БЕЛОРУССКИЙ ГОСУДАРСТВЕННЫЙ УНИВЕРСИТЕТ

ЖУРНАЛ
БЕЛОРУССКОГО ГОСУДАРСТВЕННОГО УНИВЕРСИТЕТА

МЕЖДУНАРОДНЫЕ ОТНОШЕНИЯ

JOURNAL
OF THE BELARUSIAN STATE UNIVERSITY

INTERNATIONAL RELATIONS

Издается с 2017 г.
Выходит один раз в полугодие

1 2019

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History of international relations and foreign policy

УДК 327.8

INFORMATION COVERAGE OF THE FOREIGN POLICIES OF BELARUS, RUSSIA, UKRAINE IN THE SECOND HALF OF THE 2010s: NEW RESOURCES AND INSTRUMENTS

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The article considers the main resources and instruments for information coverage of the foreign policies of the Republic of Belarus, the Russian Federation and Ukraine. They are used in the second half of the 2010s to promote national interests in the context of the active development of information and communication technologies and their more increasing use for the implementation of foreign policy tasks. The relevant approaches to realization of the digital diplomacy are identified and characterized, including an expansion of presence in the leading social networks, key features of broadcasting organization of the international satellite TV channels and use of the anonymous political *Telegram* channels for working with foreign audiences.

Keywords: foreign policy information coverage; foreign public opinion; digital diplomacy; social networks; international satellite TV channels; anonymous political *Telegram* channels.

Образец цитирования:
Фрольцов ВВ. Информационное обеспечение внешней политики Беларуси, России, Украины во второй половине 2010-х гг.: новые ресурсы и инструменты. *Журнал Белорусского государственного университета. Международные отношения*. 2019;1:3–10 (на англ.).

For citation:
Froltsov VV. Information coverage of the foreign policies of Belarus, Russia, Ukraine in the second half of the 2010s: new resources and instruments. *Journal of the Belarusian State University. International Relations*. 2019;1:3–10.

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Журнал Белорусского государственного университета. Международные отношения. 2019;1:3–10
Journal of the Belarusian State University. International Relations. 2019;1:3–10

ИНФОРМАЦИОННОЕ ОБЕСПЕЧЕНИЕ ВНЕШНЕЙ ПОЛИТИКИ БЕЛАРУСИ, РОССИИ, УКРАИНЫ ВО ВТОРОЙ ПОЛОВИНЕ 2010-х гг.: НОВЫЕ РЕСУРСЫ И ИНСТРУМЕНТЫ

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Рассмотрены новые ресурсы и инструменты информационного обеспечения внешней политики Республики Беларусь, Российской Федерации и Украины, которые стали применяться во второй половине 2010-х гг. для продвижения национальных интересов в условиях активного развития информационных и коммуникационных технологий и их все более масштабного использования для реализации внешнеполитических задач. Выявлены и охарактеризованы современные подходы к осуществлению цифровой дипломатии (включая расширение присутствия в ведущих социальных сетях), особенности организации вещания международных спутниковых телеканалов и применения анонимных политических *Telegram*-каналов для работы с зарубежной аудиторией.

Ключевые слова: информационное обеспечение внешней политики; зарубежное общественное мнение; цифровая дипломатия; социальные сети; международные спутниковые телеканалы; анонимные политические *Telegram*-каналы.

Introduction

A formation and effective implementation of the national foreign policy strategies in the early 21st century is impossible without a consistent and adequate response to the rapid development and applying of relevant information and communication technologies into political, economic and social processes in different states. The revealing and characteristics are the goal of this article. For this reason, it is necessary to realize some important tasks. Firstly, to define new and more effective instruments, forms and methods for influencing foreign public opinion. Secondly, to consider the effectivity of their using in the present international conditions. Thirdly, to evaluate wherefore they could be able to compete successfully with traditional sources and formats of information policies, to overcome any borders and barriers, and to penetrate even the most close and isolated countries and regions. Such technologies have acquired a particular relevance in all states located in the Eastern Europe region faced a process of systemic geopolitical transformation since 2014. It forced Belarus, Russia and Ukraine to use the most topical technologies and methods for effective information coverage of their foreign policy strategies and consistent influence on public opinion abroad. The main directions and trends of the information policy of these three countries abroad will be considered in this article.

Russia has become an indisputable leader of this process. After the Russian-Georgian conflict in 2008 its government acknowledged that the information resources used at that time and their implementation were ineffective, and it resulted in the domination of critical assessments regarding Russia in the foreign mass media. This evaluation led to a formation of a flexible and integral complex of relevant media resources for systematic and regular work with foreign public opinion, and namely from international satellite TV channel "RT" with billions of budgets to anonymous *Telegram* channels with influence on specific target groups in neighboring countries. Nowadays it is necessary to admit that Russia is able to carry out active, relevant and efficient information coverage for its foreign policy working systematically and consistently with foreign public opinion. At the same time, facing some restrictive measures against its mass media provided by the US and European authorities, the Russian government began to introduce the same measures to control foreign resources within its own territory. In the future, such restrictive steps could revive and repeat a situation from the late Soviet Union in the 1970s and 1980s. When in some cases the Western sources of information, first of all, the legendary US radio stations for foreign audiences "Radio Freedom" and "Voice of America" were perceived as more reliable and attractive "forbidden source" of precise information than official Soviet mass media.

Ukraine began to spend significant resources for promotion of the national interests in the global media space after the systemic political changes in 2014 and beginning of the conflict with Russia. A notable step to this direction was a creation and development of the satellite TV channel "UATV" organized to bring the Ukrainian position to the public opinion abroad. Besides the Russian-language versions of the main Ukrainian mass media web sites also play an important role to provide their information to the target audience in all former republics of the Soviet Union. As Russia, Ukraine tended toward some restrictive measures against foreign media after 2014. Most Russian mass media and social networks were declared a threat to the information security of Ukraine, but many users from this country still use them actively, by passing all

prohibitions and limitations by means of various web technologies.

Belarus is mainly based on the experience from the 1990s and the 2000s using traditional but still quite effective instruments to influence the foreign public opinion. Nonetheless new information challenges as for example the fake news determined a need to explore the best ways to use more relevant tools and forms for these tasks. It concerns the resources of digital diplomacy, implemented actively and consistently by the Ministry of Foreign Affairs and diplomatic missions, as well as a digitalization of the Belarusian mass media for foreign audiences. Unlike Russia and Ukraine, Belarus did not implemented any restriction or block of foreign mass media, taking the course to effective and fair competition with foreign information sources. Oleg Makarov, the director of the established on 12 February 2019 Belarusian Institute for Strategic Studies, underlined in his interview to Belarus 1 TV channel, a "balanced and responsible attitude to media content is the best way to challenge fake news". In his opinion, providing balanced and responsible content, and using credible and professional sources of information will help overcome the fake news, other risks and challenges, raising a public awareness of the things that are happening, without imposing one "true" opinion for all [1].

Evaluation of the effectiveness of new information resources and instruments as a research issue

The problem of a comprehensive assessment of effectiveness of both traditional and innovative information resources and instruments used for coverage of the foreign policies of all three countries acquired a significant relevance in the second half of the 2010s due to increased competition in this area and the emergence of new topical risks and threats. It predetermined a lack of detailed and complex researches of this process, received its greatest dynamics exactly in 2017–2019.

A solid theoretical basis for such study could serve fundamental works of two leading representatives of the Network Society concept Jan van Dijk (Netherlands) and Manuel Castells (Spain). At the end of the 20th century, they substantiated that the further development of social networks and electronic communications will have a decisive influence on the evolution of social, economic and political relations [2; 3].

Primarily it happens in the most industrially and technologically developed countries. A basis of their economy is already production, keeping, processing and distribution of different types of information, as well as generation, systematization and introduction of innovations. Some entire regions, like the Silicon Valley in California, specialize in the software industry and the new information technologies development. Their imposing professional communities have already not only their own economic and social, but also political interests. Moreover, they are able to influence both formation and implementation of foreign policy decisions, first in the spheres of trade, migration, information and cultural exchanges.

Therefore, a definition and characterization of the influence of common trends in the global development of information and communication technologies on the foreign policy of different states and primarily Belarus and its closest neighbors and key partners in the region, namely Russia and Ukraine, are of obvious interest for the research. Its results will be in demand during the process of implementing various aspects of the Information Security Concept of the Republic of Belarus adopted in 2019. This document first defines an "information sovereignty as an inalienable and exclusive supreme right of the state to determine independently rules of ownership, usage, and management of national information resources, to pursue an independent foreign and domestic state information policy, to shape the national information infrastructure, and ensure information security". Among the ways to achieve this goal, the policy of information neutrality is called. It "provides for recognition of universally acknowledged and accepted rights of any state in this sphere and rules out interference with the information sphere of other countries" [4].

The main preconditions for strengthening the role of information coverage in foreign policy

The most significant technological and social factors predetermined a strengthening of the role of information and communication technologies during formation and implementation of the foreign policy strategies of all states, including Belarus, Russia and Ukraine, include such as:

• simplification and cheapening of technology for searching, systematizing and mass distribution of information using different web resources, widely available software, volunteer labor, remotely and temporarily employed personnel, that made it possible to increase an audience of new networked mass media to numbers, which are comparable to the ratings of the world's leading newspapers or TV channels;

• a facilitated access to data on web resources in different countries and regions of the world, that provides an opportunity to overcome effectively all political and language barriers for obtaining a necessary information to form their own vision and to evaluate independently domestic and international events and processes;

• raising the educational level and developing computer literacy in particular among users in not only the most technologically advanced countries, but also in the developing countries, that leads to a further expansion of the global web resources and an increasing competition with national mass media;

• a rapid growth of different transnational networks in the spheres of economy and finance, education, science and culture, including specific projects created for information support on a temporary basis, which are not controlled by governments, operate in many countries or regions simultaneously, and capable to produce and support their own high-quality information production;

• a gradual rooting in the national and global information communities the newest forms of political activity, which use the most relevant communication and information technologies, social networks and other tools to counteract the national policies, or to discredit systematically their domestic and foreign policy, or to hinder realization of economic projects and exports promotion [5, p. 99].

The current digital diplomacy instruments in promoting national interests abroad

An increasing complexity of the tasks faced the foreign policy institutes of all countries today have led to an active use of the most advanced and relevant digital diplomacy instruments, which are most adapted for systematic and consistent work with foreign public opinion. First of all, it concerns the key target groups important for international cooperation, and namely decision makers, as well as specialists and experts, who are able to influence preparing and implementation of foreign policy decisions, journalists, social researchers and civic activists, businessmen and other representatives of the finance and commerce communities.

A regular interaction with all these target groups in different states, their blocs and associations, and international organizations is of undoubted interest for the implementation of foreign policy strategies of all three considered countries. It predetermines an increasing use of social networks and other digital diplomacy instruments to ensure a necessary level of interactivity and impact.

Describing their growing role in the diplomatic activity Minister of Foreign Affairs of Russia Sergey Lavrov stated at a meeting with students and faculty stuff at the Moscow State Institute of International Relations (MGIMO University) on 3 September 2018 "the Foreign Ministry has been actively using social media networks over the past few years. We have accounts in leading social networks, including *Twitter*, *Facebook*, *Instagram* and *VKontakte*. The Foreign Ministry's Information and Press Department has a special section which deals with digital information technology" [6]. The head of the Russian diplomatic service noted also an importance of preparation and distribution of content in foreign languages. The Ministry of Foreign Affairs (MFA) supports its website in all official UN languages, including Russian, English, French, Spanish, Chinese, Arabic and German, has accounts in Russian, English and some other languages in the most popular social networks. The Minister pointed to the demand for further expansion of the used foreign languages number, which nevertheless requires more resources [6].

At the beginning of 2019, most of the Russia's diplomatic missions had their own accounts on *Twitter* and *Facebook*, but not all of them. The Russian Ambassadors to the United Kingdom, Australia, Serbia, Austria, as well as the Russian Consuls General in Gothenburg (Sweden) and Karlovy Vary (Czech Republic), the First Deputy Permanent Representative of Russia to the UN, the Foreign Ministry's Special Representative for Human Rights, Democracy and the Rule of Law supported their personal accounts on *Twitter* or *Facebook*. Such divisions of the Russian MFA as the Press center, the Consular, and the History and Records Departments, the Crisis Management Centre, the First CIS Department, the Council of Young Diplomats have also their own accounts in leading social networks. In addition to *Facebook* and *Twitter*, the Russian diplomats use *VKontakte*, *Odnoklassniki*, *Instagram*, *YouTube*, *Periscope*, *Flickr*, *Google+*, *SlideShare*, *Soundcloud*, *iTunes*, *Telegram*, as well as *Weibo* and *WeChat* in China [7].

The resources of digital diplomacy used by the MFA and diplomatic missions are complemented successfully by no less effective information activities abroad of the Federal Agency for the Commonwealth of Independent States Affairs, Compatriots Living Abroad, and International Humanitarian Cooperation (Rossotrudichestvo) established in September 2008 after the Russian-Georgian conflict immediately. The Alexander Gorchakov Public Diplomacy Fund created in February 2010, and some other state institutes realize similar objectives of the Russia's foreign policy.

The information instruments and possibilities of the MFA and diplomatic missions are the main resources for present digital diplomacy of Ukraine, given its much less significant resources, especially compared to Russia. It predetermines not only an obligatory support of accounts in the most popular social networks by all diplomatic missions of Ukraine, but also a very high level of their interactivity. In the beginning of 2019, *Facebook* and *Twitter* are used by the embassies of Ukraine and consulate institutions around the world, as well as its missions to the International Organizations. Some missions work also with *Google+*, *YouTube*, *Storify*, *Medium*, *WordPress*, *Blogger*, *Instagram*, *Vine*, *Soundcloud* and *Flickr*. The MFA Team *Twitter* accounts include Minister of Foreign Affairs of Ukraine Pavlo

Klimkin personally, as well as the State Secretary, Deputy Minister, Political Director, Head of Press-Service, Executive Secretary of the Exporters and Investors Council under the MFA of Ukraine and the Spokesperson for MFA [8]. In terms of the foreign policy strategy, aimed strictly at promoting Ukrainian national interests abroad, such concentration and centralization of its diplomatic service information resources could be evaluated as quite effective and timely.

A significant progress in the use of topical digital diplomacy technologies has been declared in the Annual Review of Foreign Policy of the Republic of Belarus and Activities of the Ministry of Foreign Affairs in 2018 [9]. The "effective information coverage of home and foreign policy events, as well as initiatives in the international arena" was named as one of the MFA's priorities. The report noted also that the Ministry's *Twitter* account was included in the Top 50 World Leaders and took the 13th place according to the analytical center Twiplomacy. In 2018, a number of all social accounts subscribers increased: on *Twitter* – by 24 %, *Facebook* – by 1.5 times, *Instagram* and *Periscope* – by more than 40 %. Some bloggers and social networks activists participated in eight press-tours in Belarus organized last year for foreign journalists from Russia, China, Latvia and other countries [9].

At present, the Belarusian MFA and diplomatic missions are represented on *Facebook*, *Twitter*, *Instagram*, *YouTube*, *Periscope*, as well as on *Weibo* and *WeChat* in China. Ambassadors of Belarus to Indonesia, China and Sweden Valery Kolesnik, Kirill Rudy and Dmitry Mironchik support their own *Twitter* channels [10]. Regarding an increasing interest to the foreign policy of the Republic of Belarus as one of the key actors of the security and stability promoting in Eastern Europe and Eurasia, it is possible to predict a further growing of the users and subscribers number for all digital diplomacy resources used by the Belarusian diplomatic service.

Development of satellite TV and radio broadcasting for abroad

In 2010s, the international satellite TV channels for broadcasting to foreign audiences funded from the national budgets and reflected the foreign policies interests, have become one of the most effective instruments for influencing foreign public opinion. At the beginning of the 21st century, such TV channels replaced finally the radio stations for foreign listeners, which shaped an arena of information confrontation during the Cold War. Among the undisputed leaders of this process, the US "Voice of America" and "Radio Freedom / Free Europe", as well as the British "BBC", the West German "Deutsche Welle", and undoubtedly the Soviet "Radio Moscow" could be named. Their activity was an important part of the Cold War and predetermined largely its outcome.

The technological innovations and higher consumer requirements transferred this role to international satellite TV channels. The flagships among them in the 1990s and 2000s became the US "CNN International", the British "BBC International" and "Sky News", the French "France 24". Overtaking and surpassing the Western TV impact turned into an ambitious and large-scale goal for their competitors from China, Japan, Turkey, some influential Arabian, Latin American, South and Southeast Asian emerging powers and, of course, for the contemporary Russia.

Satellite TV channel "RT" ("Russia Today") began its broadcasting to foreign audiences on 10 December 2005. In the first half of 2019, it includes four independent TV channels working for more than one hundred countries in four languages, and namely English, Spanish, Arabian, and French. It broadcasts day and night for 700 TV-users globally. "RT" owns its studios in Washington and London [11]. Its content is focused primarily on the English-speaking audience. For effective interaction with such TV viewers, "RT" staff includes the citizens of the US, the UK and other countries. This approach increases significantly a cost of broadcasting, but makes its format more familiar for the target audience outside Russia. "RT" is funded directly from the Russian state budget.

In 2017, for example, the channel received 18.74 billion rubles. 1.22 billion rubles additionally compared with the previous year was intended to organization of broadcasting in French [12]. Such decision was quite understandable taking into account the presidential and parliamentary elections in France scheduled then.

Besides the TV-covering in English, Spanish, Arabian and French, implemented on the resource base of "RT", the main and popular Russian TV channels "Channel One Russia Worldwide", "RTR-Planeta", "NTV Mir" continue to remain the most important instruments for influencing public opinion within other former Soviet republics. They broadcast in Russian so it could be estimated as a key source of news and formation of public perceptions and views for many dwellers of the Post-Soviet area and the Russian-speaking diasporas around the world. This situation is still maintained despite all measures to restrict their broadcasting applied by the governments of the Baltic countries, Ukraine and some other states.

An establishment of the national News agency and "Radio Sputnik" on 10 November 2014 should also be mentioned in this context. It began to work based on resources of the largest Russian news agency "RIA Novosti" and the "Voice of Russia" radio company for a foreign audience founded in the Soviet Union in 1929 under the name "Radio Moscow". The emerging mass media company "Sputnik" began to work in more than 30 languages and has its offices in many countries, including the US (Washington, DC), China (Beijing), France (Paris), Germany (Berlin), Egypt (Cairo) and the UK (London and Edinburgh) [13].

All of these media resources allowed Russia to pursue a very effective and consistent policy aimed at information promoting and support of its policy abroad. However, a growing confrontation in relations towards the US and their allies led to increasing hostility in the public sphere, and the TV channels, news agencies and other resources for foreign audiences began to be evaluated as guides of "soft power", or rather "sharp power", according to the assessment of a famous political scientist Joseph S. Nye Jr. [14]. Moreover, in recent years, experts from the US and their allied countries have focused strongly on critical assessing the Russian information policy abroad, identifying its main elements and approaches, as well as determining the most effective methods to counter those [15; 16]. As a result, "RT" and "Sputnik" activities have already faced legal successive restrictions in the US, the UK and some other countries.

The Ukrainian international satellite TV channel "UATV" started its work on 1 October 2015 based on the state TV and radio company "Ukrainian Television and Radio". Currently, the channel works around the clock in five languages, namely Ukrainian, English, Russian, Arabic and Crimean Tatar. It broadcast within the cable networks of Azerbaijan, Bulgaria, Georgia, Israel, Canada, Germany, Latvia, Moldova, Poland, and the United States. Since the beginning of March 2019, the "UATV" is accessible within the cable networks in Belarus too. The tasks of the "UATV", besides the distribution of relevant information on Ukraine, are called a counteraction to disinformation about this country. The website of the channel indicates also a special attention to cover the latest political, economic and social developments in the east of Ukraine (Donbas) and the Crimea [17].

The other concept of broadcasting determines a content of the Belarusian satellite TV channel "Belarus 24", which functioned since 1 February 2005 under the name "Belarus-TV" in Belarusian and Russian. Nowadays, the channel is available in more than 100 countries with an audience of over 270 million people. The main its part is the dwellers of the post-Soviet states, primarily Russia, as well as inhabitants of countries with a significant representation of Belarusian diasporas. In contrast to the Russian and Ukrainian international satellite TV channels, the "Belarus 24" is focused more on comprehensive and complete information about a present life in Belarus avoiding informational rivalry with the media from other countries or foreign policy propaganda. The channel has its profiles in the main social networks, and namely *VKontakte*, *Facebook*, *Twitter*, *Youtube* and *Instagram* [18]. Similar principles and priorities underlie the broadcasting of the "Radio Belarus International" worked since 11 May 1962 and focused initially first on Belarusians living outside the Soviet Union. Today the radio uses already 9 languages, and namely Belarusian, Russian, English, German, Polish, French, Spanish, Chinese and Arabic [19].

In general, it could be stated that despite the differences between concepts of broadcasting and their main target groups, the international satellite TV and radio broadcasting in Belarus, Russia and Ukraine is developing in one direction. It is aiming at expanding foreign audience due to using of the web broadcasting and social networking, additional foreign languages, increasing relevance and interactivity in covering the news from their own countries and around the world.

The anonymous political *Telegram* channels as instruments of influence on foreign public opinion

A characteristic key feature of the information influence practice in the post-Soviet region is a use of anonymous political *Telegram* channels. It has become typical of Russian politics in recent years. An emergence of such new information resources is made possible due to the development of a new service *Telegram*. It is based on the innovative technology of a cloud-based instant messaging and voice over IP. This project was established and developed by the *Telegram Messenger LLP*. This privately held company is functioning in London now. It was presented in August – October 2013 by two businesspersons in the IT sector Pavel Durov and his brother Nikolai, who had faced an inability to provide a secure way of communication with each other safe and not be transparent for the Russian security services [20].

A number of service users grew rapidly. At the beginning of 2016, more than 100 million applied it successfully, that caused an increasing interest of the Russian state authorities to activities of this messenger, which turned into an uncontrolled communication channel for many users both in this country and beyond. The *Telegram* administration stated in its turn that they did not intend to share any information about its users with the authorities. This fact has led to a quite predictable conflict with the Russian government. The creator of the messenger Pavel Durov was forced to leave his homeland and distribute business between several countries and processing centers.

In 2017–2018 the Russian government made repeated attempts to gain access to the decoding of messages send by some users. In April 2018, the resource was blocked in Russia legally. However, these efforts were unsuccessful, since the technical capacities and the core staff of messenger developers were already located in several states outside Russia, including the US and some European countries. Besides it, the administration of *Telegram* has made significant technological efforts to overcome or minimize the blocking measures. In addition, many Russian companies faced problems with functioning of other information resources, which used the same cloud-based services and therefore were

also affected by the blocking measures against *Telegram*. It led finally to losses for some Russian companies, as well as foreign branches operating in this country. Such result showed obviously those prohibitive measures are not effective regarding the popular information exchange tools in the technologically advanced countries like Russia, even under the condition of a well-functioning, strictly centralized and efficient state apparatus with highly equipped security services.

However, the political consequences of these attempts could be estimated as the most impressive. After them, the Telegram presents itself, as an absolute independent broadcaster of uncensored information, which is not be distorted by state or any other structures. This image led to a rapid emergence of highly popular anonymous political Telegram channels positioned themselves as competent and independent sources of relevant information about some peculiarities of the formation and implementation of the current Russian domestic and foreign policies. A special attractiveness of their content was caused by such key factors, as:

• an anonymity, which allows to present and distribute a necessary information as exclusive and coming directly from decision-makers and their staff in Russia and other countries;

• a moderate critical interpretation of the official policy, which gives a clear opportunity to distant from the state-affiliated sources of information, like the TV channels or news agencies, and even to challenge an effectiveness of some measures taken by state institutions;

• a tolerance to all sources of information without verifying and confirming their origin and relevance, that makes it easy to create any desirable mix of true and fake information as well as to combine different views and evaluations on its content;

• an avoiding of legal responsibility for the fake news distribution due to an inability to identify clearly their authors, concerning especially the content created and supported by several anonymous authors or even entire professional teams;

• an image of the *Telegram* Messenger as an independent innovative way of communication chased regularly by Russian authorities allows denying any official responsibility for a content of the anonymous political *Telegram* channels.

All these factors determined their gradual and obvious transformation into an effective instrument for promoting some corporate or private interests of different elite groups in the Russian business, as well as federal, regional and local politics. The "anonymous and exclusive" messages from the leading Russian *Telegram* channels such as *Politburo 2.0*, *GosSovet 2.0*, *Politteh*, *Boston Tea Party*, *kremlebezBashennik*, *boilerroomchannel*, *sciencepolicy*, *postposttruth*, *Shadow policy*, *russica2* (*Nezygar*) and many others cover usually very relevant stories. Among them, there are causes and consequences of recent and planned personnel changes at different levels of Russian state power, relations between some groups of elites as well as influential figures in politics and business. Most of the *Telegram* channels authors cite each other constantly, exchange the information, evaluate and rate own activities. It is intended to provide their readers with an idea on the existence of a coherent and trustworthy system for searching, exchanging, verifying and distributing objective and unfiltered data.

At the end of December 2018, these anonymous resources reached a new level, becoming one of the factors influencing the political situation in Eastern Europe. At the turn of 2018–2019, a part of the popular *Telegram* channels with the most known *Nezygar* as an informal leader, started to spread actively an information about the coming unification of the Republic of Belarus and the Russian Federation into one state. The reasons were named an acute situation in the Belarusian economy and plans of President Vladimir Putin to prolong its powers after 2024 as a head of new country. A significant number of mass media in Russia and beyond has distributed this fake news rapidly, despite its obvious unverified character. It has led to a big resonance in neighboring countries and first of all in Ukraine, which domestic and foreign policy is very sensitive to any Russian activities near its borders. At the final stage, this fake news got a response from politicians, experts and journalists outside the Eastern European area. One of them was former NATO Secretary General Anders Fogh Rasmussen with his statements on Russia's plans to annex the Republic of Belarus and move closer to the Western European borders. On 21 February 2019 Belarusian Minister of Foreign Affairs Vladimir Makei characterized this declaration as nonsense, which is impossible to comment due to its lost touch with reality [21].

However, if such a statement of a politician or public person could be refuted openly, publicly and therefore quite effectively, the anonymity and non-transparency of political *Telegram* channels prevent the fake news from being exposed due to impossibility to identify clearly both their authors and sources of disinformation.

In this regard, it is possible to predict a further applying of the political *Telegram* channels as an especially effective way for informational promoting of foreign policy interests abroad, which would be used in the future not only in Russia, but also in other countries successfully.

Conclusion

Further intensive development and usage of information and communication technologies for the promotion of foreign policy interests predetermines the necessity of detailed and comprehensive assessment of the effectiveness of different topical instruments, approaches and forms to realize successfully these interests

towards different states and regions in view of their distinctive characteristics. A potential choice of these advanced technologies is very large and includes currently both expensive projects, such as international satellite TV channels broadcasting for hundreds of millions viewers and simpler and cheaper, but not less effective relevant instruments of digital diplomacy targeted key groups of foreign audiences.

Regarding the information space Belarus, Russia and Ukraine have similar goals to ensure their national interests in relations with other countries as well as with each other, but they have chosen different strategies, approaches and resources to achieve them. At the same time, all three states will seek a balance between national information security interests and enhancing their activity in the global information community for the successful realization of these goals.

A finding of such optimal balance requires a systematic revealing and evaluation of the interdependence between present political, economic and social processes and phenomena in different countries and world regions, and rooting of the most advanced information and communication technologies, which could affect significantly their essence, dynamics and development in the future.

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Received by editorial board 17.03.2019.

УДК 327.7

THE BELARUSIAN-GERMAN RELATIONS: KEY FACTORS OF INFLUENCE

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The article considers political, economic and ideological factors of influence on the Belarusian-German relations. The author identifies such events of the late 20th – early 21st centuries as the collapse of the Soviet Union and the formation of independent states in the post-Soviet space, the unification of Germany, the formation and expansion of the EU as political factors. Special emphasis is placed on the differences between the Belarusian-German relations before and after 1994 and the importance of the internal political situation in Belarus in this regard. The author contrasts the position of Germany on this issue in the first years of independence and after the election of President Alexander Lukashenko, when the issues of human rights and democracy were put forward by Germany as a condition for expanding political cooperation between our countries. Much attention is paid to the argumentation of the thesis on the dependence of the foreign policy of Germany, including bilateral relations with Belarus, on the consolidated policy of the European Union. It is emphasized that despite the demonstration of independence in determining the nature of the Belarusian-German relations, Germany often supported the anti-Belarusian EU resolutions under far-fetched pretexts. At the same time, economic ties between Belarus and Germany are singled out as a positive factor. A number of statistical data confirming the overall positive dynamics of their development are given. However, a more comprehensive comparative analysis of exports and imports shows periodic declines in economic cooperation. One of the reasons the author calls the aggravation of the political and economic situation in Germany. In this regard, he notes the presence of ideological factors of influence, in particular, the growth in the Federal Republic of Germany of extreme right wing and rightleftsentiments, populism in party programs and the decline in the popularity of leading parties.

Keywords: Belarus; Germany; political, economic and ideological factors; the European Union; electorate; political parties of the Federal Republic of Germany.

БЕЛОРУССКО-ГЕРМАНСКИЕ ОТНОШЕНИЯ: КЛЮЧЕВЫЕ ФАКТОРЫ ВЛИЯНИЯ

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Рассматриваются политические, экономические и идеологические факторы влияния на белорусско-германские отношения. В качестве политических факторов автор выделяет такие события конца XX – начала XXI в., как распад Советского Союза и образование независимых государств на постсоветском пространстве, объединение Германии, образование и расширение ЕС. Делается акцент на отличиях белорусско-германских отношений до и после 1994 г. и значимости в связи с этим внутриполитической обстановки в Беларуси. Автор противопоставляет позицию ФРГ по этой проблеме в первые годы независимости Беларуси и после избрания А. Г. Лукашенко Президентом Республики Беларусь, когда вопросы соблюдения прав человека и демократии были выдвинуты Германией в качестве условия расширения политического сотрудничества между странами. Аргументируются тезисы о зависимости внешнеполитического курса ФРГ, в том числе и двусторонних отношений с Беларусью, от консолидированной политики

Образец цитирования:
Шарапо АВ. Белорусско-германские отношения: ключевые факторы влияния. *Журнал Белорусского государственного университета. Международные отношения*. 2019;1:11–17 (на англ.).

For citation:
Sharapo AV. The Belarusian-German relations: key factors of influence. *Journal of the Belarusian State University. International Relations*. 2019;1:11–17.

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ЕС. Подчеркивается, что несмотря на демонстрацию самостоятельности в определении характера белорусско-германских отношений, ФРГ под надуманными предлогами зачастую поддерживала антибелорусские резолюции ЕС. Вместе с тем выделяются экономические связи Беларуси и Германии. Приводится ряд статистических данных, подтверждающих общую положительную динамику их развития. Однако более полный сравнительный анализ экспорта и импорта показывает периодические спады экономического сотрудничества. Одной из причин автор называет обострение политической и экономической ситуации в самой Германии. В связи с этим отмечается наличие идеологического фактора влияния, в частности, рост в ФРГ крайне правых и левых настроений, популизма в партийных программах и падение популярности ведущих партий.

Ключевые слова: Беларусь; Германия; политические, экономические и идеологические факторы; Евросоюз; электорат; политические партии ФРГ.

Introduction

The nature of relations between the Republic of Belarus and Germany depends on many factors, which are generally divided into political, economic and ideological. It is difficult to assess their significance and impact on international activities. All of them have either direct or indirect, positive or negative impact on the nature of the Belarusian-German relations.

The wide problematic of the bilateral relations is traditionally on the research focus in the publications of leading Belarusian experts in this sphere. A. Rusakovich considered in details different directions and aspects of the bilateral dynamics in the 1990s, 2000s and 2010s. The monography "Germany in the foreign policy of Belarus" issued in 2015 as well as the article "Belarus – Germany: main trends and stages of the development of intergovernmental relations in the 1990s – first half of the 2010s" published in the «Journal of the Belarusian State University. International Relations» in 2018 could be evaluated as the most topical among his recent publications relevant to the current development of the Belarusian-German relations and estimation of their perspectives [1; 2]. In turn, V. Froltsov paid attention to evolution of policy of four A. Merkel's governments to the Eastern European partners including Belarus in 2005–2019 as a reaction of the modern-day German political elite on the contemporary political shifts in this neighboring unpredictable region. The articles "The Eastern and Southeastern European countries in the pre-election programs of the key German parties 2017" and "Russia, Ukraine, Belarus in the program documents of the three governments of Angela Merkel (2005–2017)" published in the «Journal of the Belarusian State University. International Relations» in 2017–2018 as well as "Foreign policy goals and objectives of the A. Merkel's fourth government" published in the «Journal of International Law and International Relations» in 2018 could be mentioned firstly [3–5]. The historical and conceptual bases of the post-Soviet regional dimension of the German policy since the USSR collapse was presented also in the monography of V. Froltsov "Post-Soviet states in the foreign policy of Germany (1991–2005)" issued in 2013 [6].

It is necessary to name T. Bohn, professor of the Giessen University, as the most prominent modern-day German researcher of the bilateral relations in 2010s focused on complex evaluation of interdependencies in development of Belarus between East and West and perspectives of cooperation. Among his publications firstly book "A white spot in Europe…: the imagination of Belarus as a contact zone between East and West" ("Ein weißer Fleck in Europa…: Die Imagination der Belarus als Kontaktzone zwischen Ost und West") published in 2011 together with his Belarusian colleague V. Shadurski, professor of the Belarusian State University should be named [7]. More historically immersed approach is demonstrated in the collective monography "Colorful spots in Belarus: places of remembrance between the Polish-Lithuanian Union and the Russian-Soviet empire" ("Bunte Flecken in Weißrussland: Erinnerungsorte zwischen polnisch-litauischer Union und russisch-sowjetischem Imperium") published by T. Bohn in 2013 in collaboration with R. Einax and J. Mühlbauer [8].

Nonetheless, some very important factors of the Belarusian-German relations in the 1990s – 2010s are not named and characterized until now. It concerns research publications in both countries. Let consider some aspects of each of them.

Firstly, *the political factor of influence*. In political terms, the very wording of the 1993 Treaty on the Restoration (not establishment) of Belarusian-German relations refers us to their origin.

However, we cannot speak about any continuity, achievements and traditions in our relations with Germany. The motivation of these relations in the early 21st century and 1990s was radically different. In the first case, they were a help in trying to establish itself as a state, in the second case – using the fact of state independence and sovereignty, they were the attempts of establishing itself in the international arena. One of the main factors that has led to this difference in goals were significant differences in the political environment of that period and the present. The conditions of the war of the 1920s put forward tasks for diplomacy to achieve peace. In the 1990s, using a peaceful environment, Belarusian diplomacy set a wider range of goals. In general, it was a task to fit into a completely new post-bipolar world order, finding an acceptable place in it.

If to assess geopolitics as a factor of influence on the Belarusian-German relations, it should be noted that the assessment of the contemporary world order of the leadership of both Belarus and Germany largely coincide.

Speaking at the recent economic forum in Davos, German Chancellor A. Merkel called on all countries to settle international crises by joint efforts and search for compromises, said: "Now we face problems in the multilateral system, and because of this, the international order has been under pressure. We cannot let the existing multilateral system be destroyed. The global architecture will only work if we are capable of dialogue. I think our national interests should take into account the interests of other countries. The global architecture of international politics will work only in conditions of our readiness for compromise" [9]. In fact, A. Merkel condemned the policy of President D. Trump, which is built on the principle of "America Above All".

Here is a recent assessment of the modern world order made by the President of the Republic of Belarus: "This is a time when we are experiencing difficulties because of the beginning, as we often say, of the redistribution of the world. A new world order is being established. There are new states that claim to take a leading position under this sun, and these places are already occupied. Therefore, local conflicts break out… In various parts of the world, the voices of those politicians who put their ambitions above the good of the people are getting louder. Obviously, the old order is crumbling. There is a new re-division of the world"[1] [10].

As it is seen, both the leaders oppose the hegemony of one state and defend the multilateral system of relations. However, it would be mistaken to exaggerate the importance of a certain coincidence in the theoretical assessments of the modern world order by the Belarusian and German leaders, and especially with regard to bilateral relations. When it comes to political and economic practices, each party demonstrates the priority of their interests.

This was especially evident in the 1990s and the beginning of the 21st century, when the factor of influence of geopolitics affected, among other things, the Belarusian-German relations. The mere enumeration of the events that took place during the period, told on their uniqueness. They are the collapse of the Soviet Union and the emergence of new independent states, the fall of the Berlin Wall and the unification of Germany, the process of globalization in the 21st century and the beginning of de-globalization today. Besides it is the Maastricht Treaty on the European Union of 1992 and enlargement of the EU at the beginning of this century, events in the Balkans of the 1990s. All of them, in varying degrees, influenced the formation of diplomatic relations of states taking into account the realities of the new world order.

The restoration of Belarusian-German relations fits into these conditions. It would have been unthinkable without the accomplishment of such geopolitical events as the collapse of the USSR and the unification of Germany. In every sense, Belarus and Germany were two completely new states with all the ensuing consequences for their diplomacy. They were vulnerable to the factors of the new world, which entered the short-term phase of the unipolar world in the early 1990s. The international weight of the United States in those years was undeniable in the Western community. Western countries, including Germany, were forced to take into consideration the American position in international affairs, including building relations with the CIS countries.

In addition, the Belarusian-German relations of that period were influenced to no less extent by two opposite political processes: centrifugal forces in the post-Soviet area and centripetal forces in Europe. Alongside with other geopolitical factors, they have dramatically influenced the formation of foreign policy concepts of Belarus and Germany. As a result, the United Germany even more integrated into the Western world, Belarus preferred the Eastern vector.

It would seem that such a different "orientation" of Belarus and Germany should have predetermined a weak interest of our countries in each other, wariness and unfriendliness in their relations. However, this is not happening. In general, over the past three decades, bilateral Belarusian-German relations have been characterized by consistency and positive dynamics of their development. Of course, Belarus is not a priority area of German foreign policy. After all, Germany's political and economic weight is disproportionately higher on the world stage. Nevertheless, at the same time, our country is not in the background of German foreign policy. Moreover, after Belarus gained independence the German diplomacy gave our state more and more importance.

The reason is not only that Belarus increased its diplomatic activity every year, but also because of the peacefulness of our policy. The European countries are convinced of Belarus' sincere desire for equal and mutually beneficial cooperation in all its spheres, including bilateral relations. The government of our country is ready to understand and take into account all the nuances of the foreign policies of their Western partners, which reflect their understanding of the world and regional processes. Perhaps, this is the starting point of building Belarusian-German relations.

It should be born in mind that ties are not formed in a political vacuum. What, for example, can be considered significant and relevant for Germany (for example, the current problems of Euro-Atlanticism), seems less significant for Belarus. On the contrary, periodic

[1]Hereinafter translated by *A. Sh.*

problems in Belarusian-Russian relations, although monitored by German diplomats, are inferior in importance, for example, to the topic of the UK's exit from the EU. Each of them measures their foreign policy activity with not only their internal capabilities, but also regarding different assessments of the same political events.

Such differences are particularly evident in the assessment of domestic policy. At the same time, it is noteworthy that Belarus in the history of relations with Germany has never set a requirement for Germany to change any of its domestic political positions as a condition for expanding the scope of cooperation. We have always followed the principle of non-interference in internal affairs. In this regard, the position of Germany was different. The issue of human rights and respect for the principles of democracy has often been put forward by the German side as a necessary condition for the expansion of political dialogue between our countries. In this sense, the difference in Germany's approach to the Belarusian-German relations before and after 1994 is significant.

On the one hand, the maneuvering of the Belarusian state after gaining independence between East and West was perceived in Germany as a chance to lead out our country from the post-Soviet area and subjugate it to European politics. The issue of human rights was not raised at that time and was not an obstacle to cooperation, including its political side. On the contrary, Germany showed great interest in expanding contacts with Belarus at that time.

On 13 March 1992 a visit of the Minister of Foreign Affairs of Germany H.-D. Genscher to our country and the signing of the Agreement on the Restoration of Diplomatic Relations took place. In the same year, the head of Belarus S. Shushkevich visited Bonn and was received by the German President R. von Weizsacker. In 1992–1994, such fundamental documents for bilateral relations as the Treaty on the Development of Large-Scale Cooperation in the Field of Economy, Industry, Science and Technology (2 April 1993) and the Joint Statement on the Basis of Relations between the Republic of Belarus and the Federal Republic of Germany (25 August 1994) were signed [11].

To a large extent, the diplomatic activity between the two countries in the early 1990s was given more by the process of centrifugal forces in the post-Soviet area and fit into the geopolitics of that time – the search of the states for their place in the new world order. The leaders of the young independent countries understood that the future of their development would depend on whom they would choose as their closest ally and which regional center they would join.

On the other hand, the Belarusian-German relations received a completely different coloring after the election of the first President of the Republic of Belarus, who chose the policy of a comprehensive alliance with Russia as a priority. As a result, the political component in our relations with Germany was actually reduced to zero. This was largely because Germany in its foreign policy became largely dependent on the foreign policy decisions of the European Union.

During this period and subsequent years, Belarus felt the greatest impact of the EU's consolidated policy on its bilateral relations with the states of this alliance. Despite the official independence in carrying out its foreign policy, each of them, in the end, commensurate the adoption of specific decisions on Belarus with the European vision and assessments of "Belarusian problems". However, even against this background, Germany was often the initiator of positive initiatives and practical cases. To a certain extent, the German Chancellors of the 21st century G. Schroeder and A. Merkel tried to preserve the foundations of Belarusian-German relations and "Eastern policy" as a whole, which have been formulated by K. Kinkel, Minister of Foreign Affairs in the government of H. Kohl.

Their brief essence is to support consistently political and economic reforms; to promote the integration of the CIS countries into the international institutions; to build a wide space; to establish itself in the markets of the region. As you can see, the intentions were quite "noble". This resulted in warming the relations between our countries since the second half of the 2000s. Berlin expressed its satisfaction with the holding of the presidential elections in Belarus in 2015, as well as the provision of the Minsk platform for the settlement of the conflict in Donbass. As part of this negotiation process, Chancellor A. Merkel visited our country. In 2015, Foreign Minister of Belarus V. Makei visited Germany, which resulted in the restoration of the Minsk forum of the German-Belarusian society [11].

As part of the work of the negotiating group to resolve the crisis in Eastern Ukraine, Foreign Minister of Germany F.-V. Steinmeier visited Belarus twice [12]. The coordinator of the German government for inter-social cooperation with Russia, Central Asia and the Eastern partnership G. Erler also visited Minsk. On behalf of the Federal Government of Germany, he offered an official apology to the Belarusian people for the crimes committed on the territory of Belarus during the World War II [13].

The working visit of Z. Gabriel, the Vice-Chancellor and the Minister of Foreign Affairs of Germany, was an evidence of the improvement of the Belarusian-German relations in Belarus on 17 November 2017 [14].

As is noted by the Embassy of the Republic of Belarus in Germany, a symbolic joint project and international event was held in Minsk on 31 October – 1 November 2018 that is a meeting of the Main group of the Munich Security Conference, which was attended by a number of influential German politicians. In addition, official parliamentary contacts have also resumed since 2016. At the invitation of the German-Belarusian parliamentary group of the Bundestag in November 2018, the delegation of the Working Group on Coope-

ration with the German Parliament of the National Assembly of the Republic of Belarus paid its first official visit to Germany [15].

Cooperation on sustainable development and historical memory plays an increasingly important role in the Belarusian-German dialogue. In early 2018, a visit to Germany of the Belarusian delegation headed by M. Shchetkina, Deputy Chairman of the Council of the Republic of the National Assembly, National Coordinator for Sustainable Development Goals. In September 2018, a delegation of Belarusian law enforcement agencies headed by the Minister of Justice of the Republic of Belarus O. Slizhevsky visited Germany to study the German experience in the field of personal data protection. In the context of the implementation of the agreement reached between the Presidents of Belarus and Germany on the establishment of a bilateral Commission of Historians, the first meeting of Belarusian and German scientists was held in December 2018 in Hessen [15].

In the Review of the results of the foreign policy of the Republic of Belarus and the activities of the Ministry of Foreign Affairs (MFA) in 2018, which was presented in the Ministry of Foreign Affairs of Belarus in January 2019, it was noted that contacts with Germany were particularly intense last year. On 29 June 2018, German President F.-V. Steinmeier visited Belarus, and this was the first visit of such a level in the history of Belarusian-German relations [15]. During this visit, the head of Germany was received by the President of the Republic of Belarus A. Lukashenko and took part in the opening of the second line of the memorial complex "Trostenets" on 16–18 February 2018. Minister of Foreign Affairs of the Republic of Belarus V. Makei took part in the 54th Munich security conference. The MFA report noted the active development of inter-parliamentary and interregional cooperation [15].

The Belarusian-German relations are half a mile in the same positive light under the influence of globalization, which has made significant changes in bilateral economic relations.

Secondly, it is *the economic factor of influence*.

In the Belarusian-German relations, the economic factor of influence has become of paramount importance. Germany is one of the leading foreign trade partners of Belarus. As an example, I will bring some statistics. In 2017, bilateral trade amounted to 2846.1 million dollars (125 % by 2016), Belarusian exports reached 1118.1 million dollars (118.4 %), imports – 1728 million dollars (129 %) [16].

In 2017 the main Belarusian export to Germany made up of mineral products (54.6 %), products of forestry and woodworking industry, base metals and products from them, machines, equipment, apparatus and instruments, chemical products, textiles and textile goods, agricultural products and food industry [16].

In 2018, the following commodity structure of exports was formed: mineral products (oil and oil products) – 56.3 %, forest and wood products – 14 %, base 8 metals and products from them – 12.8 %, machinery, equipment, equipment and tools – 5.5 %, chemical products – 4.2 %, textiles and textile products – 2.4 %, agricultural and food products – 1.9 %. In general, Belarusian exports are quite diversified. Belarus exported to Germany goods more than 472 positions (4 positions of Foreign Economic Activity Commodity Nomenclature) [15].

Bilateral trade is characterized by large volumes of investment imports from Germany, which are based on the supply of machinery, equipment and vehicles. Commodity structure of import in 2018 is as follows: machinery, equipment, vehicles, equipment and tools – 54.7 %, chemical products – 23.8 %, base metals and articles thereof – 6.8 %, products of agriculture and food industry – 5.4 %, textiles and textile products – 2.9 %, products of forest and woodworking industry 2.8 % [11].

Imports have a sound investment character. Germany is the number one partner for Belarus in the supply of high-tech equipment, including the modernization of the production base of Belarusian enterprises.

Germany is traditionally among the five countries – the largest investors in the economy of the Republic of Belarus.

If in 2017 the amount of investments attracted from Germany was 142.1 million dollars (137.4 % by 2016), including direct – 87.5 million dollars (94.6 %), direct on a net basis – 26.5 million dollars (98.6 %), then in 2018 Belarus received investments in the amount of 363.7 million dollars, including direct – 113.7 million dollars, direct on a net basis – 66.1 million dollars. In our country, there are 306 companies registered with German capital, there operate 90 representative offices of German companies. German capital is most widely represented in the industrial sector, transport, agriculture, trade and food industry. German investors are showing increased interest in the Industrial Park "The Great Stone". In October 2017 the German company "Lanz Manufactory" became a new resident of the Park [11].

However, these positive statistics should not conceal the negative trends in our economic relations. If we compare the trade turnover of Belarus with Germany in 2012 (4469.1 million dollars), 2013 (4788 million dollars) and 2014 (4119.5 million dollars), 2015 (2471.7 million dollars), 2016 (2276.3 million dollars) and 2017 (2846.1 million dollars), we can note its significant decline (about 1.8 times) [16].

A significant increase to 3301. 4 million dollars occurred only in 2018 against the backdrop of improved bilateral relations in the political sphere [11].

Thirdly, *the ideological factor of influence*. Change of electoral moods of the population of Germany towards the right worldview, growth of populism gradually lead in the EU to the power politicians who put nationalism, political and economic selfishness at the forefront. Both the Social Democrats and the Christian Democrats

are gradually moving away from their traditional historical foundations.

If earlier the Social Democratic Party of Germany in its political platforms gave priority to domestic social problems, adhering to a balanced line in foreign policy, in recent years, in the desire to raise its credibility with the electorate, it demonstrates a tightening of positions on international problems. For example, at the beginning of 21st century during the reign of G. Schroeder's Sozial democratische Partei Deutschlands did not hide their sympathy for Russia and its President. Now its representatives in the European Parliament openly support the European sanctions policy.

If the Christian Democrat H. Kohl, even during the confrontation with the USSR, managed to bring bilateral relations with the Soviet Union and then with Russia to an acceptable level for both sides, now the current position of the Cristian Democratic Union, although not being hostile in essence, still remain in line with the pan-European anti-policy. Of course, all this has a negative impact on the Belarusian-German relations as well.

However, despite all the contradictions and difficulties, there is still a positive perspective for the Belarusian-German relations. They can be brought to a new mutually acceptable level by two common factors – the desire of the peoples of our states to live without war and their desire for technical progress. As for the first factor, it increases the importance of our country in the fight against challenges and threats of the 21st century, such as illegal migration, drug trafficking, human trafficking, international crime. The second factor will facilitate Belarus' accession to the ranks of highly developed states, with consequent positive effects for our international relations.

Conclusion

Evaluating prospects of the Belarusian-German relations, it could be expected that they will continue to develop positively not only in the economic, but also in the political spheres. This process will be facilitated solidly by the expected agreements between the European Union and the Russian Federation on topical European security issues, as well as intensification of the diplomatic activity of the Republic of Belarus in the western dimension.

In many ways, the nature of these relations will be influenced by objective and subjective factors associated with the relevant geopolitical and regional processes, as well as with the trends of the internal policy of both states. In the long term, a successful implementation of Belarus' economic plans and a convergence of political, economic, and military capabilities of both countries in this regard can play a particularly positive role in expanding bilateral ties.

Taking into account the recent positive trends in the Belarusian-German relations it could be predicted that Germany will see Belarus as a more important political actor not only in the post-Soviet region, but also in the entire European area in the next years. In turn the Republic of Belarus considers Germany as a reliable partner, which is ready for compromises and agreements and focused on promotion of Belarusian security initiatives and mutually beneficial cooperation in Europe.

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Received by editorial board 30.04.2019.

УДК 35.071.51(47-15)”1944/1950”

CUSTOMS PROTECTION OF THE BELARUSIAN PART OF THE WESTERN BORDER OF THE USSR IN 1944 – EARLY 1950s

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The restoration of the customs guards on the Belarusian part of the state border of the USSR in the period from 1944 till the first half of the 1950s is analysed in the article. The author considers the main problems that Soviet policy makers had to deal with to create an efficient customs system: legal, organizational, personnel, material and technical. Special attention is paid to the organisation of counteraction to different types of smuggling in the post-war period. It is concluded that a broad and systematic set of measures aimed at strengthening the customs service allowed to control successfully the movement of goods across the border and to fight against smuggling in the early 1950s.

Keywords: state border; border line; restoration; customs service; customs; customs post; border troops; post-war period; customs control; smuggling.

ТАМОЖЕННАЯ ОХРАНА БЕЛОРУССКОГО УЧАСТКА ЗАПАДНОЙ ГРАНИЦЫ СССР В 1944 – НАЧАЛЕ 1950-х гг.

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Анализируется восстановление таможенной охраны на белорусском участке государственной границы СССР в период с 1944 г. до первой половины 1950-х гг. Рассматриваются основные проблемы, которые пришлось решать советским директивным органам для создания эффективной таможенной системы: правовые, организационные, кадровые, материально-технические. Особое внимание уделено организации противодействия разным видам контрабанды в послевоенный период. Делается вывод, что проведение широкого и системного комплекса мер по укреплению таможенной службы позволило к началу 1950-х гг. успешно контролировать перемещение товаров через границу и бороться с контрабандой.

Ключевые слова: государственная граница; пограничная линия; восстановление; таможенная служба; таможня; таможенный пост; пограничные войска; послевоенный период; таможенный контроль; контрабанда.

The history of public administration bodies of the Republic of Belarus is one of the least studied areas of the past of our country. Moreover, the history of some departments and services became the object of scientific study only in the late 1990s. The history of the Belarusian customs service, which became the object of scientific analysis only from the beginning of the 2000s, is also full of gaps. Of course, among the few authors a historian from Grodno V. Sayapin should be noted first. V. Zhuk, I. Kiturko, A. Suvorov, etc. have also made contribution to the popularization of various periods of the glorious past of the customs authorities. But now many other episodes of history of the Belarusian customs require the attention of a researcher.

Образец цитирования:
Острога ВА. Таможенная охрана белорусского участка западной границы СССР в 1944 – начале 1950-х гг. *Журнал Белорусского государственного университета. Международные отношения*. 2019;1:18–21 (на англ.).

For citation:
Ostroga VA. Customs protection of the Belarusian part of the western border of the USSR in 1944 – early 1950s. *Journal of the Belarusian State University. International Relations*. 2019;1:18–21.

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Thus, one of the urgent problems, from the perspective of studying the historical experience of the service of the economic border, is the theme of the restoration of customs protection of the Belarusian part of the western border of the USSR in the post-war period from the end of 1944 till the early 1950s.

The liberation of Belarus from fascist occupation in 1944 put on the agenda the issue of restoration of the border and customs protection of the state border of the Soviet Union. On 27 October 1944 the National Commissariat of Foreign Trade (NCFT) of the USSR issued order No. 375/l on the restoration of the Brest customs, the only customs in the BSSR, on the threshold of the Great Patriotic War. In the autumn of the same year, a customs post was opened at Lososno station near Grodno, and in December, the customs office in Berestovitsa began to work. In the following 1945, in February, the customs office began to function in Grodno [1, p. 94]. Later in June of the same year, a customs office was also opened at the airport in Minsk. In comparison to the whole territory of the USSR there were 22 customs offices in 1944, mainly for the admission of immigrants and charitable goods. It is necessary to note that on 1 January 1945 the staff of the customs department of the Soviet Union were 1043 customs officers, about 50 people of them were in the BSSR [2, p. 42]. During the reviewed period, customs were divided into three classes. So, Brest customs was the 1st class, Grodno customs and Berestovitsa customs were the 2nd class, and Minsk customs was the 3rd class. The customs had customs posts. So, at this time, Grodno customs office subordinated customs posts of "Kuznitsa" ("Bruzgi"), "Lepschany" and "Hvorostyany". In 1948–1949 it included the customs post at Vilnius airport.

The mentioned recovery processes took place in the most difficult conditions. Moreover, even the restored Western border itself was not yet precisely defined and called the "border line". The Soviet side of the border was protected by the border troops, and the neighboring polish troops and the troops of the National Commissariat of Internal Affairs (NCIA) for the protection of the rear of the army. This process was carried out on the basis of a special instruction developed by the General headquarters of the Red Army together with the NCIA and the NCFT. So, in August 1944 the commander of the 1st Belarusian front, Marshal K. Rokossovsky issued an order "On the procedure of crossing border line by military units and units of goods and vehicles" [3, p. 333]. On 28 August 1944, the Military Council of the 1st Belarusian front adopted a resolution "On the border regime in the borderline areas". These were the first documents regulating the order of movement across the state border of the USSR. In accordance with them, the pass through the state by border troops, individual soldiers and categories of civilian population, other persons (the repatriated, prisoners of war, the interned, the evacuated, etc.), as well as cargo was carried out only through specially created checkpoints. It should be noted that the customs control points were created at the restored border almost simultaneously with the border guard checkpoints, which ensured the rapid establishment of effective control over the movement of people and goods across the border line.

Since 1945, the activity of the customs system in the west of the USSR had been increasing. In the first half of the year, the flow of cargo for the current units of the Red Army increased, in the second – the volume of passenger traffic and military equipment in connection with the transfer of units to the Far East and the return of Soviet citizens sent to Germany. The main task of the customs authorities during this period was the control of goods moved by individuals and soldiers. So, within 1945, through the western border of the Soviet Union 19 145 443 persons proceeded in a simplified manner; with passports and visas – 48 507 people. At the same time it was adopted from abroad: the Soviet prisoners of the war – 359 730 people; Soviet citizens returning to the USSR – 2 254 238 people; the evacuated from Poland to the USSR – 327 120 people; the evacuees from the USSR to Poland – 749 710 persons. Thus inspected and passed: trains – 79 290; aircrafts – 11 302; cars – 1 981 279; pack animals 278 053 units [2, p. 42].

The movement of huge masses of people was a specific feature of the late 1940s. We should add that in 1946–1947, in accordance with interstate agreements, the exchange of population between Poland and the USSR also took place. In this regard, through the Belarusian customs almost 240 000 immigrants passed from the Western regions of Belarus to Poland and 27 000 people – from Poland to Belarus, carrying household goods and livestock. In general, the property of immigrants was passed with minimum formalities, although some customs officers found goods prohibited for export, usually various gold products.

In the post-war period, implementing the tasks set by the government, customs officers faced great difficulties. Thus, there was no necessary regulatory framework. The customs code of 1928 could no longer provide a proper legal basis. To remedy this problem, a large number of guidance documents on the work of customs offices (instructions, directives, and memos) were developed in a short time, a large number of different issues were agreed with the concerned departments, which were not previously encountered in practical work. In the post-war decade, the range of legal acts on customs control was supplemented by numerous customs documents: resolutions and orders of the government, orders of the NCFT or Ministry of Foreign Trade (MFT, transformed from the NCFT in 1946), rules, instructions, orders of the General customs administration (GCA) on customs issues. For example, in 1953, the Rules for the registration and admission of personal baggage and unaccompanied baggage of citizens crossing the state border of the Soviet Union were adopted. A very important innovation was the establishment of

a form of customs declaration, which had to be filled in by all citizens when crossing the state border.

A great difficulty was the shortage of personnel and a significant lack of Western customs personnel trainings to perform specific and important tasks in the conditions of the end of the war and first peaceful years. It was so due to the lack of experienced workers, despite all the measures taken. It was decided to bet on demobilized front-line officers, and in 1946 special courses for their training were opened at Riga port customs. Among the later well-known Belarusian customs officers were the soldiers of Brest customs (A. Andronov, V. Gamal, M. Kiselev, O. Kondrashkin, A. Krulwich, V. Rebenok, M. Rodyukov, I. Solonko, I. Tereshenkov, M. Khovanskii, N. Tsvetkov, A. Cherepanov, N. Jhava); of Grodno customs (F. Gorin, V. Belyaev, V. Polyansky, Y. Sayapin) and of Minsk customs (N. Smirnov).

In the most difficult conditions the employees of the restored Belarusian customs selflessly performed their duty. Thus, the first head of the Grodno customs V. Belyaev, deprived of one leg as a result of severe wounds suffered at the front, could carry out customs control of 100–150 passengers within 30–40 minutes, moving from car to car [1, p. 95]. Finally, by the end of 1945, Brest customs officers and border guards detained 6 trespassers, confiscated 369 firearms, confiscated smuggled goods in the amount of 500 thousand rubles, inspected and let pass in 212 267 Soviet and foreign trains [4, p. 54].

Among other problems of the post-war customs service is the lack of office and living space, lack of necessary equipment and inventory. In addition, in the first post-war years, employees of Western customs, especially in Grodno, experienced constant risk coming from the anti-Soviet armed groups operating in the region. The veteran of Grodno customs Y. Sayapin recalled: "in April 1945, there was still the war, in the forests there were gangs that attacked the representatives of the newly emerged authorities in the liberated territories. Sometimes at night they attacked border guards and customs officers. I lived near the house of the chief of customs, and when there were attacks, we jumped up in linen with guns in hands out of the house and occupied planned in advance positions since they could throw grenades in the house. But everything went without a special firefight. Bandits attacked the location of border guards more and more" [5, p. 239].

The work of customs bodies and institutions was repeatedly checked by the state control of the USSR. A special audit group was established under the GCA. In 1947, it revealed serious violations of the Customs code: the inspection of goods was carried out selectively, some of the goods were not inspected at all, baggage was allowed to be inspected in private apartments, it was not surprising that the records of confiscated and detained goods were unsatisfactory done [6, p. 311]. But the customs system was still being restored and measures were taken to establish the work of customs.

The post-war revival of the country's economy coincided with the beginning of the growing political tensions between the Soviet Union and capitalist countries. Customs officers were also involved in the cold war. This reflected the general tendency of state policy to isolate the Soviet people from the corrupting influence of the west, cosmopolitanism and low-worship. In addition, the idea that almost every foreigner was a spy was constantly being planted among border guards and customs officers. In 1946, the government of the USSR took strict measures to limit the access of foreign goods imported privately to the domestic market. But despite the bans, the flow of consumer goods on the western border was growing. Belarusian customs officers, acting in accordance with the instructions of the legislative bodies to prevent the import of illegal goods, carried out a complete check of hand luggage and passengers crossing the border.

In the 1950s, the number of customs officers began to decline due to the significant decrease in the volume of transportation and travel of citizens. Therefore, from 1 June 1951, the Grodno customs office was transformed into customs post of Berestovitsa customs. Since 15 February 1954 it has been abolished, and its employees were transferred to other customs or dismissed. On 1 December 1954 in Berestovitsa custom house of 2nd class was transformed to the customs post of Minsk customs. But soon in April 1955, by the order of the MFT of the USSR, it was reorganized into the customs post of Vilnius customs of the 3rd class, and the former Berestovitsa customs post was closed. As a result, by the middle of the 1950s in Soviet Belarus, again, as before the war, there was only one Brest customs.

The second wave of recovery and development of the customs system began only in the second half of the 1950s, due to the implementation of new tasks of the Council of Economic Mutual Assistance (CEMA) created in 1949 among the socialist countries. At this time, due to the expansion of contacts of the USSR with the countries – participants of the CEMA, every year the volume of trade, the flow of vehicles and the number of foreign tourists crossing the state border increased. Basically, they passed through the customs posts of the Brest customs, which from that time became a real "Western gates" of the Soviet Union and the best customs of the Soviet Belarus. The most important task of the Soviet customs officers of the considered period was the fight against the attempts to smuggle goods. But in the first post-war years a small number of personnel, the lack of its training had a negative impact on the quality of work to combat smuggling.

The peculiarity of smuggling in 1944–1946 was that its carriage was associated with the use of bold and clever ways of concealing due to the usage of ranks of officials under the cover of documents containing instruction on the "secret" nature of the cargo carried in sealed containers, under the guise of reparations and the return of the goods, trophy property, as well

as the necessity of implementation of customs control in respect of the enormous number of border-crossing individuals. At this time there was an increase in the smuggling of essential commodities: tobacco, matches, baking soda, black pepper, dye for cloths and stuff. It should be pointed out that those years smuggling was detained in the numder of 85% for import and 15 % for export [2, p. 48]. For commodity groups the reduction in detention on export refers to foreign currency and non-ferrous metals and precious stones. When importing, on the contrary, detention of different tissues increased 245 %, leather – 198 %, clocks – 537 %. The nomenclature of the detained smuggled goods in 1945 looked as follows: silk, silicon for lighters, sewing needles, jewelry, currency and currency values, gold, silver. Some senior military officials tried to import from Germany to the USSR various products for personal use and sale such as consumer goods machines, cars, and even trains with forged documents.

So, in 1945, the former employee of Grodno customs U. Sayapin recalled that the General of the Army illegally received a trophy car from the garage of a former senior nazi J. Goebbels and tried to enter the USSR without documents. However, the car was detained during customs control in Grodno. The General, not wanting to part with it, left his driver with the car and went to Moscow. There he got a reception from I. Stalin. But, as it was known later, he entered the office as a General, and left as a Lieutenant Colonel. In another case, in the autumn 1945 Grodno customs officers detained a military echelon with a large batch of contraband transported under the guise of military equipment. However, in response to the legitimate demands of the customs officers, the chief of the echelon put up armed guards and demanded that the station chief send the echelon. The echelon was sent, but stalled and in the end waited for the smuggler-military consent on clearance [1, p. 109].

Some difficulties were also brought by repatriates, especially those who left the USSR in 1945–1947. Many of them, as it has already been pointed out, tried to hide their savings in the form of gold products and coins in household items, in secluded from customs officers places in cars. So, in one of the cars half of which was occupied by horses during the inspection of Grodno customs officers, golden coins of Royal coinage covered with manure were found on the floor [1, p. 110].

In turn, according to the memoirs of the veterans of the Brest customs haberdashery products, sewing machines and accessories, leather were the most popular smuggling in the 1940s. And since the beginning of the 1950s a serious segment of smuggling had become a variety of imported fabrics [7, p. 53].

Thus, a wide range of measures in strengthening the customs service held since 1944 at the restored Western border provided a successful performance of customs, letting through troops, cargo and various categories of civilians and detecting a significant amount of smuggling at the border line at first and then on the state border.

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Received by editorial board 04.03.2019.

УДК 327(470+474)”1990”

RUSSIA IN THE BALTIC STATES' FOREIGN POLICY IN 1990s: CONCEPTUAL ANALYSIS

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The goal of the article is to examine, how the main principles and concepts of the Baltic states' foreign policy shaped their relations with Russia in 1990s. For this purpose it analyzes the reasons standing behind each of these principles and concepts and reveals their implications on Baltic foreign policy towards Russia. Besides the author applies some theoretical approaches, explaining the behavior of small states on the international arena, to reveal the mechanisms of forming the major trends of Baltic foreign policies in the 1990s and their perceptions of Russia.

Keywords: foreign policy; Baltic states; Latvia; Lithuania; Estonia; Russia.

РОССИЯ ВО ВНЕШНЕЙ ПОЛИТИКЕ БАЛТИЙСКИХ ГОСУДАРСТВ В 1990-е гг.: КОНЦЕПТУАЛЬНЫЙ АНАЛИЗ

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Выясняется, как основные принципы и концепции внешней политики балтийских государств формировали их отношения с Россией в 1990-е гг. С этой целью были проанализированы причины, которые лежали в основе этих принципов и концепций, и их влияние на балтийскую внешнюю политику в отношении России. Кроме того, чтобы раскрыть главные тенденции внешней политики балтийских государств в 1990-е гг. и их восприятие России, автор использовал некоторые теоретические подходы, объясняющие поведение малых стран на международной арене.

Ключевые слова: внешняя политика; балтийские государства; Латвия; Литва; Эстония; Россия.

Introduction

It's necessary to start with explanation of the article's basic term – the “Baltic states”. First of all there should be underlined the difference between the terms “Baltic states” and “Baltic Sea states”. The later definition is generally used to mark all the states situated around the Baltic Sea and having direct access to it. In this sense the term “Baltic Sea states” is broader and in addition to Lithuania, Latvia and Estonia includes such countries as Sweden, Poland, Germany and even Russia (at least its north-western regions). The notion

Образец цитирования:
Володькин АА. Россия во внешней политике балтийских государств в 1990-е гг.: концептуальный анализ. *Журнал Белорусского государственного университета. Международные отношения*. 2019;1:22–27 (на англ.).

For citation:
Valodzkin AA. Russia in the Baltic states' foreign policy in 1990s: conceptual analysis. *Journal of the Belarusian State University. International Relations*. 2019;1:22–27.

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of the Baltic Sea region is quite new in international relations. It was institutionalized only in the early 1990s as a special regional body, the Council of the Baltic Sea States was established in 1992. Altough the term "Baltic states" has much longer history. This definition appeared in international politics of the 1920s and was attributed at that time to five non-Soviet states, that emerged on the eastern and south-eastern shores of the Baltic Sea after the collapse of the Russian Empire: Poland, Lithuania, Latvia, Estonia and Finland. In meantime these five states organized a series of regional conferences generally called "Baltic conferences" aimed at the development of a regional alliance among them. But soon Poland left this process due to a harsh territorial dispute with Lithuania. By the early 1930s Finland also showed a clear intention to be affiliated on the international arena with the group of the Scandinavian states (thus, forming with them a new regional group of Nordic countries), rather than with its small Baltic neighbors to the south. So the group of the Baltic states included only three countries: Lithuania, Latvia and Estonia. In 1934 they reached the agreement known as the Baltic Entente – the document that confirmed the attribution of the term "Baltic" to these three states. Then they shared a common destiny of incorporation into the USSR in 1940. In the Soviet Union the "three new republics" were attributed by Soviet Russian variant of this term – "Pribaltica". In the times of Lithuanian, Latvian and Estonian struggle for independence at the junction of the 1980s and 1990s the term "Baltic states" could be traced in the titles of such regional structures as the Baltic Assembly and the Baltic Council, established by their governments in 1989–1990. And since these states restored their independence in the early 1990s, they have been commonly named in English sources as "Baltic states". Although this term receives frequent criticism in Estonia, Latvia and Lithuania, as it ignores their linguistic and cultural differences, and has too much connotations with the Soviet past, it is still widely used in research and analytical literature [1, p. 875–876; 2, p. 2]. In this article the term "Baltic" refers to three states: Lithuania, Latvia and Estonia.

Despite the fact that since their very independence from the USSR the Baltic states declared establishing close ties with the West as their main foreign policy priority, it was obvious that they can not achieve their major goals in the western direction without resolving certain problems in their relations with Russia. Therefore, although not assigned a special priority in major foreign policy documents of the Baltic states, their relations with Russia still played a crucial role for realization of their national interests. So it wouldn't be an exaggeration to say that at least in the 1990s "Russian vector" in Lithuanian, Latvian and Estonian foreign policy played equally significant (if not more significant) role to that of the western one.

But the Baltic states' relations with Russia at that period were very complicated, strained and charged not only with real problems (such as Russian troops withdrawal from their territories or defining and agreeing upon their state borders with Russia), but with mutual negative stereotypes and claims stemming from the difficult heritage of the Baltic-Russian relations of 20th century and their contradicting perceptions thereof. So the aim of this article is to examine, how the main principles of the Baltic states' foreign policy of the 1990s shaped their policy towards Russia. The tasks are:

- to reveal the nature of the major principles of the Baltic states' foreign policy in 1990s;
- to analyze their implications for Baltic-Russian relations;
- to conceptualize major trends of the Baltic states' foreign policy regarding Russia applying some instruments of the international relations theory and foreign policy analysis.

The chronology of this work could be briefly defined, as the period of B. Yeltsin's presidentship in Russia, because the first change of leadership in post-Soviet Russia had much greater impact on the development of Baltic-Russian relations, than any electoral cycles in the Baltic states, and it changed to a certain degree the Baltic and western perceptions of Russian politics. Besides some major events on European and global political arena at the junction of the 1990s – 2000s (such as Kosovo crisis and terrorist attacks on the USA on 11 September) marked the emergence of a new international situation that changed the conditions for Baltic-Russian relations significantly.

Looking at numerous publications on the topic of Baltic-Russian relations, that appeared within the last two decades, it could be easily detected, that most of them focus primarily on Russian policies, interests and goals in the region, analyzing them and even making theoretical schemes to explain the patterns of Russian policies towards the Baltic states. Yet very few authors pay enough attention to the foreign policies of the Baltic states regarding Russia. Among them Russian researchers R. Simonyan [3–7] and V. Vorotnikov [8; 9], who promote the idea of "occupation doctrine" as the decisive factor in Baltic foreign policy towards Russia should be mentioned. Former American Ambassador to Estonia and Lithuania K. Smith in his work pays more attention to explaining the reasons of Baltic "fears" of Russia, yet his paper adds some information on the origins of some trends in the Baltic foreign policy [2]. Valuable observations on the topic are also provided in the articles of Lithuanian researchers G. Vitkus [10], D. Mereckis and R. Morkvėnas [11]. A prominent work of B. Buzan and O. Waever [12] and the article of J. Lamoreaux and D. Galbreath published in the Journal of Baltic Studies [13] are the theoretical bases for this research.

The role of Russia in securitization of the Baltic states' foreign policies

At first glance, it may seem, that the relations with the West, not with Russia, became the main foreign policy vector of the Baltic states since their independence from the USSR. But it is necessary to remember that such a strong will of integration with the West from the part of Baltic political elites had more emotional than rational reasons. Of course, they had some pragmatic expectations of certain benefits from closer ties with the West. But the main reason was certainly an existential fear of Russia and its possible attempts to recapture the Baltic states again in the future. And this reason had the greatest impact to the forming of the basics of Lithuanian, Latvian and Estonian foreign policy.

The analysis of numerous publications, documents and officials' speeches gives a clear understanding that there were two basic principles, that defined the whole foreign policy developments in the Baltic states in the 1990s: the concept of "restored statehood" and the slogan "return to Europe". The former (often described by Russian authors as "the occupation doctrine" or "the myth of occupation") [3; 5; 8; 9; 14] implied a legal continuity of the contemporary states of Lithuania, Latvia and Estonia with the independent nation-states of the same name and location that existed in the interwar period and lost their independence as a result of incorporation into the Soviet Union in 1940. This concept gave the Baltic states significant advantages. First of all, it allowed Lithuanian, Latvian and Estonian elites, striving for national independence, to avoid very long and complicated procedures of leaving the Union in accordance with the USSR legislation – they simply declared the Soviet jurisdiction over their republics "illegal", underlining that it was established as a result of forcible occupation.

Second, it allowed them to draw a clear watershed between themselves and other republics of the former USSR, which had never before experienced a noticeable period of its own independent national statehood. So they could join a group of transition countries of Central-Eastern Europe (CEE), which also established their national statehood after the World War I and then fell under the Soviet control after the World War II, yet, formally, never losing their independence and being never governed directly from Moscow. And this fact had not only symbolic, but practical importance: thus, Lithuania, Latvia and Estonia could claim from international, especially European institutions treatment different from that of other ex-USSR republics. As soon as January 1992, the EU Phare program initially designed for a large scale assistance for restructuring the economies of Poland, Hungary and other CEE states, was extended to the Baltic states, while all the rest post-Soviet states remained within the Technical Assistance for the Commonwealth of Independent States program responsibility, that had much more moderate goals and provided much lower financial support.

Third, it gave legitimacy to the Baltic states' claims for return of financial assets that Interwar governments of Lithuania, Latvia and Estonia deposited in western banks and real estate abroad – mostly buildings of diplomatic missions [8, p. 68]. It was very important, as all post-Soviet states in the first years after their independence suffered severe deficiency of foreign currency reserves for international trade operations.

And finally the concept of "restored statehood" strongly influenced the Baltic states' policy towards Russia – it gave the grounds for their claims to make Russia recognize the fact of forcible occupation of Lithuania, Latvia and Estonia in 1940. The reasons behind such claims included not just symbolic restoration of "historical justice" but practical expectations of making Russia pay a compensation for repressions, deportations and expropriations of Stalin's era.

Yet the further interpretation of the "occupation heritage" and what to do with its consequences divided Lithuania from Latvia and Estonia on the two important issues. One of them was the issue of borders. As Lithuanian territory was substantially enlarged after the incorporation into the USSR and included Druskeninkai, Svencionys, Klaipeda and some other territories, its leaders favored a status-quo principle in border question. The same was true for the second issue – granting citizenship to those people (mostly of Russian ethnicity or Russian-speakers from other Soviet republics) who moved to Lithuania and settled there in the Soviet period. As their share in the country's total population was relatively small, the national leaders didn't consider them a threat to the national Lithuanian identity and therefore chose a "zero variant", meaning automatic granting of citizenship to all the people permanently living in Lithuania as of the date, when the restoration of independence was declared.

On the contrary to Lithuania, Estonia and Latvia after the incorporation into the Soviet Union lost some territories, which were included into Leningrad and Pskov regions of the Russian Federation. Therefore Estonian and Latvian leaders suggested that the concept of "restored statehood" implied the return to the provisions of agreements, signed between these countries and the Soviet Russia/USSR in interwar period – first of all the famous Tartu peace treaties of 1920. According to them the Soviet government, weakened by the civil war and foreign interventions, ceded the above-mentioned disputed areas to Estonia and Latvia. Latvian and Estonian position on citizenship issue also differed completely from Lithuanian. Russians and Russian-speakers, who settled in these two republics in the Soviet period, constituted by early 1990s asubstantial part of their population – more than 34 % in Latvia and more than 30 % in Estonia [14, p. 17]. So, according to predominant views in Latvian and Estonian political elites, they posed a real threat to national sovereignty

and national identity of these two Baltic states and were often perceived as the "fifth column" of Russia. Therefore Estonian and Latvian political elites decided to exclude these Soviet time settlers, who arrived on Latvian and Estonian territory after 1940, from political process by imposing long and complicated procedures of naturalization for obtaining citizenship rights, similar to those envisaged in most Western countries for newly arrived immigrants.

As for the slogan of "return to Europe", its message to the Baltic-Russian relations was also very clear. Some Russian authors tried to snipe at them that the European order, that the Baltic states left in 1940 doesn't exists anymore, the European politics has changed completely since then, so they have "nowhere to return". Yet it was obvious that both the Baltic political elites and the general public understood this slogan simply as a complete disengagement with Russia and its sphere of influence and integration as far as possible into the Western community. Of course, at the beginning of 1990s, when Estonia, Latvia and Lithuania were still very dependent on Russia economically and Russian (former Soviet) troops were still stationed on their territories, it was too early to define forms and terms of achieving this goal. Yet it set a clear direction for the Baltic foreign policy: integration into the major European and Euro-Atlantic institutions as the main long-term priority and breaking any dependencies on Russia as the immediate goal and necessary prerequisite for "return to Europe".

The most prominent expression of such a trend in making of doctrinal basis for the Baltic foreign policy was the Constitutional Act "On Non-Alignment of the Republic of Lithuania to the Post-Soviet Eastern Unions" adopted on 8 June 1992 [15]. This document stated that Lithuania must not accede in any way to any political, military, economic or whatever else unions or commonwealths, being established on the basis of the former USSR. And any activity to engage Lithuania in such unions or commonwealths was declared to be hostile to the Lithuanian state.

Besides analyzing these two "particularly Baltic" political principles some theories of small states' general behavior in international politics could be applied here to enhance the understanding of the Baltic states' foreign policy. Understanding their vulnerability against Russia, Baltic governments have started since the very restoration of their independence pursuing a strategy of "negotiating the East by engaging the West". J. Lamoreaux and D. Galbreath in their article propose four theoretical approaches to explain such a trend in the Baltic foreign policy. First – small state theory of D. Vital, second – S. Walt's analysis of alliances, third – the regional security complex theory, based on works of B. Buzan and O. Waever. And finally B. Thorhallson's concept of action capacity and vulnerability [13, p. 4]. Leaving aside the first of them, as rooted too deep in classic realism with its accent on military force, and the last one, as more corresponding to the period, when the Baltic states have already became full-fledged members of such collective institutions as the EU and NATO, let's focus on the two remaining.

According to S. Walt (as cited by J. Lamoreaux and D. Galbreath) small states have only two options in securing their interests: balancing or bandwagoning. Balancing here means joining the weaker side of a conflict in order to "balance" the stronger side and prevent it from getting even stronger. And S. Walt considers balancing to be not a good choice for a small and weak state as its weight in international balance of power is hardly sizable to influence the outcome of the conflict substantially, but the price of appearing "on the losing side" can be disastrously high: they "can still incur the wrath of larger states if they are on the losing side" [13, p. 5]. On the contrary, bandwagoning means "joining the stronger side of a potential conflict/rivalry with the assumption that it has chosen the "winning side"... Consequently, it is in their best interest to choose the winning side in the first instance" [13, p. 5].

Applying these terms Baltic determination to join the leading Western institutions looks like a clear bandwagoning – choosing the side, that won the Cold War, and getting obvious benefits from being on the winner's side. Yet such logic looks completely inappropriate to the situation when conflict between Russia and the West seemed to be over and integration replaced block confrontation as the main trend of European politics. Besides bandwagoning is always based on rational motives and accurate calculation of costs and benefits of certain alliances. But in forming of Baltic policies towards Russia irrational motivations, stemming from traumatic memories, emotions and stereotypes seemed to have even more importance, than pragmatic thinking. Therefore the next approach looks the most appropriate.

In their famous work "Security: a new framework for analysis" B. Buzan and his colleagues representing the so called Copenhagen school in international relations theory, explain how a certain object becomes perceived as a threat. According to them, this process involves two stages. First it should be brought to actual public debates and should become a part of political discourse. This stage is called "politicization" [12, p. 25]. Then the audience involved in decision-making should be persuaded, that this issue poses a real threat to its very existence and therefore all the possible means must be used to overcome this threat. So in brief "securitization" can be described as a process of entitling a certain issue with the meaning of vital security threat. And of course, if something becomes a vital security threat, it legitimates the use of extraordinary means, which otherwise would be impossible.

So, in terms of O. Waever and B. Buzan, Baltic political elites made "securitization" of the issue of integration into the major Western institutions, presenting it as ensuring Western military and political protection

against any possible Russian aggression. In the 1990s it became the main mobilizing and consolidating factor for the elites (and to a lesser extend for general public) of the Baltic states. And Russia was awarded the role of "existential threat" to the survival of the Baltic states in this strong and lasting securitization scheme.

Even when the first Russian President B. Yeltsin declared his strong devotion to the principles of liberal democracy and market economy, Baltic elites still were among the greatest skeptics about the ability of Russia to become "a normal democracy". In other words, it didn't matter so much what Russian officials had done or said – the enormous size of Russian territory and its resource and military potential already was enough to proclaim Russia to be a threat to the Baltic states' sovereignty. And both the historical memories of Stalin's politics and ongoing disagreements with Moscow on purely practical issues were interpreted as a proof of such vision. Because in order to make this scheme working Lithuanian, Latvian and Estonian politicians had to keep Russia constantly in focus of their foreign policy to maintain, both for internal audience and their Western partners, the image of persisting "Russian threat" by bringing new evidence of Russian unfriendliness to the Baltic states and their vulnerability to their enormous and troublesome neighbour to the East.

As R. Vilpisauskas and V. Vorotnikov noted, such scheme was very comfortable and beneficial for the Baltic political elites [9; 16]. First, it allowed them to channel Western support to their states and to play the card of their vulnerability to speed up admission to the EU and NATO. Second, it helped the Baltic political elites to mobilize and consolidate domestic support for their policies in the face of supposed enormous threat from the East.

Conclusions

So it could be outlined that the major principles of Baltic foreign policy formation in the 1990s didn't favor any positive developments of cooperation with Russia, because such cooperation was considered just from the perspective of establishing new unwanted dependencies. On the contrary, they set a goal of clear distancing from Moscow – both in political and economic fields, thus minimizing its ability to influence their politics. And in short-term perspective this goal of disengaging with Russia was even more acute and important for the Baltic states than still very distant and unclear perspective of getting full membership in the EU and NATO.

There were two basic principles of the Baltic foreign policy that defined their relations with Russia: the concept of "restored statehood" and the slogan of "return to Europe". The first one paved the way for numerous Baltic claims to Russia – starting from demands for compensation for all the damages of Soviet occupation and, in the case of Estonia and Latvia, including even territorial disputes resulted from their attempts to restore their prewar borders. The second principle justified and grounded the Baltic determination to completely disengage with Russia and to build solid and reliable barriers against any possible Russian attempts to renew in any form in the future its control over Lithuania, Latvia and Estonia, by accession into the major Western institutions, such as the EU and NATO.

In the international relations theory there developed several approaches to understanding and explaining the reasons of small states behavior in international politics. Two of them – those of S. Walt and of B. Buzan and O. Waever appeared to be fully applicable to the case of the Baltic states' foreign policy. Yet securitization concept of B. Buzan and O. Waever seems to be the most suitable for understanding mechanisms of forming the major trends of Lithuanian, Latvian and Estonian foreign policy regarding Russia in the 1990s. This concept reveals how the image of external threat is being constructed and used in state politics.

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Received by editorial board 11.10.2018.

УДК 930(410.1:73):94(430)

DENAZIFICATION IN GERMANY: BASIC APPROACHES TO THE STUDY OF THE PROBLEM IN BRITISH AND AMERICAN HISTORIOGRAPHY

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The article is devoted to the examination of the main approaches to the study of denazification policy in Germany that emerged in British and American historiography. Based on the analysis of a wide range of sources, the author established the basic concepts that were used while analyzing the goals, methods and results of denazification. The evolution of scientific assessment during the second half of the 20th – early 21st centuries contributed to revealing of the three main approaches to the study of the issue: critical, revolutionary and rationalistic. The study results and the article conclusions can be used for further research of the historical science in the UK and US, as well as certain aspects of the German problem after World War II.

Key words: British historiography; American historiography; the German question; denazification; renazification; artificial revolution; conservative restoration; re-education.

ДЕНАЦИФИКАЦИЯ В ГЕРМАНИИ: ОСНОВНЫЕ ПОДХОДЫ К ИЗУЧЕНИЮ ПРОБЛЕМЫ В БРИТАНСКОЙ И АМЕРИКАНСКОЙ ИСТОРИОГРАФИИ

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Исследуются главные подходы к изучению политики денацификации в Германии, которые возникли в британской и американской историографии. Изучив многочисленные источники, автор определила основные концепции, которые использовались при анализе целей, методов и результатов денацификации. Эволюция научной оценки на протяжении второй половины XX – начала XXI вв. способствовала выявлению трех главных подходов к изучению проблемы: критического, революционного и рационалистического. Результаты и выводы исследования могут быть использованы для дальнейшего изучения исторической науки в Великобритании и США, а также отдельных аспектов германской проблемы после Второй мировой войны.

Ключевые слова: британская историография; американская историография; германский вопрос; денацификация; ренацификация; искусственная революция; консервативное восстановление; переобучение.

Образец цитирования:
Ковяко ИИ. Денацификация в Германии: основные подходы к изучению проблемы в британской и американской историографии. *Журнал Белорусского государственного университета. Международные отношения*. 2019;1:28–34 (на англ.).

For citation:
Kaviaka II. Denazification in Germany: basic approaches to the study of the problem in British and American historiography. *Journal of the Belarusian State University. International Relations*. 2019;1:28–34.

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Introduction

Denazification was one of the four important goals of the Allies in occupied Germany, along with democratization, decentralization and demilitarization. These principles of the occupation policy were agreed during the Potsdam Conference in 1945. However, different approaches of the Great Powers towards denazification became evident soon. As contradictions between the USSR and the USA were deepening (both on German and global levels) the denazification measures in the Eastern and Western zones were getting more and more diverse. By 1947, it became obvious that large-scale denazification was contrary to the long-term economic and political goals of the Western powers in Germany. The study of the allied denazification policy in postwar Germany is one of the aspects of the complex German question study in British-American historiography.

Special studies on the main approaches of British-American historiography of denazification in Germany have not been found. A brief historiographic review, as well as the analysis of certain monographs, can be traced in the works of some British and American researchers who studied the problem of denazification [1–6]. The purpose of this article is to conduct a comprehensive study of the basic concepts and approaches to the study of denazification policy in Germany that emerged during the second half of the 20th – early 21st centuries in the British-American historiography.

Speaking about the British and American historiography of denazification in Germany, it should be noted that initially researchers focused on the activities in the American zone of occupation. Since the end of the 1960s, much more attention has been paid to the analysis of denazification in the Soviet zone. The denazification programs in British and French occupation zones appear to be less studied. It can be explained taking into consideration that the denazification program undertaken by the Americans was the most ambitious and at the same time the most intricate and complicated. Compared with the United States, the Soviet Union acted much more resolutely and consistently, since it clearly understood its purposes in the occupied zone. The British and French, in comparison with the representatives of the United States and Soviet Union, showed considerable passivity and did not demonstrate a serious interest in the denazification program. Consequently, these aspects of the problem are less highlighted in historiography.

A careful study of the problem has made it possible to distinguish several approaches that formed in British and American historiography of denazification. Each group of researches (representatives of a certain approach) keeps to various methodological models and uses different working concepts while analyzing the purposes, methods and results of denazification in Germany.

Critical approach

In the second half of the 1940s, the works of British and American researchers were mainly represented by analytical articles, published by diplomats, politicians, economic and military advisors who worked in Germany or governmental departments dealing with the German problem. Analyzing activities in occupied zones, they tended to keep the critical approach regarding both methods and results of denazification as unsatisfactory. To their mind, denazification as it was implemented did not have much sense or even concealed some possible dangerous consequences for the Allies in future.

In 1945, H. Morgenthau, the United States Secretary of the Treasury, published a book "Germany is our problem". In that publication the author paid special attention to the analysis of the *Teutonic paranoia* phenomenon which pushed the Germans to unleash two world wars during the first half of the 20th century. To the author's mind, the primary task of the Allies in Germany was the decentralization of the economy, in particular the elimination of its heavy industry. That would eliminate the very possibility of new aggression. The author considered complete elimination of the Nazis from managing the economy as an important prerequisite for the formation of new Germany. Only after the completion of this process, H. Morgenthau considered it possible to undertake a program of large-scale re-education of the Germans, although he regarded its prospects as dubious. According to the author, the story did not give us examples when one civilized people would allow another to impose a different *modus vivendi* [7, p. 147, 153].

Along with the Morgenthau line, which focused on punishment, a pragmatic line emerged among the British and American researchers who followed the critical approach. They stressed the need to reduce the Allies' costs in Germany and recover the German economy. In practice, the purge of the administration soon revealed serious problems. R. M. Havens, a fellow of the University of Alabama, noted that leading posts in the Third Reich were occupied mostly by Nazi Party members, who had good education, work experience and effective management skills. In such circumstances, the transfer of property to other, politically reliable hands, threatened with a fall in profitability of enterprise and aggravation of socio-economic crisis. This entailed either an increased burden on the victorious powers budget, or social destabilization in Germany [8, p. 161]. Similar ideas were also represented by C. Weir (Economic Advisor to the Allied Control Commissions for Germany)

and A. Dulles (Director of the Central Intelligence Agency) who considered it necessary to use the industrial resources of Germany for the restoration and development of the national and European economy and could see no real positive results of (or no sense in) the denazification program [9, p. 422, 430; 10, p. 255].

Since 1948, with the announcement that Western occupation forces were no longer involved in denazification, the program failure got obvious. A new term renazification appeared in the publications of critical historians to denote unsatisfactory results of denazification. A fellow of Howard University, J. Herz, in his publication "The fiasco of denazification in Germany" (1948), noted that as a result of the program implementation, not all of society was denazified, but only part of it – the former Nationalsozialistische Deutsche Arbeiterpartei (NSDAP) members. According to the author, by 1948 the German society had entered into the phase of renazification, which was accompanied by the return of denationalized Nazis to high positions in social and governmental structures. J. Herz came to the conclusion that denazification in Germany was limited only to the temporary removal of Nazis from important posts, but it failed to ensure their long-term removal from the levers of influence. As one of the main reasons for that he called the formation of the bipolar world and the growing rivalry between the United States and the USSR. In such situation, yesterday's denazification objects gradually turned into the political instruments of the two powers. Like most of the researchers of the first postwar decade, J. Herz expressed concerns about the possible strengthening of neo-Nazism in Germany and its return to *Schaukeln* foreign policy tactics [11, p. 589–594].

The critical approach evidently dominated in the publications during the 1950s. Distrust of the denazification results was expressed by the Adviser to the President of the United States, J. Warburg, in the work "Germany: The Key to Peace" (1953). He described denazification as "farcial inconsistency", including it in the author's catalogue of Western errors in the German settlement. The author considered it wrong to entrust the future of Europe to the Bonn Republic, which he called "unnatural, unregenerate and unreliable" [12, p. 248]. He believed that if democracy did not take root on German soil, then neo-Nazis would come to power in Germany rather than communists. Consequently, the fear of the USSR could not serve as an excuse for a series of fatal mistakes in the German policy of Western countries [12, p. 264]. The vitality of the renazification concept was proved by the work of T. H. Tetens "New Germany and the old Nazis", which also contained extremely negative assessments of denazification results [13].

During the 1960s–1980s the critical approach was gradually losing its popularity. The crucial changes in the bipolar world, including rearmament of West Germany and its involvement in the economic and military integration structures of the West, contributed to the methodological shift greatly. After German unification there was a final change of generations at all levels in the united Germany and the concept of renazification finally lost its relevance. Some features of the critical approach may be revealed in the works of the British and American historians who expressed clear criticism of the military administration of the Western zones for refusing to cooperate with the anti-fascist forces. German active anti-fascists, who were often representatives of left parties and organizations, were not appointed to leading posts. For example, in opinion of professor C. Eisenberg (Hofstra University), the failure of the Western powers to accept the ideology of the left forces hindered true denazification [14, p. 124].

Revolutionary approach

Another group of researchers compared the denazification program with the revolution necessary for the rebirth of society and its entry into a new stage of development. Applying of the artificial revolution theoretical model to the study of denazification in Germany represents an attribute of the revolutionary approach. This methodological model started to take shape at the end of the 1940s – the beginning of the 1950s and gained great popularity since the end of the 1950s. The results of such a revolutionary experiment got different evaluations in the publications of revolutionary historians.

In 1947, A. Johnson, a fellow of the John Hopkins University, noted that the absence of a bourgeois-democratic revolution in the country was a great misfortune for Germany. Similar revolutions of the 17th – early 20th centuries put an end to autocracy and feudalism in England, France, the United States, and Russia. Compared to them, Germany remained a state frozen in social and political development since the times of Frederick II the Great. At the same time, according to A. Johnson, the occupying army could not carry out a democratic revolution. The author admitted that the Americans were not very good at dealing with the bureaucratic type of revolution, because the army could not make democrats out of Germans. He believed that only real German leaders of the new generation would be able to cope with that task [15, p. 59–60].

Professor W. Griffith (University of Cambridge, Massachusetts) in the article "Denazification in the United States Zone of Germany" (1950) concluded that denazification planning suffered from "Washington's indecision, the Morgenthau plan influence, and Roosevelt's decision not to plan anything at all". The Military Government, forced to make political decisions, obviously favored more conservative and "stable" elements in their opinion. As a result, they rarely appointed active anti-Nazis to high posts [16, p. 68, 74]. In 1947, hatred of the defeated Reich was replaced by the fear of

the Soviet empire. As a result, the most serious Nazis either got away with insignificant punishments or were not punished at all. Thus, the US attempt to carry out "revolutionary transformations with bureaucratic methods" ended in catastrophic failure [16, p. 69, 76].

The official termination of occupation, decisions to rearm West Germany and accept it to the NATO identified a new stage in the German question settlement. The publication of Harvard University professor J. Montgomery "Forced to be Free: The Artificial Revolution in Germany and Japan" (1957) defined the completion of the revolutionary methodological model. The author came to the conclusion that during denazification in Germany there was an attempt to make an artificial revolution under the leadership of external forces. However, as a result, the pre-totalitarian elite returned to power, which looked more like a postponed counter-revolution to Nazism than a democratic revolution leading to a new society. Professor Montgomery concluded that the experiment had achieved only limited success, and the denazification policy actually strengthened the position of neo-Nazis in the postwar years [17, p. 150].

In the 1960s the concept of artificial revolution was supported and got further development in the works of the American historians L. Edinger (Michigan State University) and J. Gimbel (Humbolt State College). L. Edinger noted that such a revolution could be considered successful if, as a result, the former opposition leaders constituted the majority of elite. However, in the early 1960s no more than 11 % of West Germany elite could be attributed to the number of Nazi opponents [18, p. 60]. The author called the assumption about the automatic emergence of counter-elite in the process of displacing the former totalitarian elite initially erroneous. In the case of Germany, this assumption turned out to be a myth [18, p. 76].

According to J. Gimbel, the military administration of the Western powers met the greatest support from the communists and political opportunists, but did not consider them politically reliable being in ideological confrontation with the USSR. As a result, the conservative middle class came to power. For them it was much more important to preserve the political, socio-economic and cultural system that existed in Germany before Nazis than to carry out a revolutionary transformation of society and political system [19, p. 85, 105]. From J. Gimbel's point of view, the limited success of the artificial revolution in Germany was caused not only by methodological difficulties (as professor J. Montgomery supposed), but also by the initially false theoretical premise that the image of American democracy is universal. The United States was uninterested in accepting German democracy based on the compromise of influential forces (including socialists and nationalists), who had their own vision of the German historical development [2, p. 172; 20, p. 88–93]. The ideas of J. Montgomery, supplemented by J. Gimbel and L. Edinger, got further development in the monograph "Denazification", published by the American historian C. FitzGibbon in 1969. The author explained the end of the program in the Soviet and American zones by political motives such as struggle for the influence in Germany and the Cold War escalation. C. FitzGibbon noted that both the Soviet Union and the United States attempted an artificial revolution in their zones, and in this respect their goals were similar [21, p. 100, 128].

The model of an artificial revolution was inextricably linked to the conservative restoration concept which gained particular popularity at the turn of the 20th century. Contemporary historians, keeping to the revolutionary approach, agreed that as a result of denazification, the old conservative elite, which existed in the Second Reich and the Weimar Republic, came back to power. In the 1930s for economic reasons, many representatives of the old elite cooperated with the Nazis. After the collapse of the Third Reich, they became the mainstay of the restoration of the political and economic foundations of West Germany. Thus, the Federal Republic of Germany, born after denazification, represented not re-nazified Germany (as critical historians supposed), but a state that returned to traditional conservative values. In the conditions of the bipolarization of the world, the Western powers staked on the economic recovery of Germany, which meant "victory of continuity over change" [22, p. 288]. The concept of "conservative restoration" was reflected in the works of such historians as R. Boehling, D. Prowe, R. Merritt in the 2000s [5; 22; 23]. The failures of American foreign policy in the Greater Middle East in the 21st century led to a gradual and mild review of the results of the denazification program in Germany. The American authors began to consider denazification (despite admitting its numerous shortcomings) as a successful event that made it possible to achieve the long-term goals – the Federal Republic of Germany became a state of Western democracy and reliable ally of the United States [24–28]. However, according to the American historian A. Levy, this "house of democracy" contains some "Nazi bricks" [3, p. 631].

Rationalistic approach

The rationalistic approach appeared within the framework of the English School of international relations theory. Liberal American historians were close to the rationalists in their theory and methodology. When studying the denazification problem they tend to take into account the existing realities. Contrary to the "revolutionary" historians they did not believe in the very possibility to conduct a kind of artificial revolution in postwar Germany. In their opinion, the nature of German people could not be changed. A distinctive feature

of rationalistic works was solidarity with the concept of German mentality. According to this concept, Nazism was not a historical accident, but a manifestation of the features of the German character, which include bellicosity (*Teutonic paranoia*) and a low level of political responsibility [6, p. 239; 29, p. 55; 30, p. 144; 31, p. 673]. Taking it into account, Great Britain never sought to conduct an artificial revolution, since it never believed in its success. The authors noted that the long-term denazification program could not be implemented due to rapid changes in the international arena. Democracy could be built in collaboration with active anti-Nazis, which included leftist parties and organizations. As a result, the Cold War led to the rapid rehabilitation of Germany. Rationalistic historians did not express harsh criticism towards denazification policy. Admitting its shortcomings they nevertheless tried to concentrate on the achievements of occupied forces that had to cope with an extremely difficult task in unfavorable conditions [6, p. 248; 30, p. 163; 32, p. 189].

The declassification of the documents concerning the postwar period in British and American archives started in 1975, when a 30 years' period of classification expired. In the 1970s–1980s the number of works devoted to the study of denazification in the British, French and Soviet zones of occupation significantly increased. The representatives of the rationalistic approach such as I. Turner (Henley Management College), B. Marshall (Polytechnic of North London), G. Murray (FCO), R. Birley (City University, London) became well-known experts on British occupation policy. Rationalistic researchers also paid much attention to the study of the educational component of denazification, as well as special programs aimed at drawing the eminent minds of the Third Reich to Western countries service [33–37].

A special feature of rationalistic publications was the emergence of the first positive assessments of the denazification results in the Soviet zone. The authors noted a predictable and understandable for the Germans mechanism of denazification in the East and a high degree of its effectiveness. The skillful concentration of the Soviet military administration on the eliminating of the Third Reich "big fish" from power was also pointed out [30, p. 144; 38, p. 35]. According to the British historian B. Marshall, the USSR was the only occupation state that could link the aspect of punishment with a positive program for the future [31, p. 668]. It should be noted that in the publications before 1990, positive assessments of denazification in the Soviet zone appeared rarely.

In the 2000s historians got access to new archive materials and documents concerning denazification in Germany. Firstly, numerous documents of the Soviet Military Administration in Germany were declassified in 1998–2002, about 90 % of them in the State Archive of Russian Federation, 10 % in the Russian Archive of Social and Political History. In 1992 Archive of Parties and Mass Organizations (includes the documents of East German State Archive and libraries) was declassified after emerging with Bundesarchiv. Thus, the end of the Cold War, the final settlement of the German question and the opening of new archives funds contributed to significant deepening and objectification of historical research.

The authors explained the reasons for the success of the USSR by the similarity of the totalitarian systems in Germany and the Soviet Union, the readiness of the new staff to replace the Nazis in leadership positions, as well as the absence of strict regulation of denazification. The American historian B. Blessing (Oregon State University) came to the conclusion that as a result of the Soviet denazifcation, carried out with the support of leftist forces, "anti-fascism became the core of the emerging German self-consciousness in the Soviet zone" [39, p. 190]. Historians also considered concentration on the "big fish" with general loyalty to the "small fry" as one of the advantages of the Soviet denazification program. In the East (in contrast to the West), former NSDAP members could never return to leading posts neither in the political, economic, cultural, nor in the educational spheres [1; 7; 14; 40–44]. In the rationalistic works of the 1990s–2000s special attention was also paid to studying the positive results of denazification in education, which made it possible to lay solid foundations for a future democratic system [45–47].

Conclusion

As we can see, there are three main approaches to the research of denazification policy in Germany in the British and American historiography. Initially, in the works of the first post-war decade, critical approach took a leading role. Two lines could be distinguished in its frame, which was a reflection of the struggle between economic pragmatism and Morgenthau line in the US foreign policy. Special attention in the critical publications was paid to the concept of renazification in the German society. The renazification phenomenon was regarded as a result of the Western Allies' unsuccessful denazification policy. Due to structural changes in the bipolar world, the critical approach started to lose its popularity since the 1960s. After German unification and complete generation change, it finally gave way to the revolutionary and rationalistic ones.

The revolutionary approach was formed in the late 1950s – early 1960s by the historian J. Montgomery who developed the concept of artificial revolution through denazification in the German society. That concept was widely used for the scientific analysis of denazification in Germany by his followers. He also

laid the foundation of the conservative restoration concept. It gained enormous popularity at the turn of the century. In the 21st century, taking into account the events in the Greater Middle East where all American efforts in democratization had failed, there was a significant softening of criticism and a general reassessment of denazification results in Germany. The concept of renazification finally lost its relevance while the concept of conservative restoration gained popularity. Nowadays harsh criticism of the denazification program in Germany in the works of American historians is gradually going into the past. History has once again proved a simple truth: everything is known in comparison.

Contrary to the representatives of the revolutionary approach, rationalistic historians rejected the very idea of possible artificial revolution through denazification considering the German national character as something unchangeable. Hereby, they demonstrated consolidation with the concept of German mentality. At the same time, while analyzing denazification policy they avoided harsh criticism, paying attention to its every positive and constructive element instead. Since the end of the 1970s, in the works of the rationalist historians there has also been a gradual shift to the study of re-education achievements in the Western zones, which was regarded as a solid cornerstone in the building of the new democratic Germany.

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Received by editorial board 25.03.2019.

Международное право

International law

УДК: 341+341.9:(450-225/492.94)

INTERACTION BETWEEN EUROPEAN LAW AND PRIVATE INTERNATIONAL LAW: FROM ROME TO MAASTRICHT

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The author demonstrates that nowadays European Union Law and Private International Law have many areas of common interests, but the process of their mutual penetration was long and gradual. The article examines Private International Law instruments adopted by the Rome Treaty of 1952 and the Maastricht Treaty of 1992, during the so-called pre-Amsterdam period. The author focuses on the role of the European Court of Justice in gradual converging of European Union Law and Private International Law.

Keywords: conflict of laws; European Court of Justice; EU Law; europeanisation of Private International Law; the Maastricht Treaty; the Rome Treaty.

ВЗАИМОДЕЙСТВИЕ ЕВРОПЕЙСКОГО ПРАВА И МЕЖДУНАРОДНОГО ЧАСТНОГО ПРАВА: ОТ РИМА ДО МААСТРИХТА

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Автор демонстрирует, что право ЕС и международное частное право имеют в настоящее время много точек соприкосновения. Однако процесс их взаимопроникновения был постепенным и длительным. Анализируются инструменты международного частного права, которые были предложены Римским договором о ЕС 1952 г. и Маастрихтским договором 1992 г., т. е. в так называемый доамстердамский период. Автор акцентирует внимание на роли Европейского суда справедливости в эволюции сближения европейского права и международного частного права.

Ключевые слова: коллизионные нормы; Европейский суд справедливости; право Европейского союза; европеизация международного частного права; Маастрихтский договор; Римский договор.

Образец цитирования:
Бабкина ЕВ. Взаимодействие европейского права и международного частного права: от Рима до Маастрихта. *Журнал Белорусского государственного университета. Международные отношения*. 2019;1:35–39 (на англ.).

For citation:
Babkina EV. Interaction between European Law and Private International Law: from Rome to Maastricht. *Journal of the Belarusian State University. International Relations*. 2019;1:35–39.

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Introduction

One of the reasons of the origin and development of Private International Law of the European Union (hereinafter – EPIL) emanates from substantial discrepancies in Private International Laws of jurisdictions of the EU member states (hereinafter – Member States) that are applicable to similar legal relationship. For example, with regard to conflict of tort laws: some Member States applied the *lex loci delicti commissi* law, whereas other Member States referred to the *lex loci damni*. Accordingly, the outcome of a legal proceeding depends entirely on the forum (the court) considering the claim. As a result, such dissonance of the conflict of laws in different jurisdictions leads to legal uncertainty and forum-shopping (the situation when a plaintiff unfairly exploits jurisdictional rules with the aim to affect the outcome of litigation) that adversely affect cross-border relations. In such scenario the regional economic integration would be considerably impeded and disabled.

The European Union proclaims the establishment of the internal market as one of its primary goals. Certainly, the EU could not tolerate the divergences of Private International Laws (hereinafter – PIL) of the Member States as it considerably hampers the achievement of the EU major ambition. Accordingly, the EU was highly interested in *developing and supporting* PIL. In the meantime, the involvement of PIL in expanding European integration sparked the adjustment of PIL instruments to the EU needs. Nowadays EPIL plays a key role in regulation, facilitation, and enhancement functioning of the EU internal market. Therefore, we can name the following objectives of EPIL:

- to analyze the interaction between supranational (Union law) and national laws of the Member States;
- to designate the applicable laws to the legal relationship between individuals, and/or business entities;
- to amplify the supranational regulation on various subjects at cross-border level.

Given such circumstances, the EU has not only contributed to the origin of EPIL, but also factored significantly further development of PIL in general.

This article is concerned with some aspects of origin and development of EPIL as well as with some modern trends in it.

A brief analysis of diffrences between PIL and Union Law

First and foremost, we should admit that on the long way to the European integration PIL and European Union Law (hereinafter – Union Law) did not experience love at first sight. They have always been uneasy bedfellows [1, p. 119].

The reason is that PIL and Union Law do not have the same starting point despite of the fact that both PIL and Union Law fulfill a similar function – they both try to resolve a problem of conflict of laws [2, p. 7].

The starting point of Union Law underlies in the very specific legal nature of the EU. The EU is a *unique and unprecedented* hybrid form of international cooperation in the whole legal history. The European Union is half-way between an international organization and a state.

According to the theory of Public International Law, an intergovernmental organization is a legal entity that has been created by international treaty, involving two or a certain number of states. The authority and powers assigned to an intergovernmental organization stipulate from the international treaty concluded between sovereign states.

Turning to the process of European integration, the EU is founded on a series of international treaties concluded among its Member States. Accordingly, these treaties outline and limit the authority and power of the EU. In contrast, a sovereign state is considered independent from other states on its internal policy regarding the territory and population. Accordingly, the EU cannot be considered as a sovereign state.

In the meantime we should admit that the EU executes essential legislative power over the territory and the citizens of the Member States by issuing directly applicable regulations. Moreover, if there is a conflict between Union law and national law, the EU law prevails.

Therefore, the power of the EU to stipulate the regulation directly affecting the citizens and entities of the EU Member States characterizes the EU as a supranational entity.

As to the legal sources of Union Law, initially they evolved around the creation of a common market. Nowadays when the internal market already exists and functions, one of the major concerns of Union Law is the imposition of a rule that may affect negatively (impose any restriction) the internal market. Thereby, smooth functioning of the internal market may be ensured by harmonization of national laws of the Member States and its application in consistency with Union Law.

Considering PIL's starting point, PIL strives to achieve "an international harmony of decisions" and to serve international trade as a whole, not just the needs of intra-Union commerce. Initially, PIL is not concerned with the political aims of European integration. According to the theory of Savigny, PIL does not seek to overcome the flaws resulting from discrepancies between national laws. PIL strives to establish the center of the relationship between the private individuals and apply the law of the place most closely con-

nected to the relationship. PIL is value free and rule blind. [2, p. 7–8].

Therefore, Union Law tries to affect the national laws of the Member States in order to promote freedom of movement of goods, services, persons and capitals within the territory of the EU. While PIL is not biased to any legal system or political integration, it pursues to mitigate potential negative consequences of the conflict of laws and facilitate international trade between any countries.

Despite these different legal grounds, rationales and aims, the interaction between Union Law and PIL has increased for the following reasons. Firstly, the EU uses PIL as the instrument to advance the main targets of the EU internal market: freedom of movement of goods, services, persons and capitals. Secondly, Union Law imposes restrictions on the conflict of laws of the Member States provided that such provisions collide with freedoms declared under the EU Treaty. And lastly, the EU codifies PIL at the European level.

The origin and development of EPIL

The Treaty of Rome [3]. Initially the EU tried to create a common market by removing obstacles to trade artificially created by the Member States with the implementation of the fundamental freedoms: free movements of goods, services, capital and persons. For this sake, the Member States signed the Treaty of Rome in 1957, establishing the European Economic Community (hereinafter – EEC).

It is difficult to overestimate the Treaty of Rome in the history of European integration. The Treaty of Rome founded a platform for future integration. The Treaty contained significant innovations, one of which was the institution of the European Court of Justice (hereinafter – the ECJ).

In the meantime, the Treaty of Rome was not flawless, had oversights, and was poorly developed in terms of cooperation of the Member States in the area of PIL.

Art. 220 of the Treaty of Rome states:

"Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals:

• the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals;

• the abolition of double taxation within the Community;

• the mutual recognition of companies or firms within the meaning of the second paragraph of Art. 58, the retention of legal personality in the event of transfer of their seat from one country to another, and the possibility of mergers between companies or firms governed by the laws of different countries;

• the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards".

One of the drawbacks of the Treaty of Rome was a lack of authority of the Commission of EEC to rule on PIL matters. Only the Member States were empowered to negotiate unification of its national laws in certain matters. Such interpretation of Art. 220 of the Treaty of Rome was proven by historical facts. For example, the initiative to adopt the Rome Convention on the Law Applicable to Contractual Obligations of 1980 [4] (hereinafter – Rome Convention) was introduced by the Member States.

Another oversight of the Treaty of Rome was that it did not envisage regulations and directives as the instruments of harmonization of the Member States' laws. The language of the Treaty of Rome referred only to the conventional legal sources, such as international treaties, as the instruments of cooperation between the Member States. During the term of the Treaty of Rome, EEC adopted neither regulations nor directives on the matter of PIL harmonization. The only exception was several specific directives dealing with free movement of persons and services.

For example, Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC [5] regulated the conflict of laws concerning self-employed professionals and provision of services [6, p. 50–52].

The next shortcoming of the Treaty of Rome was significant constraint on the ECJ power to interpret international treaties concluded between the Member States. According to the Treaty of Rome, the ECJ had the authority to interpret only Union Law. In case the Member States came across the legal issues arising out the international treaty concluded between them, the EEC Commission had to issue an additional protocol authorizing the ECJ to interpret the international treaties.

Another major deficiency of the Treaty of Rome was the absence of references to the individuals or business entities of the Member States. Technically, it meant that the provisions of the Treaty of Rome did not apply directly to the citizens and/or business entities of EEC.

Luckily, the ECJ cured this defect. The ECJ established in the landmark case *Van Gend and Loos* [7] that the provisions of the EEC Treaty and Union law were capable to provide the rights to the individuals.

Another impeccable example of functioning of the ECJ was *Costa v ENEL* [8] decision. The ECJ established the primacy of Union Law over the national laws of the Member States.

In *Defrenne II* [9] the ECJ stated that the non-discrimination principle embodied in Art. 141 of the EEC Treaty has direct effect and also applies to a contract between an employee and a private employer.

Therefore, the case law of the ECJ considerably developed, enhanced, and advanced Union Law in general and EPIL in particular.

Apart from invaluable contribution of the ECJ to the progress of EPIL, the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (hereinafter – the Brussels Convention) [10] is considered as one of the brightest examples of the unification of the conflict of laws at the international level. However, the Brussels Convention was only a regular international treaty that did not have direct effect on the individuals of EEC, unless a state adopted and implemented the convention. It seems that the Member States felt that it would be appropriate to undertake further steps for the unification of conflict of law. These attempts led to the adoption of the Rome Convention.

In the meantime, both the Brussels Convention and the Rome Convention were purely PIL instruments because they allowed the Member States to enter and apply other international treaties on the same subject matter. Basically, it meant that up to that point European integration was still relatively weak for the convergence of PIL and Union Law.

Subsequently, the ECJ in Case 22/70 Commission v. Council (ERTA) [11] and Case C-476/98 Commission v. Germany (Open Skies) [12] established the so-called doctrine of implied powers which means that the Union has the power to act externally, in so far as it is necessary for the fulfillment of its internal power. The Member States lose their power to enter into international treaties once the Union has exercised its competence internally and the treaty may affect the scope of the common rules.

If we go beyond the scope of the present article, we can realize that at a later stage the doctrine was codified in the Lisbon Treaty. Art. 351 of Treaty on the Functioning of the European Union (hereinafter – TFEU) provides that the Treaty will not affect the obligations of the Member States arising under other international conventions that entered into force before 1 January 1958. In the meantime, TFEU requires the Member States to take all appropriate steps to eliminate the existing incompatibilities.

Therefore, the Treaty of Rome provided a basis for the establishment of the common market between the Member States, but there were still a number of deficiencies and oversights related to many areas of integration, including the area of EPIL. Such defects impacted negatively the further development of the common market. And at different stages various legal instruments cured such shortcomings. The international treaties, namely the Brussels Convention and the Rome Convention, contributed to the development of PIL, while their flexible approach with regard to participation in other international treaties was still detrimental to the uniform application of Union Law. The ECJ played a significant role in the origin and development of EU PIL by issuing far-reaching decisions on the uniform and consistent application of Union Law.

The Treaty of Maastricht (1992) [13]. The next step on the way of the development of EPIL was the Treaty of Maastricht [13] that specified the purposes expressed in the Rome Convention to continue the unification of PIL.

The Treaty of Maastricht *in Article K. 1* proclaimed judicial cooperation in civil cases as a matter of common interest. According to Article K. l of the Treaty of Maastricht:

"For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:

(1) asylum policy;

(2) rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;

…

(6) judicial cooperation in civil matters…"

The language of Art. K. 1 of the Treaty of Maastricht remains an open question regarding the scope of the "judicial cooperation" concept.

The traditional concept of judicial assistance includes the cooperation between judicial bodies (in particular, the courts) of different Member States in the areas of (1) enforcement of foreign judgments, (2) transmitting judicial documents for service abroad, (3) the examination of a witness or an expert residing abroad.

The interpretation of Art. K. 1 of the Treaty of Maastricht allows us to conclude that judicial assistance embodied in the Treaty of Maastricht is broader than the traditional concept of judicial interpretation. According to Art. K. 1 of the Treaty of Maastricht: "judicial cooperation in civil matters for the purposes of achieving the objectives of the Union, in particular the free movement of person". The objective of the Union is establishing the freedom of the common market. The freedom of movement of persons includes the regulation on personal status and family relationship. In this case, judicial cooperation along with the freedom of movement of persons open the way to the regulation of all areas of conflict of laws, including the succession law. We may admit such conclusion as the succession law may play a crucial role in the choice of the place of habitual residence.

Another major contribution of the Treaty of Maastricht to the development of EPIL was delegating to the Council of EEC the right to draft international treaties with third parties (states) on the matter of judicial cooperation in civil matters and delegating to the ECJ the authority to interpret the provision of international treaties of the Member States. According to Art. K. 3 of the Treaty of Maastricht "the Council may

… without prejudice to Art. 220 of the Treaty establishing the European Community, draw up conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements… Such conventions may stipulate that the Court of Justice shall have jurisdiction to interpret their provisions and to rule on any disputes regarding their application, in accordance with such arrangements as they may lay down".

As a result, the Treaty of Maastricht contributed to the development of PIL in the following ways:

1. The subject matter of EPIL unification was considerably extended;

2. The Council of EEC received the right to draft international treaties of the Member States on judicial cooperation in civil matters;

3. The ECJ was authorized to interpret international treaties.

Conclusion

Undoubtedly, PIL instruments have made substantial contribution to the foundation and development of the common market of the EU. In the meantime, it should be admitted that the expanding competences of the EU facilitated the convergence of PIL and Union Law. Eventually, PIL and Union Law have become easy bedfellows. The first generation Union Law launched the process of the unification of PIL by the adoption of international treaties on different matters. The ECJ played the key role and triggered the subsequent development and harmonization of EPIL.

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Received by editorial board 30.04.2019.

УДК 341.215.4:341.649

LEGAL STATUS OF AN INDIVIDUAL IN INTERNATIONAL LITIGATION

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The article is devoted to the theoretical and practical issues of the legal status of an individual in international courts and tribunals. The author investigates how natural persons participate in international litigation in order to understand the evolving status of an individual in the international legal order in general. The approach is based on inclusive participation, and an overall tendency to widen *locus standi* and *locus standi in judicia* is stressed. The author analyses the status of a claimant, a defendant, other participants, such as witnesses and victims, covering different international jurisdictions, in which an individual has a procedural role – human protective mechanisms, administrative tribunals, international criminal tribunals – and even addresses the International Court of Justice case law (in which an individual formally has no access to any procedural status) in order to unveal and prove the humanization of international procedural law.

Keywords: access to justice; applicant; defendant; individual; international courts and tribunals; litigation; *locus standi*; participant; party; procedural status; victim; witness.

ПРАВОВОЙ СТАТУС ИНДИВИДА В МЕЖДУНАРОДНЫХ СУДАХ

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Рассматриваются теоретические и практические аспекты правового статуса индивида в международных судах и трибуналах. Автор предлагает взглянуть на то, каким образом физические лица участвуют в международных судебных инстанциях, для понимания эволюции статуса индивида в мировом правопорядке в целом. Подход, представленный в статье, базируется на концепции инклюзивного участия. Подчеркивается всеобщая тенденция расширения *locus standi* и *locus standi in judicia*. Автор анализирует статус заявителя, ответчика, иных участников (таких как свидетели, жертвы), охватывая различные международные юрисдикции, где индивид имеет процессуальное положение (правозащитные механизмы, административные трибуналы, система международной уголовной юстиции), и даже обращается к практике Международного суда ООН, где формально индивид не может участвовать в процессе, для раскрытия и обоснования общей гуманизации международного процессуального права.

Ключевые слова: доступ к правосудию; заявитель; ответчик; индивид; международные суды и трибуналы; судебное разбирательство; *locus standi*; участник; сторона; процессуальный статус; жертва; свидетель.

Introduction

The status of an individual in international legal relations is quite an ambiguous and controversial issue, even in its semantics. The very essence of this discussion is rooted in the adherence to either naturalist or positivist legal schools [1].

The classics of the 19th and the early 20th centuries did not presume any international legal personality of an individual. A natural person was totally objectified in *international* law. Oppositely, for H. Grotius and his contemporaries it was not of any paradox to assume

Образец цитирования:
Михалёва ТН. Правовой статус индивида в международных судах. *Журнал Белорусского государственного университета. Международные отношения*. 2019;1:40–51 (на англ.).

For citation:
Mikhaliova TN. Legal status of an individual in international litigation. *Journal of the Belarusian State University. International Relations*. 2019;1:40–51.

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that an individual had a position in international law [2, p. 70, 74].

In the late 20th century the fact of *possessing* rights and obligations by individuals is not an issue of debates. However, what still remains disputed is the source of these rights and duties. It seems quite proved that in international relations, a natural person possesses, at most, derivative legal capacity [3, p. 104]. Rights and obligations are conferred by main actors – states and, to some extent, international organizations, and "they have lopsided position in international community" [4, p. 150].

In the 21st century the post-modern world presents its new challenges, and a response to many of them, as it seems, can be a *human-oriented approach*, which can be a compromise to opposite scholar views on the very essence of law and order. "Humanization" of all spheres of international life becomes inevitable and obvious, it evolves to a strong tendency. Naturally, the status of an individual shall be at the center of schoolars' and practitioners' attention.

It was H. Kelsen who defined "a subject" of international law through the ability to exercise the procedural capacity required to bring a claim before an international judicial entity. The capacity to act is the decisive criterion of legal personality (P. Dupuy) [5]. Some authors suggest an individual is an object when it acquires international rights and a subject when it exercises them [6, p. 283]. Some consider these are artificial notions and there is no need to draw special difference between them [7].

We rely upon a frequently cited provision of the outstanding ICJ Opinion in Reparation for Injuries (1949) that "a subject of international law... capable of possessing international rights and duties... has capacity to maintain its rights by bringing international claims" [8]. Moreover, it is helpful to draw difference not only between active and passive sides of personality, but also consider "statics" (the eligibility to be involved) and "dynamics" (the procedural status, its realization in proceedings) of participation in litigation.

One can argue there is nothing reinterpreted in, for example, a well-known position of D. R. Higgins [9], while saying that *participation* not an *attribution* is a real status. Participation concept is rather widely accepted now. We, further, would like to explore how the system of international law in its different litigation procedures involves an individual. It can help to reveal the regularities and rules of such *inclusive participation*. In the given article we try to assess the status of an individual through a functional approach to one of the issues of legal capacity of international legal subjects. We state that what really gives an impulse to evolving international personality of an individual is his/her ability to participate in international litigation, to protect his/her rights and legal interests, to stand as a party, to witness, to seek for compensation, to expertise, thus, being involved and included in different roles in international legal relations having procedural rights, duties, guarantees, safeguards correspondig to the status. Functional approach derives from the Reparations for Injuries Opinion of ICJ as early as in 1949: "The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends on the needs of the community" [8], and then goes even further: to a real necessity of the evolving system of international law and order to have an individual "in" with a variety of statuses.

On some notions and methodology

The legal status of an individual in litigation is somehow a broader issue than the access of an individual to justice. However, access to justice is broader than access to judiciary.

Legal status is a wide concept. The legal status of an individual in litigation depends strongly on the procedural role it plays. We will define how different and multifaceted nowadays in contemporary international law a procedural status in an international litigation can be. An individual can play different procedural roles in contemporary international litigation standing as a complainant (applicant) and as an accused ("a defendant" actually is more preferable for it covers a suspect beforehand and then a convicted or pleaded not guilty, and due to the peculiarities of the international criminal procedure a suspect and an accused sometimes are not so clearly divided, as in International Criminal Tribunal for the former Yugoslavia (ICTY), or a suspect also undergoes a procedure of investigation by a judicial authority, e. g., pre-trial chamber in International Criminal Court (ICC)). Apart from being a party, an individual can participate actively in other procedural roles: a victim, a representative, a defender, an expert, a witness, an interpreter, etc. A general notion for them can be *participants of litigation*. Participants can be those who take interest in the results of a case (e. g., a victim) and those who do not (e. g., a defender), who assist justice technically (e. g., an interpreter) and in substance being a source of information, data, analytical assessment (e. g., a witness, an expert).

As regards the legal status of parties, it forms an indispensable element of realizing the principles of equality, due process, transparency and legal certainty. As regards other participants (other than parties), their clearly defined status is also an important precondition, a means and one of the procedural goals in administration of justice. So, anyone involved in a litigation, possesses some rights and duties, defined competence and is capable to fulfill some functions,

and, therefore, shall have his/her rights and interests protected and guaranteed.

However, "a legal status" shall not be limited to a procedural status (*locus standi in judicia*). The latter is another element, following *jus standi* and forming all together a full and real access to justice as not only getting to justice but also obtaining it. In practice, giving or expanding a procedural role of an individual, an international judiciary institution sometimes substitutes the lack of locus standi of an individual. Therefore, in the article, where it is necessary, we slightly concern the problem of *locus standi* of an individual before international judicial forums.

Legal dictionaries give the following definition to "litigation": it is an action brought in court, a judicial contest and even any dispute, any resort to a court to resolve a legal matter. Litigation is usually attributed to the concept of "judiciary". Quasi-judicial mechanisms are based on the same criteria of formal rules, defined procedure, etc., and – not the least – "a spirit of justice" and are aimed at the enforcement of the rights of individuals. Thus, the article conceptualizes international litigation as a formal (strictly defined) international public law based procedure within a judicial or quasi-judicial institution or mechanism (for the purpose of enforcing the rights and/or invoking responsibility). The concept is quite broad, contemporary international legal order has a variety of juridical mechanisms to bring an action, to stand before or participate in it for individuals, at the universal and – mostly – at regional levels. The examples used in the article are not exhaustive, but, in our opinion, are among the most debated, or, oppositely, unduly lack researchers' attention.

"The individual" is defined in different ways and as a whole includes every human being, or natural person, or even groups of persons (e. g., minority group, collective victims) as long as they do not form a legal entity (e. g., non-governmental organization, corporation, etc.) [10, p. 281]. Some peculiarities of their status before international tribunals and quasi-judicial mechanisms of different *ratione materiae* where they can seek justice, or, be prosecuted and brought to justice, or, appear in any different status (international criminal justice, administrative tribunals, human rights protection system, environmental claims, judicial organs of regional integration organizations) will be further explored.

Pre-history of the issue before the mid 20th century

The international legal system came a very long way to the creation of international courts, and even a much longer one – to the creation of the system of the protection and enforcement of human rights and interests. Some less than 90 years ago the Permanent Court of International Justice called upon "some definite rules creating individual rights and obligations enforceable by the *national* (italics by *T. M.*) courts" [11].

However, as early as in the 1880s, such bodies as the European Commission of the Danube and the Central Commission for the Navigation of the Rhine dealt directly with individuals. Limited rights were also given to individuals under the Conventions of 8 September 1923, between the United States of America and Mexico establishing a General Claims Commission. It was a transitional status in procedure: the governments filed the documents concerning the dispute, however, these governments appointed individuals to place their claims before the Commission.

Independent procedural capacity was given to individuals by Articles 297 and 304 of the Treaty of Versailles of 1919 (the nationals of the Allied Powers could bring personal actions for compensation against the German state; they could use a government agency for that, however, it was not mandatory). Under the provisions concerning the protection of the minorities in the 1919 Peace Treaties, it was possible for individuals to apply directly to an international court in particular instances. Similarly, the Tribunal created under the Upper Silesia Convention of 1922 decided that it was competent to hear cases by the nationals of a state against that state [12, p. 189].

Under the Articles 4 and 5 of the Hague Convention XII of 1907, individuals were given direct access to the International Prize Court [13]. In this regard, the Regulation No. 7 and the Advisory Opinion No. 15 are interesting and prove that the elements of admission of international legal personality of an individual in terms of rights attribution and access to justice had already formed before World War II. After that one more element evolved – international accountability[1].

Individuals belonging to any of the Central American Republics according to the Treaty of 1907, could bring an action in the Central American Court of Justice against a Government for the violations of treaties or conventions and other cases of international character. The Court, which had been in operation for a decade, examined 5 cases, one of which was claimed admissible and was decided in favor of the state. A specific feature was that there was no requirement for a treaty to form a basis for a claim, and individuals could refer to violations of an internal obligation. Thus, the Court treated individuals as having capacity to bring international claims but that capacity was not specifically linked to individuals as substantive right-bearers [14, p. 64].

[1]However, before that some norms on pirates functioned.

An individual as a claimant/an applicant in international litigation

Human rights protection mechanism. As long as individuals are given the right to claim before international judicial and quasi-judicial bodies, the number of cases has been rising by hundreds [15, p. 799]. Certainly, the systems allowing an individual to stand in a procedural capacity of a claiming party vary greatly in their procedural rules, legal nature, and the scope of jurisdiction. There is no universal judicial mechanism for human rights protection as in regional systems. However, quasi-judicial mechanisms evolve and count today up to 9 treaty and 2 institutional ones. Not all of the regional systems grant direct access to an individual. Therefore, a natural person lacks *locus standi* before e. g., Inter-American Court of Human Rights (having an increasing importance in the region and creating new procedural opportunities for natural persons even in the lacuna of direct access). By comparison, the European Court of Human Rights is still the most cited example of a successful regional system of human rights protection (though criticised a lot, too). The African system is also developing quite actively, giving individuals direct access to international judicial protection, although the protection in the frames of the Commission is still more effective. The procedure of considering individual complaints was also set up by the Organization of American States. However, almost all regional systems give a possibility for an individual to present his/her interests before a court in some other capacity, or indirectly.

Quite a wide range of human rights treaties and mechanisms provide for complaint procedures for individuals now[2]. Thus, a *status of a complainant* is given to a person. It should be underlined that this status is not given to any association, or entity, or body. These kinds of quasi-judicial procedures are available only for individuals [16].

The spectrum of rights and obligations is the same for all treaty-based mechanisms, as well the procedure and criteria of admissibility. However, the term given in different treaties to bring a claim varies from 6 months to 5 years. At the same time, exhaustion of the domestic remedies is a commonly applied requirement, becoming a commonly recognized principle for all procedures. To lodge a claim is not a complicated task, as the procedure has been simplified, so that almost every individual can technically do it. However, it is actually far from "everybody". The issue of admissability of a claim[3] (i. e., a kind of a prerequisite of substantial and procedural legal character) is not analysed in this article. Once a claim is accepted as admissable and a person is given a status of a claimant, his/her legal status is equal. Generally, to be a claimant, he/she shall be a directly concerned person, a direct victim. The only question remaining open is why, in order to get a status allowing to trigger the system of protection regarding *inalienable* rights, shall this right be demolished? One of the requirements to be satisfied for a person to claim a violation under the International Covenant on Civil and Political Rights (ICCPR) is that an act or an omission of a State party has already adversely affected his or her enjoyment of such right, or that such an effect is imminent. In E.W. v. the Netherlands the Dutch citizens alleged that the Netherlands had violated the right to life provided by the Article 6 of the ICCPR by agreeing to deploy a cruise missile fitted with nuclear warheads on the Dutch territory. The UN HR Committee found that the preparation of the deployment or the actual deployment of nuclear weapons did not place the authors in a position to claim to be a suffering person whose right to life was violated or under an imminent prospect of violation [17]. In this course, many authors believe that the individual complaint mechanisms need some reform to widen the status of a claimant, because the existing ones limit individuals and do not give a real opportunity to protect everybody who needs this protection. Moreover, some doubt that the existing mechanisms can be called effective when, in order to be protected, the right shall be expressly violated. V. Wijenayake and M. Mendis state, "that the so-called victim requirement debilitates the complete realisation of the objects and purposes of the ICCPR… the HRC's concept of victimhood should expand to include persons who are alienated from its current framework due to reasons of poverty, disability, political persecution etc. <…> extending the HRC's jurisdiction to cases in the nature of "actio

[2]The nine "core" treaties and corresponding mechanisms are: the International Covenant on Civil and Political Rights (CCPR – Human Rights Committee); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Committee against Torture – CAT); the International Convention on the Elimination of All Forms of Racial Discrimination (Committee on the Elimination of Racial Discrimination – CERD); the Convention on the Elimination of All Forms of Discrimination against Women (Committee on Elimination of Discrimination against Women – CEDAW); the Convention on the Rights of Persons with Disabilities (the relevant Committee – CRPD); the International Convention for the Protection of All Persons from Enforced Disappearance (CED); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (the relevant Committee not in force); the International Covenant on Economic, Social and Cultural Rights (CESCR); the Convention on the Rights of the Child and its Optional Protocols (CRC is the most universal instrument, however, individual communicatins procedure are not still in force). As well, under the United Nations Secretariat, complainant can consider submitting a complaint before the Human Rights Council Complaint Procedure (previously known as 1503 procedure) and the mandate-holders (special rapporteurs and working groups) of the Human Rights Council. Moreover, complainants can consider submitting also complaints before the organizations forming part of the wider United Nations family such as the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization.

[3]Though as professor Y. Tyagi indicates "the procedural jurisprudence has been developed more through cases that were declared inadmissible than through those that passed the admissibility criteria" [15, p. 799].

popularis"" [17]. They suggest that the adoption of *actio popularis* would militate against the limitations of the direct victim requirement, as it permits individuals and organisations to submit communications on behalf of the third parties whose human rights have been violated, and give the example of the African Charter realizing a broader concept of accessability. The authors claim, *actio popularis* would open the doors to victims who have, to date, been excluded from justice due to their socio-economic status by allowing intervenients with better capabilities to represent them.

This position seems to be very tricky because it can become a subject of misuse and open a Pandora's box of undesirable or/and unjustified claims. It also questions the limits and grounds of legal capacity transfer. Of course, one can say it can be a kind of public interest litigation in order to guarantee those inalienable human rights, a call upon universal jurisdiction as for a breach of jus cogens. However, to be a public interest litigation it lacks the official status of a prosecutor who fulfills a duty. To be a kind of individuals' universal jurisdiction to claim it inevitably leads to chaos because of the quantity of applications.

Therefore, it is quite appropriate to consider these requirements not as limits for providing access but as a precondition to effective access. An institution of representation of a person by another one can fully tackle the problem of limited possibilities to realize their status in international forums of some categories of people (disabled, poor, under-educated, etc.). That is why in some instances, like the above-mentioned, there is no need to widen the concept of accessability to unlimited universality. It would be enough and effective to develop the existing procedural status of a complainant and to evolve opportunities to be represented.

Concerning procedural rights and obligations, an individual possesses the right to bring a complaint irrespective of his/her nationality, residence, race, sex and any other grounds. The interests of minors can be represented in accordance with the law as far as all mechanisms give a possibility to bring a claim on behalf of another person. A person has the right to confidentiality (the author of the complaint may request the Committee not to disclose his/her name or the alleged victim's name and/or identifying elements in its final decision, so that the identity of the alleged victim or that of the author does not become public). The claimant has an obligation to be diligent in conducting correspondence with the secretariat, otherwise, if additional requested information is missing for a long time (a year), the file shall be closed. The complainant has a right to comment on the answer of the state for the complaint. It also brings the procedure closer to a litigation.

The status of a complainant is also attributed to a person through some other mechanisms. The complaint mechanisms under treaties are complemented by complaint institutional procedures before the Human Rights Council (Commission on Human Rights previously) and the Commission on the Status of Women. These two procedures, involving political bodies composed of State representatives, are among the oldest in the United Nations system. They have a focus different from complaints under the international treaties, which provide an individual with redress through quasi-judicial mechanisms. Complaints to them focus on more systematic patterns and trends of human rights violations and may be brought against any country.

Administrative disputes. Administrative disputes in international organizations give us examples of another role of an individual (an employee) in international litigation as an Applicant/Appellant/Complainant against internal (labor and equivalent) decisions of international organisations.

In the UN the Internal Justice System has been functioning since 2009. Before that it used to be the UN Administrative Tribunal (since 1949). Now the system of litigating mechanisms comprises the Dispute Tribunal and the Appeals Tribunal. An application may be filed by any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes; any former staff member of the United Nations; and any person making claims in the name of an incapacitated or deceased staff member (Article 2(2) of the Statute of the Appeals Tribunal, Article 3(1) of the Dispute Tribunal).

Certainly, the main question is about who is considered a "staff member" and, therefore, is included by *ratione personae* and has access to justice in the UN internal justice system. The General Assembly resolution 65/251 of 2 March 2011 requested the Secretary General to provide information on the remedies available to different categories of non-staff personnel, such as consultants [18]. The inclusion of individuals with consultant type contracts in the internal administration of justice system would substantially increase the need for additional resources in the Tribunals and legal representation by both respondents and appellants.

An applicant may present a case before the UN Dispute Tribunal in person or seek the representation of a counsel from the Office of Staff Legal Assistance or a counsel authorized to practice law in a national jurisdiction. He/she may also be represented by a staff member or a former staff member of the United Nations or one of the specialized agencies (Article 12 of the Rules of Procedure of the Dispute Tribunal). He/she has the right to be communicated with the copy of a judgment in the language in which the application was submitted, unless he or she requests a copy in another official language of the United Nations, to protection of personal data, and some other procedural rights. An applicant may apply to the Dispute Tribunal for the interpretation of the meaning or the scope of the final judgement, for the revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was

rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence [19].

An individual addressing the Administrative Tribunal of the International Labor Organization is called a Complainant. The Statute of the Tribunal sets 2 categories of individuals eligible to access it: an official, even if his employment has ceased, and any person on whom the official's rights have devolved on his death; any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under the provisions of the Staff Regulations on which the official could rely. Among other rights an applicant can ask for holding oral proceedings (art. 5) [20].

The World Bank Administrative Tribunal offers almost the same procedure. Any former or current Bank Group staff member can file an application with the Tribunal. In addition, any person who is entitled to claim upon a right of a staff member as a personal representative or by reason of the staff member's death, and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan, may also file an application with the Tribunal (Article II.3 of the Statute). Proceedings before the Tribunal are generally conducted in writing, but an applicant (as the other party) may request oral proceedings. Oral proceedings may include the presentation and examination of witnesses or experts, and each party has the right of oral argument and of comment on the evidence given (Rule 17 of the Rules of the Tribunal). An applicant may request anonymity [21].

The problem of all these mechanisms regarding the legal status of a person is the lack of judicial review. The legal status cannot be full and complete and the justice cannot be effective without it. However, there is an indirect participation in the international review of administrative disputes, and the practice of the International Court of Justice (ICJ) in this sphere points out once again the necessity to revise the issue of access of an individual to justice. This issue will be discussed later on in this article while considering indirect access of individuals to an interstate judicial mechanism within the ICJ.

The legal status of an individual as an accused (defendant) in the international system of criminal justice

The other (one of the most prominent achievements of the contemporary international legal system) procedural role for an individual as a party is an accused (a defendant). The first steps to evolve this side of legal personality were taken right after World War II.

The Rome Statute establishing the International Criminal Court and its Rules has provided an accused with the necessary legal status. The ICC treaty contains a detailed list of rights that any accused person shall enjoy, including the presumption of innocence, the right to counsel, to present evidence, the right to remain silent, and the right to have charges proved beyond reasonable doubt. The whole Part 3 of the Statute is devoted to general principles (*nulla poena sine lege*, non-retroactivity, etc.). Persons under 18 are exempted from jurisdiction. Officials are not exempted, no immunities are prescribed in the Statute. The responsibility of commanders and superiors are qualified strictly under the Statute (Article 18). Procedural rights and safeguards during an investigation are prescribed. Generally, procedural rights and guarantees are set forth widely and thoroughly. It (e. g., Article 59) is even questioned for efficiency.

It should be common practice that a basic right formulating the legal status of the accused is the one to be defended and legally represented. There are several possible options regarding the accused: representation by a lawyer of his/her own choice, representation by a lawyer designated and paid by a court, self-representation. In the ICTY's experience there have been very few accused who have chosen the first option (10 %), and only 4 people have chosen self-representation [22, p. 131–132]. However, the right to self-representation and self-defence exists in different legal systems in the world and, therefore, it can be regarded as one of the basic procedural rights of an accused. However, in internatinal courts, namely criminal courts, it seems to be a great challenge for a court and for a community. Starting from the procedural difficulties as "being on task", perception problems and to the very goal of the procedure (to bring peace and reconcilliation to the region, which is less achievable while making the tribunal an arena for explaining the ideas of political agenda) [22, p. 138–139]. This aspect of the legal status of the accused definitely needs to be evaluated in theory and legal documents more thouroughly. Many of the procedural rules are not appropriate to be applied to the self-represented accused and vice versa many of rules regarding the accused do not fit the purposes of self-representation. Namely, in the ICTY they have decided upon a lot of such problems, but it can be applied to a concrete case.

The legal status of a victim

The next category, which is actually very similar in its essence to that of a claimant, is a victim. However, a victim is not a party, but a participant who has an interest in the result of the case.

Victim in an international criminal judiciary. The status of an individual in this procedural role will be explored within the International Criminal Court procedure. The ICC is the world's first permanent,

international judicial body capable of bringing perpetrators to justice and providing redress to victims when states are unable or unwilling to do so. Tribunals (on the Former Yugoslavia, Rwanda), having limited jurisdiction, were exclusively important in the pre-ICC experience. It can be traced how the legal status "is growing" and "widening" with the evolvement of the very concept of the access of individuals to criminal international justice. The role of victims in criminal procedures in tribunals and in the court vary significantly. While in the ICTY and International Criminal Tribunal for Rwanda (ICTR) the role of victims was limited only to giving testimony as witnesses (they could not be provided neither with information, nor with claim reparations, and could not communicate), the ICC is a pioneer in the course: victims can present their communications (opinions) at all stages of the proceddings, can obtain information, can obtain legal representation, etc.

One of the most lauded features of the permanent ICC is its victim participation scheme which allows individuals, harmed by the crimes being prosecuted by the Court, to share their views and concerns in proceedings against the persons allegedly responsible [23]. Victims of international crimes are, for the first time, recognized as having rights as participants in the process and as recipients of reparations [24, p. 189].

One of the main problems with the status of individuals in this judiciary is, first of all, the lengthy process of application for the status of a victim (it can take more than 2 years). The second problem is that of real participation – a legal representative stands for the interests of a group of individuals in the proceedings. A new approach has been elaborated therefore, creating a 2-variant system. Those victims who wish to share their views and concerns personally before the Court are required to go through the individual application procedures established under the ICC's current rules. The remaining victims may simply register as victim participants by submitting their names, contact information, and information regarding the harm suffered to the Registry. The Registry will then automatically enter this information into a database, without any individualized review by the parties or a decision from the Chamber, and the database will be shared with the Court-appointed common legal representative. This kind of reform is the most efficient option for reforming the victim application system, saving valuable time and resources for applicants, the Registry, the parties, and the Chambers.

In general, the status of a victim in ICC proceedings presupposes the following rights and duties of an individual: the right to receive information about the proceedings from a legal representative; the right to access court records, filings, and proceedings via a legal representative. The former in their names exercises the right to make opening and closing statements, to question witnesses, to present evidence. The status is accorded to an individual as soon as he/she becomes registered. This moment is very important as regards the above-mentioned changes in the system of registration. Now much more participants (apart from those who would like to undergo the full procedure of registration) have access to information and all other elements easier and earlier.

The status of victims differs as well, depending on their intention to participate only or to get reparations. Strictly, the status of victims is different from the reparation regime. Victims do not have to participate in preliminary and/or trial phases in order to apply and/or to be eligible for reparation awards. Morever, as the Article 79 (1) of the Rome Statute, Rule 98 of the Rules of Procedure and Evidence, and Resolution 6 of the Assembly of States Parties adopted on 9 September 2005, state, reparations are made "for the benefit of victims of crimes within the jurisdiction of the court, and of the families of such victims". Under Article 75 (2) the Court can make an order specifying appropriate reparations "to, or in respect of, victims". The term "in respect of" should be interpreted to include the families and dependents of victims. However, an important limit to those who can benefit from orders for reparations is that, since they are awarded against individual perpetrators, they are restricted to the victims of crimes for which that individual has been convicted before the Court. The category of victims who may potentially benefit from reparations orders will be to a large extent dependent on the strategy of the prosecutor in terms of the cases, individuals and charges chosen for prosecution. Many victims within a particular situation will fall outside the limited cases selected by the Court for prosecution and will therefore not be able to obtain reparations through court orders (this is the case when the Trust Fund can be helpful) [25, p. 9]. In the doctrine one more problem of identifying victims of an international conflict is underlined: victims of international crimes face much more difficulties in publicizing their fate and consequently "benefiting" from their status as a victim. It is only when potential status givers are aware of the victims' existence that the victim status can be granted [26].

All this concerns mainly a victim's right and possibility to access the court. However, as soon as he/she has access, the status can and does in practice vary greatly. Participation in proceedings, the extent of some procedural rights depend on the attitude of the trial, actually, to the very essence whether interests of victims are triggered automatically in a criminal proceeding against the accused. There are two different examples of cases dealt by the ICC with a different, almost opposite approach to the extent of the victims' interests and therefore their legal status.

In Katanga/Ngudjolo it was held that a victim has a fundamental interest in the determination of facts, the identification of the responsible and the declaration of their responsibility. It makes the figure of a victim centralized in the procedure. It went on defining that procedural rights included the right to legal representation, both anonymous and non-anonymous victims could have access to confidential documents,

to make opening and closing statements, to address the Court with permission, etc. [27]. *It has much in common with the status of a party, therefore, getting an individual closer to the center of justice and making the procedure more victim-oriented*.

In another case in Uganda the Judge determined that notwithstanding the fact that a victim had been granted a general right to participate in the investigation phase, the victim would need to show his particular interest and how it would be affected in a specific proceeding [28, p. 308–309]. In Lubanga case the Trial Chamber also determined a specific procedural capacity of a victim as a participant (acceding, but not a party), ruling that in order to exercise the rights a victim must file a discrete written application to the Chamber, give notice to the parties, demonstrate how their personal interests are affected by the specific proceedings, comply with disclosure obligations and protection orders. The Trial Chamber took a restrictive approach to the status determination. It determined that Article 68(3) required to determine the specific interest of an individual [29]. Then, it is up to a court decision which specific rights shall be granted as regards the participation in the proceedings "beyond basic access to public documents or attendance at public hearings" [28, p. 309].

It shows once again how intertwined and interdependent the issues of substantive access to justice and procedural capacity in international litigation are, and the lack of a defined legal status even for the same categories in the same institutions. As B. L. McGonigle stresses, the issue at stake is a differently oriented approach – criminal law oriented or human rights law oriented, and interpretation of the principle of the right to truth in the frames of one or another [28, p. 312].

And again, one shall be more aim-oriented and functional here: as the Rome Statute determines to define a specific interest of a participant, the status of the latter shall be within this requirement, however, if it deters to gain the ultimate result to such a participant, the Court shall be quite flexible and "sensible" as regards a victim's procedural rights, not only in the course of satisfying requests from a victim, but also in its general course of proceedings and fair trial. Also, one shall not forget about a systematic approach to the trial, balance, and equal and appropriate defence of all parties' and participants rights. So, the right of the accused in the process shall also be taken into consideration and be given a due consideration [28, p. 311–312], e. g. while deciding upon the accessibility to the information, etc.

The legal status of a victim in human rights protection system. Problems of other nature come into light while analyzing the legal status of a "victim" in human rights protection procedures, e. g., in the Inter-American Court of Human Rights, in which no direct access is granted. However, a person whose rights have been presumably violated have indirect access (and appropriate legal status referred to him/her) through the category of "victim". Notwithstanding the different nature of the procedures (criminal and HR-protection) the general tendency has much in common. People suffered get more power to protect their interests and to have an adequate adjudication in international forums.

The most recent developments in the given example (the Inter-American Court of Human Rights) are as follows: further jurisdictionalization of the status of victim through the access to the Inter-American Defence Attorney [30], further implementation of the right of a victim to be represented before the Court, to be informed and to get communication to the court, etc.

Actually, the Inter-American Commision did step on behalf of a victim according to the Article 33 of the Rules of Procedure. As the Inter-American Commission represents public interest and safeguards the due application of the Convention, some kind of dualism of roles can be observed, and it "should not act as the "defender" of the victims as such" [30, p. 252]. In this sense the Public defender in the Inter-American Court serves a mission to substitute the capacity of a victim to stand before the court, the Inter-American Defence Attorney is a victim's mediator to justice and is free of charge for this victim, and all communication processes go through this attorney, and two such attorneys are appointed to each and every victim who is not represented in the Court.

The procedural capacity of the Attorney seems to be aimed at the realization of the rights of victims to a fair trial and due remuneration. However, it is not an appropriate mechanism. As soon as the inter-American system proposes the defenders from domestic systems who are officials and nationals of the state-parties, it is in either way a doubtful choice: to have a defender of the nationality of the alleged state or of the nationality of another state. In the first case in which the institution of the Inter-American Defence Attorney was called upon – Furlan case – the issue of the nationality of the Defender arose (the case was against Argentina, and two defenders, Argentinian and Uruguayan, were appointed). The Court adjudicating on the issue of the impartiality of the Attorney with the nationality of Argentina concluded it would not influence the purpose of guaranteeing the human rights of a victim, and even could be of use for the purpose of communication [31].

Nevertheless, one can doubt that such kind of an institution shall be composed of the officials of state bodies (a defender of the nationality of the responding state can be inappropriate for an individual because of the possible doubts in his independence, and the nationality different from the state can contradict the principle of non-interference as long as the attorney is a foreign state official). Even if the appointment of the two defenders of different nationalities balances the situation, this is not the best way to have the victim's interests protected in the proceedings. However, it makes the whole procedure one more step closer to

the real direct access of an individual, so that the categories of "claimant" and "victim" different in nature become closer, the differences are stirred and justice is available in different forms. This example shows how, through the widening of legal status in the procedure, not only the principles of due process and equality are followed, but also the evolving *jus standi* tendency is strengthening.

Individual's interests in the system of the ICJ: in search of a place and a status

The main judicial mechanism in the contemporary international arena is the ICJ, but its competence is strictly reserved to inter-state relations, and traditionally an individual does not have *locus standi* before the Court. However, even an individual can play some role there and his/her interests can be protected. The ICJ has dealt with a number of cases that were based on diplomatic protection: Interhandel, Nottebohm, Barcelona Traction, Elettronica Sicula S.p.A (ELSI), LaGrand, Avena, Diallo.

Recent cases in the ICJ, as mentioned in the doctrine [32, p. 136], have contributed a lot to the human rights sphere. Briefly, the position of the ICJ used to be restrictive in the sense that they did not want to have much in common with the domain of "human rights", different from individual rights. In *Diallo,* nevertheless, the Court observed that "owing to the substantive development of international law over recent decades in respect of the rights it accords to individuals, the scope *ratione materiae* of diplomatic protection, originally limited to alleged violations of the minimum standard of treatment of aliens, *has subsequently widened to include, inter alia, internationally guaranteed human rights*" [33]. Taking into International Law Comission's (ILC) definition states that "diplomatic protection consists of the invocation by a State of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural… person… with a view to the implementation of such responsibility" [34], it could be regarded as a means to execute an individual's capacity, and a state, therefore, could step as a legal representative of an individual. That could, probably, actualize the issue of the status of individual in the procedure of the ICJ in the future, not the nearest though. As for now, diplomatic protection serves the purpose to protect an individual, but it does not give a person neither any special status in international litigation, nor any rights to present evidence, to be heard, or to be informed about the results, etc.

The possible injustice that could stem from the constraints for the subjects other than states to participate, has been acknowledged by the organs of the United Nations which utilized a special pre-trial procedure allowing individuals to take a more active part in the dispute.

Though an individual has no status of a party to litigation in a universal forum a principle of equal arms plays a great role to equalize, to make an individual closer to the core of justice through different procedural tricks. The principle of equality is of extreme importance to the issue of the legal status of individuals before the Court as, due to its nature, sometimes international law cannot provide equality of arms in the procedure. The recent case of the ILO Administrative Tribunal pended to get an Advisory Opinion of the ICJ of 1 February 2012 is very representative of how the principle is realized in cases when an individual has no direct access to the court. The Court tried to balance the problems of inequality in access by diminishing the unequal position before the Court of the employing institution and its officials. The ICJ determined not to admit oral proceedings since only the institutions concerned (international organization in that case), not individuals, can appear before the Court. However, obviously, an individual, namely Mrs S. Garcia, was the ultimate interested person. Thus, the ICJ obliged the International Fund for Agricultural Development (the respondent) to transmit to the Court any statement Mrs S. Garcia intended to convey to the latter and fixed the same time limits for the filing of the two parties' written statements [35, p. 523].

The equality of the parties before the court, i. e. before the ICJ, which according to the UN Charter and the ICJ Statute does not give an individual access to the court, has been widely discussed for almost 60 years (in the works of L. Gross, R. Shabtai, C. Trinidade, for instance). Judge C.Trinidade stands for direct access of individuals and their full procedural capacity as far as they are given the rights and duties [36]. Mr D. Gallo, on the contrary, doubts if it is the right forum to settle a dispute with the interests of individuals involved, if a forum is not appropriate to this kind of *locus standi in judicio* putting aside the issue of juridical personality and international personality of an individual [35, p. 526].

Both of them sound well-reasoned, but I would try to apply the above-mentioned functional approach: as the individual's interests are concerned and less or more considered in the proceedings, a person shall be given a due level of procedural rights and guarantees. In this sense the ICJ practice seems to be relatively effective and for the moment the only possible: in the situation of not going beyond its competence, it follows the right way to preserve the common rules and traditions of the litigation. However, C. Trinidade inquires, and has a very strong position for that, whether this solution (to escape from oral hearings in order to give comparatively equal – *de facto* at least – status), on the contrary, deprived the parties of being heard in full and the Court of revealing the dossier materials at its best. D. Gallo has his own right to say that the Court's activism is not, in itself, a remedy to conceal the fact that the official's interests will be defended and represented depending on the willingness of the organizations to do

so" [35, p. 538]. The truth is that the procedural rules of the Court do not suit anyway the very just and right goal to equalize an individual in his/her procedural capacity to the rights of persons in whose interests *de facto*, though not in whose name *de jure*, the justice is made.

An individual may be called upon to stand as a witness in the ICJ. Another procedural role that a person may serve directly (at least hypothetically, yet) is *amicus curiae*. It is not status of a "party", but of "a friend of the court". According to the Statute of the ICJ, Article 50, "the Court may, at any time, entrust any individual… that it may select, with the task of carrying out an enquiry or giving an expert opinion". Also, Article 51 of the ICJ Statute sets forth that "during the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30" [37].

The status of witnesses and experts is regulated by the Rules of the Court (Articles 57, 62, 64, 65, 71). The Court may, if necessary, arrange for the attendance of a witness or an expert to give evidence in the proceedings. The parties may call any witnesses or experts appearing on the list communicated to the Court. If at any time during the hearing a party wishes to call a witness or an expert whose name was not included in that list, it shall so inform the Court and the other party. Procedural status of a witness and an expert is quite traditional[4]. The growing role for this kind of persons presenting before a court or another judiciary is mostly explained by complicated issues and more and more sophisticated technical and other special nuances of cases due to the progress of humankind and the development of technologies and science. Anyway, it makes a solid ground to claim for the necessity of further academic and normative attention to this category of individuals in proceedings, to the provision of guarantees for their impartiality and correctness, to their involvement according to the best appropriate procedural grounds (so that the expertise is transparent, liable, available for parties, etc.). A lot of fates of peoples and states often depend not on the final assessment of legal matters, but on the correct and profound scientific or another special assessment of the facts.

The evident rise in the involvement of HR-issues into the Court's activity will enhance other forms of participation of an individual in the proceedings (among those accessible now, according to the Statute and the Rules, there is a witness status, for example). It will make the proceeding more transparent, legimately precise and put the individual's participation from the twilight zone to the appropriate level of sound involvement and influence.

Conclusion

As «the right to individual petition is undoubtedly the most luminous star in the universe of human rights» [36, p. 13], the issue of legal status is central in the field of realization or exercise of the capacity of an individual to act in the international judicial sphere.

Clearly defined legal status of an individual is an important part of a fair trial concept, especially in the international context, because these types of courts and other judicial bodies face a range of pratical and procedural difficulties due to the nature of cases and the nature of the courts which make justice realization more sophisticated and the issue of due participation and the defence of rights, or the interpretation part, or witnessing even more difficult and, therefore, requiring formulation and understanding.

Contemporary international law provides an individual with access to a range of universal and regional, general and special, judicial and quasi-judicial mechanisms of the implemention of rights and realization of accountability. The procedural role of an individual varies: a defendant, an applicant (complainant), a victim, an expert and a witness.

The procedural status of an individual in proceedings depends on its role and resembles in some details the corresponding status in national proceedings. However, due to the international level of judiciary (translation and interpretation, travel costs, etc.), there are some peculiarities regarding the rights and duties of an individual. For instance, in many institutions oral proceedings are available only upon demand, collective awards are used, and representation by an advocate or a legal council is obligatory (non-direct access).

The access of an individual to litigation procedures forms an essential part of his/her international capacity. While granting rights and duties is a "passive" side of personality, participation in litigating procedures is an individual's active personality, making him/her subjectivised in international relations. The increase in the human rights protection in the international forum was an essential impulse for the formulation of the concept of an individual as a subject. However, personal access to justice makes the system function inclusively. There should be international remedies to the protection, participation, and involvement. The system of international litigation needs individuals be actively present therein, as well. This would make justice more transparent, more experienced, more profound. Access of individuals to international justice turns inter-national law to its true and core essence which is to be something more than inter-governmental, but to be *jus gentium*, *jus populi*. International law becomes humanitarized.

[4]Actually, expert status is different and not so traditional in some international tribunals and courts. E. g., the International Tribunal for the Law of the Sea may appoint at least two scientific or technical experts chosen in consultation with the disputing parties, to sit with the tribunal but without the right to vote.

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Received by editorial board 30.04.2019.

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МЕЖДУНАРОДНОЕ ПРАВО

Журнал включен Высшей аттестационной комиссией Республики Беларусь в Перечень научных изданий для опубликования результатов диссертационных исследований по историческим, политическим и юридическим наукам.

Журнал включен в библиографическую базу данных научных публикаций «Российский индекс научного цитирования» (РИНЦ).

Журнал Белорусского государственного университета. Международные отношения. № 1. 2019

Учредитель:
Белорусский государственный университет

Юридический адрес: пр. Независимости, 4, 220030, г. Минск.
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«Журнал Белорусского государственного университета. Международные отношения» издается с 2017 г.

Редактор *А. С. Люкевич*
Технический редактор *Ю. А. Тарайковская*
Корректор *А. С. Люкевич*

Подписано в печать 26.06.2019.
Тираж 100 экз. Заказ 249.

Республиканское унитарное предприятие «Информационно-вычислительный центр Министерства финансов Республики Беларусь».
ЛП № 02330/89 от 03.03.2014.
Ул. Кальварийская, 17, 220004, г. Минск.

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Journal of the Belarusian State University. International Relations. No. 1. 2019

Founder:
Belarusian State University

Registered address: 4 Niezaliežnasci Ave., Minsk 220030.
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«Journal of the Belarusian State University. International Relations» published since 2017.

Editor *A. S. Lyukevich*
Technical editors *Y. A. Taraikouskaya,*
Proofreader *A. S. Lyukevich*

Signed print 26.06.2019.
Edition 100 copies. Order number 249.

Republican Unitary Enterprise «Informatsionno-vychislitel'nyi tsentr Ministerstva finansov Respubliki Belarus'».
License for publishing No. 02330/89, 3 March, 2014.
17 Kal'variiskaya Str., Minsk 220004.

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