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BELARUS – LATVIA: ACHIEVEMENTS AND DIFFICULTIES IN BILATERAL COOPERATION (1992–2017)

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The present article is devoted to the analysis of the Belarusian-Latvian relations during the period after the two countries gained independence. The author came to the conclusion that the main obstacle to expanding bilateral cooperation is the opposite of geopolitical aspirations of Minsk and Riga and, as a consequence, a different attitude of the neighbouring countries to the problem of human rights and historical policy. It is unlikely that the existing disagreements can be eliminated in the coming years. However, such advantages as the geographic proximity of the two countries, the cultural and historical proximity of the Belarusians and Latvians are a favourable factor for establishing effective interaction in the economic sphere, contacts at the level of regions and cities. A great capacity for cooperation exists in the Belarusian-Latvian border area. The article contains an attempt to define "points of growth" in bilateral relations, as well as to identify problems that can be eliminated without serious financial costs.

Key words: Belarusian-Latvian relations; Belarusian and Latvian foreign policy; diaspora; Euroregions; twin cities; small border movement.

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БЕЛАРУСЬ – ЛАТВИЯ: ДОСТИЖЕНИЯ И ПРОБЛЕМЫ ДВУСТОРОННЕГО СОТРУДНИЧЕСТВА (1992–2017)

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Посвящена анализу белорусско-латвийских отношений на протяжении периода после обретения двумя странами независимости. Сделан вывод о том, что главным препятствием для расширения двустороннего сотрудничества являются серьезные различия в геополитических устремлениях Минска и Риги и, как следствие, различное отношение стран к проблеме прав человека и исторической политике. Отмечено, что имеющиеся разногласия вряд ли могут быть устранены в ближайшие годы, однако такие преимущества, как географическое соседство двух стран, культурная и историческая близость белорусов и латвийцев, служат благоприятными факторами для налаживания эффективного взаимодействия в экономической сфере. Предпринимается попытка определить точки роста в двусторонних отношениях, а также выявить проблемы, которые могут быть устранены без серьезных финансовых вложений.

Ключевые слова: белорусско-латвийские отношения; внешняя политика Беларуси и Латвии; диаспора; еврорегионы; города-партнеры; малое приграничное движение.

If we try to formulate the most general characteristics of the interstate relations between Belarus and Latvia after the establishment of diplomatic relations (7 April 1992), it can be concluded that the quality and level of cooperation between the countries did not fully correspond to the existing capacity for cooperation. The countries with a common border (about 193 kilometers), cultural and historical community, did not demonstrate stable contacts in the most important areas.

The discrepancy between reality and opportunity was especially evident at the political level. This can be confirmed by a number of criteria and data, including the intensity of visits at the high level, the number and level of signed bilateral agreements. Visits to Latvia by the Head of the Belarusian government were paid in 1998, 2001, 2008, 2010 and 2016. In 1994, 1995 and 2009 Belarus accepted the Prime Minister of Latvia. At the same time, the number of Belarusian-Latvian high-level visits was seriously inferior to the intensity of the exchange between official delegations of Latvia with neighbouring and some other countries. Especially if we note that the last (it was also the first) meeting between the Heads of the two states was held in September 1997 on the margins of the multilateral summit in Vilnius. The scale of the legal base within the Belarusian-Latvian cooperation, which consists of 27 interstate and intergovernmental agreements and 16 interagency agreements, is also not impressive [1].

Intensification of contacts at the level of ministers and deputy ministers of foreign affairs of Belarus and Latvia starting from 2014 may be stated as a positive trend. Thus, the Belarusian Minister V. Makei visited Riga (February 2014, July 2016). In 2015 the Foreign Ministers of Belarus and Latvia met again in Minsk and Riga. In July 2017 a visit to Minsk was made by the Latvian Minister E. Rinkēvičs.

Consultations between ministries of foreign affairs at the level of deputy ministers and heads of structural divisions have become regular. Last Belarusian-Latvian political consultations took place in Riga on 10 April 2017 and touched upon such important topics as pan-European cooperation and the Eastern Partnership, security and interaction within the framework of international organizations, conjugation of European and Eurasian integrations, etc. The Belarusian side was represented at the event by the Deputy Foreign Minister of Belarus Oleg Kravchenko, and Latvian – by the State Secretary of the Ministry Andrejs Pildegovičs.

During visits to neighbouring countries, diplomats often plan events that go beyond the official program. Thus, during the visit to Belarus (27 September 2016), the State Secretary of the Ministry of Foreign Affairs of the Republic of Latvia A. Pildegovičs delivered a lecture to the students of the faculty of international relations of Belarusian State University, where he gave an objective and frank assessment of the internal situation in his country, analysed the state and prospects of the Latvian-Belarusian relations. During the visit of the Minister E. Rinkēvičs (July 2017), presentation of the "History of Latvia" written in Belarusian by the Latvian researchers took place [2].

The analysis of political relations as a whole emphasizes the relevance of posed questions: why the capacity of the two neighbouring countries, close to each other not only geographically, is realized only partially? What objective and subjective obstacles significantly impeded cooperation between the two states and nations?

The opposite of geopolitical aspirations. An important or even the most important reason for the inhibition of cooperation between the two neighbouring countries was their opposite geopolitical aspirations. Geopolitics dictated the choice of not only the allies and the political and economic model of the state, but also of the value orientations that affect perception of the view of the world. The Latvian society in the late 1980s took a firm course to restore the country's inde-

pendence and early renunciation of the Soviet legacy. The Latvian state and most of its society saw themselves exclusively as part of the military-political and economic integration groups of the West. Already in December 1991 Latvia joined the North Atlantic Cooperation Council. On 2 April 2004, the Latvian flag as of the full member of NATO appeared on the flagstaff at the headquarters of the Organization in Brussels.

In turn, Belarus, after becoming an independent state, widely used the Soviet experience accumulated in the previous decades in the new political conditions. Russia invariably remained its main ally, with which, according to the agreements concluded in December 1999, construction of the Union State began. Minsk actively participated in all the integration processes led by Moscow. On the contrary, relations between Latvia and Russia did not go beyond the cool ones. Under the circumstances, the nature of the Belarusian-Latvian relations was closely dependent on cooperation on the lines West – Russia, Latvia – Russia, Belarus – Russia.

A different attitude to the problem of human rights and historical policy. The second important factor – a different approach to the problem of human rights, to the evaluation of historical events and facts – follows from the first circumstance explaining why the political relations between Minsk and Riga did not demonstrate successful dynamics. Opposite assessments of the past were often declared in the two states. This, above all, related to the events of the XX–XXI centuries (World War II, the postwar development of the Soviet republics, the role of the United States in world politics, etc.).

An official interpretation by Latvian authorities of the events of the Second World War provoked the most acute rejection from the part of the leadership of Belarus. Thus, in March 1998, the Belarusian side officially condemned the heroization of the Latvian SS Legion [3, p. 149–150]. In 2012 the Belarusian side represented by the Ministry of Foreign Affairs expressed an official outrage about the appearance in the center of the Latvian city of Bauska of a monument to the Latvian SS Legion. The official representative of the Belarusian Foreign Ministry A. Savinykh called this fact "an encroachment on the common European historical values" [4].

The problem of violation of the rights of the Russian-speaking population in Latvia and Estonia was the second most important topic of discord in bilateral relations. In particular, assessment of the situation with the Russian language in the neighbouring country, as well as with the so-called "non-citizens" was contained in the statements of the Belarusian Foreign Ministry in April 1994 and March 1998. In 2013, the Belarusian Foreign Ministry devoted the section of the report "Human Rights Violations in Certain Countries in 2012" to Latvia [5]. In particular, two full pages were allocated to Latvia in a 49-page report. The approaches of the Belarusian Foreign Ministry expressed in the report caused a sharp rejection of the opponents. Thus, the Minister of Foreign Affairs of Latvia E. Rinkēvičs noted that Belarus tries to hide its own problems with democracy with its statements on human rights violations in Latvia and a number of other countries [6].

The claims of the official Riga to the Belarusian government were well known. Some of them got scandalous fame. So, the Minister of Defense of Latvia in May 2001 stated that Belarus could act as "the probable enemy of Latvia". The statement of the high-ranking politician of the neighbouring country caused an immediate protest from the Belarusian Foreign Ministry [7, p. 125]. In 2005 the Ministry of Foreign Affairs of Latvia included assistance to democratization of Belarus into the list of the foreign policy priorities of the Latvian state. In March 2006, the Latvian Foreign Minister A. Pabriks at the meeting of the EU Council for General Affairs and External Relations stated that the European Union should not allow access both to the highest officials of Belarus, and also to those journalists who support the Belarusian authorities. On 15 May 2006, he urged the leaders of Latvian universities to consider the possibility of accepting Belarusian students who do not have an opportunity to study in their country because of political convictions.

In 2011, Latvia condemned the conviction of the Belarusian human rights defender A. Bialiatski, and in 2012 called on Belarus to ensure respect for human rights and conduct democratic elections, as well as to release political prisoners. Diplomatic scandals also happened in the history of relations between the two countries.

At the same time, it should be noted that after the economic crisis in Latvia, which erupted as a result of global economic shocks in 2008, the rhetoric of the official Riga towards Minsk has become more moderate. Pragmatism of the economy required expanding cooperation with Belarus and, as a result, a more constructive dialogue. This trend has not gone unnoticed in the European structures. Thus, the European Council on Foreign Policy in its report on the "Rule of Law, Democracy and Human Rights in the Eastern Neighbourhood" (2013) attributed Latvia, together with Slovakia, to "sloths" among the EU countries in liberalization of the Belarusian policy. The most "active" member states in this direction were Germany, Poland and Sweden [8].

The annual report of the Minister of Foreign Affairs on the results achieved and forthcoming work in the sphere of the country's foreign policy and on the issues of the European Union, published on the website of the Ministry of Foreign Affairs, gives a compact idea of the Belarusian vector of Latvian foreign policy. In particular, almost half of the page is allocated to Belarus in a 37-page document of the Minister for 2016, which is slightly more than in 2015. An active support by the official Riga of "further deepening of relations between

the EU and Belarus" within the framework of the policy of critical interaction with Belarus (implementation of a 29-stage plan) is noted in the report. It is emphasized that as a result of this approach, in February 2016 most of the EU sanctions against Belarus were cancelled. Latvian MFA called border control and supervision, education, science and culture as the most acute spheres in bilateral cooperation between Latvia and Belarus.

Along with the declaration of certain shifts in bilateral relations, Latvia, through its foreign policy department, as in previous years, continued to urge Belarus to undertake further efforts to uphold the norms of democracy and human rights. In order to move along these lines in 2017, Latvia did not commit itself to continue supporting the reform process by transferring Belarus' experience in organizing democratic elections and introducing Bologna standards into the Belarusian higher education [9].

The above-mentioned approaches of the official authorities of Belarus and Latvia to bilateral ties allow us to conclude that in the short term one should not expect a significant improvement in political interaction. However, this thesis does not in any way mean that the Belarusian-Latvian cooperation has reached its limit. There are many areas of interaction with good prospects for success. This success, in turn, can favourably influence the overall state of interstate relations.

Factors that positively influence the interaction between Belarus and Latvia. As noted above, mutual economic interest should be attributed primarily to factors contributing to the strengthening of bilateral relations. One of the most important areas of cooperation between Belarus and Latvia has been and remains the transport and transit sphere. Both countries are interested in optimal and guaranteed export channels to third countries through the seaports of Latvia. This circumstance acquired special relevance for the Baltic country in conditions of the Russian cargo traffic reduction.

Within the framework of the Belarusian-Latvian intergovernmental commission on economic and scientific-technical cooperation, a working group on transport has been established. In addition, meetings of the Belarusian-Latvian Joint Commission on the International Road Transport are held annually (the last meeting was held in May 2016 in Minsk).

Traditionally, Belarusian export cargoes rank second in the total volume of rail transport in Latvia. In 2014, 6.2 million tons of Belarusian goods were transported. In 2015, the volume of traffic increased 1.5 times (10 million tons), and the total cargo traffic between Latvia and Belarus reached 30.8 million tons. In 2016, 15.6 million tons of cargo (including 5.4 million tons of oil products, which accounted for 79 % of all oil cargo transported by Latvian rails) were transported by rail from Belarus to Latvia. Belarusian petroleum products, timber, chemical goods, metal products, food products, and automotive equipment are transported through the Latvian seaports.

The two countries, together with Estonia and Ukraine, are implementing the project of the container block-train ZUBR, connecting the ports of the Baltic and Black Seas along the regular route Tallinn – Riga – Minsk – Odessa / Ilyichevsk. Operators of the train are: BTLC State Enterprise (Belarus), EVR Cargo (Estonia), LDZ Cargo Logistics (Latvia), Center of Transport Service "Liski" (CTS "Liski") (Ukraine), Calea Ferată din Moldova (State Enterprise "Railway of Moldova"). The train includes wagons with universal and specialized containers, including refrigerated ones. The dispatch and arrival of containers on fitting platforms using ZUBR train technology is possible from all stations of the Belarusian Railways (in 2015 more than 3.4 thousand containers were transported) [10].

The opening of the Representative Office of the Latvian Railway in Minsk (January 2017) was an indicator of the interest in intensifying cooperation in the field of rail transportation. Una Vitola became the head of the representative office of the Latvian Railway in Minsk. She previously was the representative of the Latvian Ministry of Transport in Russia [11].

In the long term, involvement of Belarus into the large-scale Chinese project "One Belt – One Road" will help to increase the attractiveness and expand opportunities for Belarusian-Latvian cooperation in the field of transit.

A set of relations connected to the so-called "low politics", i. e. relations at the regional and municipal levels, cooperation in the sphere of culture, tourism, interaction of non-governmental organizations of the two states can be included into the list of favourable factors for the development of Belarusian-Latvian cooperation.

Regional links. As an inheritance from the USSR, neighbouring states received such an effective form of cooperation as partnership relations between cities and regions. Obviously, these ties were revived in new conditions and in a new format. The interest in comprehensive development of districts and cities inevitably led far-sighted leaders of the local government to search for new resources, and hence – for potentially useful partners in neighbouring countries. Thus, by the mid-2000s twin townships were established by Minsk and Riga, Vitebsk and Daugavpils, Gomel and Liepāja, Baranovichi and Jelgava, Lida and Jēkabpils.

Other cities and regions of Belarus and Latvia actively interacted based on both pragmatic interests and longstanding human neighbourly contacts.

By 2016, about 60 agreements on twinning and partnership relations were signed. Following the example of other countries, the practice of holding general meetings of partner cities was developed. The meetings were held: Novopolotsk (May 2012), Daugavpils (May 2013). The third meeting was held in Orsha in

April 2015. 31 cities of Belarus (71 representatives of local authorities and business circles) and 21 cities of Latvia (63 heads of city and district services, as well as business) took part in it.

The topic "Implementation of mutual interests aimed at improving the quality of life and well-being of the population" was defined as the main problem for discussion. Ambassadors of both countries M. Popkovs and M. Dolgopolova, heads of the Association of Local Authorities and Local Governments of Latvia, deputy chairmen of the regional executive committees of the Belarusian regions attended and spoke at the meeting in Orsha. In addition to the general meetings, the discussions were held within the framework of three sections: "Trade and economic cooperation in the field of the industry", "Implementation of regional partnership projects as a factor of sustainable development and interstate cooperation", "Implementation of projects in education, youth policy and cultural cooperation". A lot of attention was paid to the development of business infrastructure and business contacts.

Representatives of cities and regions of the two countries repeatedly stressed their interest in mutual expansion of contacts, stressed the need to share their work experience. For example, the head of the Valmiera regional Duma, in particular, noted that in Orsha and the Orsha district, as well as in the whole country, "the correct social policy aimed at ensuring the well-being of people, as well as securing young people in local enterprises" is carried out.

The Vitebsk and Latgale regions demonstrated the greatest number of examples of cooperation. During the past 2 years the partner cities of these regions were able to achieve visible results. This was demonstrated in Orsha, where 3 new twinning agreements were signed: Chashniki – Viļaka, Dubrovno – Dagda, Glubokoe – Viļāni. The next meeting of the cities of Belarus and Latvia is planned for 2017 [12].

Depending on the size of cities, specific forms of interaction were also used. As an example of successful cooperation of small towns, we can cite the cooperation of Verkhnedvinsk and Krāslava. The regional media widely covers meetings of the leadership of local authorities of the two countries. So, in September 2015 the delegation of Verkhnedvinsk district headed by the chairman of the district executive committee Igor Markovich took part in the celebration of the Day of Krāslava. Belarusians were not only guests, but also active participants of celebratory events. Among the 19 teams from Latvia, Lithuania and Belarus, the Verkhnedvinsk Cheese and Butter Making Plant team performed at streetball competitions. Verkhnedvinsk sportsmen conducted 9 games, 5 of which they won. The team performed in the uniform with the logo of its enterprise. Flags, booklets and other factory promotional attributes were distributed among the participants of the festival.

Verkhnedvinsk residents also did not miss the opportunity to discuss with their Latvian partners the prospects for cooperation in various fields. Participation of the President of Latvia Raimonds Vējonis in the event gave the weight to international contacts [13].

Cooperation between the capital cities is the most impressive. The start of a new period of cooperation between Riga and Minsk was given by the Agreement between the Riga City Council and the Minsk City Executive Committee signed on 29 March 1999. Practice itself prompted the most real forms of cooperation. So, in October 2014 the Days of Minsk were held in Riga, and in May 2016 the Days of Riga – in Minsk. In April 2015 the leaders of the city authorities A. Shorets and N. Ushakov signed a cooperation programme between the Minsk City Executive Committee and the Riga City Council for 2015–2017. According to the signed document, the Latvian and Belarusian capitals have committed to actively develop cooperation in the field of tourism, monument protection, communal services, social policy and medicine, as well as in the field of environmental protection. The Mayor of the Belarusian capital A. Shorets noted that the tourist experience of Riga, as well as the inflow of investments from the neighbouring country is especially interesting for Minsk. The head of Minsk also pointed out the interest of the city authorities in creation and functioning of private kindergartens, development of the historic center of Riga and parking space of the city as a whole [14; 15].

A new and very promising step forward was the success of the joint bid of Minsk and Riga to host the World Hockey Championship in 2021. Initially, Belarus planned to fight for the forum independently, but after the visit of the Latvian delegation to Minsk in November 2016 it was decided to join forces. It became known that the two countries have submitted a joint application for the Ice Hockey World Championship – 2021 on 19 January 2017. Voting for the choice of the hosts of the World Championship – 2021 was held on 19 May 2017 in Cologne at the annual congress of the International Ice Hockey Federation. The bid of Minsk and Riga won against Finland's Tampere and Helsinki, which also claimed to host the tournament. The day before, on 18 May the city-applicants held presentations of their applications. During the general presentation Nile Ushakov promised the guests of the championship democratic prices. For example, the cost of beer is planned to be determined within 2.20 euros for a glass in Riga, and in Minsk – even cheaper. The head of the executive power of Minsk, Andrei Shorets, continued the jocular topic, adding that in the Belarusian capital beer will cost buyers only 1 euro [16].

The parties have repeatedly expressed the hope that preparation and holding of the World Hockey Championship in Belarus and Latvia will intensify the work on creating joint tourism products and routes, improving the automotive infrastructure and roadside

service in order to maximize the use of the tourist potential of the two countries.

Tourism and human contacts. In recent years, bilateral cooperation in the field of tourism has started to expand, primarily in the border areas. In particular, in 2014 2348 organized tourists from Latvia visited the Republic of Belarus, in 2015 – 2337 tourists, in 2016 – already 2967 persons (7.8 % of the total number of tourists outside the CIS). Despite modest figures in terms of the number of organized tourists who visited Belarus in 2016, Latvia ceded only to Russia, Ukraine, Poland and Lithuania. It should be noted that in 2016, 216 tourists from Latvia rested in Belarusian agricultural homesteads (a rapidly developing sector of Belarusian tourism services). As for the Belarusian citizens, the statistics of tourist trips to Latvia are as follows: 2014 – 8409 tourists, 2015 – 5463 tourists, 2016 – 3377 tourists [17, p. 27].

A much bigger number of citizens of Belarus and Latvia visited neighbouring countries for reasons other than tourism (business and private visits, small border traffic, etc.). From 2010 to 2015, Belarus was visited by 33 683 310 foreigners, including from Ukraine – 10 278 720, Poland – 3 224 927, Lithuania – 6 099 167, Moldova – 1 432 109, Latvia – 909 570. Thus, in terms of the number of visits to Belarus, Latvian citizens traditionally occupied the fifth place (without accounting Russian citizens) [18].

Despite the geographical proximity of the countries, achievements in the sphere of tourism cannot be called impressive. Although, it should be noted that after the World Hockey Championship in Minsk in 2014, the situation has begun to change for the better. In August 2016 an accord was reached to conclude the agreement on cooperation and partnership between the Information and Tourist Center "Minsk" and the Riga Bureau for the Development of Tourism "Live Riga".

Within the framework of the promotion of Belarusian tourism services abroad, two photo exhibitions were presented in Latvia – "Belarus Today" by BelTA and "Nesvizh is the heritage of the world culture", prepared by the administration of the National Historical and Cultural Museum-Reserve "Nesvizh". A presentation of the possibilities of the National Park "Belovezhskaya Pushcha" was also held with the participation of the management and employees of the park.

In our opinion, the development of event tourism has serious prospects. Visit by the citizens of Latvia of the mentioned above World Hockey Championship in Minsk can be given as a striking example.

Representatives of participating teams (including Latvia), the leadership of the International Ice Hockey Federation, high guests, as well as the fans noted the high level of organization of the Ice Hockey World Championship in Minsk. Games of the World Championship were broadcasted in 120 countries of the world, more than 1 billion spectators watched the matches. More than 80 thousand foreigners from 46 countries visited the Championship, including more than 31 thousand foreign citizens from countries, with which Belarus has visa relations. Taking advantage of the right of visa-free entry to the Championship, thousands of Latvians visited Belarus.

Diaspora. Presence of the Belarusian and, respectively, Latvian diaspora in the neighbouring countries serves an effective link in relations between the two countries. Belarusians of Latvia is the second largest national minority in the country (3.4 percent of the population in early 2016 or 66 thousand people). 2748 Belarusians of Latvia have the citizenship of the Republic of Belarus.

According to the 2009 census, 1549 Latvians by nationality resided in the Republic of Belarus, which was significantly less than according to the 1999 census (2239 people).

The main reason for the existence of a significant Belarusian diaspora in Latvia was a large-scale migration of the rural population to the nearest industrial centers of Latvia throughout the post-war period. Hundreds of boys and girls after completing the school replenished the labour resources of Riga, Daugavpils, other cities of the neighbouring republic. The logic of young Belarusians was well understood then and now – they wanted higher wages and better living conditions. The collapse of the USSR, establishment of new state borders have become a serious drama for many of our fellow countrymen in Latvia.

Currently, there are Belarusian public organizations functioning in Latvia, including "Svitanak" and "Pramen" (Riga), "Uzdym" (Daugavpils), "Spadchyna" (Ventspils), "Zlata" and "Lyanok" (Jelgava), "Mara" (Liepāja), "Susor'e" (Rēzekne), "Spatkanne" (Jēkabpils), "Viaselka" (Kraslava), etc. The main goal of the organizations is popularization of the Belarusian culture, language and traditions, preservation of the national identity of the Belarusians in Latvia.

Some Belarusian organizations are part of the Union of Belarusians of Latvia. Since 1994, the Belarusian-language newspaper "Pramen" has been published by the Union of Belarusians of Latvia. In 2015 the Belarusian cultural and educational society "Uzdym" (Daugavpils) began publishing the eponymous newspaper.

The Republic of Belarus pays special attention to the development and support of the Riga's main Belarusian school, which since 2011 is named after Y. Kupala. In 2013 a memorial plaque devoted to Y. Kupala made in Belarus was installed on the school building. A museum exposition dedicated to the life and work of the great Belarusian poet, playwright and publicist was opened in the school. In January 2015 the school, where ethnic Belarusians and children of other nationalities are studying, celebrated its 20th anniversary.

The Union of Artists Belarusians of the Baltic States "Mayu Gonar" is actively functioning in Latvia, which

conducts its solo exhibitions, and also participates in various exhibition events.

The Belarusian Information Center operates in the Academic Library of the University of Latvia, which provides literature, legal and tourist information about Belarus, organizes cultural events.

The presence of Latvians in Belarus is less noticeable. Since 1996 the public association "Union of Latvians of the Vitebsk region "Daugava"" (the chairman – Novikova Sandra Karlovna) has been functioning in Belarus. The society operates the Latvian Sunday School, which trains children from 6 to 16 years. The Latvian language, culture and history of Latvia are taught at the school. There are also music and floristic classes functioning for schoolchildren.

Achievements and problems of the cross-border cooperation. Historically, the most active contacts are maintained between the border areas. Belarusian-Latvian borderland is not an exception.

Marked areas have similar and specific characteristics. So, the local authorities of the regions and municipalities of the neighbouring countries have different levels of independence: in Latvia there are legislatively stipulated large powers of local self-government bodies, in Belarus there is a more centralized management system – the "power vertical".

Both the northern regions of Belarus and the southern regions of Latvia have experienced a serious population decline in recent decades. Thus, at the beginning of 2016 the population of the Verkhnedvinsk region was a little over 22 thousand people. This is much less than in 1996 (32 074 persons) and even closer to today's 2009 (24 974) [19].

A similar situation happened in the neighbouring Krāslava region of Latvia. In 2017 the population of the region numbered 14 963 inhabitants. This is significantly less than it was in 2014 (16 291) [20].

The issue of population reduction worries not only the power structures of both states, but also ordinary citizens. With great concern they are asking about the future of their native land: who will live and work in the borderland in 10–20–30 years?

It is widely known that the most effective measure for the development of any territory (including the border area), for the preservation and expansion of the population is the creation of attractive jobs, and therefore, new efficient and profitable industries, service enterprises, tourist facilities.

In this vein, one should support optimism of authors of the website of Verkhnedvinsk district executive committee of the Vitebsk region: "The border area provides many opportunities, for example, to attract investment and develop tourism, but no less than responsibilities. Verkhnedvinsk district is the first in Belarus to welcome guests from Latvia and Russia as well as ordinary travelers. The region is the gate to the West and the East" [21].

The advantage of the Belarusian-Latvian border area is a well-developed transport infrastructure. There are rail, road and water arteries connecting Belarus with the Baltic countries and further the Northern Europe. Creation and development of transport corridors is an important condition for the advance development of the territories of the two states.

Another prerequisite for the socio-economic development of the Pridvinsk Belarusian-Latvian borderland is the high quality of the environment, as well as the presence of numerous lakes and rivers, which creates broad opportunities for ecological, agrarian, and event tourism. These advantages are noted by partners.

Euroregion "Ozerny krai". Significant capacity for development of the border is contained in the implementation of such an interstate project as the Euroregion "Ozerny krai". This cross-border structure established in 1998 in the city of Krāslava (Latvia) like all the other 186 Euroregions financed mainly by the European Union is a good example of cooperation between the border areas of neighbouring countries.

Unlike direct contacts between districts, enterprises and institutions of the two countries, the format of the Euroregion envisages the inclusion of more than two neighbouring areas into active cooperation. At present, the Euroregion "Ozerny krai" includes 30 members – 15 municipalities from Latvia, 7 municipalities from Lithuania and 8 administrations from Belarus who jointly implement innovative, creative projects.

With the support of the Norwegian Ministry of Foreign Affairs and local and regional associations of local governments, the first strategy of the Euroregion "Ozerny Krai" for 2001–2007 was developed. The second programme for the period from 2008 to 2013 was supported by the Ministry of Foreign Affairs of the Republic of Latvia. The current Programme for 2014–2020 is financed within the framework of the "3rd step" project of the Latvia – Lithuania – Belarus cross-border cooperation programme [22].

Undoubted achievements in functioning of the Euroregion include a number of jointly implemented initiatives.

Thus, representatives of the three countries took part in the creation of five cross-border tourist routes within the framework of the international project "Fostering Capacity for Tourism Development in Latgale-Utena-Vitebsk Cross Border Region" (BELLA DVINA 2). As a result of the joint work, maps and descriptions of tourist routes were prepared in Latvian, Russian, Lithuanian and English.

In particular, Verkhnedvinsk district received an opportunity to improve the tourist infrastructure in the form of beach arrangement with the installation of sports and gaming equipment. 24 signs "Sightseeing" and 10 information curbstones with the description of objects near the main tourist attractions were

established. A digital camera, printer, stationery goods were purchased for a tourist information point. Representatives of the district took part in five international exhibitions.

In September 2014 the final conference within the project of the European Union "Culinary service improvement in Latgale and Vitebsk regions, based on culinary heritage concept" (BELLA CUISINE) was held in Krāslava. As a result of the project, more than 50 objects of food and national culinary heritage of 6 districts of Vitebsk region joined the European culinary network, which priorities are popularization of culinary achievements, preservation of national traditions and customs. Training seminars, promotional tours with participation of media and other events were held. Information materials "Route of the culinary heritage in Latgale region and Vitebsk region – tourist map" were published.

In April 2013 another international project within the EU "Healthy Lifestyle Formation in Border Regions of Latvia and Belarus" was launched in the Preil Culture Center (Latvia). The project lasted for 1.5 years. During this time, its participants held six competitions of amateur athletes.

An important initiative implemented in the Euroregion "Ozerny Krai" was the "Neighbour's road" project aimed at improving the Latvian – Belarus cross-border accessibility through simplified border crossing points, increasing the level of knowledge of local residents about the procedure for crossing the border using a simplified procedure.

It should be mentioned that over the past years partners have accumulated experience of cooperation, identified bottlenecks in the organization of cross-border cooperation. For example, representatives of the Latvian part of the Euroregion leadership identified obstacles to the border crossing, the high cost of telecommunications between the EU and Belarus, and insufficient connection of the rural population to the Internet.

The sides recognized difficulties with the expansion of tourist flows on the territory of the Euroregion. Belarusian partners saw one of the reasons, that the sphere of tourism did not become a priority for state financing, the lion's share of funds was still received by industry and agriculture of the district and the region.

In connection with the abovementioned, we would like to quote the comment left on the website of Verkhnedvinsk regional newspaper "Dzvinskaya pravda" by one of its readers: "It would be necessary to conduct more work on "Bella Dvina"". Not much an advertised project, but quite interesting one. And if to facilitate visa regime for this project, it would be very good. Unfortunately, this does not depend on us" [23].

Thus, the difficulty of crossing the border between Belarus and the Schengen zone is often referred as the main problem.

Small border movement. It should be noted that an attempt to partially solve the problem of facilitating the state border crossing was made by concluding the Agreement between the Government of the Republic of Belarus and the Government of the Latvian Republic on Facilitation of Mutual Travel by Residents of Border Territories of the Republic of Belarus and the Latvian Republic, which was signed in Riga on 23 August 2010 and entered into force on 1 December 2011.

The border territories included settlements and administrative-territorial units adjacent to the Belarusian-Latvian border in the area up to 30 km. There were altogether about 220 000 people, 65 000 out of whom are residents of the Republic of Belarus (about 0.7 % of the total population of the country and 5.4 % of the population of the Vitebsk region) and 166 000 people of the Latvian Republic (8,3 % of the population of the whole country), who fall under this mechanism. Such a significant difference in the population in favour of Latvia can be explained by entry of Daugavpils into the area, the second most popular city in the country (89 thousand people).

Acceptance of applications for permits began on 1 February 2012, and the issuance of documents – on 1 March.

Residents of the border territories of Belarus and Latvia have the right to visit border territories without visas under special permits issued for a period of one to five years at the Consulate General of Belarus in Daugavpils and the Latvian Consulate in Vitebsk. A fee of 20 euros is set for consideration of the application for a permit. Pensioners, persons with disabilities and children under the age of 18 may be exempted from the fee on the basis of reciprocity.

As early as in 2012, 1.6 thousand people used the simplified mechanism in Belarus (according to the number of issued permits), while 9 500 people received permits in the Republic of Latvia. In 2016, only the Consulate General in Daugavpils issued 8.5 thousand permits to residents of Latvia for small border traffic [24]. Statistics show a significant demand for small border movement among the border population, especially from the Latvian side. But the general figures of visiting the border regions remain insignificant.

In our opinion, a not well-thought-out mechanism for regulating visits to the border area of Belarus by foreign citizens should be noted as a deterrent of mobility and turism. For example, the procedure for issuing a permit to the border area, which is a significant part of Verkhnedvinsk district, is currently quite expensive, it does not involve the use of modern information technologies (online registration and receipt of a pass). Foreigners, including Russian citizens who wish to visit the Verkhnedvinsk region's border area, from 1 January 2017, should apply in writing to the Polotsk Border Detachment (Polotsk District, Farinovo village) or to the border outposts of "Saveiki", "Bigosovo" (Verkhnedvinsk district) [25].

Let's hope that the abovementioned difficulties are of a technical nature and will be quickly overcome.

Life confirms that common borders, shared experiences can unite people, contribute to solving social and economic problems of border regions. With a competent approach, the border status can bring serious dividends.

Thus, it can be stated that cooperation between Belarus and Latvia in the period after the establishment of diplomatic relations developed unevenly. In particular, it concerns interaction in the political sphere. At the same time, the neighbourhood factor of the two countries required that authorities overcome geopolitical contradictions and search for mutually beneficial areas for cooperation. To a large extent, the level of cooperation in recent years has been improved due to the economic interest and the use of the possibilities of "low politics".

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EURASIAN INTEGRATION AT THE CROSSROADS

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The article provides an overview of the process of the Eurasian integration, analysing its origins, problems and current tendencies. The following topics are addressed: the Eurasian integration as a reaction to the European integration and NATO enlargement, the Eurasian integration in the security field, stages of the Eurasian economic integration, the Eurasian Economic Union (EAEU) in the European context, conjugation of the Eurasian Economic Union with the Belt and Road Initiative of China, prospects of the Eurasian integration.

Key words: integration; Eurasia; Republic of Belarus; Russian Federation; Kazakhstan; Armenia; Kyrgyzstan; European Union; Belt and Road Initiative; Customs Union; Collective Security Treaty Organization; NATO enlargement; economic integration.

ЕВРАЗИЙСКАЯ ИНТЕГРАЦИЯ НА ПЕРЕПУТЬЕ

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Рассматривается процесс евразийской интеграции, анализируются его истоки, проблемы и современные тенденции. В центре внимания автора следующие вопросы: евразийская интеграция как реакция на европейскую интеграцию и расширение НАТО, евразийская интеграция в сфере безопасности, стадии евразийской экономической интеграции, Евразийский экономический союз в европейском контексте, сопряжение Евразийского экономического союза с китайской инициативой «пояса и пути», перспективы евразийской интеграции.

Ключевые слова: интеграция; Евразия; Республика Беларусь; Российская Федерация; Казахстан; Армения; Кыргызстан; Европейский союз; инициатива «пояса и пути»; Таможенный союз; расширение НАТО; Организация Договора о коллективной безопасности; экономическая интеграция.

Introduction

In the age of globalization when market forces heralded by the Transnational corporations (TNCs) and Transnational banks (TNBs) conquered every corner of the world economy the nation states are desperately trying to retain some control over the economic situation. And one of the most effective tools they invented was the tool of integration. Thus, one could conclude that globalization had become a foundation for the process of interstate economic integration. For the purposes of this article we would consider "integration" as a process of creating and maintaining close collaboration between previously autonomous parts of the system.

The European States started the integration process in the 1950s and eventually ended up inside the European Union as a product of economic and political

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integration. The North American States found themselves in NAFTA. The States of South-East Asia created ASEAN. By this article we would like to prove a hypothesis that the Eurasian integration was developing both as an answer to the economic needs and as a project to meet Russian Federation security interests.

USSR as a basis for the Eurasian integration

The first model of the Eurasian integration was, in fact, the Russian Empire. It is an interesting subject to determine what was the driving force for the Moscow State's expansion to the East, West and South. Obviously it was not a search for the new markets because there were no large manufactured or agricultural surpluses in the Moscow State that would demand new markets. Most probably the Russians were looking for some geographical borders that would provide for their security needs. Finally, by the end of the XIX century these geographical borders were reached and Russia was properly secured by the Arctic Ocean, the Baltic Sea, the Carpathian Mountains, the Black Sea, the Caucasus Mountains, the Central Asian deserts, the Pamir, the Tian Shan and the Altai Mountains, by the Amur river and the Pacific Ocean.

With the exception of Poland and Finland the borders of the Soviet Union coincided with borders of the Russian Empire. Notwithstanding some difficulties, the Balshevicks managed to reinstate their control over the vast Eurasian space, rugged and sparsely populated. The Soviet centralized administrative economic system became a powerful tool to keep the different regions of the diverse USSR together. There was, of cause, a "socialist market" where main goods were produced in a Soviet republic using components brought from other republics and later distributed all over the country in an orderly manner (planned economy). The centralized economic system allowed to concentrate scarce resources for the fulfillment of main tasks of the national economy. It provided for the mobilization of labour and capital to build the socialist industrial base in mostly rural country.

All main political and economic decisions were taken by the top political leadership in Moscow and scrupulously implemented by the local governments of the Soviet republics. The mobilization potential of such system functioned especially well during war time and allowed Stalin to claim victory over Hitler. The deficiencies of the system's functioning became obvious during peace time. It was not able to satisfy the basic needs of the individuals. The quality of life in the Soviet Union was gradually falling behind the capitalist economies. The Soviet Union did not loose the competition with the West in the arms race, it was defeated in the competition for the consumer goods.

The USSR was dissolved in December 1991 but its heritage remained. And this heritage contained a number of tools useful for the persistence of the Eurasian integration. First of all, there was a huge network of cooperative economic relations tying the Soviet republics and different regions together. Secondly, there was the Russian language that allowed the local elites and businessmen talk to each other without interpretation. Thirdly, there was a cooperation culture that allowed the representatives of different peoples to understand each other, to respect the cultural and religious differences.

It is understandable that after the dissolution of the Soviet Union the local national elites wanted and tried to reestablish and strengthen the national identity of the union republics which became independent states. And, in parallel leaders of some autonomous republics of the USSR and autonomous regions were trying to achieve a national sovereignty for their peoples. The latter lead to numerous identity conflicts, some of them became quite bloody ones. The Nagorno-Karabakh conflict, the South-Ossetian and Abkhasian conflicts, the Chechen conflict, the Nagorno-Badakhshan conflict, the Transnistrian conflict and some others became real security problems for the most of the newly independent states created on the territory of the Soviet Union.

Due to these conflicts the Governments of the NISs became much more inclined to accept the integration ideas. With the exception of the Estonian, Latvian and Lithuanian Governments that chose the European integration embodied in the European Union, the Governments of other former Soviet republics toyed with the ideas of the Eurasian integration.

The Eurasian integration as a reaction to the European integration and NATO enlargement

The traditions of the Eurasian integration lay down by the Russian Empire and the Soviet Union continued in different forms after the USSR dissolution. The governments of the NISs started using the integration tool in order to develop the national economy and to manage the identity conflicts and other security risks.

The leaders of the EU and NATO at first were not ready to accept the East European post-communist States in their fold. US national security adviser Doctor R. Lake invented the Partnership for Peace Program to prevent these states from joining NATO. The idea was to create a format of military cooperation with NATO for those countries that had already had a tool of political cooperation in the form of the North Atlantic Cooperation Council (NACC) since 1991. But this trick did not pay off. The Governments of Poland,

Czech Republic, Hungary, Estonia, Latvia and Lithuania made up their minds and were adamant to join the alliance.

The NATO and EU enlargements were for the most part not the result of a Western strategy but a reaction towards the Eastern European countries' policies. Nevertheless, the enlargements that included all Central and Eastern European States posed a challenge to Russia in a situation when Moscow was trying to figure out a way to establish a security zone around the Russian Federation. In response to the European enlargements and in pursuit of its own security strategy Moscow created in 2002 the Collective Security Treaty Organization (CSTO) and a loose Eurasian Economic Community (EEC) within the Commonwealth of Independent States (CIS).

Eurasian integration in the security field

The Eurasian integration in the security field was mostly driven by Moscow interested in surrounding Russia by friendly armies. This desire intensified after Poland, the Czech Republic, Hungary Estonia, Latvia and Lithuania pushed for NATO membership. The CIS countries, whose armies were equipt with old Soviet weaponry, were also interested in enforced security cooperation. At the beginning of the 1990s most of the former Soviet republics did not have any financial resources to buy new armaments and pay high military salaries. They were in need to repair the Soviet weaponry of their armies, to purchase the munitions, etc. Therefore it was easier for Moscow, which promised to supply the armaments, to get those countries sign the Collective Security Treaty in Tashkent in 1992. Fearing the Moscow diktat the Belarus political leadership refused then to sign the treaty. Nevertheless, it had to do this later on under the insistence of the Belarusian military and security elites.

In the 1990s the Russian Federation experienced enormous economic difficulties while trying to restructure the administrative economic system. It did not have any spare funds to assist the smooth functioning of the Tashkent Treaty.

The situation in security cooperation in the CIS area was somewhat changing at the beginning of the 2000s. The Russian Federation managed to implement most of the structural reforms and its economy started showing the signs of recovery. Faced with internal and external security challenges the Governments of some CIS States were looking for ways and means to strengthen their military capabilities. At this juncture Moscow made a proposal to reorganize the Tashkent Treaty and create on its foundation a new security organization, which would in some way resemble NATO. In September 2002 the needed intergovernmental agreements were signed in Chisinau and after proper ratification processes a new security organization came into existence. The Russian Federation, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan became its founding Member States.

The Moscow's intention was to make the CSTO a full-fledged regional security organization, which would be internationally recognized and used by the United Nations in conflict management. Unfortunately, this never materialized. NATO did not react to the CSTO appeals to establish bilateral ties. The NATO leadership did not want to uphold the CSTO international status by providing it with official recognition. The United Nations duly registered the CSTO as a regional security organization and all but forgot about it.

Today the CSTO remains a valid security organization in the Eurasian area. Under the CSTO umbrella a number of activities take place. Military exercises in different military fields are regularly conducted. The cooperation between CSTO Member States in combating terrorism is developed. The supplies of military equipment and munitions are ensured. Obviously, the Russian Federation plays a pivotal role in the NISs' military cooperation.

Stages of the Eurasian economic integration

If we focus on the Eurasian economic integration after the dissolution of the Soviet Union we could determine some stages of its development. *The first stage* (1991–2001) would be associated with the attempts to preserve the economic ties that existed in the USSR and to alter them by using the CIS institutional mechanisms. *The second stage* (2001–2010) could be associated with the creation and functioning of the EEC. It was established in 2001 as a regional economic organization in order to facilitate the development of economic cooperation between the post-Soviet States and to promote the formation of the Customs Union and the Single Economic Area in the CIS. The EEC included six members (Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan) and three observes (Armenia, Moldova, Ukraine). *The third stage* (2010–2014) was mainly associated with the functioning of the Customs Union of Belarus, Kazakhstan and Russia. And *the forth stage* began in 2015 with the creation of the Eurasian Economic Union (EAEU).

First results of the EAEU functioning were far from what had been expected. The positive economic dynamics that were characteristic of the Custom Union were replaced by the negative economic dynamics during first two years of the EAEU existence. In 2010 the volume of the mutual trade among the Customs Union Member States grew by 29,1 %, and by 33,9 % in 2011. In 2015 the trade between the EAEU Member States

went down by 25,8 % in comparison with 2014. Similar tendencies continued in 2016 [1].

Why was EAEU up for such a disappointing start? There were several objective reasons for that. We will mention just three of them.

Firstly, economic and political sanctions were installed against Russia in 2014 after Kremlin's decision to take over the Crimea. Many investment projects of Western TNCs and TNBs became either frozen or annulled. It meant that for years to come Russia lost access to Western credits and modern technologies. Foreign capital flew out of Russia and some Russian capital followed suit. International credits for economic development became much more expensive for the Russian companies and banks or became altogether unexessible.

Secondly, the EAEU started functioning when the prices for hydrocarbonates in the international markets went drastically down. The price of oil went down at some point below 30 US dollars per barrel while at the beginning of the 2010s the price was well over 100 US dollars. As a result the Russian budget for 2015, which was calculated with a predicted assessment of 50 US dollars per barrel, became unrealistic. This lowered the purchasing power of the Russian Federation market and limited the volume of financial resources that Moscow could of used to support the EAEU project.

Thirdly, the Russian political leadership was sure that the Western sanctions would not be too detrimental for the country's economy, that Russia could live through bad times by using ealier accumulated oil money. But when the price of oil went down the Russian Federation Government was too slow to readjust its economic strategy at such a short notice. Moscow tried to keep mostly unchanged the state appropriations devoted to the modernization of the armed forces and the social funds. In addition, the Russia's budget had to accommodate some new big demands such as maintaining economic stability in the Crimea, supporting the Donbass separatists and waging war in Syria. Under these unforseen circumstances the EAEU project had to loose its priority for Moscow.

When Moscow is not able to devote proper resources to address the EAEU needs the political elites of Armenia, Belarus, Kazakhstan and Kyrgyzstan often choose a strategy of survival on their own. As political scientist from Moscow State Institute of International Relations K. Koktysh puts it: "Old concept of the EAEU died, and there is no new one. The EAEU was designed as a carbon copy of the EU. The dominance of three freedoms was proclaimed: movement of people, products and money. In practice this meant transfer of the resources from state to corporations. This plan did not work. And after the war of sanctions [against Russia] it became evident that the concept is not workable in principle. But the alternative one is yet to be suggested" [2].

EAEU in the European context

Before the Customs Union came into existence in 2010 the Republic of Belarus made an official proposal to the Russian side to jointly work on formation of the common economic area between the Customs Union and the EU. It was understood in Minsk that the Customs Union and the European Union were natural strategic partners in the European continent with non-confrontational economic interests. And no political prejudicies can change this.

Belarus media often underlines that it was a Belarusian idea to form a common economic area from Lisbon to Vladivistok. In all justice I should say that this idea was simultaneously developed in Minsk and Moscow. Vladimir Putin elaborated on this idea for the first time in 2010 in his interview to German newspaper "Süddeutsche Zeitung". In his article "New Integration Project for Eurasia – the Future that is Born Today" V. Putin wrote: "Economically logical and balanced system of partnership of Eurasian Union and EU can create real conditions for the changes in geopolitical and geoeconomic configuration of the entire continent and would have undoubtedly positive global effect" [3]. Before the presidential elections in the Russian Federation in 2012 V. Putin made a proposal: "I again suggest to work for the benefit of creating a harmonic economic community from Lisbon to Vladivistok <…>. Then we will get a common continental market trillions of euros worth" [4]. The official Russian position towards integration of integrations is also reflected in paragraph 56 of the Concept of the Foreign Policy of the Russian Federation signed in February 2013: "Main task for Russia as an undetachable organic part of European civilization in the relationships with the European Union is to move towards creation of a single economic and humanitarian space from the Atlantic to the Pacific Ocean" [5].

While Moscow was hurriedly assembling the EAEU in the beginning of the 2010s it had some geostrategic considerations in mind. Firstly, Moscow leaders assumed that being a head of the EAEU Russia could conduct negotiations with Brussels on a more equal footing, from a stronger geopolitical position. Secondly, Russia would participate in formulating the ground rules of integration of integrations. And finally, being the EAEU leader actively engaged in negotiating a common economic area from Lisbon to Vladivistok with Brussels Russia could become a real global player, whose interests would be taken seriously in Washington and Beijing. But Kremlin's position during the Ukranian crisis of 2013–2017 put on hold all plans in this respect. As professor of Saint Petersburg University N. Mezhevich rightly noted "currently there is no integration of integrations but a struggle of integrations" [6, с. 56].

Nevertheless, the best practices of the European integration could be of great value for the development

of the EAEU. First lesson that EAEU could draw from the EU experience is as follows: most attention should be given to the institutions' building. Only institutional system with proper checks and balancies can ensure smooth and non-discriminative functioning of an integrated body. Second lesson: the best way of conducting the institutions' building is to follow the principle of subsidiarity meaning that most economic and political decisions should be taken at the lowest possible level of power, only the most disputed issues should be dealt with at the supra-national level. Author of this article is in complete agreement with Director of the integration studies of the Eurasian Development Bank E. Vinokurov, who noted that "a conservative approach based on subsidiarity principle should be applied for the development of political aspects of the EAEU" [7]. Third lesson: the creation of supra-national structures should be conducted with taking into account interests of *all* the partners. Fourth lesson: the transfer to the supra-national structures of new powers from the nation states should be made gradually with a thorough respect of the national positions and priorities.

The Eurasian post-Soviet integration that in reality started only with the establishment of the Customs Union lags behind the European integration. This fact has its pluses and minuses. The EAEU can avoid some mistakes of the EU and use its best practices. This is a plus. The EU project is quite successful, many European and non-Europen countries dream of joining the EU. In this situation the EAEU will have to prove once and again that it is no less effective than the EU. And this is a minus.

EAEU in the Asian context

It is well known that one hundred countries voted in the UN General Assembly in 2014 against the Russian annexasion of the Crimea. Moscow actively resists international pressure and the Western sanctions applied as a consequence of the Kremlin's position during the Ukranian crisis of 2013–2017. At this juncture the Russian leaders had to find a powerful ally that could help to withstand the pressure. Right after the introduction of the Western sanctions in 2014 Moscow started to build closer ties with Beijing luring it with some consessions in Central Asia and bilateral relations.

The signing of the EAEU Treaty in May 2014 was assessed in China as an attempt of Moscow to shelter its interests in the EAEU Member States against foreign interference. In the light of Moscow's refusal to creat a Free Trade Zone (FTZ) in the Shanghai Cooperation Organization (SCO) Beijing viewed the EAEU creation as a part of the Russian policy to limit the Chinese influence in Central Asia and in the markets of other EAEU Member States.

The signing of the EAEU Treaty coinsided with the intensification of the Western policy to contain the Chinese growth by using economic megapartnerships. In 2013 negotiations started on formation of the Trans-Atlantic Trade and Investment Partnership (TTIP), which would create a common economic area between the USA and the EU, and on the EU – Japan FTZ. In 2016 an agreement on creation of the Trans-Pacific Partnership (TPP) was signed by 12 countries of Asia-Pacific Region, excluding China. All these events were rightfully considered by the Chinese side as an attempt of Washington and Brussels to rewrite the rules of world trade behind the back of the WTO by using new regional integration schemes [8, c. 144–145].

To counter the Western policy of containment Beijing came up with a suggestion to bolster international trade by building extensive connectivity between the states and world regions. It was famous China initiative of economic belt of the silk road that later became known as the Belt and Road Initiative (BRI).

Chinese President Xi Jinping made a proposal in Astana on 7 September 2013 to merge the potentials of China and the SCO to build an economic belt of the silk road from the Pacific to the Atlantic Ocean. Thus, from the very start the BRI and the EAEU looked like competitive initiatives.

In the framework of the BRI the development of six land corridors (belts) and two sea belts were envisaged. From the six land corridors three will pass through the landmass of the current SCO Member States and with India and Pakistan becoming Members five of the six economic corridors will pass through the Organization's territory.

Beijing plans to transfer the BRI ideology and practice into the SCO area. For many years the Chinese have been dissatisfied with the SCO inaction in the field of economic cooperation and decided to put the SCO "economic component" under the BRI umbrella.

To withstand the Western pressure Moscow had to agree on allowing Beijing to enter the EAEU through the back door by signing on 8 May 2015, a Russia – China agreement on conjugation of the BRI and the EAEU. And one could just wander how Moscow could sign the agreement that involves the EAEU vital interests without proper consultations with its Member States.

Prospects of the Eurasian integration

Russia was and remains the main economic force in the EAEU. The fast development of Russia's economy, if it happenes, would undoubtedly greatly contribute to the strengthening of the EAEU. The growing Russian market would ensure the economic growth in other EAEU Member States. The prospect

of easing the Western sanctions at present is deem but this could ultimately happen, if Moscow stops supporting the Donbass separatists and her cooperation will be needed to counter serious global security threats like international terrorism or nuclear proliferation.

There is a good chance that international oil market will soon be stabilized. This will allow Moscow to better plan its economic development and to replenish its emergency funds. Accelerating economic growth in the USA, the EU and some emergent economies would also increase the Russia's chances to overcome the current stagnation.

Beijing would use the conjugation agreement for meddling in the EAEU affairs, especially in Central Asia. In the extreme scenario the SCO and the EAEU could become some decorative elements covering the massive economic offensive in the Eurasian region under the banner of the BRI. In this case not Moscow but Beijing becomes the main driving force of the Eurasian integration.

Conclusion

Unlike European integration the Eurasian integration develops itself not just as a multi-national but also as a multi-civilizational one. It involves multi-confessional Christian countries (Belarus), classic Eurasian countries like Kazakhstan (where young moslem leaders entered governmental program "Boshalak", under which 80 % of them attended universities in the USA and EU States), classic moslem countries with Asian culture like Kyrgyzstan, countries with Caucasian culture with a special sort of Christianity (Armenia), and finally Russia with its endless constellation of different cultures and religions.

Eurasian integration develops itself also as a multipolitical one where each country so far keeps its sovereignity untouched.

The Eurasian integration develops itself with a different speed in different economic spheres and with different speed of implementation of the Eurasian Economic Commission's decisions in the Member States.

Moscow promoted the Eurasian integration in order to maintain control over the post-Soviet states' markets. It would be much more difficult for the Russian economy to compete with Western and Chinese goods in the open markets. Some would say that there are still exist emperial intentions in the Russia's policy in the post-Soviet space. Empirial or not but by forming the EAEU Moscow would like to play a role of regional hegemon in this space and to use the position of a EAEU leader as a tool to bolster its pretence to become a global player.

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BELARUS – JAPAN: NEW OPPORTUNITIES UNDER NEW REGIONAL CONDITIONS

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This article is dedicated to the analyses of the development of the Belarus – Japan relations, traditionally friendly and constructive nature of the interaction is emphasized. The purpose of this article is to assess the effectiveness of bilateral relations, drawing attention to the large potential of cooperation. It is concluded that there is a need to intensify the political dialogue between the two countries, deepen the Belarusian-Japanese relations in the trade, economic and humanitarian spheres, as well as to strengthen international partnership.

Key words: Belarusian-Japanese relations; Belarusian foreign policy; humanitarian and economic cooperation; intensification of political dialogue.

БЕЛАРУСЬ – ЯПОНИЯ: НОВЫЕ ВОЗМОЖНОСТИ В НОВЫХ РЕГИОНАЛЬНЫХ УСЛОВИЯХ

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Анализируется развитие белорусско-японских отношений, подчеркивается традиционно дружественный и конструктивный характер взаимодействия. Дана оценка эффективности двусторонних связей, констатируется большой потенциал сотрудничества. Делается вывод о необходимости интенсификации политического диалога между двумя странами, углубления белорусско-японских взаимоотношений в торгово-экономической и гуманитарной сферах, укрепления международного партнерства.

Ключевые слова: белорусско-японские отношения; внешняя политика Республики Беларусь; гуманитарное и экономическое сотрудничество; интенсификация политического диалога.

2016 was a defining year for the multi-vector foreign policy of Belarus in many respects. Why? First of all, because it was able to convince our international partners to get away from usual stereotypes and to take a look at Belarus in an unbiased manner.

With the eyes of a good neighbour and friend!

Belarus has shown to the world that a sovereign independent state, though not having economic and military potential of superpowers, can do a lot to maintain stability and security in the region against the backdrop of increasing global contradictions.

Firstly, the need for greater regional integration horizons was stated from the rostrum of the UN General Assembly. Briefly, this approach is shared by many countries in the world; it can be described as "integration of integrations" [1].

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Secondly, Minsk as a capital of the state that is considered as a "stability isle" in Europe, absolutely logically has become a discussion platform of the most pressing issues in East-West relations [2]. The effectiveness of the "Norman Four" negotiations confirmed that it was the right choice to make.

Thirdly, Belarus' call to mobilize efforts of the international community in the fight against the threats of terrorism, illegal migration, deteriorating socio-economic situation, found the most active response and support on all continents.

Therefore, it is logical to strengthen the relations between Belarus and BRICS, SCO, ASEAN and Mercosur member countries. It is worth noting the admission of our country to the Association of Caribbean States and to the SCO in 2016 in the status of an observer. Behind it is a pragmatic interest to assist in solving the problem of expanding the presence on the markets of the "far arc" countries.

Thus, the cooperation with the newly established New Development Bank of BRICS has already been developing in order to attract funding for the Chinese-Belarusian Industrial Park projects.

Last year Belarus for the first time took part in the "16 + 1" Summit (the countries of Central and Eastern Europe and China), which took place in Riga. The key goal pursued by our country in the discussion of the summit's agenda was to show to our partners how advantageous it is to use the transit potential of Belarus, including in the implementation of The Silk Road initiatives, to draw their attention to the opportunities offered to the Chinese-Belarusian industrial park investors.

Despite the ongoing disagreement with the EU on specific topics, the dialogue has entered a constructive direction in general. The lifting of the European Union's quantitative restrictions to the import of the Belarusian textile and clothing in 2016, which had been in effect since 1993, was an important practical achievement.

EU countries understand that Belarus intends to accelerate the process of its accession to the WTO.

Belarus' participation in the Eurasian Economic Union (EAEU) besides strengthening trade and economic relations within the Union is also capable of successfully solving tasks of entering third country markets to increase the Belarusian export. The negotiations on trade agreements with China, Israel and Iran are being conducted. In the near future the negotiations with India, Egypt, Republic of Korea, and Singapore will begin. This creates more favourable conditions for growth and diversification of export and attraction of investments.

By virtue of the Union "Five" joint efforts today we already have the possibility to export a wide range of our products to the Vietnamese market duty-free in the framework of the free trade agreement concluded between the EAEU and Vietnam. An important aspect is that products of joint ventures in Vietnam have free access to the markets of other ASEAN member states, including Indonesia, Malaysia, Singapore, Thailand, and the Philippines.

As a result, the strategic task of significantly strengthening our positions in Southeast Asia, including the use of the axis "ASEAN – Japan", is solved. Under the circumstances of current uncertain economic situation in China, worsening territorial disputes in the South China Sea, this direction is one of the most crucial on the world's political arena.

The above-listed circumstances determine our interest to shifting to a qualitatively new level of cooperation with Japan, the Country of the Rising Sun, as the Japanese Prince Regent Shotoku called it more than 1400 years ago [3].

It may seem surprising, but the Belarus – Japan ties have a long history. The first Russian consul in Japan (1858–1865), our fellow native of the village Yakimova Sloboda in Rechitsky district, Joseph Goshkevich, played an important role in formation of these ties. Joseph had a theological education, studied Chinese and Japanese, Eastern philosophy and, natural science during a 10-year-old spiritual mission to China, he was an outstanding orientalist. Goshkevich's major contribution to science is the first Japanese-Russian Dictionary, the treatise "On the roots of the Japanese language".

By the initiative of the Consul in Hakodate on Hokkaido Island there were established Russian language and photography schools, and also Russian alphabet for the Japanese was published. In the consulate Hospital the poor Japanese could obtain medical care for free. The last years of life of the distinguished son of the Belarusian people were spent in his native land in the estate of Maly, near the town of Ostrowiec in the Grodno region. In Ostrowiec and Hokodate you can find J. Goshkevich monuments. There are a street named after him in Minsk, and a bay in the Sea of Japan [4].

In the 20th century, professional associations made a great contribution to the development of the Belarus – Japan social and political ties. Whithin the period of six years (1965–1970), Belarusian trade unions were attended by about 20 Japanese delegations. The head of one of the Japanese delegations H. Suetonsi appreciated the hospitality of the Belarusian people with these words: "We have heard from the Japanese trade unionists who visited Minsk earlier that you welcome warmly here. And it was fully confirmed. We were greeted like brothers. We feel at home in your city" [5].

Fruitful cooperation of sister cities of Minsk and Sendai did not go unnoticed: in 1980 our country was entrusted to compile a program of the Soviet culture days in Japan. The delegation then included representatives of the Belarusian friendship society and a folk group from Grodno. In 1982, Japan hosted the Belarusian culture days, the highlight of which was the performance by "Khoroshki".

Strict adherence to the UN Charter, Universal Declaration of Human Rights, commitment to respect for inviolability of borders and other generally accepted principles have allowed Belarus to win high prestige in the international arena and to establish friendly relations with many countries.

Japan was one of the first (28 December 1991) countries to recognize the Republic of Belarus, and already on 26 January 1992 diplomatic relations between the two states were established. In January 1993, the Japan Embassy started to function in Minsk, and in June 1995 – Belarusian Embassy was opened in the capital of Japan.

An important event, that gave considerable impetus to the development of the Belarus – Japan cooperation in all areas, was the visit by the President, the Head of the National Olympic Committee of the Republic of Belarus Alexander Lukashenko to Japan in February 1998 to attend the Winter Olympics in Nagano.

When speaking about the level of trade and economic cooperation, trade turnover statistics is usually cited. In 1995, it amounted to 21.7 million US dollars, and in 2007 it reached its maximum value of 322.3 million US dollars.

Belarusian export to Japan overcame the mark of 10 million US dollars in 2011 for the first time and in the past five years it has remained at a similar level (in 2016 – 11.9 million US dollars). Except from potash fertilizers, holding the lion's share of our exports to Japan, the Japanese consumers prefer Belarusian laser, optical and measuring instruments, fiberglass and dairy products.

It is obvious that the export potential is not being used fully. I will quote the following figures: in 2016 Lithuania's exports to Japan amounted to 130 million euros, the Czech Republic's – 840 million euros [6]. There is something to reconsider. We obviously do not have high-tech products with high added value, which would find high demand not only on the traditional markets of the CIS, but also in countries belonging to the world's leading producers of such products, including Japan.

Therefore, the priority agenda to create new export-oriented enterprises in Belarus at the expense of our own resources or foreign investments. There already is a similar experience of cooperation with Japan. The peak of business activity of Japanese companies in our country occurred in 2010–2011, when over 37 million US dollars of investments were received from Japan to the Belarusian economy.

It is being planned to start the production of OCTG on JSC "BSW" plant with participation of the Japanese capital, at JSC "Grodno Azot" – of ammonia and carbamide. The creation of an enterprise producing video chips in Belarusian-Japanese Industrial Zone in the Mogilev region is being worked on.

In modern conditions it is not correct to evaluate the effectiveness of international cooperation using only turnover figures, especially with such a country as Japan. The priority direction of work should be the search and use of points of mutual interest in science and technology. We have world-class developments, for example, in health care, which Belarusian and Japanese scientists could jointly develop and promote in the form of commercial products. Combined efforts can bring to life the most ambitious projects, even those that currently seem fantastic.

We would like to note that recently one of the largest deals was worth 900 million US dollars. It was concluded in 2014 between a Japanese e-commerce company "Rakuten", and a resident of High Technologies Park, mobile service Viber, which has Belarusian origin [7].

Over the years, the Belarusian and Japanese people have experienced severe consequences of man-made disasters at nuclear power plants. The experience of medical assistance to those who suffered from deadly radiation and of fight against radioactive contamination was generously shared by the Japanese experts and is successfully used in Belarus.

Within the framework of the "Roots of Grass" program, the Government of Japan finances the supply of equipment to Belarusian medical facilities. 37 projects worth about 3 million US dollars were implemented [8]. In addition, to more than 20 years of government assistance, public associations from various cities of Japan have been supporting Belarus.

Belarus in its turn was on the side of Japan's misfortune after the accident at the NPS "Fukushima-1". Help in overcoming the consequences of the accident was provided both at the state level and through the "people's diplomacy".

President of Belarus Alexander Lukashenko has decided to allocate funds for recreation of the teenagers affected by the disasters in Japan and since 2012 Japanese students have been coming for recreation to the National Children's educational and health center "Zubrenok" [9].

"Such a friendly support of Belarus, both in material and moral shape has played an important role in the process of restoring Japan and reviving the spirit of the Japanese people. Taking the opportunity, Japan expresses its deep gratitude to Belarus for the help and attention", – this entry can be seen on the website of the Embassy of Japan in Belarus [10].

In December 2012, Belarus and Japan concluded an intergovernmental agreement on cooperation in the field of overcoming the consequences of accidents at nuclear power plants. The Delegation of Fukushima has repeatedly visited Gomel, Minsk and other Belarusian cities in order to study the experience of Belarus in the field of radiation safety.

In May 2016, there was jointly laid a cherry alley in the capital's Peoples Friendship Park, confined to the 30th anniversary of the Chernobyl disaster and the 5th anniversary of the "Fukushima-1" accident [11].

Cultural traditions of Belarus and Japan are multifaceted, original and unique. In Japanese and Belarusian cities events that familiarize us with cultural and historic traditions of the Belarusian and Japanese people are often held. Significant events in the cultural life of the Belarusian capital are the "Week of Contemporary Japanese Film", "Japanese Autumn in Belarus" festival. The film "Anohito (choice)", directed by Ichiro Yamamoto received a diploma on 13 November 2015 at the XXII Minsk International Festival "Listapad" in the nomination "For the miracle of faith in cinema, for believing in the miracle of life" [12].

Fans of ballet know Belarusian school well, a bright representative of which is a former soloist of the Belarusian ballet troupe Mikie Watanabe. In March 2013, together with the National Artist of Belarus Valentin Elizariev, Japanese ballerina starred in the "Swan Lake" ballet at the main Bunka Kaigan Theater in Tokyo [13]. In November last year, another Japanese ballerina Miki Suzuki performed Odette-Odile in the same performance, but this time at the Minsk Musical Theater [14].

A number of organizations have been established in Belarus and Japan, including "Belarus – Japan", the "Belarusian Friendship Society", and the "Japanese Association of Friendship and Parliamentary Relations with the Republic of Belarus", which implement cultural programs. In particular, the Belarusian Friendship Society is engaged in organizing Days of Belarusian Culture, exhibitions, "Twin cities" programs, "Recreation and rehabilitation of children from Chernobyl areas". A charitable tour of the musical and theatrical collective "Mandzyusiaka" took place in 1999 with the assistance of the above-mentioned organizations; in October 2011, an exhibition of Japanese culture, traditions and life "Planet Japan" was presented in Gomel; in March 2015, an exhibition "Secrets and fairy tales of Japan" was held in Gomel [15].

A number of joint projects, exchanges, cultural and humanitarian actions have been implemented during almost half-century cooperation between twin cities of Minsk and Sendai. Among the most important ones is the installation of "Friendship clock" and planting of cherry blossom seedlings in Sendai public garden in Minsk; fundraising for the victims of the consequences of the Chernobyl accident organized by the City of Sendai; the transfer of medical equipment and surgical instruments from Japanese partners to Minsk doctors and organization of internship for them in the Sendai clinics.

Despite the geographical distance between Belarus and Japan, the potential for cooperation between the two countries is inexhaustible. We have a mutual aspiration to expand economic, scientific, humanitarian and cultural contacts.

You can certainly say that the dialogue between Belarus and Japan is a dialogue of friends and partners. And there is no reason to doubt the fruitfulness of cooperation.

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THE EASTERN AND SOUTHEASTERN EUROPEAN COUNTRIES IN THE PRE-ELECTION PROGRAMS OF THE KEY GERMAN PARTIES 2017

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The article considers the positions of six main political parties of Germany: CDU/CSU, SPD, FDP, Alliance 90 / The Greens, Left Party, AfD concerning German policy in Eastern and Southeastern Europe declared in their pre-election programs before the German Bundestag elections on 24 September 2017. A special attention is paid to their vision of Germany's further relations with Russia and Turkey, as well as perspectives for a new EU enlargement in the East and Southeast directions. Based on a comparison of the contents of the pre-election programs in 2013 and 2017 the most important changes in the positions of all six parties regarding German interests and foreign policy priorities in the region are identified and characterized.

Key words: German main political parties; pre-election programs; German foreign policy; Eastern and Southeastern Europe; Russia; Turkey; Enlargement of the European Union; Ukraine; Western Balkans countries; migration and visa policy.

ГОСУДАРСТВА ВОСТОЧНОЙ И ЮГО-ВОСТОЧНОЙ ЕВРОПЫ В ПРЕДВЫБОРНЫХ ПРОГРАММАХ ВЕДУЩИХ ПАРТИЙ ФРГ 2017 г.

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Рассмотрены позиции шести основных политических партий Германии – ХДС/ХСС, СДПГ, СвДП, «Союз-90 – Зеленые», партия левых, «Альтернатива для Германии» – в отношении германской политики в Восточной и Юго-Восточной Европе, изложенные в предвыборных программах накануне выборов в бундестаг 24 сентября 2017 г. Особое внимание уделено их видению дальнейших отношений Германии с Россией и Турцией, а также перспектив нового расширения в ЕС в восточном и юго-восточном направлениях. На основе сопоставления содержания предвыборных программ 2013 и 2017 гг. выявлены и охарактеризованы наиболее важные изменения в позициях всех шести партий относительно германских интересов и внешнеполитических приоритетов в регионе.

Ключевые слова: ведущие политические партии ФРГ; предвыборные программы; внешняя политика Германии; Восточная и Юго-Восточная Европа; Россия; Турция; расширение Европейского союза; Украина; западнобалканские государства; миграционная и визовая политика.

The pre-election programs of six main political parties of Germany in 2017 are the most important documents, which study makes it possible to identify some key changes in evaluation of the geopolitical situation in the world by the representatives of the German political elite occurred during four years after the previous elections to the Bundestag in 2013. Based on this it is especially important to reveal these changes

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in their vision of policy towards such important political-geographical region for Germany and the entire EU as the Eastern and Southeastern Europe.

The results of such study will allow not only determining some permanent ideas and stereotypes, which were formed among the German political leadership after the geopolitical shifts in the region after 2014, but also predicting a configuration of the "Eastern Policy" of the next German government. After the EU enlargements in 2004, 2007 and 2013 its focus shifted to Eastern Europe and on the Balkans, where the eastern and southern borders of the union are currently passing. It was there that the Germany's foreign policy activity intersected with the interests of Russia and Turkey, each of them seeks to strengthen its influence in this region.

The most important is a detailed study of the content of the foreign policy chapters in the programs of the Christian Democratic Union / Christian Social Union (CDU/CSU) and the Social Democratic Party (SPD), which are forming a ruling coalition since 2009 and are able to continue a mutual government of Germany after the elections on 24 September 2017.

It is also interesting to analyse changes in the programs of the Free Democratic Party (FDP) and the Alliance 90 / The Greens, which are able to enter the ruling coalition as junior partners of two main parties under some certain conditions. In addition, a vision of the modern world and a place of Germany in the global economy and politics by the voters of Liberals and Greens, who are generally well educated, socially active, enough young and living in large or university cities, could not be ignored by the representatives of the current German political elite.

Approaches presented by the Left Party and the Alternative for Germany (AfD) suggest left (pacifist) and right (isolationist) alternatives to the German foreign policy tradition formed during the early "Bonn Republic", and namely in the first decades after formation of the FRG. Their study seems also expedient concerning that extreme left and extreme right appeals could attract 15–17 % of German voters, who are fully untrusted the federal government and its methods in national and foreign policies. In the poorer eastern part of Germany an aggregate level of support for these two "protest" parties reaches 30 % or more, and it indicates that many serious social problems have not been solved in the eastern lands even 27 years after the German unification.

The governmental program of the ruling ***CDU/CSU*** chaired by Chancellor Angela Merkel "For Germany, where we live well and happily" for 2017–2021 contained the most detailed chapter on foreign policy. This part of the key document of the Christian Democrats was opened with a paragraph, which called "A territorial integrity of Ukraine put under question as a result of Russian aggression" directly next to Germany itself among other challenges and threats to the security of the world. Given all these risks as well as an uncertainty in the further actions of the US-President Donald Trump's administration, the Europeans were appealed to take responsibility for their fate in their own hands, to feel a geostrategic responsibility for peace and freedom, and to help resolve conflicts in neighbouring regions. As an example of this approach, the EU's involvement into solution of the Russian-Ukrainian conflict was named [1, p. 55–56].

About Russia in the new CDU/CSU program was said again in the context of its conflict with Ukraine. The paragraph on Germany's role in ensuring international security called on Russia to adhere to the 2015 Minsk Agreements and continue the dialogue [1, p. 64]. Another more formal mention was concerned German immigrants from Russia and other countries who merged into a modern, diverse German society [1, p. 69].

So insignificant presence of Russia has become one of the most important features of the new program document of the Christian Democrats, who since Chancellor Helmut Kohl's government viewed the German-Russian strategic partnership as an obvious success of its flexible and pragmatic policy towards Russia. In the 2013 program, a separate paragraph "Good neighbourly relations with Russia" was devoted to relations with this country. The Chancellor Angela Merkel's party declared then a readiness to develop bilateral cooperation, although made a reservation that its depth and intensity would be determined by adherence of the Russian government to international standards in the sphere of building a rule-of-law state and maintaining democracy. The Christian Democrats intended to support a new Partnership and Cooperation Agreement between Russia and the EU, which has to replace the PCA, 1994. They promised to strengthen cooperation with Russia in foreign and security policy, including the Baltic Sea region, and also to deepen cooperation with civic associations and continue liberalizing visa laws for Russian entrepreneurs, scientists and students [2, p. 74–75].

An exclusion of Russia from Germany's foreign policy priorities in the new CDU/CSU program was a result of substantial deterioration in bilateral relations after the crisis in Ukraine in late 2013 and early 2014. Nevertheless, the ruling party refrained from mentioning Russia as a potential enemy of Germany declaring only a negative assessment of its actions against Ukraine and appealing to continue a dialogue within the framework of the Minsk agreements. Such balanced approach enabled the next Angela Merkel's government to solve several important foreign policy tasks. Firstly, to retain a role of a key "constructive" speaker in relations with Russia, especially against the background of the new American sanctions. Secondly, to support the Minsk process initiated by Germany and France for a peaceful solution in Ukraine. Thirdly, to

avoid a further curtailment of trade and economic relations with Russia threatened some German companies with the final loss of one of the important markets. Russia's share in the total volume of German exports decreased almost twice – from 3.29 % in 2013 to 1.79 % in 2016, when this country took only 16th place among buyers of German goods and services [3, p. 32; 4, p. 2].

The program stressed once again that a Turkey's membership in the EU is impossible, since this country did not fulfill the conditions necessary for admission. At the same time, the Christian Democrats refrained also from direct criticizing of the President Recep Tayyip Erdoğan's policy expressing only a great concern about development of the situation with human rights in this country, and in particular with freedom of speech. The main ruling party could not do without close interaction with Turkey in the sphere of security [1, p. 58]. This is concerned particularly a settlement of the refugees problem, and this circumstance determined an obvious striving of the CDU/CSU not to aggravate a conflict with the Turkish government.

The migration crisis in Europe and inside Germany in 2015–2016, which led almost the Chancellor Angela Merkel's party to defeat in these elections, predetermined a denial of Christian Democrats even from those obligations regarding a possible membership in the EU that they gave themselves to some countries four years back. The party program of 2013 contained a mention on prospect of including the Western Balkans countries into the EU after fulfilling of all necessary requirements [2, p. 73]. However, in 2017, the ruling party pointed only that Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia were declared as "safe countries of origin", and it would reduce significantly a number of asylum-seekers. It was also stated the same principle should be applied to Algeria, Morocco and Tunisia [1, p. 62]. Thus, the CDU/CSU indicated clearly, where the EU's secure borders pass, as well as that the Union needs currently to address internal problems, rather than accept new members. A possible expansion to the East, as well as the EU Eastern Partnership program were not mentioned either in 2013, or in 2017.

In the governmental program of the ruling ***SPD*** "It's time for greater justice: to secure the future, to strengthen Europe", which could safe a position of foreign minister retained by the SPD since 2013 according to the party quota if the present great coalition continued. This circumstance determined not only more moderate and balanced party's rhetoric towards Russia, but also its considerable attention to all challenges for Germany's foreign policy, including a region of Eastern and Southeastern Europe.

The preamble of the program said Europe, the United States, Russia and China share a common responsibility for peace in the world and for fighting against international terrorism [5, p. 4]. However, it was said further about a need to support the Council of Europe realized very important work towards Russia and Turkey, as well as about an importance of joint efforts with the United States, regardless of their leadership, concerning an uncertainty in the world and topical challenges. Among them were named situations in Syria, Iraq, Libya, Ukraine, relations with Russia, fighting against international terrorism, formation of the future global economic and trade order. At the same time, like their partners in the ruling coalition – the Christian Democrats, the Social Democrats called for understanding that security and peace will depend more on Europeans themselves [5, p. 83–84].

Relations with Russia were considered at the beginning of the paragraph "The policy of detente, dialogue and clear principles as a sign of strength". It was stated that Germany's relations with Russia were burdened by the actions of the Russian government in the east of Ukraine as well as by the violation of international law because of the Crimea annexation, which led to violation of the basic principles of the European order and security. At the same time, the Social Democrats declared that peace and security in Europe are possible only with the participation of Russia. It requires de-escalation, returning to political dialogue and a differentiated application of the sanctions mechanism. The Social Democrats admitted that a process of political settlement regarding Eastern Ukraine realized by their leaders, and namely foreign ministers Frank-Walter Steinmeier (2013–2017) and Sigmar Gabriel (since 2017) could successfully prevent an outbreak of the hot war, but stalled, however the SPD continues to support it. The program stressed that a significant progress in the implementation of the Minsk Agreements would lead to a gradual lifting of sanctions against Russia, and a policy of detente, which is capable to provide a long-term security architecture for entire Europe, should be strengthened further [5, p. 84].

It is characteristic, that the Social Democrats did not repeat in the new program a point from 2013 about "partnership for modernization" in the framework of cooperation with Russia, which provided for not only strengthening of economic ties, but for a political and public dialogue, that could be considered by the present Russian government as an interference in internal affairs. In view of the Donald Trump's presidency, a German mediation within the dialogue between Russia and the USA, promised by the SPD in 2013, became also impossible [6, p. 112–113].

Despite a migration crisis, the Social Democrats declared again the Western Balkans countries could eventually become members of the EU and supported their rapprochement with the union stressing a special attention would be paid to development of democracy and the rule of law in these countries. The SPD condemned strongly massive human rights violations in

Turkey, which contradicted fundamentally a system of European values, and it meant that neither Turkey nor the EU were ready for membership in the near future. The Social Democrats called for support of the democratic forces in Turkey, and also promised to stop negotiations on its accession to the union in case of a death penalty restoration abolished in this country in 2002 within a preparation for the EU membership. The SPD was going to prevent any agitation and voting in Germany on the death penalty return in Turkey in event of a referendum initiated by the Turkish government [5, p. 77–78]. In the 2013 program, this party was ready to support the EU membership not only for the Western Balkans countries, but also for Turkey [6, p. 110]. This change indicated first a growing mistrust of the main SPD voters, who are residents of large industrial cities, to all Middle East countries as a potential source of problems. The German Social Democrats took into account an example of the left parties from neighbouring France, who lost a significant part of the traditional workers' voters due to speculation by the ultra-rights on this problematic topic. The SPD leaders also considered a split among the German voters of Turkish origin, who leaned towards the Social Democrats. Their significant part rejected categorically the President Recep Tayyip Erdoğan's policy.

The pre-election program "Think New Way" of the ***FDP***, which could be a participant of the ruling coalition in case of a significant weakening of the SPD, contained a very detailed foreign policy agenda. It was explained by the fact, that in the coalition governments with participation of the FDP in 1969–1998 and 2009–2013 this party received traditionally a position of the Minister of Foreign Affairs and therefore considered a foreign policy as a sphere of its responsibility.

The paragraph "A clear position towards Russia" contained a demand to the Russian government to put immediately an end to the illegal occupation of the Crimea and the war in Eastern Ukraine. A growing suppression of the opposition and civil society in Russia was also perceived with a great anxiety and condemned. In case of new military escalation, the Free Democrats promised to tighten the sanctions against Russia. They could be also mitigated or canceled in event of significant changes in the Russian government, which could mean, first, a rejection of the policy of President Vladimir Putin, called as interventionist one. At the same time, the Free Democrats did not refuse a dialogue with Russia within the framework of the OSCE, the Russia – NATO Council, and between civil societies of both countries, and in the future, it should lead to resumption of a reliable partnership with Russia. The FDP demanded also a greater cooperation with the EU's eastern neighbours, and namely Ukraine, Moldova and Georgia, signed association agreements within the framework of the European Neighbourhood Policy, aiming to support democratic development and economic transformations in these countries. The Free Democrats endorsed an expansion of the military presence at the forefront of the NATO, and namely in Poland and the Baltic region in the framework of strengthening of the Germany's responsibility for regional security as a European power ("europäische Mittelmacht") [7, p. 54–56].

The party proposed also to stop negotiations on the Turkey's accession to the EU because of the President Recep Tayyip Erdoğan's policy, which did not correspond to the Copenhagen criteria regarding a functioning of the rule of law. However, the Free Democrats called for a continued cooperation with Turkey within the NATO and in those spheres, where both countries had joint interests. It was stressed the EU is in a process of searching for a model with different levels of integration, and it would offer new forms of inclusion into the pan-European structures in the future [7, p. 56]. This approach was of interest not only for Turkey, but also for the Eastern European countries, aspiring into the EU, primarily Ukraine.

In this regard, it is very characteristic, that in comparison with the 2013 program, the Free Democrats did not speak out in 2017 about perspectives for the EU membership both Ukraine and the Western Balkans countries even in the long term, if they fulfill all requirements [8, p. 81]. Against the background of the Brexit and difficult discussions about a future of the union, any promises to include new countries within could alienate a main group of party's voters, which included a middle class with relatively high incomes. For the same reason, the party abandoned its previous commitment to seek an abolition of visas for citizens of Russia, Turkey and other EU neighbours in the east and south in case if all necessary requirements are met. A disappearance of mention on Belarus from the program of 2017 is also very important. Four years ago, the FDP supported the EU sanctions and stated a need to strengthen cooperation with the civil society of Belarus [8, p. 88]. This change was primarily due to significant and internationally recognized efforts of the Belarusian government to resolve the conflict in Ukraine and ensure peace and stability in the whole Eastern Europe. In addition, Minister of Foreign Affairs Guido Westerwelle (2009–2013), who was responsible for the foreign policy party's agenda and evaluated critically the Belarusian policy, left the federal government and leadership of the FDP after its defeat in the 2013 elections.

The pre-election program of ***the Alliance 90 / The Greens*** "The future is made of courage" contained the harshest criticism of the changes, which have occurred in political development of Russia and Turkey after 2013. It is very typical for this party, which has paid traditionally the most attention to observance of human rights and civil liberties in the world. Describing a current situation the Greens pointed that many

states share responsibility for emergence of crises and conflicts. First among them was named Russia, which contributed to a significant increase in international tension because of its illegal annexation of the Crimea, military operations in Eastern Ukraine and brutal military intervention into the Syrian conflict on the side of Bashar al-Assad [9, p. 66].

The Russia's policy under President Vladimir Putin characterized as aggressive and great power was named again the first among international challenges, which changed fundamentally framework conditions for ensuring of the EU security, just in the first paragraph of the chapter devoted to the union as a capable actor of world politics. The Greens took new problems for security of the Eastern Europe countries very seriously and declared that the solution of the conflict in Ukraine could be only political and diplomatic. Therefore, the party supported the Minsk process, but also the targeted EU sanctions against Russia, which were assessed as an effective means of foreign policy [9, p. 75].

The Greens stated mass violations of human rights in Russia, China, Egypt, Turkey, and proposed to introduce a position of referent in all German embassies abroad in this sphere, which should be a permanent topic for bilateral governmental negotiations [9, p. 80]. In addition, it was proposed to create a pan-European news and educational channel with broadcasting in all European languages, especially in Russian and Turkish [9, p. 71]. In the context of increasing NATO effectiveness, the Greens recognized also an importance of dialogue within the framework of the Russia – NATO Council [9, p. 79–80].

The party promised again to integrate all Western Balkans countries into the EU without changing their borders, and to intensify cooperation with public organizations in this region as many as possible. The Greens declared a support to the democratic forces in Turkey and condemned both the national and foreign policies of President Recep Tayyip Erdoğan, speaking at the same time for a peaceful and political decision on the future of the Kurds, stopping an export of German weapons to Turkey, reception of political repression victims, abolishing visas for the Turkish citizens. In the opinion of the Greens, the future of the EU – Turkey customs union, like a membership negotiations, should depend directly on situation with democracy and the rule of law in this country [9, p. 75–77].

The tough criticism towards Russia and Turkey before the 2017 elections contrasted markedly with position of this party in 2013, which included criticism, but promises. Four years ago, the Greens expressed a solidarity with the Russian feminist punk group "Pussy Riot", which was named among human rights activists in China, Iran and Arabian countries. The party declared also a Russian and Chinese support for Bashar al-Assad due to blocking by these two countries all resolutions with strict requirements to the Syrian government in the UN Security Council [10, p. 259–260, 315–316]. However, in 2013 the Greens called to create a new multilateral security architecture with the NATO members, Russia and all Eastern European countries, and promised to achieve a revision of the EU visa policy in order to abolish visas for the citizens of Russia, Turkey, Kosovo and participants of the Eastern Partnership. The support for the EU membership was promised in 2013 not only to the Western Balkans countries, but also to Turkey, if the situation with democracy and human rights would be improved [10, p. 284–285, 314]. Based on this, it could be stated the values of the Greens' leadership and voters have contrasted increasingly with political and ideological shifts not only in Russia and Turkey, but also in many European countries, as well as in the United States, where isolationist and even xenophobic sentiments have intensified.

The pre-election program of ***the Left Party*** "Social. Fair. Peaceful. For all. The future for which we fight" contained traditionally the most radical criticism to all actions of the federal government and called for a complete reconsideration of the Germany's foreign policy priorities. Speaking for a dissolution of the NATO and the EU reform on socialist principles, the Lefts condemned a movement of troops from the EU and NATO to the Russia's borders, the federal government's policy of rearmament, confrontation and sanctions against Russia, admission of the new NATO members, deployment of the German soldiers in Eastern Europe. The party opposed also military maneuvers and plans to deploy weapons systems on the western borders of Russia. The Lefts called a growing confrontation between the NATO members, and namely the US and Russia, expansion of the NATO's sphere of influence to its western borders, including of new countries like Georgia, Ukraine or Macedonia into the alliance, which will strengthen further tension in relations with Russia, as a threat to peace in Europe. Among other menaces, the party called a "hot war" in the center of Europe, and namely in Ukraine, which replaced the "cold war", exchange of sanctions and counter-sanctions between Russia and the EU, verbal and military escalation on both sides. The Lefts advocated also an elimination of whole US and NATO infrastructure in Germany, which is used to deploy against Russia and realize a destructive policy of regime change in general as well as for military interventions [11, p. 8, 12, 93, 100–101].

Like in 2013, the party supported a creation of collective security system with participation of Russia, which goal should be a disarmament [11, p. 101; 12, p. 56]. The radical anti-war position of the Lefts determined their denial of the "war on terror" which Russia leads in Syria, together with the wars of the US and the NATO with participation of Germany in Afghanistan and Iraq [11, p. 94].

Turkish President Recep Tayyip Erdoğan was described as a despot. The Lefts opposed an intensifi-

cation of membership negotiations with the authoritarian regime of Turkey, supported democracy in this country, and demanded an immediate stopping of arms exports and deployment of military factories. They proposed to make every effort for impact on President Recep Tayyip Erdoğan, for example, in framework of discussion about customs union expansion between the EU and Turkey. The Lefts supported also a rejection of assistance for Turkey in resolving of the problem of refugees fleeing to Europe [11, p. 8, 12, 100, 107, 116].

The AfD presented the shortest pre-election program outlining an isolationist vision of the German foreign policy. The party created four years ago called again for abandoning of the euro and stopping assistance to banks of other EU members [13, p. 14–15; 14]. Detente in relations with Russia was called a prerequisite for lasting peace in Europe. The AfD believed that it is in the German interests to include Russia into a common security structure without neglecting the interests of Germany and its allies. The party advocated a termination of the sanctions policy and deepening of economic cooperation with Russia. At the same time, the AfD was the only German party supported the US demand voiced during many years and re-voiced by the Donald Trump's administration about a fair distribution of expenses within the NATO. The party supported also a strengthening of European influence in the alliance and a significant reinforcement of the Bundeswehr including a restoration of compulsory military service. The program stated Turkey does not belong to Europe in cultural terms, and the latest political events in this country showed that Turkey has moved away from Europe and the Western community of values even further. The party rejected a Turkey's accession to the EU and called for an immediate cessation of all membership negotiations. The AfD proposed also to stop the Turkey's membership in the NATO, to withdraw the Bundeswehr units from Incirlik and stop immediately all direct and indirect payments to Turkey under international, multilateral and bilateral agreements. In the chapter on migration, the party opposed the Turkey's membership in the EU once again as well as any easing of visa policies and privileges for its citizens in Germany including related to health insurance. The AfD proposed to break the associated agreement signed between the EEC and Turkey in 1963, as well as the German – Turkish agreement on social insurance signed in 1964 [13, p. 18–19, 29, 62]. All these appeals are intended for the part of the German voters, which do not represent any features of the current Turkey's policy, but are dissatisfied with the Turkish community in Germany having more than 3 million people and quite noticeable in all major German cities.

In conclusion, it is necessary to highlight the following most important aspects and characteristics of the key German parties' positions towards the eastern and southern neighbours of the EU, which are reflected in their pre-election programs:

1. None of them mentioned Belarus in 2017, and it is rather a positive circumstance, because unlike Russia, Turkey or Ukraine, an internal political situation as well as the Belarusian foreign policy does not create for Germany any acute and relevant issues, which need prompt responses or decisions. In the future, it will strengthen a key role of Belarus as a donor of stability in Eastern Europe and a reliable partner for Germany in ensuring stability on the eastern borders of the EU.

2. All four parties: CDU/CSU, SPD, FDP, Alliance 90/The Greens, which are able to join a next governmental coalition, advocated a continuation of the deterrence strategy against Russia, which policy was characterized as interventionist and violating the international law. An improvement of the German – Russian relations was tied with a fulfillment of the EU requirements by the Russian government, and it would allow a resumption of the bilateral dialogue, which necessity and importance were declared by all these parties. Positions of the Left Party and the AfD towards Russia were distinguished by greater restraint and tolerance. However this approach was caused primarily by their own ideological principles, pacifist and isolationist respectively, which were oriented on specific groups of the German voters, but not by their compliance to recognize some Russia's special geopolitical interests in Eastern and Southeastern Europe.

3. Perspectives of inclusion of the countries from the region into the EU as well as an evaluation of the Eastern Partnership effectiveness were not mentioned by any of the parties. They took into account an untimeliness of discussion on this topic in the context of heated disputes in Germany and other EU members about efficiency of the political and legal mechanism, and economic and migration policy of the union on the background of the Brexit and mobilization of the Eurosceptic parties in all countries. For the same reason, the CDU/CSU and the FDP preferred not to return to their 2013 statement on a possible inclusion of the Western Balkans countries into the EU, while the SPD and the Greens pointed to a need for these countries to fulfill a number of important political conditions.

4. A concentration of power in the hands of Turkish President Recep Tayyip Erdoğan after a military coup attempt in Turkey in July 2016 allowed all German parties to deny a right of this country to apply for the EU membership in the near future reflecting a negative attitude of the German voters' majority to such prospect. Nevertheless, an interest of the Chancellor Angela Merkel's party in further cooperation with the Turkish government in the security sphere led to a more restrained position of the CDU/CSU concerning the Recep Tayyip Erdoğan's policy. The Christian Democrats preferred to apply the same flexible situational approach to Turkey as an important international

partner, which Germany used in the 1990s and early 2000s for building relations with Russia.

5. The military and political conflicts on the EU eastern borders, like the migration crisis on the southern borders of the union, renewed a question of the Germany's further policy towards the Eastern and Southeastern European countries. On the eve of the 2013 elections, this direction of the German foreign policy was mentioned only in the most general terms in election programs, but in 2017, each party offered its own vision of the German foreign policy priorities in this region. Such interest was also very characteristic for the first half of the 1990s, when a dangerous and unpredictable situation on the territory of the former USSR and Yugoslavia increased an importance of Eastern and Southeastern Europe for the German foreign policy.

In general, a content of the key German parties' pre-election programs 2017 reflects fully some important changes, which have occurred after 2013 in the strategic vision of the Germany's interests and foreign policy objectives in the region by the German political elite. These renewed priorities will be enshrined in a new coalition agreement, which together with "The White Paper 2016 on the Security Policy and the Bundeswehr Future" ("Weissbuch 2016 zur Sicherheitspolitik und zur Zukunft der Bundeswehr") approved on 13 July 2016 will determine a German foreign policy line in Eastern and Southeastern Europe for the next four years.

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THE EURASIAN SECURITY SYSTEM AND BELARUS: PROBLEMS OF GEOPOLITICAL INTERDEPENDENCE

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This article identifies and considers the most important elements of the interdependence between the foreign policy of the Republic of Belarus and the process of formation and development of the Eurasian security system, including military-strategic cooperation between Belarus and Russia, development of the military-industrial complex, and the efforts of the CSTO to maintain security in Central Asia.

Key words: security; Eurasian integration; foreign policy of Belarus; geopolitical interdependence; the Ukrainian crisis; military-industrial complex; Central Asia; the CSTO.

ЕВРАЗИЙСКАЯ СИСТЕМА БЕЗОПАСНОСТИ И БЕЛАРУСЬ: ПРОБЛЕМЫ ГЕОПОЛИТИЧЕСКОЙ ВЗАИМОЗАВИСИМОСТИ

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Определены и рассмотрены важнейшие элементы взаимозависимости внешней политики Республики Беларусь и процесса формирования и развития евразийской системы безопасности, включая военно-стратегическое сотрудничество Беларуси и России, развитие военно-промышленного комплекса, усилий ОДКБ по поддержанию безопасности в Центральной Азии.

Ключевые слова: безопасность; евразийская интеграция; внешняя политика Беларуси; геополитическая взаимозависимость; украинский кризис; военно-промышленный комплекс; Центральная Азия; ОДКБ.

Introduction

The Republic of Belarus occupies the western periphery of geopolitical Eurasia, by which I mean the post-Soviet space, and is fairly far removed from Central Asia. This distance, however, does not mean that the Belarusian expert community, as well as military and civilian specialists, are indifferent to the problems of security of Central Asia and Inner Eurasia as a whole. Belarus is involved in all the integration structures in post-Soviet space, the Collective Security Treaty Organization (CSTO) in particular, which makes it one of the sides in any hypothetical conflict in Central Asia and the Caucasus if all the other CSTO members are involved [1].

A member, together with Russia, of the Union State, Minsk has even greater responsibilities in the collective security sphere [2; 3]. Today, Belarus is concerned about the gradual movement of NATO forces closer to its territory caused by the Ukrainian crisis and the mounting confrontation between Moscow and the West [4].

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The Ukrainian crisis has destabilized the European part of the CIS and spread its negative impact across Eurasia. The events in Ukraine confirm the principles of indivisibility of Eurasian and Euro-Atlantic security registered in the Declaration of the Astana OSCE Summit of 2010.

Military-strategic cooperation between Belarus and Russia

Very much according to the logic of previous confrontation, Belarus has preserved its military-strategic importance for Russia and is one of the most consistent and active members of military integration within the CSTO. Both countries support the so-called coalition approach that saves money spent on defense and optimizes the system of command and control.

Russia's military-strategic interests are served, among other things, by the Volga Radar Station (Russia rents it from Belarus, the present term ending in 2020), which allows Russia to follow troop movements in the North Atlantic, as well as in Northern and Central Europe, and the Antey hub site, which ensures communication with the Russian submarine missile carriers in the Atlantic Ocean. Russia pays Minsk between 14 and 20 million US dollars every year. On the whole, Russia's annual aid to Belarus in the form of armament, training of officers, and maintenance of the S-300 air-defense missile systems has reached 360 million US dollars [5–7].

Practically all the military equipment the republic receives from abroad is produced in Russia; in the last fifteen years over one thousand citizens of Belarus have graduated from Russia's military educational establishments.

The economic and political context of the relations between the two countries leaves much to be desired, but cooperation in the military sphere is developing on the basis of over 30 treaties and agreements. As a neighbour of NATO's military infrastructure, Belarus is doubly important to Russia.

The two countries successfully cooperate in the sphere of radiation, chemical and biological defense, and topographic and geodesic support of the armed forces. Experts point out that in the past much was done to ensure external security of the Union State – it acquired united systems of radio-electronic warfare, communication, and logistics in the military sphere. As mentioned earlier, there is a Russian radar station in Belarus and a hub of long-range radio communication; joint staff and field exercises keep the battle-worthiness of troops at the required level. The Single Regional Air-Defense System is another important element of the Union State's military potential. In 2013, Russia supplied Belarus with the first upgraded Buk missile systems to improve air defenses.

In April 2013, during his official visit to Minsk, Russian Defense Minister Sergey Shoygu discussed military cooperation within the Union State with President A. Lukashenko and Defense Minister of Belarus Y. Zhadobin, in particular, increasing the efficiency of joint defenses and the possibility of setting up a single group of armed forces within the CSTO. Russia intends to discontinue its import of elements for new types of strategic armaments, including nuclear weapons, and to rely in this field on Belarusian capacities. It is expected that the largest Belarusian enterprise, Integral Ltd., which manufactures microelectronics, will also be involved. Today, it occupies 15 to 20 % of the Russian market of electronic components of dual and special use.

The final stage of joint military exercises Zapad-2013 organized, for the first time, simultaneously in Russia and Belarus took place in September 2013. Russia planned to deploy, by 2015, a regiment of fighter planes at the airbase in Lida (Belarus) used by Belarusian ground attack aircraft, which also serves as a training center with the necessary and adequate infrastructure. At the first stage, it was planned to deploy the latest multi-functional SU-27SM3 fighters there, as well as strengthen the aviation group with other types of military aircraft. The Russian side, however, demonstrated that it did not plan to set up a joint airbase.

In November 2013, the situation around the base changed; it was planned to move it from Lida to Baranovichi. When in Baranovichi, A. Lukashenko made several statements addressed to Moscow, in particular about his intention to remove Su-27 planes from the republic's air force. Earlier, the Belarusian president had mentioned that Russia would deliver new military aircraft.

The statement in Baranovichi was intended as a warning to the Kremlin that the republic would modernize its weapons (including aviation) on its own and that, in the future, it would pursue an independent military policy.

The haggling over the military facility is still going on; the Lida base is too close to the external borders of the Union State; therefore, four Russian SU-27B aircraft were temporarily removed to Baranovichi.

Earlier Belarus made similar concessions in exchange for Russia's economic aid and used them as maneuvering room in its relations with Russia and the European Union. Some observers think that the steadily decreasing military potential of Belarusian aviation will make it more and more dependent on the Russian air force to protect its borders.

Russian experts are convinced that a Russian air base in Belarus is a response to the relocation, on permanent tactical efficiency, to the military base in Šiauliai (Lithuania) of four NATO F-16 Fighting Falcon all-weather multirole aircraft capable of carrying American B61 variable yield bombs. The 15-minute flight time between Šiauliai and Moscow makes these bombs (defined as tactical weapons) strategic weapons for Russia.

The experts of the Center for European Integration Problems in Minsk are convinced that a Russian airbase in Belarus indicates that the Kremlin is very concerned about NATO's military threat. The Russian airbase in Belarus issue has a domestic political dimension as well; the local opposition speaks of approaching Russian occupation and accuses the president of violating the Constitution. He, in turn, dismisses as absolutely groundless what the opposition says about the possible loss of sovereignty due to continued military cooperation with Russia.

Minsk argues that the Belarusian army forms the core of the joint group of armed forces and never fails to criticize the North Atlantic Alliance and its military activity in the region and the position of Poland on the American ABM system in Europe.

Despite the traditionally high assessments of battle-worthiness of the Belarusian Armed Forces, Russian and some Belarusian experts point to the mounting problems caused by military-technological degradation, the negative effects of demography, etc. The financial, economic, and budget problems do not allow the state to maintain its army at the previous high level.

Money shortages have negatively affected the special rapid reaction force expected to form the core of the republic's armed forces after the reforms. Russia's very justified concerns about the future of the Belarusian armed forces, the battle-worthiness of the armed forces of the Union State, and the efficient involvement of the Republic of Belarus in the CSTO are caused by the noticeable outflow of contractors from the elite and special units [8; 9].

Development of the military-industrial complex in the Republic of Belarus

Belarus inherited about 120 enterprises of the military industrial complex (including maintenance plants) from the Soviet Union and practically no enterprises of final assembly. The Belarusian Soviet Socialist Republic did not produce its own weapons; its production range was limited to automobiles and various equipment – communication, navigation, and command and control systems, as well as optics of all sorts, etc.

Today, military-industrial production is coordinated by the State Military-Industrial Committee of the Republic of Belarus. In 1992, it supplied up to 20 % of the total volume of materials, spare parts, and components needed by the Russian military-industrial complex; in the 2000s its share dropped to 8 %.

The Belarusian leaders have preserved some of the former integration contacts with Russia and the Russian enterprises that produce mobile ballistic missile systems Topol, Yars, and Iskander (the Minsk Wheel Tractor Plant (MZKT), for example, supplies chassis for them). Belarusian targeting fire systems and navigation complexes are used in Russian planes and tanks; the republic is further deepening its specialization to develop systems of communication, navigation, reconnaissance, surveillance and command and control without which no network-centric army is possible [10].

In 2012, Belarus launched production of over 35 types of high-tech products; over 20 R&D have been completed in the following five fields: battle systems of special operations and land forces; geo-information systems; drones; high-precision weapons countermeasures and systems of fire damage.

The range of latest achievements includes a radio-relay station Tsitrus (which can replace 10 radar complexes) and also automated guidance systems Bor, Polyana RB, Neman, Sprut, Prostor, Rif-R, and Protok that have no analogues in the world.

Belarus has moved to the frontline of drone production. In April 2014, at the 4th International Exhibition and the BMC DIMDEX-2014 conference in Qatar, Beltekhexport exhibited its latest products, including Berkut-1 tactical short-range drone intended for optoelectronic night/day reconnaissance. The hand-starting unit Berkut-1 together with a payload is able to absolutely automatically fly a distance of 15 km at an altitude of 1000 meters. Cruising speed machine is 50–80 km/h, the unit can be flown for 1.5 hours.

In Qatar, the republic showed Shershen-D, another novelty, viz. an absolutely unique third generation anti-tank guided missile (ATGM).

Belarus has created unique devices of radio-electronic warfare; its maintenance plants have manufactured new and modernized some types of old Soviet military machines (air-defense assets in particular) very popular in developing countries. The same enterprises cover the needs of the armed forces of the republic and other countries. There is an opinion that the Belarusian military-industrial complex turned out to be more viable and, on the whole, more successful than the Ukrainian.

Military-political cooperation between Russia and Belarus is unfolding within the Treaty on the Union State and the CSTO and is based on five main documents. Both countries belong to the unified air defense system of the CIS countries. The republic has a considerable number of facilities of Russian military-technical infrastructure in its territory, which helps to maintain strategic security in Europe (the early warning radar system in Baranovichi and Russian Navy's long-haul communication center in Vileyka, which provides communication between Russia's Navy headquarters and atomic submarines in the Atlantic (the above-mentioned Antey hub site). Since 1998, the budget of the Union State has been funding military education for the Belarusian military in the Russian Federation.

The Belarusian-Russian intergovernmental commission on military-technical cooperation is doing a lot, including holding regular talks between heads of organizations and industrial enterprises of the mili-

tary-industrial complex, designed to arrive at the best forms of cooperation in various fields and to draw up and implement programs of the Union State in the field of security and defenses.

The two countries have pooled forces to design and produce science-consuming technologies– microwave and optoelectronic products and equipment to be used to produce nano-materials. There are several very successful programs – Komposit, Traektoria, Kosmos-NT, and Nanotekhnologii-SG.

Belarus has preserved over 50 enterprises of the defense sector involved today in production and scientific and technical cooperation with over 400 enterprises in Russia, which they supply with electronic components, spare parts, etc. The country is actively involved in bilateral projects through its participation in interstate financial and industrial groups and joint ventures; its defense industry concentrates on the latest information and telecommunication technologies.

In 2006, the country launched the State Armament Program for 2006–2015, so far the most ambitious military-technical project in its history as a sovereign state. Automated systems of troops and weapons command and control are generally regarded as the highest achievement of the Belarusian military-industrial complex. According to military experts, a single automated control system for the air force and air-defense upgrades the fighting potential of the Belarusian army and the regional group of troops (forces) of Russia and Belarus.

It should be said that joint military industrial projects do not interfere with cooperation of Russia and Belarus with third countries. While moving their military products to foreign markets, both countries carefully avoid competition among themselves so as not to infringe on their partner's interests.

In the sphere of dual technologies, Belarus is present in the CIS markets and cooperates with China – they produce multi-axis wheeled chassis and tractors for special, including military, equipment and armaments of various purposes. The first Chinese-Belarusian assembly plant was opened in 1998 in Xiogan (Hubei Province). After a while, the Chinese started copying the MZKT products and pushed out the Belarusian suppliers.

China is also interested in the fairly high technical and exploitation properties and fighting qualities of the Belarusian air-defense system. According to Russian sources, in 2000–2002, China and Belarus signed several agreements in this sphere. The Chinese military are very impressed by Belarusian achievements in radar technologies, in particular the Vostok D/E mobile 2-dimensional metric band surveillance radar carried on MZKT chassis [11].

Beijing is interested in what is being done in Belarus in the field of high-precision weapons, the modernized Module-A complex designed to improve the tactical-technological description of common aerial bombs being one of them. There are signs that China and Belarus are intensifying their cooperation in design and development of means of radioelectronic warfare intended for themselves and third countries. There is an opinion that Belarus and China will cooperate in R&D of mid-range surface-to-air missile systems similar to S-300.

General overhaul and, recently, modernization of SU-27 aircraft and Mi-8 helicopters are the traditional sphere of military-technical cooperation between the two countries. Recently the military-industrial complex of the Republic of Belarus has moved into a new and potentially very attractive field for the People's Army of China, namely modernization of the Smerch multiple rocket launcher and production of the means of radio electronic protection for aircraft. There is the Satellit complex of airborne equipment of individual radio electronic protection of the aircraft against high-precision radio-controlled weapons with active homing missiles of the surface-to-air or air-to-air classes.

There is any number of those who think that the recent intensification of relations between Belarus and China at different levels is largely explained by pragmatism of the Chinese – they are interested in the results of the latest Belarusian original academic and applied studies. The state base of scientific and technical cooperation among China and Belarus, Russia, Ukraine, and other CIS cities set up in Changchun, the capital of the Jilin Province, is geared at contacts in optical electronics, studies of materials, biotechnologies, etc.

Earlier, Belarusian State University and Harbin Polytechnics signed an agreement on cooperation. The Center for Scientific and Technical Cooperation was set up for joint studies and development of new technologies (laser and nano technologies, etc.). China is especially interested in what Belarus has done in space research and dual and military high tech.

Beijing knows that many types of military equipment and dual products developed and produced in Belarus are absolutely competitive on a world scale or even unique, with no analogues in the CIS countries. The Chinese military treat as such the automated system of troops and weapons command and control, aerial space optoelectronic devices and photogrammetric systems, armored vehicles fire control, automated radar, laser-optical and information air-defense command and control systems.

Until recently the Belarusian military-industrial complex closely cooperated with the Ukrainian defense industry, Shershen, Sarmat, and Skif being the results of their joint efforts. The Belarusian side produced homing systems, while the missiles were made in Ukraine; both had the right to sell them to third countries. The rule was applied not only to these missiles but also to surface-to-air missiles and the module that transformed unguided gravity bombs into guided bombs.

The recent events in Ukraine changed everything. In April 2014, during his visit to the 558 Aviation

Maintenance Plant in Baranovichi, President A. Lukashenko pointed to two equally attractive possibilities created by the crisis – highly skilled Ukrainian specialists who could be tempted to move to Belarus and Ukrainian technologies that could be borrowed from their owners.

Late in September 2014, a delegation of the military-industrial complex of Belarus visited military enterprises in Kiev, Lvov, Dnepropetrovsk, and Chernigov on a fact-finding mission. The members were primarily interested in industrial enterprises and scientific research and development organizations connected with the design and manufacture of missiles and their components, homing systems, engines, automated command and control systems, etc. There is a more or less generally shared conviction in Ukraine that the Belarusians will try to lure the best specialists or will even try to buy missile technologies (it should be said that Russia is very reluctant to let Belarus develop these facilities in its territory).

The seventh international military hardware expo MILEX 2014 in Minsk was a great success. The organizations within the State Committee for Military Industry of the Republic of Belarus signed 55 contracts totaling over 350 million US dollars (on the whole, contracts amounting to 700 million US dollars).

Alebarda, a mid-range anti-aircraft missile system made in Belarus, attracted a lot of attention; even before the expo ended the new missile had gathered 15 orders. The market capacity is assessed as 200 or even more complexes, produced practically from beginning to end in Belarus.

Recently, the leaders of Belarus, who are seeking wider contacts with the developing countries, have been inviting their potential partners (Vietnam, Laos, Indonesia, Bangladesh, India, South Africa, and some of the Arab states) to set up joint military-technical projects.

Today, the Belarusian military-industrial complex demonstrates the following trends:

1) modernization of military equipment to add mobility and manageability to the troops, ensure their protection, widen the scope of reconnaissance, and increase the possibility of delivering precision strikes at long distances;

2) setting up a complete production cycle of promising types of weapons ranging from means of mobility to means of destruction. The country has already created prototypes of a fighting armored vehicle and a car of all-terrain capability and completed the design stage of an unmanned aerial complex with a range of 100 km or even more. Belarus and its foreign partners have created a new anti-tank missile complex;

3) there are plans to set up, jointly with leading world machine-tool companies, assembly facilities to produce equipment and the latest machine tools as a means of import replacement and, later, set up national production facilities in the republic.

Belarus and security in Central Asia in the CSTO context

Normally Minsk is not much interested in the problems of Central Asian security and the threats emanating from Afghanistan. President A. Lukashenko last clarified his position on the issue at the fall 2013 CSTO Summit. He was convinced that the CSTO states should help Tajikistan fortify its border with Afghanistan after the Western coalition pulled out its forces.

Until recently, Belarus limited its support within the CSTO to supplies of uniforms for the Tajik border guards and was officially thanked, in February 2014, by Nikolay Bordyuzha, Secretary General of the Collective Security Treaty Organization.

Civilian and military Belarusian experts are contemplating the technical possibility of being involved (as one of the units in the Collective Rapid Reaction Force) in responding to potential threats created by destabilization in Central Asia (a low-intensity conflict) after the coalition forces of NATO have been finally removed from Afghanistan. Some experts think that destabilization might spread to Kyrgyzstan and Tajikistan [12].

They also think that the country is unable to part with more than the one-third it has already pegged for participation in the Collective Rapid Reaction Force; two-thirds should remain in the republic for personnel rotation.

It is commonly believed that the country cannot spend more than 1 % of its consolidated budget (central and local budgets), that is, about 230 million US dollars, on training the national contingent and its funding.

The numerical strength of the Belarusian military contingent within the Collective Rapid Reaction Force depends on the nature and scope of the potential threats and might include military, gendarme, and counterterrorist units, communication with local authorities, and support forces.

Belarus could be represented by one mobile battalion of about 550 people complete with armored vehicles and guns; the organizational structure and personnel will be geared at the nature of the terrain and the degree of threats. The gendarme contingent will consist of two or three patrol companies from among the Ministry of the Interior Forces (up to 400 men) trained and equipped to suppress riots and conduct searches of transportation vehicles and people.

The counterterrorist part will be represented by a unit of up to 30 members of the Alfa and Almaz groups and riot police involved on a rotational basis. The group responsible for communication with local authorities consists of Belarusian officers serving in the staffs of the union forces, the Ministry of the Inte-

rior, the Air Force, and the state security forces of the host state.

The support group consists of a helicopter unit of up to 300 men and a medical sub-unit.

It has been calculated that up to 1600 military from the Ministry of the Interior, the State Security Committee, and the Defense Ministry will be needed; the country cannot afford more; no more than one-third of the total amount of needed forces are deployed in the host country, while the rest is intended for rotation.

Experts believe that the technical equipment of the units of the Ministry of the Interior, the counterterrorist units, and the medical service units is adequate, although they need well-protected transportation vehicles.

Belarusian analysts are showing a lot of interest in the fighting experience of Estonian units in Afghanistan, which revealed, among other things, that Soviet armored machines were illsuited as mine-resistant ambush protected vehicles.

Because of limited finances and technical possibilities, the republic's national contingent will be moved to the area of possible conflict and will be supplied by land; transport aviation will be reserved for emergencies.

The republic's involvement in a possible mission requires a lot of technical training since the available armored vehicles and cars cannot be used in contemporary armed conflicts.

Experts have offered the following three ways out: modernization, purchase of new machines, and purchase of surplus machines from foreign states. So far, there is no idea about the exact sums involved, even though several million dollars might be required.

In Minsk, the problem of Afghanistan is discussed as part of the drug threat; the expert community looks at drug production in this country as a unique phenomenon explained not so much by the volumes of the locally raised and processed drugs as by the unpredictable geopolitical effects of their spread and consumption. Russia consumes 75 to 80 tons of Afghan heroin every year and loses, according to certain sources, over 30 thousand lives.

There is an opinion in the Belarusian expert community that "drug production in Afghanistan, unprecedented in its scope and concentration in one geographic point, can be described as a tool for undermining international security. This is a unique planetary-historical phenomenon that can be qualified, according to the U.N. Charter, as a threat to international peace and security".

This domestic Afghan phenomenon directly affects the region and many countries outside it; it is directly connected with the armed conflicts unfolding in the territory of Afghanistan (which have already assumed international scope) and the military-political destabilization of Central Asia and pours a lot of money into extremist criminal and terrorist activities. This phenomenon is largely caused by the unprecedentedly high level of corruption in Afghanistan and the countries along the trafficking route, which excludes any possibility of realizing the ideals of democracy in the region's countries. This explains why Belarusian experts have been talking about the right of Russia and the other CSTO member states to self-defense against the drug aggression waged by Afghan non-governmental groups in their territory [13]. Some of them think that the SCO should also pour its political and economic potential into the CSTO anti-drug efforts.

The expert community has pointed out that the Ukrainian developments might radically change the geopolitical situation in Eurasia as a whole and in Eastern Europe in particular; the security system might change to confront the CSTO with new and even more complicated problems. The military-political expert community of Belarus, however, cannot discern any prospects for CSTO expansion and prefer defense cooperation with Russia within the Union State.

At one of the meetings with the speaker of the Federation Council and the heads of the federation subjects of Russia, President A. Lukashenko said that in the near future the CSTO would develop into the military component of Eurasian entity. The Belarusian expert community is of a different opinion – Moscow demonstrates a lot of independence when it comes to decision-making and rarely takes the positions of its allies into account. This has been amply confirmed by previous crises.

The Crimean crisis put the deficit of trust among Moscow, Minsk, and Astana into bolder relief. Indeed, Belarus and Russia belong to the Union State and, together with Kazakhstan, to a single regional armed group and the CSTO. The Kremlin resolved the Crimean crisis and passed the decision on unification (which means joining the peninsula to the Union State and the CSTO) unilaterally. The post-factum consultations within the Union State and the CSTO were purely formal.

Belarusian experts have pointed out that the CSTO members prefer to stay away from the Russian-Ukrainian war and that Moscow has failed to rally the post-Soviet states for a military-technical blockade of Kiev.

Belarus and the Ukrainian crisis

Throughout 2013–2014, Minsk gradually readjusted its attitude to Ukraine, which has been living through a far from easy period of political transformations. The Belarusian media and public opinion limited their comments on the wave of opposition later tagged as Euromaidan to whether or not Ukraine would be involved in Eurasian integration. As the situation on Maidan moved toward violence, Minsk paid more and more attention to the Ukrainian developments; the removal of V. Yanukovich and the political U-turn per-

formed by those who came to power in Kiev shocked the Belarusian president.

In March 2014, A. Lukashenko began regularly commenting on the Ukrainian developments; put in a nutshell, he says the following:

1) the Belarusian authorities will not allow a second edition of Maidan in their country;

2) the Ukrainian riots were caused by "the huge scope of corruption and economic collapse" in Ukraine;

3) Minsk will adequately respond to all attempts of NATO members to step up military activities in close proximity to Belarus.

This was when Minsk formulated its foreign policy interests:

- prompt stabilization of Ukraine;
- resistance (if necessary) to Russia's pressure, which might insist on worsening Minsk's relations with the Ukrainian regime;
- capitalization on the Ukrainian developments and the worsened relations between the West and Russia.

The Belarusian leaders primarily had to find a balanced political course: they did not know how far they could go with their support of Moscow because of its rapidly worsening relations with the West, lest to betray the country's national interests, undermine its international position, and dent its security.

On the whole, A. Lukashenko was not always consistent; he sided with Moscow when the U.N. General Assembly voted on the annexation of Crimea; later, on 7 June, the President of Belarus attended the inauguration of President Poroshenko and clearly indicated that he was on the side of Ukraine.

There is another aspect of the same issue – A. Lukashenko tried to wring dry the Ukrainian conflict and extract the maximum political dividends by positing himself as a broker between Kiev and Moscow. In late July 2014, he began insistently offering Minsk as a venue for the tripartite talks of the so-called contact group that was trying to settle the situation in the east of Ukraine.

Late in August 2014, Minsk welcomed a summit of the Customs Union, Ukraine, and the high representatives of the European Union; during this meeting, A. Lukashenko skillfully used his diplomatic talents to gain a personal audience with Catherine Ashton, an indirect sign that Brussels had softened its position in relation to the Lukashenko regime. The President of Belarus used the Minsk summit to obtain diplomatic bonuses and upgrade the country's international status.

Minsk extracted all possible economic and political dividends from the Western anti-Russian sanctions and Russia's reciprocal sanctions. While formally remaining on Russia's side, A. Lukashenko clearly indicated that Minsk would not join the reciprocal sanctions and promised to close possible holes in foodstuff supplies with Belarusian products. Later Moscow repeatedly accused Minsk of cheating by re-exporting products of EU countries.

In view of the crisis, Belarus adopted additional measures to tighten internal security, in particular, in connection with the world hockey championship. In August 2014, the president signed decrees on the mechanism for introducing a state of emergency; early in 2015, the law on martial law was amended.

In many respects, the Ukrainian market remains the biggest consumer of Belarusian export, oil products and potassium fertilizers in particular (which brought 6 to 7 billion US dollars every year). On 19 August 2014, Ukraine and Belarus abolished all the limiting measures previously introduced in trade and mutual licensing, which meant restoration of the free-trade regime. In 2014, the trade turnover between the two countries decreased mainly because of the devalued grivna.

Minsk strengthened its border guards, especially those stationed along the borders with Ukraine, and deployed a new air group of the Russian Federation at the Baranovichi airbase. On the whole, A. Lukashenko and V. Putin agreed that they should jointly and adequately respond to the current build-up of NATO troops.

In August 2014, the State Security Committee of the Republic of Belarus officially refuted information that Belarusian citizens had joined the volunteers in the east of Ukraine. According to official information, by August 2014 there were about 26 thousand Ukrainian refugees in Belarus; 1.5 thousand applied for a refugee status and nearly 1.5 thousand received residence permits; over 3 thousand intend to apply for temporary residence.

The country's external and internal policy remains under the pressure of the Ukrainian crisis and the related international events. President A. Lukashenko believes that the Ukrainian regions should become more independent and that the Constitution should be amended accordingly. Early in September, he signed a decree which simplified many procedures for Ukrainian citizens in Belarus, including application for state grants, education, and employment.

The country's international situation and its relations with Germany and the United States are likewise strongly affected by the Ukrainian crisis. Early in September 2014, an American delegation headed by one of the top officials of the U.S. State Department came to Minsk to confirm that Washington was pleased with Minsk's decision not to recognize unification of Crimea with Russia and that its efforts to encourage and organize talks on the settlement of the Ukrainian crisis were appreciated. The American diplomats paid particular attention to the Minsk's recognition of the new people in power in Ukraine and expressed their readiness to change the format of relations with Minsk in light of the Russian-Ukrainian conflict.

Late in September, during Lukashenko visit to Moldova and in the interview he gave on 1 October, the

Belarusian president expressed his opinion about the Ukrainian crisis. He said that the contact group that had worked in Minsk did a lot and halted the hostilities. He described the possible repercussions of the crisis as catastrophic and pointed out that what had happened on Maidan was wrong and unconstitutional. He said that his country had offered a peace plan for Ukraine, but "the West rejected it because somebody profited from this rejection".

On 21 December 2014, when in Kiev on a working visit, President A. Lukashenko made an official statement to the effect that his country would spare no effort to help restore peace in Ukraine.

The Ukrainian president reciprocated by praising Minsk's clear position on his state's sovereignty and independence and thanked A. Lukashenko for the opportunity to use Minsk for the meeting of the tripartite contact group, which arrived at a document intended as the first step toward peaceful settlement.

Experts paid particular attention to what the Ukrainian leader said about the "Minsk format" as the only model of de-escalation of the situation in some of the districts of the Donetsk and Lugansk regions; they associated this with certain shifts in Kiev's approaches and explained Lukashenko's Ukrainian visit by the recently worsened relations between Moscow and Minsk in trade and the economy and, allegedly, the common strategy Moscow, Minsk, and Astana are pursuing in their relations with Kiev.

It should be said that the talks between Minsk and Kiev produced an unexpected decision on setting up a joint TV channel in Minsk (which will probably be safely forgotten).

Most of the expert community agrees that Minsk and Kiev have many common interests: Belarus wants Ukraine as one of the largest markets for its products, while Ukraine wants maximum security along its northern border, steady supply of oil products, and neutralization of Russia's attempts to limit Ukraine's trade and to the standards of the Eurasian integration project.

What is even more important is the fact that Minsk indirectly refused to support the "federalization scenario" Moscow was imposing on Ukraine. It also guaranteed that it would not allow third countries to use Belarusian territory for military aggression against Ukraine.

In any case, Alexander Lukashenko is using every opportunity for political maneuvering to create the impression of his complete independence.

What Minsk thinks about the security threats to Central Asia

The latest assessments of the new security threats to Central Asia and the region's geopolitical future offered by the Belarusian expert community are very interesting. The report published by the Center for Strategic and Foreign Policy Studies (TsSVI) [14], described the following two supra-national strategies of counteraction: the Chinese, represented by the SCO and the emerging Silk Road Economic Belt, and the Russian, represented by the CSTO and the emerging EAEU.

There is a more or less common opinion that Central Asia has come close to fundamental changes largely connected with the developments unfolding in other regions, the Middle East in particular. The following can be described as the key factors responsible for the Central Asian strategic context:

1) the pullout of American troops from Afghanistan in 2014–1016;

2) the establishment of the EAEU and its possible enlargement;

3) the dramatic activation of China's regional policies;

4) the emergence of India as a new regional power;

5) the continued strategic rapprochement of the U.S. and Iran;

6) the shift of the zone of U.S. primary interests to the Far East and Washington's rising concern about the growing Chinese factor in Eurasia;

7) the changed structures and patterns of activity of international extremist and terrorist organizations and continued struggle between ISIS and al Qa'eda;

8) the rising level of violence, the rising drug production, and the persistent political crisis in Afghanistan.

The United States, China, India, Iran, Pakistan, and, of course, Russia are the states with the potentially greatest impact on Central Asia. Washington wants to preserve the stability level, which will allow it to shift its geopolitical priorities, safely and completely, from Central Asia to the APR and the Middle East. The White House is concentrating on containing China by counterbalancing it to the states involved in Central Asia (Russia, Iran, and India in particular). The Americans expect that Russia will try to push China out of the post-Soviet space and that Iran will help to stabilize Afghanistan and prevent the greater role of Pakistan and the Taliban, while India, locked in competition with China, will add geopolitical and economic weight to the structure.

Experts and analysts believe that China is attracted by Central Asia's mineral resources and consumer markets, its interests in the region being inspired by Beijing's desire to avoid instability in the Xinjiang Uyghur Autonomous Region.

Meanwhile, China which has already formulated the Silk Road Economic Belt initiative, occupies a much more active or even expansionist position: the economic belt will require infrastructure which will require protection. The Chinese elite, or its greater part, is regarding the Economic Belt as a free trade area between China and the Central Asian countries. After losing interest in the Mes Aynak copper mines, China developed

an interest in protecting the oil fields in the north of Afghanistan.

Containment of India is one of China's strategic concerns; Beijing wants to limit Delhi's influence in the region and intercept its share of the resources.

India, according to the expert community, is primarily concerned about receiving a steady supply of resources mainly through TAPI (Turkmenistan – Afghanistan – Pakistan – India) and IPI (Iran – Pakistan – India) gas transportation systems.

Tehran needs stability in Afghanistan, a solution to the drug trafficking problem, and suppression of the still growing influence of extremist groups oriented toward Pakistan and Saudi Arabia. Iran needs larger markets for its hydrocarbons (hence the IPI project) and a wider area of economic cooperation. The Port of Chabahar project, the only Iranian port with direct access to the ocean, is one of Tehran's strategic priorities. The country is determined to pursue an active policy in Afghanistan and post-Soviet Central Asia (Tajikistan being the main aim). A decrease in the U.S. military presence in Afghanistan and Central Asia is another point on the Iranian agenda.

On the whole, analysts agree that Pakistan has found itself in a quandary. In recent years, the traditional contacts between the Pakistani special services and the Taliban (and its branches) have been causing increasing trouble. Like many of its neighbours, Pakistan is interested in the resource-rich Central Asian states; it wants to keep India and Iran outside Central Asia and relies on China as its main ally.

Russia's strategy in the region is fairly vague; the Ukrainian crisis distracted its attention from Central Asia, the key to Eurasian security. Russia, which is establishing the EAEU together with its allies, expects that Kyrgyzstan and, somewhat later, Tajikistan will also join it. According to certain sources, it is interested in the TAPI gas pipeline, while some Russian companies are ready to join the construction project.

The Belarusian expert community has concluded that the terrorist international is being torn apart by the dramatic rivalry between ISIS and al Qa'eda. In the West, experts are very skeptical about the prospects for the Islamic Movement of Uzbekistan, which needs money and fresh forces; its ethnic composition, Uzbeks being in the minority, has moved far from its title. The Ismailites of Afghan and Tajik Badakhshan may temporarily come to the fore, as well as pan-Turkic and ethnically diverse groups in the north of Afghanistan and more moderate Islamist organizations of the Hizb ut-Tahrir type.

The expert community in Belarus points to the Islamist threat as the main one in the present conditions; the new actors, ISIS being one of them, on the regional scene may aggravate it even more.

Today, the Central Asian states are doing more than the other players to oppose the region's destabilization. They are keeping the political field under control, applying pressure, within legal limits, on the Islamist and other opposition structures, and offering the easily tempted, as well as vulnerable groups, social benefits.

The Central Asian countries have geared their opposition strategies to nationalism, a combination of the following two key values: national history and sovereign statehood. This particularly applies to Kazakhstan and Uzbekistan. According to the expert community, these two countries, rather than the CSTO, will play the main role in strengthening the region's security, at least because Russia remains bogged down in the Ukrainian crisis.

Conclusion

Today, the foreign policy course of the Republic of Belarus is largely determined by the following factors:

- wide-scale, diverse, and, at the same time, "uneven" cooperation with the Russian Federation;
- involvement in Eurasian integration and the EAEU Treaty signed in May 2014;
- cautious drawing closer to the West;
- its higher international status of a broker between the sides in the Ukrainian conflict and consolidation of its military-political cooperation with Moscow;
- continued cooperation with its traditional partners – China, Venezuela, some of the CIS countries, and Kazakhstan in particular.

Beyond its borders, the country is looking for new and widening the already existing markets for its products; it is using Eurasian integration to strengthen its position when dealing with Russia and has returned to its old policy of balancing between Russia and the EU.

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THE GERMANY'S POLICY OF REGULATING LABOUR MIGRATION

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The present article is dedicated to the analysis of the conceptual aspects of Germany's labour market integration policy for immigrants. The conclusion is made that differences in the right to access to work for various categories of immigrants and different skills and opportunities for migrants in Germany led to differences in their economic integration. The authors make an attempt to identify the characteristics of labour force participation of immigrants and the main reasons for further development of labour market integration policy.

Key words: labour market; migrant integration policy; the right to work for migrants; labour market effect from immigration.

ГОСУДАРСТВЕННАЯ ПОЛИТИКА РЕГУЛИРОВАНИЯ ТРУДОВОЙ МИГРАЦИИ В ГЕРМАНИИ

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Анализируются концептуальные аспекты немецкой миграционной политики, направленной на интеграцию иммигрантов на рынке труда. Делается вывод о том, что различия в праве на труд, в квалификации и возможностях для различных категорий иммигрантов в Германии привели к различиям в их экономической интеграции. Принимается попытка определить характеристики трудового участия иммигрантов в рынке труда и основные факторы дальнейшего развития политики интеграции на рынке труда.

Ключевые слова: рынок труда; миграционная интеграционная политика; право на труд мигрантов; эффект на рынке труда от миграции.

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Introduction

Immigration has greatly changed the population of many countries in the world including Germany. The necessity to develop new approaches towards migration policy is determined by active evolution of economic relations, dynamic changes in labour markets and labour mobility. International migration processes have a controversial impact on the development of some regions. At the same time effective supranational mechanisms of labour migration regulation have not been enough developed. The reproduction of the labour force in the European countries is shrinking and it leads to the necessity to use migrant workers. Employers are often in favour of labour migration in the country because it could provide cheap labour force on a labour market and additional demand for products produced in the country.

The main idea of the research is to define the main aspects of labour market integration policy for immigrants that have influence on their labour force participation (case of Germany).

Methodology

For the purpose of the study to develop the conceptual aspects of the model of labour market integration policy for immigrants we use a qualitative method as a method of interdisciplinary research because it allows to get deeper understanding of specific labour market effects from immigration.

We use a deductive approach by reviewing literature and discussing pertinent issues such as the conceptual aspects of the labour market integration policy for immigrants. The common indicators of the migrant economic integration in Germany are determined on the basis of the data available from the migration statistics.

Labour market effects from immigration

Different studies on migration are dedicated to different economic aspects. Borjas has developed theoretical models of internal and international migration and presented some models of migration in expository surveys [1–6]. Borjas model was supplemented by the role of income differences with various assumptions about the distributions of personal characteristics, and it was able to predict the flows of different types of workers between countries. Borjas argued that migration decision depended on not just average difference in wages across countries but on where the immigrant would fit in the destination labour market and how well the abilities of workers and how the human capital could be applied. In 1991 Bordias extended his model. Then the Bordias model was developed by Halton and Williamson and Clark, Hatton and Williamson (CHW model, 2007), that took in account for the effects of non-pecuniary costs of migration and explicit immigration restrictions [7; 8].

In the work of Bartram the aspects of labour migration associated with the demand for labour in different countries were discussed and the variability in the state migration policies were highlighted [9].

The incorporation of migrants into the receiving country's labour market was the focus of the research of Chiswick [10]. Chiswick gave detailed analyses of investments in human capital and its effectiveness on the labour market from the point of view of the migration processes [11].

Kemnitz analysed the effects of immigration on the presence of unemployment, technological and political conditions which can make low skilled immigration beneficial for the host, but also elabourated on the political viability of immigration policies and the challenges for education policy [12].

Bodvarson and Van den Berg emphasized that immigrants are not only workers, they are customers and add to the capacity of the economy, and described theoretical models that explaine the migration and answer the questions: who migrates, why migrates and what were the consequences for source and destination country [13]. Bodvarson and Van den Berg described the modern theory of internal migration and focused on the determinants that migrants can be considered as: 1) a supplier of their factor service or, effectively, a maximizing investor in their human capital [14], 2) a vigorous costumer of amenities and public goods [15], or 3) a producer of her own household goods and services [16]. Bodvarsonand Van den Berg paid attention to the role of past migration [13; 17–20] and migration as a life cycle decision [21] in the development of the models of migration.

The effect of the labour market integration of the immigrants includes economic, fiscal, and social effects. It provides the net contribution of immigrants to the public finances in the longer term and some help in alleviating the fiscal effects of population aging.

The effect of the labour market outcomes of native workers could be divided in three main groups which include labour market supply effect, aggregate demand effect and allocation of resources, product mix and technology effects [22]. Labour supply effect may be if migrants have similar skills to native workers and have an adverse effect on their employment and wages [4]. Migrants can increase the population and create aggregate demand effect for goods and services, labour demand, and firms increase output and investment over the long run [23]. Immigrants can influence the allocation of resources, product mix and technology

effects and stimulate change in the occupation and industry composition of the labour force (for example, in Israel). By promoting skill upgrading, immigration can have a positive impact on labour market productivity, upward career mobility and incomes of native workers (Denmark, Switzerland and else). Migrant mobility helps the countries adapt to asymmetric shocks of labour forces and stimulates economic growth, for example, cross-border migration [24]. Immigrants of working age can provide high tax contribution for a long time and the host country does not have education expenditure. Fertility rates of immigrants, typically higher than those of natives, can help reduce the negative impact of population aging. High-skilled immigrants usually make larger net fiscal contributions than natives [22; 25].

Assessing the fiscal effects of immigration was made by the Organisation for Economic Cooperation and Development (OECD) in 2013 [22]. For this taxes paid and other fiscal contributions made by migrants and the costs of services and benefits used by them were compared. The result of the research 2007–2009 highlighted that the average fiscal contribution of the migrant population in advanced economies amounted to 0.35 % of GDP, with most country results falling between ±1 % of GDP [22].

Recent trends in immigrants' flows in Germany

At 1 January 2016 total population in Germany was 82 162 thousand people and the change 2016/2015 was +11.8 thousand people (table 1). Share of Germany in EU population is 16.1 %. The crude rate of natural change of population in Germany was the biggest among EU countries and natural change is –2.3 per 1000 residents, so immigration was seen as a possibility to ease the adverse consequences of ageing populations and to help fill labour shortages [26]. Net of migration in 2015 was the biggest during last years. Foreign population in Germany numbered 9.1 million people and population with migrant background was 16.4 million people. A significant increase in the number of migrants was caused by the influx of refugees from Asia and Africa that were in need of economic, social, and cultural adaptation and integration as a result the problem with economic integration of migrants became significant [27].

In 2014 net migration from European Union consisted 300 000 people, net migration from outside EU was 250 000 people. According the date in July 2015 864 700 citizens of Central and Eastern European countries were employed in Germany and 22 000 foreigners held EU Blue Card. In 2015 number of new asylum applications consisted 441 900 (173 070 in 2014) [28]. The total number of illegally resident migrants in Germany estimated from 100 000 up to 1 million people [29].

Table 1

Population in Germany

Population category	Year	
	2014	2015
Total population, millions	80.8	82.2
Foreign population, millions	7.4	8.7
Population with migrant background, millions	16.4	17.1
Live births, thousands	715	738
Deaths, thousands	868	925
Arrivals of migrants, thousands	1464	2136
Departures of migrants, thousands	914	997
Net migration, thousands	+550	+1139

Source: [27].

Germany accepted a lot of humanitarian migrants and their number increased in recent years. The average unemployment rate of immigrants in Germany decreased during 2011–2014 but it was higher compared with average unemployment rate for the native population.

In Germany immigrants covered a big spectrum of economic participation. In 2015 some 24.1 % of immigrants worked in the mining, manufacturing and energy industry, 13.6 presented in the wholesale and retail trade, 11.3 % were in the health sector and 10.0 % were in the admin and ETO [28; 30]. The official employment in the households was much narrower.

Most of illegally employed migrants were employed in the construction business, service of facilities, the hotel and catering industry, agriculture and forestry, meat processing industry, the transport and forwarding industry and household services, domestic nursing and geriatric care [29].

The migration flow streams consist of permanent and temporary migration. Constant working migrants assume long-term residence in the country and their integration processes are very important for receiving immigrants in German society and their social and economic integration.

Characteristics of the right to work for various categories of immigrants in Germany

The right to access work influences immigrant opportunities to integrate successfully into the labour market. Access to the labour market is different for different categories of the migrants in Germany. Identification of categories of migrants in Germany and their rights could be based on the approach proposed by Burket and Haas that includes such categories as: 1) citizens of EE-15 and EEA nationals, EU-8 nationals (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia), EU2 nationals (Bulgaria, Romania); EU1 national (Croatia); 2) third country nationals that include labour migrants, family members of German nationals, residence permit holders and family members of Blue card; 3) humanitarian migrants among them asylum seekers; persons with suspension of deportation; recognized refugees [30].

The differences in access to work and different skills and opportunities for migrants in Germany led to different level of their needs in economic integration (table 2).

Table 2

Immigrant categories and their access to the German labour market

Immigrant category	Access to the German labour market
Citizens EU-25 and EEA nationals	Free German labour market access
Family members of German nationals	
Recognized refugees	
Citizens of Croatia	Limited access to the German labour market
Third country nationals	1. It is required a resident title for taking up employment. 2. Citizens of the third countries get residence title if they get a German labour contract
Foreign students	Time-limited in access. They are allowed to work up to 120 days a year
Holders and family members of Blue card	1. Access of holders of Blue card is limited by their contract. 2. The access of the family members of Blue card of depends on the kind of the residence permit of the visa holder
Business immigrants	The access will be given if their business corresponds to the public interest in Germany
Asylum seekers	1. Limited access to the labour market after three months of their residency in Germany. 2. Free access after four years of residence in Germany
Persons with suspension of deportation	Limited access to the labour market after three months of their residency in Germany

The main aspects of migrant economic integration in Germany

The economic impact of economic integration of migrants includes benefits for enterprises and migrants and new economic opportunities for them. Immigrants entering working age make fiscal contributions and have a high number of working years ahead. High-skilled immigrants usually make larger fiscal contributions than native-born and host country saves on education and social expenditures. Labour force participation, occupational attainment and earning are the three most often used measures for assessing immigrants' economic integration in the host countries [31].

International comparisons are complicated but the variation in immigration and integration policies between countries seems the only source of identification for the effect of migration policies [32].

Empirical models of the determinants of wages, unemployment, and labour force participation in Germany were gauged by Beyer, who used micro-data from a large household survey and the German Socio-Economic Panel [33]. It was estimated that after the arrival in Germany immigrants earned in 20 % less than natives with similar characteristics. The probability of unemployment was initially 7 % higher for recently arrived immigrants in comparison with natives and in the long run the unemployment rate remained 3 % higher among immigrants. Immigrants without German writing skills or a German degree had a wage gap as high as 30 % initially. Good German writing skills closed the gap by 12 % and a German degree by another 6 %. The gap for migrants that was born in advanced

economies was a third of other immigrants [22]. Beyer marked that the lower wages of immigrants largely reflected "skill downgrading". In Germany 66 % of highly skilled natives had a job with higher wages that actually required higher education and over 60 % had jobs with very high "autonomy" with higher wages. Immigrants that weren't born in advanced economies were only 42 % and 33 % in the respective groups. Good German language skills and a German degree helped close the gap between immigrants and natives. Female immigrants had a high probability of unemployment. The participation rate of immigrants approached fully after 20 years [33]. The immigrants made substantial contributions to the economy but face considerable obstacles in the labour market that could overcome only gradually.

The earning and employment gaps were particularly pronounced in the years immediately after arrival of migrants and diminished with time after the improvement migrants' language skills and obtaining relevant job experience. Immigrants from advanced economies or with better language skills often had better positions than other groups. Refugees and female migrants had worse labour market positions, especially in the short run. Immigrants from Africa and Asia had a lower employment rate than other groups of immigrants. In addition, there was heterogeneity in labour market performance [34; 35].

Asylum seekers and immigrants from Afghanistan, Iran, Iraq, Syria, Somalia, Eritrea, and the former Yugoslavia were less educated than others. Immigrants from EU countries and advanced economies had better education than the natives. There was a possibility than recent asylum seekers were better educated than previous immigrants. (Reliable data were not available.) In Germany, 2 % of the Syrian asylum seekers which arrived in 2013–2014 had tertiary education, among natives it was 23 % [22].

IMF in 2016 estimated that average budgetary expenses for asylum seekers in Germany increased by 0.12 % of GDP in 2015 and could increase 0.27 % in 2016 compared to 2014. Fiscal cost of asylum seekers in Germany consisted 0.08 % of GDP in 2014, 0.20 % of GDP in 2015 and could be 0.35 % of GDP in 2016. The expected level of the initial effect on German GDP will be positive and will depend crucially on labour market integration. Relative to the baseline, in Germany the level of GDP will be lifted 0.3 % by 2017. It is assumed that it is necessary about two years for the refugees to begin work. It is expected that eligible to work refugees will have a lower participation rate than natives with a gap of 5 % initially, gradually declining to 3 % by 2020, and a higher unemployment rate with a gap of 15 % initially, gradually declining to 12 % by 2020 [22].

According to the results of the study that has been done by OECD in 2015 one can conclude that Germany was among the countries (Austria, Belgium, France, Germany, the Netherlands) with long-standing destinations with many settled low-educated migrants [36]. Such categories of migrants meet difficulties in economic integration.

There are a lot of factors which shape the experience of immigrants in Germany and opportunities for economic integration among them the educational levels and industrial experience of migrants, the level of knowledge of German language, relationship between the two countries and the economic circumstances in which the migration takes place, the ethnic origin and cultural and social traditions and religion characteristics of the migrants and differences in the requirements for different categories of immigrants.

Our premise and assumption is that different levels of skills of migrants and differences in the access to labour market determine the level of the economic integration needs.

1. Migrants from the EU countries have free access to the German labour market. High educated and medium educated specialists are able to confirm their degree and to get employment contracts. In the case of long-term contracts and the perspectives of professional development in Germany, they try to get good knowledge of German. High skilled specialists have opportunities for social and cultural adaptation and use them actively.

2. High skilled immigrants with limited access to the German labour market have the same educational characteristics, but the need for economic integration is increased for them. Job search is more complicated for them even if they use "blue card". Terms of a labour contract may be less flexible. Their knowledge of legal labour norms is not deep enough. The process of the socio-cultural integration is longer.

3. The failure of legal access to the labour market is one of the main reasons of illegal migrants' employment. Mostly illegal workers do middle skilled and low-skilled jobs. Lack of German language skills is also a significant obstacle in finding a job and legalization of migrant status.

4. Free access to the labour market for middle-skilled migrants also implies the possibility to confirm degree and to get employment contracts. In this case, the competition on the German labour market is higher so competitive advantage of migrant middle-skilled workers is not significant and usually they have lower wages than natives. Migrants' German language skills are necessary for effective professional interaction.

5. Many middle skilled migrants with limited access to the German labour market have to get pre-signed contracts for jobs. Some migrants work on temporary employment contracts or they could be representing in the shadow economy. Characteristics of middle skilled migrants with limited access to the German labour market in many respects are similar to the characteristics of the middle skilled migrants which have free access, but their opportunities in choosing a job are limited.

6. The failure of legal access to the labour market is a sigbnificant problem for middle skilled migrants so they do middle skilled and low-skilled jobs. They do unskilled jobs illegally if they don't have opportunities for legalization of migrant status. Status of illegal migrants and their work in the informal economy leads to insecurity of their economic rights.

7. Low-paying jobs that don't require special skills are available for low-skilled migrants with free access to the German labour market. In some cases, a low wage constitutes a competitive advantage for less-skilled migrant workers and serves to protect them from competition from more-skilled workers.

According to the results of the study that has been done by the OECD one can conclude that Germany was among the countries (Austria, Belgium, France, Germany, the Netherlands) with long-standing destinations with many settled low-educated migrants. Such categories of migrants meet difficulties in economic integration.

8. Low-skilled migrants with limited access to the German labour market can work only if they have got the pre-signed contract. Such migrants often use temporary employment contracts or they are in the shadow economy.

9. A significant number of unskilled migrants work illegally in households and small businesses and use national networks of migrants for looking for a job. Social and cultural integration is impossible for them.

German migration policy influence on the economic adaptation of immigrants increased, but nevertheless, there were some groups of migrants that had significantly lower level of the economic integration, among them immigrants from North Africa, refugees and others. Immigrants who didn't speak German had more difficulties in the economic integration then others.

To summarize, it should be pointed out that the differences in the access to work and different skills and opportunities for migrants in Germany led to different level of needs in economic integration. In the further development of the study it is possible to determine and differentiate the needs of the immigrants in economic integration on the basic of the observing, follow-up survey, revealing and discussing pertinent issues of economic right to access work and economic integration of immigrants.

German migration policy development

The most important documents in the development of German migration policy are Immigration Act of 2005 and National Action Plan of Integration.

Since 2005 after enactment of a fundamental reform of Citizenship Law in 1999 and Immigration Law in 2004, immigrant integration became one of the top issues of the political and public agenda in Germany [37]. According to the law, the required period of legal residence for naturalization was reduced to fifteen years for the first immigrant generation and to eight years for the second. From the view point of rising expectations of economic growth limited access to the labour market was provided to highly skilled immigrants on a permanent basis and temporary immigration permits for entrepreneurs willing to make substantial investments. *In the Immigration Law the integration of immigrants was designated distinctly as a responsibility of the state* [38].

The necessity to provide for integration courses, including the German language education and lessons on German politics and society was defined in a separate chapter and was considered as very important condition for integration of the immigrants. The focus on German language skills was caused by the need to improve the level of education, vocational training, job perspectives and labour market integration, especially of the youth with migratory backgrounds and with a corresponding reduction of welfare state expenditures.

Gerdes marked that the structural and institutional conditions of integration as well as its designation as legal and political have been increasingly down played in favour of an emphasis on the economic, social and cultural features of integration [36]. The changes have entailed rising expectations of integration-related orientations and performances of migrants. Since November 2006 the long-term tolerated migrants should be granted a regular residence permit if they fulfill certain conditions include the availability of the regular job or a clear employment perspective.

In the 2007 Immigration Law Reform was caused by the necessity to implement some of the EU-guidelines. More restrictive preconditions for naturalization were endorsed (according marriage partners, young person under age of 23, criminal convictions) and *the introduction of a nationwide standard citizenship test in September 2008*.

The approach to the migrant integration as a measure of the contributions of immigrants' economic and social performances to state and society is highlight in the National Integration Plan (2007). The key aspects of this plan *include language acquisition*, *education*, *occupational training*, *working life*, *culture*, *science*, *sports*, *media*, *community volunteer work*, *gender equality and integration on location*. Integration measures are presented as "active" or "activating" integration policy in NIP. A common feature of both integration and social policy fields is a changing mode of political intervention focusing on influencing individual behaviour toward educational orientation, pro-activity and flexibility, activation of human capital [36]. This attention to skills and education is based on the widely shared assumption of a fundamental transformation to a knowledge-based society and a service economy as a matter of course.

In Germany the state employment service is possible for using by all categories of persons. The state bodies provided service provision and interact in their work with immigrants [30].

Federal Employment Agency (Bundesagentur für Arbeit) and local employment services provide support of jobseekers, assistance for job placement, vocational guidance and training for the unemployed and vocational guidance. Federal Employment Agency includes a head office, 10 regional directorates and 176 local employment agencies that *use "4-phase model" that means profiling, goal setting, strategy selection, interpretation services for clients*. The main duties of the Federal Employment Agency are: placement in training places and workplaces, vocational guidance, employer counseling, promotion of vocational training, promotion of further training, promotion of professional integration of people with disabilities, benefits to retain and create workplaces and compensations for reduced income, e. g. unemployment benefit or insolvency payments (Insolvency Fund).

One of the problems is that employment services don't differentiate between immigrant categories and natives.

Integration through Qualification program (IQ) was developed by the Federal Ministry of Labour and Social Affairs in 2005 for improvement of the service for foreign-born workers and was funded for next 5 years in 2011. The program include 16 regional networks, 5 IQ competence centers for it supporting with specialization on one of the topics among them recognition, qualification, job-related German, entrepreneurship and diversity and has delivered 90 % of 240 planned project. In the pilot program that take place from September 2008 to October 2010 11 400 participants participated, around 54 present were employed. At second round from November 2010 until December 2014 integration of asylum seekers was among main directions. Funding of the pilot project for the program is expired [30].

Head Chamber of Commerce and Industry and Chambers of Skilled Crafts define business coordinate training programs and requirements for credentialing all industrial sectors.

The Federal Government, trade unions, employers' associations and human rights organizations are the main stakeholders that act in the sphere of illegal employment of migrants [29, p. 15–16]. The position of Federal Government regarding illegal employment is that a violation of applicable law has to be under state-control.

Economic integration of immigrants is a complex problem of immigration. The solving the problem requires to develop an effective mechanism aimed at the practical implementation of the legal framework of immigration and measures for economic integration of migrants. A balance has to be between the need to protect economic rights of migrants and the desire to generate economic effect from labour migrants.

Positive German experience of the development migration integration policy can be used by other countries. The results will contribute to the evaluation of the role of economic rights of migrants and its influence on the integration of migrants into the labour market. At the same time German migration policy can be developed and can adapt the positive experience of developed countries.

Conclusion

The study addresses some qualitative aspects of migrant economic integration and German migration policy.

Germany accepted a lot of migrants and their number increased in recent years. Immigrants cover a big spectrum of economic participation but there is a wage gap and employment gap between immigrants and natives. The economic impact of economic integration of migrants includes benefits for enterprises, fiscal contributions from migrants and a high number of working years ahead and new economic opportunities for migrants. High-skilled immigrants usually make larger fiscal contributions than native-born. A lot of German labour immigrants are low skilled and middle skilled workers.

Migrants from EU countries have free access to the German labour market. German migration policy restricts access to labour market for immigrants from third countries. Differences in access to work and different skills and opportunities for migrants in Germany led to differences in their economic integration.

The key aspects of the labour migrant integration policy include language acquisition, education, occupational training, working life, culture, science, sports, media, community volunteer work, gender equality and integration on location. The "4-phase model" that means profiling, goal setting, strategy selection, interpretation services for clients and integration through qualification programs are used by employment agencies.

The economic impact of immigration will be felt by Germany for a long time so research of these phenomena is continued.

The authors believe that in this study the following terms and results are new and we make the contributions to literature: from theoretical viewpoint, we studied the labour market effects from immigration and economic integration of migrants in Germany and contribute to knowledge. We highlight the conceptual aspects of the migrant integration policy. This should lead to a better understanding of the necessity to develop labour market migrant integration policy. Our examples in the study should help understand the opportunities for the development of the migration policy. Finally, from methodological viewpoint and future direction for research, our results can be tested empirically by measuring the level of economic integration of migrants and assessing its impact on labour market performance.

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THE PROCEDURE IN THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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In the article the authors examine the procedure of arbitration and conciliation and applicable law at the International Centre for Settlement of Investment Disputes ("ICSID" or the "Centre"). Specifically, the authors compare arbitration and conciliation procedures and analyse the benefits and drawbacks of each as well as outline different positions taken by Tribunals in applying norms of international law to disputes at the Centre.

Key words: investment dispute; arbitration; conciliation; International Centre for Settlement of Investment Disputes; applicable law.

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ПРОЦЕДУРА В МЕЖДУНАРОДНОМ ЦЕНТРЕ ПО УРЕГУЛИРОВАНИЮ ИНВЕСТИЦИОННЫХ СПОРОВ

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Исследуются арбитражная и примирительная процедуры и применимое право в Международном центре по урегулированию инвестиционных споров. Сравниваются арбитражная и примирительная процедуры. Анализируются преимущества и недостатки каждой из них, приводятся различные подходы составов арбитража к применению норм международного права при разрешении споров в центре.

Ключевые слова: инвестиционный спор; арбитраж; медиация; Международный центр по урегулированию инвестиционных споров; применимое право.

ICSID procedure

The procedure of an investment dispute settlement is governed by chapters 3 and 4 of the ICSID Convention, the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings ("Institution Rules"), the Rules of Procedure for Arbitration Proceedings ("Arbitration Rules"), and the Rules of Procedure for Conciliation Proceedings ("Conciliation Rules") approved by written vote of the Administrative Council.

Normally, if the parties intend to continue their cooperation upon settlement of their dispute, conciliation is considered a more appropriate means of investment dispute resolution. On the other hand, the parties would normally resort to arbitration if they do not anticipate pursuing their business relationship.

Conciliation proceedings are initiated by a written request for conciliation of one of the parties addressed to the Secretary-General. The request should contain information concerning the issues in dispute, the identity of the parties and their consent to conciliation in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings. If necessary requirements (*i. e.*, *ratione voluntaris, ratione materiae*, and *ratione personae*) are met and after the request for conciliation is registered, the parties constitute a conciliation commission (the "Commission") by appointing a sole conciliator or any uneven number of conciliators as agreed by the parties. Where the parties do not agree on the number of conciliators and the method of their appointment, the Commission consists of three conciliators – one conciliator is appointed by each party and the third, the president of the Commission, is appointed by agreement of the parties. If the Commission is not constituted within 90 days or any other period as agreed by the parties, the Chairman of the Administrative Council appoints the conciliator or conciliators not yet appointed.

It is worth mentioning that when the ICSID Convention was drafted, one of the suggestions was to include the requirement for the parties to submit a joint request for conciliation. The rationale of this suggestion premised on the nature of conciliation that generally requires a higher level of cooperation between the parties to initiate this type of dispute resolution procedure. However, the final language of the provision that regulates the procedure of submitting a request for conciliation did not include the suggested joint request requirement and is identical to the respective arbitration provision.

The detailed requirements to contents of the request for conciliation are found in the Institution rules [1]. Specifically, under Rule 2 of the Institution rules, the request should designate each party to the dispute and state the address of each party, and, if one of the parties is a constituent subdivision or agency of a Contracting State, the request should indicate that it has been designated to the Centre by that State. Moreover, it is required that the request indicate the date of consent to submit a dispute to ICSID and the instruments in which it is recorded. If the parties gave consent on different dates, the request should indicate the latest date of one of the parties' consent. It is also required to include information on nationality of the investor party to the dispute as of the date the request if filed as well as information concerning issues in dispute to confirm that the Centre has jurisdiction over it (specifically, that there is a legal dispute between the parties that arises directly out of an investment). In addition, in accordance with Rule 3 of the Institution rules, the request may also include any other information with regard to the dispute, for example, the number of conciliators or arbitrators and the method of their appointment. It is also recommended that the claimant presents the case on the merit by including complete statement of facts underlying the dispute [2, p. 21].

Even though the Institution Rules contain detailed requirements to the contents of the request, the claimant may consult with the Centre on this matter prior to filing the request [3, p. 450–457]. Advance consultations prior to submitting the request allow the claimant to clarify points that need to be addressed in the request and reduce the risk of refusal to register the request by the Secretary-General [2, p. 23].

When the ICSID Convention was drafted, it was proposed that its provisions allow the claimant to make amendments in the filed request that does not conform to the requirements or to supplement an incomplete request [3, p. 774]. This suggested provision was included in the final language of the ICSID Convention and, accordingly, if the contents of the claimant's request does not meet certain formal requirements or misses any required information, the Secretary-General gives the claimant an opportunity to correct or supplement the request. For example, in *Fedax N. V. v. Bolivarian Republic of Venezuela*, the Secretary-General sent an acknowledgement of receipt of the request to the claimant and at the same time, required that the request be supplemented with address of the other party in accordance with Rule 2(1)(a) of the Institution rules. On the same day, the requesting party provided the Centre with the missing information and the Secretary-General transmitted a copy of the request and the accompanying documentation to the other party in accordance with Rule 5(2) of the Institution rules the following day [4].

The request and supporting documents should be accompanied by five additional signed copies, unless the Secretary-General requires that more copies be provided (Rule 4 of the Institution rules). All the documents should be in a language approved for the proceeding in question or accompanied by a certified translation into this language (Rule 30 of the Administrative and Financial Regulations).

Once the request is registered and the Conciliation Commission is properly appointed, the Commission works with the parties to clarify the facts and circumstances of the dispute in question and to suggest terms of mutually acceptable solution. To achieve this goal, on different stages of the conciliation proceeding, the Commission proposes various options of the parties' dispute resolution. This procedure is relatively flexible and allows the parties to reach an agreement in a variety of ways. In particular, unlike in arbitration, the Conciliation Commission is not strictly bound by the norms of substantive law, including provisions of the investment treaties. For example, the Commission may propose that, instead of resorting to remedies provided in multilateral and bilateral investment treaties, parties consider and negotiate benefits of their potential cooperation on a new investment project. Parties to conciliation proceedings, in turn, are expected to cooperate in good faith with the Commission and consider its recommendations.

In addition to comparative flexibility of the procedural norms, parties also benefit from predictability with respect to the expenses that they bear as a result of resolving their dispute through conciliation with the Centre. Specifically, in accordance with Article 61(1) of the ICSID Convention, in conciliation proceedings, the fees and expenses of members of the Commission and the charges for the use of the facilities of the Centre are borne equally by the parties. In contrast, in arbitration proceedings, the Tribunal first assesses the expenses incurred by the parties in connection with the proceedings and decides how such expenses should be allocated (Article 61(2) of the ICSID Convention).

When the parties reach an agreement, the Conciliation Commission prepares a report that includes the issues in dispute and terms and conditions of the parties' agreement. However, if at any stage of the proceedings, the Commission finds that there is no likelihood of reaching agreement by the parties, it closes the proceeding and prepares a report recording the failure of the parties to reach an agreement. In other words, the result of the Conciliation Commission's work is typically either reaching an agreement by the parties or concluding that such agreement cannot be reached. In addition, if one of the parties fails to appear or participate in the proceeding, the Commission gives a notice to the parties and closes the proceeding by drawing up its report to record the failure of the party to appear or participate.

Notwithstanding the benefits of conciliation, only two percent of the disputes registered with the Centre were resolved through conciliation. More specifically, according to the information published on the official ICSID website, conciliation practice of the Centre is limited to ten disputes. In eight cases, the Conciliation Commissions drew reports and two of the cases are currently under consideration. This infrequent recourse to conciliation proceedings as compared to arbitration can be explained by a non-binding character of a report drawn by the Conciliation Commission and absence of a mechanism of legal enforcement and recognition of an agreement that the parties reach in the course of conciliation proceedings.

Independent of the results of the Conciliation Commission's work, at any point of the conciliation proceedings, the parties may resort to arbitration. The procedure of initiation of the arbitration proceedings is analogous to conciliation. Specifically, a party submits a written request for arbitration containing an issue at dispute, information on both parties, and their consent to arbitration in accordance with the Institution rules to the Secretary-General. As in conciliation proceedings, an arbitration Tribunal consists of a sole arbitrator or any uneven number of arbitrators appointed by the parties. If the parties have not agreed upon the number of arbitrators and the method of their appointment, the Tribunal consists of three arbitrators – one is appointed by each party and the third, the president of the Tribunal, is appointed by agreement of the parties. If the Tribunal is not constituted within 90 days after notice of registration of the request has been dispatched or any other period as agreed by the parties, the Chairman of the Administrative Council appoints the arbitrator or arbitrators not yet appointed shall at the request of either party and after consulting both parties in accordance with Article 38 of the ICSID Con-

vention. Arbitrators appointed by the Chairman in the manner described above should not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.

The provisions of the ICSID Convention require that the majority of the arbitrators are not nationals of the Contracting State party to the dispute or the Contracting State whose national is a party to this dispute. This requirement, however, does not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

Arbitrators of the Tribunal have broad powers as compared to conciliators. For example, the Tribunal may request that the parties produce documents or other evidence as well as independently visit the scene connected with the dispute and conduct such inquiries there as it deems appropriate. On the other hand, the Tribunal's authority related to enforcement of its awards is limited. Specifically, the Tribunal is not authorized to take any coercive measures directed at enforcement of its award but may only advise the parties on any additional measures to ensure enforcement by each of the parties.

An arbitration award that is rendered by a majority of the votes of all the members of the Tribunal should address every question submitted to the Tribunal and should state the reasons upon which it is based. An award is required to be signed by all members of the Tribunal. However, any of the members of the Tribunal, whether or not he or she dissents from a majority vote, may attach an individual opinion or a statement of a dissent to the award. The award is published only upon the consent of the parties (Article 48(5) of the ICSID Convention).

The Secretary-General promptly dispatches certified copies of the award to the parties. In accordance with Article 49(1) of the ICSID Convention, the award is deemed to have been rendered on the date on which the certified copies were dispatched.

Upon the request of any of the parties made within 45 days after the award was rendered, the Tribunal may decide any question which it had omitted to decide in the award, and should rectify any clerical, arithmetical or similar errors in the award, which becomes part of the award and is notified to the parties in the same manner as the award.

As opposed to a report issued by the Conciliation Commission, the Tribunal's award is binding on the parties and is not subject to an appeal.

The Tribunal may revise the award upon written application of a party if this party discovered a new fact that would decisively affect the award, provided that the Tribunal and the applicant did not know of that fact when the award was rendered and that the applicant's ignorance of it was not due to negligence. This application should be submitted within 90 days after the party discovered of such fact and in any event no later than within three years after the date on which the award was rendered. In addition, if possible, the request to revise the award should be submitted to the Tribunal which rendered that award. If not possible, however, a new Tribunal is constituted in the manner described above.

Either party may request annulment of the award in writing based on one or more of the following grounds listed in Article 52(1) of the ICSID Convention:

1) that the Tribunal was not properly constituted;

2) that the Tribunal has manifestly exceeded its powers;

3) that there was corruption on the part of a member of the Tribunal;

4) that there has been a serious departure from a fundamental rule of procedure;

5) that the award has failed to state the reasons on which it is based.

The procedure of filing of an application to request annulment is governed by Article 52 of the ICSID Convention. Specifically, an application requesting annulment of the award should be made within 120 days after the date on which such award was rendered. However, if annulment is requested on the ground of corruption it should be made within 120 days after discovery of the corruption but in any event within three years after the award was rendered.

Upon receipt of the request of annulment of the award, the Chairman of the Administrative Council appoints an *ad hoc* Committee of three persons from the Panel of Arbitrators. None of the members of the *ad hoc* Committee should (i) be a member of the Tribunal which rendered the award, (ii) be of the same nationality as any such member, (iii) be a national of the State party to the dispute or of the State whose national is a party to the dispute, (iv) have been designated to the Panel of Arbitrators by either of those States, or (v) or have acted as a conciliator in the same dispute. The *ad hoc* Committee has the authority to annul the award or any of its part on any of the grounds discussed above. The Committee may also stay enforcement of the award pending its decision if it considers that the circumstances so require. If the award is annulled the dispute should be submitted to a new Tribunal at the request of either party.

According to the 2016 Annual Report issued by the Centre, only 15 arbitration awards rendered by the ICSID Tribunals were annulled in 2016, five of which in totality and ten – in part, which evidences their high quality [5, p. 38].

Each Contracting State should recognize an award rendered by the ICSID Tribunal as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. Moreover, in accordance with Article 54(3) of the ICSID Convention, execution of the award is governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought. Article 54(4) further clarifies

that the recognition and enforcement provisions contained therein should not be interpreted as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution. Accordingly, the ICSID Convention does not provide an effective mechanism of enforcement of the awards rendered by the arbitration Tribunals. In practice, a Contracting State that is a party to an investment dispute settled through the ICSID arbitration mechanism could refuse to enforce the Tribunal's award in its territory. For example, in *Liberian Eastern Timber Corporation v. Republic of Liberia,* Liberia who was a party to the dispute refused to recognize the ICSID Tribunal's award in favour of the foreign investor. As a result, the foreign investor had to resort to the domestic U.S. court for enforcement of this award.

Applicable law

Pursuant to Article 42(1) of the ICSID Convention, the Tribunal decides a dispute in accordance with such rules of law as agreed by the parties. In the absence of such agreement, the Tribunal applies the law of hosting Contracting State party to the dispute as well as "such rules of international law as may be applicable".

Accordingly, because of participation of parties of different legal nature in ICSID investment disputes - a Contracting State on one side and a foreign investor on the other, – the ICSID Tribunals apply both international and domestic civil norms and principles [6, p. 74].

Article 42(1) of the ICSID specifies a priority of applicable sources of law – domestic law of the host Contracting State, then – international law norms. In accordance with doctrine [6, p. 75] and the ICSID precedent (*e. g.*, *SPP v. Arab Republic of Egypt)*, the norms of international law apply in case of a gap in the applicable domestic law or a conflict between the domestic and international law. Accordingly, the norms of international law play the complementary (or supplemental) and corrective functions [3, p. 623]. Interestingly, in its Award in *Wena Hotels Ltd. v. Arab Republic of Egypt* (*ICSID Case No. ARB/98/4*), the Tribunal observed that different approaches on the role of international law as a source of law in the ICSID proceedings had been taken, i. e., either restricting its role or applying it broadly and, in turn, restricting the role of the host State's law. The Tribunal further noted that the use of the word "may" in the second sentence of Article 42(1) cited above indicates that the Convention does not draw a sharp line for the distinction of the respective scope of international and of domestic law and, correspondingly, that this has the effect to confer upon the Tribunal a certain margin and power for interpretation. The Tribunal in *Autopista Concesionada de Venezuela, C. A. v. Bolivarian Republic of Venezuela* [7] dissented the position taken by the Tribunal in *Wena Hotels* and refused to surpass the corrective and supplemental functions of international law, concluding that the arbitration proceeding was based on the contract between the parties and not on a treaty.

Generally, the ICSID Tribunals are reluctant to apply domestic norms that in any way restrict any of the party's rights for a dispute resolution, such as, for example, statute of limitation provisions. In *Wena Hotels*, for example, the Tribunal refused to apply a domestic three-year statute of limitation noting that that "municipal statutes of limitation do not bind claims before an international tribunal".

Further, in accordance with Article 42(2), the Tribunal may not bring in a finding of *non liquet* based on silence or obscurity of the law.

Finally, the Tribunal is authorized to decide a dispute *ex aequo et bono* only if the parties so agree. In practice, in a number of cases the Tribunals decided disputes *ex aequo et bono,* including but not limited to awards in *Atlantic Triton Company v. People's Revolutionary Republic of Guinea* (*ICSID Case No. ARB/84/1*), *S.A.R.L. Benvenuti & Bonfant v. People's Republic of the Congo* (*ICSID Case No. ARB/77/2*).

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THE DRAFT PROTOCOL ON THE CREATION OF THE COURT OF JUSTICE OF MERCOSUR – A NEW MILESTONE IN THE JUDICIALIZATION OF REGIONAL INTEGRATION LAW

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Several years have passed since Parlasur submitted a draft protocol to the Member States of Mercosur for approval, envisaging the creation of a permanent Court of Justice for this South American integration system. Repeated calls for a reform of Mercosur's dispute settlement mechanism have remained unheard ever since, as the national governments' focus of attention has shifted to the economic and political difficulties this regional integration system had to face. The recent election of a new government in Argentina has raised hopes that the reform would be finally implemented. The present article will explain the reasons for the necessity of this reform. It will further provide an account of the key features of the draft protocol, which intends to remedy the shortcomings of the dispute settlement mechanism currently in place, while highlighting the influence European and Latin American integration law has had. The conclusion to be drawn is that the draft protocol constitutes a milestone in the judicialization of regional integration law and that a failure to make it legally binding would have to be considered a missed opportunity for regional economic integration.

Key words: supranationality; procedural law; dispute settlement mechanisms; comparative law; Mercosur; Andean Community; Central American Integration System; European Union; European Free Trade Association; Eurasian Economic Union.

ПРОЕКТ ПРОТОКОЛА О СОЗДАНИИ СУДА СПРАВЕДЛИВОСТИ МЕРКОСУР – НОВАЯ ВЕХА ЮРИДИЗАЦИИ ПРАВА РЕГИОНАЛЬНОЙ ИНТЕГРАЦИИ

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Несколько лет прошло с того момента, как ПАРЛАСУР представил на утверждение государствам – членам МЕРКОСУР проект протокола о создании постоянного судебного органа настоящего интеграционного объединения южноамериканского региона. Отмечается, что неоднократные призывы к реформе механизма урегулирования споров в МЕРКОСУР до сих пор не были услышаны, поскольку внимание национальных правительств переключилось на экономические и политические трудности, с которыми сталкивалась региональная интеграционная система. Состоявшиеся выборы в Аргентине оставляют надежду на то, что реформа в итоге будет проведена. Предпринимается попытка объяснить причины необходимости такой реформы. Анализируются основные черты проекта протокола, который стремится устранить недостатки механизма урегулирования споров в настоящее время, подчеркивается влияние на этот процесс европейского и латиноамериканского интеграционного права. Делается вывод о том, что проект протокола представляет собой краеугольный камень юридизации регионального интеграционного права, отказ сделать его юридически обязательным будет рассматриваться как упущенная возможность для региональной экономической интеграции.

Ключевые слова: наднациональность; процессуальное право; механизмы разрешения споров; сравнительное право; МЕРКОСУР; Андское сообщество; интеграционное объединение Центральной Америки; Европейский союз; Европейская ассоциация свободной торговли; Евразийский экономический союз.

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Introduction

In December 2010, after an intense debate, Parlasur – the parliamentary assembly of Mercosur – expressed its support in favour of the establishment of a court of justice for Mercosur. The authors of the draft protocol creating the necessary legal basis were the deputies *Alfonso Rodríguez Sáa* (Argentina) and *Eric Salum Pires* (Paraguay). After the adoption of the resolution approving it, the draft protocol was submitted to the *Consejo del Mercado Común (CMC)* – the supreme political body of Mercosur – for deliberation[1], which has failed to scrutinize it to this date. This is regrettable, given the important innovations the draft protocol introduces to Mercosur's dispute settlement mechanism. Admittedly, Mercosur had to face more urgent matters, such as the admission of Venezuela as a member, as well as the suspension of Paraguay's membership following the institutional crisis in that country[2] [1]. In addition, Bolivia's interest in joining the trade bloc despite its membership in the *Andean Community (CAN)*[3] remains unbroken. However, after having overcome most of these challenges, the time would appear ripe for a new attempt to adjust the institutional framework to the demands of the integration process. Before explaining the details of the reform, it appears sensible to describe conciselythe current setup of Mercosur's dispute settlement mechanism. A closer look at the deficiencies of this mechanism will make clear why various legal scholars have called for a reform [2]. The draft protocolmust be regarded asan initiative aimed at providing a political answer to this appeal.

Mercosur's current dispute settlement mechanism

Actions aimed at pursuing infringements

Article 33 of the UN Charter provides that a dispute settlement mechanism is an important instrument for the pacific solution of international conflicts, listing up a few examples: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of the parties' choice. The *Protocol of Olivos* put in place the *Tribunal Permanence de Revisión (TPR)* in Mercosur, which aims at solving disputes concerning the interpretation, the application and the infringement of Mercosur law, which comprises the *Treaty of Asunción (TA)* – the treaty by which Mercosur was established, – its protocols and the agreements concluded, as well as the disputes arising in connection with decisions, resolutions and directives adopted by Mercosur bodies having decision-making competence. Notwithstanding this, the Member States of Mercosur have the right to submit their controversies to the WTO or any other dispute settlement mechanism.

The origins of the dispute settlement mechanism currently in place in Mercosur go back to the *Protocol of Brasilia (PB)*, which was replaced by the *Protocol of Olivos (PO)*. The PB introduced a dispute settlement mechanism similar to the one, which exists in the *North American Free Trade Agreement (NAFTA)*[4], whereas the PO reshaped it so as to create one resembling more to the mechanism in place in the *European Union (EU)* and the CAN. Even though the PO creates a more sophisticated mechanism than the one in place in NAFTA, it does not reach the level of sophistication attained by the EU or the CAN, as it does not foresee the establishment of a permanent court of justice but rather of a TPR.

Another essential difference is the participation of individuals in the dispute settlement mechanism. There is no possibility under the PO to activate the dispute settlement mechanism directly, an option which does exist in the EU and in the CAN. The mechanisms in place in these integration systems allow individuals to submit their disputes before a permanent court of justice without the prior intervention of the respective Member State. Articles 39 and 40 PO provide for the right of individuals to lodge complaints before the respective National Section of the *Grupo del Mercado Común (GMC)* – the executive body of Mercosur – concerning legislative or administrative measures allegedly having restrictive effect or liable to distort competition, in breach of Mercosur law. The procedure foresees that the complainants must provide elements of evidence confirming the authenticity of the breach as well as the existence or the threat of damage, so as

[1]The draft protocol was handled as dossier MEP 134/09 and submitted to the "*Comisión de Asuntos Jurídicos e Institucional" ("CAJI")* of *Parlasur*. After a year of assessment, the draft protocol was submitted to the plenary session of *Parlasur* for debate, which accepted it as Legislative Proposal 2/10 of 13 December 2010. After the parliamentary approval, the draft protocol was submitted to the CMC on 14 December 2010 for its consideration and final approval.

[2]The institutional crisis caused by the impeachment of President *Fernando Lugo*, the subsequent suspension of Paraguay in Mercosur on grounds of an alleged breach of the Protocol of Ushuaia regarding the Commitment of Mercosur to Democracy, and the entry of Venezuela in the organization as a full member led to litigation before the TPR.

[3]The CAN is a South American integration system established in 1969, comprising Bolivia, Colombia, Ecuador and Peru. Chile left in 1976 and Venezuela left in 2006 in order to join Mercosur. Associated States are Argentina, Brazil, Paraguay, Uruguay, Panama, Mexico and Chile, while Spain has observer status. The objective of this integration system is to create a customs union and a common market between its members.

[4]The principal dispute settlement mechanisms of the NAFTA are found in Chapter 11 (Settlement of disputes between a party and an investor of another party), Chapter 19 (Mechanism to provide an alternative to judicial review by domestic courts of final determinations in antidumping and countervailing duty cases, with review by independent binational panels) and Chapter 20 (Disputes regarding the interpretation or application of the NAFTA).

to allow the complaint to be formally admitted by the National Section and assessed by the GMC and the group of experts summoned to this purpose.

The dispute settlement mechanism of Mercosur consists essentially of the following stages: (i) bilateral negotiations between Member States; (ii) the submission of the dispute to the GMC through consultations and complaints; and (iii) the arbitration procedure before the *ad hoc* panel and the TPR. When a dispute arises, the first step is to launch bilateral negotiations[5]. If no agreement is found, it is possible to opt for the procedure before the *Comisión de Comercio (CCM)*, which does not preclude lodging a complaint before the GMC, which will formulate detailed – but non-binding – recommendations on how to solve the dispute. Where the settlement of the dispute in the two previous procedural stages has been unsuccessful, any of the Member States involved may inform the *Secretaría Administrativa (Secretariat)* – the body in charge of providing technical support to the other Mercosur bodies – of its intention to resort to the arbitration procedure, thus starting the third and last stage, which implies setting up an *ad hoc* panel.

Every *ad hoc* panel is made up of three members. Every Member State involved in the dispute shall designate one panel member respectively, while the third panel member, who chairs the panel and may not be a national of neither of the Member States, shall be designated by common agreement. In the event that no agreement should be found on the choice of the chair, the PO provides that the *Secretariat* shall designate it on the basis of a list of candidates drawn up to this purpose. The Member States have the right to designate their representatives and legal counsels. As the name suggests, the *ad hoc* panel is a tribunal expressly created for the resolution of the dispute in question. The panel must therefore limit itself to rule on the subject matter of the dispute, determined by the written submissions and the pleadings of the parties. The parties must submit their factual and legal observations in support of their respective views.

Article 17 PO provides that any of the Member States involved in the dispute may appeal the panel decision before the TPR within 15 days after the notification of the decision to the parties. The TPR is composed of five arbiters, designated by each Member State, and a reserve arbiter, this one being elected by unanimous vote. The arbiters must be available on a permanent basis whenever they are needed. The TPR shall adopt a ruling within 30 days (with a possibility of extension for another 15 days). The TPR has the power to confirm, modify or revoke the legal reasoning and the decisions adopted by the *ad hoc* panel. The TPR's arbitral award will be final, overriding the *ad hoc* panel's decision adopted.

It is feasible to skip certain stages of the procedure foreseen by the dispute settlement mechanism, as Article 23 PO provides for the possibility for the parties to submit the dispute immediately and in last instance to the TPR, however only once the direct negotiations have ended. In this case, the TPR has the same competence as an *ad hoc* panel, with the consequence that its arbitral awards have the effect of *res iudicata*. They cannot be subject to a revision, for it has been adopted by the judicial body of last instance created by the PO. The importance of Article 23 PO lies in giving the Member States the option of saving the time usually consumed by the regular dispute settlement mechanism created by the PB and refined by the PO. The regular procedure can last up to 195 days (including the possible extension of deadlines) since the beginning of the direct negotiations. The frequent use of the option laid down in Article 23 PO by the Member States involved is likely to favour a development by which going through the initial stages of the procedure might eventually be rendered futile, turning the TPR into a permanent court of justice. However, for the time being, the Member States have shied away from taking this next,crucial step.

The arbitral awards – of both the *ad hoc* panels and the TPR – must be adopted by a majority, contain an account of reasons and be signed by the chair and the other arbiters. The arbiters must keep the confidentiality of the deliberation and the voting. The parties to the dispute must comply with the arbitral award within the time limits specified. In the event that the Member State party to the dispute should not comply with the arbitral award, the harmed party is allowed to apply countermeasures in order to avoid any damages. Where proof has been adduced of a situation likely to cause grave and irreparable damages, it is for the parties possible to request interim measures. Before the entry into force of the PO, interim measures could be ordered until the ad hoc panel would adopt its arbitral award. Nowadays, the effect of interim measures end when the TPR has adopted it arbitral award.

Mechanisms aimed at obtaining an interpretation or verification of validity of integration law

To a similar extent as other integration systems[6] [3; 4], Mercosur has a mechanism in place allowing certain bodies to request an interpretation of the in-

[5]This mechanism bears a slight similarity with the dispute settlement mechanism of the Eurasian Economic Union (EurAsEU) in so far as the latter also prescribes a mandatory attempt of pre-trial resolution prior to a referral of the matter to CJ-EurAsEU, according to Article 43 of its Statute.

[6]See Article 267 TFUE in the EU ("preliminary rulings"); Article 34 SCA in the EFTA pillar of the EEA ("advisory opinions"); Article 32 TTJCAN in the CAN ("cuestionesprejudiciales"); Article 22 lit. k Statute CJ-SICA in the SICA ("consultasprejudiciales"). The Court of Justice of the Eurasian Economic Community ("CJ-EurAsEC") used to have the competence laid down in Article 3 of the *Private Litigants Treaty* to give "advisory opinions" upon request of a national supreme court, even though it was only used once during its existence. The Court of Justice of the Eurasian Economic Union ("CJ-EurAsEU") has not been conferred any similar competence.

tegration system's common rules[7]. The *Opiniones Consultativas* are reasoned decisions adopted by the TPR in response to legal questions submitted, concerning the interpretation and application of the Mercosur in an individual case, with a view to safeguard its uniform application in the territory of the Member States. The mechanism is also applicable in circumstances in which it is necessary to verify the validity a specific legal act or provision of integration law. It can be invoked by the Member States acting jointly, the bodies of Mercosur having decision-making powers – CMC, GMC and CCM, – the Supreme Courts of the Member States and the Parlasur.

Secondary Mercosur legislation allows the Supreme Courts to extend this competence to other supreme judicial bodies of the Member States[8], a competence which has not yet been made use of. Conversely, there is no legal provision in Mercosur law allowing lower national courts to refer questions directly to the TPR without the intermediary of the Supreme Courts. In other words, lower national courts must submit their questions on interpretation of Mercosur law to the Supreme Courts before a referral to the TPR is possible at all. This is explicitly prescribed by secondary Mercosur legislation[9], which requires the adoption of national implementing measures, a task which has been entrusted not to the Parliaments but to the Supreme Courts [5]. Internal legislation adopted in the meantime by the Supreme Courts of all Member States specifies that all national courts may initiate a referral, either at first instance or at appeal level, as well as *motuproprio* or upon request by any of the parties to the procedure. Request for referrals must originate in judicial procedures before national courts. The manner in which the implementing national legislation has been drafted in all Member States allows the conclusion that the interpretation of the Mercosur law in question must be deemed relevant for the resolution of the dispute. Given the fact that only the Supreme Courts are allowed to refer questions directly to the TPR, while the role of lower national courts is rather limited to request a referral and to pre-formulate the questions, there is no distinction between facultative and obligatory referrals as is the case in the legal systems of the EU[10] and the CAN[11]. The procedure initiated by the national courts is officially considered to be of "judicial cooperation" for the reason that it does not require the involvement of the ministries of foreign affairs or any other bodies belonging to the executive branch. The Supreme Courts' role is to declare the request for referrals admissible.

The TPR has 65 days to respond to the questions referred[12]. The opinion must be based on Mercosur law and can be adopted by a majority of votes. The decision must state any dissenting votes should there be any. It is important noting that the opinion is neither binding nor obligatory[13]. However, it is generally presumed to have a certain *de facto* authority, as it is produced by a highly specialized judicial body [6]. The national delegations at the GMC may submit written observations within 15 days after the notification of the admissibility of the request of an opinion, with the aim of supporting the TPR in its deliberations. Once the decision has been adopted, the procedure comes to an end, although Mercosur law foresees two scenarios, which go beyond the TPR's scope of competence: the non-presentation of opinions for particular reasons and the beginning of a dispute as the result of an opinion.

Mercosur's longinner struggle over the future of its institutional framework

Contrary to other integrations systems in the Americas – more specifically, the CAN and the *Central American Integration System (SICA)*,[14] – Mercosur has opted for an intergovernmental model of integration, deliberately rejecting any attempt to infuse elements of supranationality into its legal system [7][15]. Consequently, Mercosur has a very lean institutional framework, a trait that becomes particularly evident in the manner in which its dispute settlement mechanism is configured, characterized *inter alia* by (1) the instrumentalisation by the State of the individual affected by a breach of Mercosur law in order to pursue infringements by other Member States rather than by bodies safeguarding the integrity of the legal system, (2) the resort to direct negotiations between the Member States and (3) the use of an arbitration system.

[7] See Article 9 MERCOSUR/CMC/DEC. No. 37/03.
[8] See MERCOSUR/CMC/DEC. No. 02/07.
[9] See MERCOSUR/CMC/DEC. No. 02/07 and MERCOSUR/GMC/RES. No. 40/04 and 41/04.
[10] See Article 267(3) TFEU.
[11] See Article 33 TTJCAN. See the explanations by the TJCAN on facultative and obligatory referrals, clearly inspired by the case-law of the ECJ, in Cases 154-IP-2011, p. 6 and 57-IP-2012, p. 5.
[12] See MERCOSUR/CMC/ DEC. No. 15/10.
[13] See Article 11 MERCOSUR/CMC/DEC. No. 37/03.
[14] The SICA is a Central American integration system established in 1991, comprising El Salvador, Guatemala, Honduras, Nicaragua y Panamá. Costa Rica left in 2015. Mexico, Chile, Brazil, Argentina, Peru, USA, Ecuador, Uruguay, Colombia, China (Taiwan), Spain, Germany, Italy, Japan, Australia, South Korea, France, HolySee, United Kingdom, EU, New Zealand, Morocco, Qatar and Turkey have observer status. The objectives of SICA are the promotion of democracy, security and economic development in the region.
[15] Explains that, at the time of creation of Mercosur, the political will to put in place an authentic judicial body was lacking.

The initial belief in the advantages of such a model has given way to serious doubts by legal scholars as to whether the lack of a robust institutional framework will manage to contribute to the further development of the integration process [8; 9]. An intergovernmental integration model becomes vulnerable when it is obliged to rely exclusively on the good will of its Member States, in particular when they have an overly presidential format, as is the case of Argentina and Brazil. This vulnerability is exacerbated by the absence of any mechanisms to reduce asymmetries (in terms of economic and, ultimately, of political power), relying rather on an unrealistic "formal" equality between the Member States. An integration system, which does not prevent Member States from using economic and/or power as a leverage to enforce their interests, does not inspire confidence in its legal system.

Lack of legal certainty is detrimental to the survival of an integration system in the long run. In order to depoliticize disputes and to strengthen Mercosur's legal system for the benefit of the citizens, the idea of creating a permanent court of justice of Mercosur was proposed by various legal scholars. A major concern was the need to ensure the uniform interpretation and application of Mercosur law. It was feared that leaving it to the national courts to interpret Mercosur law in light of their own legal traditions and using their methodologies would lead to a situation, in which Mercosur law would not have the same validity or effect from one Member State or another.

It was also argued that the arbitration model appeared to be more appropriate for an association or a cooperation agreement rather than for an ambitious process, whose objective is to achieve integration at legal, commercial, economic, social and cultural level. Indeed, Article 1 TA provides that the Member States agree to establish a common market, implying the free movement of goods, services and production factors, the creation of a customs union and the adoption of a common trade policy, as well as the coordination of macro-economic and sectorial policies in the area of foreign trade, agriculture, industrial development, taxation, monetary policy and capitals, services, customs, transport and communication and other to be agreed upon, apart from guaranteeing adequate conditions of competition in the Member States.

Mercosur law was expected to gradually evolve into community law and the arbitration model was considered inadequate, once Mercosur would have been left behind its foundational phase. The very nature of *ad hoc* panels was regarded as an obstacle to ensuring a uniform case-law. The lack of established rules of procedure was deemed to undermine legal certainty, as it could not be ruled that the *ad hoc* panels might rule differently in similar disputes. Furthermore, it was argued that even though a mechanism foreseeing negotiation and arbitration might solve individual conflicts, it would not guarantee a uniformity of general resolution criteria applicable to all cases. In addition, the solution of conflicts by consensus and, in the majority of cases, by intergovernmental non-judicial bodies lacking independence, by arbiters lacking experience, appeared unbearable. The establishment of the TPR as a permanent arbitration panel was seen as major step in the further institutionalization of Mercosur, as it reflected the aspiration by the Member States to create a "community of law", with at least a "judicial instance" on its top. It should be noted in this context that various provisions of primary Mercosur law had foreseen the creation of a "permanent dispute settlement mechanism" (although not necessarily a court of justice)[16].

Apart from the deficiencies of the dispute settlement system described above, the view was taken that the current dispute settlement mechanism failed to guarantee proper access to justiceto individuals. In fact, individuals are only allowed to lodge complaints in certain areas, while active legitimation to bring disputes before the resolution bodies lies only with the Member States. Commentators harbored hope that a future permanent court of justice might help implement such a fundamental right as the access to justice.

The conviction grew that a harmonious interpretation of Mercosur law meant the basis of every integration process and that it could only be achieved by means of a permanent judicial body bestowed with the competence of interpretation, being the interpretation given binding upon the Member States. There were doubts concerning the right approach though, as the view was taken by some that the creation of a court of justice would not make sense before Mercosur law had not evolved into community law. According to this viewpoint, a judicial dialogue would have to start between the national supreme courts, which would eventually create a body of case-law and provide normative content to Mercosur law. According to the opposite view, the creation of a court of justice was an urgent step to take, recalling in this context the European integration experience, which in their opinion had been characterized by the creation of strong institutions designed by lawyers, ultimately facilitating economic integration.

After having described Mercosur's dispute settlement mechanism and put in evidence its deficiencies, the following analysis will focus on the major traits of the reform introduced by the draft protocol and explain the manner in which it intends to address these shortcomings.

[16]Annex III No. 3 Treaty of Asunción; Article 34 PB (repealed); Article 44 PoP; Article 53 PO.

Major traits of the dispute settlement mechanism introduced by the draft protocol

Procedure required for its enactment

Contrary to the situation in the EU and to what its character as parliamentary assembly might suggest, the Parlasur is a consultative body of Mercosur without any legislative powers[17]. Its competence in connection with the draft protocol is therefore limited to submitting it to the CMC for political approval in accordance with Article 4(13) of the *Constitutive Protocol of the Mercosur Parliament*. For the protocol to become legally binding, the Member States represented in the CMC would have to incorporate it into the legal order of Mercosur by approving it in accordance with their respective national constitutional requirements [10]. In order for the future judicial body to become operational immediately and without restraints, the simultaneous entry into force of the draft protocol would have to be ensured. For that purpose, the implementation procedure laid down in Article 40 PO would have to be used, which foresees that, once the Mercosur legal act has been adopted, the Member States must proceed to adopt the necessary national implementing measures. Once this has occurred, they must notify it to the Secretariat, which will inform all Member States. The aforecited provision further states that the national implementing measures must enter into force and be published in the official journals of the Member States 30 days following the notification by the Secretariat. As complicated as this procedure may sound, Mercosur has already enough experience with the incorporation of protocols in its legal system and nothing suggests that the incorporation of the draft protocol – once approved by the CMC – might encounter difficulties [11].

As any other legislative proposal, the draft protocol contains a statement of reasons, explaining the objectives pursued. The recitals call for the establishment of a *Court of Justice of Mercosur (CJM)* as an independent judicial body, whose objective shall be the uniform interpretation and application of Mercosur law. The CJM is meant to be a contribution to the legal and institutional consolidation of the integration process. The draft protocol draws expressly from the experience gained in the application of both the protocols laying down the legal basis for Mercosur's current dispute settlement mechanism and the mechanisms in place in other integration systems characterized by a supranational format such as the EU, CAN and SICA. The recitals confirm that the draft a protocol is essentially the product of a profound comparative study of integration law.

By using a new terminology, different from the one used at national level, the draft protocol clarifies that the CJM is supposed to become a distinct, specialized, judicial instance, anchored in the institutional framework of Mercosur. It is also evident that the drafters' intention was to depart from the arbitration model currently in place. In other words, the CJM is supposed to replace the current dispute settlement mechanism entirely. The draft protocol stresses the need to guarantee legal certainty, by pointing at the progress achieved in other integrations systems, which have developed more advanced dispute settlement mechanisms.

The recitals refer to previous resolutions of Parlasur and national supreme courts, calling for the establishment of a judicial body for Mercosur[18]. Reference is also made to several provisions in Mercosur primary law, envisaging the establishment of a "permanent dispute settlement mechanism". All these references indicate that the draft protocol has been expressly developed with a view to address these requests. The process of judicialization of Mercosur is seen by the drafters as an important stage in the evolution of the integration system as a whole.

Remarkable in this context is the fact that the draft protocol refers to the CJM as a compensation for the absence of a "judicial instance of community law". Bearing in mind that it is the unanimous opinion in the TPR's case-law[19] and in legal theory [12] that Mercosur law does not qualify as "community law" at its current stage of development, this necessarily implies that the establishment of the CJM must be understood as a step towards the transformation of Mercosur into a supranational legal system, autonomous and *sui generis*.

Structure of the draft protocol

Organizational aspects. The draft protocol is a well-structured document, which sets out the jurisdiction, the configuration and the competences of the CJM. It provides that the CJM shall be based in Asunción – the capital of Paraguay – and shall have exclusive jurisdiction for disputes concerning the legal system of Mercosur. This constitutes an important turning point in the evolution of Mercosur, in particular given the loss of confidence that some Member

[17] Article 24 TA provides for the creation of a "Joint Parliamentary Commission", however, without specifying its competences. These are set out in detail in Article 4 of the Constitutive Protocol of the Mercosur Parliament (MERCOSUR/CMC/DEC. No. 23/05) and consist essentially in surveying the integration process, submitting opinions, suggestions as well as legislative proposals for consideration by the CMC and/or the national parliaments. The members of Parlasur are meant to be elected directly by the citizens of the Member States (to this date, only Paraguay in 2008 and Argentina in 2015 have created the necessary legal conditions for a direct election). Parlasur hopes to evolve into a genuine legislative body similar to the European Parliament.

[18] Parlasur, *Declaration No. 23/08 concerning the 6th Meeting of National Supreme Courts of 21 November 2008 in Brasilia*; *Declaration No. 1/09 concerning the World Crisis* / National Supreme Courts, *Final Declaration on the occasion of the 7th Meeting of 2 September 2009 in Buenos Aires*.

[19] See TPR decision No. 1/2005 of 20 December 2005, in which the TPR characterizes Mercosur law as "integration law", contrary to "community law", which Mercosur does not yet have due to lack of "the sought-after supranational character".

States had shown in the current dispute settlement mechanism in the past, manifested by the referral of disputes to the WTO's rather than to the integration system's own panel system[20]. This is possible under Article 1(2) PO, which contains a forum choice clause. According to this provision, a Member State can always choose whether to resort to the Mercosur system for the settlement of disputes or to a different mechanism to which it is a party, such as the multilateral settlement of the WTO. However, once the choice has been made and the procedures have started, the party cannot resort to a second forum.

The draft protocol reflects the principle of conferral, by providing that the CJM shall be structured and exercise its competences as stipulated therein. As regards the institutional structure, the draft protocol specifies that the CJM shall be composed of judges – whose number shall be equal to the number of Member States – and deputy judges. However, it provides for a possible increase in the number of judges and the creation of an *Advocate General* by the CMC upon a proposal by the CJM. By foreseeing the figure of the Advocate General, the CJM clearly borrows from the European integration experience. It remains to be seen whether this provision will ever be implemented or will rather remain *lettremorte*, as has been the case in the CAN. While Article 6(3) of the *Treaty establishing the Court of Justice of the CAN (TTJCAN)* and Article 142 of its Statute provides for the creation of the figure of the Advocate General by the *Andean Council of Foreign Affairs Ministers* upon consultation of the TJCAN, this legal basis has not been yet invoked, allegedly due to the low number of cases. In any case, it is notable that the draft protocol refrains from defining the competences of the Advocate General, leaving the implementation to the future Statute of the CJM.

Stressing the absolute independence of the members of the CJM appears to have been of paramount importance to the drafters of the protocol, which must be seen in light of the difficulties related to the current panel system. Teaching assignments are regarded as the only activity compatible with the exercise of judicial functions. The provisions on judicial independence are far-reaching and modelled after the regulation currently in place in the SICA since the establishment of its Court of Justice (CJ-SICA) by the *Protocol of Tegucigalpa*[21].

The same applies to the procedure for the selection of judges, clearly inspired by Article 10(1) of the *Statute of the CJ-SICA*[22]. According to this procedure, the Supreme Court of each Member State shall draw up a list of candidates, following the provisions in national legislation laying down the procedure for the selection of Supreme Court judges. However, contrary to the situation in the SICA, where also the appointment of the judges is carried out by the Supreme Court of each Member State, this stage of the procedures falls within the competence of the national governments [13]. The judges of CJM shall be appointed for a term of 6 years and be eligible for reappointment[23]. In order to avoid parity in the number of judges, which might hinder majority votes, the draft protocol appears to introduce a solution foreseen in the CAN, as in those circumstances, an additional judge shall be appointed by absolute majority. With a view to ensure that the functioning of the CJM is not compromised by the absence of a judge, the draft provides for the appointment of substitute judges, who mustfulfil the same professional requirements as the ordinary judges. As regards these requirements, the CJM follows the example of the EU[24], the SICA[25] and the CAN[26], by requiring that *judges shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence*[27]. Judges may only be removed by unanimous decision of CJM, upon request by all Member States, in case of a grave violation in the fulfilment of their duties, to be specified in the CJM Statute.

Apart from judges and the possible creation of an Advocate General, the draft protocol envisages that the position of the Registrar will be filled and staff will be hired. The methodology chosen for their appointment is the one of an international public *concours*.

The draft protocol contains detailed provisions concerning the immunities to be granted to the judges, the

[20] Brazil had initiated a procedure against Argentina in an antidumping case by resorting first to the panel system foreseen in the PB. Not satisfied by the panel decision, it had subsequently brought the matter before the WTO's dispute settlement system (case WT/DS 241). As a consequence, the WTO panel had been called upon to interpret Mercosur rules.

[21] The Protocol of Tegucigalpa, by which the institutional framework of the SICA was modified so as to establish a judicial body, is an international treaty concluded by the Member States of the SICA on the occasion of the 11th presidential summit (held on 13 December 1991 in Managua). See, as regards the independence of judges, the far-reaching provisions in Articles 12, 14, 15 and 29 of the Protocol.

[22] The Statute of the CJ-SICA is an international treaty, which was concluded by the Member States of the SICA on the occasion of the 13th presidential summit (held on 9–11 December 1992 in Panama) and entered into force on 2 February 1994.

[23] Similar to the ECJ, EFTA Court and TJCAN, whereas judges at the CJ-SICA and at the Court of Justice of the Eurasian Economic Union ("CJ-EurAsEU") are appointed for a term of 10 years and 9 years respectively.

[24] See Article 253 TFEU.

[25] See Article 9 Statute of the CJ-SICA.

[26] See Article 6 TTJCAN.

[27] Other integration systems have similar criteria concerning the appointment of judges for their respective judicial bodies, for example, the EurAsEU (see Articles 9, 18–21 Statute of the CJ-EurAsEU) and EFTA (see Article 30 SCA), combining requirements of competence and independence, necessary for the fulfilment of their duties.

Registrar and other staff. While judges possess the same immunity as chiefs of mission, in accordance with the *Vienna Convention on Diplomatic Relations*, the immunity granted to the Registrar and public servants is merely functional, restrained to cover the exercise of their respective functions. The protection of the CJM's archives and official postal communication is guaranteed.

According to the draft protocol, the CJM shall adopt its statute, which shall be approved by the CMC, following the positive vote of Parlasur. Furthermore, the CJM shall adopt its internal regulation and rules of procedure.

The draft protocol imposes certain reporting duties on CJM with regard to the Parlasur and the CMC, in order to reinforce the CJM's democratic accountability. A remarkable aspect of the draft protocol is the establishment of a system of own financial resources for the CJM. It provides that the CJM's budget shall be covered by a percentage of Mercosur's revenues derived from customs duties on imports. If this system were to be implemented, the CJM's autonomy and supranational nature would be emphasized. This would constitute a novelty in the history of South American and partly also of European integration, where integration systems rely on direct financial contributions from the Member States[28]. In the EU, on the contrary, financial self-sufficiency is guaranteed mainly by a system composed of the traditional own resources (customs duties on imports from outside the EU and sugar levies), the resources based on value added tax and a percentage of each Member State's gross national income.

Competences and system of procedures. The provisions in the draft protocol setting out the competences of and the system procedures before the CJM must be regarded as the most important European contribution. In the same manner as the CAN several decades ago, Mercosur transposes the European experience to the South American reality by conferring on the CJM similar competences as the ECJ.

(a) Action for annulment. An action for annulment can be brought against any act of secondary law adopted by the CMC, the GMC, the CCM and other bodies of Mercosur, in violation of the integration system's legal system, in particular against *ultra vires* legal acts. Plaintiff can be by any Member State, the Parlasur, the CMC, the GMC, the CCM, the Secretariat and – provided that their subjective rights and legitimate interests are affected – also individuals. The CJM thus adopts the distinction between so-called preferential and non-preferential plaintiffs known in EU law. One interesting difference lies, however, in the fact that active legitimacy can be extended to other Mercosur bodies by decision of the CMC, upon proposal from the CJM and approval of the Parlasur.

Another important characteristic of the rules introduced by the draft protocol is the more generous access to justice granted to individuals, made possible by an active legitimacy defined in broader terms. As already mentioned, individuals may challenge legal acts also when their "legitimate interests" are affected, as is nowadays also the case under CAN law[29]. This clearly distinguishes South American procedural law from European procedural law with its two main representatives – EU law[30] and EFTA law[31], – under which active legitimacy is granted to the addressee of the legal act in question and to anyone else provided that this legal act be of his "direct and individual concern". This difference becomes more evident in view of the strict interpretation given to this legal requirement by the European Courts[32].

The application of the action for annulment does not suspend or affect the validity of the legal act challenged. However, the CJM may, upon request by any of the parties to the procedure, order the provisional suspension of the legal act challenged or adopt other interim measures, if the application of the act or the absence of the interim measures risk causing irreparable damages to any of the parties[33].

The draft protocol enables the CJM to specify the temporal effects of its judgement in case that it should declare the total or partial annulment of the legal act challenged. It imposes on the Mercosur body whose act has been annulled the obligation to adopt the necessary measures to guarantee compliance with the judgement within the time limit specified by the CJM[34].

The time limit for anaction for annulment is of 6 months after the entry into force of the legal act challenged[35]. However, in a legal dispute concerning

[28] See Article 36 PO; Article 41 of the Statute of the CJ-SICA; Article 27 TTJCAN; Article 48 SCA and Article 20 TEurAsEU.
[29] See Article 19 TTJCAN.
[30] See Article 263(4) TFEU.
[31] See Article 36(2) SCA.
[32] See joined cases C-463/10 P and C-475/10 P, *Deutsche Post AG and Germany v Commission*, EU:C:2011:656, paras. 37-38; Case E-2/02, *Technologien Bau- und Wirtschaftsberatung GmbH and Bellona Foundation v ESA*, paras. 41–79.
[33] The situation is similar in the EU (see Articles 278 and 279 TFEU), EFTA (see Articles 40 and 41 SCA) and CAN (see Article 21 TTJCAN).
[34] The situation is similar in the EU (see Article 264(2) TFEU; Case C-211/01, *Commission v Council*, EU:C:2003:452, paras. 54–57) and CAN (Article 22 TTJCAN).
[35] This differs from the situation in the EU (see Article 263(6) TFEU) and EFTA (see Article 36(2) SCA), where it is foreseen that proceedings shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be. The deadlines referred to above are extremely short, taking into account that in the CAN, an action for annulment can be filed within two years of the publication of the measure (see Article 20(1) TTJCAN). The Statute of the CJ-SICA does not provide any specific deadline even though this judicial body is also competent for actions for annulment (see Article 22 lit. c).

the validity of a legal act, any of the parties of the procedure may raise the question of its applicability before the CJM for the same reasons as in an action for annulment. This incidental plea in law is modelled after the objection of illegality enshrined in Article 277 TFEU and serves the same purpose, namely to allow parties to challenge the legality legal acts despite the fact that the time limit for an action for annulment may have expired or that the parties may have no legal standing to challenge these acts [14].

(b) Action for failure to act. An action for failure to act can be filed whenever the Parlasur, the CMC, the GMC, the CCM or the Secretariat should have failed to adopt a measure, in violation of an obligation derived from Mercosur law. As is the case in EU law, the draft protocol uses a broad terminology to define the requested measure (*medida*; *actividad*), which encompasses also non-legally binding acts[36]. Active legitimacy is given to the Member States, the Parlasur, the Secretariat and individuals, in so far as they should be affected in their rights or legitimate interests. The action is admissible if the respective Mercosur body has failed to adopt a favourable decision within 30 days after the request to act has been submitted[37]. Should the CJM consider the action founded, then it shall adopt a judgement based on the technical information available, containing the antecedents of the case, the explanations of the respondent body, as well as the form, modality and time-limit for the fulfilment of its obligation.

(c) Action for infringement. An important novelty in the procedural law of Mercosur, crucial to survey compliance by the Member States with their obligations derived from this integration system's legal order, is the introduction of the action for infringement, designed after the model in placein the *European Economic Area (EEA)*[38] and the CAN[39] [15]. However, contrary to the original model, the draft protocol foresees a number of remarkable differences. For instance, it envisages that the action for infringement may not be only filed by, alternatively, a surveillance body (EU: *European Commission*; EFTA: *EFTA Surveillance Authority*; CAN: *Secretaría General*) or another Member State. The draft protocol goes in this respect beyond what is known in the other integration systems by extending this competence to additional actors such as Parlasur, the Secretariat and – subject to certain conditions, which shall be explained in detail – even to individuals. All these actors are presumed to act in the general interest of safeguarding the legality of State action.

The draft protocol follows the original European[40] and Andean[41] model by distinguishing between a pre-litigation and a litigation stage. In the pre-litigation stage, the Secretariat shall confront the Member State with the alleged breach of Mercosur law in writing, to which the latter shall reply within a deadline of 30 days. After the receipt of the reply, the Secretariat shall submit a reasoned opinion containing an assessment of the alleged breach, with a deadline for reply of 15 days. If the opinion should conclude on a breach and the Member State were to persist in its behaviour, the Secretariat shall refer the matter to the CJM. Any other Member State affected is allowed to join the action in support of the Secretariat. While the original European model[42] provides that that the executive body in charge of pursuing breaches of the integration system's law shall have discretion as to whether to take action against a Member State – a fact reflected in the wording of the respective provisions[43], – the draft protocol appears to use a stricter wording (*deberáiniciar, de forma inmediata, la acción de cumplimiento*), suggesting that the Secretariat might be obliged to bring an action before the CJM in all circumstances. Hereby, the draft protocol appears to lean more towards the Andean model, which leaves no other option to the

[36] In the EU, the duty to take a decision or other sort of action requested must give rise to an act that is capable of having legal effects. The nature of the legal effects required, however, is not always the same. In depends on the status of the party bringing the action. EU law distinguishes in Articles 265(1) and (3) TFEU between, on the one hand, actions filed by EU institutions as a result of a general failure by another institution to act according to obligations derived from the EU Treaties and, on the other hand, actions aimed at the adoption of a legal act ("other than a recommendation or an opinion") addressed to an individual. A similar concept can be found in Article 37(1) and (3) SCA for the EFTA pillar of the EEA ("any decision"), whereas the draft protocol on the CJM and CAN law do not appear to make such a distinction. Instead the respective provisions are framed in general terms, so as to encompass different types of measures or activities foreseen in integration law. This is similar in Eurasian law, as Article 39 of the Statute of the CJ-EurAsEU merely refers to "omissions".

[37] The deadline is of 2 months in the EU (Article 265(2) TFEU) as well as in the EFTA pillar of the EEA (Article 37(2) SCA) and 30 days in the CAN (Article 37(2) TTJCAN).

[38] The EEA is the association between the EU and the EFTA States (excluding Switzerland), established in 1994 and comprising the Member States of both integration systems. Its objective is the extension of the internal market created by the EU to the participating EFTA States as well as cooperation in horizontal matters (see Case C-431/11, *United Kingdom v Council*, EU:C:2013:589, paras. 50).

[39] Contrary to the Eurasian system, which does no longer have any similar procedure to pursue infringements under the Treaty of the EurAsEU, in force since 1 January 2015. The dispute settlement mechanism of the former EurAsEC used still to foresee that the Eurasian Economic Commission could "notify" the Member State in question of the need to eliminate the violation of integration law within a "reasonable" period of time; if the latter failed to do so, the Board of the Eurasian Economic Commission would then refer the issue to the Commission's Council. Only if the Member State ignored the Council's decision, the Board would refer the case to the Court of Justice of the EurAsEC.

[40] See Article 258(1) and (2) TFEU; Article 31(1) and (2) SCA.

[41] See Article 23(1) and (2) TTJCAN.

[42] See Case C-383/00 *Commission v Germany*, EU:C:2002:289, paras. 19; Case E-2/13, *Bentzen Transport*, [2013] EFTA Ct. Rep. 803, point 40.

[43] See Article 258(2) TFEU and Article 31(2) SCA (*[European Commission/ESA] may bring the matter before the [ECJ/EFTA Court]*).

Secretaría General than to investigate a breach and, once established, to launch infringement proceedings, ultimately referring the matter to the TJCAN[44].

As is the case in the EU and in the CAN, the action for infringement can be initiated by another Member State, provided that it first lodges a complaint before the respective executive body in charge of pursuing breaches. Under this procedure, the same deadlines for the pre-litigation stage referred to above apply. Should the Secretariat not refer the matter to the CJM within 60 days after having presented its reasoned opinion, the Member State may then bring the action by itself. It has this right as well in a situation, in which the Secretariat might not have submitted a reasoned opinion at all, for which a waiting period of 65 days after the filing of the complaint applies. Contrary to the provisions regulating the infringement procedure carried out by the Secretariat on its own motion, the Member State is awarded discretion (*el Estado Parte reclamantepodráiniciar la acción de incumplimiento*). The procedure described in this paragraph applies for any action for infringement initiated by Parlasur.

In deviation from the European and Andean model, the draft protocol grants individuals active legal capacity to pursue infringements of Mercosur in the event that their rights might have been violated. However, this remedy requires that individuals first undergo the procedure described above, which implies lodging a complaint before the Secretariat before being able to file an action. Remarkably, the use of this remedy expressly precludes the individual's right to call the competent national courts on grounds of a breach of Mercosur law by a Member State. While this provision, which is clearly inspired by CAN law[45], appears to prevent contradictory judicial decisions at supranational and national level, it is worth noting in this context that such a risk is rather unlikely. As practical experience shows, the risk that a national court might come to an interpretation and/or application of integration law is averted by the fact that national courts are usually entitled to submit a request for a preliminary ruling aimed at clarifying controversial questions of interpretation. Any judgement delivered by the CJM constitutes a suitable legal basis for individuals seeking reparation for damages before national courts on the basis of State liability for breach of Mercosur law. Here, Mercosur law leans more towards CAN law, which contains essentially the same provision[46], whereas in EU law, an ECJ judegment alone cannot be used as a legal basis for a claim based on State liability. It would rather require a judgement, either of the ECJ or a national court, concluding that the legal requirements for State liability established in the case-law of the ECJ – in particular, the existence of a "sufficiently serious breach" of a provision of EU law "conferring a right" on individuals – are met in the case in issue[47].

After a breach of Mercosur law has been established, the respective Member State has a deadline of 90 days to take the necessary measures to comply with the CJM judgement, unless a different deadline has been set. The draft protocol provides that the CJM judgement shall be binding upon all Member States and Mercosur bodies. As regards the measures available to CJM in case that the Member State should not have fulfilled this obligation, the draft protocol borrows from EU law[48] the faculty to impose a lumpsum or a penalty payment[49] [16; 17]. By doing this, the draft protocol clearly rejects the models currently in place in Mercosur[50] itself, CAN[51] and SICA[52], which allow Member States to resort to either compensatory measures – in the case of Mercosur – or countermeasures – in the case of CAN and SICA – against other Member States. While the first model is inspired by WTO law, the second one bears some similarity with the instrument of "lawful reprisal" known

[44] See Article 23 TTJCAN (*La Secretaría General… formulará sus observaciones; emitirá un dictamen sobre el estado de incumplimiento; deberá solicitar…el pronunciamiento del Tribunal*). See also *Decision 623 of the Andean Council of Ministers of Foreign Affairs regulating the pre-litigation stage of the infringement procedure*, implementing this provision, which contains instructions framed in terms leaving no discretion to the Secretaría General.

[45] Article 31 in conjunction with Article 4 TTJCAN provides that individuals may call national courts in accordance with national rules in cases where Member States had failed to adopt the necessary measures to ensure compliance with CAN law, resulting in a breach of their individual rights.

[46] See Article 30 TTJCAN.

[47] The finding of a failure to fulfil obligations may potentially form the basis for liability on the part of the Member State concerned (see C-118/08, *Transportes Urbanos y Servicios Generales*, EU:C:2010:39). However, in accordance with the case-law, a Member State may incur liability only in the case of a "sufficiently serious breach" of EU law. A judgement finding a failure to fulfil obligations is in itself not enough (see Case C-445/06, *Danske Slagterier*, EU:C:2009:178). The requirement for a "sufficiently serious breach" does not square completely with the strict or objective nature of an action for failure to fulfil obligations, since the ECJ also takes other factors into account, such as whether or not the breach was intentional and whether any mistake of law was excusable.

[48] See Article 260(2) TFEU.

[49] An option not available in the dispute settlement mechanism foreseen in the EFTA pillar of the EEA, which must rather rely on ESA's readiness to launch subsequent infringement proceedings pursuant to Article 33 SCA, aimed at establishing that the respective EFTA State has failed to comply with the EFTA Court judgement (see [16]; see Case E-19/14, *ESA v Norway*, paras. 41). In the EurAsEU as well, while the decisions of its judicial body are deemed to be binding, there is no guaranteed enforcement. Article 114 of the Statute of the CJ-EurAsEU provides that if there is no implementation within a given period of time, the aggrieved party can turn to the Supreme Council, or in other words, seek a high-level, political remedy (see [17]).

[50] See Chapter IX of the PO.

[51] See Article 27 TTJCAN. The Secretaría General has developed certain criteria, accepted by the TJCAN, that sanctions must meet, such as the suitability of the measure to achieve the aimed objective of remedying the breach and its proportionality to the gravity of the breach (see Comunicación SG-C/0.5/1206/2004 adopted in Case 52-AI-2002).

[52] See Article 39(2) of the Statute of the CJ-SICA.

in public international law[53]. It must be assumed that the drafters were aware of the risks that such a system has for the stability of an integration system. In fact, an integration system, which allows its Member States to resort to reprisal without addressing the precise origin of the dispute, will be undermined in the long term if the conflict escalates. A series of reprisal measures is unlikely to allow the integration system to reestablish the mutual trust shattered by the dispute. On the other hand, it cannot be ruled out that certain Member States might refrain entirely from adopting authorized countermeasures out of fear of reprisals [18], ultimately putting into question the system of law enforcement. It is exceptionally, and only on the basis of reasons, that the CJM may impose sanctions in addition to a lump sum or a penalty payment, such as the restriction or the suspension of advantages granted to the Member State in breach of Mercosur law, including voting rights in Mercosur bodies. However, the draft protocol seems to take the concerns voiced above into account, as the CJM may refrain from imposing restrictions and rather opt for alternative – not specified – sanctions if the restrictions were to exacerbate the situation or to be inefficient.

The judgement delivered by the CJM shall be final and have effect of *resiudicata*. However, in order to prevent irreparable damages, any of the intervening parties may request the adoption of *interim* measures, such as the provisional suspension of the act allegedly in breach of Mercosur law. Furthermore, the CJM is entitled to review its own decision upon request by any of the parties on the basis of a decisive fact unknown at the time of the delivery of the judgement. The time limit for the submission of this request is of 90 days. This legal remedy aimed at striking a balance between legal certainty on the one hand and material justice on the other hand is clearly modeled after the legal provision laid down in Article 29 TTJCAN.

(d) Preliminary ruling procedure. An important novelty of the draft protocol is the introduction of the preliminary ruling procedure, designed after the model in place in the EU and the CAN. The CJM shall have jurisdiction to give preliminary rulings concerning the interpretation or validity of Mercosur law, upon request by the national courts. The draft protocol specifies that a national court may bring the matter before the CJM on its own motion or upon request by any of the parties of the procedure[54]. In the same way as in the EU and the CAN, the draft protocol distinguishes between the facultative and the obligatory referral, depending on whether there is a judicial remedy under national law against the national court's decision or not. Contrary to the European and the Andean model, the draft protocol extends the right to refer questions of interpretation or validity to other Mercosur bodies, namely Parlasur, the CMC, the GMC, the CCM and the Secretariat. From that perspective, the system envisaged appears to have borrowed characteristics of the one in place in the SICA, which provides for an "advisory opinion procedure" reserved to national courts[55] as well as for a "consultation procedure" available to other bodies[56], aimed both at obtaining an interpretation of the rules of the integration system[57].

Interestingly, even though the draft protocol states that a national court envisaging a referral to the CJM must suspend the national procedure, it explicitly acknowledges the national court's right to rule on the case even without having to wait for the CJM's preliminary ruling. This provision is derived from Andean law, which prescribes in Article 33 TTJCAN the suspension of the national procedure by the *iudex* a *quo* only in the case of an obligatory referral (paras. 2), whereas a referral does not have the effect of suspending the national procedure if it is merely facultative (paras. 1). Consequently, in the latter case, the national judge may adopt a decision resolving the dispute even before the supranational court has had the opportunity to rule on the questions submitted for interpretation[58] [19]. It is questionable whether this provision contributes to the efficiency of the system, given the considerable amount of resources often used in the framework of a single referral procedure.

It is worth noting in this context that the said provision of the draft protocol is likely to pose similar problems as in the legal situation, which existed in the EU before the latest reform of the ECJ's rules of procedure. Article 100 of the new *Rules of Procedure* recognizes the national court's right to withdraw its request for a preliminary ruling, however with certain restrictions. Ac-

[53] Reprisals in international law contexts were defined in the Naulilaa Case (Portugal v. Germany), 2 UN Reports of International Arbitral Awards 1012 (Portuguese-German Mixed Arbitral Tribunal, 1928): *A reprisal is an act of self-help … by the injured state, responding – after an unsatisfied demand – to an act contrary to international law committed by the offending state… Its object is to effect Reparation from the offending state for the offense or* a *return to legality by the avoidance of further offenses.*

[54] The draft protocol is therefore more precise than European and Andean law as regards a possible "right" of the parties of the main proceedings to request a referral to the supranational court. The wording of Article 267(2) TFEU, Article 34(2) SCA and Article 33(1) TTJCAN is, on the contrary, rather neutral, suggesting that a referral constitutes the sole prerogative of the national judge, who shall determine its necessity for the resolution of the legal dispute. This interpretation has been confirmed in case-law (see Case C-104/10, *Kelly*, EU:C:2011:506, paras. 61, 64; Case E-18/11, *Irish Bank*, [2012] EFTA Ct. Rep. 592, paras. 55; Case 149-IP-2011, p. 8).

[55] See Article 22 lit. k of the Statute of the CJ-SICA.

[56] See Article 22 lit. e of the Statute of the CJ-SICA.

[57] As mentioned above, the Eurasian integration system has been deprived of its mechanism of preliminary ruling with the entry into force of Treaty on the EurAsEU. Instead, the Statute of the CJ-EurAsEU, contained in Annex II to that treaty, provides in Article 46 for the competence to provide clarifications by means of "advisory opinions" to provisions of the treaty upon request of a Member State or an EurAsEU body.

[58] This is not the case in the SICA, where a suspension of the national procedure is considered to be a necessary step before any referral to the CJ-SICA.

cording to this provision, the withdrawal of a request may be taken into account until notice of the date of delivery of the judgement has been served on the interested persons referred to in Article 23 of the Statute. This provision must be interpreted as an attempt to strike a balance between the procedural autonomy, which every national court has, on the one hand and the interest in developing the case-law of the ECJ on the other hand, let alone in not wasting the precious personal and material resources invested in the procedure before the ECJ. In order to avoid any doubts regarding the binding nature of the judgement delivered by the CJM – what constitutes a turning point in the history of Mercosur procedural law, – the draft protocol states that the national court must apply the answer provided to the case brought before it[59]. It further states that the Member States and the Mercosur bodies shall ensure that national courts strictly comply with the rules regulating the preliminary ruling procedure. The reference to Mercosur bodies in this context might be understood as an implicit statement that Member States are – despite the judicial independence awarded to judicial bodies under national constitutional law – not exempted from facing infringement proceedings for their courts' failure to comply with CJM case-law or with the duty to request preliminary rulings[60].

(e) Arbitration. The draft protocol borrows from the TTJCAN legal provisions conferring on the CJM jurisdiction to give judgement on the basis of an arbitration clause[61]. They do not entirely correspond to those laid down in the EU Treaties[62] and are also considerably more detailed than the provisions regulating the competence of the CJ-SICA in arbitration matters[63]. According to these provisions, the CJM shall have jurisdiction in disputes concerning the application or interpretation of contracts or agreements concluded between Mercosur bodies and third parties if they agree. Furthermore, natural and legal persons may submit disputes to arbitration concerning the application or interpretation of private law contracts governed by Mercosur law. The CJM is entitled to rule on the basis of law or equity, depending on the choice of the parties.

(f) Staff matters. Last but not least, the CJM shall have jurisdiction in staff matters. By so doing, Mercosur follows the model established in the EU[64] and the CAN[65], which envisages the creation of a special jurisdiction, detached from the national court systems. The draft protocol distinguishes between officials and contract agents, who shall nonetheless be equally subject to the CJM's jurisdiction. The provisions specify that staff member shall have access to the CJM provided that the administrative legal remedies be exhausted. This implies *inter alia* lodging a complaint before the highest instance of the Mercosur body concerned. The principle of exhaustion of administrative legal remedies before the matter can be referred to the judicial body of the integration system is also foreseen in the EU[66].

(g) Missing competences. A comparative study of European and American supranational procedural law allows concluding that the draft protocol fails to provide for two essential types of procedures. One of them would be an action to be brought against Mercosur for non-contractual liability in the event that any of its institutions or servants hascaused any damages to third parties, similar to the possibility foreseen both in European[67] and CAN law[68] [20; 21]. On the other hand, it is important noting that, at its current stage of development, Mercosur does not provide for such a possibility either [22], as is also the case of SICA[69]. The other mis-

[59] Decisions adopted by the judicial bodies of integration systems upon referrals by national courts are binding with effect *inter partes* – despite the fact that they may have certain authority for the resolution of similar disputes – in the EU (see Case C-173/09, *Elchinov*, ECLI:EU:C:2010:581, paras. 29), CAN (see Case 156-IP-2011) and SICA (see Articles 3 and 39 Statute of the CJ-SICA; Case No. 1-27-05-2011, p. 5). Although advisory opinions of the EFTA Court do not have binding effect, they provide an interpretation of EEA law and therefore have certain authority. Consequently, ESA may launch infringement proceedings pursuant to Article 31 SCA should an EFTA State disregard this interpretation.

[60] The possibility for the surveillance body (European Commission/Secretaría General) to launch infringement proceedings in the event of a violation of the duty to refer questions concerning the interpretation of integration law is recognized in the case-law of the ECJ (see Case C-129/00, *Commission v Italy*, EU:C:2003:656) and the TJCAN (see Case 180-IP-2011, p. 10). This is not possible in the EFTA pillar of the EEA, as Article 34 SCA imposes no corresponding duty for a national court of last instance to request an advisory opinion (see Case E-18/11, *Irish Bank*, cited above, paras. 57, which is explained by the depth of integration under the EEA Agreement is less far-reaching than under the EU treaties as well as by the more partner-like relationship between the EFTA Court and the national courts of last resort.

[61] See Article 38 TTJCAN.

[62] See Articles 272-273 TFEU.

[63] See Article 22 lit. chStatute of the CJ-SICA.

[64] See Articles 257 and 270 TFEU; Annex I to the Statute of the ECJ; Council Decision of 2 November 2004 establishing the European Union Civil Service Tribunal.

[65] See Article 40 TTJCAN and Articles 135-139 Statute of the TJCAN.

[66] See Case F-73/10, *Coedo Suárez v Council*, EU:F:2011:102.

[67] See Article 268 TFEU in conjunction with Article 340(2) TFEU as regards the non-contractual liability of the EU; See Article 46 SCA for the non-contractual liability of ESA in the EFTA pillar of the EEA.

[68] The non-contractual liability of CAN institutions is not explicitly foreseen in the Andean legal system. However, the TJCAN has developed this concept in its recent case-law based on the European integration experience (see Case 214-AN-2005; see, for a detailed analysis.

[69] This possibility is merely theoretical, as there is neither a legal basis in the treaties nor a precedent in the case-law of the CJ-SICA (see: Salazar Grande C. E., UlateChacón E. N. *Manual de Derecho ComunitarioCentroamericano*. 2nd edition. Salvador, 2013. P. 254).

sing procedure would be one allowing the CJM to verify compatibility with Mercosur law of international agreements to be concluded by Mercosur with third States, as laid down in EU law[70]. The introduction of this procedure seems very necessary, given the fact that Mercosur (and its Member States) often conclude agreements with third States, groups of States and international organizations, without carrying out a prior control of compatibility there of with its legal order [23].

Types and legal effects of judicial decisions. Chapter II of the draft protocol deals with the legal effects emanating from judicial decisions. This concerns first of all the interim measures, which the CJM may order in specific circumstances, as has been already explained. Furthermore, the draft protocol refers to the binding and direct effect of judicial decisions, which shall be enforceable in the same way as any of a national court without other formality than verification of the authenticity of the decision by the CJM. From that viewpoint, this regulation is similar to Article 280 TFEU in conjunction with Article 299 TFEU, even though it rather appears to be modelled after Article 41 TTJCANand Article 39 CJ-SICA. Again, the draft protocol relies on the evolution supranational law has experienced in Latin America over the years.

The draft protocol creates with the CJM a single jurisdiction – as is nowadays the case for the TJCAN, the CJ-SICA, the CJ-EurAsEU, as well as for the EFTA Court, or the ECJ in its early beginnings – with the consequence that its judgements are final and appeals are not admissible. However, for the sake of legal certainty, the draft protocol stipulates that the CJM shall be entitled to clarify or extend the scope of its judgements either on its own motion or upon request by any of the parties to the main proceedings within 30 days after its notification. This procedureappears to have as its model the procedure laid down in Article 38 of the Statute of the CJ-SICA, asthe exact same wording of the provisions indicates. A similar procedure is foreseen in Article 92(1) TTJCAN, except that the latter provides for a time limit of 15 days. The true origin of all these procedures seems, however, to be in Article 43 of the ECJ Statute, which allows the parties of a procedure and/or an EU institution to request the interpretation of judgements or orders of the ECJ and the General Court if the meaning of the judicial decision in question is in doubt. The resort to this procedure under EU law is however more generous than under the draft protocol and CAN law, as the time limit foreseen in the aforecited provision is of two years.

The deviation from the current legal regime of panel decisions has been a major concern of the drafters, as the protocol reiterates the binding effect of all decisions adopted by the CJM upon the Member States, Mercosur bodies as well as natural and legal persons. It further states that these decisions shall be published in the *Official Journal of Mercosur*, unless decided otherwise.

Jurisdictional matters. As already mentioned, the draft protocol provides that the CJM shall have exclusive jurisdiction for disputes arising in connection with the legal system of Mercosur. This provision is the consequence of the negative experience made by Mercosur in the past and accordingly follows the European[71] [24], the Andean and the Central American model, which foresee the exclusive jurisdiction of their respective dispute settlement mechanisms in Article 344 TFEU, Article 108(2) EEA, Article 42(1) TTJCAN[72] and Article 3 of the Statute of the CJ-SICA[73].

In addition, the draft protocol provides that Member States and Mercosur bodies may decide to accept the CJM's jurisdiction in their relations with third States or groups of states. While this provision is clearly modelled after Article 42(2) TTJCAN, it is in line with EU law as well. It is worth recalling in this context that, as the ECJ has stated in its case-law concerning jurisdictional matters, an international agreement concluded with third States may confer new judicial powers on the ECJ provided that in so doing it does not change the essential character of the function of the ECJ as conceived in the EU Treaties[74]. Both the CJ-SICA[75] and the CJ-EurAsEU[76] have been conferred similar competences.

The draft protocol borrows elements found in CAN law as regards the conferral of the necessary powers to fulfil its functions in practice. The legal provisions in question essentially replicate the competences foreseen in Articles 44 and 45 TTJCAN. These powers imply *inter alia* maintaining relations with the Member States and Mercosur bodies. Moreover, the draft pro-

[70] See Article 218(11) TFEU.

[71] It is worth mentioning in this context that there is no similar provision in the Statute of the CJ-EurAsEU (see also [3, p. 18]). It seems that the judicial body of the Eurasian integration process has lost its exclusive competence and that national jurisdictions will be allowed to interpret Eurasian law on their own right. This understanding appears to be in line with Article 47 of the Statute, which provides that *providing clarifications by the Court shall mean providing an advisory opinion and shall not deprive the Member States of the right for joint interpretation of international treaties*.

[72] See Case 2-AI-97; Case 01-AN-2016.

[73] Whilst Article 3 of the Statute of the CJ-SICA merely states that the court shall have jurisdiction to settle disputes and that its decisions shall have binding effect on all States and bodies being part of the integration system as well as on individuals, this provision is commonly understood as referring to the court's exclusive jurisdiction. This is also unambiguously stated in the recitals (*Su competencia se establece como una competencia de atribución, con exclusión de cualquier otro Tribunal*; *Las facultades que se le atribuyan con carácter excluyente, son jurisdiccionales*).

[74] ECJ, Opinion 1/92, *EEA II*, ECLI:EU:C:1992:189, point 32; ECJ, Opinion 1/09, *European Patent Tribunal*, ECLI:EU:C:2011:123, point 75.

[75] See Article 22 lit. h of the Statute of the CJ-SICA.

[76] See Article 48 of the Statute of the CJ-EurAsEU.

tocol states that the CJM shall coordinate meetings and actions with the highest judicial authorities of the Member States with a view to promote the knowledge and the development of Mercosur law as well as its uniform application.

General provisions. As in any other international legal system, the draft protocol is expected to provide for a regulation concerning the linguistic regime. By declaring Spanish and Portuguese official languages in all legal proceedings, the draft protocol keeps the linguistic regime of the dispute settlement mechanism currently in place in Mercosur.

While the CJM is supposed to replace the current dispute settlement mechanism, the draft protocol clarifies that the provisions of the PO shall remain applicable to pending legal proceedings. This regulation confirms the view that the draft protocol's objective is by no means to set up an entirely new integration system with a distinct legal personality. The legislative amendments must rather be construed as meaning that they only concern Mercosur's dispute settlement mechanism. The situation in Mercosur can therefore not be compared to the evolution experienced in the Eurasian space, in which a distinct Court of Justice has been created with the establishment of the *Eurasian Economic Union (EurAsEU)* on 1 January 2015[77] [25; 26]. Even though the *Eurasian Economic Community (EurAsEC)* preceded this integration system until its dissolution on the said date and had a court of justice of its own, which shared the same premises, it is not possible to speak of a legal succession between these two international organizations. Accordingly, the CJ-EurAsEU as such does not have jurisdiction for disputes concerning the legal system of the EurAsEC. Despite the considerable repercussions of the reform of its dispute settlement mechanism, which might entail a transformation into a supranational legal system, the amendments remain confined within the same integration system.

The draft protocol, once approved, will be a separate legal instrument of public international law, which will nonetheless constitute part of the Mercosur legal *acquis*. In line with the CJM's exclusive jurisdiction in Mercosur law matters, the draft protocol provides that any State acceding to the TA shall accede *ipso iure* to the protocol. Conversely, any withdrawal from the protocol implies the withdrawal from the TA. A similar provision can be found in Article 51 of the *Agreement between the EFTA States on the establishment of* a *Surveillance Authority and* a *Court of Justice (SCA)* for the EEA.

Transitional provisions. Last but not least, the draft protocol contains provisions, which regulate the transition from the current dispute settlement regime to the new one. They state time limits for the first appointment of judges, the completion of the establishment of the CJM, the adoption of its Statute and Rules of Procedure, as well as the adoption of the regulation establishing a system of own financial resources.

Sources of integration law. The core duty of an integration system's judicial body is, first of all, to settle disputes between the various stakeholders. Apart from that, it will have to contribute to the evolution of the legal order created by the founding treaties in order to allow the integration system as a whole to attain its objectives. The importance of the latter task is owed to the fact that integration law, firstly, is fragmentary by nature and, secondly, has its own principles and rules, which transcend the categories known from national and public international law. Consequently, achieving this task will require the development and use of a specific methodology proper to the respective legal order. It can be observed by means of a comparative study that the methodology employed finds different expressions from one integration system to another, depending on the characteristics of the sources of law[78]. If Mercosur is meant to evolve from an integration system of an intergovernmental format into a supranational one, it will be crucial to establish first the sources of law, which the CJM will have to apply.

It is worth noting in this context that the draft protocol provides in its preamble that the CJM shall "interpret" and "state" integration law, however without referring to the sources of Mercosur law, contrary to what had been the approach to this date under Article 1 PO. Due to the fact that the PO – regulating the arbitration system currently in place – is likely to be repealed after the draft protocol has entered into force, it will be necessary to rely on Article 41 of the *Protocol of OuroPreto (POP),* with lists up these sources. Mercosur would therefore take a different systematic approach than CAN, EFTA and EurAsEU, which specifically indicate in the founding legal instruments of their respec-

[77] The EurAsEU is an integration system established in 2015, comprising Belarus, Russia, Kazakhstan, Armenia and Kyrgyzstan. Its objectives are the establishment of a customs union and a single economic space to guarantee the free movement of goods, services, capital and labour among its Member States.

[78] A few examples are the doctrine of the "complementonecesario" in CAN law, designed to compensate the absence of legal acts having the specific characteristics of EU Directives (see Cases 90-IP-2008, p. 11 and 88-IP-2011, p. 15); the principle of primacy, designed to guarantee the effective application of EU (see Cases C-399/11, *Melloni*, EU:C:2013:107, paras. 59 and C-409/06, *Winner Wetten*, EU:C:2010:503, paras. 69), CAN (see Cases 044-IP-2013 and 22-IP-2012), Mercosur (see Cases TPR, Opinión Consultiva No. 1/2009, paras. 17 and conclusion 2; No. 1/2008, paras. 30, 31 and 34, conclusion 2), SICA (see CCJ, Res. 11 hrs. 27/08/01, *Nicaragua v Honduras*, cons. V.; CCJ, Res. 10 hrs. 24/5/95, Opinión Consultiva SGSICA; CCJ, Res. 10:25 de 20/10/95, Opinión Consultiva. SG SICA) and Eurasian (CJ-EurAsEC, judgement of 5 September 2012, Russian OJSC "Ugolnaya Kompaniya Yuzhny Kuzbass") law; the principles of substantive (see E-2/06, *ESA v Norway* [2007] EFTA Ct. Rep. 164, paras. 41), effect-related (see E-1/01, *Einarsson* [2002] EFTA Ct. Rep. 1) and procedural homogeneity (see Case E-18/10, *ESA v Norway* [2011] EFTA Ct. Rep. 202, paras. 26) in EEA law, designed to guarantee the uniformity of EEA law despite the division in an EU and an EFTA pillar.

tive judicial bodies the law to be applied for the resolution of disputes[79]. As a matter of comparison, it should be mentioned that the founding legal instruments of the respective judicial bodies of SICA and EU merely refer to their respective forms of integration law in general, with a catalogue of legal act types contained in separate legal instruments, respectively in Article 9 of the *Reglamento de los Actos Normativos del SICA* andin Article 288 TFEU.

It must be concluded from the above that the CJM would simply "inherit" the old set of rules, originally designed for an intergovernmental system, along with the daunting assignment to infuse elements of supranationality into Mercosur through its own case-law. It can be reasonably expected that Mercosur will undergo gradual stages of development as similar integration systems elsewhere in the world. Having said this, it is common to almost all legal orders, in which the aforementioned judicial bodies operate, that they view themselves as *sui generis* and autonomous, distinct from national and public international law, either if they are to be classified as "community law"[80] or as being at an "intermediate stage"[81]. Only the Statute of the CJ-EurAsEU raises questions as regards the precise nature of Eurasian law[82], as it explicitly refers to public international law as one of its sources[83].

Conclusions

The draft protocol on the creation of CJM constitutes a compilation of legal provisions inspired by the legal orders of other integration systems in both America and Europe. While the influence of CAN and, to a less extent, of SICA is palpable, it is worth noting that most provisions ultimately go back to the legal order created by the EU. This concerns, for the most part, the system of procedures and remedies, which has been adopted with only few modifications. The same applies to the system of financial penalties for breach of integration law, what might make of Mercosur the sole integration system in America to put in place such a mechanism of legal enforcement. However, the fact that the draft protocol partially sticks to a system of countermeasures in order to ensure enforcement, as is the case in CAN and SICA, indicates that the drafters were still cautious as regards the possible acceptance of a system of financial penalties by the Member States, which are called upon to approve the draft protocol.

The dispute settlement mechanism envisaged is meant to replace a system of arbitration, which has become obsolete for an integration system such as Mercosur with the ambitious objective of creating a common market comprising the largest economies in South America. The tendency goes clearly towards the adoption of supranational features, leaving behind the intergovernmental past. Safeguards such as the independence in financial matters as well as regards the appointment of judges shall ensure that the future CJM will operate efficiently, shielded from any possible intervention by national governments. The ultimate purpose consists in the consolidation of the Mercosur legal order as one distinct from national and international law, which shall evolve into community law. This aspiration can be deduced from the draft protocol and from the diverse decisions adopted by the TPR, which essentially acknowledge that Mercosur law is still at an early stage of development. It further follows from the recitals to the preamble and the explanations attached to the draft protocol that the drafters hoped for more professionalism in the exercise of judicial functions, liable to contribute to an improvement of the quality of Mercosur case-law. Unfortunately, at this stage, certain panel and TPR decisions reveal a lack of legal creativity, with solutions often "imported" from the findings of other supranational courts. The involvement of permanent judges shall hopefully help the CJM develop its own case-law, derived from an inward and rigorous analysis of Mercosur law. Ultimately, depending on the success of the CJM, Mercosur law might advance to becoming an additional source of supranational integration law worldwide, contributing to a more authentic "judicial dialogue"[84] with the TJCAN[85] [27] and other supranational courts, instead of remaining confined to the role of the receptor, which processes and transposes foreign case-law (mainly from CAN[86] and EU) to Mercosur's reality.

[79] Article 1 TTJCA; Article 1 lit. a SCA; Article 50 of the Statute of the CJ-EurAsEU.

[80] This is the case of the EU (see Cases C-26/62, Van Genden Loos, EU:C:1963:1; C-6/64, Costa v E.N.E.L., EU:C:1964:66); of the CAN (see Cases 2-AI-97; Case 3-AI-96; 2-IP-90); and of the SICA (CCJ, Decisions 4-1-12-96; No. 05-08-97).

[81] This is the case of the EEA (see Case E-7/97, *Sveinbjörnsdóttir* [1998] EFTA Ct. Rep. 127, paras. 59; E-4/01 Karlsson [2002] EFTA Ct. Rep. 240, paras. 25) and of Mercosur (TPR, Decisions No. 1/2005; No. 1/2007; No. 1/2009).

[82] Certain aspects, such as the regulatory competence of the EurAsEU Commission – its executive body – and the supremacy of its Customs Code over national law, suggest that it combines supranational and intergovernmental elements.

[83] Article 50 of the Statute of the CJ-EurAsEU reads *In the exercise of justice, the Court shall apply: 1) the generally recognised principles and regulations of international law* (paragraph 1)... *4) the international custom as evidence of the general practice accepted as* a *rule of law.*

[84] Term coined for the continuous exchange between the ECJ and the EFTA Court, commonly understood as a joint effort of both European courts to synchronise their case-law with a view to ensure that the rules of the EEA Agreement, which are identical in substance to those of the EU Treaties, are interpreted uniformly, in line with the principle of homogeneity (see Cases C-286/02, *Bellio*, EU:C:2004:212 and E-1/04, *Fokus Bank*, [2004] EFTA Ct. Rep., 11).

[85] See [27], concerning the proposal consisting of creating a legal mechanism aimed at establishing a link between CAN and Mercosur, which would make their legal orders compatible with each other. The ultimate objective would be to create an integrated "South American Economic Area", in which both, TJCAN and a future CJM would play a crucial role in the interpretation of the common integration law.

[86] See Case TPR, 1/2005, paras. 4, 5, 10.

The draft protocol can be seen as an answer to the long debated question as to whether Mercosur could evolve into a supranational legal order by its own means, relying exclusively on the efforts undertaken by its dispute settlement bodies and the case-law produced, or rather by the creation of a judicial body with far-reaching competences, such as ECJ, EFTA Court and TJCAN. Experience has shown that an arbitration system cannot deliver the expected results, due to its lack of continuity, professionalism and long-term perspective. Neither could be expected that powerful Member States would relinquish their bargaining power in negotiations in favour of a more balanced system, which promotes the formal equality between Member States for the sake of the stability of integration process. Against this backdrop, the creation of a supranational court would constitute a radical turning point in Mercosur's history. Eventually, such a step might provide *stimuli* for other integration systems around the world to follow the example. As can be seen in the case of the CJ-EurAsEU, integration does not necessarily entail a continuous increase in the competence of judicial bodies but sometimes even the loss thereof[87] [28].

The way ahead

Although five years have passed since Parlasur submitted the draft protocol for approval, the idea of establishing the CJM has not been given up. On the contrary, the election of a new government in Argentina has sparked hopes for a consideration of this project by the CMC. Accordingly, on 14 March 2016, the delegation of Paraguay at Parlasur submitted a note to the President of this body, inviting him to address again the CMC with a view to urge this body to study the legislative project. Due to Uruguay's traditionally positive stance on this matter – Uruguay had already in 1994 suggested the creation of a court of justice[88] – there is the hope that the presidency of this Member State at the CMC will be favourable to the project. Despite the overwhelming number of arguments presented by officials and legal scholars, the only certain fact at the moment is that the Member States will have the last word in this issue.

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[87] The Statute of the CJ-EurAsEU shows a clear intention to limit its competences and authority. A few examples are the already mentioned abolishment of the mechanism or preliminary ruling, the authorisation of joint interpretations by the Member States themselves (Article 47), the prohibition on the CJ-EurAsEU to vest additional competences to the bodies of the integration system (Article 42) or to create new legal provisions, including in national legislation, and the pre-trial requirement (Article 43).

[88] On that occasion, Uruguay had submitted a draft document on the establishment of a court of justice, produced by the National Commission of Lawyers, which had started its work in 1992 with a seminary organised by the Ministry of Foreign Affairs of Uruguay, to which *Pierre Pescatore* (ECJ) and *Fernando Uribe Restrepo* (TJCAN) had been invited.

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ARBITRABILITY OF THE DISPUTES, CONNECTED WITH UNFAIR COMPETITION

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The article is devoted to the approaches of the Republic of Belarus and foreign countries to arbitrability of the disputes connected with unfair competition. The authors analyse both the provisions of treaties and normative legal acts, as well as the materials of judicial practice on this issue. Based on the analysis made they conclude that it is reasonable for the parties of an arbitration agreement to choose as the law applicable to the contract and lex arbitri the law of the state which in principle allows arbitrability of the mentioned disputes.

Key words: arbitration; arbitrability; unfair competition; mechanisms of protection against unfair competition; commercial dispute; recognition and enforcement of foreign arbitral awards.

АРБИТРАБЕЛЬНОСТЬ СПОРОВ, СВЯЗАННЫХ С НЕДОБРОСОВЕСТНОЙ КОНКУРЕНЦИЕЙ

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Посвящена подходам Республики Беларусь и зарубежных государств к арбитрабельности споров, связанных с недобросовестной конкуренцией. Анализируются положения международных договоров и нормативных правовых актов, а также материалы судебной практики по данному вопросу. Делается вывод о целесообразности выбора сторонами арбитражного соглашения права, применимого к договору и *lex arbitri*, – права того государства, которое допускает арбитрабельность указанных споров.

Ключевые слова: арбитраж; арбитрабельность; недобросовестная конкуренция; механизмы защиты от недобросовестной конкуренции; хозяйственный (экономический) спор; признание и приведение в исполнение иностранных арбитражных решений.

The intensive development of foreign economic activity, the expansion and deepening of integration processes, the emergence of new and improvement of the existing technologies lead to an aggravation of the competitive struggle of market participants for the consumer's demand which often has unfair character. Particular importance for the persons whose rights and legitimate interests are violated or may be violated as a result of the latter has the question to which bodies (institutions) they can resort for the protection against

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this illegal activity. The existing mechanisms of protection against unfair competition can be roughly divided into two groups:

1) state ones, i. e. created by certain states or with their participation. This group includes the mechanisms of state bodies (for example, courts, antimonopoly bodies) and bodies of international organizations (for example, the Eurasian Economic Commission, the Court of the Eurasian Economic Union);

2) non-state ones, i. e. created (being created) without state participation (arbitration courts, various non-governmental organizations).

It bears noting that arbitration as an alternative dispute resolution mechanism has a significant number of advantages (the possibility of the parties to independently appoint arbitrators, determine the place and procedural aspects of arbitration, the applicable law, the language of arbitration; confidentiality of the dispute resolution; the finality of the arbitral award etc.). At the same time, the possibility of its application for resolving the disputes connected with unfair competition depends to a large extent on whether these disputes are arbitral under the law of the place of the arbitration, since otherwise an arbitration award may be subject to cancellation by a national court. In other words, on whether the disputes arising out of unfair competition may be the subject matter of arbitration. It is also important how the correspondent question is resolved by the legislation of the state where recognition and enforcement of the relevant arbitration award will be sought, as according to Article V(2)(a) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 recognition and enforcement may be refused if the competent authority in the this country finds that the subject matter of the difference is not capable of settlement by arbitration under the law of that country [1].

Up to date the mentioned issue has not been studied in the Belarusian scientific literature. Foreign scientific researchers (for example, A. I. Kolomiets and T. Yu. Grigoryev [2], N. Alija [3], I. Bantekas [4], G. Blanke [5], J. H. Dalhuisen [6], E. J. Fuglsang [7], C. Ragazzo and M. Binder [8], L. M. Smith [9] and others) as a rule deal with arbitration of antitrust disputes.

However, as early as in 2006 the United Nations Commission on International Trade Law suggested that a study might be undertaken of the question of arbitrability and other forms of alternative dispute resolution in the context of immovable property, **unfair competition** and insolvency [10].

The article is aimed at comparing domestic and foreign approaches to arbitrability of the disputes connected with unfair competition *ratione materiae* and formulating some appropriate recommendations for its potential subjects.

In the Republic of Belarus the main provisions determining arbitrability of disputes are the norms of part 2 of Article 4 of the Law of the Republic of Belarus of 9 July 1999 "On the International Arbitration Court" [11], Article 19 of the Law of the Republic of Belarus of 18 July 2011 "On Arbitration Courts" (contains rules on domestic arbitration courts) [12], part 1 of Article 39 of the Code of Civil Procedure of the Republic of Belarus of 11 January 1999 (hereinafter – CCP) [13] and part 1 of Art. 40 of the Code of Economic Procedure of the Republic of Belarus of 15 December 1998 (hereinafter – CEP) [14].

According to part 2 of Article 4 of the Law "On the International Arbitration Court" civil and legal disputes between any subjects of law, arising during carrying out foreign trade and other types of international economic activities may be submitted to the international arbitration court as agreed by the parties, if at least one of them is located or resides outside Belarus, as well as other disputes of economic nature, if the contract between the parties stipulates submitting of a dispute to the international arbitration court, and of this is not prohibited by the legislation of Belarus.

Article 19 of the Law "On Arbitration Courts" stipulates that domestic arbitration court shall settle any disputes arising between the parties that have concluded an arbitration agreement, with the exception of the disputes to which a founder of a permanent domestic arbitration court established as a non-commercial organization or a legal entity whose separate unit (division) represents such a domestic arbitration court is a party, as well as the disputes directly affecting the rights and legitimate interests of third parties who are not the parties to the arbitration agreement and the disputes that cannot be the subject matter of arbitration under the legislation of the Republic of Belarus or the legislation of a foreign state, if the application of the foreign state legislation is provided by the arbitration agreement or any other agreement of the parties.

Pursuant to Article 39 CCP in cases provided for by legislative acts or treaties of the Republic of Belarus on an agreement of the parties a dispute may be submitted to the domestic arbitration court.

Under part 1 of Article 40 CEP on a written agreement of the parties a dispute arising out of civil legal relationships and falling under authority of the court considering economic cases, prior to adoption of judgment by it, may be submitted by the parties to the international arbitration court, domestic arbitration court, other permanent arbitration body.

As can be seen, under the Law "On the International Arbitration Court" the objective criterion of arbitrability of a dispute is the nature of the disputed relations: in order to be considered by the international arbitration court the dispute should, firstly, be civil legal (arise out of civil legal relations), secondly, should have commercial character.

Besides, taking into account that only the disputes falling under authority of the court considering eco-

nomic cases may be submitted to the international arbitration court, as well as the notion of commercial dispute, set forth in ind. 18 of Article 1 of CEP, it may be concluded that the competence of the international arbitration court extends to the disputes, arising out of civil legal relations ***when the entrepreneurial and other economic activities are being carried out***. At the same time the legislation of Belarus do not provide for such limitations, concerning the competence of the domestic arbitration courts, defining it in a quite broad manner.

Pursuant to Article 1 (1) (1.15) of the Law of the Republic of Belarus "On counteraction to monopolistic activities and promotion of competition" of 12 December 2013 unfair competition – any actions of an economic entity or several economic entities ***aimed at obtaining an advantage in entrepreneurial activity*** contradicting this law, other acts of antimonopoly legislation or requirements of good faith and reasonableness and being able to cause or have caused losses to other competitors or damage to their business reputation [15]. Thus, the Belarusian legislator has clearly defined that unfair competition is possible exclusively in connection with entrepreneurial activity.

It should be borne in mind that from the point of view of civil law unfair competition represents an offense (in favour of this testifies the prohibition of unfair competition, stipulated in part 1 of Article 1029 of Civil Code of the Republic of Belarus of 7 December 1998 (hereinafter – CC) [16]. It engenders one or more of the following duties of the person carrying it out:

- to terminate the illegal actions;
- to publish the disclaimer of the disseminated information and actions which constitute the contents of unfair competition (Article (1) 1030 CC).

In addition, if unfair competition has resulted in someone's losses, the relevant person must compensate them based on Article 1030 (2) and Article 14 CC.

Accordingly, the person who has suffered from unfair competition has the right to demand from unfair competitor to take those actions.

The mentioned relations between the person who has carried out or who is carrying out the actions qualified as unfair competition and the person who has incurred (may incur) losses or whose business reputation has been damaged (may be damaged) by unfair competition, are civil legal relations.

Under part. 1 of Article 39 CEP the court considering economic cases has jurisdiction over the cases on commercial disputes, the cases related to realization of entrepreneurial and other business (economic) activities, and other cases referred to its jurisdiction by the legislative acts. Thus this court is competent to consider the indicated civil legal disputes, arising out of unfair competition. The legislation of the Republic of Belarus does not contain the norms excluding the possibility of their submitting to the arbitration courts. Consequently, they can be the subject matter of arbitration *ratione materie*. At the same time, it is important to bear in mind that one of the main conditions for the settlement of a dispute by an arbitration court is first and foremost the existence of an arbitration agreement. The existence of the latter in case of the absence of contractual relations between the parties is doubtful. The most likely situation is when there is a contract concluded by the parties (for example, a license agreement, a franchise agreement, etc.) containing an arbitration clause according to which all disputes arising out of or in connection with it shall be settled by an arbitration court (as a hypothetical example may be given the dispute related to the recovery of damages caused by unfair competition through the illegal acquisition or disclosure of trade secrets obtained in the framework of the contract of the parties for the performance of research and development work [17, p. 58]).

According to the Bulgarian lawyer D. Draguiev, "the most common manner of private enforcement of competition law would be tortuous claims for damages caused by anticompetitive behaviour. Competition law arbitration… is limited to two types:

- this happens if a party contends before the arbitral tribunal that the contract (where the arbitration clause is inserted as well) has anticompetitive implications;
- the second (and more common) instance encompasses the situation where the arising dispute does not concern competition issues prima facie but, when applying the law applicable to the substance of the dispute, the arbitral tribunal would have to apply rules of competition law part and parcel with the rest of the rules of the applicable law" [18].

International legal acts provide for only few references to the possibility of arbitration of the disputes connected with unfair competition. In particular, the Convention establishing the World Intellectual Property Organization of July 14, 1967 sets forth that "intellectual property" shall include the rights relating to… protection against unfair competition" [19].

The legislation of the majority of foreign states, as well as the national legislation, as a rule, does not provide for a direct answer to the question of whether the private-law disputes arising in connection with unfair competition can be settled by arbitration. A kind of exception is the Law of the Kingdom of Sweden "On arbitration" of 1999. Pursuant to part 3 of Article 1 of it arbitrators may rule on the civil law effects of competition law as between the parties [20]. In this regard, for determining the arbitrability of the mentioned disputes, in our opinion, an analysis of the available judicial practice shall be useful.

In the award made in 2003 an International Chamber of Commerce (ICC) Arbitration Court maintained: "The arbitral tribunal has jurisdiction to hear claims for unfair competition if such a conduct is very close-

ly linked to non-performance or poor performance of a contract containing an arbitration clause". It also directly added that "disputes concerning unfair competition which be very closely linked with breach of contract may be arbitrable" [21, p. 171, 174].

In 2012 the Court of Appeal of Paris (*Cour d'appel de Paris*) was considering the case between SA CONFORMA FRANCE and Societé SPA GROUP SOFA. These organizations were in business relations since 2003. SA CONFORMA FRANCE sold mainly the sofa of the "Cardiff 423" model produced by Societé SPA GROUP SOFA. Due to the repeated delays in delivery on December 23, 2008 SA CONFORMA FRANCE informed SPA GROUP SOFA of the termination of sales of this product. On 15 January 2009 SPA GROUP SOFA notified it about its objection to the rough break in commercial relations as well as that the "Cardiff 423" model was registered on 14 January 2009 as an industrial Community design. Claiming that this break caused it great damage, resulting in its liquidation and subsequent dismissal of its 100 employees, and that SA CONFORMA FRANCE counterfeited the "Cardiff 423" model by another company and committed acts of unfair competition by poaching two of its employees, on July 2, 2010 SPA GROUP SOFA filed against the plaintiff with the *Tribunal de grande instance* of Paris a claim for compensation for damages. SA CONFORMA FRANCE raised the issue of the lack of competence of this court over deciding on the claims arising out of unlawful termination of commercial relations, unfair competition and unpaid invoices, referring to the arbitration clause contained in both the supply contracts and the general conditions of sale of this organization. At the same time, it did not challenge the competence of the *Tribunal de grande instance* of Paris to rule on the actions of counterfeit of the industrial design of the Community.

In the resolution adopted on 10 June 2011 the objection concerning the lack of competence of the court was not satisfied, because, as the court noted, the supply contracts and the general terms of sale of SA CONFORAMA FRANCE were signed after the facts on which the requirements of GROUP SOFA were based and they could not have retroactive effect. On 4 July 2011 SA CONFORAMA FRANCE filed a complaint against this ruling with the Court of Appeal of Paris.

The latter in its decision of 14 March 2012 noted the following. The supply contract dated 5 December 2008 concluded between GROUP SOFA and the Swiss organization IHTM SA acting on behalf of and in the interests of CONFORAMA FRANCE contained the provision according to which if the supplier and a branch of CONFORAMA FRANCE were established in different countries, all the disputes, arising out of the contract or in connection with it, should be settled in accordance with the Amicable Dispute Resolution Rules of the ICC. In accordance with the principles contained in Articles 1448 and 1465 of the French Civil Procedure Code, except for the invalidity or the apparent inapplicability of the arbitration clause, the competence over its validity or scope belongs to the arbitration. Notwithstanding that the actions of breaking of commercial relations and unfair competition have a tort nature, an arbitration clause covering all disputes arising out of or in connection with a contract is not manifestly inapplicable when the counterparty's demand is connected with the contract because it mainly relates to the conditions in which it was terminated, and to the consequences that gave rise to this demand. Taking it into consideration, the *Tribunal de grande instance* of Paris ruled that it did not have the competence to consider the demands of the SPA Group SOFA regarding the break of the said relations, acts of unfair competition and payment of invoices [22].

One more case was considered by the Second Civil Chamber of the First Section of the Center, San Salvador (*Cámara Segunda de lo Civil de La Primera Sección del Centro*), on the appeal of COMTEC, S.A. De C.V. against the decision of the Third Court of Civil and Commercial Matters of San Salvador (*Juez Tercero de lo Civil y Mercantil*) of 28 November 2011 (in this judgment, the court established the competence of the arbitration over the dispute between COMTEC, S.A de C.V. and DIGICEL, S.A. de C.V., relating to the recovery from DIGICEL, S.A. de C.V. of the losses caused to this organization by unfair competition on the part of COMTEC, S.A. de C.V.). The Second Civil Chamber of the First Section of the Center established the existence in the contract signed by the parties of the arbitration clause, according to which they should submit to arbitration all the disputes related to the interpretation, violation, conflicts, regardless of their nature, as well as to the cancellation or termination of that contract. However, according to the decision of this court of January 5, 2012, "…unfair competition is an anti-competitive practice that seeks to poach for its own benefit the clientele of a commercial or industrial organization by using dishonest actions… when we are dealing with competition, one must keep in mind free game of supply and demand, as well as the fact that the functions of promoting, protecting and guaranteeing it belong to the State… we believe that unfair competition, as claimed by the plaintiff, may not be considered by arbitration as it is an issue directly referred to the judicial authority of the State…" Thus, the appeal was dismissed [23].

On 18 October 2013 the Section 28 of the Madrid Provincial Court (*La Sección Vigésima Octava de la Audiencia Provincila de Madrid*) ruled the decision on the appeal of CAMIMALAGA, S.A.U. against the decision of the Madrid Commercial Court No. 11 (Juzgado de lo Mercantil nº 11 de Madrid) on the case between CAMIMALAGA, S.A.U. and DAF VEHICULOS INDUSTRIALES S.A.U. In this decision the Madrid Commer-

cial Court No. 11 established the lack of its competence to hear the mentioned case based on the hybrid arbitration clause contained in the written agreements of the parties providing submitting of the disputes between them to arbitration or to national courts of the Netherlands. The appellant denied the possibility of submitting the disputes related to the protection of free competition to arbitration. In his appeal he also claimed about the violation of competition rules, sought the declaration of nullity of certain provisions of the contracts signed by the disputing parties and compensation of the damages caused. In support of its position CAMIMALAGA, S. A. U. referred to the Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and to the Commission Regulation (EC) No. 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector.

The Madrid Provincial Court took the position that both these regulations did not exclude the possibility of submitting the disputes connected with violations of the Community competition rules to the arbitration and dismissed the mentioned appeal of CAMIMALAGA, S. A. U. [24].

The Supreme Court of the Republic of Poland (*Sąd Najwyższy*) in its decision of December 2, 2009 (Sygn. akt I CSK 120/09), concerning the appeal on the Decision of the Court of Appeal (*Sąd Apelacyjny*) of 28 July 2008 indicated that the arbitration agreements of the parties clearly related to the disputes arising out or connected with the contracts on cooperation in the purchase of goods. It stated the following: "The respondent's unfair competition, consisting in the receipt of additional charges, is not connected with the fulfillment or realization of those contracts, but was carried out in parallel (*przy okazji*) with their realization. The claim sought by it hence was not contractual in nature and did not rise out of the contracts concluded by the parties, but concerned the defendant's act of unfair competition. It is difficult to admit that the parties entering into the mentioned agreements upfront foresaw that one of them would commit an unfair competition act and they would submit the relevant disputes to the arbitration. It clearly follows from the content of the arbitration agreements that they concern the disputes related to the fulfillment of the contracts, rather than all the disputes arising in the realization thereof" [25]. According to some authors, from the analyses of this case follows that the claim for unjust enrichment under Article 18 (1) (4) of the Republic of Poland "On suppression of unfair competition" as a dispute on a property right which may be disposed by the parties, may be subject to settlement; as such it may constitute the subject-matter of arbitration agreement [26, p. 308].

In the view of the foregoing, the following conclusions may be made. Up to date, the question of arbitrability of the disputes connected with unfair competition must be solved in each case on the basis of the law applicable to the arbitration clause. At the same time, the supporters of the positive approach to the arbitrability of the disputes connected with bad faith proceed from a broad interpretation of the competence of arbitration, interpreting such disputes as having a civil law character. The opponents of such an approach relies upon the fact that "mandatory rules implementing public policy goals, such as competition law, should protect important social interests and their enforcement should not be left to uncontrolled national or international arbitral bodies" [18]. If the applicable substantive law unequivocally excludes the competition disputes from the arbitral ones, according to Article V (2) (a) of the New York Convention the court at the place of the enforcement of the award rendered on such a dispute will refuse to recognize and enforce it. The parties to the arbitration agreement should choose as the law applicable to the contract and *lex arbitri* the law of the state which allows arbitrability of the disputes arising out of unfair competition. At all accounts, the inclusion of an arbitration clause in an agreement between the parties involved in the relations regulated by public competition rules, may provide them with the opportunity to resolve possible disputes in an alternative way, having always the possibility to resort to the state justice in case of the arbitrability defectiveness of the relationship.

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CONTENTS

HISTORY OF INTERNATIONAL RELATIONS AND FOREIGN POLICY

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СОДЕРЖАНИЕ

ИСТОРИЯ МЕЖДУНАРОДНЫХ ОТНОШЕНИЙ И ВНЕШНЯЯ ПОЛИТИКА

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