленных Манделл и Кеатл. Сделан вывод о том, что разница в объеме сетевого сотрудничества между Клайпедским самоуправлением и Кретингским самоуправлением незначительная. В обоих местных учреждениях меньше, чем в среднем, выявлены типы координационных сетей.

Ключевые слова: Литва; местное самоуправление; неправительственные организации; сетевое сотрудничество; государственное управление.

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Introduction

In order to modernize the public governance in the XIX century, more attention is paid to the *network cooperation* as a form of the inter-organizational interactions. We can see the growing application of the *network cooperation* worldwide what means this form to be one of the best among the other forms of inter-organizational cooperation. Networks provide new opportunities for organizations to work together and achieve common goals. The importance of network cooperation in public management is undeniable, so this paper ***aims*** to assess *network cooperation* of the Kretinga district's and the Klaipeda city municipal administrations and the respective districts' NGOs. In order to reach the aim, the paper is structured into the three main parts.

First of all, in the process of assessing *network cooperation* of municipal administration and NGOs it is necessary to review the theoretical aspects of network cooperation, examine the importance of NGOs in public governance as well as to present the regulation of the NGOs and the public sector in Lithuania. After the review of the theoretical aspects of the network cooperation, the model for the cooperation network assessment is created.

The second part of the paper, therefore, presents the creation of the model as a new analytical tool for the analysis of cooperation between the municipal administration and the NGOs: the indices system is composed which allows indicating and assessing the predominant type of the network, aftermath it is possible to project future scenarios for the most suitable cooperation network type. According to this model the questionnaire is prepared for the survey/research.

The third part of the paper presents the results of the survey, conducted at the Kretinga district and the Klaipeda city municipalities. The survey included the representatives of the municipal administrations and the respective NGOs'. The insights obtained during the investigation complements the interpretation of the data.

Theoretical background

Contemporary society will definitely chase the history as a network society (or *network era*). The complexity of relations among different (societal) bodies (stakeholders), however, should be dealt (up) with nowadays. Amid the literature providing for different networks' research angles and different solutions one can find the questions of ***collaboration*** analyzed. While the paradigmatic shift of public administration towards the *New Public Management* (NPM) opened the doors for the "outers" willing to participate in the public affairs, several decades had to pass while trying to find the suitable evaluation and performance indicators (measures). A strong emphasis of the emergent doctrine of *Public Governance* on *the network* as the main power serves as a perfect background for assessment of the inter-organizational cooperation [1, p. 542; 2, p. 549; 3, p. 33–35; 4, p. 234–235].

The essence of any (administrative/public) network consists of a simple idea that governmental agencies are no longer able alone to deal with (to cope with) the complex variety of public issues. Different stakeholders should be involved in the processes. Different stakeholders with different NGOs amongst should be and are willing to be involved in these processes. The question of NGOs' participation (involvement) is not that simple due to the patchy entity of the former. NGOs differ. Banks and Hulme [5] polarizes between those (almost 90 %) "working towards mutual goals in service and welfare provisions" and those (less than 10 %) trying their success "in advocacy and empowerment". While the former being as a clear example of the spread of the *NPM* the later is the growing outcome of the *governance* debate. The emergent *network era* particularly challenges NGOs to become active "in advocacy and empowerment". Despite this might confront with the closed nature of local and national governments, nonetheless, the growing pressure from the society leads to the growing need to elaborate effective *collaboration networks*.

We still lack any more serious attempts to evaluate (or assess) the interaction between the local municipal administrations and the respective NGOs.

Involvement of NGOs into the processes of service delivery and policy actions/decisions amplifies outspreads from the broader *network paradigm*. While all the authors in unison talk about *network* as "a third alternative between top-down planning and the anarchy of the market" [6, p. 31], simplicity falls under an illusion. As Keast [7, p. 15–23] defines, specifically in public sector administration one can trace three interrelated strands of networking (or network theorizing): namely, the *Network Theory*, the *Inter-organizational Networks*, and the *Policy, Governance and Public Management Networks* (the later being split into the *Implementation Structures and Service Networks*, and the *Governance Network Theory*). As *networks* are always about *the nodes* and *the ties* (or links, linkages), all the theorizing attempts differ according their focus of attention. Despite the tangled up research objects of these strands, attempts to assess the interaction between local municipal administrations and NGOs fall under the theorizing of the *Implementation Structures and Service Networks*. Being originated from the studies of inter-organizational relations, research of the *Implementation Structures and Service Networks* focuses namely on the development of various network typolo-

gies ranging from the *policy network* to the *network management and performance*. As *networks* are always about *the nodes* and *the ties* the focus of attention, thus, falls over *the ties* and *their management*.

Proponents of the strand understand networks as multilevel phenomena [8, p. 448; 9, p. 73; 10, p. 479]. Putting away the intro-organizational networking questions, the authors focus on inter-organizational relations. Network, therefore, serves, on the one hand, as an umbrella term to define all the possible contemporary relations among different nodes (i. e., various participative actors, organizations as well). On the other hand, network (by some authors) is understood as a particular type (among broad variety of the other types) of the relations among nodes. (The former could be called as a macro-level type, while the later as a micro-level type.) Mandell and Steelman [10, p. 202] define the last (i. e., micro-level type) networks as a part of *inter-organizational innovations*: some horizontally arranged agreements, involving "at least two or more actors" as well as including "participants from the public, private, non-profit sectors, as well as community groups, with varying degrees of interdependence to accomplish goals that otherwise could not be accomplished independently" and "they provide the foundation upon which more innovative solutions can develop". Grounding on the works by Agranoff and McGuire [11], Agranoff [12], Agranoff [13], Mandell [14], and Milward and Provan [15], the authors synthesize all "of definitions referring to various inter-organizational innovations" into five different types:

- intermittent coordination;
- temporary task force;
- permanent and/or regular coordination;
- a coalition;
- a network structure [14, p. 203–204].

Research methodology

The present research employs the combination of qualitative and quantitative research methods. On the basis of the quantitative research method, calculations are performed with the aim to investigate the values of the network cooperation index. Indices values increase the value of a quantitative research. On the basis of the quantitative method, the research aims at interpreting the indices values, provides the conclusions of the research, and indicates the perspectives of network collaboration.

Research sample

Kretinga district municipality administration. The research aims at interviewing the employees of the Kretinga district municipality administration, i. e. one employee from each of the 19 departments. Almost all department representatives of Kretinga district municipality communicated willingly and filled in the questionnaire. Twelve representatives of administration departments were interviewed directly. The representative of one department strictly refused to answer the questions and explained that he did not have time and did not have any relation to NGOs. It was not possible to talk to the representatives of the other departments directly; therefore, the questionnaires were emailed to the heads of six departments (a variant of the questionnaire in MS Word document). Four departments replied very quickly and returned the questionnaires filled in, while two departments did not reply. Thus, 19 questionnaires were provided to the departments of Kretinga district municipality administration; 16 of them were filled in, which makes 84 %.

Klaipeda city municipality administration. The structure analysis of Kaipėda City Municipality Administration has revealed that the administration is composed of 6 divisions and 27 subdivisions; in addition, there are twelve subdivisions in this administration which do not belong to any division. As Klaipėda City Municipality Administration is especially large, a decision has been made to base the research on the activity areas of Kretinga Region Municipality Administration; therefore, when analyzing the functions of Klaipėda City Municipality Administration divisions and subdivisions, 17 divisions and subdivisions have been selected, which at least partly correspond to the functions of Kretinga Region Municipality Administration. Thus, certain divisions and subdivisions have been included to the sample of Klaipėda City Municipality Administration with the aim to represent both Kretinga Region Municipality Administration and Klaipėda City Municipality Administration proportionally according to their activity area. Klaipėda City Municipality Administration has been investigated using a questionnaire on the website *www.apklausa.lt*. As Klaipėda City Municipality Administration is especially closed, a member of Klaipėda City Municipality Council had to mediate. An online questionnaire method has been chosen in order to facilitate the mediation process so that the member of the City Council could send the link to the questionnaire to the Heads of divisions and subdivisions. Thus, the member of the Municipality Council sent the link to the online questionnaire to the indicated 17 representatives of the administration. The return rate of the questionnaire is seven questionnaires (i. e., 41 %).

Non-governmental organizations in the Kretinga district. The formation of the NGOs sample was more complicated. Non-governmental organizations are not registered to a NGO data base; therefore, it is not known exactly how many non-governmental organizations there are which are registered or operating in Lithuania or in a certain municipality. Thus, the final sample is not known and it is not possible to determine an exact NGO sample. As this problem was faced, the

contacts of NGOs were searched using various sources. NGO contacts in Kretinga district were searched with the help of NGO coordinator, who indicated that all NGO contacts are provided on the website of Kretinga district municipality accessed at *www.kretinga.lt*. This website provides the contacts of 32 communities, 49 sports clubs, 17 youth organizations or the organizations which work with youth, and 27 miscellaneous organizations. In total, 125 non-governmental organizations were found. Not all of them provide their emails in the above-mentioned website; therefore, some emails were collected using personal acquaintances. The NGOs in Kretinga district were sent the questionnaires by email as this way is the most convenient and it requires the least time and financial resources. The research participants had to mark the option which is the most suitable and to send the questionnaire back. In total, 125 questionnaires were sent to NGOs in Kretinga district; 20 of the questionnaires (17 %) were returned.

Non-governmental organizations in the Klaipeda city. The contacts of Klaipėda city NGOs have been collected with the help of a member of Klaipėda City Non-Governmental Organizations Council. The member of the NGO Council has indicated that there is no database of Klaipėda City NGOs and that the Council is trying to collect this data. In addition, the member of the NGO Council has claimed that only Klaipėda Youth Organizations Association "Round Table", which unites youth organizations, has collected data about youth NGOs in Klaipėda city. In total, 29 youth and working with youth organizations have been found, using the website of "Round Table". Other organizations have been found on the website *www.3sektorius.lt*; out of 89 NGOs provided on the website and registered in Klaipėda city, 62 NGOs have been chosen for the present research (other NGOs are not suitable because they do not provide their contact information or have already been included into the present research). In order to find the contacts of sports NGOs, the search system *www.google.lt* has been used. In total, 18 sports NGOs have been found which provide their e-mails. In total, 112 NGOs have been found in Klaipėda city. It is important to stress that there are no citizens' communities in Klaipėda city; there are only Community Councils established in conformity to the order of the Administration Director. The NGOs of Klaipėda city have been investigated using a questionnaire on the website *www.apklausa.lt*. In total, 112 questionnaires have been sent; their return rate is 20 questionnaires (i. e., 18 %).

Interpretation of the research sample. As can be seen from the data, the return of the questionnaires filled in by the municipality administration comprises a larger percentage; however, only a small part of the NGOs agreed to participate in the research actively. As Banks and Hulme [5] already mentioned above claim, impact NGOs usually comprise approximately 10 % of all NGOs; therefore, 17–18 % can be viewed as sufficiently representative.

Research instrumentarium

For the present research, the questionnaires were developed based on Mandell and Keast's [16, p. 575–597] characteristics types of network collaboration. An assumption was formulated that the most desirable type of the three network collaboration characteristics is the collaborative network type. Based on the characteristics criteria of network collaboration types, research questions were formulated, which reflect the essence of each criterion. It was aimed that the answer to each question would reflect the network type identified by the respondent, depending on the present situation. Thus, the questions had three possible answer variants, which defined the three types of networks. For the analysis of the data, the several-stage strategy of was applied: 1) first, the percentage was calculated; 2) second, the values of indices were calculated. Figure 1 provides the interval system of indices. In this case, the interval score is important, which demonstrates the variation between network types. The interval part from 0 to 2 is appointed to the coordination network; the interval from 2.1 to 4 is assigned to the cooperation network; and the interval from 4.1 to 6 indicates the collaboration network.

It is important to emphasize that coordination networks have the lowest score because, as indicated in the theoretical sources, they are the expression of the lowest network collaboration, and in certain aspects there may not be any collaboration at all. As indicated in the theoretical sources, collaboration networks are presented as collaboration networks of medium strength. Furthermore, collaboration networks are presented as especially close networks of network collaboration, which are viewed as an aspiration.

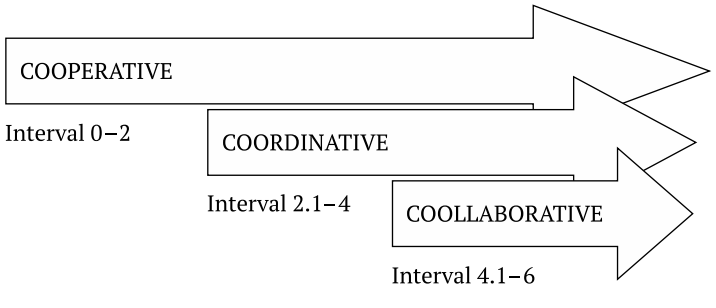

Fig. 1. Intervals of the network collaboration index (developed by the authors)

Research results

As it was described in the part of the research methodology, first of all, we calculated the percentage of the respondents' answers. The distribution of the answers is presented in the tables 1 and 2.

The results (see table 1) reveal that the level of ***trust*** is evaluated as average in both municipalities. Nonetheless, the level of inter-organizational trust in the Kretinga district municipality is slightly bigger than that of the Klaipėda city. What concerns the ***communication bandwidth***, the respondents of the survey are sure about the rare/occasional intensity of inter-organizational communication (communication happens on the demand). ***Information sharing*** is treated as average in both municipalities. ***Aims*** reveal to be more interdependent between the Klaipėda City Municipality's Administration and the respective NGOs than between the Kretinga district municipality's administration and the respective NGOs. It means that cooperation/collaboration in forming common ***aims*** is more often in the Klaipėda city municipality. What concerns the ***resource allocations***, the respondents of the survey in almost unison state the financial support (resources) is provided only for the specialized activities (projects) and not permanently. Summary of the ***cooperation duration*** indicator shows cooperation among the administration and the NGOs to be more intense and happen more often (periodically) in the Kretinga district municipality. ***Commitment orientation and accountability*** reveals all the respondents are totally accountable only to their respective units (administration to administration, NGO to NGO). Finally, in the table 2 the results for the ***activities*** evaluation are presented. According the percentage of all the answers, it is visual that the administration of the Klaipėda city municipality and the respective NGOs hold more common activities than those in the Kretinga district.

Table 1

Distribution of the respondents' answers, %

No.	Characteristics	Kretinga district NGOs	Kretinga district municipality administration	Klaipėda city NGOs	Klaipėda City Municipality Administration
1	*Trust*				
	Low	19	12	33	29
	Average	67	75	48	71
	High	14	13	19	0
2	*Communication bandwidth*				
	Rare	19	19	19	43
	Rare or occasional (on the requirement)	62	44	48	43
	Often	19	37	33	14
3	*Information sharing*				
	Rare	38	13	29	28,5
	Average (on purpose)	52	56	57	43
	Very often	10	31	14	28,5
4	*Aims*				
	Aims are independent	53	56	33	43
	Aims are half-dependant	33	25	48	28,5
	Shared aims	14	19	19	28,5
5	*Resources*				
	No resources	19	56	43	29
	Resources for special activities (projects only)	67	44	43	57
	Permanent resources	14	0	14	14
6	*Cooperation duration*				
	Short-termed	33	62	38	43
	Periodical	24	19	29	43
	Permanent	43	19	33	14

Ending table 1

No.	Characteristics	Kretinga district NGOs	Kretinga district municipality administration	Klaipėda city NGOs	Klaipėda City Municipality Administration
7	*Commitment orientation and accountability*				
	To the represented unit	62	88	62	86
	To the represented unit and the other	38	6	38	14
	To the other and the represented unit	0	6	0	0

Table 2

Distribution of the respondents' answers, %

Activities	Organization	Variants of answers				
		Very often (5)	Often (4)	Average (3)	Rare (2)	Never (1)
Unified (common) activities on demand	Kretingos raj.	4,7	22,1	33,9	22,1	17,2
	Klaipėdos m.	12,1	31,8	27,2	28,9	0
Coordinated policy for activities	Kretingos raj.	0	11	40,9	23,7	24,4
	Klaipėdos m.	9,7	0	32,1	48,5	9,70
No united activities at all	Kretingos raj.	0	5,5	40,2	19,7	34,6
	Klaipėdos m.	11,9	11,9	14,3	45,2	16,7
Unified activities	Kretingos raj.	9,5	7,2	24,4	25,1	33,8
	Klaipėdos m.	0	19,6	39	21,4	20

While summarizing and analyzing all the results it is possible to conclude that relation between the administration and the NGOs differs in both municipalities. The more intense level of trust, communication bandwidth, and information share is inspected in the Kretinga district municipality. However, the Klaipėda city municipality reveals to have the more intense level of aims (share), resource allocation, and cooperation duration. These results do not show all the picture of the research. It is necessary, therefore, to perform the second step of the research.

The second part of the research is devoted for the summarizing of the results revealed through the survey. The finalized indices' values with the network's characteristic descriptions of the both municipalities are presented in the table 3 below.

Table 3

Final indices

No.	Inter-organizational cooperation	Kretinga district municipality		Klaipėda city municipality	
		Index value	Network's characteristic	Index value	Network's characteristic
1	Trust	2,93	Average coordination	2,35	Weak coordination
2	Communication bandwith	3,28	Strong coordination	2,28	Weak coordination
3	Information share	2,85	Average coordination	2,78	Average coordination
4	Activities	2,11	Week coordination	2,55	Average coordination
5	Aims	1,87	Cooperation	2,57	Average coordination
6	Resources	2,23	Weak coordination	2,35	Weak coordination
7	Cooperation duration	2,2	Weak coordination	2,5	Week coordination
8	Commitment and accountability	0,85	Cooperation	0,78	Cooperation
Total		*2,29*	*Weakly expressed coordination form*	*2,35*	*Weakly expressed coordination form*

Note. Authors' own calculations.

According the data presented in the table 3, difference between the Kretinga district municipality and the Klaipėda city is not very big. Both municipalities reveal to be the less than the average coordination network type (weakly expressed coordination form).

Conclusions

Nowaday various forms of network cooperation become main public management tool that encourage close interorganizational cooperation. There described an exploratory model of network cooperation, that provides an opportunity to assess the situation and possibilities of cooperation between local government adminisration and non-governmental organization. All to all during the research we identified the prevailing forms and cooperation perspectives of network cooperation.

According to the researh data and obtained indices found that both Kretinga district and Klaipėda city municipalities cooperation with NGO's is similar. Though different dimensions were analyzed – district and city. The developing of network cooperation is necessary condition for cooperation from both sides: municipality administration and NGO's representatives. The preparation of inter-organizational cooperation programme may strength between the both sides. In this perspective the cooperation between municipalities administration and NGO's from coordinative network will due to other dimension – collaborative network.

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SECURITY PROBLEMS IN INTERNATIONAL TOURISM

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The article contains analyses of the main issues related to security in the international tourism, gives characteristics to the main types of threats not only to health and life of tourists, but also to business entities that organize tourist trips. Analysis of the economic losses from tourism in Egypt, Turkey, Saudi Arabia and other countries shows the complex impact of terrorist acts and threats on the economic, historical and cultural capacity of these countries and tourist regions as a whole. This article explores the dynamics of growth of the total number of terrorist attacks on tourist sites in the Middle East, the Asia-Pacific region, which are directly linked to the activities of terrorist organizations such as "Al-Qaeda", "Islamic State", "Dzhabhaten-Nusra" and others. The author analyzes the main legal documents in the field of security adopted by the United Nations, World Tourism Organization and other specialized international organizations, to ensure the safety of tourist travel, proposes to increase the effectiveness of the regional commissions of the UNWTO, international cooperation of countries in these fields.

Key words: international tourism; security; terrorism; tourist region; World Tourism Organization.

ПРОБЛЕМЫ ОБЕСПЕЧЕНИЯ БЕЗОПАСНОСТИ В СИСТЕМЕ МЕЖДУНАРОДНОГО ТУРИЗМА

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Анализируются вопросы, связанные с безопасностью в системе международного туризма. Дана характеристика основным видам опасности, представляющим угрозу как здоровью и жизни туристов, так и субъектам хозяйствования, организующим туристические путешествия. Представлена классификация основных видов опасности. Анализ экономических потерь в сфере туризма в Египте, Турции, Саудовской Аравии и других государствах свидетельствует о комплексном воздействии террористических актов и угроз на состояние экономического, историко-культурного потенциала этих стран и на географию туристских потоков в регионах и мире в целом. Исследована динамика роста общего количества терактов на туристических объектах Ближнего и Среднего Востока, Азиатско-Тихоокеанского региона, что напрямую связано с деятельностью террористических организаций «Аль-Кайда», «Исламское государство», «Джáбхатан-Нусра» и др. Автор анализирует основные нормативные правовые документы в области безопасности, принятые ООН, Всемирной туристической организацией, другими специализированными международными организациями, призванные обеспечить безопасность туристических путешествий, предлагает повысить эффективность деятельности региональных комиссий ЮНВТО, национальных правительств межгосударственного сотрудничества стран в этих вопросах.

Ключевые слова: международный туризм; безопасность; терроризм; туристский регион; Всемирная туристская организация.

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In recent years, tourism has become one of the most profitable businesses on the global scale. Tourism uses about 7 % of the world capital. According to the World Travel and Tourism Council, tourism contribution to the world economy was 7.2 trillion USD in 2015. It accounts for 9.8 % of global GDP. According to this indicator, it is ahead of the production of chemical products (8.6 %), agriculture (8.5 %), education (8.4 %), automobile manufacturing (7.0 %) and banking (5.9 %) [1]. The share of the tourism sector accounts for 11 % of global consumer spending, 5 % of tax revenues. The tourism sector employs about 284 million people (every 11 workplace). Over the past six years, we have seen a positive dynamics of growth in tourism industry. Experts predict this trend will continue, showing annual growth of 4 % [2, p. 42].

As noted by some researchers (M. Morozov, N. Morozov, G. Karpov, L. Horev), the dynamic of the tourism development kept the tendency of growth even in times of global economic crisis, and its role in the modern post-industrial society is constantly growing. The state of the national tourism is one of the main indicators of the quality of population life.

International tourism for a number of countries is a key source of replenishment of the budget. For example, in 2014 year Egypt was visited by 9.9 million foreign tourists, which accounted for 36 billion USD of currency revenues (12.8 % of GDP) and provided employment to 2.9 million people of the country's population. The country's infrastructure has attracted 43 billion USD of the capital investment [3].

In 2014, Turkey was visited by 36.8 million tourists, which provided 96 billion USD of revenues in GDP (12 %). The tourist sector in Saudi Arabia each year brings more than 20 billion USD of revenue [4; 5].

However, the stable dynamics of international tourism development in recent years is violated by numerous terrorist acts that require prompt solving a number of issues related to the security of the organization of tourist travel. Therefore, the main research task of this article is issues of safety in the system of international tourism.

The concept of tourists' safety provides a "set of measures on the part of national governments, host communities, tourism sector and travelers to create a safe travel environment, to minimize the possible risks related to emergencies, consequences of terrorist attacks, accidents, natural and man-made disasters". Based on the reasons that form the category of "danger" it is possible to designate the following classification:

- dangers of natural and ecological character, cause adverse effects of natural disasters on human or man-made breach of natural systems;
- technologically-production dangers, associated with the possibility of unwanted emissions of pollutants, toxic substances and energy, generated at technological objects;
- social and man-made dangers, caused by willful concealment or misinformation private economic entities, public administration authorities, whose actions put at risk health and lives of both travelers and its own population.

In the implementation of tourist trips, mentioned dangers can occur individually or in combination. Based on the cause-and-effect condition of danger and direct damage caused by tourists, there are two groups of objectively existing dangers:

a) dangers representing the direct danger to human life (tourist life);

b) dangers, that indirectly inflict damage to a person (tourist), for example, as a result of the deterioration of living conditions (loss of wealth, natural pollution, etc.).

In the practice of organization the safe work of international tourism, three main operating side shave the key importance:

1) tourists – as consumers of tourism products, require the insurance of individual safety;

2) travel agencies – producers and sellers of tourism products (in this case, all types of organizations, institutions and companies related to the provision of services to tourists), need safe conditions of its operation and guaranteeing the safety of tourists;

3) the state bodies, carrying out appropriate administrative and other functions (passport and visa, border guards, customs, foreign exchange control, sanitary and epidemiological control, licensing, certification, quoting of visiting certain areas, etc.) to ensure security in the tourism sector for the above mentioned parties.

Relations between tourists and travel agencies are usually regulated by a written contract, fixing mutual rights and responsibilities. Relations between tourists and state are regulated by the national legislation about passport and visa regime, by the legal status of foreign citizens, by customs, currency, health norms, by regulations of cultural and historical values movements, some samples of flora and fauna movements. Within the competence of state regulation are the legal norms on consumer protection, licensing, international tourism activity, tourism product certification, insurance, regulation of tourist advertising. Lead sheet of most legal norms in the field of tourism at the national level is, as a rule, the Tourism Act.

The dynamic development of the international tourism complicates issues of the providing tourist security in different tourist regions. Moreover, in recent years, a threat to their life, health and property has increased significantly in all six tourist macroregions. According to the World Tourism Organization (UNWTO), more than 8 million Europeans (3 % of all travelers) traveling abroad were victims of crimes, robberies (and theft) [6].

It should be noted that often travel agencies (especially in the former Soviet Union) are more concerned with the profit, so do not always provide customers with full information on the country of travel and existing threats, which entails not only material losses, but also a threat to life of tourists, their health and property.

According to the research of the Institute of the World Economy, the safest countries are Switzerland, Singapore, Hong Kong. Tranquility and respectability is the visiting card of Switzerland. Three cities in this country – Geneva, Bern and Zurich – are among the top ten safest cities in the world. In the country the number of police officers per 100 thousands inhabitants is one of the lowest – 216 people. The most problematic countries in terms of security for tourists are Afghanistan, South Sudan, and Iraq [7].

In recent years, tourism in some states has become a target for terrorism, which has extremely negative impact not only on the economy of these countries, but also on the world tourism industry as a whole (table 1).

Table 1

Information about the terrorist acts aimed at tourists, made in the world in 2010–2016

Date	Country	Description of terrorist attack	Number of victims
13 December, 2010	India	The explosion in Pune	9 people were killed, 12 people were wounded
23 August, 2010	Philippines	The capture of tourist bus in Manila	8 people were killed
7 December, 2010	India	The explosion in Varansi	1 person was killed, 20 people were wounded
28 April, 2011	Morocco	The explosion in the central part of Marrakeida	14 people were killed, 20 people were wounded
28 October, 2011	Turkey	The explosion on the beach of Kemer	14 people were wounded
25 October, 2011	Thailand	The series of explosions in the capital of Yala	3 people were killed, 20 people were wounded
18 January, 2012	Ethiopia	At the top of the volcano Erta Ale the tourist camp was attacked by militants	5 people were killed. Two German nationals and two people from Ethiopia were taken hostage
18 June, 2012	Bulgaria	In the airport of Burgas "Sarafovo" the bus with Israeli tourists was blown up	7 people were killed, 30 people were wounded
23 June, 2013	Pakistan	In the mountain resort of Fairy Meadows militants attacked foreign tourists	10 people were killed, among them – two Slovaks, three Ukrainians, two citizens of China, a Nepalese, a citizen of Lithuania and the United States. Pakistani guide was also killed
30 October, 2013	Tunisia	In the Sousse city, a suicide bomber blew up on a beach near the hotel	The blast killed a suicide bomber. Employees and visitors were not injured
2 January, 2014	Kenya	Unknown persons launched a grenade at one of the restaurants in the tourist center of Diani	At least 10 people were wounded
16 February, 2014	Egypt	Explosion occurred in the tourist bus in the resort of Taba, near the border with Israel	4 people were killed, another 13 people were injured
12 October, 2014	Somalia	The explosion in the Mogadishu city, near the popular tourist hotel and café	20 people were killed
1 February, 2015	Syria	In the center of Damascus, at the entrance of the historic market there was the explosion in the bus with pilgrims from neighboring Lebanon	7 people were killed, 13 were wounded
18 March, 2015	Tunisia	Dressed in military uniforms militants took hostage the foreign tourists in the museum "Bardo". At the time of the attack at the museum, there were 200 visitors	25 people were killed, among them 20 tourists from Italy, France, Colombia, Japan, Spain, Australia, Poland, Great Britain and Russia
10 June, 2015	Egypt	Terrorists blasted the carnear one of the most popular tourist archaeological sites – the Temple of Karnak in Luxor	5 people were wounded

Ending table 1

Date	Country	Description of terrorist attack	Number of victims
26 June, 2015	Tunisia	The militant group "Islamic State" opened fire next to the hotel	40 people were killed, among them 30 tourists from the United Kingdom, Belgium, Ireland, Germany, and one tourist from Russia. 40 people were wounded
17 August, 2015	Thailand	In the tourist center of Bangkok was explosion	20 people were killed, more than 120 were wounded, among them tourists from China, Singapore and Taiwan
10 October, 2015	Turkey	The biggest terrorist attack in the country's history. Two explosions occurred in the Ankara city and near the railway station	95 people were killed, 246 people were wounded
31 October, 2015	Egypt	Terrorists blew up the Russian airliner A-321	217 tourists were killed
3 July, 2016	Iraq	The mined car exploded in the center of Baghdad	The victims of terrorist attack have become 292 people
8 July, 2016	Iraq	The series of explosions near a Shiite shrine were in Balad, province of Salahal-Din	40 people were killed, 75 people were wounded
12 and 13 July, 2016	Iraq	To the north of Baghdad there were two explosions	18 people were killed
1 July, 2016	Bangladesh	The terrorist attack in the diplomatic square of Dhaka	20 people were killed
14 July, 2016	France	The truck driver crashed into a crowd of people on the promenade in Nice, and opened fire on them	84 people were killed, 6 people were wounded
8 July, 2016	Nigeria	The explosion in mosque of the Damboa city (Borno State) was hosted by suicide bomber	9 people were killed, 9 people were wounded
22 April, 2016	Iraq	The explosion in the mosque in Baghdad	25 people were killed
28 June, 2016	Turkey	Three explosions occurred in the international terminal of the Ataturk Airport in Istanbul	44 people were killed, among them 19 oreigners; 239 people were wounded
7 June, 2016	Turkey	The explosion in the center of Istanbul (district Beyazit)	11 people were killed, 36 people were wounded
11 May, 2016	Iraq	The series of terrorist attacks occurred in the country's capital (Baghdad)	94 people were killed, 150 people were wounded
19 April, 2016	Afghanistan	The series of terrorist attacks occurred in the center of the Kabul city	64 people were killed, 347 people were wounded
13 March, 2016	Turkey	In the center of Istanbul at the bus stop the mined car has exploded	37 people were killed, 125 people were wounded
31 January, 2016	Nigeria	The terrorist attack of militants grouping "Boko Haram" in Mayduguri	65 people were killed

Note. The table was compiled by the author based on sources [8; 9].

As you can see from the analysis in table 1, there is a quantitative increase in terrorist attacks (2010 – 3 terrorist attacks; 2015 – 7; 2016 – 13 terrorist attacks). With a predominant territorial reference to the region of the Middle East, which is related, of course, with activities in the region of terrorist groupings "Al-Qaeda", "Islamic State", "Dzhebhat-en-Nusra" and others. The attacks of course had a negative impact not only on the economic status of the states, but also on tourism in the region and the world at large. Taking also into account the multiplier effect of tourism, economic losses can be huge for the country.

For example, in Turkey in 2014–2015, terrorist attacks had a negative impact on the fall of demand for the textile industry, leather production and the real estate market (more than 1.300 hotels have been put up for sale, the total value of which exceeded 13 billion USD). The tourist sector was responsible for almost 50 % of the Turkish budget deficit [4]. Moreover, because of terrorist attacks, the number of tourists from Turkey switched to Spain and Italy, and to restore this flow in the short term would be extremely difficult.

According to the research agency "Euromonitor international", "in the understanding of Western tourists

there is no doubt that the terrorist attack in one country associated with risk in general in the region" [4]. Of course, the organizers of the terrorist acts perfectly understand what economic damage may cause for the tourism industry of countries and regions. For them, killing of people is not so important in terms of creation of social panic and fear. Terrorism has long ceased to be a problem of one country that requires the international community consolidated solutions.

Sustained growth of international tourist flows has led to the creation of an international legal framework for the activities of specialized international organizations and institutions to ensure the safety of tourist travel. Maintaining and strengthening of peace and security, the development of cooperation between States is conducted in the framework of the United Nations (UN), which today remains the supporting structure of the international system of collective security. International legal safety issues in the international tourism system is based on international treaties, conventions and declarations adopted by the United Nations specialized agencies.

International conferences and documents adopted by them play an important role in the legal regulation of security issues in tourism. These documents are fundamental security issues in tourism and create a specific mechanism that can reduce the risk of vulnerabilities and minimize the damage to the tourists (table 2).

Table 2

Issues of the international tourism security in the major international documents

Title of the document	The main theses of the document relating to tourism
The Universal Declaration of Human Rights. New York (the USA), 1948 year	*Article 24*. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay *Article 27*. Every State has the primary responsibility and duty to protect and fulfill all human rights and freedoms
The CSCE Final Act. Helsinki (Finland), 1975 year	Participating States express their intention to encourage the development of tourism by considering in a positive spirit of issues related to international travel security as a fundamental condition of its development
Manila Declaration on World Tourism. The Hague (the Philippines), 1980 year	The World Tourism Organization includes in the program of actions the issues of study tourism security in the world, existing rules and current practices in this area, as well as the development of common recommendations for streamlining and improving the safety of tourist trips
Tourism Charter. Madrid (Spain), 1985 year	*Article 4*. The States should also: • ensure the safety of visitors and the security of their belongings through preventive and protective measures; • afford the best possible conditions of hygiene and access to health services as well as of the prevention of communicable diseases and accidents; • reinforce, for the protection of tourists and the population of the host community, measures to prevent the illegal use of narcotics; • prevent any discriminatory measures against tourists
Hague Declaration on World Tourism. The Netherlands, 1989 year	*Principle 7*. The safety, security and protection of tourists and respect for their dignity are a precondition to develop tourism. Therefore, States, within their systems, should contribute to implement its policy in the field of security and protection of tourists
The Declaration of the World Conference of Tourism Ministers. Osaka (Japan), 1994 year	*Article 6*. Governments are responsible for the ongoing development of tourism, strengthening the travel safety, protection of tourists together with respect for the tourism resources and the environment
International Declaration on the security of tourism and reduction of risks associated with travel. Ostersund (Sweden), 1995 year	*Article 18*. Issues of simplification of tourist formalities must be inseparably linked with the security of tourism and the development of mutually acceptable and agreed solutions of problems in this sphere
Global Code of Ethics for Tourism. Santiago (Chile), 1999 year	*Article 1*. It is the task of the public authorities to provide protection for tourists and visitors and their belongings; they should facilitate the introduction of specific means of information, prevention, security, insurance and assistance consistent with their needs; any attacks against tourists should be severely condemned and punished in accordance with their respective national laws
Istanbul Declaration of the Economic Cooperation Organization. Istanbul (Turkey), 2002 year	*Article 6*. The meeting participants emphasized the urgent need to ensure the security of international tourism

Ending table 2

Title of the document	The main theses of the document relating to tourism
International Health Regulations, the World Health Organization, 2005 year	The purpose and scope of these regulations are to prevent the international spread of disease, protect against, control and provide decision – responsible action on public health levels, that are commensurate with the risks to public health and which avoid unnecessary interference with international traffic and trade
Global Counter-Terrorism Strategy of the United Nations. United Nations, New York (the USA), 8 September, 2006	We, Member States of the UN, resolve to undertake: • measures aimed at addressing the conditions conducive to the spread of terrorism; • measures to prevent terrorism and fight against them; • measures to strengthen the capacity of States to prevent terrorism and fight it and strengthen the role of the United Nations system in this field; • measures to ensure respect for human rights and the rule of law as the fundamental basis for the fight against terrorism
Note by the UNCTAD secretariat. Geneva (Switzerland), 19–20 November, 2007	International organizations, including the International Labor Organization (ILO), WTO and UNCTAD, should cooperate in exploring issues related to reduction of poverty scale and working conditions in the tourism industry, in order to facilitate obtaining a fair income, social security, social protection, health and deployment of social dialogue in the interests of the workforce employed in tourism in developing countries
Strategic Plan for Human Security. The United Nations, New York (the USA), March, 2014	The main objectives of the plan are: • pay more attention to human security in the UN; • support the implementation of UN General Assembly resolutions on human security; • to promote cooperation and exchange of information for a better understanding of the benefits of human safety regulation between Member States and their support for its implementation at all levels (local, national, regional and international)
The Cairo Declaration on Tourism Safety and Security in the Middle East and North Africa. Cairo (Egypt), September, 2014	The participants put forward a number of measures aimed at the development of international tourism in the Middle East and North Africa (see the text below)
The project of the development of standards in the field of disaster risk reduction for the hospitality industry in Asia and the Pacific. The United Nations, New York (the USA), July, 2015	The hotel industry in dangerous areas around the world is vulnerable due to problems of floods, storms and earthquakes. This represents a significant threat to the development of tourism and employment of the population, because it can lead to the closure of the resort. Therefore, concern about the lack of universal standards for the management of natural disasters risks is expressed by representatives of the hospitality industry worldwide

N o t e. The table was compiled by the author based on sources [10–15].

The Cairo Declaration (14–15 September, 2014, Cairo) is one of the latest documents of the UNWTO aimed at the regulation of safety issues in one of the most dangerous regions in the world – the Middle East and North Africa.

Conference participants called on governments, national and local authorities, the United Nations, international organizations, non-governmental organizations and the private sector, to adopt a number of measures in order to:

• develop and implement a risk management strategy, which will be affected by the theme of stability destinations to emergencies, mitigate external threats to tourist destinations;

• promote inter-state coordination in order to ensure the full integration of the tourism sector with response system in emergency situations at the national level to increase the stability of travel sites to minimize the negative impacts and promote rapid recovery of tourism from negative events. We should always take into account the special needs and specificities of the tourism sector;

• develop a strategy for crisis management, which will ensure the provision of immediate and continuous assistance to tourists in times of emergency;

• provide support to implementation of the automated control systems (Automated Border Controls) and developed systems of management tourist identity (ICAO's Traveler Identification Programme), the use of the Interpol database on stolen and lost documents (SLTF), in order to increase the security level of tourists, reducing the spread of terrorism and assist the families of the victims;

• develop and implement an efficient structure, methods and tools of communication in emergency situations, in accordance with the recommendations of UNWTO;

• make sure that the instructions for travellers, created by the competent authorities, are accurate,

consistent, modern and integrity of documents in accordance with Resolution 592 of UNWTO, dedicated to the publication of information about tourist activities and advice, in order to avoid unintended adverse effects in the host country;

• invest in the use of modern information and communication technologies to disseminate accurate, coordinated and timely information;

• encourage and facilitate meaningful partnerships with all stakeholders in the tourism sector at the national, regional and international levels, for more effective solving problems of security and risk mitigation;

• use the experience and knowledge available in UNWTO, for the development of the tourist potential and creation of training programs on tourism security programs that are targeted to the specific needs of countries and tourist destinations in the Middle East and North Africa;

• actively support the relevant regional and international processes and agreements such as the UN Conference on Disaster Reduction and the UN Global Counterterrorism Strategy. Countries should recognize that security problems require coordinated responsible action [15].

The European Region is the leading world tourist region and security issues are given great importance. Policy in the sphere of tourism of the European Union has been developed taking into account the strengths and weaknesses, threats and opportunities for the development of tourist areas, as well as allows to support, coordinate and supplement the actions of its Member States in matters of adoption of common standards relating to safety in tourism. Current issues of tourism regulation in the EU in recent years has become a migration policy in which there is a regulation of visa relations for third countries [16].

In the European countries, the issues of the development tourist market, including safety issues are made by special organs of state power. In Austria, the tourist industry is supervised by the Ministry of Economy, in the UK – the Ministry of Culture, Entertainment and Sport, which has the authority responsible for tourism, in Germany – the National Tourist Board of the Federal Ministry of Economics and Technology.

The Republic of Belarus is a rather young state in the international tourism and the constant improvement of the level of tourist safety in the country is its priority. For this purpose, from 01.12.2017 a five-day visa-free regime for tourists (from 80 countries) entering the country through the border crossing point the "National Airport Minsk" was introduced.

The State Tourism Development Programme for 2011–2015 years has put into effect a number of legal instruments for the regulation of tourist flows, including, visa facilitation (visa-free entry to the World Championship of Ice Hockey in 2014, visa-free visit to the Beloviezskaya Pushcha etc.).

In Belarus, state regulation in the sphere of tourism is created by the President of the Republic of Belarus, by the Parliament of the Republic of Belarus, by the Council of Ministers of Belarus, by the Belarusian Ministry of Sport and Tourism, by the local councils of deputies, by executive and administrative bodies and other state bodies within their competence in accordance with the law. The State regulation in the sphere of tourism bases on the protection of the rights and legitimate interests of individuals' principles, including their security, ensuring individuals' rights to rest, freedom of movement and other rights, implemented in the sphere of tourism.

As a result, the basis of the international tourism security should base on uniform state policy, because we are talking about the development of a set of coordinated and united by a common idea political, institutional, socio-economic, legal, information and other measures, aimed at creating favourable conditions for sustainable tourism development.

However, security in the international tourism system not fully depends on the host country, but also on the region in which it is located. Each region has its own problems, which affect the quality of tourist services. These problems can be internal or external nature. At present, most of them still has the external nature: terrorism, epidemics, poverty, trafficking in arms and drug trafficking, natural disasters. Solution of these problems is not possible without proper cooperation of countries within the region and beyond. The regional commissions of UNWTO (Europe, Africa, America, the South Asia, the Middle East, the East Asia and the Pacific) could play more active work in this direction.

The most urgent problem today, posing a threat to international tourism, is terrorism. It has long ceased to be considered as part of a single country. Today terrorism is "the world epidemic of the XXI century". Therefore, removal of this threat is only possible with the cooperation of the world states, through the conclusion of the relevant international agreements in this field, the use of new modern technology-innovation systems ensuring the safety of travellers on all modes of transport and leisure activities.

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SOCIO-ECONOMIC, POLITICAL AND INTERNATIONAL DIMENSIONS OF UKRAINIAN CRISIS

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This article presents the after-effect of the Ukrainian crises for the internal situation of the country, in particular a situation in the social and economic sphere and for the international relations in general. The author notes that the situation in Ukraine, which had turned into a conflict after the power shift in February, 2014, led the national economy to a deep decline, which cannot be overcome under Ukraine's own power. According to the researcher's opinion, the main problem of the implementation of Minsk agreements is the different approaches of the signed parties to the fulfillment of their obligations. The article emphasizes that the current Ukrainian crisis in many aspects turned out to be the consequence of the de facto unfinished "cold war". Mostly because of the West's efforts Ukraine had to sever the geopolitical and civilization ties with Russia and to choose the "Western project of development". This choice led the country to its current situation and highlighted an actuate question about the future of the Ukrainian nationhood.

Key words: Ukraine; colored revolution; Ukrainian crisis.

СОЦИАЛЬНО-ЭКОНОМИЧЕСКИЕ, ПОЛИТИЧЕСКИЕ И МЕЖДУНАРОДНЫЕ ИЗМЕРЕНИЯ УКРАИНСКОГО КРИЗИСА

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Рассматриваются последствия мирового кризиса для внутреннего положения Украины, в частности состояния ее социально-экономической сферы, а также для международных отношений в целом. Отмечается, что после смены власти на Украине в феврале 2014 г. внутригосударственный конфликт привел экономику страны к глубокому упадку, выйти из которого без внешней помощи страна не в состоянии. По мнению исследователя, основная проблема в реализации минских договоренностей – это разные подходы подписавших их сторон к порядку исполнения своих обязательств. Подчеркивается, что современный украинский кризис во многом стал следствием де-факто неоконченной холодной войны. Во многом благодаря усилиям Запада Украине пришлось пойти на геополитический, а по сути, цивилизационный разрыв с Россией, сделав выбор в пользу «западного проекта развития», что и привело страну к сегодняшнему состоянию, при котором остро стоит вопрос о будущности украинской государственности.

Ключевые слова: Украина; цветная революция; украинский кризис.

On 21 November, 2013 in the center of Kiev was launched a mass protest action, which was held for several months. It started in response to the suspension of President V. Yanukovych of signing an association agreement between Ukraine and the European Union. This action was supported by the population of the other cities of Ukraine as well. These events eventually took the form of armed confrontation, accompanied by the capture of administrative buildings, which led to a power shift on 21 February, 2014.

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This crisis has taken a leading position among the issues that has a direct impact on the European security and the entire system of international relations. It drew not only a number of serious conflicts, but also exacerbated them to the extreme. For Ukraine, the events of late 2013 – early 2014 were critical both in terms of nation-building and the definition of foreign policy priorities as well. Opting of the Kiev authorities for the project of the national identification has led to the collapse of the old foreign policy concept and approval of a new alternative by its nature [1, p. 5]. Balancing between Russia and the West during the post-Soviet period, the country dramatically changed the vector of its foreign policy and has taken a clear Euro-Atlantic course. The Ukrainian crisis has clearly exposed the shortcomings of the existing European security model based on the leading role of NATO and the peripheral status of the Russian factor. The crisis led Ukraine to a geopolitical decomposition and immersion into a conflict. Already a year old Minsk Agreement, which stopped armed actions in the southeast of the country, could not end the conflict.

Socio-economic situation in the country after the crisis

Ukraine after the crisis is in a situation of turbulence. If in 2013 its GDP was 183 billion USD with an increase of about 4 % per year, in 2014 it was already 132 billion USD with 28 % decrease, while in 2015 the falling has increased by 10 %. Hundreds of millions of dollars every month is spent by gold and foreign exchange reserve to keep the hryvnia exchange rate, which is continuing to fall. Two years ago the course was 9.5 hryvnia for one USD, today it has grown to 26 hryvnia. The rise in prices in 2013 was almost at zero, in 2014, they increased by 25 % and in 2015 a further 43 %. Since 2013, the state debt increased from 500 to 885 billion hryvnia. The total national debt is currently estimated at 80 % of GDP. Export of Ukrainian goods in 2014 decreased by 14 % to 53 billion USD. In 2015, exports fell by 30 % from the previous year's level and amounted at 38 billion USD. This notable decline in imports occurred in the Customs Union countries, especially Russia and the EU countries as well. The unemployment rate rose from 8 to 10 %. Real wages declined by 10 % in 2014 compared with the previous year and by 20 % further in 2015 [2]. There was a large shift of the economic activity in the "informal" sector, which reduces the revenue part of the budget. A large number of people leaving to work abroad, which deprives the country not only of the working population, but also a part of active taxpayers. There is a huge outflow of capital caused by closing offices and production facilities of the foreign companies. The shale gas stir also ended up with nothing. In autumn 2015 it became known that the English-Dutch oil giant "Shell" cancelled the Yuzovsky project of the extraction of shale gas in Kharkov and Donetsk regions of Ukraine. To the list of characteristics of today's Ukraine can be added the absence of a unified legal field, engagement of proceedings, the highest level of pressure on the business, utmost level of corruption.

Minsk process

In Minsk 11–12 February, 2015 at the summit of "Normand Quartet" (Russia, Germany, France and Ukraine) after 16-hour negotiations, two documents were adopted. The first one is a "set of measures for the implementation of the Minsk agreements" [3], known as the Minsk-2. This document was only submitted by "Normandy Format". But it was signed by contact group, consists of representatives of Ukraine, Donetsk People's Republic (DNR) and Lugansk People's Republic (LPR), Russia and the OSCE. This set of measures should facilitate the realization of the Minsk agreements reached in September, 2014 in Minsk (Minsk Protocol, 5 September, 2014 and the Minsk memorandum, 19 September, 2014). The second document is a declaration of "Normandy Quartet" leaders to support a package of measures [4]. This statement is not a subscription document. "Minsk agreements" formed the political and legal base, enabling the de-escalation of the conflict in the east of Ukraine.

In Paris 2 October, 2015 the leaders of the "Normandy Format" stated the possible spreading execution period of Minsk-2 in 2016. In Berlin 6 November heads of foreign services of Russia, Germany, France and Ukraine have agreed to postpone the implementation of "Minsk agreement" in 2016.

Now it has been more than a year. Large-scale military operations are not conducted, but many points of agreement are not adhering. Moreover we cannot speak about any breakout in the implementation of this complex of measures. Since that time, 3 points of Minsk-2 are implemented partially, and 8 of 13 conditions are not abide at all. It should recognize the deterioration of situation at all political points, and it occurs due to Kiev's attempt to change the basic conditions of it. At that time, really tangible result of Complex of measures is the cessation of hostilities, besides that there are some clashes.

We can distinguish the following main reasons associated with the implementation of the "Minsk-2". Firstly, the greatest difficulty is the 11^{th} point: the constitutional reform. The amendments to the Ukrainian Constitution have not been made. Ukraine

does not want to assign a special status of Donbas, trying to solve the problem by the decentralization. DNR and LPR, as well as the Russian side require to define Donetsk and Lugansk regions in the 133 the article of the Constitution of Ukraine as separate areas with special status. Disruption of voting on the special status issue is justified by the Ukrainian side as the fact of absence of necessary decision votes in the Verkhovna Rada. According to the Ukrainian laws such initiative should be supported by 2 of 3 of the Rada (300 members of Parliament). It is clear: if Donbas gets a special status, other regions of Ukraine may initiate the same requirements [5].

Secondly, the 9th paragraph also is a greater complexity, concerning the recovery of full control over the state border from Ukraine. On the one hand, the economic assistance coming from Russia is vital to the unrecognized republics, so if the border control by Ukraine, it will be able to block such measures. On the other hand, in case of elections in the DNR and LNR will holding on, Ukraine gets there legitimate authority and it will be impossible to ignore it. Is it appropriate in this case to talk about the full control over the border of Kiev? – No.

Third, the Ukrainian authorities do not have a pattern that could be used for the reintegration of the inhabitants of the unrecognized republics [5].

Fourth, if the parties come to peace, Ukraine cannot already use the rhetoric about Russian aggression and thus deprive them of the opportunity to blame Moscow and personally Putin in all problems and troubles, and finally it will miss Ukraine of victimity in the eyes of civil society [6, p. 13].

Fifth, according to "a set of measures for implementation of agreements", it is necessary to ensure the restoration of social and economic relations, in particular, to solve the problems of social benefits, tax system and the functioning of banks. Accordingly, it increases financial overhang being in tatters Ukrainian economy. Ukraine has to allocate funds for social protection for the three million people of the republic, public servants' salaries and infrastructure rehabilitation. Before the conflict Donbas largely having in tows other Ukrainian regions. Now it is in ruin and decay [7, p. 65].

Stay with it although we can go on. Already it is clear that this agreement in its current form is not benefit. However, it is the only legitimate basis for the resolution of the Ukrainian crisis. Therefore, any unagreed attempts to make a new points in Minsk agreement or to connect the implementation of the agreed points with some additional conditions, as well as failure to comply with the agreements already fixed as scheduled, should be seen as a disruption of the peace process.

Ukrainian crisis international dimension

Ukraine is an essential element of European security. Ukrainian factor can both ensure stability in Europe by balancing the interests of Russia and the West, can also devalue the European security, undermining it its internal instability, encouraging external rivalries actors, urging them to fight for influence in Ukraine. Unfolding crisis in the country proved it.

Ukrainian crisis demonstrated the crisis of the current the NATO-centric model of European security. According to its founders, this system was appealed to shape peace, stability and security in Europe. However, an attempt to draw in Ukraine in NATO provide evidence of the selectivity of the system, its bias, anti-Russian interests, that led to active opposition from Russia and the growth of international tension [8].

The nature and characteristics of the Ukrainian state, such as ethno-confessional fragmentation, encouraging civilization split of society, have led to the fact that any Ukraine's attempt to make a geopolitical choice, to wit attractive only one geopolitical centers contributed to the growing threat to its national security, meaning a geopolitical decomposition of state. The only way of Ukraine's development in the conditions of the state dissimilarity would be cautious moving forward and maneuver among the major centers of influence, where Ukraine is lodged between.

Having political will and commitment to restore stability and security in Europe, the best form of Ukrainian interests would be an agreement of Russia, the US and the EU, with the participation of official Kiev about a reasonable and sustainable balance of interests, which can be defined as "three no". Ukraine should be independent, neutral and not unitary. Thus, it is managed to ensure relative equidistance. However, this is possible only if Russia, the US and EU are ready to abandon the rhetoric about the "Eurasian" or "European" choice of Ukraine.

However, the leadership of the Ukrainian state and external actors is not enough wisdom and the concept of foreign policy of Ukraine, emerged as a result of the collapse of the Soviet Union and at the turn of 2013–2014. It is not just exhausted, but failed. The attempt to keep a foot on both camps failed for the whole Kiev's foreign policy. Largely due to the efforts of the West Ukraine had to geopolitical, and indeed civilization gap with Russia, choosing the "western development project". As a result, in Ukraine there was broken balance of power forming for decades. There has been a unacceptable for Russian interests misbalance in favour of the depth of Ukraine's relations with the West. The irresponsibility of the Ukrainian authorities, condone to external forces by their actions, enabled them to implement their own plans.

It seems that the modern Ukrainian crisis largely was the result of a de facto unfinished "cold war". West considered himself as a winner in it and because non-

despite protests from Russia, began to spread the impact on countries of the former Soviet bloc through the expansion of NATO and the EU. The endpoint of this was the fight for the CIS space. Penetrating there, the West tried to completely secure their geopolitical preferences, formed after the collapse of the USSR. Experience of Ukraine assures that the scenario launched by the United States in the CIS region, is designed to solve the main geopolitical, political-economic and military-strategic goal, which one is the elimination of Russia as a fledgling and independent player in the conditions of formation of a new polycentric world order.

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POLITICAL PROPAGANDA IN THE BRITISH MEDIA OF THE LATE 1930s (using the example of the humanitarian aspect of the Spanish Civil War 1936–1939)

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The article deals with problems of information warfare history using the example of the British media of the 1930s. The British printed propaganda of the second half of the 1930s presents the object of the study. Its political aspect using the example of humanitarian issues coverage during the Civil War in Spain 1936–1939 is the subject of research. The purpose of research is to give characteristics to interpretations of humanitarian aspects of the Spanish conflict 1936–1939 by the British printed propaganda. It is based on the principles of historicism (understanding of historical facts and phenomena in their interconnection and development in time) and objectivity. Based on the study of about 20 editions of the British press of various political directions, the authors come to the conclusion that a humanitarian disaster as a result of the Spanish War 1936–1939 was recognized by all the editions, however, it was interpreted according to their political preferences. The humanitarian content of the Spanish events provoked sharp polarization of the public opinion in the UK. Major newsbreaks were the following: sufferings of the civil population; refugee problem and the public reaction in Britain towards it; humanitarian campaigns. A "moral standard" of criticism towards the "enemy" was boldly outlined – the focus was made on the inhumanity and threat emanating from him. The Spanish problematic was actively used in information and psychological confrontation and the formation of the "image of the enemy" on the eve of the Second World War.

Key words: British printed propaganda; image of the enemy; information warfare; humanitarian aspects; Spanish Civil War of 1936–1939.

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ПОЛИТИЧЕСКАЯ ПРОПАГАНДА В БРИТАНСКИХ СМИ КОНЦА 1930-х гг. (на примере гуманитарного аспекта гражданской войны в Испании в 1936–1939 гг.)

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Рассматриваются проблемы истории информационных войн на примере СМИ Великобритании 1930-х гг. Объектом исследования выступает британская печатная пропаганда второй половины 1930-х гг., предметом – ее политический аспект на примере освещения гуманитарных проблем гражданской войны в Испании в 1936–1939 гг. Дана характеристика трактовкам гуманитарных аспектов испанского конфликта 1936–1939 гг., предложенным английской печатной пропагандой. Исследование базируется на принципах историзма (понимание исторических фактов и явлений в их связи и развитии) и объективности. На основе изучения материалов около 20 наименований британской прессы различных политических направлений авторы приходят к выводу о том, что гуманитарное бедствие как результат войны в Испании в 1936–1939 гг. признавали все издания, однако интерпретировалось оно в зависимости от их политических предпочтений. Показано, что гуманитарное наполнение событий в Испании вызвало резкую поляризацию общественного мнения Великобритании; основными новостными поводами стали страдания мирного населения, проблема беженцев и общественная реакция на нее в Великобритании, гуманитарные кампании. Был рельефно очерчен моральный уровень критики, «врага» – сделан акцент на бесчеловечность и исходящую от него опасность. Указывается на то, что испанская проблематика активно использовалась в информационно-психологическом противостоянии и формировании образа врага накануне Второй мировой войны.

Ключевые слова: гражданская война в Испании в 1936–1939 гг.; информационные войны; британская печатная пропаганда; гуманитарные аспекты; образ врага.

An ideological component of the Spanish conflict invisibly presented in all of its other international aspects. Breaking the pages of European newspapers with short messages in July, 1936, the Spanish Civil War caused serious information and propaganda wars, exacerbating polarization in Europe on eve of World War II. In early August, 1936 the British leadership and diplomats expressed concerns about the prospects of appearance of hostile ideological blocs in Europe in connection with the events in Spain. A similar fear throughout the Spanish War was expressed by the French side (Paris-Soir. 1936. 18 Aug.) [1, p. 90–91; 2, p. 18]. The European propaganda struggle around the Spanish problem gained the true scale with the formation of L. Caballero's Cabinet and the beginning of the International Non-Intervention Committee functioning (September, 1936).

A humanitarian aspect of the Spanish confrontation became one of the most important newsbreaks in formation of the "enemy image" in the British press. It is worth paying attention to a typical, drastically directed against appeasement, a note in "The Daily Mirror" in August, 1936: "As long as you read this article, 250 bullets have flew from the barrel of a machine gun in Spain. How many people have they killed?" The rebel leader General F. Franco was viewed by this newspaper as an "executioner" of the civilian population (Daily Mirror. 1936. 7 Aug.; 1938. 8 Aug.).

Description of "atrocities" of the Spanish nationalists and their Italian-German allies, for example, in July, 1936 became a wide-spread plot in the left "The Daily Worker" publications. Categorical articles clearly marked a sharp rejection of the rebel camp (Daily Worker. 1936. 24, 27, 30, 31 Jule). Subsequently, information on casualties or damages caused by the nationalist forces to civilians may be met almost in every issue of "The Daily Worker" (for example, in July, 1937, "The Daily Worker" has 28 such rooms 6; The Daily Worker. 1938. 1 Jan.).

The refugee problem equally relevant for wars was also exposed by the British media scrutiny. Conservative "The Spectator" in early September, 1936, "expressed concern" about appearance of this phenomenon, stressing that big groups of people were constantly leaving the country through the border check post Irun. British newspapers of various political branches often stressed the fact of refugee removal from the combat zone, mainly by British ships (The Spectator. 1936. 10 Sept.). The author of the same "The Spectator" noted that British sailors often did it while risking their lives (The Spectator. 1937. 12 Aug.).

Large-scale "resettlement" obtained the character of humanitarian catastrophe in Spain by the middle of 1937. According to the Catalan government documents, by August, 1938 there were more than one million refugees from the territory of the Republic on the territory of the autonomy [3].

The British media also touched upon the issue of refugee presence in other countries: "The Times" with reference to the Republican press cited about 470 thousand of refugees who fled Catalonia in February, 1939, and "The Spectator" provided a figure of 300 thousand

refugees (The Times. 1939. 7 Feb.; The Spectator. 1939. 3 Feb.). The main flow invaded France, where not less than 180 thousand people remained for living. Along with civilians the rest of the Republican units and foreign volunteers also moved there (The Times. 1939. 3 Feb.). The majority of forcibly displaced persons were temporarily placed in filtration camps, which provoked indignation of the world democratic community. The Soviet Ambassador to Britain Ivan Maisky wrote that people were sleeping on the ground without any clothes, blankets, medicines [4, c. 169]. Earlier, England had accepted no less than 4 thousand Basque children and few hundred Spanish sailors (The Daily Express. 1937. 13 Nov.). According to "The Manchester Guardian", refugees who appeared in Portugal (2 million) were mainly residents of the province Badajoz (The Manchester Guardian. 1936. 19 Aug.).

The British clerical press was the only direction that often published information also about refugees from the nationalist zone. So, "The Catholic Herald" wrote about the numerous priests who fled to France immediately after the outbreak of the civil war. It was also stressed that many of the chapels had been destroyed, altars had been desecrated. Church remained intact, however, they had been transferred to municipal institutions (The Catholic Herald. 1936. 14 Aug.; 1938. 29 Jule). "The Catholic Herald" observed a large influx of forcibly displaced persons from Spain to Paris, with the conclusion that France would not manage to eliminate itself from the war in the neighboring country (The Catholic Herald. 1936. 4, 18 Sept.). At the same time, "The Catholic Herald" reacted also with approval on the activities of the "National United Committee to aid Spain" (The Catholic Herald. 1937. 7 May, 26 Nov.). It is also indicative that welcoming humanitarian efforts of Britain and France, "The Catholic Herald" kept fairly reserved, even an unfriendly policy towards refugees from Spain: they have flooded France, and in case of Franco's victory "serious political complications may be expected from this unstable element". 70 % of refugees in France would like to return to the nationalist zone, but the Republican "commissioners" impeded this (The Catholic Herald. 1937. 17 Dec.; 1938. 13 May; 1939. 1 Feb.). "The Tablet" was also writing about a "serious" problem of refugees in France, noting that the "humanity" (in fact, world public opinion) puts pressure on France in order to organize favorable conditions for refugees to stay. The image of the enemy in the British Catholic press in covering the refugee problem was closely linked to the perception of a destructive role of the Republican government.

The fate of Spanish children was also among the worries of the British left intellectuals, some religious and public figures. In November 1936 the "Manchester Guardian" expressed concerns over the fate of "innocent hostages of the situation occurred in the country". It was noted that there was an acute shortage of clothes and food supplies among the civilian population in the affected areas in Spain. The task of receiving refugees in the UK itself was also stated: "In order to protect them from discrimination" (The Manchester Guardian. 1936. 21 Nov.).

According to the British press, the first steamboat ("Havana") with 4 thousand Spanish refugee children arrived in England on 23 May, 1937 for temporary accommodation in the camp near Southampton (The Times. 1937. 23 May). Further resettlement of some children in private homes, and their further return to Spain after normalization of the situation was envisaged [5]. "The Daily Mirror" appealing to human feelings of its audience was playing an episode: on the first day of their stay in the UK children were scared of the storm, which they took for the bombing. The note was focusing on sufferings of the victims of "the war unleashed by the rebels" (The Daily Mirror. 1937. 24 May). "The Daily Express" published an interview with a Basque boy L. Sansom (January, 1938) who said that only in England he was not afraid of war and that "this land is happier than ours" (The Daily Express. 1938. 6 Jan.).

Mass arrival of a large number of forcibly displaced persons in the UK provoked also critical responses. So, someone A. Wilson in his letter to "The Times" editor (February, 1938) called for transporting Republican children survived from the war back to Bilbao under the protection of Catholic organizations, as far as the arrival of the "masses" of the Spaniards may subsequently create political difficulties (The Times. 1938. 1, 7 Feb.).

The British press also raised questions of the Spanish children fates in other countries. Thus, "The Daily Mirror" reported on the "rebellion" in the children's camp Saint-Cloud near Paris, where in August, 1938 more than 20 Spanish children out of 1800 persons staying in the camp were smashing windows, breaking furniture and throwing stones at the police after they'd heard about the downfall of Santander. After that incident they were interned back home (The Daily Mirror. 1937. 19 Aug.).

There's another companion of wars such as hunger and diseases among the civil population. According to the findings of the liberal "The Manchester Guardian" (summer 1937), despite the fact that many people were dying in Spain from bombings in Madrid and other "open" cities, majority of them became victims of starvation and diseases: "Many languish in unhygienic conditions, almost one in two is malnourished". "The Republican government is doing its best to alleviate the plight of refugees and civilians affected by war: it builds hospitals and disinfection stations, the population is provided with medicines and hot food, the problem of typhus is almost solved in Catalonia". However, the reporter added, "If the world community assisted Spain more seriously it would be to save the lives of many more victims of the war" (The Manchester Guardian. 1937. 23 Jule).

Humanitarian campaigns in favor of the Republican Spain from the side of left-wing forces and charitable organizations were also among important newsbreaks. The press actively promoted voluntary allocation of funds to help Spain (one of the few aspects of the Spanish war, where different, except for the fascist, currents of the British politics were in agreement). Thus, "The Daily Herald" was writing about the complicated situation in Catalonia in the spring 1938: "250 thousand people in the autonomy camps are urgently in need of the international assistance, some of them cannot eat more than once a day" (The Daily Herald. 1938. 10 March).

Especially much attention to solidarity was paid by the leftist "The Daily Worker" (materials on this topic were present in almost every issue), spreading a powerful propaganda to assist the Republicans (The Daily Worker. 1936. 1 Aug., 31 Jule). It is significant that in April, 1937 the amount of collected funds, according to the newspaper, significantly decreased. And the intensity of the campaign supporting the Republicans went on the wane. Obviously, it was slightly hindered by inconsistency of the British left-wing forces, because of the lack of a single point of funds accumulation and protracted nature of the Spanish war (The Daily Worker. 1936. 3, 25, 28 Aug., 8 Sept.; 1937. 7 Apr.).

In May, 1937 "The Daily Worker" continued publishing reports on the rallies in favour of the Spanish Republic (The Daily Worker. 1937. 1, 3, 4, 8, 10–29, 31 May). "The Daily Worker" had a special section with the analysis of daily and weekly contributions to relief funds of Spain.

The leadership of the Labour party changed somewhat the position on the Spanish question from July, 1937. The financial support to Republicans became more apparent. It was reported in the labour "The Daily Herald" in July, 1937 that the British Labour movement was planning to create its own Fund to help the Republicans. The rhetoric against the Non-Intervention policy towards Spain toughened (The Daily Herald. 1937. 1 June, 9, 12, 20, 27, 25, 26 Jule). From January, 1938 "The Daily Worker" increasingly focused on promoting assistance to the International Brigades rather than on humanitarian actions. It is noteworthy, that the topic of providing assistance to refugees was covered to a less extent on the pages of the newspaper. Dynamics of donations remained low and stable. By the end of 1938 calls to help Spain appeared on the pages of "The Daily Worker" less often, and later sporadically (The Daily Worker. 1938. 31 March, 8 Aug., 11 Dec.; 1939. 1 Jan.).

Fascist newspapers considered humanitarian activities from the standpoint of a narrow nationalism. Thus, "The Action" wrote that the aid to Spain was too expensive, stressing that in the UK itself there are many people who suffer from hunger and lack of medicines. The British fascist organizations called for the immediate termination of humanitarian aid to Spain and reception of Spanish refugees. In some publications such appeals were of a really misanthropic nature. Thus, "The Action" noted that those "philanthropists" who wanted to achieve cheap popularity staged a real hunt for refugees. According to the newspaper, adherents of Franco in Spain more acted as nurses, "cleaning out of the country those infected with the red plague". The edition also criticized initiatives of the various British charitable organizations (The Action. 1939. 18, 25 March).

The focus was also made on the fact that resettlement of refugees on the territory of the United Kingdom becomes a reason for unemployment. The anti-Semitist motive in many materials complied with this theses. "The Catholic Herald" and "The Table" reported on the humanitarian activities of Catholic organizations by publishing materials about alternative funds of providing assistance to Spanish refugees, who fled the country because of the fear of the Republican government (The Catholic Herald. 1937. 1 Jan.; The Table. 1937. 20 March).

The topic of "man and war" was present in the materials of the British press on the Civil War in Spain 1936–1939. For example, "The Daily Mail" published an article on the "fashion on Spain", which was brought by the returning volunteers. In particular, the khaki clothes, the widespread expressions: *No pasarán!* ("they shall not pass!"), *quinta columna* (the "fifth column"), *camarada* ("comrade"), etc., which have become popular in the spoken English (The Daily Mail. 1939. 4 Jan.). "The Observer" chose for its publications other topics and personalities: for example, it wrote about the famous aviator T. Black, who offered his services to the nationalists during the Civil War in Spain and carried out several combat missions (The Observer. 1936. 20 Sept.). "The Daily Mirror" allowed itself to "entertain the audience" with the stories about the adventures of various agents, spies and adventurers in Spain (The Daily Mirror. 1936. 14 Sept.).

In October 1936 "The Spectator" was considering the war itself as an important issue of an inhumane nature using the example of the Spanish Civil War. Explaining the large number of victims of the conflict, it appealed to the mental characteristics and ethnic psychology of the Spanish people: atrocities of War became the result of the split into rival factions, "the nation of warriors and conquerors". The deep context of events was identified, a big role of propaganda in generating this kind of social phenomena was noted: "Exaggeration of atrocities and horrors, which are described by the press of one of the military camps about its opponents, will take place until there is a war" (The Spectator. 1936. 16 Oct.).

Sharing his impressions after visiting Barcelona, "The Spectator" correspondent L. Maknis gave a description of the refugee columns, stressed the high morale that prevailed in their community, despite the

extremely cramped living conditions: "people were joking and laughing, even though many of them lost their homes forever, were sick, almost starved" (The Spectator. 1939. 20 Jan.).

In general, a humanitarian aspect of the Spanish Civil War of 1936–1939 was an important addition to the image of the enemy designed by the British press. There were few key moments within this context: a question of responsibility for bombings of civil areas, killings and persecutions of the population (war crimes), a responsibility for the outbreak of the Civil War and the problem of attitude towards forcibly displaced persons (repressions and discrimination on various grounds). A humanitarian disaster as a result of the war was recognized by all the editions, however, it was interpreted according to their political preferences.

The main newsbreaks during that period were the following: sufferings of the civil population (war crimes, bombings, killings and destructions); the refugee problem and the public reaction in Britain; humanitarian campaigns (in most cases in favour of the Republic); the topic of the "man and war" (often publications of an entertaining or sensational nature while referring to specific personalities). In this case, it wasn't necessary to name the "enemy" openly, but only to point out his responsibility for sufferings of the population in particular, or publications even not related to this subject. This phenomenon vividly outlined "moral standard" of the criticism towards the "enemy" – emphasis on brutality and a threat emanating from him. "Physiological level" of the criticism – such as physical and mental disability, deformity (for example, shown in cartoons) was typical only for the extreme right-wing press.

British editions were divided with respect to the various humanitarian concerns of the Spanish Civil War of 1936–1939 according to the antipathy towards the policy of the General Franco (some publications hushed up the facts to a different extent). Left-wing, centrist, part of right-wing newspapers blamed Spanish nationalists for the outbreak of the civil war in Spain. Communist "The Daily Worker" and the Comintern's "The Inprecorr" had the most rigid and uncompromising criticism over the rebel camp. "The Daily Worker" had a big share of materials on humanitarian topics in general. A very consistent "demonization" of Franco adherents was noticed on the pages of "The Daily Mirror", "The Manchester Guardian", "The Daily Express". Humanitarian campaigns and assistance to refugees were actively discussed in the number of local newspapers. "The Times", "The Spectator", "The Daily Mail" and "The Observer", otherwise, didn't focus on the fact who had been responsible for the situation to a greater extent while mentioning humanitarian crisis in Spain; events were understood as a consequence of force majeure nature. Labour "The Daily Herald" may also be attributed to this category, which published, however, pretty harsh statements about Franco's policy on refugee issues and bombings of the cities. The clerical press in the face of "The Tablet" and "The Catholic Herald" was inclined to condemn the Republicans, motivating it by the political radicalism of the Republican regime. The same can be said about fascist "The Action" and "The Blackshirt", which, for example, advocated for the refusal to accept refugees in the Great Britain. The British fascists believed that it was fraught with political difficulties; it would also complicate the problem of unemployment and lead to serious public expenditure.

Without a doubt, problems of bombings of "open" cities, which were often devastating, became an important component of negativisation the Franco's regime in the British press. The nationalist regime was thus presented as a structure of a terrorist type, dangerous by its nature. Motives of indifference, injustice and cruelty towards the civil population, especially women, children and the elderly people (emphasis on the formation of a sense of the pity), were an important psychological consequence of indication of the "enemy". Such lines as "deaths of women and children", "attacks on the crowds of people", "bombings of the civil targets" became a kind of propaganda clichés.

Humanitarian campaigns to aid the Republican Spain unfolded both with the purpose to provide concrete assistance to the population in the zone of military operations and also in propagandist purposes with the underlined emphasis of the anti-fascist nature of the Spanish war ("The Daily Herald", "The Daily Worker", partially "The Manchester Guardian"). "The Daily Worker" made the most ambitious efforts in assisting the "democratic Spain". "The Daily Herald" was writing about humanitarian campaigns separate from the Communists.

Overall, domestic aspects of the Spanish crisis yielded to some extent to the international ones in the number of references in the British press. Number of such publications reached 34 % in the analyzed materials of about 30 newspapers dated between 1936 and 1939. Moreover, military actions and the actual domestic issues were mentioned almost equally (14 % and 15 %, respectively, humanitarian aspects were touched upon less often).

"The Daily Worker", "The Daily Express", "The Manchester Guardian", "The Daily Mirror", "The Evening Standard", "The Inprecorr", some of the local press took the pro-Republican position in the description of internal political aspects. "The Daily Herald" did not make a focus on its sympathy towards the Republic. "The Times" as "the horn of appeasement", "The Daily Telegraph" and "The Morning Post" (with significantly expressed sympathy towards Franco's camp) were trying to stick to neutrality. "The Action", "The Blackshirt", "The Observer", "The Daily Mail", "The Spectator", "The Catholic Herald", "The Daily Sketch" could

be considered as pro-Franco's. It should be mentioned that the editions' sympathy did not correlate clearly with their political affiliations. A typical example is the conservative "The Daily Express", which took a distinctly anti-Franco position, or apparent "impartiality" of "The Daily Herald".

Using the example of domestic political aspects within the Spanish conflict, we can clearly see how the image of the enemy was formed in the British press. In terms of techniques and methods of information warfare, these aspects to a great extent have opened a new chapter in propaganda complementing already existing tactics.

Connotations (variations of the meaning) were among the most profound levels of propaganda in the British press. Depending on the context, a particular definition was coloured with a negative or positive content. Over 20 names of the parties and related to them adjectives can be given to demonstrate this example (for instance, for the Republicans: from "killers" in "The Blackshirt" to "democratic forces" in "The Daily Worker"). The disposition "glorification" – "demonization" played an important role. Moreover, the "party of compassion" was somehow glorified, and the other side was demonized. In this regard, humanitarian aspects of the Spanish Civil War 1936–1939 became the fertile ground for mythologizing, constructing of perfect images in the British printed propaganda. Often construction of myths about "heroes" moved to the archaization of the image, to the historical examples of courage and valor. In this aspect, the bias estimates in the right-wing and left-wing press was manifested especially clearly. "Hushing" or "exaggeration" became other necessary elements in rendering the image of the enemy (most often they were used while reporting about military actions). Even the choice of the news reports topics, intensity of descriptions of certain facts, phenomena, and events can also be considered as a propaganda technique. Homologating (of political forces, personalities, tendencies), often far-fetched and incorrect, but with a serious psychological effect (e. g., "Caballero = Lenin" in the right-wing press) remained a very common technique.

Thus, events in Spain, their humanitarian content provoked a sharp polarization of public opinion in the Great Britain and throughout Europe. Spanish problem was actively used in mutual information-psychological confrontation between the countries of the continent.

Playing on the effect of "sympathy-antipathy", the British and all-European propaganda (regardless of the political affiliation) managed to shift significantly the angle of perception of the situation happening in Spain. Construction of the false political and psychological stereotypes on both sides, not separation of a propaganda campaign from the actual mechanisms in the foreign policy had extremely negative consequences for the whole complex of international relations. Unfortunately, it happened during almost the most important period in terms of deterrence of fascist aggression.

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EVOLUTION OF BELARUSIAN-POLISH RELATIONS AT THE PRESENT STAGE: BALANCE OF INTERESTS

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The present article is dedicated to the analysis of the Belarusian-Polish relations' development during the post-USSR period. The conclusion is made that despite the geographical neighborhood of both countries, their cultural and historical proximity, cooperation between Minsk and Warsaw didn't comply with the existing capacity. Political contradictions became the reason for that, which resulted in fluctuations in bilateral cooperation, local conflicts on the inter-state level. The author makes an attempt to identify the main reasons for a low level of efficiency in bilateral relations and to give an assessment of foreign factors impact on Minsk and Warsaw policies.

Key words: Belarusian-Polish relations; Belarusian foreign policy; Belarusian and Polish diplomacy; historical policy.

ЭВОЛЮЦИЯ БЕЛОРУССКО-ПОЛЬСКИХ ОТНОШЕНИЙ НА СОВРЕМЕННОМ ЭТАПЕ: ПОИСК БАЛАНСА ИНТЕРЕСОВ

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В представленной публикации анализируется развитие белорусско-польских отношений на протяжении периода после распада СССР. Делается вывод о том, что, несмотря на географическое соседство двух стран, их культурную и историческую близость, сотрудничество Минска и Варшавы не соответствовало имеющемуся потенциалу. Причиной тому являлись политические разногласия, следствием которых стали перепады в двухстороннем взаимодействии, частые конфликты на межгосударственном уровне. Автор пытается выяснить основные причины невысокой эффективности двусторонних связей, дать оценку влияния внешних факторов на политику Минска и Варшавы.

Ключевые слова: белорусско-польские отношения; внешняя политика Беларуси; белорусская и польская дипломатия; историческая политика.

Over the past three years there is a noticeable expansion of official contacts between Belarus and Poland. The government circles, the societies of the two countries hope to intensify Belarusian-Polish cooperation in all significant areas. There is a noticeable contrast between the recent positive trends in relations that started in August, 2014 and past practices.

For nearly twenty years the two neighbouring countries that are close to each other in historic and cultural terms and have unlimited possibilities for economic cooperation, have had few positive political contacts. The potential for economic cooperation due to geographic proximity was only partially used by the two countries. The relations between Warsaw and Minsk at different times varied from tension to some degree of discharge.

Poland was among the first states to recognize Belarusian independence before the final collapse of the USSR. The recognition act was secured in October, 1991 by signing the Declaration on Good-Neighbourliness, Mutual Understanding and Cooperation. On 23 June, 1992 the countries signed the basic political legal document – the Treaty on Good-Neighbourliness and Friendly Cooperation that consists of 29 articles [1].

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In May, 1992 on the basis of the Polish Consulate General the Polish Embassy was opened in Minsk. Belarusian Embassy in Warsaw opened in July, 1992.

However, the first contacts of independent Belarus and Poland were marked by different approaches to many problem solutions.

Why the huge neighbourhood potential was not largely implemented by Minsk and Warsaw at the start of formal relations, what prevented the two countries to go beyond the standard international treaties and agreements in the first half of the 1990's? One of the reasons, in our opinion, was the various foreign policy directions and priorities of the two states. After the collapse of the Soviet Union and the socialist system, while Belarus was still trying to define its geopolitical identity, Poland took a steady course towards the Euro-Atlantic integration. This course included distancing from Russia and, as a result, from the whole post-Soviet area.

It is difficult to give an unambiguous assessment of how effective the Belarusian vector of Polish politics in the first half of the 1990s was. Apparently, Poland was willing to play a more significant role on Belarusian and Ukrainian lands, and actively participate in domestic and foreign policies' formation of these countries. However, in order to achieve such an ambitious goal Warsaw did not have the necessary resources. One of the main characteristics of the Polish political elite not only in the 1990's, but also at all subsequent stages was the desire to patronize the neighbouring Eastern European states and be the "advocate" of Kiev and Minsk in the EU and Western community as a whole. However, neither Ukraine nor Belarus agreed with this "division of responsibility" in the bilateral relationship. They preferred other more powerful states of the West to be "their advocates".

The Belarusian Foreign Minister in 1990–1994 Piotr Kravchenko in his book "Belarus at a turning point. The diplomatic breakthrough into the world" stressed that the road to a constructive relationship with the Polish colleagues was not strewn with roses. In particular, as an example he noted that in 1993 no member of the Polish Cabinet attended the official reception dedicated to the Independence Day organized by the Belarusian Embassy in Warsaw. The Belarusian side decided to reciprocate [2, p. 66].

In his memoirs P. Kravchenko mentioned that significant differences existed in Belarusian-Polish relations even before the establishment of diplomatic relations. Thus, in October, 1990 the Belarusian side refused to sign the declaration proposed by the Polish Minister of Foreign Affairs K. Skubiszewski. The Belarusian side explained the refusal to sign the declaration by the fact that the treaties between Poland and the Soviet Union did not take into account Belarusian national interests. The Foreign Minister of Poland was informed about the concerns around the situation with the Belarusian minority in the Bialystok region. The questions of Belarusian cultural values restitution were acutely raised. According to the memoirs of the former Belarusian Minister, the Belarusian statement shocked the high-ranking Polish representative [3, p. 17–20].

Belarusian-Polish relations became tense when in November, 1996 Belarus held a national referendum on amending the country's constitution. On 19 November, 1996 the Sejm of the Republic of Poland adopted a statement in which the Belarusian reality was criticized: "An open conflict in Belarus threatens the stability of the situation in Europe. Authoritarianism threat can seriously affect and delay democratization and transformation to market economy in certain countries of the region". In the document the Polish parliamentarians appealed to the international community, European politicians, and especially to the authorities and political elites of the neighbouring countries to show solidarity with the opposition political forces in Belarus [4].

Poland's accession to NATO (1999) and the European Union (2004), the signing of the Treaty establishing the Union State of Belarus and Russia (1999) by Minsk revealed that the neighbouring states realized their geopolitical aspirations and, thus, found themselves in the competing economic and military-political groups.

Warsaw, along with other capitals of the European Union members continued to be an active critic of the Belarusian authorities, supported sanctions against Belarusian leaders, provided moral and financial support to the opposition structures. The author wrote about this in the previous work [5].

During the whole period of diplomatic relations the most sensitive issue of Belarusian-Polish relations that remains unresolved until now was the split of the Belarusian Union of Poles which occurred in 2005. According to the Polish side, the acute crisis did not happen without the interference of the Belarusian authorities. The Belarusian side had exactly the opposite opinion. In 2005–2007 the relations were so tense that Belarus and Poland stopped interaction not only at the top governmental level, but also at the level of separate administrative units.

TV channel "Belsat" (December, 2007) and "Radio Ratsya" (1998) began and continued broadcasting on Polish territory. The broadcasting is based on information sources alternative to Belarusian government information. According to the information provided by the Deputy Foreign Minister of Poland Marek Ziolkowski in an interview with the newspaper "Rzeczpospolita" from 2007 until 2015 TV channel "Belsat" received 157 million zlotys from the government. In total 500 million zlotys were allocated to Belarusian projects in this period [6].

One of these projects was the Kalinowski programme. The Polish government began its funding after Belarusian presidential elections (2006). The programme

implied that Polish universities admitted Belarusians who left the country for political reasons.

A certain political thaw in relations between Belarus and the West, including Poland, began to take place, starting in March, 2008, following the signing of the Agreement on opening of the European Commission Office in Minsk between Belarus and the European Commission. In the following 2009 Belarus received an invitation to become a member of the new EU programme "Eastern Partnership", which had been initiated by Poland and Sweden in spring, 2008.

An important event in Belarusian-Polish relations can be considered the signing of the Agreement on Local Border Traffic in 2010. The document called for a simplified border crossing procedure by the citizens of both countries living in the 30-kilometers border area [7].

However, it should be noted that in spite of the interest on the side of Polish authorities, at the time of writing, the agreement has not entered into force. The Belarusian government has not completed the formal act – has not sent a note that the necessary procedures have been carried out through the diplomatic channels. As a possible reason for "freezing" of the agreements, the experts name that the Belarusian side fears that the increase of people crossing the border in both directions, will not only require a significant increase of border security expenses, but also an increase of the flow of cheaper industrial and agricultural goods from neighbouring countries to Belarus.

In February, 2010 the Head of Belarusian Foreign Ministry Sergei Martynov visited Poland. On 2 November, 2010 Minsk was visited by the Minister of Foreign Affairs of Poland Radoslaw Sikorski, who promised the Belarusian authorities to provide a concession loan of 3 billion USD in the event of a "democratic transition" [8].

Belarusian-Polish relations again exacerbated after the presidential elections in Belarus (December, 2010). In January, 2011 the EU imposed sanctions against a number of Belarusian officials and companies that, in the opinion of the European institutions, were guilty of violating election laws and other "illegal acts". The sanctions were actively supported by the Polish side, after that the history of Belarusian-Polish conflict replenished with new negative developments.

In response to the expansion of sanctions list by the Council of Foreign Ministers of the EU on 28 February, 2012 the Belarusian Ministry of Foreign Affairs suggested that the Head of the EU Delegation in Minsk M. Mora and the Ambassador of Poland L. Sherepka leave Belarus "for consultations, to inform their leadership about the firm Belarusian position on unacceptable pressure and sanctions". Earlier that day, the Foreign Ministry of the Republic of Belarus recalled its representatives from Brussels and Warsaw for consultations. Heads of diplomatic missions of EU member states, along with several other ambassadors supported their colleagues and also left the Belarusian capital [9].

The negative effects of the diplomatic conflict led both sides to understanding the futility of further confrontation. The Belarusian leadership pardoned the detained opposition activists. In return, the EU refrained from adding more Belarusian citizens to the sanctions lists. Over the following months in 2012 and 2013 both sides began to express their desire to improve the relations between Minsk and the EU, Minsk and Warsaw. Belarus intensified contacts with Polish partners in the framework of "Eastern Partnership". In September, 2012 in the framework of cultural cooperation Poland hosted the Days of Belarusian Culture for the first time in the last 17 years.

The Summit of the EU Programme "Eastern Partnership" in Vilnius (November, 2013) did not bring any unpleasant surprises to official Minsk. At the meeting, where the Foreign Minister Vladimir Makei made a speech, Belarus was not harshly criticized, concrete proposals on relations improvement between the EU and Belarus were voiced.

The policy of Belarusian authorities towards the US and the EU, including neighbouring Poland, was becoming more pragmatic. In difficult economic conditions, the Belarusian government adopted a policy to reduce the over-dependence on the Russian market, diversification of trade and economic relations, building mutually beneficial relations with all foreign partners, and, above all, the ones in geographic proximity.

The crisis in Ukraine that happened soon after the Vilnius meeting of "Eastern Partnership", profoundly changed the geopolitical situation in Eastern Europe, added more drama in Belarus' relations with the neighbouring countries and gave a new meaning to its foreign policy. Minsk took a constructive position with regard to the armed conflict, undertook efforts for the peaceful resolution of the military clashes in South-East Ukraine.

While significant deterioration of the situation in Eastern Europe was taking place, on 28–29 August, 2014 the Minister of Foreign Affairs of the Republic of Belarus Vladimir Makei paid a working visit to the Republic of Poland. During the visit, he met with his Polish counterpart Radoslaw Sikorsky and discussed the current situation in the region, as well as a number of bilateral issues. V. Makei also had talks with the Deputy Prime Minister – Minister of Economy of Poland Janusz Pehotinski. The parties discussed the meeting preparation of the Joint Belarusian-Polish Commission on Economic Cooperation [10]. During the visit the decision to launch the Belarusian-Polish commission of historians was made, its leaders were appointed: from the Belarusian side – BSU professor Victor Shadurski, from the Polish side – professor Andrzej Kunert.

In our opinion, this ministerial visit can be considered a new phase in Belarusian-Polish relations,

though some Polish politicians link the beginning of relations improvement with the fact that the Party "Law and Justice" came to power in Poland [6].

In May, 2015 Andrzej Duda the representative of the Polish conservative party "Law and Justice" was elected the President of Poland. As a result of the same party victory in the Polish Sejm elections in October, 2015 Beata Szydlo became the Head of Government. Among other priorities, the Polish Conservative government declared the establishment of a new kind of foreign relations, including its relations with the East. In contrast to the "Europeanists" of the "Civic Platform" party, "traditionalists" from "Law and Justice" called for a more active and Poland-oriented policy in the post-Soviet space.

The development of Belarusian-Polish contacts traditionally occurred with the relations improvement of Belarus and the EU. Mainly, the constructive position of the Belarusian authorities on Donbass crisis-resolution contributed to positive dynamics of the interaction between Brussels and Minsk. Minsk became the meeting place for the parties, for which it was named "Eastern European Geneva" by many experts. Since September, 2014, the capital of Belarus began to hold regular meetings of the Tripartite OSCE Contact Group to discuss concrete ways to de-escalate the armed conflict in the Eastern regions of Ukraine. In February, 2015 there was a meeting of Heads of the four States (Norman format) in Minsk, which contributed to a significant reduction in armed clashes in the region.

With a growing international prestige of Minsk the EU abolished personal sanctions, as well as sanctions against three Belarusian companies (15 February, 2016). Warsaw took a constructive position on the sanctions lifting issue.

Another significant event in the dialogue launched between the two countries was the visit of the Minister of Foreign Affairs of Poland Witold Waszczykowski to Belarus (22–23 March, 2016). It happened more than five years after the previous visit of the Polish Minister (November, 2010). The fact that V. Waszczykowski visited Vaukavysk, the city where his mother was born and lived for some time added more meaning to the event.

In October, 2016 Warsaw again was visited by the Minister of Foreign Affairs of Belarus Vladimir Makei, who was received by the President of Poland Aleksander Duda. During the same month Minsk was visited by the Deputy Prime Minister of Poland, Minister of Economic Development Mateusz Moravetsky. In addition to the meetings, including some at the highest level, the Polish leader participated in the opening ceremony of the Belarusian-Polish Economic Forum "Neighbourhood-2016" (October, 24).

Under the conditions of deepening of Russia – NATO, Russia – EU contradictions Belarus preferred a very careful foreign policy rhetoric. Thus, Belarus considered the actions taken by NATO and the US to strengthen the NATO presence in the Baltic countries and Poland as a challenge leading to tension increase in the regional security area, but, according to the Minister of Foreign Affairs of Belarus, not an immediate and direct safety threat to the Republic of Belarus [11].

And finally, at the end of a politically saturated on 4–6 December, 2016 the Polish Senate Marshal Stanislaw Karchevsky paid a working visit to Belarus. He met with President of Belarus Alexander Lukashenko and leaders of both chambers of the National Assembly of the Republic of Belarus Mikhail Myasnikovich and Vladimir Andreichenko [12]. In diplomatic language the visit of Polish Senate leader meant the resumption of official Belarusian-Polish contacts at the parliamentary level. As it is known, these contacts were officially frozen by the decision of the governing bodies of the European Union in September, 1997.

Thus, the analysis of Belarusian-Polish relations over the past two and a half decades shows that the interaction developed irregularly, the cooling periods of official contacts alternated with "calm" periods and vice versa. The potential for cooperation of the two neighbouring states with strong historical and cultural ties was not fully used.

Unfortunately, there is no clear vision of the future of Belarusian-Polish relations at present too. According to the author, the countries have not yet been able to go beyond the enhanced dialogue, have not carried out real actions. The state and public structures expect more concrete and meaningful results of the interaction between the two countries, especially, in the field of economy.

The prevailing state of relations can be explained by a number of factors, which are both short-term and long-term.

The positive factors are primarily geographic proximity, similarity of cultures and languages. The number of Belarusians traveling to Poland with different purposes and Poles visiting Belarus is increasing every year. Thus, according to the Head of the Consular department of the Embassy of Poland in Belarus Marek Pendiha, in 2015 the Polish consular offices in Minsk, Brest and Grodno issued about 400 thousand of Schengen and national visas to the citizens of our country. The number of multiple-entry visas amounted to almost 270 thousand, the number of long-term visas increased by 70 % compared to 2014 [13]. The number of Belarusian visas issued to Polish citizens – tens of thousands.

The above-mentioned favorable neighbourhood relations stimulate a sustained demand in bilateral economic relations. The economy is one of the main drivers of relations. Thus, in 2015 the volume of the Belarusian-Polish trade amounted to about 1.8 billion USD, the volume of Belarusian exports to Poland – 767 million USD, imports – 1.1 billion USD. At the end of the same year, Poland became the sixth trade partner

of Belarus, in trade volume it ranked the eighth in exports, the seventh – in investments in the Belarusian economy. In 2015, the Polish capital invested about 195 million USD in the Belarusian economy. More than 350 companies with Polish capital registered in Belarus, of which more than 200 are joint ventures [14].

The facts published on the website of the Belarusian Embassy in Poland confirm a great potential in the bilateral economic relationship, there are good prospects for the advanced development. Thus, even in the situation of a general foreign trade turnover decline of Belarus (January – August, 2016) trade with Poland increased by almost 11 %.

However, the large number of advantages and mutual interest in bilateral contacts were overshadowed by political conflicts and numerous diplomatic crises. The situation analysis leads to the conclusion of an incomplete understanding by the parties of each other's motives and problems as well as a serious lack of confidence that was present in the relations between the nations over the long period in history.

Historically formed stereotypes prevented the establishment of the trust between the nations. According to some researchers, in particular, the Belarusian expert Yury Shevtsov, who published a book entitled "United Nation. Belarusian phenomenon" in Moscow in 2005, the neighbourhood with Poland was the most difficult for Belarus in the post-Soviet period [15, p. 34–35]. The researcher sees the roots of the problems in a long history associated with the existence of Rzeczpospolita (1569–1795) and the Polish Republic (1918–1939). Yury Shevtsov believes that the Polish historical consciousness considers a significant part of the territory inhabited by Belarusians a part of Polish cultural landscape and takes local Belarusian population as the part of their people who only temporarily changed their ethnic identity, language and historic memory [15, p. 360]. According to the analyst, to some extent, there is a "superiority complex" in the Polish perception of Belarus. Local Belarusian population traditionally perceived as "downtrodden and poor peasants", managed by the Polish gentry. Accordingly, the adaptation process to the existing realities, where Belarusians act as educated people who have their own attitude about history is very difficult in the present-day Poland [15, p. 361].

In turn, different population groups, at different government levels in Belarus still have stereotypes that certain forces in Poland are dreaming to restore the Eastern border in the form it existed before the Second World War. A discussion dedicated to this kind of concerns, was held in the Belarusian version of "Radio Liberty" (January, 2017). For example, one of the discussion participants F. Vyachorka, Polish scholarship fellow, drew attention to a comment published in the Polish online network, stating that "in our kress (Polish border regions. – *V. Sh.*), is home to 5 million Poles who stay there with the thought and hope that Poland will return and continue to expect Poland" [16].

Despite the fact that the Polish authorities repeatedly criticize such statements, the number of Belarusian opponents of the "civilizing mission of Poland" has not significantly reduced.

If we do not take into consideration the radical charges of the debate on both sides, it should be recognized that the people of both countries, unfortunately, have a very superficial understanding of their neighbours, a poor understanding of the dominant mood in the neighbouring country. As evidence of the mentioned above, can refer to the opinion of a young Polish video-blogger Michael Sikorski. In an interview with one of the Belarusian internet portals, he noted that many Poles who watched his film about Belarus on the *YouTube* were in shock. It turns out that in Belarus there are attractions, historical sites and important objects, that people normally live here. Some Poles, according to Sikorski, thinks that Belarus is North Korea [17].

At the new stage that started in the 1990s independent Poland and recently independent Belarus failed to develop an effective action strategy in relation to each other, were not able, to a full extent, to create an atmosphere of trust between the governments and societies. Polish experts recognize that Poland did not attach particular importance to the formation of a reasonable and balanced policy with Minsk. Neither Belarus had a long-term country policy. It should be noted that there were enough appeals to all parties to develop such a policy.

Opposite-vector foreign policy, different models of political and economic systems of the two countries aggravated the situation in the Belarusian-Polish relations. The Polish side has refused to fully and unconditionally recognize Belarusian political realities. Polish representatives frequently expressed their intention to support civil society in Belarus as a priority.

Belarusian-Polish cooperation was under a powerful influence of the Russian factor. Many experts and politicians from different countries continue to believe that the Belarusian issue is in the "shadow" of the relations between Poland and Russia. At various historical stages the Polish state due to national security considerations, saw the danger in its geographic proximity to Russia. According to the prevalent doctrine of Polish foreign policy sovereign Belarus and Ukraine form a kind of "barrier" between Poland and Russia. This explains the interest of Warsaw in reducing Belarus' dependence on Russia, enhancement of the differences between Moscow and Minsk, strengthening of Belarusian sovereignty. Numerous statements of the Polish establishment provide evidence for that. As it is pointed out in the book "The Guises of Belarus. Ambassador Notes" by former Polish Ambassador in Minsk Leszek Sherepka, Polish and the EU policy towards Belarus does not

depend only on Belarus. It depends on Russia, on the events in Ukraine, on how the EU itself will be transformed [18].

Depending on the state of the Belarusian-Russian, Ukrainian-Polish relations Warsaw was ready to soften its approach in relations with Belarus, ignore serious disagreements with Ukraine.

Russia, in turn, closely followed the development of Belarusian-Polish relations. When it could Russia tried to neutralize the two countries' rapprochement seen as a threat to its national interests.

Belarusian-Polish relations also have a number of more specific contradictions that until present have not been resolved.

The split of the main organization of the Polish minority – the Union of Poles in Belarus in 2005 is seen as the most serious problem that is still on the agenda. Currently, there is the Union of Poles in Belarus which is not registered in the country and, therefore, acts illegally. Recently, there could be yet another split in the structure. Officially registered in the Republic of Belarus the Union of Poles in Belarus headed by Mieczyslaw Lysy is ignored not only by a part of Belarusian Poles, but also by Polish authorities. Thus, the leaders and active members of this registered union are prohibited from entering Poland.

It is obvious that the problem mentioned above can be resolved only on the basis of Belarusian legislation in the course of negotiations between Minsk and Warsaw officials, as well as an active dialogue within the Polish community in Belarus.

It should be noted that the problem of the existing two (three) public associations of the Polish minority in Belarus is an integral part of a much broader issue – the situation of the Polish minority in Belarus and, accordingly, the situation of the Belarusian minority in Poland. Warsaw with more financial resources and experience compared with Belarus was most active in this area. In September, 2007 the Polish Parliament introduced "Pole's Card" – a document confirming the affiliation of a citizen in one of the CIS and Baltic countries to the Polish people. The "card" holders received some uncivil rights provided by the Polish government which caused a negative reaction of the authorities and the public in the countries involved in "Polish aid" process.

As the Head of the Belarusian Foreign Minister Vladimir Makei stated in an interview to "Rzeczpospolita" (October, 2016), Belarusian authorities are interested to make the citizens of Polish nationality to feel normal in our country [11]. From time to time similar statements are made by Polish politicians. However, despite the apparent willingness of the parties to improve the situation, many of the national minorities problems are solved slowly.

The "formula" for the advancement of Belarusian citizens of Polish origin proposed in the aforementioned book by Leszek Sherepka caused an ambiguous response. Thus, the former Ambassador to Belarus suggests to simplify the process of obtaining Polish citizenship to descendants of interwar Poland inhabitants (i. e. Western Belarus). He considers that the mass exodus of Grodno region residents can make the Belarusian government "change its policy towards the Polish minority" [18].

Another urgent problem that until now has not been actively discussed is a different interpretation of some most important historic issues by the parties. The Polish side sees the identification of names, places of execution and burial places of war prisoners officers of the Polish Army and other Polish citizens on the so-called "Katyn list" in 1940 as the most acute issue of this process.

Leaders of Belarusian archival institutions, as well as other officials have repeatedly stated that "Belarusian Katyn List" does not exist in Belarusian archives. In the mentioned interview to "Rzeczpospolita" (9 October, 2016) Vladimir Makei was convincing enough on this subject: "In Belarusian archives neither the state one nor the national and departmental ones such a document does not exist" [11]. The Belarusian side called for de-politicization of the repressions issue and prepare for a long thorough work. The Polish side, apparently, did not see the answer of a high-ranking Belarusian leader reasonable enough.

The foreign ministries continue to count on the cooperation expansion between Belarusian and Polish historians, which was launched in August, 2014.

At the invitation of the Belarusian part the first meeting of the commission was held in Minsk in July, 2015. The parties clarified their positions on joint activities, discussed issues of mutual interest, identified the topic of the forthcoming seminar. However, the change of government in Poland has led to the fact that the discussion about who will be the new partner of the Belarusians on joint historical commission started in Warsaw [19].

The author of the publication believes that in order to successfully start and continue the historical dialogue, it is necessary to organize the work on a step-by-step, consistent basis.

Firstly, the goals of the discussion should be specified to focus its work on strengthening Belarusian-Polish cooperation, and not creating new dividing lines. It is necessary to organize activities according to the principle that forgiveness does not mean forgetting, it involves the rejection of hatred and revenge.

Secondly, a "portfolio of historic topics" that the parties consider relevant and appropriate for joint consideration should be formed.

Thirdly, it is necessary to rank the topics according to the "complexity" of bilateral discussions and the expected public response. It is advisable to split the "portfolio" into several levels. At the initial stage it would be logical to work together on the topic, approaches to which are not radically different in the

partner countries. It is necessary to focus on the study of more neutral and less sensitive to the collective memory topics of both countries and peoples.

There is hope that the intensification of Belarusian-Polish dialogue, including the field of history, will open new horizons for bilateral cooperation. However, the framework, direction and speed of this interaction are still not apparent. So far, there are only some positive trends and signs in bilateral relations.

At present none of the bilateral relations issues has been completely resolved. To overcome the existing barriers political will of the two countries' leadership, wide public support and favourable external influence on Belarus and Poland are required.

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TERRITORIAL STATUS OF THE WESTERN BELARUSIAN LANDS IN THE SOVIET-POLISH RELATIONS DURING THE WORLD WAR II AND THE GREAT PATRIOTIC WAR

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The article is devoted to the analysis of problems in the Soviet-Polish bilateral relations during World War II and the Great Patriotic War (1939–1945). International relations during that period present the object of the study, the Soviet-Polish bilateral relations during that period is the study subject. The purpose of research is to characterize the role and place of the Western Belarusian lands united with Belarus in autumn 1939 in the mutual relations between the USSR authorities and the Polish government in exile, left powers of the Polish national liberation movement (Union of Polish Patriots, Polish Committee of National Liberation, Krajova Rada Narodova). The main task of the USSR government at that time was to preserve territories which became part of the territory of the Soviet Union in autumn 1939, including the territory of Western Belarus. The international legal recognition of unification of Western Belarus and the BSSR took place only in 1945, when Belarus became the member of the United Nation Organization.

Key words: boundary; Great Patriotic War; Soviet-Polish border; Poland; Polish government in exile; Soviet Union; UN; unite; Western Belarus; World War II.

ГОСУДАРСТВЕННО-ТЕРРИТОРИАЛЬНЫЙ СТАТУС ЗАПАДНО-БЕЛОРУССКИХ ЗЕМЕЛЬ В СОВЕТСКО-ПОЛЬСКИХ ОТНОШЕНИЯХ В ГОДЫ ВТОРОЙ МИРОВОЙ ВОЙНЫ И ВЕЛИКОЙ ОТЕЧЕСТВЕННОЙ ВОЙНЫ

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Рассматриваются проблемы двусторонних советско-польских отношений в годы Второй мировой войны и Великой Отечественной войны. Объектом выступают международные отношения в этот период, предметом – советско-польские двусторонние отношения. Цель исследования – охарактеризовать роль и место западно-белорусских земель, воссоединенных с БССР осенью 1939 г., во взаимоотношениях руководства Советского Союза с польским эмигрантским правительством, левыми силами польского национально-освободительного движения (Союз польских патриотов, Крайова Рада Народова, Польский комитет национального освобождения). Показано, что для руководства Советского Союза было важно сохранить территории, которые вошли в состав СССР осенью 1939 г., в том числе и территорию Западной Беларуси. Отмечается, что международно-правовое признание факта воссоединения Западной Беларуси с БССР произошло только в 1945 г., после вступления БССР в состав ООН.

Ключевые слова: Вторая мировая война; Великая Отечественная война; советско-польские отношения; Западная Беларусь; советско-польская граница; Советский Союз; польское эмигрантское правительство; воссоединение; ООН.

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A problem of the Soviet-Polish relations during World War II and the Great Patriotic War was then and still is one of the most researched topics for the Belarusian historians. First of all, it's stipulated by the problem of Western Belarus, which became an integral part of the USSR and the Byelorussian Soviet Socialist Republic (BSSR) in 1939. In this respect, it is necessary to focus on few fundamental issues typical to the Belarusian historiography at the present stage of its development.

It should be noted, that the modern Belarusian historiography is far behind in the development of problems of international legal mechanisms reviewing norms and principles of the international law that could substantiate and give a legal assessment to the events which took place in 1939. In the vast majority of research papers Belarusian historians provide a historical and political assessment, which it unequal to the legal one. At the same time, only in the combination of these two approaches it is possible and necessary to give a thorough and scientifically objective evaluation of the events of September, 1939, and assess the status of the Western Belarusian lands during World War II War and the Great Patriotic War, taking into account Belarusian national interests.

By focusing on the Soviet-Polish relations, the researchers did not pay attention to the role and place of Belarus in the Soviet-Polish relations, but only "revived it in memory", as far as the Curzon Line taken as the post-war Soviet-Polish border, partially passed through its territory, as well as due to the necessity of the mutual resettlement of Polish and Belarusian population from the territory of western regions of BSSR to Poland, and from Poland to BSSR. Thesis, that the final territorial reunification of Belarusian lands took place in 1939, appeared, retained sustainability and is still preserved in the Belarusian historiography, starting from September, 1939. However, it reflects the Belarusian-centric view on the events of 1939 and has a historical and political rather than juridical and legal estimation [1, p. 204]. However, in terms of the international law, there was no international recognition of the Belarusian lands reunification into the one state in 1939. Six long years passed comprising World War II and the Great Patriotic War from September, 1939 until the final international legal recognition of this fact in 1945.

The aim of this article is to analyze the role and place of Belarus in the Soviet-Polish relations during World War II and the Great Patriotic War, as well as the struggle of the Soviet Union political leadership for the international legal recognition of the fact of territorial unification of Belarusian lands in one state.

The Soviet Union's position on this issue has undergone significant tactical changes without affecting strategic ones. It was all about the fact that the Soviet leadership considered preservation of Western Belarus and Western Ukraine in the USSR which were reunited in the autumn 1939 as one of the most important foreign policy objectives.

Aggression of the Nazi Germany against the Soviet Union in June, 1941 drastically changed the situation. The task to defeat the Nazi Germany forced the Soviet Union and Poland to unite under the Atlantic Charter (1941) and to renew diplomatic relations broken off in 1939. The Soviet Union, which signed the Agreement on restoring diplomatic relations with the Polish government in exile of W. Sikorski on 30 July, 1941, declared that "the Soviet-German treaties of 1939 regarding territorial changes in Poland are invalid" [2, p. 35]. However, the Soviet Union and the government of W. Sikorski assessed the situation and considered this agreement from various perspectives, especially in the part which dealt with post-war borders and the territory of Western Belarus. The Polish government in exile and political forces that supported it, the Polish emigration, wide circles in occupied Poland believed that it is a real step towards the future of the international recognition of the borders established by the Treaty of Riga in 1921 [3, p. 104]. Leaders of the Soviet Union regarded Article of the Agreement on "territorial changes" just as "the denunciation of their political agreements with the German Reich" [3, p. 105] and did not give up with the acquisition of the territory.

Fundamental contradictions in this question inevitably resulted in an uncompromising political and diplomatic struggle in the bilateral Soviet-Polish relations. The first thing which revealed fundamental contradictions between the both countries was the question on the nationality of citizens of Western Belarus, who, in accordance with the USSR Law "On the Citizenship of the Union of Soviet Socialist Republics" of 19 August, 1939, acquired the USSR citizenship [2, p. 46]. However, Polish government in exile was absolutely against it. It believed that by doing so the Soviet Union confirmed the legitimacy of including eastern territories of Poland into the Soviet Union in 1939. After the restoration of diplomatic relations with the government of W. Sikorski, the Soviet leadership's position in this matter underwent minor changes. The Soviet government in December, 1941 recognized the right to citizenship for "the persons of Polish nationality", that "gave them the right to serve in the Polish army" [4, p. 208, 214]. At the same time, all other citizens of Western Belarus – Belarusians, Ukrainians, Jews – had to be recruited into the Red Army. It provoked protests from the Polish side. However, the USSR People's Commissariat for Foreign Affairs during 1941 and especially 1942 [2, p. 46–47] categorically rejected claims of the Poles. Moreover, in 1942 Stalin's position significantly strengthened, which was associated with the improvement of the situation on the Soviet-German front. While discussing conditions of the Anglo-Soviet agreement in May, 1942, Stalin firmly declared that "we

will solve by force questions of the borders, or rather the guarantees of security on our borders in a certain area of our country" [3, p. 105].

The policy of confrontation with the Polish government in exile and at the same time search for political, historical, ethnographic grounds for the legitimacy of unification of the Western Belarusian lands in one Belarusian state becomes a priority for the leadership of the Soviet Union. The beginning of 1943 was the crucial period from this point of view. The meeting between J. Stalin and the Ambassador of the Polish government in exile to the Soviet Union T. Romer was planned for 26–27 February by agreement with W. Sikorski government. It was envisaged to discuss a wide range of bilateral Soviet-Polish relations. While discussing a question of the Soviet-Polish border with T. Romer, J. Stalin told to the Polish Ambassador that "unification of the Ukrainian and Belarusian peoples took place in the autumn 1939. Ukrainians and Belarusians are not Poles. The Soviet Union did not annex any Polish provinces. All the Polish provinces were ceded to Germany" [5, p. 61]. The victory in the Battle of Stalingrad gave more confidence to Stalin in defending his point of view on this matter. At the end of the conversation Stalin roughly stated to T. Romer, that "there is no and there will be no government in the Soviet Union that would agree to change borders of 1939 with Poland and tear away from the USSR regions, which inclusion in the USSR is provided by the USSR Constitution" [3, p. 123].

Justifying the legitimacy of the Soviet Union claims to eastern territories of Poland for the first time in its statements TASS referred to Lord Curzon, who, as stressed in the statement: "Despite his unfriendly attitude toward the Soviet Union he knew that Poland cannot claim the Ukrainian and Belarusian lands, and the Polish governmental circles do not wish to show understanding on this matter so far" [6, p. 4]. Thus, long before the Teheran Conference (28 November – 1 December, 1943), which adopted the Curzon Line as the Soviet-Polish border, the top political leadership of the Soviet Union voiced its position on this issue, and J. Stalin at the meeting with T. Romer made it clear to the latter that the Soviet Union will not make any concessions to the Polish government in exile on the issue of the future Soviet-Polish border.

At the conference in Teheran (28 November – 1 December, 1943) leaders of the USSR, USA and Great Britain reached an agreement on the western border of the USSR with the Curzon Line taken as a basis without any consultations with representatives of the Polish government in exile [7, p. 405, 411]. The beginning of 1944 drastically changed the situation. On 3 January, 1944 the Red Army troops crossed the Polish border that existed before 17 September, 1939. In this regard, the Polish government in exile in its statement on 5 January, 1944 noted that the post-war Poland should exist with the borders defined in 1921. In response the Soviet leadership in the statement from 11 January, 1944 stated no less categorically that the Western Belarusian and Western Ukrainian lands are an integral part of the USSR. At the same time, the Soviet leadership expressed readiness to a compromise by saying that "the Soviet government doesn't believe that borders of 1939 are unchangeable. These boundaries may be corrected in favor of Poland in that direction for the areas where the Polish population prevails to be transferred to Poland. In this case, the Soviet-Polish border could pass along the so-called Curzon Line" [2, p. 167].

Left forces of the Polish national liberation movement the Krajowa Rada Narodowa (KRN), the Union of Polish Patriots (UPP) agreed with the position of the Soviet Union on the question of the Soviet-Polish border and the decisions taken within the Teheran Conference. On 15 July, 1944 a mandated representative of the KRN E. Osubka-Moravski and the Chairman of UPP W. Wasilewska appealed to J. Stalin with a letter where they stressed that "the most urgent thing is the adoption by the Provisional Polish Government of the Curzon Line as a basis for establishing the border between the USSR and Poland. Restoration of the Soviet administration on the territories west to the Curzon Line (for example, in the western part of Bialystok region) threatens to weaken positions of the democratic camp and to decrease the Polish public confidence in the Soviet Union" [8, p. 12–131].

In January – February, 1944 the Soviet government making advances to Western allies made an attempt to discuss the statement of 11 January, 1944 with the Polish government in exile and offered to make a statement that the "Curzon Line, established by the Riga Treaty, is a subject to change and that the Curzon Line is the line of a new border between the USSR and Poland" [2, p. 175]. Despite some concessions of the Soviet Union on the matter, the Polish government in exile flatly rejected the Soviet proposal citing the fact that it was not based on a legal basis and, therefore, cannot be considered as a border.

In principle, the border issue, as well as which part of the territory of Bialystok region will be transferred to Poland, was defined in July, 1944. The Chairman of UPP W. Wasilewska and a mandated representative of the KRN E. Osubka-Moravski on 15 July, 1944 addressed to Stalin with a letter in which they justified the necessity to transfer the western part of Bialystok region to Poland [9, p. 79]. On 21 July formation of the Polish Committee of National Liberation (PCNL) was proclaimed, which on 22 July, 1944 addressed with a manifesto to the people of Poland with the message and desire to settle the question of the Soviet-Polish border according to the ethnic principle. The UPP and PCNL recognized that "the eastern boundary should be a line of neighbourly friendship rather than a barrier between us and our neighbours, it should be resolved according to the principle: Polish lands – to Poland,

Ukrainian, Belarusian and Lithuanian lands – to the Soviet Ukraine, Belarus and Lithuania" [9, p. 79].

Negotiations between the Soviet government and the PCNL took place on 24–26 July in Moscow, where the question of the state border between the USSR and Poland occupied the most important place on the agenda. A project on the eastern part of the Belarusian area proposed by J. Stalin left all Bialowieza Pushcha and the biggest part of Suwalki region to BSSR [10, S. 150.], which was significantly different from the Curzon Line. The Poles, after having analyzed the Soviet proposal, did not agree with it, especially in the part of transfer of Bialowieza Pushcha to Belarus. During the subsequent negotiations J. Stalin agreed to give Augustow and Suwalki to Poland, however, as for Bialowieza Pushcha, he was uncompromising and did not even want to discuss the matter. He substantiated his position by arguing that he was not interested in the issue of increasing the territory of the Soviet Union, but in the interests of the Belarusian and Ukrainian peoples. Nevertheless, taking into account interests of the Poles, he agreed to give them half of the territory of the Pushcha and a site Belavezha [10, S. 152]. On 27 July, 1944 V. Molotov and E. Osubka-Moravski signed an agreement on the Soviet-Polish border which adopted the Curzon Line as the base with dirogations from it in favour of Poland (on the Belarusian part): "part of the territory of the Bialowieza Pushcha in the area Nemirov – Jalowka located to the east from the Curzon Line with the villages of Nemirov, Hajnowka, Bialowieza and Jalowka on the side of Poland" [2, p. 327]. Thus, the territorial uncertainty – which areas of Bialystok region will become part of Poland and which will remain as a part of the BSSR – was completed in July, 1944.

Analysis of the signed Soviet-Polish agreement of 27 July, 1944 draws attention to two fundamental aspects to which Belarusian and foreign historians did not pay the necessary attention. They noted that the settlement of the Soviet-Polish border was realized according to the principle: "Polish lands – to Poland, Belarusian – to the Soviet Belarus". The question arises: what criteria (national, historical, geographical, ethno-confessional) were taken as a basis, who and when during the war "held" the distinction between "Polish" and "Belarusian" lands? In our view, during the July negotiations it was observed a shift from the ethnographic principle of determining the border and its substitution with a political wording. The US Ambassador to the USSR G. Kenan paid attention to this important moment. He stressed that "in the question of borders, I noticed that they seem to be determined in accordance with political and strategic considerations of Moscow, using an ethnographic principle contained in the PCNL Manifesto, which implies a considerable freedom of understanding" [11, p. 132].

Moscow talks in October, 1944 with the participation of J. Stalin, W. Churchill, S. Mikolajczyk and PCNR representatives once again demonstrated that Stalin did not intend to make any concessions and compromises to the Polish government in exile on the border issue. When on 15 October, 1944 S. Mikolajczyk tried to debate with J. Stalin on the Curzon Line, the latter not only did not take into account the arguments of S. Mikolajczyk, but "flared up, got up and demonstratively left the negotiations" [5, p. 65].

Decisions taken within the Crimea Conference (4–11 January, 1945) played an important role in the international legal recognition of the question of the Soviet-Polish border. Speaking at the conference J. Stalin stated that the consent of the Soviet government for the Curzon Line to be the Soviet-Polish border is a principal position of the USSR, and it would not go for any concessions on this issue. After discussions heads of the three governments – the USSR, USA and the Great Britain – agreed that Poland's eastern border should run along the Curzon Line with derogations in some regions from 5 to 8 kilometers in favour of Poland [12]. We would like to emphasize that the Yalta agreements were legally binding and consolidated the Curzon Line as the Soviet-Polish border, indicating on the accession of the territory of Western Belarus to the BSSR.

At the Potsdam conference, leaders of the USSR, USA and Great Britain (17 July – 2 August, 1945) didn't actively discuss the question of the Soviet-Polish border. The conference participants agreed that the issue of the border was solved at the Yalta Conference [13].

The international legal recognition of the border between the USSR and Poland allowed the two countries to conclude a bilateral agreement on the Soviet-Polish border instead of a temporary agreement of 27 July, 1944, which on 16 August, 1945 was signed by the Deputy Chairman of the Council of People's Commissars of the USSR V. Molotov and the Chairman of the KRN E. Osubka-Moravski [14, p. 322–323].

However, the Polish delegation in 1945 tried again to agree with the Soviet Union on the transfer of all of the Bialowieza Pushcha to Poland. In August, 1945 the Soviet-Polish negotiations were held before signing of the Soviet-Polish border agreement. The Polish delegation announced to the Soviet delegation its plan, according to which all the Bialowieza Pushcha was supposed to be a part of Poland. The Polish side stressed that "the definition of the political borders through the forest threatens its destruction as a monument of world importance. The reserve, which is located in the forest, requires for its preservation. Therefore, Poland's borders must remain the whole forest [15, k. 18]. However, the Soviet leadership position was solid and substantiated the fact that territorial changes were stipulated in the Soviet-Polish agreement on 27 July, 1944. It should be noted that the Belarusian side was interested in the fact that the Bialowieza Pushcha would completely remain on the territory of the Byelorussian SSR. The First Secretary of the BSSR Council

of People's Commissars P. Ponomarenko in June, 1945 sent to the Chairman of SNK USSR V. Molotov a letter in which he argued the need to abandon the Pushcha as part of Belarus. P. Ponomarenko also appealed for support to the President of the Academy of Sciences of the USSR V. Komarov with the fact that he asked V. Molotov on leaving the forest as part of the Belarusian SSR. V. Komarov in his letter to V. Molotov in particular emphasized that "it is necessary to take measures to restore the protected mode in the forest and there is a need to unite its divided parts into a unified whole" [16, f. 601]. However, even this coordinated position between the Academy of Sciences of the USSR and the BSSR government was not successful.

The BSSR accession to the UN had a significant meaning for reunification of Western Belarus with the BSSR. First Secretary of the Communist Party (Bolsheviks) and simultaneously the Chairman of the BSSR Council of People's Commissars P. Ponomarenko at the meeting of the BSSR Presidium (30 August, 1945), where the question of the UN Charter ratification was discussed, stated: "Working at a conference in San Francisco, among all the international legal acts our delegation carried out the establishment of western borders *and thus from the perspective of international law, we have the legal grounds for unification of Belarus*. This is a significant fact. There can be no retrieval to the previous state in history or revision of this issue. *This is extremely important because we actually reunited in 1939, but kept our position open because it was a bit difficult. Now it is recognized internationally and is considered to be an inviolable factor. For Belarus it is the matter of historical significance* [17, p. 315–316].

Thus, reunification of Belarusian territories, which took place in September, 1939, received the international legal recognition only 6 years later – in 1945. In conclusion its need to emphasize that the territorial status of Western Belarusian lands during the World War II and the Great Patriotic War was finally resolved in 1945. The political leadership of the Soviet Union defending the national and state interests of the USSR defended the national and state interests of Belarus and the Belarusian people. The decisions of the international conferences of the period of the World War II and the Great Patriotic War (Teheran, Yalta, Potsdam), which determined the Soviet-Polish state border, confirmed the legitimacy of Western Belarusian lands reunited with the BSSR in 1939, which lead to the territorial and ethnic consolidation of the Belarusian people.

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INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES AS AN EFFECTIVE MECHANISM OF DISPUTE RESOLUTION BETWEEN AN INVESTOR AND A STATE

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In this article, the authors discuss an effective mechanism of investment dispute resolution at the International Centre for Settlement of Investment Disputes (ICSID). In particular, the authors analyze its structure and jurisdiction rationemateriae and ratione personae, focusing on the problems of applying an umbrella clause. Specifically, ICSID jurisdiction rationemateriae includes disputes of a legal nature that arise directly out of an investment. The authors discuss deviation from a classic interpretation of the term "investment", which traditionally included such components ascontribution, certain duration of the performance of the contract, and assumption of risks arising from the investment agreement and which was later supplemented with factors like contribution to the host state's economy (Salini test) and bone fide performance. ICSID jurisdiction ratione personae, in turn, includes individual entrepreneurs and juridical persons, regardless of their status as a business entity. Nationality of a juridical person is determined in accordance with the principles of international private law (e. g., by the place of its incorporation, principal business operations, or central administrative offices). However, a place of management and control of an investor is often considered as an important criterion in determining its nationality as well. It is generally determined based on all facts and circumstances by analyzing the number of shares owned by the foreign investor, its decision-making power, and the ability to participate in the company's management. Lastly, in this article, the authors also discuss the various ways of expressing consent to ICSID jurisdiction by the parties.

Key words: umbrella clause; investment dispute; foreign investments; International Centre for Settlement of Investment Disputes.

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МЕЖДУНАРОДНЫЙ ЦЕНТР ПО УРЕГУЛИРОВАНИЮ ИНВЕСТИЦИОННЫХ СПОРОВ КАК ЭФФЕКТИВНЫЙ МЕХАНИЗМ УРЕГУЛИРОВАНИЯ СПОРОВ МЕЖДУ ИНВЕСТОРОМ И ГОСУДАРСТВОМ

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Рассматривается такой эффективный механизм разрешения инвестиционных споров, как Международный центр по урегулированию инвестиционных споров (МЦУИС). Анализируется его структура, компетенции *ratione materiae* и *ratione personae*. Особое внимание уделено проблемам применения «зонтичной оговорки». Предметную юрисдикцию МЦУИС составляют споры, имеющие правовой характер и непосредственно связанные с инвестициями. Показан переход от классического понимания термина «инвестиция», который включал такие составляющие, как вклад, определенный период исполнения договора и принятие на себя его рисков, к его дополнению такими признаками, как вклад в экономическое развитие государства-реципиента (тест *Salini*) и *bonafide*. Отмечается, что в круг субъектов обращения в МЦУИС входят индивидуальные предприниматели и юридические лица, в том числе не имеющие статуса коммерческой организации. Национальность юридического лица определяется согласно нормам международного частного права (принцип инкорпорации, принцип оседлости и принцип центра эксплуатации), однако возможно применение и принципа контроля. Указаны критерии наличия иностранного контроля с учетом конкретных фактических обстоятельств: размер доли, степень влияния при принятии решений, осуществление управления деятельностью компании. Рассматриваются формы выражения согласия государства на юрисдикцию МЦУИС.

Ключевые слова: «зонтичная оговорка»; инвестиционный спор; иностранные инвестиции; Международный центр по урегулированию инвестиционных споров.

The International Centre for Settlement of Investment Disputes (ICSID or the Centre) was established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March, 1965 (the ICSID Convention). The ICSID Convention entered into force on 14 October, 1966. In accordance with Article 67 it is opened for signature on behalf of States members of the World Bank and on behalf of any other State which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a vote of two-thirds of its members, has invited to sign the Convention.

ICSID had 161 Signatory States and 153 Contracting States of the ICSID Convention by the end of 2016, which implies that eight states signed it but did not initiate the domestic ratification procedures. It is worth noting that certain members of the Commonwealth of Independent States, namely, the Kirgiz Republic and the Russian Federation, are among such states. The Republic of Belarus, in turn, signed the ICSID Convention and deposited the ratification instrument on 10 July, 1992. The ICSID Convention entered into force for Belarus on 9 August, 1992.

ICSID is part and is funded by the World Bank Group and is located in Washington, D.C., where the headquarters of the World Bankis located. In addition, ICSID has 15 institutional agreements with other international arbitration institutions and dispute-settlement centers, which enables the Centre to arrange hearings at various venues around the world.

The Centre is an intergovernmental organization with full international capacity. Its core target is the settlement of investment disputes between its Member States and nationals of other Member States. The purpose of the ICSID instruments is to change the character of legal relationship between the parties from public to private: according to Article 27(1) of the ICSID Convention, no Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

Structure of ICSID

The Centre has an Administrative Council and a Secretariat. The Administrative Council is composed of one representative of each Contracting State. The World Bank President is an ex officio Chairman of the Administrative Council but he has no vote on matters before the Administrative Council.

The powers of the Administrative Council, according to Article 6, are as follows:

(a) to adopt the administrative and financial regulations of the Centre;

(b) to adopt the rules of procedure for the institution of conciliation and arbitration proceedings;

(c) to adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules);

(d) to approve arrangements with the Bank for the use of the Bank's administrative facilities and services;

(e) to determine the conditions of service of the Secretary-General and of any Deputy Secretary-General;

(f) to adopt the annual budget of revenues and expenditures of the Centre;

(g) to approve the annual report on the operation of the Centre.

The Administrative Council holds annual meetings and other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than five members of the Council.

The Secretariat consists of a Secretary-General, one or more Deputy Secretaries-General, and staff. The Secretary-General and any Deputy Secretary-General are elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and are eligible for re-election. The Secretary-General is the legal representative and the principal officer of the Centre and is responsible for its administration, including the appointment of staff in accordance with the provisions of the ICSID Convention and the rules adopted by the Administrative Council. The Secretary-General performs the functions of registrar and has the power to authenticate arbitral awards and to certify copies of such awards.

The duty of the Secretariat includes the maintaining a Panel of Conciliators and a Panel of Arbitrators composed of persons appointed by the Contracting States – up to four representatives for each panel who may but need not be such Contracting States' nationals. The designees are nominated to the Panels for a renewable term of six years. The Chairman may designate ten persons to each Panel. The persons so designated to a Panel must each have a different nationality.

According to Article 14(1) of the ICSID Convention, persons designated to serve on the Panels should be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law is of particular importance in the case of persons on the Panel ofArbitrators.

By the end of July, 2016, there were 625 individuals on the ICSID Panels of Arbitrators and of Conciliators. Belarus made designations to the ICSID Panels for the first time on 29 December 2015 [1, p. 22].

ICSID jurisdiction

Under Article 25(1) of the ICSID Convention, the jurisdiction of the Centre extends to "any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally". As a general rule, the Tribunal in each respective claim is the judge of its own competence (Article 41 of the ICSID Convention).

Generally, jurisdiction *ratione materiae* of the Centre is comprised of two components; namely, a dispute (i) must be of a legal nature and (ii) must arise directly out of an investment.

The purpose of the requirement of a dispute's legal nature is to exclude the moral, political, and commercial claims from ICSID jurisdiction [2, p. 103–104]. Notably, the First Draft of the ICSID Convention defined the term "legal dispute" as any dispute concerning legal right or obligation or concerning a fact relevant to the determination of a legal right or obligation [3]. However, this definition was not included in the final wording of the ICSID Convention. Most commentators of the ICSID Convention define the term "legal dispute" by listing typical factual situations and issues that have been subject matters in various ICSID cases, for example, expropriation, breach or termination of agreement, and application of tax and custom rules. Noting that the above examples may be useful, Christoph H. Schreuer, ascholar in the field of international investment law, points out that such approach does notcontribute to the qualification of the legal nature of a dispute. From his point of view, a dispute may be qualified as legal if legal remedies such as restitution or damages are sought and legal rights and obligations are based on the legal norms of treaties or legislation [2, p. 105].

The second component of jurisdiction *ratione materiae* of the Centre requires a direct connection of a dispute with the investment. The First Draft of ICSID Convention contained the definition of the term "investment" – any contribution of money or other asset of economic value for an indefinite period or, if the period be defined, for not less than five years [4, p. 116]. However, the ICSID Convention, as finalized,excluded the above definition of the term "investment" from its language but allowed the Contracting States to define the types of disputes that should be outside of the Centre's jurisdictionon their own. Specifically, under Article 25(4) of the ICSID Convention, any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre.

Seven Contracting States provided such notifications: China excluded from the jurisdiction of the ICSID

the disputes connected with compensation resulting from expropriation and nationalization; Guatemala – disputes arising from the compensation for damages resulting from armed conflicts or civil unrest; Indonesia – disputes arising from administrative decisions of the governmental agencies of Indonesia; Jamaica – disputes arising directly from investment relating to mineral and other natural resources; Papua – New Guinea limited the Centre's jurisdiction to disputes which are fundamental to the investment itself; Saudi Arabia excluded questions pertaining to oil and acts of sovereignty from ICSID jurisdiction; and, finally, Turkey excluded disputes related to the property and real rights upon the real estates that are totally under the jurisdiction of the Turkish courts [5].

Traditionally, a doctrinal notion of "investment" generally includes the following components: contribution, certain duration of the performance of the contract (or performance of an investment activity in another form), and assumption of risks arising from the investment agreement. For instance, disputes arising out of breach of a delivery contract or a bank guarantee agreement supporting such contract are typically not subject to the Centre's jurisdiction (e.g., *Joy Mining Machinery Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction of 6 August, 2004). The above components have been commonly referred to in a number of the ICSID arbitration awards on jurisdiction. For example, in its Award on *Nova Scotia Power Incorporated v. Bolivarian Republic of Venezuela* of 30 April, 2014 [6], the Tribunal referred to the requirements of contribution, duration, and risk as "the triad representing the minimum requirements for an investment" and concluded that itlacked jurisdiction over a dispute related to the coal supply agreement because the agreement did not meet the above requirements of an investment.

The list of qualifying requirements of investment was further developed by the Tribunal in *Salini Costruttori SpA and Italstrade SpAv. Kingdom of Morocco* of 23 July, 2001 [7], where the Tribunal considered whether a public procurement activity (construction of a highway) could be treated as an investment. In its Award on Jurisdiction, the Tribunal supplemented the above-mentioned triad with additional requirements that extended the list to five criteria – duration; regularity of profit and return; assumption of risk; substantial commitment; and significance for the host State's development, commonly referred to as the "*Salini* test".

Even though the *Salini* test has been commonly used by the tribunals to determine whether an investment exists, it is not universally applied. For example, in its Award in *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania* of 24 July, 2008 [8], the Tribunal found that where the Contracting States mutually omitted to define the term "investment" in the ICSID Convention, there is no basis for mechanically applying the five *Salini* criteria in each case because such criteria are not legally enforced and can be negotiated by the Contracting States. Therefore, the Tribunal in this case took a more balanced and flexible approach in application of the *Salini* test, having considered the facts and circumstances of the case and the terms of the consent of the host State to submit the claim to ICSID.

Finally, in addition to the *Salini* test, some tribunals have applied other criteria to determine whether an investment exists. For example, in its Award in *Phoenix Action, Ltd. v. Czech Republic* of 15 April, 2009 [9], the Tribunal concluded that to qualify as an investment, an activity should be performed *bona fide* (i. e., funds should be invested in good faith). In this case, it was found that the operations in question lacked a business plan, a program of re-financing, and economic objectives and, moreover, no real valuation of the economic transactions was ever attempted. Accordingly, the Tribunal concluded that it lacked jurisdiction *ratione materiae* because such operations did not constitute a *bona fide* investment.

Jurisdiction *Ratione Personae*. The settlement of investment disputes at ICSID is available to a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State), on one side, and a national of another Contracting State, on the other side.

Article 25(2) of the ICSID Convention defines the term "national of another Contracting State" as follows:

(a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute;

(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

Notably, the ICSID's jurisdiction *ratione personae* covers a wide range of subjects, including individual entrepreneurs and juridical persons without the status of a business entity. Nationality of a juridical entity is determined by the norms of international private law (e. g., by the place of its incorporation, principal business operations, or central administrative offices). Nationality could also be determined by a place of management and control, where, in accordance with

domestic law of a host State, investment activity is permitted to be performed only through ownership of shares in a domestic entity registered under the laws of such State. In this case, consent to ICSID jurisdiction by the host State through a bilateral investment treaty is not sufficient because such treaties normally do not include provisions allowing domestic entities of the host State that are wholly or partially owned by foreign shareholders to become parties to investment disputes at ICSID. Therefore, a separate agreement that contains consent to ICSID jurisdiction between such domestic entity and the host State is required. In the Award in *SOABI v. State of Senegal (ICSID Case No. ARB/82/1)* of 1 August, 1984 [10], the Tribunal found that it had jurisdiction over the dispute between a Senegal company owned by a Panamanian joint stock corporation that was, in turn, owned by Belgian investors. Notably, at the time when the investment contract was signed, Panama was not an ICSID Contracting State, while Belgium was. The arbitration clause provided: "The undersigned expressly agree that arbitration shall be subject to the rules set out in the Convention for the Settlement of Disputes between States and the Nationals of Other States, produced by the International Bank of Reconstruction and Development. To this end, the Government agrees that the requirements of nationality set out in Articles 25 of the IBRD Convention shall be deemed to be fulfilled".

The requirement of recognition of investor's foreign nationality by the host Contracting State as a prerequisite for the ICSID's jurisdiction *ratione personae* was also discussed in the Award in *Tokios Tokeles v. Ukraine (ICSID Case No. ARB/02/18)* of 29 April, 2004 [11]. In this Award, the Tribunal noted that, where the ICSID Convention does not provide guidance as to how an investor's nationality should be determined, the parties are given significant flexibility in choosing criteria for such determination and method of the parties' consent to these criteria.

Generally, the criteria for determining foreign control of an investor include the number of shares owned, decision-making power, and the ability to participate in the company's management. However, the above criteria should be considered and applied on a case-by-case basis. For example, in the Award in *Vacuum Salt v. Ghana (ICSID Case No. ARB/92/1*) of February, 1994 [12], the Tribunal found that, regardless of the parties' consent to ICSID jurisdiction in the arbitration clause contained in the Bilateral Investment Agreement, it had no jurisdiction over the dispute because only 20 % of the investor's stock was owned by foreign shareholders, and the remaining 80 % was owned by the nationals of the host State, Ghana. Moreover, according to the Tribunal, the fact that Greek nationals held positions as directors of and technical counsel to the company was not sufficient to constitute control of this company. Therefore, because there was no agreement between the investor and the host State to treat the investor as a national of another Contracting State, the Tribunal found that it lacked jurisdiction over this dispute.

A Contracting State to the ICSID Convention is eligible to become a party to an investment dispute as of the date on which the ICSID Convention enters into force for such State. Normally, a Contracting State is represented by its designated territorial entities (constituent subdivision) or governmental agencies. For example, in *Suez, Sociedad General de Aguas de Barcelona S. A. and Vivendi Universal S. A v. Argentine Republic* of 20 August, 2007 [13], the investment dispute arose out of alleged breach of the water concession contract between foreign investors and the Province of Tucuman that represented the Argentine Republic in the proceedings.

The ICSID Convention does not specify which agency may represent the Contracting State in a dispute, which gives Contracting States significant discretion. Importantly, the term "agency" is not determined structurally (e. g., by reference to form of incorporation, State's share of ownership, etc.) but functionally, i. e., an agency should perform public functions on behalf of the Contracting State [2, p. 151]. However, it is presumed that if a Contracting State designates its governmental agency to the Centre, such agency is authorized to represent the State in investment disputes before the Centre. Accordingly, if a Contracting State does not designate an agency to represent it in an investment dispute at ICSID, there is a presumptive lack of jurisdiction. The ICSID Convention does not specify the time when such designation should be made, and therefore, Contracting States may designateits agencies at any time before or after the dispute has arisen, provided such designation exists on the day a request for arbitration or conciliation is made to the Centre.

Failure to fulfill the requirement *ratione personae,* however, is not an unconditional obstacle for parties to participate in dispute settlement proceedings administered by the Centre. Specifically, the Additional Facility Arbitration Rules adopted in 1978 [14] offer an alternative method of dispute settlement in situations where one of the parties to a dispute is a State that is not a Contracting State of the ICSID Convention or an investor that is a national of the host State. In other words, the Additional Facility is available if only one of the parties meets the *ratione personae* requirements of the ICSID Convention. Moreover, the Additional Facility is also available in casea legal dispute is not subject to the ICSID Convention because it does not arise directly out of an investment. Notably, the provisions of the ICSID Convention do not apply to the investment disputes settled under the Additional Facility Arbitration Rules. The Additional Facility awards are recognized and enforced under the norms of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (as amended on 11 April, 2006).

Written consent to ICSID jurisdiction by Contracting States

The prerequisite to settlement of an investment dispute between parties at ICSID is their consent to ICSID jurisdiction in writing. The mere participation of a Contracting State in the ICSID Convention is not sufficient to initiate a dispute-resolution proceeding at ICSID, regardless of whether the Contracting State's consent to be bound to the ICSID Convention is expressed via ratification, acceptance, approval, or accession. The consent to ICSID jurisdiction must be expressed in writing and cannot be withdrawn once given by the State of the investor's nationality, on one hand, and the host States, on the other hand. Pursuant to Article 25(3) of the ICSID Convention, consent by a constituent subdivision or agency of a Contracting State requires the approval of that State unless that State notifies the Centre that no such approval is required.

In practice, consent is given in one of the following ways, namely:

1. In a bilateral treaty for the promotion and protection of investment entered by and between the host State and the State of the investor's nationality ("BIT"). For example, under Article 9(3) of the Agreement between the Government of the Republic of Belarus and the State of Kuwait for the Promotion and Protection of Investment of 10 June, 2001, to initiate settlement of a legal dispute in the ICSID, an investor must submit its written consent to international arbitration at ICSID or the United Nations Commission on International Trade Law (UNCITRAL). Currently, the total number of BITs globally reaches 3000. Moreover, according to the 2016 ICSID Annual Report, the majority of the cases registered in ICSID in 2016 (i. e., 25 cases, or 51 % of all the cases) asserted ICSID jurisdiction on the basis of BITs [1, p. 31].

2. In a direct investment (concession) contract between the investor and the host State. Inclusion of an ICSID arbitration clause in investment contracts is not a common practice. According to the 2016 ICSID Annual Report, only 6 % of all the registered cases were brought on the basis of the parties' consent in the investment contracts. At the same time, expressing consent in an investment contract eliminates the uncertainty around tribunal's jurisdiction over specific dispute sarising out of that contract – an issue related to the so-called "umbrella clause" discussed below.

3. In multilateral investment treaties for the promotion and protection of investment (MITs) and free trade agreements (FTA). This type of international agreement is typically of a regional character. There are currently about 350 operating MITs and FTAs that include, among others, the Energy Charter Treaty of 1994 (ECT) and the North American Free Trade Agreement of 1992 (NAFTA). According to the 2016 ICSID Annual Report, 15 cases (i. e., 31 % of all cases) were brought on the basis of the ECT, and in one case, the investor sought to establish ICSID jurisdiction on the basis of the NAFTA.

4. In the domestic legislation of the host State. For example Article 13(3) of the Law of the Republic of Belarus No. 53-Z on Investments of 12 July, 2013 provides that disputes between an investor and the Republic of Belarus may, at the investor's discretion, be settled through arbitration under the Arbitration Rules of the UNCITRAL or the ICSID Convention if the foreign investor is a national of the Contracting State to the ICSID Convention, unless such disputes are within the exclusive jurisdiction of Belarusian courts or have been settled under a pre-trial procedure through negotiations. In 2016, 10 % of the registered cases asserted ICSID jurisdiction on the basis of the host States' national legislation [1, p. 31]. Accordingly, currently, the most common basis of the parties' consent to ICSID jurisdiction is through an arbitration clause included in BITs.

Some investment agreements contain arbitration clauses that are limited in scope to disputes arising from violation of the obligations under that particular agreement. Others include a provision that creates a broad international law obligation that a host State should observe any commitment with regard to foreign investment made within its territory. Such a provision is commonly referred to as an "umbrella clause". It is estimated that about 40 % of BITs contain such umbrella clauses [15]. Interestingly, certain countries like Great Britain, Germany, the Netherlands, and Switzerland typically include umbrella clauses in their agreements on promotion and protection of investment, while Austria, France, and Japan, for example, do so rarely. Some of the Belarusian BITs also contain umbrella clauses (for example, the Agreement on Promotion and Protection of Investment with the Government of the Italian Republic of 25 July, 1995).

Even though the concept of an umbrella clause is based on the application of the general principle of international public law *pacta sunt servanda*, its enforcement in ICSID arbitration is not universal. For example, in its Decision on the Objection to Jurisdiction in *SGS v. Pakistan* of 6 August, 2003 [16], the ICSID Tribunal considered whether the umbrella clause in the Swiss-Pakistan BIT enables its jurisdiction over the claimant's contractual claim related to the alleged violation of the Pre-Shipment Inspection Agreement (PSI). In particular, the Tribunal took the following position: "We recognize that disputes arising from claims grounded on alleged violation of the BIT, and disputes arising from claims based wholly on supposed violations of the PSI Agreement, can both be described as "disputes with respect to investments", the phrase used in Article 9 of the BIT. That phrase, however, while descriptive of the factual subject matter of the disputes, does not relate to the legal basis of the claims, or the cause of action asserted in the claims. In other words, from that description alone, without more, we be-

lieve that no implication necessarily arises that both BIT and purely contract claims are intended to be covered by the Contracting Parties in Article 9. Neither, accordingly, does an implication arise that the Article 9 dispute settlement mechanism would supersede and set at naught all otherwise valid non-ICSID forum selection clauses in all earlier agreements between Swiss investors and the Respondent. <…> We believe that Article 11.1 of the PSI Agreement is a valid forum selection clause so far as concerns the Claimant's contract claims which do not also amount to BIT claims, and it is a clause that this Tribunal should respect".

The Tribunal in the Decision on Objection to Jurisdiction in *SGS Société Générale de Surveillance S. A. v. Republic of the Philippines* of 29 January, 2004 [17] took a similar position, i. e., breach of the contractual obligations by the host State *per se* could also constitute a violation of the obligations under the BIT. However, as the Tribunal pointed out, if the parties have included an exclusive jurisdiction clause in their contract, the BIT umbrella clause should not override such contractual provision to refer the claim arising out of the contract to assert ICSID jurisdiction. In support of this position, Russian legal scholars argued that an umbrella clause "[allowed] an investor to bring the claim to two separate venues at the same time, and to initiate two parallel proceedings where two independent dispute resolution bodies would settle the dispute based on the same facts and likely arrive to different conclusions" [18, p. 89]. The rationale of this position does not appear to be convincing. Under a well-recognized principle of civil procedure, national courts must decline to hear a claim where a parallel claim between the same persons, on the same subject matter, and based on the same set of facts has already been initiated at the international arbitration venue. Moreover, national courts typically suspend a case if the decision of the pending arbitration proceeding may impact the outcome of the national court's proceedings. Finally, national courts must dismiss a claim if there is a binding arbitration award resolving a claim between the same persons, on the same subject matter, and based on the same set of facts. Therefore, in practice, the problem of parallel dispute resolution proceedings may arise only in case of a conflict of jurisdiction between ICSID and another international commercial arbitration, both institutional and *ad hoc*.

The Tribunal took a position in support of the enforcement of umbrella clauses in *Noble Ventures Inc. v. Romania* [19]. In this case, the Tribunal applied the rules of interpretation of treaties set forth in the Vienna Convention on the Law of Treaties of 1969 (the "Vienna Convention"). Specifically, Article 31 of the Vienna Convention prescribes that a treaty should be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose, and that a special meaning should be given to a term if it is established that the parties so intended. Article 32, in turn, provides for the supplementary means of interpretation, namely, the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of the general rule of interpretation in Article 31. Having applied the above rules of interpretation, the Tribunal looked at the intent of the Parties to the US-Romanian BIT and concluded that the arbitration clause in this BIT that referred to "any obligation [a party] may have entered into with regard to investments" should be regarded "as a clear reference to investment contracts". The Tribunal further concluded that "in including [the arbitration clause] in the BIT, the Parties had as their aim to equate contractual obligations governed by municipal law to international treaty obligations as established in the BIT".

To summarize, the ICSID Convention offers a flexible, objective and independent mechanism of investment dispute resolution. The large volume of cases settled through the ICSID's mechanism attests a high demand for it. The first case was registered in 1972. Within fifty years of the Centre's existence, 525 cases were settled at ICSID, and the number of registered cases is growing each year – for example, in 2000, there were 38 registered cases [20, p. 6], whereas in 2015 this number increased to 52 cases [1, p. 21].

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FUNDAMENTAL HUMAN RIGHTS AND COERCIVE MEASURES: IMPACT AND INTERDEPENDENCE

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The current article is devoted to the impact of coercive measures both when applied by the UN Security Council and without its authorization (unilateral coercive measures) by states and regional organizations over the enjoyment of human rights. It assesses grounds, justifications and consequences of application of both comprehensive sanctions applied to states and targeted sanctions applied to specific individuals from the legal point of view. This activity often happens in the course of complex, long-term, extreme situations of human rights – that is intractable human rights crisis. States and international organizations feel free to take activity being in breach of international law under the slogan of the need to protect endangered human rights. The article analyses, what measures can be viewed as unilateral coercive measures, assesses the impact of comprehensive measures of the UN Security Council over Iraq's general population, considers whether and under which conditions means of pressure can be applied over the states or specific individuals or legal entities legally or with reference to state's consent or application of countermeasures. It is concluded that comprehensive sanctions may legally be taken by the UN Security Council, however their impact on the enjoyment of human rights is huge and negative. Means of pressure (both towards states and individuals) may only be applied by states if they are legal under international law or their illegality is otherwise excluded in accordance with international law. Any other means are prohibited under international law.

Key words: unilateral coercive measures; sanctions; targeted sanctions; human rights; negative impact.

ОСНОВОПОЛАГАЮЩИЕ ПРАВА ЧЕЛОВЕКА И ПРИНУДИТЕЛЬНЫЕ МЕРЫ: ВЛИЯНИЕ И ВЗАИМОЗАВИСИМОСТЬ

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Посвящена влиянию принудительных мер, принимаемых как с санкции Совета Безопасности ООН, так и в одностороннем порядке, на соблюдение прав человека. Дается оценка фактическим и правовым основаниям, а также последствиям применения всеобъемлющих применяемых к государствам санкций и целевых санкций с точки зрения международного права. Поскольку такие действия часто имеют место в ходе гуманитарных кризисов, государства и международные организации считают возможным прибегать к противоправным деяниям под лозунгом необходимости защиты прав человека. Обсуждается вопрос о том, какие деяния могут и должны рассматриваться как односторонние принудительные меры. Исследуется влияние санкций Совета Безопасности ООН 1990-х гг. на население Ирака. Указывается, какие меры и в каких ситуациях могут быть правомерно применены для оказания давления на государства, физических или юридических лиц. Делается вывод о том, что международное право разрешает введение Советом Безопасности ООН всеобъемлющих санкций, однако их применение имеет огромный негативный гуманитарный эффект. Средства давления на государства, физических и юридических лиц могут

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применяться только в том случае, если они правомерны с точки зрения международного права либо их противоправность исключается в соответствии с международным правом. Любые иные средства воздействия запрещаются международным правом.

Ключевые слова: односторонние принудительные меры; санкции; целевые санкции; права человека; негативное влияние.

Starting from the 1990s, the UN and the world have been living in the era of sanctions. During this period sanctions have evolved from comprehensive to targeted ones, although the former are still applied in some restricted forms. Traditionally, sanctions are applied by international organizations. However, in recent years we often hear about sanctions of individual states.

This activity even more frequent in the course of complex, long-term, extreme situations of human rights – that is intractable human rights crisis. States and international organizations feel free to take activity being in breach of international law under the slogan of the need to protect endangered human rights. It shall be taken into account however that this pressure can also have a substantial negative influence on the enjoyment of human rights by individuals of targeted states and/or directly targeted individuals. As a result, this situation has been repeatedly considered by the UN Human Rights Council (hereafter UNHRC) and in March, 2015 the UN High Commissioner for Human Rights (hereafter UNHCHR) has appointed a Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights (hereafter Special Rapporteur).

Therefore, in order to analyze the status of endangered fundamental human rights in the international context especially in the course of human rights crisis, it is necessary:

- to define, what unilateral and multilateral coercive measures are and what is their status under international law;
- to assess the impact of measures targeting states to the observance of human rights;
- to assess the impact of targeted measures over the observance of human rights;
- to define existing mechanisms of human rights protection in situations where coercive measures are applied.

Unilateral coercive measures under international law

The notion of coercive measures is very unclear in international law. On an everyday basis, states independently or via international organizations look for some means of influence over other states. However, not all means of such an influence are legal under international law. It is also obvious that no state or international organization will ever confess that its activity goes counter to international law.

From the terminological point of view, the situation is not any clearer. When one speaks about enforcement or coercive activity, terms like enforcement activity, sanctions, force, countermeasures, unfriendly acts, coercion are used. Therefore, when we speak about the impact on human rights, it is necessary to define what we are going to assess.

The term *Unilateral coercive measures* (hereafter UCM) is intensively discussed and even more often mentioned. However, the UN Charter does not contain it. Moreover, there is no universal definition of the UCM in international law. a Thematic study refers to the UCM as to "*economic* measures *taken by states to compel a change in the policy of another state*" (para. 2) and notes that the notion includes more recently also targeted measures (freezing assets and travel bans) in order to "influence individuals who are perceived to be in a position to decide on the political action in a particular state" (para. 3) [1].

This definition demonstrates four main characteristics: 1) applied by states; 2) primarily (but not exclusively) economic measures; 3) applied to states or individuals able to decide on the policy of the state; 4) aimed to change a policy of a target state. It says nothing about the status of these measures in international law, however. Therefore, it is necessary to take a closer look at these measures:

Subject. UCM are measures applied by states. The notion of states shall be interpreted here in the broad way. States may act both independently and indirectly through coalitions and international organizations. This approach is implicitly inherent in the UN practice as well. For example, the UN Security Council used to authorize states acting both independently and through international organizations (resolutions 1031 (1995) of 15.12.1995, paras. 14–17, 36; 1247 (1999) of 19.06.1999, paras. 10–13; 1575 (2004) of 22.11.2004, paras. 10, 14–16; 1785 (2007) of 21.11.2007, paras. 10, 14–16; 1948 (2010) of 18.11.2010, paras. 10, 14–16; 1973 (2011) of 11.03.2011, paras. 4, 8, 15). Therefore, "unilateral" shall be understood as measures taken without proper authorization of the UN Security Council. It may therefore be measures taken by individual states, groups of states or regional organizations.

Means. Economic measures are the prior mechanism of unilateral coercive measures. However, this list is not limited to economic measures exclusively, which is illustrated by the prohibition of intervention not only by economic but also by political and other measures (Declaration of Principles of International

Law 1970, Helsinki Final Act 1975), as well as qualification of specific forms of targeted sanctions as UCM.

Target. Initially only states have been viewed as targets of UCM. Later, the scope has also expanded to individuals "who are perceived to be in a position to decide on the political action in a particular state". Nevertheless, this approach seems to be too narrow, too.

Targeted sanctions are introduced to influence a state rather often. It does not mean, however, that (in such a case) they are aimed only at individuals able "to decide on the political action in a particular state". For example, EU targeted sanctions seeking to change the policy and behavior of a state in order to enhance democracy, the rule of law and good governance, are introduced against persons or entities "benefitting from or supporting the … regime", (e.g. Council Decision 2012/36/CFSP, art. 1(2) "responsible for "undermining … agreement" (e.g. Council Decision 2011/173/CFSP, art. 1(1c)) or "misappropriation of … state funds" (e.g. Council Decision 2011/172/CFSP, art. 1(1)) who are often state officials, judges, journalists, hardly able to decide on or change the policy of a state. Moreover, targeted sanctions introduced under the slogan of struggle against international terrorism or other transnational crimes (beyond authorizations of the UN Security Council) may also be aimed to apply a pressure over a state.

Purpose. UCM are aimed to change a policy or behavior of a target state. This characteristic mostly deprives the "target" element of its qualifying role. Therefore, we shall also include here measures aimed to change policy or behavior of specific individuals or organizations.

Targeted sanctions are directed against non-state actors. They may include the following types of measures:

- freezing assets and other economic resources, such as property, directly or indirectly controlled by individuals and organizations included on the list;
- prohibiting entry into the territory of states or transit through their territory; aviation restrictions, visa bans;
- prevention of the direct or indirect supply, sale or transfer of weapons and military equipment; the direct or indirect supply of technical assistance or training, financial or other assistance, including investment, brokering or other financial services, related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment (Resolution 1597 (2008) PACE, paras. 9–12) [2; 3; 4, p. 168].

Therefore, from the legal point of view it is possible to define UCM close to enforcement action under art. 53 of the UN Charter. F. Morrison defines enforcement action as "any action which would itself be a violation of international law, if taken without either some special 'justification' or without the contemporaneous consent or acquiescence of the targeted state". [5, p. 43]. It is necessary, therefore, to establish and use legal criteria to be able to define what UCM are.

The UN Charter prohibiting the use of force in international relations (art. 2 (4)), establishing a foundation for the prohibition of intervention into the domestic affairs of states (art. 2 (7)) and conferring the UN Security Council with "primary responsibility for the maintenance of international peace and security" (art. 24 (1)) has substantially limited rights of individual states and regional organizations as concerns application of pressure over other states. Therefore, the application of pressure will correspond to the requirements of the UN Charter only if:

- it is legal under international law;
- it is taken with prior explicit authorization of the UN Security Council; or
- its illegality is excluded on other grounds, e. g. in the course of countermeasures.

However, as far as the UN Security Council is the only institution empowered by the UN Charter to take enforcement action, and the use of enforcement measures by the Council constitutes an exception from the principles of international law, authorization of the UN Security Council shall be interpreted in the narrowest possible way. Any measures taken beyond the limits of the UN Security Council authorization (scope, purposes, timing) shall be subjected to analysis as concerns correspondence to two other criteria. It is also important that the fact that decisions about UCM are taken by international organizations (besides the UN Security Council) does not endow these measures with any sort of legality or makes them multilateral. From the legal point of view UCM are measures, which are not legal under international law, illegality of which is not excluded under international law or via authorization of the UN Security Council.

Impact of measures targeting states to the observance of human rights

The humanitarian impact of these measures applied to states is usually very high. Economic, political and other sanctions result in the crash of or are able to undermine substantially the economic system of the state, increase unemployment rates, decrease the level of education, vaccination and medical care. The humanitarian impact of comprehensive sanctions imposed on Iraq in 1991 may serve as an appropriate example of the case, despite the UN Security Council authorization in resolution 687 (1991) of 03.04.1991. The report was prepared by the Global Policy Forum together with 13 NGOs in 2002 [6]. The major reasons

for negative consequences have been stated as the following: 1) bombardment of infrastructure: electricity plants, factories, water supplied during the Gulf war; 2) economic sanctions, prohibiting to sell oil; 3) need to pay compensation after the war; 4) introduction of non-fly zones; 5) prohibition to import medicines including vaccination, which could presumably be used to produce biological weapons.

The impact of sanctions over Iraq's civilian population is provided in the report as the following:

1. "In accordance with FAO information in 2000 around 800,000 Iraqi children have been "chronically malnourished". The UNICEF 1999 study had shown 21 % of children under five underweight, 20% stunted (chronic malnutrition) and 9 % wasted (acute malnutrition).

2. The food basket in the country became very poor. There was an insufficient number of not only calories but also of vitamins A, C, *riboflavin, foliate and iron in the diet due to the lack of vegetables, fruits and animal products*.

3. Bad water quality and sanitation resulted in diarrhoea that also increased child mortality (up to 70 % in 2001). Sanctions "blocked the rebuilding of much of Iraq's water treatment infrastructure as well as of the electricity sector which powers pumps and other vital water treatment equipment".

4. Electricity shortages seriously disrupted hospital care and disrupted the storage of certain types of medicines.

5. Shortages of medical equipment and spare parts, blockages of certain important medicines, shortage of skilled medical staff, and more.

6. 500,000 children under five years old had died in "excess" numbers in Iraq between 1991 and 1998" (Iraq sanctions).

In this way, measures applied to states can have far-reaching implications for the rights of the targeted state population including the right to life, adequate standard of living (incl. medical care, food, clothes and housing), the right to development, the right to self-determination (First report of the UN Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights of 28.08.2015 [7]).

All this has been the reason why, in the early 2000s, the UN recognized comprehensive sanctions as being ineffective and causing too much suffering and started to impose actively targeted ones. As the UN Secretary-General announced: "If we want to punish, let us punish the guilty" (Address to International Rescue Committee on the humanitarian impact of economic sanctions, UN Secretary-General, press release, SG/SM/7625, 15, November, 2000).

Status of coercive measures targeting states under international law

As mentioned above, the UN Security Council is entitled to decide what non-military or military measures are to be applied by states and regional organizations for the maintenance of international peace and security (UN Charter, art. 41, 42, 53). However, sometimes states intend to take means of pressure in order to enforce the decisions or behavior they prefer. As mentioned above, states and regional organizations may only take measures, which are either legal under international law or illegality of which is excluded in accordance with international law.

Legal acts are only those, which do not breach any norm of international law, either in the sphere of economy, environment, human rights or any other sphere. As for the circumstances, precluding wrongfulness of acts of states, only consent of the target state and countermeasures may be referred to as concerning application of coercive means.

Consent. It is generally recognized in international law that "valid consent by a state to a commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent" (Draft articles on responsibility of states for internationally wrongful acts 2001 (hereafter DARS), art. 20 [8]; Draft articles on responsibility of international organizations (hereafter DARIO), art. 20). The same approach was taken by the ICJ (Certain Expenses (1962) [9, p. 162]; Military and Paramilitary Activity (1986) [10, p. 126, para. 246]).

The wording or art. 20 of DARS and DARIO provides for the need in any given case to establish that (1) state consent is given, (2) the consent is valid, and (3) the act remains within the limits of this consent.

Consent is given. The fact that consent is given by a state for the commission of certain acts should result from the wording of the consent (DARS with comments (2001) comment to art. 20, para. 3). It *is to be clearly established* and may be given both verbally or in written form, *ad hoc* or in advance – or also in the form of an international treaty. No presumption of consent may be established on the basis that it had been requested but no negative answer was received (DARS with comments (2001) comment to art. 20, paras. 4, 6).

Consent *should identify the acts that may be committed*. In reality, the scope of these acts is rather disputable. In particular, it is not that clear whether consent may be given to an act that would otherwise be in breach of peremptory norms of general international law.

Formally, the answer is obvious. The Vienna Convention on the Law of Treaties 1969 stipulates that provisions being in conflict with *jus cogens* norms are void (art. 53, 64). In comments to art. 26 of DARS and DARIO, it is further maintained that "circumstances precluding wrongfulness in chapter V of Part One do

not authorize or excuse any derogation from a peremptory norm of general international law". At the same time, these provisions shall not be interpreted unequivocally.

Consent is valid. Valid consent should be freely given (without the application of pressure on a state or its agent) by the agent representing a state who is authorized to give consent in a given case (DARS with comments (2001) comment to art. 20, paras. 4, 5), in advance of the act or when it is occurring (DARS with comments (2001) comment to art. 20, para. 3) [11, para. 29] (consent given after the act is only a waiver to invoke responsibility for a committed act) (DARS with comments (2001) comment to art. 45(a), paras. 2, 3).

A government representing a state should be effective both at the moment when it gives consent and at the time the act (which otherwise would be wrongful) is committed [12, p. 146–147]. The right of an effective government (as opposed to its opposition) (Military and paramilitary (1986) [10, p. 126]; Geyerhalter D. [13, p. 71]) to invite foreign troops is usually recognized in the legal doctrine (Jamnerjad M., Wood M.[14, p. 378]; KunigP. [11, para. 29],). In recent years, it has sometimes been asserted that the effectiveness of the government is not sufficient and that the government should also be recognized by other states and claim its adherence to democracy and the rule of law (Geyerhalter D. [13, p. 72]; Nolte G. [15, para. 17]). These criteria are, however, too loose. They are often politically motivated and conditioned.

Countermeasures. DARS provides for a set of circumstances precluding wrongfulness of the act. The application of countermeasures for violation of norms being of interest for the international community as a whole is the most cited justification for application of UCM.

A thematic study has correctly noted that reference to countermeasures is only acceptable when they do not affect the prohibition to use force, obligations for the protection of fundamental human rights, obligations of humanitarian character and other obligations under peremptory norms of general international law and are proportionate to the violation committed (para. 23).

These rules, however, need some further explanation. It is also necessary to pay attention to subjects and grounds of countermeasures. In accordance with art. 49(1) of DARS, "An injured State may only take countermeasures *against a State* which is *responsible for an internationally wrongful act in order to induce that State to comply with its obligations*". Therefore, countermeasures may only be introduced by *injured state* in response to the *violation of a specific international obligation by a specific state* and may be directed only *against that state* to induce it to comply with the obligation.

Therefore, countermeasures may only be invoked when pressure is applied against a state as a whole, or against individuals immediately responsible for the policy or activity of a state in breach of an international obligation, in order to change that policy or activity, that is, in reality, a very narrow list of individuals. No measures can be taken against other individuals with reference to counter measures.

Subject entitled to apply countermeasures. In accordance with art. 22, 49(1) of DARS, countermeasures may be taken in relation between the directly injured state and the respondent state. The application of countermeasures by other states (including through international organizations) is only allowed as regards so-called "*collective obligations*" owed to the international community as a whole (*erga omnes* obligations) (Vienna Convention on the Law of Treaties, 1969, art. 60(2); DARS, art. 42, 48; Barcelona Traction 1970 [16, p. 32]; General Comment No. 31 [17, para. 2]; Geyerhalter D. [13, p. 65]; Frowein J. [18, p. 391–404]; Wolfrum R. [19, p. 581]).

There is no precise list of *erga omnes* obligations. In the modern interdependent world it may be very broad. However, due to the high potential for abuse, especially in the sphere of human rights (Simma B. [20, p. 134]), use of pressure by states other than the directly injured state as concerns *erga omnes* obligations shall be very limited. It is remarkable that exactly this issue has been the most debated issue in the course of work on DARS (Tams C. [21, p. 789]; Crawford J. [22, p. 302]. Therefore, I would maintain here that the scope of *erga omnes* obligations for the purpose of application of countermeasures by the third states shall be interpreted restrictively and be identical to the list of *jus cogens* norms (Vaur-Chaumette A.-L. [23, p. 1026]; Simma B. [20, p. 133].

Therefore, states (and, intermediately, regional organizations) not directly injured may only apply countermeasures in the case of a serious breach of obligations arising under peremptory norms of general international law as defined in art. 40–41 of DARS. The list of these is rather narrow (DARS with commentary (2001) 133). The ICJ identifies them as serious violations of the right to self-determination (Barcelona traction 1970 [16, p. 34–35]; Crawford J. [22, p. 277–279]), international humanitarian law (Palestinian wall 2004 [24, paras. 88, 155]) and mass systematic and outrageous violation of fundamental human rights (Interpretation of peace treaties 1950 [25, p. 77]; Barcelona traction 1970 [16, p. 32]). We may add here situations threatening international peace and security. Due to the extreme danger constituted by these situations to international peace and security, the UN Security Council is usually viewed as the most appropriate (the only) organ endowed with powers to act.

Limitations. Countermeasures shall generally be limited to the "non-performance for the time being of international obligations of the State taking the measures towards the responsible State" (DARS, art 49), proportionate with the injury suffered (DARS, art. 51),

taken with due account for the requirements of humanity and the rules of good faith and implemented in accordance with the rules of art. 52 of DARS.

Moreover, as noted in art. 50(1) DARS countermeasures cannot affect obligations to protect fundamental human rights. It basically means that art. 50(1b) prohibits violations of the fundamental rights of every individual, rather than only mass systematic and outrageous violations. As fundamental are viewed all non-derogable human rights including in accordance with art. 4 of the ICCPR, the right to life (art. 6), freedom from torture (art. 7) or slavery (art. 8(1, 2)), prohibition of imprisonment on grounds of an inability to fulfill contractual obligations (art. 11), prohibition of punishment for offenses that are not viewed as crimes at the moment of their commission (*nullum crimen*) (art. 15), right to recognition of personality (art. 16), or freedom of thought, conscience and religion (art. 18).

Impact of targeted measures on the observance of human rights

As mentioned above, targeted sanctions aimed at minimizing the negative effects of comprehensive ones have more direct impact on the enjoyment of human rights of targeted individuals. For example, *bans on admission* are recognized to violate the right to freedom of movement (European Convention on human rights and fundamental freedoms 1950 (hereafter ECHR), art. 2; International Covenant on civil and political rights 1966 (hereafter ICCPR), art. 12), the right to privacy and family life (ICCPR, art. 17; ECHR, art. 8), and the right to life, when access to medical help is urgent (ICCPR, art. 6; ECHR, art. 2) (Cameron (2005) 184–185). *Financial sanctions* are viewed as violating the rights to privacy, family life and property (ECHR, art. 8; Protocol 4, art. 1; Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin (A/HRC/4/26), 29 January 2007, paras. 38–41 [26]). An arms embargo: property rights (Cameron I. [27, p. 185–186]). Sanctions against journalists concerning anything said or written by them: the right to hold opinions and freedom of expression (ECHR, art. 10; ICCPR, art. 19). The introduction of targeted sanctions in general: the right to a fair trial, to a fair hearing, to effective remedy, to protection by law, procedural guarantees (ECHR, art. 6, 13, 14; ICCPR, art. 14(2), 26; PACE resolution 1597(2008), para. 5.1), the right to be informed promptly on the nature and cause of the accusation, to defend oneself (ECHR, art. 6(3)) and to protection of reputation (Zollman v. Great Britain, Application no. 62902/00 of 27 November 2003; ICCPR, art. 17) (Cameron I. [27, p. 186]).

However, before looking for mechanisms for human rights protection in the course of targeted sanctions, it is necessary to define the legal framework for these sanctions, when applied by different organs.

The UN Security Council has the exclusive position in international law. It is conferred with major responsibility for the maintenance of international peace and security (art. 24(1) of the UN Charter) and is entitled to take enforcement measures (Chapter VII). The only limitations imposed over the UN Security Council are set forth in the UN Charter. The UN Security Council shall act in conformity with purposes and principles of the UN Charter (art. 24(2)) and only when a situation threatens international peace and security. As all subjects of international law it shall also in accordance with peremptory norms of public international law including prohibition to violate non-derogable human rights.

As concerns the application of targeted sanctions by the EU, it shall be remembered that it can only take measures, which are in conformity with international law or illegality of which is excluded in accordance with international law. Targeted sanctions are mostly imposed on individuals either accused in commission of serious crimes (e.g. "severe human rights violations", "crackdown on civil society" (EU Council Decision 2010/639/CFSP, art. 1(1)) undermining "the sovereignty, territorial integrity, constitutional order and international personality" of … state (EU Council Decision 2011/173/CFSP, art. 1(1a)), "harbouring, financing, facilitating, supporting, organizing, training or inciting individuals or groups to perpetrate acts of violence or terrorist acts against other States or their citizens in the region". (EU Council Decision 2010/127/CFSP, 1 March 2010, art. 3)), or for certain affiliation with state authorities (e.g. "persons or entities benefitting from or supporting the … regime" (EU Council Decision 2012/36/CFSP, art. 1(2).) persons responsible for "undermining … agreement" (EU Council Decision 2011/173/CFSP, art. 1(1c)).

The latter does not constitute a crime at all. Moreover, the wording used to define the reason for targeted sanctions is open to abuse. For example, every taxpayer in the state may be viewed as supporting the regime. And every person getting salary, medical care, education emergency services etc. from the states, benefits from it. Therefore, restriction of rights of the latter category imposes a sort of punishment for something that does not constitute a violation of either international or national law. The very fact of quasi-punishment violates thus provisions of art. 15 of the ICCPR prohibiting to recognize someone guilty for acts or omissions that did not constitute a crime at the moment of their commission. Moreover, this right has a non-derogable nature even in the time of emergency (ICCPR, art. 4(2)).

As concerns the first category, when targeted sanctions are applied for alleged serious crimes, no investigation, court hearing or even attempt of investigation or hearing takes place. Violation of the listed rights

thus cannot be justified. Moreover, in the absence of investigation and hearing introduction of targeted sanctions violates procedural rights: the right to a fair trial, to a fair hearing, to effective remedy, to protection by law, procedural guarantees (ECHR, art. 6, 13, 14; ICCPR, art. 14(2), 26), the right to be informed promptly on the nature and cause of the accusation, to defend oneself (ECHR, art. 6(3)).

Preclusion of wrongfulness as concerns targeted sanctions

When we speak about coercive means applied to individuals, we cannot refer to the consent of a state of nationality towards these individuals even in the situation when a state itself initiated their listing. As mentioned above, a state cannot consent to the violation of rights of its national or inhabitant.

As for the application of countermeasures all general rules of DARS and DARIO are applied also to the application of targeted sanctions. However, when sanctions are applied to specific individuals, this exemption may be applied with much more difficulties. It has already been cited that in accordance with art. 49(1) of DARS, "*An injured State* may only take countermeasures *against a State* which is *responsible for an internationally wrongful act in order to induce that State to comply with its obligations*". Therefore, countermeasures may only be introduced by an *injured state* in response to the *violation of a specific international obligation by a specific state* and may be directed only *against that state* to induce it to comply with the obligation.

Hereby it is mostly important that not directly injured states may only apply countermeasures in the case of a serious breach of obligations arising under peremptory norms of general international law as defined in art. 40–41 of DARS. As far as such a breach may only be committed by a state, targeted sanctions may thus be applied in the course of countermeasures only against individuals immediately responsible for the policy or behavior of the state. That means only high state officials as they are understood under international law. The same conclusion comes from the requirement of art. 49 of DARS to apply countermeasures against a state.

It shall be also taken into account that as noted in art. 50(1) of DARS countermeasures cannot affect obligations to protect fundamental human rights. However, in the case of targeted sanctions it is important that this prohibition concerns not only mass systematic and outrageous violations of non-derogable human rights but additionally all procedural guarantees, in particular the right to due process (ICCPR, art. 14(2–7); ECHR, art. 6, 13, 14), the inalienable nature of which is broadly recognized by human rights institutions (General Comments No. 29 [28, para. 16]) and legal scholars. Therefore, the decision on their limitation shall be null and void under international law from the moment of their adoption.

Therefore, neither the UN Security Council nor regional organizations can legally impose targeted sanctions on individuals as far as the existing process infringes minimal procedural guarantees of fair trial, which constitute inalienable human right norms of peremptory character. Rights of regional organizations to impose means of pressure on states and non-state actors is limited to implementation of activity of the UN Security Council within the limits of authorization, activity, which otherwise is legal under international law or illegality of which is excluded under international law.

Mechanisms for human rights protection against unilateral coercive measures

It shall be noted here that UCM imposed on states as such could hardly be adverted by specific individuals. The targeted state thus is the only actor, which can complain about illegality or too high a negative impact of the imposed measures. At the present moment, no international mechanism provides for the possibility of individuals to appeal for protection of their rights from the violations happened because of measures applied to states.

The situation becomes substantially different if we speak about targeted measures, applied to individuals directly. Hereby it is possible to use a number of mechanisms at both the universal and the regional levels. The UN provides currently a number of mechanisms. They include: 1) mechanisms for de-listing (Ombudsperson. Focal point), 2) mechanisms of control over the situation with human rights (Special Rapporteur on the Promotion and Protection of Human Rights while countering terrorism; Special Rapporteur); 3) quasi-judicial bodies (UNHRC).

Since 2006, the UN Security Council has started to take steps to guarantee the human rights of targeted individuals. In particular, states are obliged to provide detailed information when submitting for listing names of specific individuals as well as to provide a ground for listing(resolutions 1989(2011) of 17.06.2011, para. 13), to avoid false identification (para. 15); to inform listed individuals immediately upon listing about the fact of listing, reason, consequences, limitations and mechanisms of appeal(para. 20).

Appeal for de-listing may be forwarded to Ombudsperson (sanctions against Al-Qaeda and ISIL: resolutions 1904(2009) of 17.12.2009, 1989(2011), addenda 2) or to the Focal Point (sanctions against all other groups: resolution 1730(2006) of 19.12.2006, travel ban and asset freezing against individuals from Al Qaeda and ISIL group: resolution 2083(2012) of 17.12.2012, other sanctions against Al Qaeda and ISIL: resolutions 2083(2012), 2253(2015), 2255(2015)).

As of January 2016, the Focal Point has considered de-listing applications from 62 individuals and 39 organizations. 17 individuals and 17 organizations have been excluded from the list [29]. There have 47 individuals and 26 organizations been de-listed by the Ombudsperson [30]. It shall also be mentioned that the Ombudsperson and Focal Point are UN subsidiary bodies, which can only consider application of measures by the UN Security Council. They do not have any authority to consider legality or grounds of sanctions application by the EU.

Special rapporteurs collect information, communicate to governments, but have no authority to de-list individuals or to act as a quasi-judicial body. Individuals can also use international mechanisms of human rights protection such as the UNHRC or ECHR in accordance with their rule that is to complain about violation of specific articles of the ICCPR or ECHR by a specific state.

EU documents contain rather developed provisions for human rights protection. They provide for:

• The need to adopt and implement sanctions in accordance with the purposes and principles of the United Nations (Basic principles of the use of restrictive measures (sanctions): Brussels, 7 June 2004, 10198/1/04 Rev. 1 (hereafter Principles), para. 1) and obligations under the UN Charter (Principles, para. 4);

• The obligation to define precisely the objective of sanctions as well as criteria upon which individuals are subjected to them (Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy: Brussels, 2 Dec. 2005, 15114/05 (hereafter Guidelines), paras. 5, 18; Principles, para. 9) and to lift sanctions as soon as the objectives are met (Principles, para. 9);

• The possibility for the sanctions' legality to be appealed to the Court of Justice of the EU (Treaty on Functioning of the EU, art. 275);

• The obligation to develop mechanisms for humanitarian exceptions from the sanctions regime (Guidelines, paras. 24, 68) in order to prevent improper application of the sanctions (Practices, paras. 6–9, 22). As a subtle step in this direction, provisions on humanitarian exceptions are introduced in most of the Council's decisions and regulations (see, *e.g.*, Council Regulation 765/2006, 18 May 2006, art. 3(a); Council Decision 2010/639/CFSP, para. 6). Moreover, in late 2011 special notice was taken by the Council in explaining the possibility for individuals subjected to restrictive measures to apply to "competent authorities of relevant Member states".

Theoretically, these principles cover the whole spectrum of human rights and are able to guarantee these rights when targeted sanctions are imposed (if it is ensured that the sanctions do not violate the obligations of any EU member state). However, the reality, as repeatedly acknowledged in the legal doctrine, is unfortunately not that optimistic. As mentioned above, targeted sanctions violate a broad number of human rights.

Despite the stated readiness of the EU and its member states to fulfill their international obligations, including those in the sphere of human rights, procedural rights and guarantees are not observed in the course of applying targeted sanctions. In particular, despite the obligation to review regularly the lists of sanctioned individuals (at least once every six months) in accordance with art. 1(6) of the EU Common Position 2001/931/CFSP of 29.12.2001 and the possibility to apply for de-listing, reviews take place rather seldom: once every several years. Art. 275 of the TFEU provides for the possibility to appeal the legality of applying restrictive measures to natural and legal persons to the EU Court of Justice. In practice, this is limited to the right of states to bring to the attention of the Court measures taken against their nationals or legal persons (Kadi v. Council and Commission 2005, paras. 261–291; Yusuf and al Barakaat International Foundation 2005, paras. 309–346), or the submission of written objections by a person (Mojahedines case, para. 69). Individuals are deprived of any possibility to be heard both before and after restrictions are imposed (Resolution 1597 (2008) PACE, para. 9; United Nations Security Council and European Union Blacklists, PACE doc. 11454, paras. 87–90).

In addition, the EU often prevents individuals from exercising procedural rights, referring to the administrative rather than criminal nature of restrictions (Mojahedines, para. 77). I would, however, disagree with the last assumption. The wording of the EU acts that impose restrictive measures "for …[something]" clearly demonstrates a punitive purpose and turns it into punishment (Bianchi A. [31, p. 905]). Moreover, in the majority of cases, restrictive measures are applied to individuals expressly accused of the commission of serious crimes ("*who are responsible for*", in the wording of EU documents), *e.g.*, "severe human rights violations", "crackdown on civil society"(Council Decision 2010/639/CFSP, op. cit., art. 1(1)), undermining "the sovereignty, territorial integrity, constitutional order and international personality" of … state (Council Decision 2011/173/CFSP, op. cit., art. 1(1a)). Thus, the only conclusion one can reach is that EU targeted sanctions tend to substitute for criminal punishment. The EU instruments claim people guilty and impose punishment without criminal investigations, hearings or the possibility of appeal. Beyond any doubt, this violates the presumption of innocence as well as other procedural guarantees that become even more important due to the seriousness of the accusations.

Some other persons – "natural and legal persons, bodies and entities associated with them" (Council Decision 2010/639/CFSP, art. 2; Decision 2011/172/CFSP, art. 1(1)), "persons or entities benefitting from or supporting the … regime"(Council Decision 2012/36/CFSP, art. 1(2)) persons responsible for "un-

dermining … agreement"(Council Decision 2011/173/CFSP, art. 1(1c)) or "misappropriation of … state funds"(Council Decision 2011/172/CFSP, art. 1(1)) – are sanctioned and, as concerns the consequences, punished for acts which are not qualified as crimes under the legislation of either their own or any other state. This results in the violation of the right not to be held guilty for any offense that did not constitute an offense at the moment of its commission (ICCPR, art. 15(1); ECHR, art. 7(1)).

None of these violations may be justified through reference to the emergent and extraordinary character of the situation. In the modern world, the rights of particular individuals may only be restricted in accordance with a court's decision taken in compliance with procedural rules. Any other limitations may take place only in a time of public emergency, the existence of which is officially proclaimed (ICCPR, art. 4; ECHR, art. 15).

The latter limitations, however, as stipulated by the ICHR in General Comment No. 29, must be expressly prescribed by national law and have a minimal, proportionate, necessary and non-discriminatory character (paras. 2, 4–5) (General Comment No. 29*:* Article 4). In accordance with art. 4 of the ICCPR, no derogation is allowed from the right to life (art. 6), freedom from torture (art. 7) or slavery (art. 8(1, 2)), prohibition of imprisonment on grounds of an inability to fulfill contractual obligations (art. 11), prohibition of punishment for offenses that are not viewed as crimes at the moment of their commission (*nullum crimen*) (art. 15), right to recognition of personality (art. 16), or freedom of thought, conscience and religion (art. 18). The ECHR limits this list to the first four freedoms.

Conclusions: proposals for evolving protection of human rights infringed by measures applied by states and international organizations

If we speak about the improvement of procedure for human rights protection in the case of comprehensive sanctions, the best mechanism shall focus on the first hand on the general enhancement of the rule of law in the course of imposition of any means of pressure. Attempts to "make the life of population that bad so that it changes the government" shall not be viewed as appropriate means and definitely goes counter the very notion of the responsibility to protect. It also never helps in the situation, when the intractable human rights crisis already exist, but may rather deteriorate the situation.

It shall therefore also be taken into account that violation of human rights under the slogan of the need to protect human rights is ridiculous both from a moral, logical and legal point of view. Therefore, references to "legitimacy" rather than "legality" of activity under the slogan of "do something or do nothing" has nothing to do with international law.

The UCM are measures applied by states, groups of states or regional organizations without or beyond authorization of the UN Security Council to states, individuals or entities in order to change a policy or behavior of a directly or indirectly targeted states, if these measures cannot undoubtedly be qualified as not violating any international obligation of the applying state or organization, or its wrongfulness is not excluded under general international law.

To make a fair judgment it shall be admitted that comprehensive sanctions usually have some negative humanitarian impact regardless of the fact of their legality. Therefore, this impact shall be carefully calculated before sanctions are imposed and any decision taken shall pay due regard to these aspects.

As for the UN Security Council targeted sanctions that these measures violate procedural guarantees of listed individuals including the rights to fair trial, that has been criticized by the PACE already in 2007–2008. It is believed thus to be necessary to correct the procedure. a state submitting a person for listing shall simultaneously with submission of information start criminal hearing against individuals and administrative or criminal (depending on legislation) procedure against organizations. a person or organization shall be submitted by the state for de-listing if their national court finds them non-guilty.

Procedural guarantees, including the right to due process, are therefore inalienable. They constitute basic standards of promotion and protection of human rights, are of interest to the international community as a whole (*erga omnes*)and have a peremptory character (*jus cogens*) (Barcelona Traction, Light and Power Company 1970 [16, p. 32]; International Status of South-West Africa 1950 [32, p. 133]; Interpretation of Peace Treaties 1950 [25, p. 77]; Kadi v. Council and Commission, paras. 226–232; Yusuf and al Barakaat International Foundation, paras. 277–283). As such, they occupy the supreme position in the international legal system and are obligatory for all subjects of international law (including regional organizations and even the UN Security Council) in all situations (Bianchi A. [31, p. 886]; Reinisch A. [33, p. 858–859]). Acts of any of these organizations (including resolutions of the Security Council) are to conform with *juscogens* norms, including in the sphere of human rights. Otherwise, applying analogously the provisions of art. 53 of the Vienna Convention on the Law of Treaties ("A treaty is void if […] it conflicts with a peremptory norm of general international law"), they will be void from the moment of their adoption (van Herik L. [34, p. 801]; Orakhelashvili A. [35, p. 423, 468–469]; Bekjashev *K. A.* [36, p. 66–67]; Case Concerning Armed Activities on the Territory of the Congo, Separate Opinion of Judge Dugard (2006) [37, p. 88–89, para. 8]; Cassesse A. [38, p. 26]; Bianchi A. [31, p. 906–909].

Therefore, neither the UN Security Council nor regional organizations can legally impose targeted sanctions on individuals as far as the existing process infringes minimal procedural guarantees of fair trial, which constitute inalienable human rights norms of peremptory character. Rights of regional organizations to impose means of pressure on states and non-state actors is limited to the implementation of activity of the UN Security Council within the limits of authorization, activity, which otherwise is legal under international law or illegality of which is excluded under international law.

As for UCM applied by states or regional organizations, the law of human rights is an important qualifying criteria on this point. Measures are legal if they do not violate any human right set forth in the international documents. Illegality of pressure applied by not directly injured states is excluded if it is applied in response violation of *jus cogens* norms including gross mass violations of fundamental human rights, shocking the conscience of mankind, and do not violate fundamental human rights including the right to life, freedom from torture or slavery, prohibition of imprisonment on grounds of an inability to fulfill contractual obligations, prohibition of punishment for offenses that are not viewed as crimes at the moment of their commission (*nullum crimen*), right to recognition of personality, or freedom of thought, conscience and religion as well as procedural guarantees (that has the major importance in the course of application of targeted sanctions).All other measures that constitute UCM are illegal under international law and shall be withdrawn.

Application of pressure collectively or through international organization does not change its qualification. It is generally agreed in international law that international organizations may legally take measures, which may legally be taken by their member states (Kelsen H. [39, p. 724]; Walter C. [12, p. 137–138, 191]; Geyerhalter D. [13, p. 65]). However, as far as every member state of an international organization bears its own set of international rights and responsibilities, pressure may be applied through an international organization to the third states and to its member states beyond the provisions of its constituent documents if it may be legally taken by all its member states or illegality of which is excluded towards all member states. Measures applied to member states are limited to those set forth in the constituent and other documents of organizations and shall be taken in accordance with the UN Charter and peremptory norms of international law. Existing mechanisms for de-listing are not sufficient and do not provide for necessary procedural guarantees.

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INTELLECTUAL PROPERTY RIGHTS IN THE INTERNET: EXTRATERRITORIAL RECOGNITION OR NEW CONFLICT OF LAW RULES?

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The article is devoted to the new tendencies of application of mechanisms of private international law in intellectual property cases. The author explores conflict of law rules applicable to intellectual property relations, and shows the change of the traditional territorial approach to the disclosure of the legal content of intellectual property rights. The settlement mechanism for disputes arising from violations of intellectual property rights in domain names serves as the basis of the research. It is concluded that conflict of law rules on intellectual property demand new localization factors if corresponding relations take place in the Internet. The author proposes to adhere to the most flexible concept of the territorial nature of intellectual property rights in disputes on intellectual property settled by online procedures alternative to litigation in national courts.

Key words: intellectual property; private international law; conflict of law rules; applicable law; territoriality; extraterritoriality; criterion of closest connection; domain names; trade marks.

ПРАВА ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ В ИНТЕРНЕТЕ: ЭКСТЕРРИТОРИАЛЬНОЕ ПРИЗНАНИЕ ИЛИ НОВЫЕ КОЛЛИЗИОННЫЕ ПРАВИЛА?

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Посвящена новым тенденциям применения механизмов международного частного права в делах по интеллектуальной собственности. Исследованы коллизионные правила, применимые к отношениям интеллектуальной собственности. Показано изменение традиционного территориального подхода к раскрытию правового содержания прав интеллектуальной собственности. За основу исследования взят механизм урегулирования споров о нарушениях прав интеллектуальной собственности в доменных именах. Сделан вывод о необходимости новой коллизионной привязки для отношений интеллектуальной собственности, складывающихся в интернете. Автор предлагает придерживаться максимально гибкого понимания территориального характера прав интеллектуальной собственности при рассмотрении споров по вопросам интеллектуальной собственности с помощью онлайн-процедур, альтернативных разбирательству в государственных судах.

Ключевые слова: интеллектуальная собственность; международное частное право; коллизионные нормы; применимое право; территориальность; экстерриториальность; критерий наиболее тесной связи; доменные имена; товарные знаки.

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Global information infrastructure based on the Internet and other virtual communication networks raise complex problems of legal regulation of intellectual property relations, especially in cases where these relations include foreign elements. Placing the product on the website, distribution of goods embodying trademarks through the online store and other variants of cross-border use of intellectual property rights pose the key question of private international law ruling: the right of which state to apply?

Conflicts of law rules for intellectual property do exist. As of now it is not a question whether to apply them in such specific area of legal regulation as intellectual property. National laws on intellectual property and intellectual property rights based on them alike do not have extraterritorial effect. It means that grounds, conditions of protection and process of enforcement of intellectual property are determined by domestic law and does not depend on rules and actions abroad. From the practical point of view this situation can be reduced to the very simple solution of *lex fori*. However the two-side paradigm of private international law including a place of filing a lawsuit and a place of a relation (violation of intellectual property rights, creation of a work, occurrence of protection, recognition of rights, etc.) cannot always be successfully accomplished by the rule *lex fori*. In order to estimate intellectual property relations properly courts have to consider at least the law of the state where the key elements of an intellectual property relation are located. Otherwise these relations would not exist or would be different.

In particular one of the fundamental principles of private international law demands that if legal concepts requiring legal qualifications are unknown or known under another name or with other content and cannot be identified through interpretation by the law of the court they can be qualified under the foreign law. This principle (called *qualification*) is enshrined in Article 1094.2 of the Civil Code of the Republic of Belarus [1]. It not only helps to find an applicable law but also expresses *ratio legis* for relations with a foreign element. Transnational relations cannot be considered by courts only through the prism of their domestic legal system excluding foreign law at the place of occurrence, change and development of these relations.

Conflict of law rules on intellectual have been actively introduced in the legislation of private international law from the beginning of the 2000s. Before that strong necessity to apply foreign laws on intellectual property despite of the principle of territoriality was shown by case law.

Judicial practice shows slow but inevitable process of penetration of conflict of laws rules into the legal field of intellectual property. The most famous case on that subject was launched on the suit of several Russian and American media companies and other persons to the «Russian Kurier» (a weekly newspaper published in the United States in Russian). The plaintiffs were ITAR-TASS (a Russian news agency), Iter-Tass USA, Inc. (a subsidiary of the ITAR-TASS news agency established in the USA), the Russian media corporations "Argumenty and Facty", "Komsomolskaya Pravda", "Moscow News", "Moskovsky Komsomolets", the Russian Union of Journalists, Heslin Trading Ltd. (an Israeli company, who published a monthly magazine in Israel "Balagan"), Fromer and Associates, Inc. (a US company to whom the "Komsomolskaya Pravda" transferred a right to distribute its materials in the USA) and some other persons and entities. Defendants were Russian Kurier, Inc. (a US corporation which published on a weekly basis a newspaper in Russian "Russian Kurier", O. Pogrebnoy, president, owner and sole shareholder of the Russian Kurier, Inc., and the chief editor of the newspaper "Russian Kurier", Linco Printing, Inc. (a US corporation who printed the newspaper "Russian Kurier").

Without any permission from the copyright holders O. Pogrebnoy gave Linco Printing, Inc. materials of the plaintiffs. He just cut out pieces from several newspapers, pasted them on the layout of his newspaper and sent it to print. The defendant even used the entire view including lines, graphics and other elements. As a matter of fact the defendant did not add self-created materials other than advertisements.

The case was considered at first instance and passed through the appeal process. Violation of copyright was apparent. But the legal reasoning (*ratio decidendi*) was vague. The defendants stated that the plaintiffs' copyright is invalid because they were claimed improperly according to the US law. The defendant pointed out two main problems: improper plaintiffs and non-compliance with rules of copyright registration according to the US law.

The most interesting problem in the context of conflict of laws was the status of the plaintiffs and the contested works. The registration issues were solved according to materials norms and mainly under the Berne Convention [3]. This convention is based on the principle of refusal from the registration and other formality requirements.

Almost without any special disputing the majority of works were considered in the *Russian Kurier case* as Berne Convention works protected in all Berne Union countries. Nevertheless the defendants disputed the possibility of their protection in the US referring to various provisions of the Russian copyright law. It is not necessary and it is not even possible to pose a conflict of laws question. According to the traditional territorial approach it is enough to consider works to be conventionally protected and then courts can decide cases on their domestic laws. The defendants in the Russian Kurier case posed that question and the court did not dismissed it. Moreover the court

applied foreign law and came to the following conclusions. Exceptions to copyright protection for facts and events of informational character in the Russian law does not apply to the work in question, since the latter contains commentary, analysis, and other creative activities of the elements as it appears from the Russian copyright law, commentary to it and Russian case law.

The Russian plaintiffs proved the existence of their copyright under the Russian law despite of the statement in the Russian copyright law that only a natural person can be the author and has to transfer his rights to other persons on the basis of a written transaction. The plaintiffs asserted their rights on the basis of exemptions in the Russian law for works of hire works published in media and periodical editions.

For damages the court applied the US law, including regulations on copyright registration. Statutory compensation amount (so called *statutory damages*) have been assessed only on 28 works that had been duly registered. Total 500,000 USD was awarded to the recovery from the Russian Kurier and O. Pogrebnoy. The printing company Linco was fined 3934 USD as by printing newspapers.

Because of the absence of conflict of laws norms in the US copyright law and the Berne Convention the court was forced to formulate their own ruling. The court even complained that the question of applicable law had been largely ignored yet. The court highlighted two kinds of relations and used for them different methods of localization. It applied the rule of *the place of origin* for the recognition of copyright and the rule of *the place of violation* for the enforcement demand. The first rule was obviously influenced by the rules of the Berne Convention (for example Article 5 of this convention). However, it is important that the court assumed and allowed the question about the choice of an applicable law.

Some private international law specialists consider results of the Russian Kurier case as the revolution in international copyright because "Having rejected the territorial interpretation of national treatment, copyright law has inherited all the flexibility, but also the confusion, of the modern interest analysis" [4, p. 915]. Conflict of laws ruling in the field of copyright presents easy transition from the traditional territorial interpretation of the national treatment principle to a more flexible approach in order to gain international protection of intellectual property rights. The appearance of conflict of laws ruling in the Russian Kurier case is very important because the difference between the Russian and the US law was determinative for its outcome.

The court was guided by flexible private international law method – the criterion of the closest connection, rather than by precise rules of localization in the Restatements of laws. In the Russian Kurier case the Court of the State of New York formulated the conflict rules not of the state but of the federal common law because only in this way the uniform application of the federal copyright law in Section 17 of the US Code is possible. In the Russian Kurier case other mechanisms of private international law have been used. For example it concerns the mechanism of qualification – the court took into account domestic commentary and practical application of the Russian law for its application.

Changes of the traditional approach in fact denying conflict of laws ruling are caused by necessity to prove unhindered movement of goods containing intellectual property objects. The goal of universal marketability of intellectual property rights has been drastically challenged by the Internet. Some attempts to deepen conflict of laws rules show that in such circumstances ordinary methods of localization are not very useful.

One of the most detailed set of conflict of laws norms for intellectual property relations was prepared by The European Max Planck Group on Conflict of Laws in Intellectual Property. It is a group of scholars in the fields of intellectual property and private international law. It was established in 2004 and has regularly met to discuss the problems of intellectual property in the domain of private international law. The group has drafted a set of principles on conflict of laws in intellectual property as a pattern of legal regulation and independent advice to European and national law makers. The Group has prepared a document called Principles on Conflict of Laws in Intellectual Property (CLIP). On 31 August, 2011 the Group advanced the Final Text of CLIP [5].

CLIP specially mentions so called *ubiquitous media such as the Internet* proposes for the relations connected with them special rules. For example according to Article 3:603 of CLIP in disputes concerned with infringement carried out through ubiquitous media such as the Internet, the court may apply the law of the state having the closest connection with the infringement if the infringement arguably takes place in every state in which the signals can be received. This rule also applies to existence, duration, limitations and scope to the extent that these questions arise as incidental questions in infringement proceedings. In determining which state has the closest connection with the infringement CLIP suggest to take into account all relevant factors, in particular: the infringer's habitual residence; the infringer's principal place of business; the place where substantial activities in furtherance of the infringement in its entirety have been carried out; the place where the harm caused by the infringement is substantial in relation to the infringement in its entirety. There could be another factors which the court can consider as localization factors.

CLIP is very liberal in method of ruling. It recognizes wide freedom of choice (in private international

law so called *party autonomy*). According to CLIP notwithstanding the law applicable pursuant to the above mentioned conflict of laws rules, any party may prove that the rules applying in a state or states covered by the dispute differ from the law applicable to the dispute in aspects which are essential for the decision. The court shall apply the different national laws unless this leads to inconsistent results, in which case the differences shall be taken into account in fashioning the remedy. Thus in non-contractual relations one of the parties can affect the process of choice of applicable law. This situation cannot be compared with the private international law mechanism of mandatory rules because only the difference between applicable law and law of another state is crucial.

In rest CLIP adheres to the common approach of the sources of conflict of laws for intellectual property relations and establishes as a general rule *lex loci protectionis*. According to Article 3:102 of CLIP the law applicable to existence, validity, registration, scope and duration of an intellectual property right and all other matters concerning the right as such is the law of the state for which protection is sought.

The principle *lex loci protectionis* has become very popular in modern private international law. It is stated in the preamble of Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), "Regarding infringements of intellectual property rights, the universally acknowledged principle of the *lex loci protectionis* should be preserved" [6]. It is interesting to compare precise wordings in Article 8 of the Rome II and in Article 1132 of the Civil Code of the Republic of Belarus. It is quite clear that "the law of the country *for which* protection is claimed" in the former and "the law of the country *where* protection is claimed" in the latter are different methods of localization and can lead to different destinations. The Belarusian conflict of laws rules are more restrictive. The European approach means that if a suit was filed in one country and a violation has occurred in another country it is possible that a plaintiff seeks enforcement his intellectual property rights not necessarily in the country of a court but also in other countries through mechanisms of legal assistance and judicial cooperation. For example he could demand compensation, seizure of counterfeit goods, authorship recognition and realization of other moral rights on grounds of recognition and enforcement of a foreign court decision. A suit can be filed not at the place of infringement of intellectual property rights or at the place where a rightholder needs to act. According to the general rule of jurisdiction a lawsuit is filed at the place of habitual residence of a defendant. Even in the beginning of 2000s E. Geller said about "…increasingly frequent cases where the forum country and the protecting country are not identical" [7, p. 330]. Relying on a wide range of cases this author explored various stages of transnational infringement. He posed very important private international law questions: where to localize infringement; where it has occurred and where to stop it; flexible territoriality versus extraterritoriality for injunctive relief.

Attempts to localize intellectual property relations by conflict of laws rules in the Internet cases are very are cumbersome and almost useless. Nevertheless these relations originally have multinational nature and inevitably belong to the private international law domain.

The World Intellectual Property Organization (WIPO) has for a long time doing research on interaction of intellectual property and private international law. In September, 2015 WIPO published a next report entitled Private International Law Issues in Online Intellectual Property Infringement Disputes with Cross-Border Elements: An Analysis of National Approaches (the Report) [8].

An unquestionable positive feature of the report is very rich statistical data methodology. In the second-half of both 2013 and 2014, the WIPO Secretariat administered a questionnaire to experts in 25 countries: Argentina; Australia; Belgium; Brazil; Canada; Chile; China; Colombia; Denmark; Germany; India; Israel; Republic of Ireland; Italy; Republic of Korea; Malaysia; Mexico; The Netherlands; New Zealand; Nigeria; Russian Federation; Singapore; South Africa; Switzerland; and the United Arab Emirates. The experts were asked to provide several (3–5) leading judgments (between three to five cases), involving private international law aspects in online intellectual property disputes. However, in spite of its WIPO origin the report has an author. It was prepared by professor *Andrew F. Christie*, Melbourne Law School, University of Melbourne. It is stated in a special remark to the report that the views expressed in this study are those of the author and do not necessarily reflect those of the WIPO Secretariat or any of the Organization's Member States. Thus the report can be considered a subjective author's opinion and critics object namely to *A. Christie*.

One of them is professor *Marketa Trimble*, William S. Boyd School of Law, University of Nevada. She arrived at conclusions that are different from the conclusions in the report. In her paper Undetected Conflict-of-Laws Problems in Cross-Border Online Copyright Infringement Cases she pointed out that empirical studies that rely on existing court cases, such as those in the report and her own tend to underreport conflict of laws problems that intellectual property rights holders face when they encounter online infringements. *M. Trimble* correctly said that "The absence of phenomena may point to problems that result in an ignorance or avoidance of the phenomena – problems that would go undetected if statistics were evaluated only on phenomena present in the statistics" [9].

As a matter of fact the report shows that private international law issues not so common in online intellectual property infringement disputes with cross-border elements. The report states that the issue of applicable law was expressly addressed in just over one-quarter (29 %) of cases. In 16 cases directly addressing the issue, local law was identified as the applicable law, and was applied, in 14 of them. In the two cases where foreign law was identified as the applicable law, it was applied in one case, but not applied in the other case due to the court declining to accept jurisdiction over the matter. In the one case in which the law applied was foreign, the particular law in issue was about unjust enrichment. In all but one of the 40 cases in which the issue of applicable law was not directly addressed, it appears that the court simply assumed that the applicable law was local law. In the exceptional case, the issue was not addressed because the court found it did not have jurisdiction over the matter and thus did not need to decide the issue. Overall, the applicable law was local law in almost all (95 %) of the evaluated cases.

The author of the report, *A. Christie* proposes that WIPO shall provide various educative activities and further research and develop *soft law* understanding as "… a set of harmonized private international law rules for application by national courts to transnational intellectual property disputes". We agree with *M. Trimble* that these solutions are somewhat naive and far removed from the practice of civil litigation in national court especially in perspective of enforcement. She pointed out: "…the need to prove damages under foreign-country law, might be the primary limitation on the territorial scope of parties' copyright enforcement actions". It is worth of mentioning for better understanding of the importance of private international law issues in intellectual property relations with cross-border elements that correlation of *lex fori* and foreign law is necessary at least to avoid the *ordre public* triggering at the place of enforcement of foreign judgments on remedies.

Addressing the conflict of laws problems that arise in transnational intellectual property relations is necessary but not the only one mechanism of private international law which courts shall use. They do have these obligations at least due the rules of civil procedure. However in online intellectual property infringement disputes alternative ways are more popular and convenient than national court litigation. Both authors do not mention this aspect. They indicate very important legal problems of online intellectual property disputes to be solved and did not notice that it is better to rely on self-regulation practices of the Internet instead of transferring them into offline disputes.

M. Trimble says about the necessity "…to harmonized standards for safe harbors for internet service providers (which would need to be adjusted in light of the latest technological advances), 92 improved access to evidence, and other forms of judicial cooperation". We can assume this statement as a demand of international treaties on legal assistance. It is possible but somewhat rough method of legal regulation regarding online relations. Initiatives of the Hague conference of private international law is mentioned in the report but the corresponding draft treaty under the auspices of this organization does not go too far (Article 5.1 k) l) only states what kind of judgments on intellectual property issues can be recognized and enforced) and is still debating [10].

A. Christie did not consider private international law problems in arbitration or quasi-arbitration in online intellectual property disputes. However he mentioned as a possible solution the development of the soft law on online intellectual property infringement. He turned to the WIPO Joint Recommendation on Protection of Marks on the Internet Given (the Recommendation) and identified this document like a model for a copyright equivalent of the WIPO soft law. The determination of the applicable law itself is not addressed by the Recommendation [11]. The Recommendation contains generalized rules of proper behavior and allowable actions concerning intellectual property rights of others in a specific internet environment. Its provisions often contain references to applicable law as Article 7 stating that there shall be liability in a state under the applicable law when a right is infringed, or an act of unfair competition is committed, through use of a sign on the Internet in that state. But the most important and frequently used in practice provisions of the Recommendation (evidences of commercial effect in a state in Article 3, features of bad faith in Article 4) are self-sufficient.

Online arbitration and other bodies considering intellectual property disputes usually do not pose conflict of laws questions, do not apply national laws and render decisions on the Internet standards.

The WIPO Arbitration and Mediation Center (the Center) offers alternative dispute resolution options and is recognized as the global leader in the settlement of domain name disputes under the WIPO designed Uniform Domain-Name Dispute-Resolution Policy (often referred to as the "UDRP") receiving cases from trademark owners from around the world. UDRP applies primarily to international domains such as *.com*, *.net*, *.org*, *.xyz*, *.top*, and *.win*. In addition, 74 country code top-level domains (ccTLD) have now appointed the WIPO Center as service provider for their domain name disputes.

Supporting [12] or denying [13] a complainant's demand the panels of the Center follow the rules and concepts of the Recommendation usually without any special legal reasoning. UDRP and UDRP Rules are considered to be sufficient [14]. Nevertheless

sometimes panels touch the problem of applicable law. In *Jupiter Investment Management Group Limited v. N/A, Robert Johnson* the panel even in outlined the controversial history of this issue and stated its position [15]. It was decided that copyright of the complainant could have been infringed but the panel noted that an assessment of whether a registrant's activities constituted an infringement according to some national intellectual property laws was both unnecessary and undesirable. The panel quoted similar comments in *Delta Air Transport NV (trading as SN Brussels Airlines) v. Theodule de Souza* in relation to the question of trade mark infringement and *High Tech Computer Corporation v. LCD Electronic Systems SRL* in relation to both copyright infringement and trade mark infringement and disagreed with another approach in *TPI Holdings Inc. v JB Design*. The Panel said that the finding of copyright infringement in this case was not necessary in order to come to a finding of bad faith.

We share expectations of *A. Christie* that WIPO will develop special rules (in the meaning of the author as *WIPO soft law*) in relation to online infringements of copyright and other intellectual property rights. UDRP mechanism of dispute settlement is effective due to the possibility of prompt and easy enforcement of intellectual property rights by cancellation of the domain name registration or its transfer to the complainant. Thus the main task for WIPO is to clarify legal grounds for corresponding technical aspects. It is necessary to ensure that service providers, registrars and other professional participants of the internet infrastructure will take necessary actions to implement decisions against web sites, pages and other internet areas infringing intellectual property rights. Our hypothesis is that the key issues (especially for copyright and related rights) in the possible *WIPO soft law* will shift from the notion of bad faith and commercial use to existence and ownership of intellectual property rights and grounds for their free use. It is quite likely and desirables that the modern UDRP approach of flexible concept of the territorial nature of intellectual property rights will be maintained. The majority of cases under UDRP shows that it is enough to prove intellectual property rights in one jurisdiction in order to consider infringement in domain name registration. This approach is quite contradictory. It is especially evident in matters where parties have different nationality and the intellectual property rights are not supported by the law of one of the parties. However, this method can provide effective means of combating the widespread practice of piracy on the Internet. Moreover, the importance and value of determination of national jurisdiction and applicable law outside of the national segments of the Internet (ccTLD) are not clear. In our opinion the future private international law for online intellectual property relations with cross-border elements shall mainly rely not on a conflict of laws rules but on a set of material law analogous to *lex mercatoria* for international commercial relations.

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COMPENSATION OF THE LOSSES CAUSED BY UNFAIR COMPETITION: NATIONAL AND FOREIGN LEGAL APPROACHES

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The article is devoted to the approaches to regulation in the Republic of Belarus and foreign countries of the compensation of the losses caused by unfair competition. The author considers, in particular, such issues as the kinds of the recoverable losses, the range of the persons entitled to their compensation, and the persons against whom the corresponding claim may be brought, the conditions of the compensation of the mentioned losses etc. Based on the analysis made the need for the Regulation of the Plenum of the Supreme Court of the Republic of Belarus concerning the recognition and enforcement in the Republic of Belarus of foreign judgments and arbitration awards on recovery of punitive damages, as well as the amendment of the national legislation, allowing compensation of the losses caused by unfair competition, in case of failure to prove their exact size, is substantiated.

Key words: unfair competition; measures of civil liability; compensation of losses; real damage; lost advantage; punitive damages.

ВОЗМЕЩЕНИЕ УБЫТКОВ, ПРИЧИНЕННЫХ НЕДОБРОСОВЕСТНОЙ КОНКУРЕНЦИЕЙ: ОТЕЧЕСТВЕННЫЙ И ЗАРУБЕЖНЫЕ ПРАВОВЫЕ ПОДХОДЫ

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Посвящена подходам к регулированию возмещения убытков, причиненных недобросовестной конкуренцией, в Республике Беларусь и зарубежных государствах. Рассматриваются виды убытков, подлежащих возмещению, круг лиц, имеющих право на их возмещение, и круг лиц, которым может быть предъявлено соответствующее требование, условия возмещения данных убытков и др. На основании проведенного анализа обосновывается необходимость принятия постановления Пленума Верховного Суда Республики Беларусь, касающегося признания и приведения в исполнение в Республике Беларусь иностранных судебных и арбитражных решений о присуждении штрафных убытков, а также внесение в отечественное законодательство изменений, позволяющих возмещение убытков, причиненных недобросовестной конкуренцией, в случае недоказанности их точного размера.

Ключевые слова: недобросовестная конкуренция; меры гражданско-правовой ответственности; возмещение убытков; реальный ущерб; упущенная выгода; «штрафные убытки».

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The development of international trade, expansion and deepening of the economic integration and other factors has contributed to the intensification of competitive struggle on the internal and external market, including the one which is carried out with unfair methods and means. Special importance for the persons suffered from unfair competition represents compensation of the losses caused by it.

For the time being all the existing scientific works [1; 2; 3; 4; 5] deal only with foreign legal regulation of the compensation of the losses caused by violations of antimonopoly legislation. Due to this fact the current article seems to be relevant.

The aim of the article is to analyze the existing national legal approaches in the mentioned field in comparison with foreign ones, to consider certain theoretical and practical problems and to propose the ways of their solving.

It bears noting that the questions of compensation of the losses caused by unfair competition, have not been tackled on the international legal level. Thus, they are regulated in the Republic of Belarus, as well as in foreign countries, by acts of national law.

The right of the person, suffered from unfair competition, to demand compensation of the losses caused by it is directly provided in par. 2 of Article 1030 of the Civil Code of the Republic of Belarus of 7 December, 1998 (hereinafter – Civil Code) [6]. In the Belarusian legislation there are no other special rules dealing with the indicated losses, thus on this issue it is necessary to be guided by, first and foremost, general provisions of the Civil Code for compensation of losses, provided for in Article 14.

Pursuant to par. 1 of this Article a person whose right has been violated may demand full compensation of losses caused to him unless otherwise is provided for by the legislation or a contract complying to it. According to par. 2 of Article 14 of the Civil Code within the losses 2 elements may be divided:

- real damage – the expenses which the person whose right has been violated made or must make in order to restore the violated right, loss or damage of his property;
- lost advantage – revenues not received which this person would have received under ordinary conditions of civil turnover if his right had not been violated.

From the analysis of this provision follows that the losses represent a cost estimate of the adverse effects of the wrongful conduct of the debtor to the creditor's property sphere [7].

Real damage can be both existing and future costs of the creditor. In case of unfair competition they may include, for example, marketing expenses needed for the attraction of new customers, expenses for the widening of the assortment and improvement of quality of the goods produced, for the finding and training of new employees (in the case of "poaching" of the staff of an entrepreneur by his competitor), and others.

Lost advantage may be the result of deprivation of the inflicted subject of reasonably expected turnover (including due to the planned increase in the volume of his products or the expansion of sales market), of price erosion (including resulting from the need for reduction of prices because of the offer of cheaper imitations of his goods), of the loss of all or a portion of the anticipated licensing fees, etc. [8, p. 1015].

Belarusian legislation does not contain the norms which may be considered as derogation from the set forth in Article 14 of the Civil Code rule of full compensation of losses relating to the losses caused by unfair competition. The inclusion of corresponding provisions in an agreement is not prohibited, but seems unlikely given the legal nature of unfair competition.

It is important to keep in mind that the losses caused by unfair competition, are considered by Belarusian law as a measure of civil liability. In literature it is stated that liability in the form of compensation of losses most fully express its compensatory nature [9, p. 173]. In accordance with the principle of the inadmissibility of unjust enrichment by compensation of losses the creditor should not get anything superfluous that goes beyond the necessary allowing restoring his violated rights [10]. This approach has been traditionally inherent to the countries of the Continental system of law.

In this regard it is necessary to note that law of a number of countries of the Anglo-Saxon system (Australia, Great Britain, Canada, New Zealand, USA, South Africa) permits recovering in cases of torts, including unfair competition, of so-called "punitive damages" [11, p. 321]. They are awarded in addition to compensatory damages and the purpose of their award is the achievement of general prevention and due punishment of the tortfeasor for the harm caused to the whole of society [12; 13, p. 30]. According to a famous American scientist J. Y. Gotanda courts and commentators have asserted that these damages also serve other functions. Specifically, they "vent the indignation of the victimized", discourage the injured party from engaging in self-help remedies, compensate victims for otherwise uncompensable losses, and reimburse the plaintiff for litigation expenses that are not otherwise recoverable [14, p. 395–396]. An example of the norm providing for punitive damages is § 1D-1 of Chapter 1D of the North Carolina General Statutes setting forth that these damages may be awarded, in an appropriate case and subject to the provisions of this Chapter, to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts [15].

The mentioned difference in legal approaches raise the question whether the foreign court or arbitration decision awarding punitive damages will be recognized and enforced in the Republic of Belarus. It bears noting, that in some countries, which law, like Belarusian one, does not provide for the punitive damages, the highest

instances in civil matters have already expressed their position on the corresponding issue. Thus, the Supreme Court of Japan, considering the case about the enforcement of the judgment of the Court of the State of California awarding punitive damages, indicated the following: «Article 200 of the Code of Civil Procedure requires that the foreign judgment should not contradict public policy and good morals of Japan. It is evident that the system of punitive damages as provided by the Civil Code of the State of California (hereinafter, "punitive damages") is designed to impose sanctions on the culprit and prevent similar acts in the future by ordering the culprit who had effected malicious acts to pay additional damages on top of the damages for the actual loss, and judging from the purposes, is similar to criminal sanctions such as fines in Japan. In contrast, the system of damages based upon tort in Japan assesses the actual loss in a pecuniary manner, forces the culprit to compensate this amount, and thus enables the recovery of the disadvantage suffered by the victim and restores the status quo ante and is not intended for sanctions on the culprit or prevention of similar acts in the future, i. e. general prevention. Therefore, the part of the foreign judgment in the present case which ordered the appellee company to pay punitive damages for the purpose of deterrence and sanction in addition to compensatory damages and the cost is against public order of Japan and therefore, has no effect" [16].

To our mind, the adoption by the Supreme Court of the Republic of Belarus of the Regulation, containing some clarifications on the recognition and enforcement in the Republic of Belarus of foreign judgments and arbitration awards on punitive damages would undoubtedly contribute to legal certainty in this field.

From par. 2 of Article 1030 of the Civil Code follows that to demand compensation of the losses caused by unfair competition may any person suffered from it. Thus, the corresponding right is granted not only to the economic entities, but also, for example, consumers in the sense of par. 14 of Article 1 of the Law of the Republic of Belarus of 9 January, 2002 "On protection of consumers' rights" (individuals who intend to order or purchase or ordering, purchasing goods (works, services) or using the goods (result of work, service) solely for personal, family, household and other needs not related to entrepreneurial activities [17]), which is in conformity with such a progressive tendency of development of foreign legislation aimed at combatting unfair competition as spreading civil protection against unfair competition to consumers.

Based the definition of unfair competition, contained in subp. 1.15 of par. 1 of Article 1 of the Law of the Republic of Belarus of 12 December, 2013 "On counteraction to monopolistic activities and promotion of competition" only the actions of one or several economic entities (under subp. 1.22 of the mentioned paragraph they include legal persons and individual entrepreneurs carrying out entrepreneurial activity and (or) having the right to carry it out [18]) may be recognized as unfair competition in the Republic of Belarus. Consequently, the lawsuit for compensation of the losses caused by unfair competition may only be filed against the persons concerned.

Before filing the mentioned lawsuit into a court it is advisable for the suffered person to apply to the Belarusian anti-monopoly body (the Ministry of antimonopoly regulation and trade of the Republic of Belarus) for establishing the fact of existence of unfair competition (such authority is assigned to the said body by subp. 1.2 of par. 1 of Article 9 of the Law "On counteraction to monopolistic activities and promotion of competition" and by subp. 6.9 of par. 6 of the Regulation on the Ministry of antimonopoly regulation and trade of the Republic of Belarus, approved by the Council of Ministers of the Republic of Belarus of 6 September, 2016, No. 702 [19]). This can greatly facilitate the proving process in a court (the facts established by the administrative acts are not prejudicial) due to the evidences obtained by the mentioned Ministry within the implementation of the said authority.

It is important to note that if a dispute about the losses caused by unfair competition takes place between legal persons and/or individual entrepreneurs, before reference to a court with a corresponding complaint it is obligatory to observe pre-trail procedure (part 2 of par. 2 of Article 10 of the Civil Code), consisting in the sending of the pre-trial complaint (a written proposal on voluntary settlement of the dispute) and receiving response to it or expiry of the period set forth for the response (part 1 of par. 12 of the Resolution of the Plenum of the Supreme Economic Court of the Republic of Belarus of 27 May, 2011, No. 6 "On certain issues of consideration of cases in an economic court of first instance" [20]).

Since, as it has been already stated, compensation of the losses caused by unfair competition, is under Belarusian law, a measure of civil liability, its conditions are the following:

1) carrying out of unfair competition by a certain person (hereinafter – the debtor);

2) losses;

3) a causal link between the losses born by the suffered person (hereinafter – the creditor) and the debtor's actions;

4) the creditor's fault in causing losses to the debtor.

Pursuant to part 1 of Article 179 of the Code of Civil Procedure of the Republic of Belarus of 11 January, 1999 [21] and part 2 of Article 100 of the Code of Economic Procedure of the Republic of Belarus of 15 December, 1998 [22] the burden of proof of that conditions is levied on the person, filing a relative claim. Thus, in the case of failure of proof of any of them, a Belarusian court has no right to take a decision awarding losses.

However, it should be borne in mind that the amount of the losses caused by unfair competition, is often objectively difficult to be proved. As correctly noted the

Supreme Court of the Republic of Poland in its Decision of 26 November, 2004, I CK 300/04, it is connected, among others, with the variety and intensity of the effects of an unfair competition act, which may not be always identified and evaluated; in addition, they are poorly palpable, as they concern the reaction of a wide range of clientele, reasons for decrease in interest in the goods, the costs required to restore the market position of the victim, expanded advertisements and damaged, if not undermined reputation of the carried out business and other interests of the suffered entrepreneur, exposed to the risk of their violation [23].

In this regard, in some countries plaintiffs are provided with the possibility to recover the corresponding losses even if their amount is not proved. For example according to French unfair competition case law the harm necessarily stems from the breach of the competitive balance [24, p. 229]. This approach is reflected, in particular, in the judgment of the Commercial Tribunal of Paris of July 26, 2011 on the "Referencement.com v. Zlio". In this case even though the quantum of the damage to the image of the plaintiff caused by dissemination by the defendant of discrediting statements had not been proven, the Tribunal evaluated it in the sum of 10 thousand euros, stating that it was inevitably engendered by the mentioned acts of unfair competition [25]. According to Article 13 of the Commercial torts Law of Israel of 1999 (under this law unfair competition pertains to commercial torts) the court may, at the plaintiff's request, award damages for every wrong, without proof of actual damage, in an amount of not more than NIS 100 thousand [26]. In par. 5 of Article 393 of the Civil Code of the Russian Federation (Part 1) of 30 November, 1994 it is stated that if the amount of the losses caused by the failure or improper performance of the obligation cannot be determined with a reasonable degree of certainty, the amount of losses to be recovered shall be determined by the court taking into account all the circumstances of the case based on the principles of fairness and proportionality of the liability to the violation of the obligation [27].

To our mind, such approaches to the question under consideration better, than the national one, serve the full realization of the principle of the restoration of the violated rights and enhance the effectiveness of combating unfair competition by civil law means.

On the basis of the analyses carried out in this article it is proposed:

- to adopt the Regulation of the Plenum of the Supreme Court of the Republic on the recognition and enforcement in the Republic of Belarus of foreign judgments and arbitration awards on punitive damages;
- to amend the legislation of the Republic of Belarus for the purpose of elimination of the impossibility of compensation of the losses caused by unfair competition in cases when their exact amount is unproven.

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