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## UNITED NATIONS SECURITY COUNCIL AND COVID-19

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The article provides an overview of the United Nations Security Council activities in confronting infectious diseases, analysing the reasons for its inaction vis-à-vis the COVID-19 pandemic. The following topics are addressed: geopolitical circumstances of the COVID-19 outbreak, the UN Security Council experiences in countering the infectious diseases' challenges, particularities, and special features of the UN Security Council position vis-à-vis the coronavirus pandemic.

***Keywords:*** United Nations Security Council; COVID-19 pandemic; European Union; USA; China; Ebola outbreak; Security Council resolutions; Euro-Atlantic region; Eurasian space; political confrontation; consensus; infectious disease; global challenge; global threat; national economy; world economy; United Nations Secretary-General; duties and jurisdiction of the UN Security Council.

## СОВЕТ БЕЗОПАСНОСТИ ООН И COVID-19

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Рассматривается деятельность Совета Безопасности Организации Объединенных Наций по противодействию инфекционным заболеваниям как глобальному вызову, анализируются причины бездеятельности Совета Безопасности в период пандемии COVID-19. В центре внимания автора следующие вопросы: геополитические условия в момент вспышки COVID-19, практики Совета Безопасности в противостоянии вызовам, связанным с инфекционными заболеваниями, особенности и специфика позиции Совета Безопасности в отношении пандемии коронавируса.

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***Ключевые слова***: Совет Безопасности ООН; пандемия COVID-19; Европейский союз; США; Китай; вспышка Эболы; резолюции Совета Безопасности; Евро-Атлантический регион; Евразийское пространство; политическая конфронтация; консенсус; инфекционная болезнь; глобальный вызов; глобальная угроза; национальная экономика; мировая экономика; Генеральный секретарь ООН; права и обязанности Совета Безопасности ООН.

## Introduction

The United Nations Security Council (SC) met the COVID-19 pandemic in a rather bad shape. By the beginning of the 21st century, the traditional "cold war" confrontation returned to the SC, and it was not able to effectively manage the crises in Syria, Ukraine, and the acute world crisis associated with the COVID-19 pandemic. The SC has not succeeded in reforming itself despite 30 years of promises by the UN ambassadors of different countries to make it more effective and more representative. At the end of the 20th century, some big UN member-states (Japan, Germany, India, Brasil, Nigeria, and South Africa) expressed their wish to become the SC permanent members and received support from one or two of the current five permanent members. Nevertheless, the consensus between the big five was not reached on who deserves the permanent seat. And the SC composition remains as in 1945.

It is necessary to understand from the beginning that the assessments and conclusions contained in this article do not apply to the entire United Nations Organisation (or to the UN system), they are made in relation to the activity of the SC during the coronavirus pandemic. The hypothesis that the author is trying to prove is as follows: the SC's inaction vis-à-vis the pandemic was in large extent determined by the political confrontation within the SC (mainly between the USA and the People's Republic of China (PRC)) and had negatively affected the image of the whole organisation and its ability to confront other global challenges.

One of the main consequences of COVID-19 is the securitisation of medicine. This means that medical doctors and scientists acquired a much stronger voice in formulating the security policies for civil societies in different countries. In our days to maintain international peace and security means to secure the lives of the ordinary citizens in China, Russia, the USA, Brasil, the EU, in all UN member-states, including of course Belarus.

Because the coronavirus has become an international problem quite recently (in March 2020) there are no fundamental studies of strategies to confront it internationally and in different countries, as yet. Nevertheless, there are few articles on UN involvement in dealing with the international consequences of the infectious diseases' outbreaks. The latter is represented, for example, by J. Cohen's article on the SC's response to the Ebola outbreak. He writes about the logic of confronting Ebola that prevailed in 2014 and included lifting travel and border restrictions introduced against the affected countries, there was even mentioning of the establishment of the UN Mission for Ebola Emergency Response (UNMEER) with the priorities of stopping the outbreak, treating the infected, ensuring essential social services, preserving stability and preventing further outbreaks [1]. In Journal of Global Security Studies published in Oxford (UK) there was an article by Ch. Enemark on the SC's role in disease control. He came to a conclusion based mainly on the content of the SC's resolution 2177 on Ebola that "the Council contribution to health governance was to support a shift in security logic: from securitisation to securing circulation" [2, p. 148]. There, perhaps, was such logic in the SC's thinking in 2014 but in 2020 the health governance was conducted mainly at the states' level and was underpinned by a logic of total securitisation. And not just some researchers but SC's official reports did not envisage a new global health challenge in a short run. In January 2020 a SC research report on prioritisation and sequencing of council mandates was prepared and there was no mentioning of any global health threat or challenge among the SC's priorities[1]. In the article "COVID-19 as a threat to international peace and security: what place for the UN Security Council?" M. Svicevic underlined that the SC for the first time determined a public health issue as a threat to international peace and security when it adopted resolution 2177 on Ebola. In his opinion, "potential resistance from China" prevented the SC from making such a determination in the case of COVID-19 [3]. In the article "The United Nations Security Council and securitisation of COVID-19" by T. Muherjee posted on the site of Observer Research Foundation (an Indian think-tank), the regret was expressed at the lacking of global governance at a time of the pandemic because "the United States is failing in its response under president Trump, whereas nations constituting the European Union operate as separate entities. Totalitarian states such as China and Russia, are occupied with sustaining their respective state apparatus, rather than focusing efforts on a global response" [4]. In the article "A legal analysis of the United Nations response to Covid-19: how the Security Council can still help" S. Mathur declared that the pandemic comes under the duties and jurisdiction of the SC as the communicable disease as it could pose a threat to international peace and security because it undermines the stability of na-

[1]Prioritasation and sequencing of council mandates: walking the walk? [Electronic resource]. URL: https://www.securitycouncilreport.org/atf/cf%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/prioritisation_sequencing_mandates_report.pdf (date of access: 13.05.2020).

tions if remains unchecked; it would have a devastating impact on the economy of states and by extension, on the world economy [5]. Giving the EU perspective on the SC inaction vis-à-vis the coronavirus pandemic, S. Fillion sides with French UN ambassador N. de Riviere who said while assuming his duties as a chairman of the SC for the month of June 2020: "It's very painful. It's very frustrating. And again, on this one, the Security Council is not fulfilling its mandate" [6].

The common denominator of the recent publications on the UN response to COVID-19 is that the SC had jurisdiction and experience in confronting the global threat of the infectious diseases but failed to fulfill its mandate because of political infighting.

## Geopolitical circumstances of the COVID-19 outbreak

The United Nations was created by the victors of the World War II with the aim to prevent an occurrence of another world war by providing an international collective security mechanism. Unfortunately, its main body which is SC had become divided between two opposing blocks during the Cold War period. This confrontation was suspended for ten years in the 1990s. During that period the SC managed to take consensual decisions that stopped the Iraqi invasion of Kuwait and created a framework for removing the Taliban regime in Afghanistan, the regime that turned the country into a training field for the international terrorists.

The era of confrontation came back into the SC after the famous U-turn over the Atlantic performed by the personal airplane of Russian prime minister E. Primakov on 24 March 1999. E. Primakov was on his way to Washington to negotiate with International Monetary Fund a new loan for Russia when US vice-president A. Gore called and informed him that the NATO air force was about to strike Yugoslavia. Russian prime minister considered this NATO decision an unacceptable stretch of the SC resolutions adopted by that time on Yugoslavia and ordered the pilot to return to Moscow.

After 1999 the SC again became divided. The disaccord among its permanent members prevented it from taking decisions on most acute crisis situations threatening international peace and security in the 21st century, be it in Syria, be it in Ukraine, be it in relation to the COVID-19 pandemic. The SC was able to perform the peace support operations (PSOs) only in those countries where its permanent members' interests were not seriously involved.

The United Nations is a global inter-governmental organisation. Therefore, the global challenges to the system of international relations have become the main dilemmas for the organisation. If it does not adequately react to these challenges, they turn into the threats to international peace and security. Among them, one could mention climate change, international terrorism, migration crisis, local conflicts with the participation of the bigger powers, ecological problem. The COVID-19 pandemic could be considered a part of the last problem, but it is far more complex if one takes into account its consequences for world politics and the economy.

The UN could be compared to a mirror that reflects the main problems and contradictions of the contemporary world. The financial and economic crisis of 2008–2009 contributed greatly to the strengthening of unilateralism and isolationism in international affairs. The current confrontations between the Russian Federation and the West, between the USA and China is undoubtedly very negatively reflected in the organisation's capabilities to deal with global threats and challenges. The coronavirus pandemic also played in the hands of unilateralism and isolationism.

## The SC experiences in countering the infectious diseases' challenges

There were precedents in the recent UN history of the SC participation in streamlining the international efforts to fight infectious diseases.

In 2000 the SC adopted resolution 1308 that stated that "the HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security" in the world. The SC debated a necessity to include AIDS prevention in the UN mandates for PSOs in Africa [4]. In 2003 severe acute respiratory syndrome (SARS) arose in the PRC, affected Hong Kong. The SC formally did not adopt a resolution on the SARS outbreak, but at the annual World Health Organisation (WHO) meeting a unanimous resolution of 192 member-states was approved calling for the full support of all countries to control SARS which is "a serious threat to the stability and growth of economies, the livelihood of populations". The resolution recognised SARS as the first severe infectious disease to emerge in the 21st century[2]. The first mentioning of infectious disease as a global security threat one could find in the report of UN Secretary-General K. Annan of 2005[3].

On 18 September 2014, the SC adopted resolution 2177 (on Ebola outbreak), co-sponsored by the biggest number of countries in the SC history: 130. The resolution stated, "the unprecedented extent of the Ebola outbreak in Africa constitutes a threat to international peace and security", it "may lead to further instances of civil unrest, social tensions and deterioration of political and security climate"[4]. This conclusion

[2]Annual UN health forum adopts resolution calling for support to control SARS [Electronic resource]. URL: https://news.un.org/en/story/2003/5/69292-annual-un-health-forum-adopts-reso;ution-calling-support-control-sars (date of access: 16.05.2020).
[3]Report of the Secretary-General (Kofi Annan). UNGA A/59/2005/Add. 3. 26 May 2005.
[4]Resolution 2177 [Electronic resource]. URL: unscr.com/en/resolutions/2177 (date of access: 10.05.2020).

emanated from the fact that the ability of the domestic health care systems was not sufficient to respond to the outbreak. The outbreak also handicapped the post-conflict rehabilitation processes in West Africa. It's worth mentioning that delegates, who took the floor during the discussion of the Ebola resolution, did not support the isolation of the infected countries. S. Power, the US ambassador to UN, mentioned that "isolation is effective and indeed necessary for dealing with individuals who may have been exposed to Ebola, it is utterly counterproductive when applied to entire countries" [1]. Resolution 2177 itself called on the member states (para 4) "to lift general travel and border restrictions imposed as a result of the Ebola outbreak and also calls on airlines and shipping companies to maintain trade and transport links with the affected countries and the wider region"[5]. The SC involvement in countering the threat of infectious diseases was repeated in 2018 when the Ebola outbreak was registered in the Democratic Republic of Congo: the relevant resolution 2439 was adopted by the SC on 30 October.

Why the measures envisaged in Ebola resolution contradict largely the isolationist policies of the majority of the states during the coronavirus pandemic? It's a complicated question that could be partly answered if we look at the place of origin of COVID-19. Chinese city Wuhan was completely isolated in China and every family in the city was placed under strict quarantine. All country was placed under quarantine measures, curfews, and so on. In the Chinese authoritarian political system, it was possible to do this in a fast and effective manner. The world media that has today previously unseen powers and enjoys enormous political influence presented the Wuhan experience as the only effective way to deal with COVID-19 pandemic. The media ostracised the governments that did not follow the Chinese example (Belarus, Sweden). Political leaders of the Western countries facing regular re-elections in 2–4 years' term were utterly afraid of being accused of not fighting the pandemic aggressively enough. Under the media pressure, they mostly opted for the Wuhan practices.

## Security Council vis-à-vis the coronavirus pandemic

Following the tradition of the SC involvement in countering the threat of infectious diseases in the 21st century, France and Tunisia introduced in March 2020 a draft resolution in the SC that called for the international support to the countries most affected by the coronavirus pandemic and urged a halt to fighting in Afghanistan and Yemen as they struggle to cope with COVID-19. The draft did not go through the SC because some of its languages were not to the US liking. Frustrated by the SC inaction in relation to the pandemic UN Secretary-General A. Guterres issued on 23 March his own appeal for global peace, he urged warring parties across the world to agree to a ceasefire in response to COVID-19: "Our world faces a common enemy: COVID-19. The virus does not care about nationality or ethnicity, faction, or faith. It attacks all, relentlessly… That is why today, I am calling for an immediate global ceasefire in all corners of the world"[6]. But even the appeal of the UN Secretary-General did not become a basis for debates in the SC on the international situation caused by the coronavirus (nevertheless, A. Guterres's appeal made it easier for the UN PSOs' personnel to assist the governments and the populations of the relevant countries in fighting the coronavirus pandemic).

Some experts from Asia and Africa underlined that this SC's "inaction" was not at all accidental, that Chinese diplomats (PRC's ambassador Zhang Jun chaired SC in March 2020) did not want to allow their country to be accused of giving birth to a pandemic that had become the threat to international peace and security [4].

In May 2020, under the Estonian SC chairmanship, Germany and Estonia introduced another draft resolution on COVID-19 pandemic, and again it fell victim to the SC permanent members' bickering. China promised that it would veto any resolution that would not mention the WHO, and Washington assured that it would veto any that would mention WHO.

The inability of the SC to play even a symbolic role in the consolidation of the world's efforts badly damaged the United Nations' image. In fact, "we" (world community) did not fight COVID-19, the nation states did rely mostly on its own recourses. The reciprocal accusations of Beijing and Washington in spreading coronavirus underlined very vividly the new axis of confrontation in modern world politics – between the PRC and the USA. This new confrontation has been added up to an "old" one: between the Russian Federation and the West. They both paralysed the work of the SC. At the SC meeting on 28 May 2020, J. Borrell, EU high representative for foreign and security policy, stated: "At a time of global crisis, we need a Security Council able to take the necessary decisions – and not one that is paralysed by vetoes and political infighting"[7].

The SC was primarily set up to deal with armed conflicts that threaten international peace and security. The COVID-19 pandemic is not exactly an armed conflict but, in our opinion, there are a number of compelling reasons why the SC should have acted against coronavirus.

[5]Resolution 2177 [Electronic resource]. URL: unscr.com/en/resolutions/2177 (date of access: 10.05.2020).
[6]Secretary-General's appeal for global ceasefire [Electronic resource]. URL: https://www.un.org/sg/en/content/sg/statement/2020-03-23/secretary-generals-appeal-for-global-ceasefire (date of access: 05.05.2020).
[7]Amid COVID-19, strong multinational system key to delivering for world's most vulnerable, European Union foreign policy chief tells Security Council [Electronic resourse]. URL: https://www.un.org/press/en/2020/sc14197.doc.htm (date of access: 16.06.2020).

First of all, there have already been precedents when the SC adopted resolutions on the situations caused by the infectious diseases (HIV/AIDS, Ebola), and infectious disease had been already mentioned by a UN Secretary-General as a global security threat. Therefore, a SC resolution on COVID-19 would have been not an exception but a logical continuation of this UN tradition.

Secondly, the very magnitude of the pandemic with over 30 million effected and a million innocent men, women, and children dead in about 200 countries and territories all over the world is a sufficient enough reason for the SC to be involved.

Thirdly, the pandemic demonstrated itself as a truly trans-border global issue that can not be dealt with only by nation-states' own efforts, but only through an international coordinating mechanism.

Fourthly, the pandemic breeds social discontent, racial and civil unrest (look at the "Black lives matter" movement acquiring international character and getting more and more radicalised) that in its part may lead to local and trans-border conflicts, including the armed ones.

Fifthly, the pandemic had a really devastating impact on the national economies of different states, some of which do not have enough resources to remedy the situation and destined for years and years of economic stagnation with all its social and political consequences (poverty, social tension, the rise of populism and authoritarian tendencies, and so on).

On 22 September 2020, UN Secretary-General A. Guterres delivered his annual report on the work of the organisation to the 75th session of the UN General Assembly. Once more he asked for a global ceasefire at the face of COVID-19 and underlined the necessity of the SC leading role in consolidating the world efforts to fight the pandemic. "I appeal, – he said, – for a stepped-up international effort – led by the Security Council – to achieve a global ceasefire by the end of this year"[8]. Unfortunately it is very doubtful that even after this passionate appeal, the SC permanent members will put aside their differences and let the Council find a consensus and start playing an active role in mobilising world resources in fighting the common enemy.

## Conclusion

As it seems, the UN business will go on as usual in the third decade of the 21st century. The PSOs will be conducted in the local conflicts that do not directly touch upon the interests of the global and regional power centers. The confrontation of these centres in the SC will swart the attempts to consolidate the world community in countering the global challenges.

The continuation of the UN business "as usual" is determined by a combination of two reasons. On one side, there is a growing dissatisfaction with the current UN position. On the other side, certain expectations remain, especially among small and medium-size countries, that the UN machinery could defend their interests vis-à-vis the world power centres.

The downgrading of the UN role in world affairs vividly expressed itself during the coronavirus pandemic. Subsequently, the SC inaction in the face of COVID-19 negatively affected the UN image and its influence in the Euro-Atlantic and Eurasian regions. More often than not the SC had to hand over the responsibility of resolving the conflicts to regional organisations. The latter unilaterally expand the terms and conditions of the mandates received. This was the case with NATO in Yugoslavia, with the African Union in Sudan, and with the EU in Kosovo and Libya.

At the beginning of the 21st century, most of the security issues in the Euro-Atlantic region is decided upon by NATO, not the UN SC. The probable resumption of negotiations between the USA and the EU on the Trans-Atlantic Trade and Investment Partnership will allow lying down a solid foundation for managing Euro-Atlantic conflicts under the Washington and Brussels aegis.

In Eurasia, the UN SC traditionally was not heavily involved in managing security problems. The situation in the field of Eurasian security mostly depended upon the positions of four major power centres: PRC, EU, USA, and Russian Federation. The SC's inability to deploy a UN PSO in Ukraine after 2014 vividly underlined this supposition. Such regional organisations in the Eurasian space as Collective Security Treaty Organisation and Eurasian Economic Union can not decisively influence the reform processes in Eurasia. The concept of the Great Eurasian Partnership promoted by Moscow neither enjoys the political consensus of its potential participants nor has a solid financial foundation. The Chinese Belt and Road Initiative remains the only real project aimed at strengthening Eurasian security by creating transportation and other ties among the countries of the region. The Shanghai Cooperation Organisation's (SCO) inactivity, especially after India and Pakistan joined its ranks, more and more becomes the rule, not the exception. At best, the SCO could perform the role of a bodyguard for the BRI.

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# UN AGENDA ON PREVENTION OF HUMAN RIGHTS VIOLATIONS

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Prevention costs less than cure. This wisdom has been recently mainstreamed in the UN system. Prevention lies at the core of the UN reforms. The UN prevention agenda has incorporated the domains of peace and security, development, humanitarian assistance, and human rights. The UN preventive diplomacy has comprised briefings, monitoring bodies, "quiet diplomacy" within the UN Security Council, the UN development group, the UN Secretariat, the World Bank group, the UN office for the coordination of humanitarian affairs, etc. In 2018, a group of states proposed to extend prevention to the UN Human Rights Council – to operationalise it's mandate to prevent human rights violations. The views on the operationalisation of prevention have diverged. Human rights and conflict caucus under the leadership of Germany suggested using the full preventive potential of the UN human rights instruments by a stronger link between Geneva and New York – through the briefings by the UN Human Rights Council special procedures at the Security Council. The Like-Minded Group recommended to refrain from the review of the existing mandates of the UN bodies and rather to enhance technical assistance and capacity building of states to address the root causes of crises. A few states expressed concerns that prevention might serve as an umbrella for the military component of responsibility to protect. Surprisingly, the agenda has not been suspended: the stakeholders do not quit the agenda and engage constructively in negotiations on the prevention tools. The research puzzle of the article is that while the interrelation of peace and security with human rights might bring a cumulative effect, such an interrelation could also mix the mandates of the UN principal organs and cause the deep structural review of the UN. This article aims to reveal the variety of tools in the UN prevention agenda. What is prevention at the UN system? What are the tools that could be launched for the prevention of human rights violations?

***Keywords:*** United Nations; Security Council; Human Rights Council; responsibility to protect; right to development; prevention.

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# ПОВЕСТКА ООН ПО ПРЕДОТВРАЩЕНИЮ НАРУШЕНИЙ ПРАВ ЧЕЛОВЕКА

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Предотвратить болезнь дешевле, чем ее лечить. Эта мудрая мысль пронизывает недавние инициативы в системе ООН. Идея предотвращения лежит в основе реформирования организации. Повестка ООН в области предотвращения затрагивает вопросы обеспечения мира и безопасности, развития, гуманитарной помощи и прав человека. Превентивная дипломатия ООН включила брифинги, мониторинговые структуры, "тихую дипломатию" в рамках Совета Безопасности ООН, группы ООН по вопросам развития, Секретариат ООН, группу Всемирного банка и Управление ООН по координации гуманитарных вопросов и других структур. В 2018 г. группа государств предложила задействовать предотвращение в рамках мандата Совета ООН по правам человека. Позиции участников по этому вопросу разошлись. Коалиция "Кокус по правам человека и конфликтам", возглавляемая Германией, предложила использовать

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потенциал правочеловеческих инструментов ООН через обеспечение взаимодействия Женевы и Нью-Йорка путем брифингов мандатариев спецпроцедур Совета ООН по правам человека в Совете Безопасности. Группа единомышленников рекомендовала воздержаться от пересмотра существующих мандатов органов ООН и усилить инструменты технической помощи и наращивания потенциала с согласия государств, чтобы разрешать конфликты на начальной стадии. Некоторые страны выразили опасения, что предотвращение нарушений прав человека может стать лишь ширмой для задействования силового компонента ответственности по защите. Удивительно, но данные переговоры не были прекращены: заинтересованные стороны не отказываются от повестки и ведут конструктивные переговоры по конкретным инструментам предотвращения. Исследследуется следующая проблема: в то время как переплетение вопросов мира и безопасности с вопросом соблюдения прав человека может дать кумулятивный эффект, оно также может изменить мандаты главных органов ООН и повлечь глубокие структурные изменения в организации. Автор предпринимает попытку выяснить, что представляет собой предотвращение в системе ООН и какие инструменты могут быть задействованы для предотвращения нарушений прав человека.

***Ключевые слова:*** ООН; Совет Безопасности; Совет по правам человека; ответственность по защите; право на развитие; предотвращение.

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## Introduction

This article aims to answer the research question about the tools and mechanisms that could serve the purpose of the prevention of human rights violations. The relevance of this question is determined by the recent initiatives in the UN system to interrelate the mandate on peace and security of the UN Security Council (SC) with the mandate of the UN Human Rights Council (HRC) to prevent human rights violations. The UN system could face deep structural reforms or even seize to exist depending on how actors and relevant stakeholders agree on the operationalisation of prevention. For example, the recent proposals by Germany to establish communication channels between the UN SC and the UN HRC are based on the overlap between the prevention of conflict and the prevention of human rights violations that are the mandates of the UN SC and the UN HRC respectively[1]. These initiatives could bring the cumulative effect to dealing with crises, however, raise high risks of either reviewing the status of the UN HRC or reforming the institution-building of the UN SC (and thus opening the Pandora box of reviewing the UN Charter), or even develop a new concept of humanitarian intervention or a military component of responsibility to protect (R2P). The conflict prevention of the UN has been largely operationalised, which is not the case of the prevention of human rights violations – the respective mandate of the UN HRC has no concrete tool and mechanism. Would the prevention of human rights violations mean the inclusion of non-state actors in the activities of the UN SC? How to differentiate the prevention of conflict from the prevention of human rights violations? What are the possible tools and a wider context of UN preventive diplomacy?

To answer these questions, the article deals with the following objectives. At first, the article explores the genesis of UN preventive diplomacy. Further, it examines the agenda on prevention within the UN SC, the UN development group, the UN Secretariat, the World Bank group (WBG), the UN office for the coordination of humanitarian affairs. Finally, the article investigates the main proposals on the prevention mandate of the UN HRC.

## Genesis of the UN preventive diplomacy

The agenda of the prevention of human rights violations is held at the UN HRC in Geneva because the prevention of human rights violations is one of the mandates of the UN HRC. The constitutive document of the UN HRC which is the UN General Assembly resolution 60/251 stipulates in para 5f that the UN HRC shall "contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies". At the same time, the broader prevention agenda of the UN system incorporates the mandate of the UN SC to prevent conflicts, plus, a few other dimensions of prevention within the UN development group, the UN Secretariat, the WBG, the UN office for the coordination of humanitarian affairs.

The prevention agenda of a few UN bodies includes a scale of concrete instruments, tools, mechanisms, and methodologies. For example, in the case of the conflict prevention toolkit that is largely developed within the UN SC, the mechanisms include special envoys, special political missions, peacekeeping operations, rapidly deployable mediation expertise, sanctions monitoring, etc[2]. The prevention of crime that is the focus of the UN office on drugs and crime suggests largely

[1]Note verbale dated 1 July 2020 from the permanent missions of Belgium, Estonia, France and Germany to the United Nations addressed to the president of the Security Council. UN Doc. S/2020/631.

[2]United Nations conflict prevention and preventive diplomacy in action. UN department of political affairs [Electronic resource]. URL: https://dppa.un.org/sites/default/files/booklet_200618_fin_scrn.pdf (date of access: 30.07.2020).

research-based prevention based on the analysis of the information and intergovernmental cooperation. The prevention of human rights violations, in its turn, has not been operationalised yet, which opens room for interpretations and discussion. The constituent document of the UN HRC (resolution 60/251 of the UN General Assembly) does not propose any concrete mechanism to implement prevention, but "a prompt response" or "dialogue and cooperation", whatsoever it could be interpreted.

In 2010–2020, the discussions on the prevention mandate of the UN HRC reinvigorated and suggested two leading views on the prevention of human rights violations promoted by the two most active coalition networks at the UN HRC. The first standpoint presupposes building a stronger link between the UN HRC and the UN SC. This view is intensively promoted by the JUSCANZ[3] and EU formal diplomatic networks, plus, the informal grouping of caucus on human rights and conflict prevention and group of friends of responsibility to protect. Though not completely contrary, but the other standpoint is promoted by the like-minded group (LMG): the prevention of human rights violations is different from the prevention of conflict, and has to involve the capacity building based on mainly intergovernmental cooperation and the respective consent of a state concerned. While the two views overlap in their acknowledgement of the positive effect of the operationalisation of prevention, the perspectives diverge in their understanding of hierarchy between governmental and non-governmental stakeholders. The recent proposal by the JUSCANZ and EU networks in September 2020 at the UN HRC was to widen the Secretary-General mandate and enable him to regularly bring to the attention of the UN SC the reports of the UN HRC[4]. This initiative did not find the consensus.

On the one hand, as suggested by the Marc Limon and Mariana Montoya, the prevention could bring the cost-effective and positive effect once it would comprise three pillars of the UN: peace and security, development, and human rights [1, p. 3]. This standpoint is supported by Bertrand Ramcharan, the frontrunner of the notion "preventive diplomacy", who recently claimed that the involvement of non-governmental stakeholders in UN preventive diplomacy would enhance the prevention role of the UN SC [2; 3, p. 137–143]. On the other hand, the interrelation of peace and security with human rights would potentially infringe the balance between the governmental and non-governmental stakeholders in conflict prevention, plus, informally expand the mandate of the UN SC and the UN HRC.

The augmenting attention to prevention is a natural consequence of the UN reforms. Because of the implementation of the 2030 agenda the UN system had been driving to a proactive, risk-informed, and prevention-centre approach[5]. Both the UN General Assembly in resolution 70/262 and the UN Security Council in resolution 2282 (2016) acknowledged that development, peace and security, human rights were interlinked and mutually reinforcing. In 2012, the UN Secretary-General Ban Ki-Moon has identified prevention as the imperative for the UN agenda[6]. This imperative included advancing a preventive approach to human rights. The vision of the current UN Secretary-General Antonio Guterres also underscores prevention as one of the UN key priorities[7]. The UN high commissioner for human rights Michelle Bachelet has prioritised the prevention of human rights violations to be at the core of the whole UN human rights work[8].

The interrelation of peace and security with human rights has been proposed as the cornerstone of the UN preventive diplomacy only since the 1990s. Before that, the UN preventive diplomacy referred to conflict-related issues and consisted mainly of mediation by the Good offices of the UN CHR [4, p. 130]. In the domain of human rights, the prevention agenda of the UN Commission on Human Rights was limited to the prevention of discrimination and genocide [5, p. 353]. This commission introduced the concept of prevention of human rights violations only in 1981 by the proposal to establish the UN high commissioner for human rights to effectively promote human rights and prevent their violations, still without concrete mechanisms [5, p. 368].

Before the 1990s, the prevention in human rights included only the prevention of genocide, though a great scope of prevention mechanisms was introduced including a world human rights court. On 11 December 1946, the UN General Assembly recommended in its resolution 96 (1) that "international co-operation be organised between states with a view to facilitating the speedy prevention and punishment of the crime of genocide"[9]. The UN General Assembly resolution 96 (1) has led to the adoption of the Convention on the prevention and punishment of the crime of genocide

[3]JUSCANZ is a coalition of somewhat 16 states within the Western European and Others Group. The name of the group is derived from its founding members: Japan, the United States, Canada, Australia and New Zeland.

[4]The contribution of the Human Rights Council to the prevention of human rights violations [Electronic resource]. URL: https://undocs.org/en/A/HRC/RES/45/31 (date of access: 26.10.2020).

[5]Annual overview report of the United Nations System Chief Executives Board for Coordination for 2017. Doc. E/2018/48.

[6]Priorities: prevention [Electronic resource]. URL: https://www.un.org/sg/en/priorities/prevention.shtml (date of access: 30.07.2020).

[7]Prevention key to saving lives, money, Secretary-General tells Alliance for Peacebuilding 2017 Annual conference [Electronic resource]. URL: https://www.un.org/press/en/2017/sgsm18743.doc.htm (date of access: 30.07.2020).

[8]Presentation of the annual appeal by high commissioner for human rights Michelle Bachelet [Electronic resource]. URL: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24074&LangID=E (date of access: 30.07.2020).

[9]Yearbook of the United Nations 1946–47. New York : United Nations, 1947. P. 244.

(Convention on genocide) by the UN General Assembly resolution 260 (III) on 9 December 1948. During the drafting process, the UN member states (France, the Netherlands) and the UN Secretariat (the division of human rights) elaborated on four tools of the prevention:

1) creation of an international administrative instrument;

2) establishment of a special court;

3) use of the UN organs by the states;

4) application of prevention in the forms other than criminal measures and beyond the crime of genocide – to criminal offenses that do not themselves constitute genocide[10].

Those proposals were going too far due to risks posed for sovereignty: some member states (the United States) understood prevention limited by the sovereignty principle: the parties to the Convention on genocide "… agree to concert their action as such members to assure that the United Nations take such action as may be appropriate under the UN Charter for the prevention and suppression of genocide"[11].

The interpretation of prevention in the 1990s by the UN senior officials has moved the accent from conflict-related issues to human rights, still not though all-encompassing consensus. The 1992 report "Agenda for peace", written at the request of the SC by the administration of Boutros Ghali, associated the UN preventive diplomacy with the domain of peace and security: the report elaborated on the preventive deployment of peacekeepers and establishment of demilitarised zones as the main preventive tools[12]. The other report in 1992, by Bacre Ndiaye, the UN special rapporteur on extrajudicial, summary or arbitrary executions, to the UN CHR, highlighted the state obligations under international law to prevent violations of the right to life, to prevent the appearance of death due to abusive use of force and torture[13]. Bacre Ndiaye referred to the 1989 "Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions" recommended by Economic and Social Council resolution 1989/65[14] [6, p. 494]. Though these principles were recommendatory, the idea of the interrelation of prevention of conflict with the prevention of human rights violations fostered further discussions on how the UN preventive diplomacy should look like.

The 1999 report by Javier Perez de Cuellar outlined the concept of preventive diplomacy and highlighted that the protection of human rights is itself a preventive strategy[15]. From this point of view, UN preventive diplomacy is based on the interrelation of peace and security with development and human rights and thus includes a wide range of mechanisms from presence of the Secretary-General special representatives on the ground to the early warning by civil society organisations. The 2006 report by Kofi Annan incorporated both views on prevention. On the one hand, the report by Kofi Annan underscored that prevention was essential when conducted at a national level thus stressing the importance of national capacity building and development[16]. On the other hand, this report highlighted the significance of interrelation of peace and security with human rights through building a communicative channel on prevention between the office of the high commissioner for human rights and the SC thus stressing monitoring, early warning, and prompt response from the UN[17].

The proposals of the UN senior officials reflected the debates on the lack of human rights in the UN prevention agenda. The independent inquiry into the UN actions during the 1994 genocide in Rwanda showed the lack of human rights in the prevention agenda of the UN as the main reason for the UN failure to act[18]. These concerns were raised again at the UN HRC. The 2012 report of the "SG's Internal Review Panel on UN Action in Sri Lanka", headed by Charles Petrie, referred to the following limitations of the UN actions during the internal conflict from August 2008 till May 2009 in Sri Lanka: the reluctance among the UN institutions on the ground to recognise prevention of human rights violations as the part of their mandate, separation of pillars of peace and security, development, and human rights[19]. The Charles Petrie's report proposed several diplomatic and organisational tools on prevention of human rights violations including strengthening the presence of office of the high comnisioner for human rights (OHCHR) in New York and its collaboration with the department of political and peacebuilding affairs, improvement of the competences of the UN country team staff in human rights, a new model of a small human rights team in size of up to 20 staff deployable for a short term, etc.

The Charles Petrie's report in 2012 was following by the 2013 initiative of Ban Ki-Moon "Human rights up front" (HRUF) that also suggested to interrelate peace and security with human rights. The HRUF initiative

[10]Interoffice Memorandum. 1 Apr. 1948. File No. SOA 318/1/01. Annex. P. 6.

[11]Observations by the Netherlands government concerning the draft Convention on genocide. 15 Apr. 1948. SOA 318/1/01/ (1) C.

[12]An agenda for peace preventive diplomacy, peacemaking and peace-keeping [Electronic resource]. URL: https://www.un.org/ruleoflaw/files/A_47_277.pdf (date of access: 30.07.2020).

[13]Extrajudicial, summary or arbitrary executions : report by the special rapporteur Bacre Waly Ndiaye, submitted pursuant to Commision on the Human rights resolution 1992/72. UN Doc. E/CN.4/1993/46, 7.

[14]Yearbook of the United Nations. London : Martinus Nijhoff Publishers, 1989. P. 494.

[15]Report of the Secretary-General on the work of the organisation. UN Doc. A/54/1.

[16]Report of the Secretary-General on progress report on the prevention of armed conflict. UN Doc. A/60/891.

[17]Ibid. P. 17.

[18]Letter dated 15 Dec. 1999 from the Secretary-General addressed to the President of the Security Council. UN Doc. S/1999/1257.

[19]Report of the Secretary-General's Internal Review Panel on United Nations action in Sri Lanka. UN Doc. ST(02)/R425/Sri Lanka.

developed the recommendations by the Charles Petrie's commission into 3 types of change needed to prevent serious problems on the ground. These types refer to the multi-stakeholder approach in prevention:

1) cultural change includes all staff and UN entities to conduct their work with an awareness of their wider responsibility to support the UN Charter and overall UN mandates, staff to take principled positions and act with moral courage, United Nationals headquarters (UNHQ) to back staff who uphold overall UN responsibilities, greater accountability for UN action;

2) operational change includes bring the UN's three pillars together, joint analysis and strategy by the UN system, in the field and UNHQ, better early warning and response;

3) change to UN engagement with member states includes proactive engagement with national authorities about concerns identified in analysis, early and full engagement with member states to prevent large-scale human rights violations[20].

The HRUF initiative was expected to improve the capacities of the UN to act on the ground within the human rights agenda. However, in 2018 following the elections of Antonio Guterres as the UN Secretary-General the director-level post for the implementation of the HRUF was eliminated. The recent trends in the reforms of the UN Secretariat have shown the strengthening of the permanently functioning executive office of the Secretary-General and its regional representatives rather than the keeping attention on the temporary established monitoring UN entities on the ground with a human rights-based approach and risk analysis tools prescribed by the HRUF as one-UN on the ground approach.

## UN prevention mechanisms

The application of prevention has been widely spread within the UN system: UN SC, UN office on drugs and crime, UN resident coordinators system, WBG, UN office for the coordination of humanitarian affairs (UN disaster relief office), UN Central Emergency Response Fund.

The wider UN context has shown four evolving trends:

1) a closer interrelation between prevention and human rights;

2) a stronger significance of mutual reinforcement of peace and security, human right, and development at the implementation of UN preventive diplomacy;

3) splitting "primary prevention" addressing root causes of human rights violations and "secondary prevention" focusing on early warning mechanisms and communication;

4) complex interlinkages of states, international institutions, and non-governmental organisations (NGOs) in preventing human rights violations.

## UN Security Council

The UN SC focuses mainly on prevention in the domain of peace and security. In this regard, the UN SC regularly acts to prevent and combat terrorist acts, financing of terrorism, money laundering[21]. One of the UN SC prevention tools regularly used is the SG reports to the SC on the situation on the ground under Art. 99 of the UN Charter. These reports regularly stress the need for a preventive approach and elaborate on the UN institutional structures on the ground that take action to prevent the conflict[22].

At the same time, the UN SC recognises that conflict prevention is inevitably linked with the root causes of conflict that in turn may significantly aggravate the situation. In 2005 Philippines (the UN SC presidency) stressed the preventive approach by the UN SC in the presidential statement on the role of civil society in conflict prevention and the pacific settlement of disputes[23]. Another example, in the UN SC resolution on Libya, adopted on 13 September 2018, calls on the Libyan authorities to prevent and respond to sexual violence in the conflict including gender-based violence crimes[24].

Besides official meetings, resolutions, and Secretary-General reports, the prevention tools of the UN SC include a tool of horizon-scanning at informal interactive dialogues and Arria formula meetings.

Informal interactive dialogues are held as informal consultations for horizon scanning of a situation on the ground. These are negotiations at a senior government level that are limited to the UN SC members and are situation-specific. Handbook on the UN SC working methods defines these consultations as "informal private meetings of the Security Council members convened in order to hold an off-the-record discussion with one or more non-Council member states"[25]. The informal dialogues are presided over by the president

[20]Human rights up front. An overview [Electronic resource]. URL: https://interagencystandingcommittee.org/system/files/overview_of_human_rights_up_front_july_2015.pdf (date of access: 07.06.2020).

[21]Resolution 2462 (2019) on prevention and suppression of the financing of terrorism. UN Doc. S/RES/2462.

[22]Ibid.

[23]Statement by the president of the Security Coucil. UN Doc. S/PRST/2005/42.

[24]Resolution 2434 (2018) on extension of the mandate of the UN Support Mission in Libya (UNSMIL) until 15 Sept. 2019. UN Doc. S/RES/2434 (2018).

[25]The Security Council working methods handbook [Electronic resource]. URL: www.unic-ir.org/SC-HANDBOOK.pdf (date of access: 30.07.2020).

of the UN SC and take place in a meeting room other than the council chamber or consultations room[26]. This preventive tool is useful when there is no consensus on the procedures for a formal meeting. It helps to engage constructively with relevant stakeholders and proved to be effective while preventing violations during the 2009 conflict in Sri Lanka. Since then, the UN SC has met under this format more than 42 occasions[27].

The other type of preventive horizon-scanning at the UN SC is the Arria formula meetings that constitute direct dialogues with high representatives of governments and international organisations. They may be requested by governments or by the Secretary-General and the other chief officials of the UN. In contrast to informal interactive dialogues, the Arria meetings represent consultations with the senior officials from non-members of the UN SC, plus, representatives of non-state actors, heads of international organisations, and high UN officials, holders of monitoring mandates from the HRC, i. e. Commission of Inquiry (COI) on Syria and Commission of Inguiry on Human Rifhts in the Democratic People's Republic of Koreya. Due to their informal character, these meetings often do not have meeting records, however, some of them may be put on the webcast.

Through these mechanisms, the UN SC conducts regular horizon scanning. The combination of these informal and formal tools constitute the effective preventive "tool-box" of the UN SC. In addition to that, the preventive "tool-box" of the SC is based also on briefings in regular meetings, communication with the UN SC and the Secretariat, intra-council communication and exchange of information, the publication of outcome documents, consultations with troop- and police-contributing countries, dialogue with non-council members and bodies, the establishment of subsidiary bodies, the UN SC missions and annual reports to the General Assembly[28].

## UN development group and resident coordinators system

The UN resident coordinators system coordinates the UN organisations in development regardless of their presence in the country. The resident coordinators are Secretary-General designated representatives for development operations at the country level and they lead 130 UN country teams operating in 164 countries[29]. The system is governed by the management and accountability system established by the UN development group.

The recent reinvigoration of this system has been based on a systemic and preventive approach. The resident coordinators should now have a deep understanding of the conceptual shift brought by the 2030 agenda, as well as of national developments, plus, they should have skills and competence to work across the development-humanitarian-peacebuilding continuum to prevent the aggravation of the crisis.

The prevention is at the core of all tools of this system as recommended by the UN development assistance framework guidance[30]. The main prevention tool according to this document is the focus on underlying and root causes for the conflict analysis by the system. Among the other tools applied by the system one may find:

a) strengthening national capacities at all levels;

b) supporting monitoring and implementation of international commitments, norms, and standards, comprising the 2030 agenda, the Paris agreement, the Sendai framework on disaster risk reduction, multilateral environmental agreements, international or regional human rights treaties and agreed international instruments;

c) assisting countries through normative support, as appropriate;

d) acting as a convener of a wide range of national and international partners;

e) providing high-quality technical expertise;

f) objective monitoring and evaluation of the national development framework;

g) providing impartial policy advice, based on international experience, technical expertise, and good practices;

h) providing a neutral space within which sensitive political issues can be addressed and resolved, including support to mediation or peace negotiations[31].

The other prevention tool is risk analysis conducted by the resident coordinators. The Secretary-General Human rights up front initiative supports the UN in identifying the risks arising from the root causes of conflict, especially, the human rights risks. As for the concrete methodologies for the analysis, the conflict and development analysis tool and UN conflict analysis practice-note are proposed. These tools combine the analysis of political risks with the analysis of human rights issues. Given that the analysis is further spread through the UN system, the tool seems to have significant potential.

[26]Ibid.

[27]UN Security Coucil working methods. Informal interactive dialogue [Electronic resource]. URL: https://www.securitycouncilreport.org/un-security-council-working-methods/informal-interactive-dialogue.php (date of access: 30.07.2020).

[28]Note on measures to enhance the efficiency and transparency of the work of the Security Council. UN Doc. S/2017/507.

[29]The reinvigorated resident coordinator system [Electronic resource]. URL: https://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/qcpr/2_%20The%20reinvigorated%20Resident%20Coordinator%20system.pdf (date of access: 30.07.2020).

[30]UN development assistance framework guidance [Electronic resource]. URL: https://unsdg.un.org/resources/united-nations-development-assistance-framework-guidance (date of access: 30.07.2020).

[31]Ibid.

## World Bank group

In line with a preventive and systemic approach, the UN and the WBG launched a joint global study "Pathways for peace. Inclusive approaches to preventing violent conflict". The study originates from the conviction that the international community's attention must urgently be refocused on prevention. A scaled-up system for preventive action would save between 5 and 70 bln US dollars per year, which could be reinvested in reducing poverty and improving the wellbeing of populations[32].

The prevention tools proposed by the study include monitoring risks of conflicts, capacity building, and quick resource allocation, the involvement of actors beyond states in dialogue and peacebuilding, ensuring that security and development are mutually supportive, the share of risk assessments among national authorities and international stakeholders, cooperation with collective mechanisms, a greater degree of coordination with the UN system[33].

The study "Pathways for peace. Inclusive approaches to preventing violent conflict" suggests the following vision on prevention tools:

1) development actors need to provide more support to national and regional prevention agendas through targeted, flexible, and sustained engagement;

2) to prevent societies from descending into crisis their resilience should be ensured through investment in inclusive and sustainable development;

3) the primary responsibility for preventive action rests with states, both through their national policy and their governance of the multilateral system;

4) exclusion from access to power, opportunity, services, and security creates fertile ground for mobilising group grievances to violence, especially in areas with weak state capacity or legitimacy or in the context of human rights abuse;

5) preventing violence requires departing from traditional economic and social policies when risks are building up or are high. It also means seeking inclusive solutions through dialogue, adapted macroeconomic policies, institutional reform in core state functions, and redistributive policies;

6) inclusive decision making is fundamental to sustaining peace at all levels, as are long-term policies to address economic, social, and political aspirations;

7) new mechanisms need to be established that will allow greater synergy among the various tools and instruments of prevention, in particular, diplomacy and mediation, security, and development[34].

These preventive tools are applied through the whole collaboration between the UN system and the WBG. In particular, the preventive approach was put forward in the UN and the WBG the humanitarian-development-peace initiative to establish joint platforms aligning country operations in Cameroon, the Central African Republic, Guinea-Bissau, Pakistan, Somalia, the Sudan, and Yemen[35]. Moreover, the prevention agenda performs as the methodology in the actions of numerous trust funds established under the framework of UN-WBG cooperation: UN Peacebuilding Fund, UN DP Crisis Prevention and Recovery Thematic Trust Fund, International Development Association, State- and Peace-Building Fund, Korean trust fund for economic and peace-building transitions, the system of multi-donor trust funds. Besides that, one of the effective prevention tools is the debt relief initiatives: heavily indebted poor countries initiative, the multilateral debt relief initiative, the debt reduction facility[36].

## UN office for the coordination of humanitarian affairs (UN disaster relief office)

The UN disaster relief office which is now the part of the UN office for the coordination of humanitarian Affairs (OCHA) has historical experience dealing with the prevention of disasters and emergencies. To a greater extent, the prevention agenda of the UN OCHA is based on capacity building aiming at creating preparedness at the national and regional levels. The main tools of OCHA are humanitarian assistance, advocacy, policy recommendations, plus, coordinated information management services.

OCHA provides information management services to the humanitarian community to inform a rapid, effective, and principled response. It gathers, shares, and uses data and information, underpinning coordination, decision-making, and advocacy. OCHA also adapts tools and methodologies for monitoring humanitarian response, including developing joint analysis with local communities, and with development, peacebuilding, environment, and other actors[37].

As a concrete prevention tool, the famine action mechanism (FAM) was launched by the WBG, the UN, the International Committee of the Red Cross, and some other global actors[38]. The FAM builds on existing famine early warning systems to enhance the capacity

[32]Pathways for peace: inclusive approaches to preventing violent conflict. Washington : World Bank, 2018.
[33]Ibid.
[34]Ibid.
[35]The humanitarian-development-peace initiative [Electronic resource]. URL: www.worldbank.org/en/topic/fragilityconflictviolence/brief/the-humanitarian-development-peace-initiative (date of access: 30.07.2020).
[36]International Development Association [Electronic resource]. URL: http://ida.worldbank.org/ (date of access: 30.07.2020).
[37]Information management [Electronic resource]. URL: https://www.unocha.org/our-work/information-management (date of access: 30.07.2020).
[38]Global humanitarian overview 2019 [Electronic resource]. URL: https://www.unocha.org/sites/unocha/files/GHO2019.pdf (date of access: 30.07.2020).

to forecast areas most at risk of famine. By leveraging the World Bank's analytics and partnering with global technology firms (including Microsoft, Google, Amazon Web Services and tech start-ups) the FAM explores the use of state-of-the-art technologies, such as artificial intelligence and machine learning, to provide more powerful early warnings to identify when food crises threaten to turn into famines.

The other example of the prevention tools establishment within the humanitarian risks agenda is the UN Central Emergency Response Fund established as the UN Global Emergency Response Fund[39]. The main idea of this tool is to provide urgent humanitarian assistance as soon as possible. These tools were able to allocate 418.2 mln US dollars for preventive action in 2017[40].

## Operationalisation of prevention of human rights violations at the UN Human Rights Council

The debates on the prevention of human rights violations escalated in 2018 when pen holders and the core group on the respective HRC resolution on the prevention mandate decided to establish a group of experts on the prevention of human rights violations to building a stronger link between the UN HRC in Geneva and the UN SC in New York. Before 2018, the HRC Resolution on prevention was submitted by Ukraine and did not operationalise the HRC prevention mandate: it served as an agenda-setting tool and initiated the OHCHR studies, workshops, panels. In comparison to sole Ukraine in 2010–2011 as the main sponsor, the 2016 HRC resolution on prevention included seven main sponsors: Australia, Hungary, Maldives, Morocco, Poland, Ukraine, Uruguay.

In 2018, when the core group decided to operationalise the prevention instruments of the HRC, Ukraine quitted from the sponsorship of the resolution and even did not participate in the respective proceedings of the HRC. The core coalition was based on two informal groupings: Human rights and conflict prevention caucus and Group of friends of the responsibility to protect. The HRC resolution on prevention in 2018 was submitted by Norway and Switzerland, with four sponsors (Colombia, Norway, Sierra Leone, Switzerland) and 53 co-sponsors. The resolution secured 419 100 US dollars for the activities of the experts who would allegedly develop the prevention mandate of the UN HRC after consulting the UN headquarters in New York and other relevant stakeholders. While the previous HRC resolutions had been adopted by consensus, the 2018 resolution did not meet consensus through was adopted.

Belarus elaborated on its position on the operationalisation of the prevention mandate of the UN HRC during the discussions with the appointed experts on prevention at the 2nd Intersessional seminar on prevention held on 8 October 2019 in Geneva. In its statement, Belarus aligned its position with the views of the LMG on the matter of operationalisation. Furthermore, Belarus expressed its concerns on the increasing degree of politicisation and double standards in the activities of the HRC, notably, in case of country-specific resolutions and absence of a coherent approach to all countries. According to the Belarusian diplomat, the operationalisation of the HRC prevention mandate needs consensus, which might be challenged by the unresolved issues of politicisation.

According to the statements by the representatives of the LMG countries, the prevention mandate of the HRC should be operationalised in accordance with the UN Charter, therefore, firstly, keeping the dividing lines between the mandates of the UN HRC and the UN SC, secondly, ensuring the primacy of states in the prevention of human rights violations. Regarding the prevention tools, the LMG suggested that technical assistance upon the consent of a state concerned could be an effective prevention tool to strengthen capacity building on the domestic level and effective prevention of human rights violations. Since human rights are interdependent, prevention of the root causes of violations shall be focused not only on civil and political rights, but also on economic, social, and cultural ones, notably, prevention could concentrate on the fight against poverty and right to development.

The LMG was cautious towards the efforts of a few states to use the prevention agenda to review the overall mandate of the council in circumvention of the General Assembly as its superior body. The LMG proposed that the prevention of human rights violations should be guided by the principles of universality, non-selectivity, impartiality, and constructive cooperation under the HRC institution-building package and the constituent resolution of the UN General Assembly.

According to the LMGs, the existing division of responsibilities among the principal UN organs should be kept. The linkage between the SC and the HRC should be discussed and decided universally. According to the LMG positions, no HRC procedure should not be prioritised or used to connect peace and security domains of the UN SC with the prevention of human rights violations of the UN HRC. A few delega-

[39]UN Central Emergency Response Fund [Electronic resource]. URL: https://cerf.un.org/about-us/who-we-are (date of access: 30.07.2020).
[40]Annual report 2017 [Electronic resource]. URL: https://cerf.un.org/sites/default/files/resources/cerf_ar_2017_en.pdf (date of access: 30.07.2020).

tions expressed concerns on whether the prevention of human rights violations would serve as an umbrella for the R2P.

If prevention interrelates peace and security with development and human rights, then how far is it different from "responsibility to protect"? On the one hand, according to the report by the International Commission on Intervention and State Sovereignty, the responsibility to protect has a strong human rights component that includes human rights violations as a root cause of the crisis and an early warning for the international community to directly act [6, p. 33]. On the other hand, the outcome of the 2005 World summit limited the application of the responsibility to protect genocide, war crimes, crimes against humanity, and ethnic cleansing thus constraining the human rights component of the responsibility to protect. Though the preparatory report for R2P explicitly included the prevention of conflict and not the prevention of human rights violations, the R2P was developed based on the interrelation between peace and security issues with human rights. For example, the report by the International Commission on Intervention and State Sovereignty discussed two types of prevention: root cause prevention efforts and direct cause prevention efforts. The first type related to addressing political needs and deficiencies, capacity building and strengthening democratic institutions, power-sharing, power-alternating and redistribution arrangements, confidence building between different groups or minorities, support for press freedom, and the rule of law, enabling space for civil society. Prevention efforts towards root causes could also include development assistance, access to external markets for developing states, technical assistance [6, p. 34–35]. The second type, aiming at direct cases, referred to straightforward assistance, unilateral coercive measures, direct involvement of the Secretary-General, COIs, fact-finding missions, groups of friends, dialogue and mediation through good offices, second-track dialogues, "naming and shaming", political isolation tactics, restrictive measures, suspension of organisation membership [6]. Some economic measures may include the International Monetary Fund or World Bank support, favorable trade terms, aid, or other assistance.

Following these discussions, Bertrand G. Ramcharan, the former UN high commissioner for human rights, suggested two types for the UN preventive diplomacy: primary – to build up the national protection system of every country with a strong emphasis on the prevention of human rights violations; and secondary – coordination of a coherent response from the UN on the basis of an early warning mechanism (from the UN HRC, Secretary-General, United Nations high commissioner for human rights, special procedures, treaty bodies, regional organisations) [6]. While these proposals may seem to bring a cumulative effect, they are still far away from the central point in the debates. The proposals on primary and secondary prevention seem to unite the diverging views among stakeholders on the prevention tools (early warning and response vs technical assistance and capacity building) but not on the link between New York and Geneva.

A variety of methodologies for prevention could be implemented. In 2010, NGO, Association for Prevention of Torture proposed direct and indirect prevention that largely reflected the ideas of root and direct prevention in R2P. In February 2018, Kate Gilmore, the UN deputy high commissioner for human rights, suggested four-level prevention of human rights violations comprised of primary, secondary, tertiary, and primordial prevention[41]. In April 2019, a think tank specialised in the UN HRC, the universal rights group, promoted the methodology of primary and secondary prevention.

The issue is not in the tools, types or methodologies for prevention, but rather in the questions of whether the domain of peace and security should be interrelated with human rights, and thus whether intergovernmental decision-making of the UN would be substituted with a non-governmental one. If these gaps would be bridged coherently, the prevention of human rights violations could become an effective tool to raise international consensus and enhance international cooperation in human rights. Belarus could engage constructively in these negotiations because Belarus has high potential in implementing the prevention of human rights violations, notably, through the fight against crime and human trafficking. Moreover, Belarus could contribute to the UN prevention agenda through initiatives in technical assistance and capacity building. The HRC annual country-specific resolution on Belarus could benefit more on the implementation phase if submitted not on the country-specific item 4, but rather on item 10 related to technical assistance and capacity building. The outcome would surely depend on the preparedness of all relevant stakeholders to foster international dialogue and refuse the politicisation of human rights.

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# THE ETIOLOGY OF THE EMERGENCE OF COVID-19 IN THE FRAMEWORK OF INTERNATIONAL TRANSFORMATION

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With every event affecting humanity, there are conspiracy theories, messages and hypotheses promoted by politicians, the military, intellectuals and clerics in societies and countries. There are many hypotheses about the source of COVID-19. The aim of this article is to identify the alleged origin of this virus. The article examines the main sources of the emergence of COVID-19 and sheds light on the opposing opinions regarding the outbreak of the virus in question. A significant number of Arabic and English sources have been introduced into scientific circulation, which clarified the origins of this epidemic. Due to a number of reasons for the emergence of a pandemic, the authour will divide them into several groups, which will contain a certain hypothesis considered from different points of view.

***Keywords:*** COVID-19; coronavirus; conspiracy theories; 5G; vaccines; Wuhan.

# ЭТИОЛОГИЯ ПОЯВЛЕНИЯ COVID-19 В РАМКАХ МЕЖДУНАРОДНОЙ ТРАНСФОРМАЦИИ

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Каждое событие, затрагивающее человечество, ведет к появлению теорий заговора, сообщений и гипотез, продвигаемых политиками, военными, интеллектуалами и священнослужителями в обществах и странах. Существует множество гипотез об источнике COVID-19. Цель данной статьи заключается в выявлении предполагаемого происхождения этого вируса. Исследуются основные источники возникновения COVID-19 и освещаются противоположные мнения относительно вспышки данного вируса. Значительное количество в научном обороте источников на арабском и английском языках прояснили происхождение этой эпидемии. Автор делит причины возникновения пандемии на несколько групп. Относительно каждой из них будет выдвинута определенная гипотеза, рассматриваемая с разных точек зрения. Следует отметить, что о каждой из этих групп будут высказаны противоположные мнения.

***Ключевые слова:*** COVID-19; коронавирус; теории заговора; 5G; вакцины; Ухань.

The COVID-19 pandemic has hit almost the entire planet, infecting millions of people around the world. As of November 2020, there have been 46 840 783 confirmed cases of COVID-19, including 1 204 028 deaths, reported to World Health Organisation (WHO)[1]. While countries and scientists have been making efforts to produce a vaccine against the coronavirus, its origins are still undetermined. The aim of this article is to

[1]WHO coronavirus disease (COVID-19) dashboard [Electronic resource]. URL: https://covid19.who.int/ (date of access: 04.09.2020).

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identify the alleged origin of this virus. For a better understanding, the authour will divide the origins of COVID-19 into a number of groups.

Thus, in the first group, plenty of Western and Eastern writers, journalists and doctors view COVID-19 as a biological weapon. For example, the Egyptian journalist Shaima Shaaban maintains, the virus that has recently hit the world is undoubtedly manufactured with high technology. That let us come to the conclusion that the next war will not be conventional by launching missiles, artilleries, warplanes, wearing military uniforms rather a biological battle in which science, modern technologies and scientific researches seem to be its tools in destroying the economy[2].

A similar opinion was echoed by journalist Ayman Hussein, noting that it is likely that the American special services were involved in creating the epidemic[3]. The British journalist Abdel al-Bari Atwan confirms, the USA is the only country in history to has used nuclear bombs in Japan. Based on that, it is not excluded the US will be the first in the world to use the "coronavirus bomb", and biological weapons, as long as they have stood behind all wars[4].

In the same context, the Egyptian security expert, Amr El-Zayat, believes that what has been circulating about the coronavirus, it is an American biological warfare in an attempt to stop China's development[5].

It is worth mentioning, that few Arab analysts dismiss these kinds of theories. For instance, the economic analyst Talal Abu-Ghazali rules out America's involvement in the spread of the coronavirus in China[6]. From the perspective of the Palestinian writer Muhammad Amin, the feeling of uncertainty and loss of control make us more inclined to believe conspiracy theories. The COVID-19 is not a nuclear or biological cosmic conspiracy. The two superpowers, America and China, have been affected by the virus. Currently, America is being leading the world in the number of casualties, so is that possible the US is conspiring against itself. If so, why, then, did not America create the antidote and give it to the American citizens? Moreover, how come Donald Trump create a plot that would minimise his chance of being a reelected president and destroy his own country's economy? Muhammad Amin asks[7].

In the framework of the second group, scholars and clerics maintain that there is a link between installing 5G antennas and the spread of the virus. As an example, the American scientist Thomas Cowan claims that the coronavirus does not exist at all. According to him, more than one hundred thousand satellites have been installed in the sky. These satellites send out electromagnetic vibrations much higher than that can be tolerated by human bodies. He explains, as we know, the human body works at two and a half gigahertz, but the fifth-generation technology emits six gigahertz. Besides the electrification of the planet, the cells inside the human body have started to release toxic substances. Furthermore, the scientist points out that the rapid spread of the virus in the world indicates that it is not transmitted from person to person as it is alleged but rather it is electronic radiation from the satellites. The evidence of that, COVID-19 has reached out to very far apart regions of the world at the same moment[8].

Another statement on the same issue was made by the former Grand Mufti of Egypt and the famous Islamic scholar Ali Gomaa during the interview. Lunching hundreds of thousands of satellites to get the fifth-generation antennas operated, has prepared the atmosphere for the outbreak of the virus due to the change in the electromagnetism of the Earth, he underscored[9].

In addition to this, the Arab doctor Violet Dagher connected the spread of the Spanish flu with launching radar around the world, also, she linked the outbreak of Asian flu to the emergence of the internet and the

[2]Coronavirus: between the economic repercussions and conspiracy theories [Electronic resource]. URL: https://www.bbc.com/arabic/inthepress-51406492 (date of access: 09.07.2020).

[3]Ibid.

[4]*Atwan Abdel al-Bari*. China accuses America of "officially" inventing the coronavirus and spreading it in Wuhan [Electronic resource]. URL: https://www.raialyoum.com/index.php/%D8%A7%D9%84%D8%B5%D9%8A%D9%86-%D8%AA%D8%AA%D9%87%D9%85-%D8%A3%D9%85%D8%B1%D9%8A%D9%83%D8%A7-%D8%B1%D8%B3%D9%85%D9%8A%D8%A7-%D8%A8%D8%A7%D8%AE%D8%AA%D8%B1%D8%A7%D8%B9-%D9%81%D9%8A%D8%B1%D9%88/ (date of access: 14.07.2020).

[5]America's influence will weaken, and China, Russia, India and Egypt will enter the arena [Electronic resource]. URL: https://arabic.rt.com/middle_east/1102921-%D8%AE%D8%A8%D9%8A%D8%B1-%D9%86%D9%81%D9%88%D8%B0-%D8%A3%D9%85%D8%B1%D9%8A%D9%83%D8%A7-%D8%B3%D9%8A%D8%B6%D9%81%D8%B9-%D9%88%D8%B3%D8%AA%D8%AD%D8%AA%D9%84-%D8%A7%D9%84%D8%B3%D8%A7%D8%AD%D8%A9-%D8%AF%D9%88%D9%84-%D9%83%D8%A7%D9%84%D8%B5%D9%8A%D9%86-%D9%88%D8%B1%D9%88%D8%B3%D9%8A%D8%A7-%D9%88%D8%A7%D9%84%D9%87%D9%86%D8%AF-%D9%88%D9%85%D8%B5%D8%B1 (date of access: 01.09.2020).

[6]*Abu Ghazali T*. Coronavirus is not an American production [Electronic resource]. URL: http://www.jfranews.com.jo/post.php?id=260572 (date of access: 14.07.2020).

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[8]Dr Thomas Cowan on COVID-19 from 5G [Electronic resource]. URL: https://sites.google.com/a/wabiz.org/www/Home/news/drthomascowanoncovid-19from5g?overridemobile=true (date of access: 04.09.2020).

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spread of COVID-19 with the rollout of 5G[10]. Irrespective of these claims, the WHO has confirmed that viruses cannot be transmitted via radio waves or mobile phone networks. COVID-19 has spread in many countries, such as Iran, the Netherlands, and Britain, where there are no fifth-generation mobile phone networks, it stated[11].

At that point, the website "Fatabyyano", which fights fake news, clarifies that the theory of the fifth-generation networks is baseless, as mobile communication technology does not use satellites to send data at all, but rather the fiber-optic cables are used because they are more efficient, faster and less expensive. Furthermore, the website indicates that the number of satellites orbiting the Earth does not exceed 2 500 in contrast to what some think[12].

In addition, the professor of microbiology at the University of Reading in England, Simon Clark, describes that electromagnetic waves can damage the body's organs by increasing its temperature and weakening the immune system, but the energy levels of the fifth-generation electromagnetic waves are very small and they cannot have sufficient power to have an effect on the body[13]. The professor of pediatrics, Adam Finn, affirms the 5G waves cannot cause infection. The current epidemic's reason is a virus transmitted from one infected person to another[14].

In terms of the third group, a number of thinkers, such as the Venezuelan thinker Naim Moise, who does not rule out that, in the future, historians will consider the current epidemic as one of the climate-related that rocked the planet[15]. Likewise, Thomas Jefferson, the senior researcher at the Centre for Evidence-Based Medicine in Oxford, points out that environmental changes have triggered the emergence of the virus. Based on the evidence from various countries, the scientist refers, in March 2019, 9 months before the outbreak of COVID-19 in Wuhan (China), the virus was detected in wastewater samples in Barcelona (Spain). In December 2019, the coronavirus was, also, found in samples taken from Turin and Milan (Italy). In his view, the virus was everywhere. Perhaps it was a dormant virus activated by environmental conditions. As an example, he cited an infection case, which had emerged on board the ship traveling from South Georgia Island in the South Atlantic Ocean to the Argentine capital Buenos Aires. The case was confirmed on the eighth day of the voyage when the ship was crossing the Weddell Sea, Thomas Jefferson underlined[16].

He compared the coronavirus to the Spanish flu epidemic that took the lives of about 100 million people around the world in 1918–1920, noting that about 30 % of the Samoan population died because of the flu, however, they had no contact with the outside world. He added, that viruses always exist, but there is something that makes them active at a certain moment, perhaps population density or environmental conditions could be[17].

For that matter, the Lebanese doctor Violet Dagher says that the bewildering question is how to explain that 940 captains out of 2 300 contracted the virus on the aircraft carrier Charles de Gaulle, at a time when it was in the sea for a long time without any contact with the world. According to her, that could mean the virus had spread before it was officially announced[18].

As far as the fourth group is concerned, several doctors assume the wet markets in Wuhan (China) are responsible for the outbreak of the virus. They suppose

[10]*Dagher V*. About the book that predicted coronavirus [Electronic resource]. URL: https://www.almayadeen.net/articles/blog/1392872/%D8%B9%D9%86-%D8%A7%D9%84%D9%83%D8%AA%D8%A7%D8%A8-%D8%A7%D9%84%D8%B0%D9%8A-%D8%AA%D9%88%D9%82%D8%B9-%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7---%D8%A8%D9%85%D8%A7%D8%B0%D8%A7-%D9%8A%D9%86%D8%A8%D9%8A-%D8%A7%D9%84%D9%81%D9%8A%D8%B1%D9%88%D8%B3-%D8%A7%D9%84%D8%AA%D8%A7%D8%AC%D9%8A (date of access: 12.08.2020).

[11]5G technology is not linked to the spread of COVID-19 [Electronic resource]. URL: https://www.covid19facts.ca/en/fact-checked/5g-technology-is-not-linked-to-the-spread-of-covid-19 (date of access: 04.09.2020).

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[14]Ibid.

[15]*Naim M*. Coronavirus and global warming. Where is the world heading for? [Electronic resource]. URL: https://www.aljazeera.net/news/politics/2020/5/4/%D8%A7%D9%84%D8%A7%D8%AD%D8%AA%D8%A8%D8%A7%D8%B3-%D8%A7%D9%84%D8%AD%D8%B1%D8%A7%D8%B1%D9%8A-%D9%88%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7-%D9%88%D9%82%D8%B6%D8%A7%D9%8A%D8%A7-%D8%A3%D8%AE%D8%B1%D9%89-%D8%A5%D9%84%D9%89-%D8%A3%D9%8A%D9%86-%D9%8A%D8%AA%D8%AC%D9%87-%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85 (date of access: 12.08.2020).

[16]*Burki T*. The origin of SARS-CoV-2 [Electronic resource]. URL: https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30641-1/fulltext (date of access: 04.09.2020).

[17]Ibid.

[18]*Dagher V*. About the book that predicted coronavirus [Electronic resource]. URL: https://www.almayadeen.net/articles/blog/1392872/%D8%B9%D9%86-%D8%A7%D9%84%D9%83%D8%AA%D8%A7%D8%A8-%D8%A7%D9%84%D8%B0%D9%8A-%D8%AA%D9%88%D9%82%D8%B9-%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7---%D8%A8%D9%85%D8%A7%D8%B0%D8%A7-%D9%8A%D9%86%D8%A8%D9%8A-%D8%A7%D9%84%D9%81%D9%8A%D8%B1%D9%88%D8%B3-%D8%A7%D9%84%D8%AA%D8%A7%D8%AC%D9%8A (date of access: 12.08.2020).

that COVID-19 may have been carried to humans through a mediator. Professor Stanley Perelman, the pioneering immunologist at the University of Iowa and the expert on previous coronavirus diseases coming from animals, presumes that an animal could have served as a mediator, but it has not yet been proven that pangolins are the "main mediator", although they are one of the possibilities[19]. Regarding the pangolins, the International Union for Conservation of Nature states that pangolin is the most illegally traded mammal in the world. Because of their meat and the supposed medicinal benefits, they are prised.

In this connection, some doctors suggest it is very likely that the virus came from bats, but it had passed through an intermediate animal in the same way that another coronavirus – the SARS virus breaking out in 2002 – passed from a horseshoe bat to a cat-like civet before it infected humans. For example, Michael Baker, the immunologist at the Australian Research Centre that does researches on viruses in bats, clarifies, that we do not really know the accurate origin of COVID-19. It is somehow related to the market in Wuhan, and people who went there got infected. From his perspective, the very likely scenario is that the virus originated in a bat, but we cannot be sure about it because the Chinese workers cleaned up the market very quickly[20].

In point on a mediator, the professor Edward Holmes, from the University of Sydney, emphasises that the identity of the species that acted as an intermediate host for the virus remains uncertain. The idea of interacting the person with the animal carrying COVID-19 in the market is just a possible speculation about the emergence of the coronavirus. Another possible scenario is that the virus could have developed after being transmitted to humans from one person to another, he adds[21].

The next set of hypotheses on the emergence of the epidemic centres around the laboratory in Wuhan. Whilst most scientists believe, the source of COVID-19 is the wet markets, US chanel "Fox News" published, Beijing deliberately blamed the market in an attempt to dispel doubts about the involvement of the laboratory that gave rise to the disaster. It was said that there were never bats on the market[22]. According to the American newspaper "Washington post", in 2018, after many frequent visits of American diplomats to the Chinese research institute, they sent two warning messages to Washington, stating that safety measures were insufficient in the laboratory. The diplomats expressed their concerns about weaknesses in safety and management procedures at the Institute of Virology in Wuhan. The research conducted by the laboratory on the coronavirus in bats could lead to a new widespread disease similar to the SARS epidemic[23].

In response to that, Yuan Ziming, the director of the Institute of Virology in Wuhan, has accentuated, that it is impossible that the virus originated from the laboratory[24]. In the same context, the Chinese foreign ministry speaker, Gao Li Jin stated, WHO officials made it clear that there was no evidence that the new coronavirus was created in the laboratory[25]. WHO spokeswoman Fadela Chaib said that it is probable, likely, that the virus is of animal origin[26].

Yet, the presence of the Institute of Virology close to the market in question has raised speculations about releasing the virus from these sensitive facilities.

It is noteworthy that the Institute of Virology in Wuhan, which has been carrying out researches on coronavirus in bats, is well known. These tests have been legal and published in international journals. In this regard, in 2020, the American channel "Fox News" issued an exclusive report on the coronavirus. It was said that COVID-19 was not a biological weapon used by China, but rather it was a part of Beijing's plans to demonstrate its efforts in the field of viruses' detection and fighting them. Additionally, China has been trying to prove that it has not been less powerful and even has surpassed the United States. According to the network, the virus leaked by mistake from the laboratory in Wuhan during a virus testing process. Fox News referred that Ameri-

[19]The coronavirus may not have originated in China, says Oxford professor [Electronic resource]. URL: https://www.sciencefocus.com/news/the-coronavirus-may-not-have-originated-in-china-says-oxford-professor/ (date of access: 04.09.2020).

[20]How did coronavirus start, and did it really come from the Wuhan market? The story of the pandemic from the beginning until now [Electronic resource]. URL: https://arabicpost.net/%D8%AA%D8%AD%D9%84%D9%8A%D9%84%D8%A7%D8%AA-%D8%B4%D8%A7%D8%B1%D8%AD%D8%A9/2020/04/13/%D9%83%D9%8A%D9%81-%D8%A8%D8%AF%D8%A3-%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7%D8%8C-%D9%88%D9%87%D9%84-%D8%A3%D8%AA%D9%89-%D9%85%D9%86-%D8%B3%D9%88%D9%82-%D9%88%D9%88%D9%87%D8%A7%D9%86-%D8%AD%D9%82%D8%A7/ (date of access: 04.09.2020).

[21]Nature medicine [Electronic resource]. URL: https://www.nature.com/articles/s41591-020-0820-9 (date of access: 04.09.2020).

[22]Sources believe coronavirus outbreak originated in Wuhan lab as part of China's efforts to compete with US [Electronic resource]. URL: https://www.foxnews.com/politics/coronavirus-wuhan-lab-china-compete-us-sources (date of access: 11.09.2020).

[23]*Rincon P.* Coronavirus: is there any evidence for lab release theory? [Electronic resource]. URL: https://www.bbc.com/news/science-environment-52318539 (date of access: 11.09.2020).

[24]The Chinese laboratory, accused of causing the spread of coronavirus, is breaking its silence [Electronic resource]. URL: https://arabic.rt.com/world/1105604-%D8%A7%D9%84%D9%85%D8%AE%D8%AA%D8%A8%D8%B1-%D8%A7%D9%84%D8%B5%D9%8A%D9%86%D9%8A-%D8%A7%D9%84%D9%85%D8%AA%D9%87%D9%85-%D8%A8%D8%A7%D9%84%D8%AA%D8%B3%D8%A8%D8%A8-%D8%A8%D8%A7%D9%86%D8%AA%D8%B4%D8%A7%D8%B1-%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7-%D9%8A%D8%AE%D8%B1%D8%AC-%D8%B9%D9%86-%D8%B5%D9%85%D8%AA%D9%87/ (date of access: 07.08.2020).

[25]Ibid.

[26]Coronavirus disease 2019 (COVID-19) situation report-94 [Electronic resource]. URL: https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19.pdf (date of access: 04.09.2020).

ca always helped China to conduct experiments in the field of viruses detection and control before the Chinese scientists set out to study this virus on their own in the laboratory[27]. As for "patient zero", the newspaper outlined that it belonged to a researcher working in the laboratory. While testing for the virus, she accidentally contracted an infection that caused the virus to spread outside the laboratory a few days before her death[28].

Some scientists mentioned that the Chinese government knew about the virus. As an example, in December 2019, the virologist Li Mingyan working at the school of public health at the University of Hong Kong, unveiled some details about the emergence of the coronavirus, confirming that the authorities deliberately hid the information on the virus. At the beginning of the outbreak of the epidemic, her bosses tried to silence her when she was warning them of the dangerous virus, she added[29].

For its part, the University of Hong Kong denied Li Mingyan's statement, affirming that she has never studied the transmission of COVID-19 from one person to another and, therefore her claims were not based on any scientific ground[30].

With reference to the next group, there are religious explanations behind the spread of the virus. Many opinions have been circulated in the Islamic world indicating that coronavirus is a divine punishment for China for its treatment of the Uighurs in China. Yet, some Arab journalists, such as Muhammad Amin, considers that such interpretations and linking them to religion are an offense to it. If the coronavirus was a divine punishment against China and "the countries of the infidels", why, then, did it strike Muslim countries? Does the epidemic differentiate between followers of different religions? The journalist asks[31].

On the other hand, the intrusion of religion in explaining the phenomenon is not only restricted to Muslims. In this regard, the British journalist Mahdi Hasan highlights the attempts of anti-Islam fanatics to use the coronavirus situation to demonise Muslims. For example, in India, supporters of the right-wing Bharatiya Janata Party called the spread of the virus corona jihad. They claimed that the epidemic was a conspiracy by Muslims to infect and poison Hindus. The Indian government attributed the infection of about a third of the confirmed cases of COVID-19 to a gathering held by a conservative Islamic group in Delhi known as the Tablighi Jamaat[32].

Furthermore, Mahdi Hasan cites the words of the American authour and radio presenter Neil Bortz, who published on Twitter: "Do you think COVID-19 is so bad? Wait until the Muslim population reaches a critical number in America. Then we will look nostalgically to the old days in which we are living now. From Mahdi Hasan's standpoint, we may succeed in defeating the coronavirus in the near future, but we will need a very long time to overcome "Islamophobia""[33].

Within the last group, the coronavirus is a hoax, as it was manufactured to sell vaccines with which the population would be controlled by artificial intelligence technologies. For instance, David Icke, an English conspiracy theorist, considers that the virus is a conspiracy and a game run by a "behind-the-scenes world sect" to bring about their economic and financial plans applying artificial intelligence technologies[34]. In fact, since the beginning of the pandemic, dozens of rumors have been circulated in many languages on the social networks targeting members of this sect, such as Bill Gates. He has been accused of exploiting the COVID-19 vaccine to get a handle on people by implanting a subcutaneous chip along with the vaccine. These chips will be linked to the individuals' social media profiles in order to control them via the fifth-generation communication technology. These theories

[27]Sources believe coronavirus outbreak originated in Wuhan lab as part of China's efforts to compete with US [Electronic resource]. URL: https://www.foxnews.com/politics/coronavirus-wuhan-lab-china-compete-us-sources (date of access: 11.09.2020).

[28]Ibid.

[29]We may disappear. A fugitive Chinese scientist explodes a surprise about coronavirus [Electronic resource]. URL: https://www.alarabiya.net/ar/medicine-and-health/2020/07/11/%D8%B9%D8%A7%D9%84%D9%85%D8%A9-%D8%B5%D9%8A%D9%86%D9%8A%D8%A9-%D8%AA%D9%81%D8%AC%D8%B1-%D9%85%D9%81%D8%A7%D8%AC%D8%A3%D8%A9-%D9%86%D8%A8%D9%87%D8%AA%D9%87%D9%85-%D8%AD%D9%88%D9%84-%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7-%D9%81%D8%A3%D8%B3%D9%83%D8%AA%D9%88%D9%86%D9%8A (date of access: 20.08.2020).

[30]The University of Hong Kong responds to a virologist who claimed China's reluctance to announce the outbreak of coronavirus [Electronic resource]. URL: https://arabic.rt.com/world/1133841-%D8%AC%D8%A7%D9%85%D8%B9%D8%A9-%D9%87%D9%88%D9%86%D8%BA-%D9%87%D9%88%D9%86%D8%BA-%D8%AA%D8%B1%D8%AF-%D8%B9%D9%84%D9%89-%D8%AA%D8%B5%D8%B1%D9%8A%D8%AD%D8%A7%D8%AA-%D8%B9%D8%A7%D9%84%D9%85%D8%A9-%D9%81%D9%8A%D8%B1%D9%88%D8%B3%D8%A7%D8%AA-%D8%A8%D8%B4%D8%A3%D9%86-%D9%85%D8%B9%D8%B1%D9%81%D8%A9-%D8%A7%D9%84%D8%B5%D9%8A%D9%86-%D8%A7%D9%84%D9%85%D8%B3%D8%A8%D9%82%D8%A9-%D8%A8%D8%AA%D9%81%D8%B4%D9%8A-%D9%81%D9%8A%D8%B1%D9%88%D8%B3-%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7/ (date of access: 20.08.2020).

[31]*Amin M.* The conspiracy is a theory, not nonsense, and this is the evidence [Electronic resource]. URL: https://blogs.aljazeera.net/blogs/2020/4/3/%D8%A7%D9%84%D9%85%D8%A4%D8%A7%D9%85%D8%B1%D8%A9-%D9%86%D8%B8%D8%B1%D9%8A%D8%A9-%D9%88%D9%84%D9%8A%D8%B3%D8%AA-%D9%87%D8%B1%D8%A7%D8%A1-%D9%88%D9%87%D8%B0%D8%A7-%D9%87%D9%88-%D8%A7%D9%84%D8%AF%D9%84%D9%8A%D9%84 (date of access: 01.09.2020).

[32]*Hasan M.* The coronavirus is empowering islamophobes – but exposing the idiocy of islamophobia [Electronic resource]. URL: https://theintercept.com/2020/04/14/coronavirus-muslims-islamophobia/ (date of access: 14.08.2020).

[33]Ibid.

[34]Coronavirus: conspiracy theories about the fifth generation and microchips are spreading globally [Electronic resource]. URL: https://www.bbc.com/arabic/world-53206583 (date of access: 12.08.2020).

have also contained claims that Bill Gates'aim is to get rid of 15 % of the world's population through the vaccines, which Bill Gates has invested in[35]. In this regard, the journalist Faisal al-Qasim says, people, who have doubts about the conspiracy theory, they argue that the epidemic has hit the most powerful countries, so how come they kill themselves! To his opinion, in the game of chess the player considers all stones as his children, including the small pawns, but when he starts playing, he begins to sacrifice his stones in order to keep the king alive and win the game. America destroyed the twin towers in New York just to justify its subsequent projects internally and externally. Taking that into account, COVID-19 is a part of the game, the journalist confirms[36].

However, Bill Gates has expressed his confidence that the truth will out and these conspiracy theories will disperse. He has also stressed that the spread of such misinformation would make people reluctant in taking the COVID-19 vaccines. From his point of view, if that happened, the situation would get much worse in poor countries, which are in dire need of vaccines and, therefore, they would face a catastrophic fate[37].

In conclusion, although there are a number of hypotheses accounting for the emergence of COVID-19, none of the groups mentioned above allow us to reveal how and where it stemmed from. On one hand, the authour can come to terms that a few hypotheses may uncover the reasons for the outbreak of COVID-19 to some extent. For example, the environmental, climate changes, and the 5G technology's impact might give a logical explanation of how people got infected while they had been isolated or unconnected, or how some countries have been hit by the virus. In addition to this, based on the low safety and management procedures at the Institute of Virology in Wuhan, the authour cannot rule out the prospect of the unintended leakage of this plague from the laboratory in Wuhan (China) or its emergence in the wet markets there. Concerning the hypothesis on being COVID-19 a biological weapon, it calls into question. However, given the history of using biological and nuclear weapons by some countries, particularly, the United States, this possibility is allowed. On the other hand, the author asserts that religion-based explanations and rumors around Bill Gates' role are nothing but a media epidemic. Undoubtedly, this kind of misinformation, fueled by conspiracy theories, could have potentially serious effects on the individuals and society if they took a lead over evidence-based guidelines. Having said that, the international agencies, governments, and social media must track and deal with the "information epidemic" to avoid the circulation of such kind of misinformation. Also, individuals should have an active part to play and be mindful not to automatically share what they receive at the moment. The authour would stress, that COVID-19 has changed the world and will therefore have geopolitical repercussions that could lead to a reformatting the world order. This topic will be the author's next article titled "International transformation in the context of COVID-19".

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[35]A new conspiracy theory: Bill Gates is behind the origin and spread of the coronavirus [Electronic resource]. URL: //arabic.rt.com/society/1104324-%D9%86%D8%B8%D8%B1%D9%8A%D8%A9-%D9%85%D8%A4%D8%A7%D9%85%D8%B1%D8%A9-%D8%A8%D9%8A%D9%84-%D8%BA%D9%8A%D8%AA%D8%B3-%D9%86%D8%B4%D8%A3%D8%A9-%D8%A7%D9%86%D8%AA%D8%B4%D8%A7%D8%B1-%D9%81%D9%8A%D8%B1%D9%88%D8%B3-%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7/ (date of access: 30.07.2020).

[36]*Faisal al-Qasim.* Horrific and confusing theories about corona virus. Whom does we believe? [Electronic resource]. URL: https://shaamtimes.net/231291/%d9%81%d9%8a%d8%b5%d9%84-%d8%a7%d9%84%d9%82%d8%a7%d8%b3%d9%85-%d9%86%-d8%b8%d8%b1%d9%8a%d8%a7%d8%aa-%d9%83%d9%88%d8%b1%d9%88%d9%86%d9%8a%d8%a9-%d9%85%d8%-b1%d8%b9%d8%a8%d8%a9-%d9%88%d9%85%d8%ad%d9%8a/ (date of access: 01.07.2020).

[37]Bill Gates denies conspiracy theories that say he wants to use coronavirus vaccines to implant tracking devices [Electronic resource]. URL: https://www.cnbc.com/2020/07/22/bill-gates-denies-conspiracy-theories-that-say-he-wants-to-use-coronavirus-vaccines-to-implant-tracking-devices.html (date of access: 11.09.2020).

*UDC 339*

# DEVELOPMENT OF THE EAEU REGIONAL TRADE THROUGH THE FORMATION OF SOME INSTITUTIONAL AND ECONOMIC FACTORS OF INTEGRATION

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The article analyses the inconsistency of the current state of the EAEU mutual trade. On the one hand, it is characterised by low quantitative indicators and objective difficulties in increasing volumes. On the other, the current practice of increasing foreign trade by countries shows not only how to use features in a single space but also about opportunities for the protection of national entities at their national segments of the union market. Creation of the new factors of competitiveness at the present stage of integration of the EAEU requires a common approach to the formation of common markets, the use of single technical regulations of the Eurasian Economic Union, and additional growth in the mobility of existing factors of production, that has a significant impact on the increased trade in comparison with the further reduction of customs tariffs, and an additional increase in the mobility of existing factors of production.

***Keywords:*** economic integration; regional trade; trade with third countries; Eurasian integration; free movement of goods, services, capital, labour; obstacles to trade; restrictions on free trade; exceptions to the general rules of trade; barriers to mutual access to the domestic market.

# РАЗВИТИЕ РЕГИОНАЛЬНОЙ ТОРГОВЛИ ЕАЭС ПОСРЕДСТВОМ ФОРМИРОВАНИЯ НЕКОТОРЫХ ИНСТИТУЦИОНАЛЬНО-ЭКОНОМИЧЕСКИХ ФАКТОРОВ ИНТЕГРАЦИИ

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Анализируется противоречивость современного состояния взаимной торговли ЕАЭС. С одной стороны, в данной сфере сейчас наблюдаются низкие количественные показатели и объективные сложности наращивания объемов. С другой – сложившаяся практика наращивания внешней торговли странами говорит не только о преимуществах единого пространства, но и об использовании возможностей защиты национальных субъектов хозяйствования на своих национальных сегментах союзного рынка. Для создания новых факторов роста конкурентоспособности на современном этапе интеграции ЕАЭС требуется универсальный подход к формированию общих рынков, использованию единых технических регламентов ЕАЭС, ощутимо воздействующих на увеличение объема торговли по сравнению с дальнейшим снижением таможенных тарифов на дополнительный рост мобильности имеющихся факторов производства.

***Ключевые слова:*** экономическая интеграция; региональная торговля; торговля с третьими странами; евразийская интеграция; свободное движение товаров, услуг, капитала, рабочей силы; препятствия торговле; ограничения свободной торговли; изъятия из общих правил торговли; барьеры для взаимного доступа на внутренний рынок.

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## Introduction

Summarising the theoretical ideas about the integration processes in different countries, the most important and most often deployed criteria of assessment are the depth of integration, which determines the stage of rapprochement (first of all the sequence of measures for liberalisation, facilitation of mutual trade and also assuming the adoption (or not) of supranational norms and rules by states), the possibilities of economic growth and development associated with the facilitation of mutual trade (the effects of the creation and deviation of trade flows, opportunities and indicators of movement (reallocation) of production). Modern studies of integration processes highlight differences in the integration goals and effects for countries with emerging markets in comparison with developed countries. Convergence within the borders of the customs union does not always lead all participating countries to an increase in prosperity, the rapprochement is not equally favorable for their foreign trade and mutual investments, because countries differ in their starting conditions and planned goals, and for the general growth of trade there must be sectoral and infrastructure opportunities. Even free trade is not an unambiguous condition for economic growth: as empirical studies of the efforts of different countries to increase trade show, this growth can be limited by both internal and external factors. Among these factors are the monopoly of national markets and the presence or absence of policies limiting it; the effectiveness of domestic taxation and subsidies; the imperfection of labour and capital markets, which can be expressed in the rigidity of wages to a decrease or increase in bank interest rates in the context of inflation regulation [1, p. 595–598]. Meanwhile, the Treaty on the EAEU defines among the main goals of the union on the development of comprehensive modernisation, cooperation, and increasing the competitiveness of national segments of the economy which are factors in the sustainability of foreign trade growth and overall economic growth in general.

Thus, in the studies of Eurasian integration, the whole range of measures to improve the common space of trade, which was formed within the borders of the customs union, is of interest. As early as in the 1950s, Jacob Viner noted that the benefits in the customs union do not always occur, and the probability of this is greater if large economies integrate and use protectionist barriers to trade to protect important industries in their economies.

In any case, the elimination of trade barriers is not identical to the movement towards free trade, according to Jacob Viner. Depending on the sectoral structure of the union's economy, the structure of imports of intermediate goods, and the specifics of the regional division of labour, it is possible to "strengthen protection from foreign competition by lowering duties and weaken this protection by raising duties" [2, p. 702]. Thus, changes in tariff policy in any direction may lead to a decrease in imports from third countries, but it will be favorable only when trade in the united market increases and production becomes more efficient.

## Obstacles to the foreign trade

In this regard, it should be noted that the modern international economy is dominated by small open economies (especially integrating ones), for which strict protectionism is in any case an impossible and expensive policy. If we consider the European or Eurasian integration of countries, the position of protectionism does not seem constructive, because they lead to the loss of the benefits of free trade with third countries, and the unification of countries into a common customs territory does not always bring the benefits of free trade between the united countries.

Summarising the results of various studies of integration directions, Alexander Knobel identifies two main motives, conventionally called creative and redistributive [3, p. 88–89]. The creative changes include those that lead to the release of mutual trade from restrictions within integration, which can be interpreted as obtaining additional resources and increasing their efficiency in the development of foreign trade relations. Any persistence of barriers to trade between the united countries generates inefficiency in the use and reproduction of resources, reduces the efficiency of their distribution and rationality of use in the economies of the partner countries. "In the absence of such barriers to trade between countries, various sectors of the economy of a particular group of countries could produce, sell to each other, and consume large volumes of products. Removing mutual trade barriers frees up, that is, actually creates, resources that were not previously produced, which are distributed among the participants of the integration association, thereby increasing its competitiveness" [3, p. 89].

The redistributive integration changes are due to the expansion of the integration association at the expense of new member states, whose interests are in obtaining economic or non-economic benefits from the transfer of the resources of other countries in their favour. "Integration associations based on motivation of the second type are able to expand and involve new participants faster than those based on motivation of the first type, since they can offer them concrete financial benefits in the short term. However, the total competitiveness of agreements of this type grows much more slowly (or does not grow at all) than agreements

of the first type" [3, p. 89]. Thus, the EAEU is seen as an integration of the redistributive direction of development, where an increase in the overall scale of the market has limited opportunities to influence the efficiency of production and mutual trade due to structural and institutional differences in the economies of the integrating countries.

It is also a common but disputed practice to increase barriers to domestic trade. For example, the current stage of development of the EAEU is associated with the active search for ways to preserve markets for their producers by member states. The strengthening of integration initiatives is explained both by the interest of countries in specialisation in the most profitable sectors and activities, in using their competitive advantages in these areas, and the desire to preserve national markets for their producers. Each country within the integration seeks to expand markets for their own goods and services, but resolutely uses available means to limit access to national segments of the union market. And this should be seen as an opposing effort.

The Treaty on the EAEU defines among the main objectives of the union – the development of comprehensive modernisation, cooperation, and increasing the competitiveness of national economies in the global economy. On the one hand, competitiveness within the framework of integration is formed due to uniform requirements for customs and tariff foreign trade regulation, and, on the other hand, it is supported on national markets through obstacles to trade with other member states of the EAEU.

Obstacles in the internal market of the union in a separate branch (sphere of activity) of any national segment (national market of the member state) are possible because the regulation of national markets involves both supranational regulation of the internal market of the union and state economic regulation of the national segment of the internal market by the legislation of the member state of the union. It is necessary to highlight, that the law of the union provides (for application by the member states in the national segment of the internal market of the union) exceptions to the general rules of functioning of the internal market of the union:

1) exemptions;

2) measures applied unilaterally by member states in cases where such a procedure is permitted under the law of the union;

3) the restrictions provided by the legislation of the member states in cases when regulation of the corresponding legal relations is carried out according to the law of the union at the level of the legislation of the member states[1].

For example, the general principles of technical regulation set out in Art. 51 of the Treaty on the EAEU presuppose the establishment of uniform mandatory requirements in the technical regulations of the union or national mandatory requirements in the legislation of the member states for products included in the unified list of products for which mandatory requirements are established within the union. At the same time, the application and execution of technical regulations of the union in the member states without exceptions is required and the establishment of excessive barriers for conducting business activity; obstacles for the formation and functioning of the internal market of the union are not allowed. As a rule, obstacles are expressed in the presence of requirements or prohibitions regarding the free movement of goods, services, capital, labour, as well as mutual access of business entities to the market of the member states[2]. Within the framework of any integration, there may be such requirements or prohibitions that will act in order to limit the level of competition of importers with domestic producers.

The resolution of the Board of the Eurasian Economic Commission No. 152 of 14 November 2017, approved the Methodology for dividing obstacles in the internal market of the Eurasian Economic Union into barriers, exemptions and restrictions. According to this resolution, obstacles in the internal market of the union are divided into barriers, exemptions, and restrictions.

Word "barriers" refers to "obstacles to the free movement of goods, services, capital, and workforce within the functioning of the internal market of the union not corresponding with the law of the union", in other words, "the standards prescribed by union law"[3]. Barriers to mutual access to the domestic market are the most tangible obstacle to the formation of single or common markets of the EAEU, because they do not comply with the law of the EAEU, and the presence of exemptions and restrictions is permissible, although it should be minimal[4].

Exemptions allow the member state not to apply the general rules of functioning of the internal market of the union, they are provided by the law of the union exceptions (derogations) from the general rules of free

[1]Доклад Евразийской экономической комиссии о ситуации по устранению препятствующих функционированию внутреннего рынка Евразийского экономического союза барьеров для взаимного доступа, а также изъятий и ограничений в отношении движения товаров, услуг, капитала и рабочей силы. М. : ЕЭК, 2015. С. 24–25.

[2]Ibid. P. 22–23.

[3]Барьеры, изъятия и ограничения Евразийского экономического союза : доклад Евраз. Эконом. комиссии [Электронный ресурс]. URL: https://barriers.eaeunion.org/api/info/document/38/file (дата обращения: 10.02.2018).

[4]Аналитический доклад Евразийской экономической комиссии о ситуации по устранению препятствующих функционированию внутреннего рынка Евразийского экономического союза барьеров для взаимного доступа, а также изъятий и ограничений в отношении движения товаров, услуг, капитала и рабочей силы. М. : ЕЭК, 2015. С. 27.

movement of goods, services, capital and labour in the functioning of the internal market of the union. Exceptions to the general rules protect the common market from the results of measures imposed most often by member states unilaterally, albeit in accordance with the law of the union[5].

"Restrictions are obstacles to the free movement of goods, services, capital, labour within the framework of the functioning of the internal market of the union, arising from the lack of legal regulation of economic relations, the development of which is provided by the law of the union"[6]. Restrictions on free trade arise as a result of the lack of legal regulation of economic relations in the law of the union or absence of the developed law of the union, and also due to the analysis of law enforcement practice of the contradictions between law union[7].

In fact, it remains important to consider any obstacle in mutual trade not only as an opportunity to protect the domestic quality of consumption but also as a possibility of excessive restrictions on access to the domestic market of other producers of the union state. Despite the fact that the requirements often relate to compliance with either union norms of technical regulations, or national (they lead to a restriction of access of producers of one union state to the market of another union state, for domestic producers of which) this is an additional opportunity to expand sales, the implementation of which may result in monopoly power or dominance.

In the conditions of the formation of uniform requirements of non-tariff character in foreign trade of the union with the third countries preservation of obstacles in regional trade can be regarded as restriction of freedom of movement of goods. In addition to domestic producers, who are protected by additional domestic barriers to trade, and who benefit from market access, domestic consumers are the losers.

## The state of the regional trade in the EAEU

Regional trade of the EAEU is not a rapidly developing phenomenon: we see that all participating states within the Eurasian integration seek to expand markets for their goods and services, but with full determination to use available means to limit access to national segments of the union market. The statistics of mutual trade provided by the Eurasian Economic Commision gives information that there is no stable trend towards the growth of regional mutual trade, and periods of its slowdown or decline prevail:

1) thus, in 2016, mutual trade decreased to 94.2 % compared to 2015;

2) increased in 2017 to 127.3 % compared to 2016[8];

3) its growth rate slowed down: mutual trade for the period January – September 2018 amounted to 110.1% compared to January–September 2017;

4) mutual trade for the period 2019 amounted to 102.3 % compared to 2018[9];

5) mutual trade for the period January – June 2020 decreased to 82.7 % compared to January – June 2019[10].

The largest contribution to the volume of mutual trade was made by the Russian Federation (about 65 %), the Republic of Belarus (about 25 %), and Kazakhstan (about 10 %) for a number of analysed periods from 2015 to 2020[11].

Thus, all these statistical observations show that the contribution of the Russian Federation to the EAEU trade is significant, but the importance of trade with the EAEU for Russia is low (see the table). The fact that Russia has a greater foreign trade turnover with the EU countries (by 2018 it was 42.7 % of the total turnover) than with the EAEU countries (8.1 %, respectively) means not only Russia's dependence on trade with the EU. This objectively demonstrates the fact that the common market of the EAEU without the market of the Russian Federation is much less capacious than the EU market, so the share of the EAEU in the structure of Russian foreign trade turnover is insignificant. Technically, if the markets for goods and services of the EAEU were uniform for the origin of the goods, and the national segments had intertwining trade and cooperation ties with each other, then general factors of competitiveness would form in the economy, and the foreign trade of the EAEU would have common factors of growth, but producers EAEU countries compete with each other both in the markets of third countries and in the EAEU.

[5]Барьеры, изъятия и ограничения Евразийского экономического союза : доклад Евраз. Эконом. комиссии [Электронный ресурс]. URL: https://barriers.eaeunion.org/api/info/document/38/file (дата обращения: 30.03.2019).

[6]Ibid.

[7]Ibid.

[8]Об итогах взаимной торговли товарами Евразийского экономического союза. Январь – декабрь 2017 года [Электронный ресурс]. URL: http://www.eurasiancommission.org/ru/act/integr_i_makroec/dep_stat/tradestat/analytics/Documents/2017/Analytics_I_201712_180.pdf (дата обращения: 19.12.2019).

[9]Об итогах взаимной торговли товарами Евразийского экономического союза. Январь – декабрь 2019 года [Электронный ресурс]. URL: http://www.eurasiancommission.org/ru/act/integr_i_makroec/dep_stat/tradestat/analytics/Documents/2020/Analytics_E_201912_180.pdf (дата обращения: 19.09.2019).

[10]Об итогах взаимной торговли товарами Евразийского экономического союза. Январь – июль 2020 года [Электронный ресурс]. URL: http://www.eurasiancommission.org/ru/ act/integr_i_makroec/dep_stat/tradestat/analytics/Documents/2020/Analytics_E_202007.pdf (дата обращения: 16.12.2019).

[11]Объемы, темпы и пропорции развития взаимной торговли государств – членов ЕАЭС [Электронный ресурс]. URL: http://www.eurasiancommission.org/ru/act/integr_i_makroec/dep_stat/tradestat/tables/intra/Documents/2019_180/I201912_1.pdf(дата обращения: 16.12.2019).

Table

**Foreign trade turnover of the Russian Federation with the main partner countries in the EU and the EAEU in 2015–2019[12]**

| Year | 2015 | | 2016 | | 2017 | | 2018 | | 2019 | |
|---|---|---|---|---|---|---|---|---|---|---|
| Unit | Mln US dollars | % to total | Mln US dollars | % to total | Mln US dollars | % to total | Mln US dollars | % to total | Mln US dollars | % to total |
| Foreign trade turnover of the Russian Federation | 526 261 | 100 | 467 753 | 100 | 585 319 | 100 | 688 115 | 100 | 666 558 | 100 |
| With far abroad countries | 460 206 | 87.4 | 411 066 | 87.9 | 512 296 | 87.5 | 607 292 | 88.3 | 586 179 | 87.9 |
| China (the first trading partner) | 63 553 | 12.1 | 66 108 | 14.1 | 86 975 | 14.9 | 108 284 | 15.7 | 110 919 | 16.6 |
| With EU countries | 235 828 | 44.8 | 200 392 | 42.8 | 246 593 | 42.1 | 294 167 | 42.7 | 277 796 | 41.7 |
| Germany (the second trading partner) | 45 792 | 8.8 | 40 709 | 8.7 | 49 966 | 8.5 | 59 607 | 8.7 | 53 161 | 8.0 |
| With the EAEU countries | 42 385 | 8.1 | 39 028 | 8.3 | 51 526 | 8.8 | 56 070 | 8.1 | 57 344 | 8.6 |
| Belarus | 24 219 | 4.6 | 23 457 | 5.0 | 30 657 | 5.2 | 33 999 | 4.9 | 33 346 | 5.0 |
| Kazakhstan | 15 570 | 3.0 | 13 039 | 2.8 | 17 482 | 3.0 | 18 219 | 2.6 | 19 622 | 2.9 |

The first trading partner of the Russian Federation, both in export and import supplies, for the analysed period of 2015–2018, is China. It could be mentioned that the EAEU countries lose in the most capacious market of their main trading partner which is the Russian market both the EU and China due to the objective circumstance of the insignificance of their economic and trade scales. Currently, China is the main trading partner of the EAEU with a foreign trade turnover of more than 126 bln US dollars in 2018 (with an equal volume of imports and exports) or 16.5 % of the total foreign trade turnover[13].

Belarus and Kazakhstan, first of all, have the largest share of their exports in the Russian market, and mutual trade in the EAEU is growing in these two areas of trade (Russia – Kazakhstan, Russia – Belarus), and the growth of Chinese imports to the Russian Federation for both countries is painful, although imports of Chinese goods are increasing everywhere in the EAEU countries in recent years. Even for Belarus, China is turning in 2015–2017. In the second trading partner for the supply of its imports, while being the first trading partner of the Russian Federation in both export and import supplies for the analysed period 2015–2018[14].

At the same time, this fact can mean for the EAEU the absence of the effects of crowding out foreign trade with China, the absence of an effective substitution of trade with internal analogues of the EAEU production. On the one hand, this is the preservation of the efficiency of the existing trade flows, which are not replaced by the mutual trade turnover of the EAEU; on the other hand, it is the complexity of the formation of new trade flows (the absence of trade creation effects in this direction), the effectiveness of which we cannot talk about, because these flows do not exist.

The importance of the EU in the foreign trade of the EAEU is confirmed by the fact that the European Union is the main buyer of goods exported by the EAEU (39.4 % of total exports). The main share of exports of the EAEU member states (84.1 %) falls on intermediate goods, of which energy products account for 55.6 % of total exports, and other intermediate goods – 28.5 %. The imports of the EAEU member states from third countries are dominated by intermediate (44 % of

[12]Беларусь в цифрах, 2018. Минск : Нац. статистич. комитет Респ. Беларусь, 2018. 72 с. ; О состоянии внешней торговли в 2016 [Электронный ресурс]. URL: http://www.gks.ru/bgd/free/b04_03/IssWWW.exe/Stg/d01/35.htm (дата обращения: 19.03.2019) ; О состоянии внешней торговли в 2018 году [Электронный ресурс]. URL: http://www.gks.ru/bgd/free/b04_03/IssWWW.exe/Stg/d04/35.htm (дата доступа: 19.03.2019) ; Внешняя торговля России с Беларусью за 9 месяцев 2019 г. [Электронный ресурс]. URL: https://russian-trade.com/reports-and-reviews/2019-11/vneshnyaya-torgovlya-rossii-s-belarusyu-za-9-mesyatsev-2019-g/ (дата обращения: 16.12.2019).

[13]Об итогах внешней торговли товарами Евразийского экономического союза. Январь – декабрь 2018 года [Электронный ресурс]. URL: http://www.eurasiancommission.org/ru/act/integr_i_makroec/dep_stat/tradestat/analytics/Documents/2018/Analytics_E_201812.pdf (дата обращения: 17.03.2019).

[14]Внешняя торговля Республики Беларусь, 2018. Минск : Нац. статистич. комитет Респ. Беларусь, 2018. С. 67–69.

total imports) and consumer (30.4 %) goods, the share of investment goods is 21 % which explains the technological and investment dependence on the EU[15].

These are the structural characteristics of the EAEU foreign trade: the capacious Russian market is a source of redistributive factors and motives for integration into the EAEU. It can be assumed that the preservation of the importance of trade with China and the EU, i. e. old structural ties, is the result of the effective distribution of resources spent on the production of exports to third countries – there is no reorientation of previous trade flows to reciprocal, in fact, integration agreements.

The persistence of obstacles in regional trade can be regarded as a restriction on the freedom of movement of goods within integration, which preserves the importance of its markets for each national segment of the EAEU. The customs union, in fact, increases the total size of the protected sales market for each national economy, but opportunities to use this should also expand – national segments lack a tangible increase in the mobility of factors of production (labour and capital) between the member countries of the union, opportunities for common markets.

The general conclusion of our research is that the signed agreements are the infrastructure that will create opportunities for relations between countries, for trade and business, and for economic growth. First of all, we are talking about the treaty on the EAEU, the Customs Code of the EAEU. But the insignificant growth of mutual trade of the EAEU allows us to draw conclusions about the insufficiency of only institutional support for the growth of integration. In our opinion, the presence of obstacles will decrease when mutual trade will be more intra-industry – that means that it should be built around increasing the flow of intermediate goods in order to ensure cooperation, and the effectiveness of the final export results will depend on the effectiveness of partners in the single EAEU market.

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*UDC 338*

# THE UNIQUENESS OF THE EUROPEAN PROCESS OF REGIONAL INTEGRATION: INSTITUTIONAL FRAMEWORK

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The article covers supranational governance that relies on the well-built institutional structure of the EU and shows its peculiarity. It argues the fact that the EU can be perceived as a state in nature. The article also highlights the drawbacks in the formation and functioning of other regional integration associations such as ASEAN, NAFTA, and MERCOSUR. Good governance of the EU, remarkable economic results achieved by its members and the existence of strong and independent supranational institutions result in the EU uniqueness.

***Keywords:*** ASEAN decision-making; European Union; EU governance; EU decision-making; European Council.

# УНИКАЛЬНОСТЬ ЕВРОПЕЙСКОГО ПРОЦЕССА РЕГИОНАЛЬНОЙ ИНТЕГРАЦИИ: ИНСТИТУЦИОНАЛЬНАЯ СТРУКТУРА

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Рассматривается наднациональное управление, опирающееся на хорошо выстроенную институциональную структуру ЕС, и демонстрируется особенность такого управления. Приводятся доводы в пользу того, что ЕС может восприниматься как государство по своей природе. Также освещаются недостатки в формировании и функционировании других региональных интеграционных объединений, таких как АСЕАН, НАФТА и МЕРКОСУР. Надлежащее управление ЕС, хорошие экономические результаты, достигнутые его членами, и наличие сильных и независимых наднациональных институтов могут свидетельствовать об уникальности союза.

***Ключевые слова:*** процесс принятия решений в АСЕАН; Европейский союз; управление ЕС; процесс принятия решений в ЕС; европейский Совет министров.

## Introduction

The time between 1945 and 1948 could be characterised by the escalation of the Cold War and the foundation of approximately a hundred new organisations that mostly focused on its mitigation, Western Europe became a place for international forums. As a result, the Western European states connected to one another and to the "benignant hegemon", the USA [1, p. 652]. Moreover, European integration could be assigned to the economic situation in the region [2, p. 111]. Some of the Western European countries' governments considered the integration as a chance to modernise their economies, increase the competition by establishing an extending market that eventually would lead to the substitution of old forms of manufacturing for new

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ones based on cooperation and specialisation and put expenses on the economy restructure on the common European budget. Furthermore, there were attempts to gain more power through establishing the integration, for example, France could have more power using the European interdependence rather than national independence. It was a good way of eliminating the US influence, becoming more influential (especially in the case of France and later Britain), and re-establishing equilibrium in the Atlantic Alliance. Germany considered the integration as a way of exonerating its image in the international arena and act on behalf of Europe [3, p. 248]. The European Union (EU) could be considered as one of the most sophisticated and multinational political institutions, less dependent on authority of member states [4, p. 124]. The uniqueness of the EU is that it initially declared to be unique, all the while, it has been an ambition of achieving more rather than a political substantiality [1, p. 670].

The purpose of the study is to present the experience of European integration by virtue of the uniqueness of its institutional framework and its comparison to other integration associations.

The objectives of the study are:

1) to look into the integration theories identifying the best practices each school of thought brought to the understanding of the integration process and its success;

2) to describe the basics of the EU decision-making process and identifying its peculiarities;

3) to evaluate the EU as a federation, confederation or a compound of states;

4) to compare the experiences of other regional integrations (NAFTA, ASEAN, MERCOSUR) with the EU experience and identify the reason of the EU for the successful institution building.

The novelty of the study is using different integration dimensions and theoretical approaches as well as identifying the reasons for the success of the process of European integration.

The EU uniqueness concept could include constancy and well-functioning of the supranational governance relying on national governmental institutions, consideration of the EU as being a superstate, federation or confederation; the comparison of European integration to other ones in the different regions of the world could demonstrate the manifestation of the EU uniqueness.

## The theoretical framework of the EU uniqueness

One of the main EU peculiarities is the stability of its governance and a wide range of institutions that provide it. The European process of integration can be divided into three dimensions that might try to explain the EU governance success: sectoral, vertical, and horizontal ones. The sectoral dimension of the integration describes the process of how new policy areas start to be regulated (partially or completely) at the supranational level (EU level). This entails any new policy area that is becoming to be regulated by the EU (the security and defence, immigration and asylum policies can be taken as an example of sectoral integration progressing). This describes the ways and reasons for the policy sectors to be regulated at the supranational level. The vertical dimension describes the distribution of competencies across EU institutions and the transfer of local competencies to the supranational level. Table below gives examples of how the decisions are taken in some policy areas in different periods of the EU integration process. This dimension shows how the competencies of member states are being delegated to the EU level and it might be used as an indicator of the integration level across the different policy areas.

Table

**The EU vertical and sectoral integration**

| Policy area | Year | | | | |
|---|---|---|---|---|---|
| | 1950 | 1958 | 1967 | 1993 | 2004 |
| Movement of goods and services | NL | EUL | BL | CL | CL |
| Environmental standards | NL | EUL | EUL | BL | BL |
| Labour market standards | NL | NL | NL | BL | BL |
| Security and defence | NL | NL | NL | NL | EUL |
| Immigration and asylum | NL | NL | NL | EUL | BL |

Ending table

| Policy area | Year | | | | |
|---|---|---|---|---|---|
| | 1950 | 1958 | 1967 | 1993 | 2004 |
| Regional development | NL | NL | NL | BL | BL |
| Public healthcare | NL | NL | NL | EUL | EUL |

Note. NL – all the decisions are taken at the national level; EUL – some decisions are taken at the EU level; BL – the decisions are taken at both levels; CL – most decisions are taken at the central level.

The horizontal dimension describes the increase of sectoral and vertical integration levels across territories. It mostly refers to the EU enlargement, and analyses, why some countries are willing to become a member of the EU and some, are not, it evaluates the cases where the full EU membership is not reached and it is only association or trade agreements between the EU and a state or a group of states. It is worth mentioning that horizontal integration is not homogeneous in the EU: for instance, there are exclusions from the European Monetary Union or Schengen regime for some of the members.

The existing theories of integration that could be divided into the theories of federalism, intergovernmentalism and supranationalism [5, p. 184; 6] are seeking to explain the durability of the European institutionalisation framework [7, p. 464]. In the early steps of the emergence of integration the functionalist concept that belongs to the supranational "school of thought" is believed to be predominant in the EU's development [8, p. 186]. After the termination of the World War II the rise of the market, capital flow, and social welfare could be considered to be stressed [8, p. 44]. The concept and approach to the process of the European integration were dictated by the conditions in which countries had to survive and restore their economies and, eventually, become remarkable actors in the international arena [9, p. 971]. The federalist approach was quite widespread at the beginning of the EU integration process as it relied on the example of the USA and its success. Nevertheless, the creation of a federal state in Europe might have prevented the conflicts among participants, but it would not result in the sound cooperation with third party countries as well as it might have hindered the political democracy in the region and it did touch the economic development issues that were essential.

The contemporary EU is a complex entity with a great number of institutions that make the union's work sound and stable, the principle of intergovernmentalism could be traced in the EU of today. The sophisticated apparatus of governance implementing internal and external policies based on the principles of equality and unanimity (or on the principle of the majority of votes depending on the issue) could be seen in the union [7, p. 463]. The neo-functionalism relies on the cooperation of political powers and spillover of economic cooperation into the interactions in other areas. This theory declines the importance of governance of member states, supranational institutions have the full power. The neo-functionalist theory is considered questionable speaking about the contemporary EU because of the development of the integration process, especially, after the Maastricht Treaty was signed. The neo-functionalist theory relies on that the "successive spillovers would accrue to the same regional institution, for instance, the EU Commission" that is inconsistent with unwillingness of member states to empower the EU Commission since 1992 [10, p. 14; 11, p. 39].

There are many modern approaches to the integration that are based on the traditional theories of integration: all this complex of approaches based on the governance (or new governance) theory. This theory claims that the EU is a political system that functions apart from the member states. It focuses on the EU intuitions and downplays national actors [10, p. 7].

It can be seen that the research area of European integration is characterised by a variety of modern and traditional schools of thought and approaches. All of them highlight the complicity and multidimensionality of EU integration. The federalism is most effective while analysing the aims of the integration, the governance theory can assist in researching a complex and multilevel practice of the integrated countries. The intergovernmental and neo-functional approaches are best to use for analysing the process itself. Intergovernmental practices are used for analysing the integration process at the time of active dynamics that allows evaluating the negotiation processes, while neo-functional practices are used to study integration in the recession period as it describes how the members get the possibility of employing supranational bodies at their benefits thus developing and enforcing them. The complex use of all the approaches will result in an effective understanding and analysis of the EU experience [10, p. 8].

## EU institutions as a unique mechanism of the governance at the supranational level

One of the peculiarities of the EU is that it does not have any coercive institutions at the supranational level that makes entities obey the EU regulations and laws; also, it is possible to leave the organisation

(Brexit is a good example). Thus, the stability of the EU governance is not based on enforcement measures to comply with the EU rules, but it is considered to be conditional on non-mandatory accordance of each member state administrative establishments "such as agencies, courts, and police and, ultimately, of citizens" [7, p. 463].

The EU is a multicultural entity, without huge stratification in values (although there might be observed economic stratification) across members. Any stratification is believed to undermine the consensus within the union and it is present in the EU. However, each member state has its representative in the Council of Ministers. This allows advocating (or discussing) the issues that are of high importance to one particular country. Thus, there is a consensus in the decision-making process of the EU. The undivided opinion is required in the issues concerning national security, independence, and foreign policy issues. Furthermore, it is worth emphasising that EU member states have strong national governing institutions that are responsible for the implementation of the policies dictated by the weaker supranational establishments [7, p. 467].

The explanation for such good governance is that there are four necessary conditions to be met: accordant and personal settlement of intercultural conflicts (including disputes between leader countries and the rest of the members), debarment of the decision made on the majority of opinions that could have any impact on the vital interest issues, a high degree of political autonomy of each member state and equal participation in the administrative establishments [7, p. 472].

## Can the EU be considered a superstate?

Another EU singularity is that it could be claimed that the EU is a state or at least some kind of superstate. The majority of functions of national governments are considered to be performed by supranational institutions [12, p. 408]. Therefore, it is possible to say that the EU itself has some kind of sovereignty and has one of the peculiarities of a state which is independence. Also, analysing the Lisbon treaty, for example, Art. 48(7) that establishes the simplified procedure of making amendments to Treaties of the EU. It means that the European Council on its own initiative could alter the decision-making process in the Council of Ministers on certain issues from unanimity to the qualified majority. Previously it was not possible to make such amendments without the approval of the parliaments of member states and referendum. This procedure is considered to reveal the similarity of the EU to a state. The national parliament may only veto the suggested amendments so that the resolution of the parliament is not required. Furthermore, the possibility of using the qualified majority system could undermine each member state power, the unwilling decisions could be taken, and being a member state of the union a state should impose and meet every decision taken pursuant to this simplified procedure [12, p. 412]. Therefore, the EU has become a powerful entity that has a variety of competencies and might act without the prior resolution of its member states.

Nevertheless, the concept of the EU being a state is very arguable, especially, when the participating members are the sovereign countries, and they, and not least, have the right to leave the union following the specially designed procedure. This right of abandoning the community is of great importance: having so many competencies the EU might make decisions on very significant to particular member issues that might not comply with the view of a state and the state might be extremely opposite the policy performed by the union in a certain sphere. The possibility of leaving the union could differ the EU from a state: it would not be possible to withdraw from a state in such a simple (without considering such secession illegal in accordance with the international law) procedure [12, p. 414].

Charles B. Blankart describes the European Union as "neither a confederation nor a federation, but rather an association of compound states" [13, p. 99]. Nevertheless, the EU has a parliament that could be perceived as an element of the federation, but at the same time, there is a European Council that could be considered as a peculiarity of a confederation state, so that it is possible to speak about neither about federation nor confederation, but a composition of the two – a compound state that describes the EU most.

## EU versus other regional integration associations

In addition, it is necessary to compare the EU to other integration groups to reveal the uniqueness of the former. NAFTA, MERCOSUR, ASEAN are believed to be the most common associations that have been admitted worldwide as leaders in their regions and perceived by the world community as important world actors. Moreover, analysis of these integration associations could give examples of the integration processes in different parts of the globe; accordingly, it is possible to identify the existing problems of regional integrations all over the world. It is worth mentioning that the success of regional integration depends on the interdependence of the states in a certain region. The volume of trade within the integration association could be seen as an indicator that might identify the interdependence of parties involved. However, it should be mentioned that the volume of intra-regional trade is not a paramount factor in showing the interdependence in the integration. For example, the intra-regional trade across all EU countries is higher than among EU 15 countries. Nevertheless, the more a state trades with its "colleagues" from the region, the more important the participation

in the association will be, and as a result, "the more you pay attention to integration in your region" and this is the reason for taking into account this factor [14, p. 240].

Comparing the share of intra-trade in the trade balance in all the associations named above, we can assume the EU as the most successful one: the EU intra-trade in 2017 is almost 64 %. However, the success of NAFTA in this field should be also mentioned: approximately 50 % of the total trade in 2017[1]. It is a very good result and it could be said that NAFTA is a very successful example of the regional form of integration as well. Despite the asymmetry that could be seen in NAFTA, it is believed that the developing member state benefited a lot especially in the first years of block emergence: in the period between 1993 and 2002 exports from Mexica to the US increased by 234 % and to Canada in more than 200 % [14, p. 248]. MERCOSUR and ASEAN are not so well-developed in this concern: intra-trade in 2017 is 13 %[2] and 23 % of the whole trade comparatively[3].

The decision-making process, more specifically, the way in which it is performed, is very essential in the understanding of the integration level achieved by countries. NAFTA has less need in the "objective" decision-making process, it means that there are no supranational institutions that decide the policies in spheres of cooperation, but there are plenty of detailed treaties in which all the terms and conditions are written. There is only a need for a dispute authority that would judge the actions of members and identify whether they are conformed or non-conformed to the treaties. Certainly, NAFTA has not achieved a very close integration, however, the cooperation concerns mostly the intra-trade regimes. As it has been said above, the EU has a very sophisticated apparatus of governance, and its sphere of governance is broad. The EU members have delegated some of the sovereignty to the common institutions within the union [14, p. 239]. Speaking about the MERCOSUR institutions, they do not have powers that ones of the EU have: legal acts issued by MERCOSUR "have neither immediate applicability nor direct effect" and they are to be implemented into the national legislation of each member after performing the established procedure [14, p. 254]. It is a similar way in which every international act is to be implemented into national legislation. It could be explained by the existence of the obvious leader in the regional integration and existing strong asymmetry of its members (Brasil is the most powerful country in the region, moreover, it does not rely on the intra-trade with its partners, the volume of exports of Brasil to the EU is much more than to the other MERCOSUR countries) [14, p. 240]. ASEAN could be characterised by asymmetry as well. ASEAN's institutional experience cannot be considered as effective in its function as the one of the EU. The intergovernmental institutions in ASEAN have a lack of sovereignty in their actions and the regional integration relies more on informal agreements among members, as a result, voluntarism and high level of divergence are widely widespread in ASEAN interactions. The consensus that is so difficult to obtain is mandatory to take the decisions. The inefficiency of this approach could be seen in 1979 when Vietnam invaded Cambodia. ASEAN did not come to a solution on this issues and the external help was needed to be provided [15, p. 662]. However, nowadays ASEAN encounters with more challenges and the ASEAN institutions have to provide not only the high degree of interstate stability across its members as it was in the Cold War period but put their efforts into ensuring security and stability beyond Southeast Asia in the post-Cold War period [6, p. 50]. The Charter 2008 provides a new institutional framework to address these new challenges. However, it does not name the number of changes that are to streamline burdensome organisational structure of ASEAN. There is still a principle of consensus that is paramount in the decision-making; there is no clarity in the new institutions established by the charter (there is a lack of understanding of their functions and how they relate to each other). "ASEAN is still characterised by the lack of a mechanism to enforce compliance, the absence of regime sanctions, and the tenacity of consensus-based rather than legalised dispute-settlement mechanism; thus reflecting ASEAN's continued preference for non-binding agreements and informality" [16, p. 11]. Consequently, ASEAN is not effective in the solution of existential problems.

The uniqueness of the EU might be explained by the fact that it has a very ample way of its enlargement: not only attracting new states as members of the union but different ways of cooperation with countries that are not willing or do not conform to be a full member of the union (European neighbourhood policy (ENP), associations of cooperation, trade agreements). A state should comply with the EU norms and special procedure of joining that confirms that a state can be a full member as it can be considered one of the EU states because it shares the same values and economically similar (not only the economic development of the state but the way the economics and the society itself function). Potential members are willing to become closer to the full members of the EU; they admit common values, come to unanimity on political stance on the majority of affairs, the way of economic development, and the social development[4]. A state can become a full member only after the acceptance of the EU values and compliance with pre-accession terms that need to be met. Nevertheless, the EU has other forms of cooperation for the ones that

[1]World Trade Organisation. World trade statistical review 2019. Geneva, 2019.
[2]Ibid.
[3]ASEAN statistical highlights 2018. Jakarta : The ASEAN Secretariat, 2018.
[4]Conditions for membership [Electronic resource]. URL: https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en (date of access: 30.05.2020).

cannot (or do not want) conform to its values and criteria for accession: associations of cooperation, trade agreements, specially designed policies of mutually beneficial cooperation (for example, ENP). This might explain the success of the institutional mechanism the union has on its supranational level and why the consensus can be reached in the decision-making: the members are not so distant from each other in the way of thinking as they are united on the basis of common values or the conformity to these values that had had to be accepted before joining the EU. Hence, it is obvious that the EU experience could be considered more successful in the majority of issues (both economic and political) comparing to the experiences of other regional integrations.

## Conclusion

In conclusion, each integration association is exclusive, it could be difficult to say that there are similar reasons for the formation of each integration and the processes of their development are identical. As a result, we have a variety of associations each of which could be described as a remarkable one. It is not possible to identify the most appropriate and universal theory that can describe and give a full understanding of how the integration process work: there is a need of utilising different approaches and theories to address different questions an integration process encounters and a researcher desires to explore. Nevertheless, the EU experience of integration could be considered as the unique one because it is the most successful and well-organised: solid management of the union, good economic well-being and slight asymmetry of the members, the existing sovereignty of the supranational institutions, nevertheless, relying mostly on strong national governance framework. All this could lead to the perception of the EU as a superstate or at least as the most holistic example of compound of independent states, however, it is not possible to state that the EU is either federation or confederation, but it might be seen as a compound state. The success of the EU is the result of a very sophisticated process of the integration and also the constant changes in the functioning of union aimed at deeper cooperation and convergence of its members, and the overcoming the challenges the other big global actors could launch to undermine the values and stability of the EU. The freedom of participation and leaving the union could make the EU even more attractive to join, but it is open only to ones that share the European values and conform to special requirements. The process of accession of new members into the EU guarantees that the new full members share the EU values and norms, are close economically that guarantees conformity to the common EU stance and allows the sound functioning of the EU supranational institutions. It might be said that the states joined the EU share common interests and objectives while states in other integration associations might be in pursuit of their individual interests and objectives that might be reflected in the drawbacks in their institutional framework. Moreover, the economic interdependence of the state that could be proved by the high level of intra-trade in the region might be considered as one of the driving force to the further EU integration and prosperity. The high level of asymmetry that could be believed to feature the majority of regional integration blocks does not seem to be a case of the European process of integration that contributes to the sustainable development of the region. This also might mean the low level of disputes among members since there is real equality of states within the union that is shown by the absence of one evident leader and by the parity of representative's presence in the institutions of union, this helps to act fast in urgent cases. The success of the EU in the process of integration and its uniqueness could be imported by others, but first, it is necessary to examine properly the possibility of the implementation of the European integration model in each particular region.

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# THE UNION STATE: A CHANGING RELATIONSHIP BETWEEN BELARUS AND RUSSIA

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In December 2018, the Russian president Vladimir Putin and Belarusian president Alexander Lukashenko agreed to set up an intergovernmental working group on the development of further integration of the Union State A. Lukashenko had been reluctant to yield more Belarusian sovereignty over to Russia. However, a dispute regarding compensating Belarus for a Russian oil tax manoeuvre prompted Moscow to revisit the oldest disagreement: the 1999 Union State Treaty. Russia presented Belarus what sounded like an ultimatum: financial support in return for greater integration with the Russian Federation. This essay will explore the uncertain future and relationship between Belarus and its supposedly closest ally Russia. Chapter one will discuss the early relationship between the countries following the collapse of the USSR. Following that, the second chapter will discuss the relationship between A. Lukashenko and V. Putin and their conflicting ideas of the future of the Union State, up until the 2014 Ukrainian crisis and the deterioration of their relationship. The third chapter will discuss the Russian government's effort at reviving the Union State, including its successes and shortcomings. The fourth chapter will look at the Belarusian response drawing on some primary research (interviews and official documents analysis) carried out to examine the Belarusian perspective in greater detail. Finally, the essay will conclude with an outlook on the future of the Union State and the relations between Belarus and Russia, using a classical realist approach.

***Keywords:*** Union State; Russia; Belarus; European Union; US; Eurasian Economic Union; A. Lukashenko; NATO; integration; sovereignty.

# СОЮЗНОЕ ГОСУДАРСТВО: МЕНЯЮЩИЕСЯ ВЗАИМООТНОШЕНИЯ МЕЖДУ БЕЛАРУСЬЮ И РОССИЕЙ

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В декабре 2018 г. Владимир Путин и Александр Лукашенко договорились о создании межправительственной рабочей группы по дальнейшей интеграции Союзного государства. А. Лукашенко не хотел терять суверенитет Беларуси. Однако спор о компенсации Беларуси за налоговый маневр России с нефтью побудил РФ вернуться к давнему разногласию – договору о создании Союзного государства 1999 г. Россия поставила Беларуси условие, звучавшее как ультиматум: финансовая поддержка в обмен на более глубокую интеграцию с Российской Федерацией. Исследуется неопределенность будущих и отношений между Беларусью и, как считается, ее ближайшим союзником – Россией. В первой части работы исследуются ранние отношения между странами после распада СССР. Во второй части статьи анализируются взаимоотношения А. Лукашенко и В. Путина и их противоречивые представления о будущем Союзного государства вплоть до украинского кризиса 2014 г. и ухудшения во взаимоотношениях. В третьей части рассматриваются действия и усилия российского правительства по возрождению Союзного государства, успехи и промахи в этой сфере. С опорой на первичные исследования (интервью и анализ официальных документов) в четвертой части работы рассмотрены действия Беларуси. В заключении представлен реалистичный взгляд на будущее Союзного государства и взаимоотношения между Беларусью и Россией.

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***Ключевые слова:*** Союзное государство; Россия; Беларусь; Европейский Союз; США; Евразийский экономический союз; А. Лукашенко; НАТО; интеграция; суверенитет.

## The launch of the Union State

The renewed relationship between Belarus and Russia began following the collapse of the USSR in 1991. Russian president Boris Yeltsin and chairman of Belarusian parliament Stanislav Shushkevich, along with Ukrainian president Leonid Kravchuk signed the Belovezha Accords on 8 December 1991, effectively dissolving the Soviet Union to establish the Commonwealth of Independent States (CIS), though doubts still remained regarding the authority of these three men to do so[1]. These leaders seemingly had a close relationship with the onset of independent pathways for their respective countries. However, following independence of Belarus, the country was in turmoil. The economy was shrinking fast; the parliament, due to infighting, provided little leadership, and the country was increasingly relying on Russia's subsidies [1]. Therefore, to stop the chaos, many thought that strong presidential leadership would help to restore order and prosperity in what was then a parliamentary republic. When the national constitution was adopted in 1994, the office of the presidency was created, under which the key functions of the prime minister were given to the president. The powers of the prime minister were diminished to simply aiding the president and culminated in the dissolution of the Supreme Soviet, along with its chairman, in 1996. In 1994, the first presidential elections were held and A. Lukashenko received an absolute majority of the vote (80.6 %) and was elected Belarusian first and until now the only president [2, p. 252].

After A. Lukashenko came to power, Belarus seemed an ideal candidate for integration with Russia, to prevent Belarus from drifting away and establishing ties with the West to fix its broken economy. Belarusian economy had been built around the entire Soviet Union and going at it alone was a hard option for most of the republics. Belarus enjoyed stability and relative prosperity under the USSR and Russia took the opportunity to propose reintegration with Belarus in order to prop up their economy [3, p. 85–118]. Russia also saw NATO expansion eastwards and didn't want to lose its sphere of influence. B. Yeltsin said after signing, in February 1995, the Treaty of friendship, good-neighbourliness and cooperation between Russian Federation and the Republic of Belarus, that "both countries have had a common historical experience for many centuries which had created the basis for the signing of the treaty and other documents for deeper integration of our two countries. Among all the CIS countries, Belarus has the most rights to such relations due to its geographical position, its contacts with Russia, our friendship and the progress of its reforms"[2] [4, p. 311]. The integration process began with the climax of this process being the establishment of the Union State of Russia and Belarus on 8 December 1999 [5, p. 27–44].

The Treaty on the creation of the Union State established various institutions and a legal framework, however, the exact nature of the political entity remained vague [6, p. 41–53]. The highest jurisdiction within the union was the Supreme State Council, made up of the presidents, prime ministers, and the heads of both chambers of the parliaments of both countries. Each nation had one vote in the council, meaning all decisions must be unanimous. The subordinate authority was the Council of Ministers, encompassing of the prime ministers of member states, ministers of foreign affairs, economy, and finance, and the state secretary of the union. The legislature is composed of a bicameral parliament, composed of an elected House of Representatives, which consists of 75 deputies from Russia and 28 from Belarus, elected by the general public of each nation, and a house of the union with an equal number of deputies (36) from each nation selected by their respective upper legislative houses. However, due to the ambiguity of the Union State Treaty, the union parliament had never been put into effect. The judicial branch of the Union State, the court of the union, consisted of nine judges appointed for six-year terms. However, like the union parliament, the court of the union was never properly established. The last institution created was the house of audit which controls the implementation of the budget [7].

Each member state retains their own sovereignty meaning that Russia and Belarus have full authority over their own internal and external affairs. The Union State cannot claim representation in other international organisations or overrule legislation or government decisions of its member states, except in cases specified by the Union State Treaty [7]. Thus, the Union State predominantly resembles a supranational confederation similar to the African Union.

However, shortly after its inauguration, and with the election of the new Russian president, both member states lost their enthusiasm for the union, with first Russia, and then Belarus, restoring customs controls along their common border in 2001, suspending the customs union until it was restored in 2010 when a

[1]Commonwealth of Independent States [Electronic resource]. URL: http://mfa.gov.by/en/organizations/membership/list/c2bd4cebdf6bd9f9.html (date of access: 31.01.2020).

[2]Hereinafter translated by *G. P.-K.*

new customs (Eurasian) union was signed with Kazakhstan [8, p. 7–28]. Therefore, the original plan of a supranational union was already off to a rocky start. There was no common currency, no common flag, no parliament, and no judiciary. However, despite the original shortcomings, the Union State does provide both citizens of Russia and Belarus the right to work and live in either country without any formal immigration procedures. There are also joint military officer training programs designed to integrate their military structures, known as the Regional forces group of Belarus and Russia[3].

In summary, A. Lukashenko didn't agree to the Union State in order to lose sovereignty. The reason for the formation of the Union State was because the Belarusian economy was collapsing, and membership granted Belarus oil and natural gas subsidies which it could refine and sell for a profit to its Western European neighbours. Membership also provided Russia a way to prevent Belarus from drifting away from its sphere of influence. Therefore, it benefitted both countries at the time. However, there were shortcomings expectations of the Union State versus reality. On the eve of the millennium, B. Yeltsin offered his resignation as president of the Russian Federation, with V. Putin now taking the reins. The following chapter will discuss the new relationship between Belarus and Russia, with V. Putin as new president of Russia, up until the Ukrainian crisis.

## The decline of the Union State, the rise of the EEU and the Ukrainian crisis

In order to comprehend Russia's renewed interest in the Union State, and Belarus apprehension towards it, it is imperative to discuss the recent history to set the background. After B. Yeltsin stepped down, V. Putin took his place as president, and a new era of relations between A. Lukashenko's Belarus and V. Putin's Russia began. The two leaders began sparring over the central question of the constitution of the Union State. Would it be unitary or confederal? Who would control the rouble if the union adopted a single currency? A. Lukashenko proposed a Union of equals, which was unacceptable to V. Putin, and in return, V. Putin proposed that Belarus be incorporated into the Russian Federation, which A. Lukashenko thought was inadmissible. V. Putin made evident that it was necessary to "separate the flies from the cutlets", meaning that A. Lukashenko had no rights to equality in their union [9, p. 210]. The talks came to a stalemate in 2000. Nevertheless, Moscow still desired to maintain friendly relations with Belarus. It still provided financial assistance and sold natural gas and oil at below market value. However, Russia's willingness to subsidise Belarus' gas consumption would soon dissipate [9, p. 210].

After talks on the Union State came to a stalemate, V. Putin's attention instead drew to the establishment of the Eurasian Economic Community (EAEC) in 2000, which was a regional organisation which aimed for the integration of its member states of Russia, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan. The EAEC utilises the four freedoms of movement modelled after the EU: goods, capital, services and people [10, p. 1–22]. The EAEC evolved into a customs union and eventually developed into what we know today as the Eurasian Economic Union (EEU) in 2014, with the absence of Tajikistan[4]. Similar to the original plan of the 1999 Union State Treaty between Russia and Belarus, the future of the EEU envisions the creation of a single currency and greater integration [11].

However, Belarus' relations with the EAEC and the EEU were not smooth either. Significant stages of Eurasian integration were followed by contentious disagreements between Belarus and Russia. Most importantly, Belarus' expectation from EAEC membership was the preservation of beneficial terms of Russian oil and gas deliveries. Belarus also aimed at preserving access to Russian markets for its goods, services and labour force, and to expand its transit potential as a gateway between the EU, on the one hand, and Russia and China, on the other [12]. However, in 2009–2010, when entry into the common customs code and ratification of the agreements on the establishment of the common economic space were at stake, the two countries went into a lengthy row over energy rents. During that period Russia cut energy subsidies to Belarus and ran a brief anti-Lukashenko information war. In turn, from 2010–2012, Belarus resorted to importing oil from Azerbaijan and Venezuela in its quest to secure more beneficial terms for oil deliveries from Russia [13].

Bilateral disputes like this between Russia and Belarus affect the development of the EEU. The Union State acts as a driver for the EEU, and any dispute between Russia and Belarus leaves progress at a standstill. Director of the Belarusian Institute of Strategic Research Oleg Makarov stated that Belarus – Russia relations drive forward interaction between the EEU member states, with the Union State being hailed as the example for the future of the EEU[5]. However, in recent years, relations between Russia and Belarus have soured.

The relationship between V. Putin and A. Lukashenko had always been tumultuous, however, it really be-

[3]Cooperation with Russian armed forces [Electronic resource]. URL: https://www.mil.by/en/military_policy/cooperation_RF/#rg-vs (date of access: 31.01.2020).

[4]Treaty on the Eurasian Economic Union [Electronic resource]. URL: https://www.un.org/en/ga/sixth/70/docs/treaty_on_eeu.pdf (date of access: 31.01.2020).

[5]EAEU development to slow down without Belarus – Russia union acting as driver [Electronic resource]. URL: https://eng.belta.by/society/view/eaeu-development-to-slow-down-without-belarus-russia-union-acting-as-driver-127646-2020/ (date of access: 31.01.2020).

gan to deteriorate in 2014, after the infamous Ukrainian crisis that culminated into the annexation of Crimea by Russian forces. This assertion of aggression on a neighbour impacted Belarus' outlook on its ally, with A. Lukashenko affirming his concern of the annexation and asserting his support for Ukraine's territorial integrity[6]. Since 2014, Belarus has been attempting to balance relations with Russia and the West in the fear that what happened to Ukraine may happen to Belarus [14, p. 33–43]. While Belarus has been a member of the Eastern Partnership (EaP) since 2009, an EU neighbourhood initiative intended to provide a framework for cooperation on trade, economic development and wider sustainability including security, good governance, environment, tourism, democracy promotion, etc.; relations with the EU have been unstable [15, p. 365–383]. The 2010 presidential elections in Belarus led to mass demonstrations and arrests in Minsk. The EU declared that the imprisonment of opposition figures and protesters contravened human rights and imposed new targeted sanctions on major Belarusian officials and businesspeople [16, p. 486–505]. However, in 2015, the EU announced it would suspend most of its sanctions against Belarus, following the freeing of the country's political prisoners in August 2015[7]. This is no coincidence and is most likely a tactic used by A. Lukashenko to improve relations with the West to counteract Russian influence in the country. Whilst it's widely regarded that Belarus still remains one of the least reformed countries in the EaP, some aspects of its membership have been beneficial for the country [17]. Due to Belarus' strategic position within Europe, it is best placed to act as a mediator between Russia and the West, in such cases as being a peace negotiator in the war in Donbass. Remarkably, warmer relations with the EU have barely influenced the relations with Russia[8]. David Marples considered Belarus to be a "success story of the EaP" and "A. Lukashenko… has opened a dialogue with the West that has allowed Belarus to move closer to Europe without breaking its ties with Russia" [18].

However, Russia sees Belarus' improving relations with the West as a threat. To put pressure on Belarus, a tax manoeuvre was initiated in 2014, when the Russian parliament adopted a new law lowering the export duties on crude oil from 59 % to 30 % in 2017[9]. Then in May 2018, V. Putin agreed for the export duties to be reduced to zero by 2024. The tax manoeuvre implies that by 2024, the export duty on oil in Russia, which Belarus does not pay when importing hydrocarbons, will decrease from 30 % to 0 % [19]. A study by Vygon Consulting estimated that Belarus may lose up to 8 bln US dollars by 2024[10]. A. Lukashenko, knowing that this would be economically devastating for the country, demanded compensation from Russia. However, Russia refused saying "the tax manoeuvre is a sovereign right of Russia, so it is hardly appropriate to talk about any compensation"[11]. Instead, Russia proposed linking any sort of compensation to deepening integration with each other. The events that transpired in the 2000s echo the events of recent years, with Belarus asking for more concessions, and Russia offering deeper integration in return for assistance. However, the establishment of the EEU has introduced another aspect to Belarus – Russia relations, which is important to take into account in analysis of bilateral relations. So far, EEU membership has largely allowed Belarus to maintain its economic benefits, and although the EEU has fixed Belarus even closer to Russian institutionally, it has also given Belarus some leverage over Russia. Therefore, Russia has sought to make it their main objective to keep Belarus in line by instigating further integration in return for additional economic concessions. Coincidentally, in December 2018, the then prime minister Dmitrii Medvedev announced plans for the revival of the Union State. The next chapter will discuss this attempted revival, as well as the many disputes between Russia and Belarus over the endeavour.

## The revival of the Union State

In December 2018, the then Russian prime minister D. Medvedev announced that they had renewed talks with Belarus regarding deepening integration stating: "The Union State project can be executed in a completely different way if we make efforts to implement the agreement signed in December 1999, including the creation of those structures that have not yet been created, but which are assumed by this agreement"[12].

[6]President of the Republic of Belarus Alexander Lukashenko answers questions of mass media representatives on 23 March 2014 [Electronic resource]. URL: http://president.gov.by/en/news_en/view/president-of-the-republic-of-belarus-alexander-lukashenko-answers-questions-of-mass-media-representatives-on-8348/(date of access: 01.02.2020).

[7]Republic of Belarus presidential election 11 October 2015. OSCE/ODIHR Election observation mission final report. Warsaw : Office for Democratic Institutions and Human Rights, 2016.

[8]Ukraine, Russia and Europe prepare for negotiations in Minsk [Electronic resource]. URL: https://search-ebscohost-com.ezproxy1.bath.ac.uk/login.aspx?direct=true&db=bth&AN=97892123&site=ehost-live (date of access: 01.02.2020).

[9]On tax manoeuvre and other issues [Electronic resource]. URL: https://www.pwc.ru/en/tax-consulting-services/assets/legislation/tax-flash-report-25-eng.pdf (date of access: 07.05.2020).

[10]Belarus may lose $ 8 billion out of Russia's tax maneuver [Electronic resource]. URL: https://charter97.org/en/news/2018/11/30/314707/ (date of access: 31.01.2020).

[11]Russia refuses to compensate Belarus for tax maneuver [Electronic resource]. URL: https://charter97.org/en/news/2019/7/19/341832/ (date of access: 03.02.2020).

[12]Медведев рассчитывает на подписание в ближайшее время соглашения с Белоруссией о визах [Электронный ресурс]. URL: https://tass.ru/politika/5910233 (дата обращения: 14.05.2020).

The Russian newspaper "Kommersant" released the first (leaked) technicalities about the prospective Russian-Belarusian economic integration proposal signed by the prime ministers of the respective countries on 6 September 2019. The agreement advocated a partial unification of the Russian and Belarusian economies after 2021. This entails mutual cancellation of roaming charges from June 2020, the adoption of a unified Tax Code by April 2021, unified customs and energy policies, including the creation of shared regulators for the gas, oil, oil-products, and electricity markets. The agreement also states that the central banks of Russia and Belarus should work according to the same general principles of banking and financial supervision after 2021 (though the deal doesn't mention the creation of a single currency, which is what the original 1999 Union State Treaty proposed). Russia and Belarus also agreed to establish on consistent laws for observing special economic measures, alluding to Russian counter-sanctions against the West, which Belarus has been suspected of ignoring. After June 2022, Russia and Belarus will also be implementing a coordinated policy in the labour market and social-protection sphere, converging their levels of state benefits. However, the initial agreement doesn't mention national defence, state security, courts, law enforcement, education, healthcare, science, or the internal structure of the executive branch in Russia or Belarus. The agreement seems to focus more on economic integration rather than political. Nevertheless, the newspaper "Kommersant" calls the integration programme "a rather radical project" that proposes a degree of integration greater in many ways that the European Union[13].

However, Belarus believes, in the words of minister of international affairs Vladimir Makei, that Russia's terms of integration are unacceptable, stating that before integrating their economies further, the current problems must be solved. Furthermore, president A. Lukashenko accused Moscow of attempting to incorporate Belarus into Russia using oil and gas leverage, noting that his country would never be a part of the Russian Federation[14]. Moscow keeps the Belarusian economy afloat with cheap energy and low-interest loans, but Minsk recognises that allowing too much Russian influence may be a threat to its sovereignty [20, p. 289–291]. Conflicting views between Minsk and Moscow regarding the Union State may cause a crisis in bilateral relations, particularly as Belarus refuses to make concessions that would undermine its sovereignty. Due to this, Belarus, being located in between two economic blocs, is attempting to walk a diplomatic tightrope, countermeasuring Russia's attempted assimilation by warming up to the EU. After months of negotiation, Belarus and the EU signed a visa facilitation agreement and a readmission agreement on 8 January 2020, paving the way for improved mobility of citizens, contributing to closer links between the EU and Belarus. This can be seen as a direct move to counteract Russian influence in Belarus at a time when Belarus is seen to either have to choose between Russia or the West. A. Lukashenko stated in December 2019 that it will not cede its sovereignty to any power, whether that be the EU or Russia, and will remain an independent nation. The visa facilitation agreement will make it easier for Belarusian citizens to acquire short-term visas to visit the European Union. Once the visa facilitation agreement enters into force, the visa fee will be reduced from 80 to 35 euro[15]. Another way Belarus is attempting to reduce Russian influence is by having denied Russia permission to host an air base on its territory, in September 2019. Russia said that Belarus' defiance had been an "unpleasant episode", a previously uncommon but increasing public display of animosity between the nations [21]. The air base clash illustrates the limitations of their alliance as Moscow's ties with the West have plunged to post-Cold War lows. Not only has Belarus been warming relations with the EU but it also attempted to re-establish relations with the USA. The US has not had an ambassador to Belarus since 2008, when the Belarusian government expelled the ambassador and most US diplomats. Various US sanctions were imposed in 2006 after a presidential election that violated international norms and was neither free nor fair [22, p. 208–211]. However, in recent months, Belarus and the US have sought to normalise their diplomatic relationship and are prepared to exchange ambassadors as the next step, after secretary of state Mike Pompeo paid a visit to Belarus in January 2020 to discuss issues regarding sovereignty, oil disputes and human rights[16].

To conclude this chapter, on the surface, although the Union State negotiations have resumed allegedly on mutual terms, Belarus' negotiating position is weak. By resisting market reforms that could have diversified imports and exports, A. Lukashenko has instead kept the economy tied to Russia; 40 % of Belarusian exports go to Russia[17]. In addition, Russia has decreased

[13]Russia, Belarus to form economic "Confederacy" by 2022 – Kommersant [Electronic resource]. URL: https://www.themoscowtimes.com/2019/09/16/russia-belarus-to-form-economic-confederacy-by-2022-kommersant-a67297 (date of access: 10.03.2020).

[14]Belarus rejects Russia's "unacceptable" terms of integration [Electronic resource]. URL: https://www.themoscowtimes.com/2019/10/01/belarus-rejects-russias-unacceptable-terms-of-integration-a67540 (date of access: 10.03.2020).

[15]Belarus, EU sign visa facilitation agreement, readmission agreement [Electronic resource]. URL: https://eng.belta.by/politics/view/belarus-eu-sign-visa-facilitation-agreement-readmission-agreement-127147-2020/ (date of access: 10.03.2020).

[16]Normalising US – Belarus relations: Mike Pompeo due in Minsk [Electronic resource]. URL: https://belsat.eu/en/news/normalizing-us-belarus-relations-mike-pompeo-due-in-minsk/ (date of access: 10.03.2020).

[17]Foreign trade of Belarus in H1 2019 [Electronic resource]. URL: http://www.mfa.gov.by/en/foreign_trade/ (date of access: 10.03.2020).

its reliance on imports from Belarus as part of a broad policy of import substitution[18]. Raising the gas price will deprive Belarusian companies of their comparative advantage. Approximately 90 % of Belarus' electricity and heat is generated by natural gas imported from Russia at below market prices [23]. Petroleum products refined from Russian crude oil that is supplied duty free to Belarus account for the largest source of the country's export earnings [25]. However, A. Lukashenko is a master of negotiation with the Kremlin, with a talent for turning weakness into a strength. First, by eliminating political competition in Belarus, he has given V. Putin no option but to deal with him personally. Second, he understands that Moscow needs to present integration between the two countries as voluntary and does not want to use economic sanctions or other tools of persuasion that could destabilise Belarus. Third, he knows that there is no consensus in Moscow on creating a single currency. Unification of the tax systems would also be problematic because of their different structures. If these measures were implemented, Moscow could end up paying much larger subsidies to keep Belarus stable. Minsk is therefore likely to pursue three options: dragging out the negotiations with Moscow, while continuing to declare its commitment to closer union with Russia, seeking alternative sources of energy and credits, and reforming the economy to lower its dependency on Russia.

## Prospects and implications

The future of Belarus – Russia relations, especially in the context of the Union State, is presently uncertain. However, to develop the argument further, first-hand evidence has been collected premised on the authour's interviews with a number of experts (academics, policy-makers and practitioners) who understand the political landscape of Belarus and Russia. This additional primary research (full methodology is presented in the references below) will be used to ascertain the future of the Union State.

The following three questions were asked:

1. What are the reasons for the revival of the Union State?

2. What will be a more likely scenario(s) for Belarus – Russia integration?

3. What are the implications for the Eurasian Economic Union?

Mixed answers were received to the first question. For example, Alexey Gromyko from Russian Academy of Science (Moscow) notes that there is no need to discuss the revival of the Union State as it had never really existed before. This strengthens the argument made earlier, in chapter 1, about the Union State being "in name only", falling short of all its initial intentions. However, Grigory Ioffe from Radford (US) claims that the Union State was never dead on arrival, instead claiming that many ordinary citizens see the benefits of the Union State, with the frictionless travel due to a transparent border and mutual employment authorisation. Anonymous British official disagreed that the revival of the Union State was anyhow connected with V. Putin's administration seeking ways to keep him in power (a popular version in late 2019) [25]. This was evidently corroborated by president V. Putin's recent moves to initiate internal reforms in the country. As early as January 2020, Russian president engaged in reforming the constitution and transferring powers from the presidency to parliament. In March, a member of Russia's ruling party proposed amending the constitution in a way that would "reset" V. Putin's presidential term count back to zero, as he is currently nearing the end of his second-term and would be required to stand down or become prime minister again like in 2008 [26]. However, this suggestion, while supported by Duma, is not yet decisive. It was due to be approved by referendum in April, but due to the COVID-19 outbreak in Russia, it was delayed until further notice. Therefore, the future of V. Putin's tenure looks to be on the trajectory of staying in power until at least 2036, but this all depends on how he, and A. Lukashenko for that matter, come out of the crisis. Nevertheless, most respondents have noted that the Russian government's interest in the Union State has increased in recent years due to the Ukrainian crisis, in an attempt to maintain Russia's influence in the near abroad.

Concerning the more likely scenarios for future integration, the responses also varied. Some noted that Belarus may seek to diversify its trade relations, though this would take time. However, due to the COVID-19 crisis, and Belarus' existing dependency on Russia, Minsk can become even more vulnerable to the latter's pressures. However, with the ravaging pandemic, Russia itself has entered uncharted waters and is facing higher risks and uncertainties. A British official noted that there may be a move for more integrated policies, but not deeper political integration, as president A. Lukashenko is clearly reluctant to give up independence. Belarus would do the minimum to keep Russia content, and will be playing the long game by putting barriers in the way to drag the process out. It is difficult to predict what could happen. It will all depend on how both Russia and Belarus come out of the crisis – politically and socially. V. Putin and A. Lukashenko both underestimated the COVID-19 outbreak, though Russia did act sooner. Nevertheless, the likely outcome will be Russia still attempting to negotiate further integration

[18]Belarus: economic update [Electronic resource]. URL: http://pubdocs.worldbank.org/en/560461559660793014/Eng-EcUpdate-BLR-S19.pdf (date of access: 10.03.2020).

with a weakened Belarus as, according to an EU official Belarus has never been less under Russian control since 1995 as it is today. However, the EU official also noted that military pressure cannot be totally excluded. This will all depend on how stable A. Lukashenko's position is after the crisis. For example, the coronavirus epidemic could lead to a Euromaidan-style revolution in Belarus, as we saw in Ukraine in 2014, which could lead to A. Lukashenko's overthrow. And if this turmoil is occurring in Belarus, Russia may intervene and send its troops in, in an attempt to "calm the situation". Still, this is all in the realms of possibility, and would still not be Russia's first choice.

As for the implications for the future of the EEU, due to the current COVID-19 crisis, the EEU may become a less integrated structure, with member states enacting protectionist policies against each other to prop up their economies and stop the spread of the virus. Evgenii Preiherman from the Council for international relations "Minsk Dialogue" believes this to be a likely scenario, though stating the EEU will still survive, only formally. However, Pavel Tereshkovich from the Belarusian State University believes that the EEU may have two options ahead of them: increased integration or the stagnation of the integration process. We are already witnessing member states applying protectionist policies on one another, and if the COVID-19 crisis worsens, this may lead to trade wars and even threat of withdrawal from the EEU. P. Tereshkovich draws to the cautious decision of Uzbekistan on 7 March 2020, to become an observer rather than a member of the EEU. The still fragile EEU may become weaker after the crisis and may even disintegrate if Russia – Belarus relations continue to break down. And even if the EEU survives, it is likely that internal infighting will continue, with limited prospects for ever closer integration. After all, as mentioned previously in chapter 1, and pointed out by A. Gromyko, the Union State serves as an example for the EEU to follow. Without the Union State acting as a driver, the EEU too will struggle to progress.

In summary, the analysis in this chapter indicates that the situation for the Union State, and the EEU as a whole, remain unstable and unpredictable. The COVID-19 crisis will test the dependability of each member state towards each other. Responses from experts confirm some previously stated theories for the reason for the revival of the Union State was Russia's intent on keeping Belarus in its sphere of influence. The respondents also noted the possible future of the Union State; Russia will continue to demand further integration in return for subsidised oil and Belarus will continue to diversify its trade in an attempt to become less dependent on Russia.

## Conclusion

To conclude, from 1991 onwards, Belarus and Russia have had an ever-changing relationship. What started off as a brotherly alliance has since become more complicated in the last decade. As the Ukrainian crisis unfolded, Belarus feared what happened there may happen in its own territory. Seeing this, Russia immediately took to forge closer ties and further integration with Belarus in order to keep Belarus in line. A. Lukashenko, as a reaction, is now warming up to the West, the EU and the USA especially, in order to balance out Russia's heavy influence in the country.

Russia's mindset for its actions in recent years can be best described by using a classical realist approach. An accepted principle of realism is that a state's main objective is survival. Survival necessitates power over other potentially threatening states. Therefore, the ultimate objective of the state is to maintain power relative to those that would threaten the state's existence [27, p. 633]. Russia sees the US as a threat and resists Belarus developing closer relations with the West. Russia's growing insecurity could play a role in why Russia is working to increasing its sphere of influence [28, p. 60–76]. A realist would contend that Russia's invasion of Ukraine is to further Russia's interests as a great power in the international community and to deter others, such as the US, from challenging Russia. Classical realism would also claim that V. Putin believes that Western interests are to contain Russia's influence internationally and expand theirs. V. Putin did not want risk losing Ukraine to the US and all the strategic benefits that come from obtaining Crimea, and that applies directly to Belarus, as NATO has been expanding its borders closer to Russia ever since the fall of the USSR. Therefore, Russia chose to invade Ukraine, preserving regional interests, and now Russia is pursuing a different strategy to Belarus, by blackmailing it in order to preserve its influence in the country. Therefore, the realist assumption that states pursue security at all costs may explain why Russia is pursuing power outside of its borders.

It is important to understand that throughout most of its history Belarus had always been part of another entity, whether that was the Grand Duchy of Lithuania, the Polish-Lithuanian Commonwealth, the Russian Empire or the Soviet Union. Now that Belarus has achieved independence, the president is unlikely to agree to any loss of sovereignty, which would weaken his authority. A. Lukashenko walks a diplomatic tightrope, being situated between two great powers (the EU and Russia) and hopes to achieve a balanced relationship while preserving Belarus' sovereignty and independence. And for Belarus, this is the priority. The Union State Treaty is built on parity. It provides mechanisms to ensure that no Union State decision passes unless Belarus agrees to it. This is why the sides have never fully implemented the treaty. It is hard to ima-

gine that Moscow will ever give Minsk equal say on a broad array of issues. Belarus, for its part, cannot agree to anything short of parity, as this would amount to a loss of sovereignty.

The future of the Union State is uncertain. Our contemporary world, especially with the advent of COVID-19 makes prediction difficult. Coronavirus could lead to further integration, in order to survive. If Belarus fails to diversify its economy and diplomatic relationships, it may eventually find itself in a more precarious position. The country would not only become more vulnerable to Russian pressure but also, would increasingly look – to foreign observers – like a country with an uncertain future, a perception with damaging political and economic repercussions.

However, the crisis could lead Belarus to improve relations with the EU further. The EU would do well to help it in this endeavour, because – as recent years have shown (particularly Belarus' position on events in Crimea and the Donbass) – Belarusian sovereignty remains important to European security. Moreover, the EU would struggle to improve its relations with Russia if Belarus descended into chaos. In this sense, a stable Belarus is key to easing tensions between Russia and the West.

While uncertainty currently prevails, the Belarusians, along with other neighbouring nations, look forward to building more stable and cooperative external relations, and only time will show what shape they are likely to take.

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# THE REPUBLIC OF BELARUS PARTICIPATION IN NATO PROGRAMME "PARTNERSHIP FOR PEACE" (1995–2016)

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The present article is devoted to the analysis of Belarus – NATO relations in the context of instability and turbulence of regional security. The author came to the conclusion that the main actors from the Belarusian side formulating the framework of Belarus – NATO interaction are the State Secretariat of the Security Council of the Republic of Belarus, Ministry of Defence of the Republic of Belarus, and Ministry of Foreign Affairs of the Republic of Belarus. Moreover, the major directions of Belarus – NATO relations are Individual partnership programme elaborated for two years within Partnership for peace programme, Partnership for peace planning and review process. The author evaluates the effectiveness of Individual partnership programme via demonstration of case studies and results of certain directions.

***Keywords:*** NATO; Belarus – NATO relations; Belarusian foreign policy; Partnership for peace programme; regional security.

# УЧАСТИЕ РЕСПУБЛИКИ БЕЛАРУСЬ В ПРОГРАММЕ НАТО "ПАРТНЕРСТВО РАДИ МИРА" (1995–2016)

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Анализируются отношения Беларусь – НАТО в контексте нестабильности региональной безопасности. Сделан вывод о том, что основными акторами с белорусской стороны, формирующими рамки взаимодействия Беларуси и НАТО, являются Государственный секретариат Совета Безопасности Республики Беларусь, Министерство обороны Республики Беларусь и Министерство иностранных дел Республики Беларусь. Кроме того, основными направлениями отношений Беларусь – НАТО являются взаимодействие в рамках индивидуальной программы партнерства, разрабатываемой на два года в рамках программы "Партнерство ради мира», участие в процессе планирования и оценки. Автор рассматривает эффективность реализации индивидуальной программы партнерства, ее результаты и приводит конкретные примеры по рассматриваемым вопросам.

***Ключевые слова:*** НАТО; отношения Беларусь – НАТО; внешняя политика Беларуси; программа "Партнерство ради мира"; региональная безопасность.

## Introduction

The Belarus' participation in the construction of regional security is evident and undisputable. Moreover, this process is impossible without analysing Belarus – NATO relations as these two actors in the international arena have common borders since 1999 and 2004. Thus the goal of this article is to show how Belarus and NATO interact with each other, what mechanisms are used, who is responsible for the realisation from the Belaru-

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sian side. In other words, the objective of the article is to demonstrate the long historic and political process of establishing more or less constant cooperation between Belarus and NATO. For this reason, it is necessary to fulfill some important tasks. Firstly, to describe the fundamental grounds of the Partnership for peace programme (PfP), historical methods, and official documents used in the article by the researcher. Secondly, to consider the effectivity of certain events in the framework of the Individual partnership programme (IPP) via their case study. Thirdly, to evaluate the level of Belarus – NATO cooperation: either mutually beneficial or unilateral directive aggressive.

It goes without saying that the Belarusian issue in the NATO context is topical and great attention is paid to its studying. Frankly speaking, the international relations department at the faculty of international relations of the Belarusian State University is the major scientific academic community in the Republic of Belarus. A. Baichorov [1], A. Rozanov [2], A. Rusakovich [3], V. Shadursky [4], V. Snapkousky [5] studied problems of Belarusian foreign and security policy including aspects of Belarus – NATO interaction. There are numerous fragmentary articles devoted to NATO issues but there is no all-encompassing comprehensive work, that is why this article is an author's attempt to summarise the tendencies and case studies in Belarus' participation in the PfP. The author examined sites of NATO[1], Ministry of Foreign Affairs of the Republic of Belarus[2], National Archive of the Republic of Belarus[3]. It should be noted that foreign historiography is primarily devoted to the political situation in Belarus [6], to geopolitical disputes between East and West and Belarus' place in them or to the president A. Lukashenko and his relations with a Russian colleague. That's why the authour considered them useless and not presented in the article because it lacks a useful assessment for the disclosure of the topic.

Actually, we should underline the diversity of security architecture in Europe in general and in Eastern Europe in particular. Firstly, there are different systems and regimes of security in the region: NATO, Collective Security Treaty Organisation (CSTO), EU defence and security policy, Russia – USA bilateral agreements. Of course, there are different approaches to security guarantees that trigger contradictions between regional actors. The Republic of Belarus is a member of CSTO, CIS, and Union State with the Russian Federation. But in 2015 it was underlined by the head of Belarusian state that Belarus' aspiration is to maintain and expand constructive cooperation with the NATO on the basis of equality and mutual respect [6].

Secondly, Belarus is situated in the centre of Europe and is always regarded as a buffer zone or bridge between West and East. It's self-evident that the country tends to realise the multivector foreign policy and participates in international security organisations.

Moreover, the country expresses concern about existing problems (possible cooperation between CSTO and NATO, further NATO expansion to Ukraine and Georgia, the predominant role of the USA in the alliance, destruction of the system of armaments treaties between the USA and Russian Federation) [6].

If we try to give general characteristics of Belarus – NATO relations since 1992 up to 2016 it is not surprising that we observe the uneven quality of interaction and irregular quantity of events depending on the political conjuncture at the particular moment. This political atmosphere is created at the international level: certain summits (NATO, EU, G8, G20) play an important role, bilateral agreements and meetings as well as at the national level (elections of the president, etc.).

## The problem of denuclearisation and conversion

The first contacts of new sovereign state in the 1990s were primarily established with the USA in connection with denuclearisation and economic aid for the conversion of the armaments industry. We should mention the great range of high-level visits in the 1990s: it was the first visit of the chairman of the Supreme Council of the Republic of Belarus in 1993, and 6-hours' visit of the US president in Belarus in 1994; state secretary of the USA visited Belarus in 1993 and Belarusian minister of foreign affairs visited the USA in 1993, 1995, 1996, 1997[4]. There were reconnaissance visits with the slogan "come and see". At that time Belarus was trying to diminish its dependence on Russia and was searching for ways how to get economic privileges and bonuses from other countries. During each visit to the USA, the Belarusian state was invited to join NATO PfP. To make a long story short Belarus at that time was waiting for real money from the US side and the republic did not have a unified foreign policy strategy, there was a permanent discussion between different state bodies (Supreme Council of the Republic of Belarus and Council of Ministers of the Republic of Belarus) and political parties and even some officials (minister of foreign affairs of the Republic of Belarus). That's

[1]North Atlantic Treaty Organisation [Electronic resource]. URL: https://www.nato.int/cps/en/natohq/index.htm (date of access: 01.02.2020).

[2]Ministry of Foreign Affairs of the Republic of Belarus [Electronic resource]. URL: https://mfa.gov.by/en_(date of access: 01.02.2020).

[3]Национальный архив Республики Беларусь [Электронный ресурс]. URL: http://www.narb.by/rus/reading_room/ (дата обращения: 01.02.2020).

[4]Справочные материалы. Отношения Республики Беларусь и США // Нац. арх. Респ. Беларусь. Ф. 7. Оп. 16. Д. 3806. Л. 167.

why the country postponed PfP joining. But after the constitutional referendum in 1996, US implementation of selective engagement policy in 1997, the diplomatic scandal "Drozdy" in 1998 USA – Belarus interstate cooperation decreased and the bilateral interaction fell into oblivion for a decade. The United States has always respected Belarus' desire to chart its own course and to contribute to peace and stability in the region. Both sides confirmed willingness to continue dialogue on regional and international security matters. The USA highly appreciated Belarusian efforts to preserve peace in the region. Summing it up, against the background of tensions with the Russian Federation the Republic of Belarus is turning to Western partners.

## Partnership for peace

The next step was the announcement of a new NATO format on 10–11 January 1994. According to the official press communique "NATO today launched an immediate and practical programme that will transform the relationship between NATO and participating states. This new programme goes beyond dialogue and cooperation to forge a real partnership – a Partnership for peace. We (ministers of member states) therefore invite the other states participating in the NACC and other CSCE countries able and willing to contribute to this programme, to join with us in this partnership. Active participation in the Partnership for peace will play an important role in the evolutionary process of the expansion of NATO"[5]. Then in 1995 Belarusian representative, minister of foreign affairs V. Senko signed the framework document of PfP.

According to this official agreement, the other states subscribing to this document will cooperate with NATO in pursuing facilitation of transparency in national defence planning and budgeting processes; ensuring democratic control of defence forces; maintenance of the capability and readiness to contribute, subject to constitutional considerations, to operations under the authority of the UN and (or) the responsibility of the CSCE; the development of cooperative military relations with NATO, for the purpose of joint planning, training, and exercises in order to strengthen their ability to undertake missions in the fields of peacekeeping, search and rescue, humanitarian operations, and others; the development, over the longer term, of forces that are better able to operate with those of the members of the North Atlantic Alliance[6].

The first step for subscribing states was to provide to the NATO authorities presentation documents identifying the long-term strategy to achieve the political goals of the partnership and the military and other assets that might be used for partnership activities. NATO will propose a programme of partnership exercises and other activities consistent with the partnership's objectives special for each state. Based on this programme and its presentation document, each subscribing state will develop with NATO an individual partnership programme[7].

To assist and to control the process of elaboration of the Belarusian presentation document department head of defence policy and planning division W. Gerard visited Belarus in August 1995 and took part in working meeting with representatives of Ministry of Foreign Affairs of the Republic of Belarus, Ministry of Defence of the Republic of Belarus and Ministry of Internal Affairs of the Republic of Belarus. Firstly, the general directions of multilateral interaction within North Atlantic Cooperation Council (NACC) were enumerated including political consultations, regional security, strategic matters, conversion, and scientific cooperation. Belarus demonstrated interest in all spheres. Secondly, partner countries choose individual activities according to their ambitions and abilities. An Individual partnership and cooperation programme (previously called the Individual partnership programme) is then jointly developed and agreed between NATO and each partner country. These two-year programmes are drawn up from an extensive menu of activities, according to each country's specific interests and needs. All partners have access to the partnership and cooperation menu, which comprises some 1 600 activities[8] .

The first IPP with Belarus was endorsed by the NATO Council in July 1997. Since then, the number of annual joint activities under the IPP has increased more than six-fold and now (2019) stands at around 125. For example, the participation of Ministry of Defence of the Republic of Belarus in IPP events was the following: in 1997 – 20 events, in 1998 – 25, in 1999 – 11 (suspension of interaction due to Kosovo crisis), in 2000 – 35, in 2001 – 52, in 2002 – 78[9]. Regular consultations are held with NATO international staff and international military staff on the IPP implementation assessment[10].

[5]Partnership for peace: invitation [Electronic resource]. URL: https://www.nato.int/docu/comm/49-95/c940110a.htm (date of access: 01.02.2020).

[6]Partnership for peace: framework document [Electronic resource]. URL: https://www.nato.int/docu/comm/49-95/c940110b.htm (date of access: 01.02.2020).

[7]Ibid.

[8]О мерах, принимаемых правительством по расширению военного сотрудничества РБ с НАТО в рамках ПРМ // Нац. арх. Респ. Беларусь. Ф. 7. Оп. 18. Д. 167. Л. 50.

[9]Ibid.

[10]Ibid.

## Kosovo crisis and suspension of IPP

But the first IPP was temporarily suspended because of the Kosovo crisis, the Belarus – NATO relations were frozen. The high officials of the Republic of Belarus accused NATO of unsanctioned bombardments. First of all, the Ministry of Foreign Affairs of the Republic of Belarus called on NATO countries to abandon military intervention. On 14 October 1998, ministry released a statement, in which it was noted that "the use of force against a sovereign state without the sanction of the UN Security Council is a severe violation of the UN Charter, this step contradicts the fundamental principles of international relations and undermines the security and legal system on the European continent <…> NATO's military intervention in the intra-state conflict not only does not eliminate its causes, but, on the contrary, deepens the confrontation between the parties in Kosovo"[11]. On 20 February 1999, the President of the Republic of Belarus made a statement on the development of the situation around Kosovo. "The Republic of Belarus is closely following the development of the situation around the conflict in Kosovo and at the talks in Rambouillet on issues of its settlement. The main thing now is to preserve the negotiation process and prevent any actions that could put it at risk… The Republic of Belarus reaffirms the firmness of its position regarding the settlement of the Kosovo conflict, which should be based on unconditional respect for the sovereignty of Yugoslavia, its territorial integrity and the principle of non-use of force"[12] (hereinafter translated by *O. Zh.*). In connection with the launch of the NATO military action against the Federal Republic of Yugoslavia on 24 March 1999, A. Lukashenko again issued a statement on the development of the situation around Yugoslavia, which was perceived in this country as a powerful psychological factor of moral support. "The Republic of Belarus with deep concern accepted the decision of the NATO leadership on the use of military force against sovereign Yugoslavia. The desire to resort to extreme and most counterproductive measures in resolving the crisis indicates the reluctance of the North Atlantic Alliance to use all available means for a peaceful resolution of the intra-Yugoslav conflict, which can only cause condemnation of the world community"[13]. Belarus consistently opposed the use of force in the conflict, spoke out against the military intervention of third countries in Yugoslavia.

So the Republic of Belarus being a partner country doesn't have any influence on NATO policy. The country tends to develop initiatives to strengthen the regional security system, to promote stability and to minimise the negative side effects of NATO actions in the region. NATO may be regarded as a relic because after USSR and Organisation of Warsaw Treaty dissolution it lost its original purpose.

**The planning and review process (PARP)** is a mechanism with the main task to develop the framework of military cooperation with NATO. Belarus joined it in 2004. Fulfillment of partnership goals, selected within PARP, allows gaining relevant experience in improving the training of the armed forces of Belarus, with the possible aim of enabling their participation in multinational peace operations.Within PARP, Belarus and NATO regularly exchange delegations in order to design partnership goals for the two-year period and to assess their implementation[14].

Belarus regularly brings forward initiatives in order to deepen its cooperation with the alliance in responding to challenges and threats to international security. One more important direction within PfP is conducting joint exercises on operating in a radiological threat, given the unique experience gained by Belarus to mitigate the consequences of the Chernobyl disaster; creation on the basis of the Ministry of Emergency Situations of the Republic of Belarus of a PfP training centre to train specialists in the field of chemical, biological, radiological and nuclear defence; hosting the disaster response exercise organised by the Euro-Atlantic Disaster Response Coordination Centre (EADRCC). For example, the scenario for EADRCC exercise "SRBIJA 2018" provided an opportunity to practice international cooperation and strengthen the ability of teams from different nations to work effectively together across a wide range of relief operations. These included urban search and rescue, emergency medical teams, water rescue, as well as detection, protection, and decontamination teams. Contributions to the exercise consisted of emergency response teams, exercise planners, and evaluators. With around 2 000 personnel from 40 countries involved, it was the largest exercise organised by the EADRCC. Belarus also participated in this event (30 people and 8 units of equipment)[15]. In 2017 Belarus took part in exercise "Bosnia and Herzegovina 2017" including the field exercise and a training programme, a table top exercise and a virtual reality – command post exercise with the aim to train and exercise procedures for the local emergency management authority,

[11]Документы о двусторонних отношениях Республики Беларусь с государствами югославского региона (соглашения, информация, запись бесед и др.) // Арх. М-ва иностр. дел Респ. Беларусь. Ф. 907. Оп. 2. Д. 1978.

[12]Заявления Президента Республики Беларусь от 20 февраля 1999 г. и от 24 марта 1999 г. о развитии ситуации вокруг Косово // Вестн. М-ва иностр. дел Респ. Беларусь. 1999. № 1. С. 26–28.

[13]Ibid.

[14]North Atlantic Treaty Organisation. Belarus – NATO cooperation [Electronic resource]. URL: http://mfa.gov.by/en/organizations/membership/list/c6eaf2b20c037582.html (date of access: 01.02.2020).

[15]EADRCC consequence management field exercise "Srbia 2018" [Electronic resource]. URL: https://www.nato.int/cps/en/natohq/news_152120.htm (date of access: 01.02.2020).

the UN model on-site operation co-ordination centre, the liaison officers, the on-site commanders as well as the team leaders of participating consequence management teams[16].

Belarus has been actively engaged within the framework of the NATO **Science for peace and security (SPS) programme** since 1992. Since 2001, Belarus has received grant awards for about 40 cooperative activities under SPS. Areas of focus include telecommunications, Chernobyl-related risk assessment studies, and explosive material detection systems. Belarus has completed several activities with the SPS programme. The leading areas for cooperation have included security-related advanced technology, defence against CBRN, and environmental security. There are some examples of ongoing and completed projects under the framework of the NATO SPS programme in 2015[17].

Nano-optics: principles enabling basic research and applications together with US scientists; fundamental and applied nanoelectromagnetics together with Italian colleagues; flood monitoring and forecasting in Pripyat river basin led by scientists from Belarus, Ukraine and Slovakia; biodetectors based on advanced microchips; radioactive contamination in the Polessie state radiation-ecological reserve (assessment and analysis), the notable project led by scientists and experts from Belarus, Ukraine and Norway[18].

Recently Belarusian scientists and experts have discussed opportunities for cooperation through NATO's SPS programme during an information day held at the National Academy of Sciences in Minsk. Addressing participants, NATO assistant Secretary-General for emerging security challenges, A. Missiroli (he is the highest-ranking representative of the NATO Secretariat to visit Belarus in the last 27 years), noted that the benefits of scientific cooperation are shared among NATO and partner nations. He encouraged Belarus to further engage in NATO partnership activities and underlined SPS as "an excellent opportunity for Belarusian scientists and experts to work alongside their peers from NATO and partner nations to deliver tangible, security-related results"[19] .

In his welcome address, Belarusian deputy minister of foreign affairs A. Dapkiunas emphasised the importance of the SPS programme as platform for non-military scientific cooperation. He further stressed that "the information day will give new impetus to cooperation in the scientific field between Belarus and NATO, its members and partner nations, and will contribute to bridge-building, strengthening mutual understanding and trust in the region"[20].

Moreover, A. Dapkiunas and A. Missiroli mentioned the gradual improvement of Belarus – NATO relations. Belarus' cooperation with NATO member states and partners in various fields was discussed, including fight against new challenges and threats such as terrorism. A. Dapkiunas stressed Belarus' readiness for a constructive dialogue and interaction with NATO on the basis of mutual respect and equality. The Belarusian diplomat also drew the NATO representative's attention to Belarus' initiatives in favor of creating a digital good neighbourhood belt and in favour of working out a declaration on the non-deployment of medium-range and shorter-range missiles in Europe. A. Dapkiunas mentioned the Belarusian proposals are meant to reduce confrontation, restore trust, and bolster friendly ties between countries[21].

Public opinion. It can be concluded that NATO is often regarded as an opponent, seldom – as a threat, rare – as an ally. This can be confirmed by a number of data. According to national opinion polls conducted in 2000 34.4 % respondents considered NATO as a threat and in 2001 this number was 26.7 %. One more question that sounds interesting is about NATO expansion to the East: immediately after Poland joined NATO 47.7 % people were against further expansion (June 1999), later then 43.7 % in November 1999, 31.1 % in November 2000, 32.6 % in February 2001 [7].

## The Belarusian state bodies and officials responsible for the realisation of Individual partnership programme

The primary role in the formation of Belarus – NATO relations from the Belarusian side belongs to the Secretariat of the Security Council of the Republic of Belarus that is an interdepartmental body with a mandate to ensure the security of the Republic of Belarus. It considers internal and external affairs of the state with regard to the interest of maintaining security and defence. The Ministry of Foreign Affairs of the Republic of Belarus is the major state republican body responsible for the elaboration and coordination of the strategy

[16]EADRCC consequence management field exercise "Bosna i Hercegovina 2017" [Electronic resource]. URL: https://www.nato.int/cps/en/natohq/news_140528.htm (date of access: 01.02.2020).

[17]Relations with Belarus [Electronic resource]. URL: https://www.nato.int/cps/en/natohq/topics_49119.htm (date of access: 01.02.2020).

[18]Country flyer 2015, Belarus [Electronic resource]. URL: https://www.nato.int/science/country-fliers/Belarus.pdf (date of access: 01.02.2020).

[19]NATO promotes scientific cooperation with Belarus [Electronic resource]. URL: https://www.nato.int/cps/en/natohq/news_169739.htm?selectedLocale=en (date of access: 01.02.2020).

[20]Об участии заместителя министра иностранных дел А. Дапкюнаса в открытии информационного дня НАТО и встрече с заместителем Генерального секретаря НАТО [Электронный ресурс]. URL: http://mfa.gov.by/press/news_mfa/b14224ef64e9-7089.html (дата обращения: 01.02.2020).

[21]Ibid.

and general directions of foreign policy. Its mission is to promote the rights and interests of the Republic of Belarus on the international arena, negotiate with the representatives of foreign countries, international organisations and intergovernmental institutions. The Ministry of Defence of the Republic of Belarus is responsible for military policy of Belarus that is an important element of national and foreign policy activities aimed at the country's national security protection, war and armed conflicts prevention and strengthening of strategic stability. Military policy is determined according to the country's national interests and military, economic, social and diplomatic potential.

Taking into account these competences of responsible bodies we should mention the conceptual documents as the Concept of national security of the Republic of Belarus adopted in 2010 (the first versions in 1995 and 2001)[22], the Military doctrine of the Republic of Belarus of 2016 (previous in 2002)[23] and the law on main directions of internal and foreign policy of 2005[24]. The strategic aspects are also stated in numerous presidential statements, addresses to parliament, official declarations, etc. But these documents are more theoretical and rhetorical.

From the NATO side the major bodies responsible for organising and implementing PfP are Political Committee and International Secretariat.

The new form of interaction is consultations on confidence and security building measures. From 2015 there were 4 rounds of consultations between Belarus and NATO experts on confidence and security-building measures. The latest was in February 2020. Belarusian state is represented by the deputy minister of foreign affairs of the Republic of Belarus, A. Dapkiunas, the counterpart is the director of the arms control, disarmament and weapons of mass distruction (WMD) non-proliferation centre of the NATO International Secretariat, W. Alberque. Usually both sides exchanged views on the possibilities for further development of mutually beneficial cooperation, discussed a number of topical issues of international and regional security, non-proliferation and arms control. A. Dapkiunas emphasised the importance of deepening a mutually respectful dialogue between Belarus, the NATO Secretariat and NATO allies on confidence- and security-building measures to gradually reduce confrontation and create favourable conditions for practical work to restore the viability of arms control and WMD non-proliferation mechanisms[25].

In 2019 the traditional international seminar "NATO and international security" under the aegis of the Centre of foreign policy and Security research centre was held and the great fruitful discussion was on the role of NATO and its relations with Eastern European countries. According to words of V. Bespaly, senior counselor of the State Secretariat of the Security Council of the Republic of Belarus there are negative tendencies in international relations today: destruction of short and medium range missiles' treaty, indefinite situation with Strategic arms reduction treaty, international military capacity building. The jubilee NATO summit in London demonstrated the controversies within the alliance members. The Republic of Belarus initiates the creation of good neighbourhood belt, issues declaration of responsible countries.

In M. Huterer's opinion, Ambassador Plenipotentiary of the Federal Republic of Germany to the Republic of Belarus (that is now NATO contact embassy in Belarus), the international political situation today becomes dangerous. Security and arms control architecture has been damaged including cornerstone of European security, strategic nuclear weapons treaty. The NATO members and partners express mutual understanding of this problem and should take care of it.

According to words of V. Pavlov, head of department of international security and arms control of the Ministry of Foreign Affairs of the Republic of Belarus, there is the accusing rhetoric in political dialogue and confrontation replaces confidence. In a word there is the constant increase of scale of military exercises but Belarus is against additional militarisation in the region, we are monitoring the NATO preparations for exercise "Defender-2020" and waiting for invitation (as response to exercises "Zapad-2017"). Ministry of Foreign Affairs of the Republic of Belarus hopes to have open and sincere dialogue with the Russian Federation and NATO.

However, P. Lunac, head of NATO public diplomacy department, specifies Belarus – NATO relations since 1995 and underlines the willing to go step by step on the way to dialogue on substantial issues and practical cooperation. He pays attention to science based achievements, to gradual process of interaction, that Belarus does not contribute to NATO peacemaking operations. Let's hope that the abovementioned difficulties can be easily overcome and in the nearest future the Belarus – NATO interaction will be more stable and fruitful.

[22]Об утверждении Концепции национальной безопасности Республики Беларусь : Указ Президента Респ. Беларусь от 9 нояб. 2010 г. № 575 [Электронный ресурс]. URL: https://www.pravo.by/document/?guid=3871&p0=p31000575 (дата обращения: 01.02.2020).

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[24]Об утверждении основных направлений внутренней и внешней политики Республики Беларусь : Закон Респ. Беларусь от 14 нояб. 2005 г. № 60-З [Электронный ресурс]. URL: https://www.pravo.by/document/?guid=3871&p0=h10500060 (дата обращения: 01.02.2020).

[25]Deputy minister of foreign affairs A. Dapkiunas meets the director of the arms control, disarmament, and WMD non-proliferation centre of the NATO International Secretariat [Electronic resource]. URL: http://mfa.gov.by/en/press/news_mfa/ac2064ace2f-4d44a.html (date of access: 01.02.2020).

## Conclusion

Interaction with NATO is one of directions of Belarusian multivector foreign policy through which Belarusian side tries to ensure security on western frontiers, on the one hand, and increase its own importance in alliance with the Russian Federation on the other hand. The NATO security infrastructure is approaching to Belarusian borders and bilateral interaction with NATO member states (Lithuania, Latvia, Poland) is the element of Belarusian security policy, one should not underestimate the role of NATO in the context of regional security and the Union State with the Russian Federation. After Belarus joined NACC in 1992 the relations with NATO have gradually developed, the process was difficultand it is possible to highlight several crises, periods of frozen contacts, decline of high level political relations, etc. However, there is one permanent form of interaction throughout 25 years (contact embassy on the basis of embassy of NATO member state) that performs logistic and intermediary functions.

But the bulk of beneficial cooperation is realised via IPP within PfP. There are two major directions within IPP: military and non-military which have a lot of spheres of cooperation. For example, science for peace and security; dealing with emergency situations (EADRCC); medical training; language courses and international exchange, seminars. The perspective of Belarus – NATO relations are unclear nowadays.

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# THE EUROPEAN UNION'S PLACE IN BRITISH FOREIGN POLICY IN 2010–2016

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The article examines the place of the European Union in the foreign policy of Great Britain, as well as those adopted in the period 2010–2016 documents related to British policy concerning the EU: European Union act 2011, European Union [referendum] bill 2013–2014, European Union referendum act 2015. The role of referenda in the political life of Great Britain and the impact of relations with the EU on their development are characterised. Foreign policy with the EU has long been a priority for Britain but has given the way to internal political struggle, including on the issue of participation in the European integration project. In the 2010s referenda began to play a large role in the political life of the United Kingdom and attempts were made to legislatively formulate a referendum on EU membership, which was done only in 2015.

***Keywords:*** the UK; EU; foreign policy; Brexit; UK referendum 2016; Conservative party; coalition government; David Cameron.

# МЕСТО ЕВРОПЕЙСКОГО СОЮЗА ВО ВНЕШНЕЙ ПОЛИТИКЕ ВЕЛИКОБРИТАНИИ В 2010–2016 гг.

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Рассматривается место Европейского союза во внешней политике Великобритании, а также принятые в период 2010–2016 гг. документы, относящиеся к политике Соединенного Королевства в отношении ЕС: акт о Европейском союзе 2011 г., билль о референдуме по вопросу членства Великобритании в ЕС 2013–2014 гг., акт о референдуме 2015 г. Дается характеристика роли референдумов в политической жизни Великобритании и влияния отношений с ЕС на их развитие. Внешняя политика в отношении ЕС долгое время была приоритетным направлением деятельности Великобритании, однако уступила место внутриполитической борьбе, в том числе по вопросу участия в европейском интеграционном проекте. В 2010-х гг. в политической жизни Соединенного Королевства большую роль начинают играть референдумы и предпринимаются попытки законодательного оформления референдума о членстве в ЕС, что было сделано только в 2015 г.

***Ключевые слова:*** Великобритания; Европейский союз; внешняя политика; Брексит; референдум 2016 г. в Великобритании; консервативная партия; коалиционное правительство; Дэвид Кэмерон.

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## Introduction

The European Union is a unique integration association and a significant actor in international relations. Over the past decades, the union has strengthened and expanded, more and more structures have appeared. Great Britain, which was the part of the EU since 1973, conducted foreign policy in the period under review aimed at reviewing relations within the integration association and critically assessing interaction with it. Period 2010–2016 is characterised by the increasing influence of Eurosceptics on British foreign policy, and, in general, a change in priorities in favour of domestic politics. In 2010–2016, during the premiership of D. Cameron, the UK made a radical shift in its EU policy. General elections of 2010 brought the Conservatives to power as a part of the coalition government, therefore making right-wing conservative Eurosceptics more influential. The referendum institution played a significant role in this. In 2016, the referendum outcome was to withdraw the state from the EU (which happened for the first time in the history of the union) and on 31 January 2020, the United Kingdom left the union.

The relevance of the research topic is due to the large role of both the EU and the UK in international relations. Brexit is an example of the EU disintegration process that developed in the UK during the study period and has implications for all participants and millions of citizens.

The study of European policy in Great Britain is carried out by R. Whitman [1; 2], R. Niblett [3], W. Wallace [4], T. Andreeva [5], D. Galushko [6], B. Davies [7], S. Collard [8], B. Wellings and E. Vines [9], J. Shaw [10], and others.

R. Whitman specialises in the analysis of UK foreign policy towards the EU. His works are distinguished by a high degree of generalisation and systemic presentation. His articles analyse the British diplomatic strategy, its tools, and its parameters. The authour also characterises the foreign policy of Great Britain towards the EU, outlines its main objectives. R. Whitman notes the special role of the referendum in determining future relations with the EU.

T. Andreeva represents the Russian school of British policy research. The authour specialises in analysing the relations of Great Britain with the EU, the foreign policy of the United Kingdom in a wider context, as well as the study of internal political processes in the UK. Separately, it is worth noting her monograph "European policy of the D. Cameron – N. Clegg Cabinet (May 2010 – July 2013)", giving a detailed description of an important period in the formation of relations with the EU.

D. Galushko examines the institution of a referendum in the context of EU membership and identifies three categories of such referenda. The authour also assesses the importance of referenda in making socially important decisions and concludes that their results can have not only national but also international significance, as the referendum in the UK in 2016 showed.

R. Niblett owns a new concept of UK foreign policy priorities in the context of limited funds for its implementation. According to this concept, the priority of British foreign policy should be the EU, then the Transatlantic Partnership, and then bilateral and multilateral relations with the rest of the world. Being part of the EU, the UK has more influence than outside of it.

W. Wallace's research interests are in UK foreign policy. The author proves the overestimation of the "special relations" between the UK and the USA and indicates the limitedness of its influence on its former colony. At the same time, the United Kingdom should be more actively involved in the European integration project, and relations with the United States should not be built to the detriment of relations with continental Europe.

B. Davies and S. Collard draw attention to the fact that according to the European Union referendum act 2015, some groups of UK citizens were excluded from the voting process and emphasise that this was not only at variance with the intentions of the conservatives to introduce a vote for life, but also contradicted the advocate of maintaining government membership, as excluded groups are more likely to vote against leaving the EU.

J. Shaw considers concepts such as "will of the people", "democracy" and criticises the referendum franchise, which did not allow many British citizens to speak out on the issue of EU membership. Analysing the course and results of the 2016 referendum, the authour raises some problems arising from the decision to withdraw from the EU.

B. Wellings and E. Vines examine in detail the 2011 act, which called for a referendum if relations between the UK and the EU change significantly. Researchers conclude that EU policies for 2010–2015 and the debate over membership included populist nationalism as opposed to the European integration project and became part of British political culture.

The purpose of the study is to determine the role of the European Union in the foreign policy of Great Britain and its change during 2010–2016.

To achieve this goal, the authour posed several tasks:

- to determine the priority of UK European policy and to specify its objectives;
- to examine UK decisions related to the EU;
- to define the role of referenda in UK political life;
- to analyse critically the stages of legislative consolidation of the referendum on UK membership in the EU.

## Methods

To cover the topic, a combination of general scientific and special historical methods was used.

Among the general scientific methods, the authour used a historical and systematic approach. Of the general scientific logical methods, analysis, synthesis, induction, deduction, scientific study, and generalisation were used. The study involved special historical methods, such as historical-genetic and historical-descriptive methods.

In the process of studying the European Union in Britain's foreign policy, a significant role was given to descriptive research. Moreover, during a descriptive study, a connection was established between various elements. It was supplemented in part by an analytical study aimed at establishing causal relationships. Evaluation of the studied articles on the problem was carried out based on critical analysis.

The foreign policy of Great Britain was determined by three priorities – three interlocking circles proposed by W. Churchill: relations with Europe, relations with English-speaking countries with special emphasis on Anglo-American cooperation, relations with the Commonwealth of Nations. In the European direction, relations with the EU and NATO, as well as regional organisations, stood out [4]. An alternative to this concept was proposed in 2015 by R. Niblett. He argued that, due to global problems and limited resources, the UK could no longer pay equal attention to all three areas, and therefore should prioritise cooperation. The researcher was given a gradation of the importance of relationships for the United Kingdom. He put the EU in the first place, followed by relations with the United States, and third with relations with international organisations and other states [3].

Foreign policy towards the EU was not regulated by one document. In the absence of a comprehensive strategy for Europe (including the EU), the European direction was mentioned in the context of foreign policy and security. The strategic goals of the state were outlined in the National security strategy and the Strategic defence and security review [1, p. 2].

The National Security strategy and Strategic defence and security review 2015 note that a prosperous and secure EU is essential for a prosperous and secure UK. "We want Europe to be dynamic, competitive and outwardly focused, delivering prosperity and security" – reflects the desire of the state to reform the union. Mention was made of cooperation with the EU and NATO in the field of security, as well as the economic importance of the EU for the United Kingdom. At the end of the section, a referendum on the issue of EU membership until the end of 2017 was mentioned[1].

The main strategic goals of the European policy of Great Britain were deepening and further liberalisation and deregulation of the single market, free trade; support for further EU enlargement; preventing the formation of a political union in the EU, resistance to deepening integration, avoiding the mention in the documents of the "United States of Europe" as the ultimate goal of European integration, the predominance of intergovernmental relations, rather than a supranational approach; ensuring the decisive role of Great Britain in EU affairs and preventing the dominance of Germany and France in the union [2, p. 510–511]. Britain sought to maintain autonomy from the EU in matters of foreign policy, security, and defence. The various composition of British governments adhered to these goals since the 1990s and ending with the government of D. Cameron in 2015 [1, p. 4].

British diplomacy in relations with the EU consisted of two dimensions. The first included UK relations with EU institutions, the possibility of resolving issues in a multilateral format. The decision-making process and coordination of the UK within the EU took place between the United Kingdom permanent representation to the EU, the Foreign and Commonwealth office (FCO), and the UK cabinet office [2, p. 512]. The second included UK foreign policy outside the EU. It was influenced by the obligations of the United Kingdom to the EU – in the foreign economic sphere and economic development policy particularly.

Starting with the premiership of G. Brown and continuing first with the coalition government of conservatives and liberal democrats in 2010–2015, and then with the conservative government, the UK increasingly deviated from the strategic goals of European politics. During the crisis of the eurozone and the migration crisis, the government demonstrated the priority of internal political processes (preserving the unity of the Conservative party, the proximity of elections) excessive involvement in European affairs [3, p. 6]. At the same time, the UK still sought to play one of the main roles in the union, influence decision-making, and to prevent the strengthening of the role of Germany and France but turned out to be an outsider in solving EU problems [5, p. 185].

The period of the premiership of D. Cameron is characterised by the desire to change priorities in foreign policy, to shift emphasis from the EU by developing relations with rising powers such as India and China, overlapping with the growing popularity of Euroscepticism, largely due to the crises that have fallen during this period, the increase in immigration from the EU countries and the inability to control it, the miscalculations of previous governments and, as a result, the population's discontent with the ruling elites.

During the first term of D. Cameron as prime minister in the domestic policy of the state, there was an

[1]National security strategy and Strategic defence and security review 2015 [Electronic resource]. URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/478933/52309_Cm_9161_NSS_SD_Review_web_only.pdf (date of access: 19.05.2020).

increase in contradictions regarding relations with the EU both within the coalition and within the Conservative party, aggravated by the global economic crisis and the eurozone crisis. Once again, proposals were made to hold a referendum on EU membership by the right wing of the Conservative party and the United Kingdom Independence party, which advocated secession from the EU. Throughout 2011–2015 attempts were made to legislate the holding of such a referendum. The institution of the referendum itself became an integral part of the political life of the state.

It worth noting that the very possibility of exiting the EU was introduced only in the Lisbon treaty in 2009 with Art. 50 providing the formal withdrawing procedure[2]. Therefore, the UK became the first EU member state to advocate such changes in its status in the union.

During the period under review, the importance of referenda in the United Kingdom was growing. The European Union act 2011 introduced a universal vote on the transfer of EU powers; in 2012, a referendum was held in the state on the issue of changing the electoral system; in 2014, the referendum decided the status of Scotland; in 2016, a referendum was held on UK membership in the EU.

Referenda are considered as a tool to maintain the status quo and a mechanism to give popular legitimacy to already adopted decisions [9, p. 317]. Nevertheless, in the case of the UK referendum of 2016 this tendency was overturned by unexpected outcomes of the popular vote.

In the context of EU membership, three types of referenda can be distinguished: referenda on EU accession, referenda on the adoption of amendments to EU constituent agreements, and referenda on the country's exit from the EU [6]. The 2016 referendum in the UK also belongs to the latter category.

Referenda are an atypical phenomenon for the UK political system. Historically, parliament always played a big role in the country. Parliamentary sovereignty is one of the basic constitutional principles of the United Kingdom. According to it, the parliament's highest legislative body in the UK, which can accept or repeal any law[3]. On the other hand, there is popular sovereignty and popular representation. Traditionally, the state is governed by legislative and executive powers, elected by the people. Parliamentary sovereignty and representative government restrained popular sovereignty, which is embodied through referenda. The idea of a strong parliament, which knows what and how to do, albeit less reactive and accountable to the people, prevailed in British political culture [9, p. 312].

The problem of referenda in the UK also lies in their advisory nature and the issue of representation of the electorate. So, any decision made in a referendum can be reviewed by the next government, and the lack of a homogeneous political community recognising its legitimacy affects the voting results, as was the case with the Northern Ireland border poll in 1973 [7, p. 325].

In the history of the state, there are examples of holding referenda at the local level, and the first national referendum was held only in 1975 on the issue of European integration. Then 2/3 of the voters, contrary to estimates, voted for the state to remain in the European Economic Community (EEC) [9, p. 316]. The referendum was initiated by the Labour party, which was in a split, and its leader H. Wilson sought to reconcile the parties by, firstly, negotiating with the EEC and obtaining concessions for the country, and secondly, by submitting the issue of community membership to a nationwide vote. Domestic political motives here prevailed over foreign – the unity of Europe. This referendum is often compared with the 2016 referendum on the UK membership in the EU initiated by D. Cameron.

Researchers B. Wellings and E. Vines believe that this referendum laid the foundation for a populist policy towards Europe. The issue of participation in the European integration project turned out to be too complicated for the ruling party, and it transferred responsibility for making decisions to the people. "The 1975 referendum led to a situation whereby "the People" underwrote parliamentary sovereignty" [9, p. 316]. According to M. Loughlin, the British parliament gave part of its power not only to the government and EU institutions but also to the people [11, p. 18]. From that moment, questions of holding a referendum periodically arose in debates around the UK in the process of European integration, especially when it came to the ratification of European Union treaties, for example, Maastricht and Lisbon.

One of the first steps of the coalition government towards the EU was the adoption of the European Union act in 2011 and the launch of the competence balance with the EU in 2012.

The European Union act 2011, also known as the referendum lock, prevented the transfer of more competencies to EU bodies without approving such a transfer through a referendum and was one of the key points of the conservative election program, which later became a coalition programme[4].

The purpose of the adoption of the referendum lock was to confirm the supremacy of the national parliament over EU law, that is the fact that EU laws are

[2]The Treaty of Lisbon [Electronic resource]. URL: https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon (date of access: 20.09.2020).

[3]Parliamentary sovereignty [Electronic resource]. URL: https://www.parliament.uk/site-information/glossary/parliamentary-sovereignty/ (date of access: 20.05.2020).

[4]The coalition: our programme for government [Electronic resource]. URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/83820/coalition_programme_for_government.pdf (date of access: 14.07.2020) ; The Conservative party manifesto 2010 [Electronic resource]. URL: http://media.conservatives.s3.amazonaws.com/manifesto/cpmanifesto2010_lowres.pdf (date of access: 27.06.2020).

applied and act in the UK only after their status is recognised by European communities act. However, the 2011 document also established that further transfer of powers from the UK to the EU could only be carried out after approval in a referendum, which made the people, not parliament, responsible for the final decision. Researcher M. Loughlin believes that "the 2011 Act was a self-conscious abdication of parliament's supposedly ultimate legal sovereignty in favor of popular political sovereignty" [11, p. 18].

When considering and analysing the European Union act 2011, questions were raised about the powers of parliament and its sovereignty; the feasibility of holding referenda and their place in the UK constitution; the impact of the document on relations with the EU [12].

The list of issues on which a referendum could be convened was quite wide and included topics that were difficult for citizens to understand, for example, "decisions relating to common foreign and security policy to which qualified majority voting applies", social security, judicial cooperation in criminal matters, coordination of economic and employment policies[5]. It remained unclear how, in the event of a referendum, to formulate a question for better understanding if it implies the existence of special knowledge among voters and whether simplification will lead to a distortion of the meaning of the issue put to the general vote. It was suggested that for this reason small interested groups and individuals with strong beliefs to the EU would take part in this kind of referendum and it would be they to determine its results [12].

The document also contained ways to avoid referenda. In several cases, in order to hold a referendum, a change in relations with the EU had to comply with the "significance condition" determined by the government [9, p. 312].

The European Union act 2011 was also criticised for the wide range of areas covered by referendum. Theoretically, with their frequent conduct on issues insignificant for the electorate, voter fatigue could have formed. This would reduce turnout and cast doubt on the legitimacy of both real decisions and direct democracy [12].

It should be noted that this law did not initiate a single referendum in the period 2011–2015 and was repealed by the European Union [withdrawal] act in 2018[6].

When D. Cameron announced his intention to hold a referendum on UK membership in the EU in January 2013 it caused a public outcry[7]. Although this step was aimed at maintaining the integrity of the Conservative party and it corresponded to the interests of its right wing, the words of the prime minister were not enough.

The European Union [referendum] bill was an attempt to legislate the promise made by D. Cameron to hold a referendum on state membership in the EU no later than 2017. The initiator of the bill was D. Wharton, a representative of the Conservative party. The attempt was unsuccessful, and, after considering the bill in the House of Commons, it was no longer considered in the House of Lords at the Committee stage. On the second day of the Committee's meeting, the backbench-labourer lord Lipsey put forward a proposal to complete the Committee's work[8] and thereby stop the consideration and amendment of the bill. According to the results of the voting in the House of Lords, the majority voted in support of his proposal – 180 against 130[9]. Thus, the European Union [referendum] bill was no longer considered in this parliamentary session.

It was suggested that the bill would be considered at the next session of parliament. In a coalition government with liberal democrats as partners, conservatives would inevitably again face resistance from them on this issue.

The bill successfully passed the stage of consideration in the House of Commons, for the most part, because the Liberal democrats boycotted the meetings to consider it, citing the fact that these are internal affairs of the Conservative party. The Liberal democrats did not participate in the vote following the second reading, there were few Labour [13, p. 178]. Due to opposition from the Liberal Democrats, the bill could not become government and was proposed as a private member's bill[10].

Nevertheless, the consideration of the bill prepared the basis for further work towards securing a referendum on UK membership in the EU in subsequent years. Even at the stage of amending the bill 2013–2014 there was wide discussion, debate, and consultation with the election commission. In particular, it was possible to

[5]The European Union act 2011 [Electronic resource]. URL: http://www.legislation.gov.uk/ukpga/2011/12/enacted/data.pdf (date of access: 19.05.2020).

[6]European Union [withdrawal] act 2018 [Electronic resource]. URL: http://www.legislation.gov.uk/ukpga/2018/16/enacted/data.pdf (date of access: 19.05.2020).

[7]EU speech at Bloomberg [Electronic resource]. URL: https://www.gov.uk/government/speeches/eu-speech-at-bloomberg (date of access: 19.05.2020).

[8]House of Lords: European Union (referendum) bill. Committee (2nd day) [Electronic resource]. URL: https://publications.parliament.uk/pa/ld201314/ldhansrd/text/140131-0002.htm (date of access: 19.05.2020).

[9]European Union (referendum) bill 2013–14-progress of the bill [Electronic resource]. URL: http://researchbriefings.files.parliament.uk/documents/SN06711/SN06711.pdf (date of access: 19.05.2020).

[10]Who killed the EU referendum bill? [Electronic resource]. URL: https://www.bbc.com/news/uk-politics-26031550 (date of access: 19.05.2020).

discuss issues such as the duration of the campaign period, the wording of the question, the franchise, the possibility of combining the referendum with other votes, creating uncertainty in relations with the EU between the adoption of the law and the referendum itself (which would have been four years from 2013 to 2017) and others[11].

It should be noted that an identical bill was nevertheless put forward for consideration at the next parliamentary session 2014–2015 by B. Neill, however, as the previous one was not adopted, this time due to disagreements on the issue of financing[12].

In 2015, after the victory of the conservatives in the general election and the formation of the majority government, the question about the legislative consolidation of the referendum arose again. Conservatives could not abandon this idea, firstly, because it was required to maintain the unity of the party, divided over the EU issue, and secondly, because this provision was spelled out in their manifesto[13]. For these reasons, D. Cameron decided to hold a referendum on UK's membership in the EU. Prior to that, he aimed at conducting successful negotiations and gaining more opt-outs from the union and then campaigning against Brexit.

The bill was proposed for consideration by parliament on 28 May 2015, and on 17 December of that year received royal assent[14].

The law on the referendum, according to which the referendum on the issue of UK membership in the EU should be held no later than 2017, was criticised in several ways.

B. Davies notes that in the process of determining the right to vote in a referendum, the government made several decisions against its interests.

According to the EU referendum act 2015, people who have the right to vote in general elections, i. e. persons over 18 years of age, a registered voter, citizens of the Commonwealth of Nations, or Ireland, residing in the United Kingdom. Moreover, to have the right to vote, a citizen of the United Kingdom had to live in the UK for the past 15 years. Peers entitled to vote in local or European elections and citizens of Gibraltar could also vote[15].

The following conclusions follow from this.

First, it should be noted that in this case, the government, which advocated maintaining EU membership, did not take the opportunity to reduce the age for voting, as was the case with the referendum on Scottish independence, where it was possible to participate from 16 years old[16]. Young people are supposedly more inclined to vote for preserving EU membership, as they take more advantage of the union's educational programs and freedom of movement. Unlike the general election, in which people aged 16–17 will be able to take part the next time after 5 years, in the case of Great Britain's exit from the EU, which is potentially irreversible, it is the youth who will face the consequences of this decision – and they did not have the right to vote on the issue.

Secondly, the rule that only people who have lived in the UK for the past 15 years can take part in voting automatically excludes UK citizens who enjoy the right of free movement within the EU and reside in another country of the union. Citizens of other EU states residing in the United Kingdom for any number of years cannot participate in general elections, i. e. are also excluded from the voting process according to the Treaty on the functioning of the European Union (TFEU)[17]. This situation is significant because it affects enough people who could not participate in the referendum, but who were directly affected by its result – Brexit. Potentially, with the possibility of participating in a referendum, they would also be more inclined to vote for maintaining EU membership as persons enjoying its privileges. It should also be noted that EU citizens living in Scotland could participate in the referendum on the independence of the region[18].

Having established such a right to participate in a referendum, the government excluded two groups from the voting process that could change its outcome [7]. This decision was unsuccessfully challenged in court by two British citizens deprived of the right to vote because this is incompatible with EU law [8].

It is noteworthy that the conservatives' election program in 2015 included a provision on changing the suffrage to include UK citizens living abroad for more than 15 years: "We will introduce votes for life, scrapping the rule that bars British citizens who have lived abroad for more than 15 years from voting" [26, p. 49].

[11]European Union referendum bill 2015–16 [Electronic resource]. URL: http://researchbriefings.files.parliament.uk/documents/CBP-7212/CBP-7212.pdf (date of access: 19.05.2020).

[12] Ibid.

[13]The Conservative party manifesto 2015 [Electronic resource]. URL: http://ucrel.lancs.ac.uk/wmatrix/ukmanifestos2015/localpdf/Conservatives.pdf (date of access: 19.05.2020).

[14]EU referendum bill receives royal assent [Electronic resource]. URL: https://www.gov.uk/government/news/eu-referendum-bill-receives-royal-assent (date of access: 19.05.2020).

[15]European Union referendum act 2015 [Electronic resource]. URL: http://www.legislation.gov.uk/ukpga/2015/36/contents (date of access: 19.05.2020).

[16]Ibid.

[17]Consolidated version of the Treaty on the functioning of the European Union (TFEU) [Electronic resource]. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN (date of access: 19.05.2020).

[18]Scottish independence referendum (franchise) act 2013 [Electronic resource]. URL: http://www.legislation.gov.uk/asp/2013/13/contents/enacted (date of access: 19.05.2020).

This proposal was not considered before the referendum of 2016 and was not considered in the parliament until the announcement of the next general election of 2017 [10, p. 566].

The lack of provisions on checking the results of the referendum in the law was also criticised [10]. On such an important and far-reaching issue as state membership in the EU, no threshold was set for the votes, and the result was determined by a simple majority. The researcher J. Shaw believes that to guarantee equal treatment of voters, the referendum act could include provisions such as:

• the need for the same (for or against) results in all four regions of the country to recognise the results of the referendum, i. e. Great Britain leaves the EU only if in all four regions the majority votes for it;

• the establishment of the minimum number of votes in case of a change in the status quo, which may concern both voters directly and persons registered for voting;

• the requirement for a second vote after negotiations on the conditions for withdrawing from the EU if, according to the results of the first, the state should withdraw from the union [10, p. 568].

If Great Britain left the EU, the changes would affect such rights of British citizens as the right to reside, labour rights, access to the social system and the health care system, and the pension benefit payment system [8].

After the results of the referendum were announced and the forthcoming exit from the EU, politicians appealed to the fact that this was the will of the people, which is a populist statement. Only 51.9 % of voters voted to leave the EU, with a turnout of 72.2 % with the exclusion from the voting process of some groups that were directly affected by this decision, therefore it is rather controversial to declare that "the people decided"[19].

Even though referenda on European integration are advisory, they impose obligations on the implementation of their decisions on the government, which cannot go against the fear of causing widespread discontent or undermining its authority [6, p. 171].

## Results and discussion

The European policy of Great Britain was one of the three priority areas for the state, but it came to the fore after the country acceded to the EEC. Even though the United Kingdom did not have a separate document setting out the main provisions of European politics, its main tasks were to deepen economic integration and develop a common market, prevent further political integration, and influence decision-making in the union. The UK was gradually moving further away from the realisation of these goals, paying more attention to domestic politics, where there were significant contradictions on the issue of European integration. The result was a referendum on state membership in the EU.

In the 2010s, referenda became an integral part of Britain's political life, largely due to the lack of consensus on European politics, which led to a referendum on UK membership in the EU in 2016. Many researchers regard this step as transferring part of the parliament's power to the people and government, weakening representative democracy. Referenda as a form of direct democracy have several features and shortcomings that make it possible to question its results.

Britain's participation in the European integration project and the topic of the referendum originates in 1975 when the first national vote was held on this issue. Since then, the topic of referendum and EU membership periodically arose in political discourse, especially during the adoption of new EU treaties.

The documents adopted during 2010–2015 in regard to relations between the UK and the EU demonstrate a high degree of politicisation of the issue of EU membership, largely due to contradictions within the Conservative party. The adopted laws have some shortcomings and have been criticised. After several attempts to legislatively consolidate the referendum on UK membership in the EU, such a law was adopted in 2015. In 2016, a referendum was held that determined the future of relations between the UK and the EU for years to come.

## Conclusions

Britain's policy towards the EU was one of the priority areas, along with its special relations with the United States and the Commonwealth of Nations. The emphasis of the UK was given to the economic importance of the common market and security cooperation. By 2010 there was a tendency for Great Britain to move away from the goals of foreign policy towards Europe and shift its focus to domestic political processes, which entailed the inclusion of populism and nationalism both in the political life of the country and in the discussion on relations with the EU, making the question of membership in the union increasingly politicised.

The main goals of British foreign policy towards the EU were the development of free trade; the enlargement of the EU; the opposition to political integration

[19]Results and turnout at the EU referendum [Electronic resource]. URL: https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/past-elections-and-referendums/eu-referendum/results-and-turnout-eu-referendum (date of access: 19.05.2020)

in the union and the predominance of a supranational approach and also ensuring a central role of the UK in EU affairs.

During 2010–2015 in the UK decisions are made to limit the EU's influence on the country. These decisions were generated by internal political processes and were defiant in nature. These include the introduction of a "referendum lock" in 2011, which was never used, the analysis of the balance of competencies 2012–2014 as well as D. Cameron's statement on holding a membership referendum on Great Britain in the EU 2013 and two unsuccessful attempts to consolidate it.

During the study period, the role of national referenda in the political life of Great Britain is growing, which is argued by the fact that people need to be allowed to choose. However, researchers argue that the institution of a referendum is not characteristic of British domestic politics and that the growing importance of referenda undermines the sovereignty of the traditionally strong British parliament.

Legislative consolidation of the referendum on UK membership in the EU went through several stages. First, it is worth noting two unsuccessful attempts in 2013 and 2014, which nevertheless laid the foundation for the future European Union referendum act 2015. The referendum could only be legally consolidated after the general elections and the Conservative party won them. The 2015 document was criticised for the franchise, which did not include UK citizens living outside the country for more than 15 years, as well as people aged 16 to 18, but including the people of Gibraltar, commonwealth citizens living in the UK, and also citizens of Ireland.

Thus, the foreign policy steps of the UK in 2010–2016 were motivated primarily by internal political processes and included populism, Euroscepticism, and nationalism. They were criticised because they contained many inaccuracies, allowing freedom of interpretation, excluded some groups of people from the voting process.

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# TURKEY IN NATO: AN EXTRAORDINARY POSITION

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In this article the Turkish view on the membership of the country in the North Atlantic Treaty Organisation is analysed. Entering of the Turkish Republic into the organisation had been possible thanks to the multifaceted and stressful performance of the government of the country. Turkey's historically inherent ability to provide regional leadership was challenged. The geopolitical reality of the period after World War II required the search for allies. The confrontation between the USSR and the West began to determine the trends of world development, and the circumstance required Ankara to decide: to which pole to join. Joining NATO was chosen as more acceptable among both undesirable options. Subsequently, the influence of the region and the desire to ensure its own security mainly on its own repeatedly led Turkey to the need to defend exclusive national interests within the framework of the NATO. In addition, in a situation of permanent destabilisation in the Middle East, Ankara has not always agreed with NATO's strategy in this region, reflecting mainly US interests.

***Keywords:*** Republic of Turkey; NATO; block confrontation; Turkey's European priorities; multi-vector policy of Turkey; Turkish critical westernisation.

# ТУРЦИЯ В НАТО: НЕСТАНДАРТНАЯ ПОЗИЦИЯ

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Прослеживается отношение Турции к деятельности в Организации Североатлантического договора. Вхождение Турецкой Республики в данный союз явилось результатом многогранной и напряженной аналитической работы руководства страны. Исторически присущая Турции способность обеспечить собственными усилиями региональное лидерство была подвергнута сомнению. Геополитическая реальность периода после Второй мировой войны требовала поиска союзников. Противостояние между СССР и Западом стало определять тренды мирового развития, и данное обстоятельство потребовало от Анкары решить, к какому полюсу примкнуть. Вступление в НАТО было выбрано как более приемлемое среди двух нежелательных вариантов. В последующем региональное влияние и стремление обеспечивать собственную безопасность преимущественно своими силами многократно приводило Турцию к необходимости отстаивать особые национальные интересы в рамках альянса. Кроме этого, в обстановке перманентной дестабилизации на Ближнем Востоке Анкара не всегда соглашалась со стратегией НАТО в данном регионе, отражающей преимущественно интересы США.

***Ключевые слова:*** Турецкая Республика; НАТО; блоковое противостояние; европейские приоритеты Турции; многовекторная политика Турции; турецкая критическая вестернизация.

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## General prerequisites for the formation of the pro-Western position of Turkey in the 20th century

The Republic of Turkey is a member of the North Atlantic Alliance since 1952. The Turkish armed forces are the largest and most powerful army in NATO after the United States army. The location of Turkey is critical both for the alliance and for the West as a whole. As a member of NATO, in the past it had the only common border with the Soviet Union (except for the relatively short Norwegian-Soviet border in the Murmansk region).

Determining the choice of NATO membership is a complicated history. The young Turkish Republic, headed by Mustafa Kemal (in 1934 he received the name Atatürk, which means father of the Turks) retook the occupied territories from Western countries (Great Britain, France, Italy and Greece) from 1919 to 1923. At the same time, for Turkey, the western world remained as an example of progress. Legislation of Western countries has also served as an example in the work on the constitution and legislation of the country. It strengthened its pro-western trends.

These trends, in turn, did not begin with the formation of a secular republic. The modernisation of the Ottoman Empire in the form of adaptation to the Western world can be traced in the late 17th – early 18th centuries, during the reign of Selim III and Mahmud II, when the empire began to realise that the Ottomans were losing their superiority over the outside world. The idea of westernising or joining the Western alliance in the 20th century was not suddenly arisen and it was familiar to the Turkish political elite.

Atatürk was not the last leader of the Republic of Turkey, who regarded the West as the peak of civilisation for which the country should strive. On 19 May 1945, at the traditional festival of youth and sports, the second president of Turkey, İsmet İnönü, addressed the youth with these words: "We want to abandon a number of actions that we carried out because of the difficulties caused by the war. The conditions are created for the widespread use of democratic principles in the political and ideological life of our country"[1]. In this regard, he emphasised the role of the Great National Assembly, which, according to the president, "from the first day of its formation… remained our most democratic institution and, holding the steering wheel tightly, led our country along the path of democracy"[2].

Turkey's, as a part of Europe with a predominantly Muslim population, pro-Western orientation was strengthened even before the decision to join NATO. In order to understand the characteristic position of Turkey in the organisation itself, it is important to understand the motives and incentive of its choice, as well as the events that predetermined its distinctive behaviour in the alliance.

It is justifiable to call the country's position within the framework of NATO as characteristic for many reasons. Throughout its membership, Turkey has repeatedly stated its disagreement with other member countries. Knowing its special role and responsibility in the alliance, it proved that it would not leave room for doubts about its own independent position; and it does not necessarily support a priori policy of its allies, which is why it could not be called a satellite state. This was proved, in particular, during the Cyprus conflict (1974), the Persian Gulf War (1990–1991), the Iraq War (2003–2011), the armed conflict between Russia and Georgia in South Ossetia (2008), and the Crimean conflict (with 2014).

And without restrictions, inherent to other NATO member countries, Turkey cooperates with the CIS countries, including the Russian Federation. Such cooperation can be seen not only in the field of economics, culture, or education but also extends to the defence industry. Ankara has restored a historically unique affinity with the former Soviet republics of Turkic origin. Family ties have a positive effect on Turkey's bilateral relations with these post-Soviet states in the field of culture, history and language.

It is important to emphasise: relations between Turkey and the Republic of Belarus have never lost their pace due to Western sanctions against Minsk. Both countries implement a coordinated line, supporting each other in international organisations, including the UN. Turkey significantly supports Belarus joining the World Trade Organisation, and not only.

At the same time, Turkey knows its rights well and does not ignore the fulfilment of its duties in NATO. The alliance is one of the important pillars in the Turkish defence and national security; Turkey also does not lose its special and important place among other members of the North Atlantic Treaty. Such a non-standard policy in the field of external priorities, as the Turkish government often reminds, does not mean that the country is going to change its foreign policy course.

## The formation of motives for Turkey's joining the North Atlantic Alliance

The brief analysis above, of the formation of the pro-Western orientation of the Republic of Turkey, does not provide an exhaustive answer to the question of its non-discussed decision to join NATO. It is important to emphasise that it was the result of a response to a number of challenges after the end of World War II. The most significant of them is the change in the policy of the Soviet Union in the form of a territorial claim

[1] *Иванов А.* Ближневосточный отдел Наркоминдела. 25.06.1945 // Центр. гос. арх. Азейрбайдж. Респ. (ЦГА АР). Ф. 28. Оп. 4. Д. 22, l. 213.
[2] Ibid.

against Turkey by its leader J. Stalin. This challenge predetermined the decision of Ankara to participate in the Korean War (which was not ratified by parliament, but received the support of various political forces of the country), and accordingly, the intention to get closer to the Western alliance.

The Stalin era put forward the USSR among the successors of the centuries-old fierce diplomatic struggle and wars for control of the Bosporus and Dardanelles, respectively – the passage of ships from the Mediterranean Sea to the Black Sea. Throughout this period, Turkey has been the subject of claims because of its unique geopolitical position at the crossroads between east and west, south and north, and also because of its decisive role in the issue of straits.

Earlier, Turkey managed to avoid being drawn into the bloody World War II thanks to its multi-vector diplomacy. In May–June 1939, it signed agreements with Britain and France on mutual assistance in case of aggression in the Mediterranean region, and on 18 June 1941, an agreement on friendship and non-aggression with Nazi Germany. 25 June 1941, on the third day after the German attack on the USSR, Turkey declared its neutrality in the war. Later, on 2 August 1944, Turkey broke off diplomatic relations with the Third Reich, and only on 23 February 1945, it symbolically declared war on it.

Initially, Turkey's decision not to intervene in the war was welcomed by J. Stalin, especially during operation "Barbarossa". Indeed, in this way, the USSR was convinced of the security of the South Caucasus. But, by the end of the war, when the victory of the Allies became inevitable, he changed his mind about this. In October 1943, the Soviet leader bluntly stated: "At present, Turkish neutrality, which was once useful to the Allies, is useful to Hitler; he covers his flank in the Balkans," adding that if Turkey claims to participate in the post-war conference of countries-winners, "it is needed Turkey to contribute to the cause of victory and deserve to participate in a peace conference"[3].

After World War II, the USSR began to rapidly expand its zone of influence at the expense of the countries of Central and Eastern Europe. Moscow considered that the domino effect would work, and Turkey would not be able to resist it either. At the same time, the problem of straits would be simultaneously resolved in a variant favourable to the Kremlin. But such a development of the situation was not geopolitically acceptable for Turkey. The Soviet plan did not work, but, on the contrary, caused Ankara to change its foreign policy priority, moving away from friendship with the Soviet Union and joining the Western world alliance.

At the same time, during the war, Turkey was able to maintain neutrality, which was favourable for the anti-Hitler coalition. With the outbreak of war, Germany pressed on Turkey to let German and Italian ships pass through the straits under the Bulgarian flag. But the Turkish foreign ministry strongly opposed. On 11 July 1941, in a conversation with the Soviet ambassador S. Vinogradov, the leadership of the Turkish foreign ministry rightly noted that Bulgaria could no longer be considered a neutral country[4].

Thus, Turkey passed the first exam on the implementation of the 1936 Montreux convention, which restored the sovereignty of Turkey over the Bosphorus and Dardanelles from the Black to the Aegean, and then to the Mediterranean. After this event, Turkey repeatedly proved its consistent allegiance to the legal letter of the convention.

In August 1941, Soviet and British troops entered neighbouring Iran, which caused some concern in neutral Turkey. Two weeks earlier, on 10 August Britain and the USSR made a joint statement that they would respect the regime of the straits and the territorial integrity of Turkey. The Soviet government also reaffirmed its allegiance to the Montreux convention and assured the Turkish government that it has no aggressive intentions and claims in relation to the straits. The Soviet side emphasised that it understands Turkey's desire to remain neutral, and therefore will provide it with assistance and assistance if it is a victim of an attack by a European power[5]. Of course, this refers to Nazi Germany and its allies.

However, on the other hand, in contrast to historical truth, after instructions from state authorities, post-war Soviet scientific literature began stubbornly to inflate the bugaboo of Turkish danger. In particular, it was alleged that Turkey is trying to take advantage of the fruits of German aggression and, expanding its borders, "unite all the Turks" under its own control. It was a question not only of Azerbaijani Turks but also of all the Turkic peoples living in the territory of the USSR – from the Gagauz people in the very west of the USSR to the Yakuts in the east (note: when the Russian Empire at one time intervened in the internal affairs of the Ottoman Empire through the Slavic and Orthodox peoples inhabiting it, Turkey also had suitable conditions and a reason to do the same).

The lack of anti-Soviet trends in Turkish politics was proved by the fact that even in the most difficult periods of the Great Patriotic War (especially when the German army approached the Caucasus), Turkey refused to declare war on the USSR. Although such an attack from the south could change the course of the war, and the factors mentioned above – the cultural, ethnic and historical proximity of Turkey to the region – could be a tempting reason for its entry into the war.

[3]Советский Союз на международных конференциях периода Великой Отечественной войны, 1941–1945 : сб. док. в 6 т. Т. 4. М. : Политиздат, 1984. С. 123.
[4]*Шулумба Г.* Справка на Н. Менеменджиоглу. 29.12.1944 // ЦГА АР. Ф. 28. Оп. 4. Д. 4, 1.75.
[5]Заявление советского правительства. 10.08.1941 // Арх. внеш. политики Рос. Федерации. Ф. 06. Оп. 9. С. 69. Д. 1071, 1.29.

Despite the blackmail and pressure from Germany, it was not possible to involve Turkey in the fascist bloc in the summer and fall of 1941. The then ruling elite of the Republic of Turkey showed decisiveness: first of all, former officers of the Ottoman Empire, who spent their entire youth on the fronts of the Balkan Wars, the wars in Libya with Italy, and the World War I. These were people, who knew the value of the peace well and saw with their own eyes how a huge empire collapsed because of these endless wars. Their position played the most significant role in maintaining the neutrality of their country during the World War II.

Then-president İ. İnönü assessed this situation as follows: "The movement began with the Balkan events, then step by step Iraq and Syria, our western and southern neighbours, fell into a state of war and dependence, and suddenly, like a miracle, rushing forward, it turned into a German-Soviet armed conflict. Thus, our northern neighbour is now burning in the fire of war, and our other neighbour, Iran, is experiencing the tragedy of occupation. The hostilities that swept our country from all sides have further strengthened our vigilance, and within the framework of fidelity to our obligations and our friendship, the pursuit of a sustainable peace that protects our honour and life forms the basis of our policy" [2, p. 20].

In 1943, another event occurred, indicating that Turkey should be trusted in the issue of implementation of the Montreux convention. Germany requested permission from the Turkish foreign ministry for the passage of its ships to Romania. The German naval attache assured that they were not warships. Turkish foreign minister N. Menemencioğlu said that permission can be given if the German ambassador in Ankara F. von Papen personally assures that the ships are not of military us. F. von Papen gave such assurances, and the minister considered them sufficient. But Turkish intelligence agencies found weapons, radar installations and sailor uniforms on the ship. As a result, the ships were not allowed in, but N. Menemencioğlu paid for a possible violation of the Montreux convention; he had to resign right after the event.

However, these facts were not sufficient for J. Stalin to abandon claims against Turkey. On 15 July 1944, he wrote to W. Churchill: "Of course, you remember how insistently the governments of our three countries proposed Turkey to enter the war against Nazi Germany on the side of the Allies in November and December 1943. Nothing came of this. On the initiative of the Turkish government in May–June of that year, we again came up with negotiations with the Turkish government and twice offered them the same… Nothing came of this either. Except for some certain half measures from Turkey, at present, I do not see any benefit of this for the Allies. In view of the evasive and unclear position taken by the Turkish government towards Germany, it is better to leave Turkey alone and leave it to its own free will, without making new pressure on Turkey. This, of course, means that the claims of Turkey, which has evaded the war with Germany, for special rights in post-war affairs will also disappear" [6].

In 1944, a note "On the issue of the straits" was prepared at the Soviet foreign ministry. It spoke about the deprivation of Turkey's exclusive rights to control the regime of the passage of ships through the Black Sea straits. It was noted that Turkey would resist it and it would require the consent of many countries, especially the United Kingdom, to revise the convention. However, W. Churchill did not discuss this topic in October 1944 during a visit to Moscow [5].

Another similar attempt by J. Stalin occurred at the Yalta conference in February 1945. On the Montreux convention, in particular, he stated: "At present, this agreement is outdated and has outlived itself… Turkey has been given the right to close the Straits when it wishes so. It is necessary to change the existing order so far without prejudice to Turkish sovereignty" [9]. This time, Stalin's position, after the disapproval of it by the Allies, became softer: he reaffirmed the sovereignty of Turkey. As a result, the parties agreed that the three ministers of foreign affairs of the Allied countries at their next meeting in London will discuss the proposals of the Soviet government regarding the Montreux convention and report to their governments. In May 1945, in Moscow, the people's commissar of the USSR V. Molotov received the Turkish ambassador to the USSR, S. Sarper. The ambassador was instructed by Ankara to propose the conclusion of a new treaty of friendship and neutrality between the two countries, since the friendship agreement of 1925 was prematurely denounced by the Soviet side in March 1945. During the conversation, V. Molotov unexpectedly put forward two conditions:

1) return of territories transferred to Turkey in 1921, to the Soviet Union;

2) joint control over the straits and the deployment of Soviet military bases in the zone of the straits.

S. Sarper refused to discuss the conditions of the USSR. At the same time, the USSR's claims to the straits greatly surprised the leaders of the United States and Great Britain, since it was agreed in Yalta that this issue should be discussed with them, and not unilaterally, as did the Soviet government. Moreover, the allies did not support the unilateral demands of the Soviet Union on Turkey [7].

On 7 August 1946, the Soviet note "On the Montreux convention on the Black Sea straits" was submitted to

[6]Переписка председателя Совета министров СССР с президентами США и премьер-министрами Великобритании во время Великой Отечественной войны 1941–1945. Т. 2. М. : Госполитиздат, 1989. С. 290.

[7]Советский Союз на международных конференциях периода Великой Отечественной войны, 1941–1945 : сб. док. в 6 т. Т. 4. М. : Политиздат, 1984. С. 444.

the Turkish ministry of foreign affairs, which once again raised the question of deploying Soviet military bases in the zone of straits to exercise control together with Turkey. On 24 September the next note on the straits was sent to the Turkish government. On 18 October the Turkish government responded with a counter note. The positions of the parties remained unchanged. Ankara perceived the whole situation as an infringement of its regional powers and a weakening of foreign policy independence.

## The Korean War and Turkey's entry into NATO

Disagreements grew between Turkey and the Soviet Union regarding the straits and claims to the eastern Turkish provinces, while the exacerbation of the Cold War was approaching, so to say, the Korean War of 1950–1953. This event inevitably required a clear position of Ankara: which side to support in the Cold War. It became the starting point of the rapprochement between Turkey and the West, and later – the participation of Turkish troops in the Korean War itself.

The conflict between the Democratic People's Republic of Korea and the Republic of Korea almost led to the third world war. Resolution No. 83 of the UN Security Council of 27 June 1950, contained an appeal to all member countries of this organisation to assist in confronting North Korean aggression. The resolution was supported by the majority of UN member states, while sixteen of them, including Turkey, went further, having decided to render military assistance to South Korea. Among them, the Turkish military contingent was sent to the peninsula too.

Turkey's participation in the Korean War accelerated the decision to join NATO. This decision has not been ratified by the Turkish parliament; it was adopted by the ruling party on its own. But membership in the Alliance was supported by many figures in Turkish politics, despite many years of opposition to the West by certain circles, mainly social democrats.

The decision was made by the new government of Turkey, formed by the Democratic party led by A. Menderes. The elected prime minister shortly before the war saw Turkey's participation in the war as an opportunity to achieve NATO membership, which, in his opinion, allowed achieving the key goal of foreign policy: to strengthen the national security of the state in the context of the emerging bipolar world.

The United States attached great importance to Turkey, emphasising its importance for American politics. However, it would be difficult to imagine Turkey preparing seriously for the North Atlantic bloc in 1949. And it was not included in the American plans, first of all, because of the geographical distance from the North Atlantic. But geopolitical circumstances forced Ankara to seek a collective defence zone, even by moving beyond the geographic range.

To understand Turkey's foreign policy strategy, which included the legitimacy of the decision to send troops to Korean Penissula, a series of speeches by the leader of the opposition People's republican party, İ. İnönü and Turkish prime minister A. Menderes at the sessions of the Turkish meclis, are of undeniable value.

An analysis of their speeches shows that Turkey's entry into the Council of Europe in the summer of 1949 was an important step towards its integration into Europe. In July, Turkey received an invitation to attend the Council of Europe session in Strasbourg. N. Sadak, who was the permanent delegate of Turkey to the League of Nations in the pre-war period, highly appreciated this achievement, considering the invitation of his country to be aside with the members of the Atlantic Pact quite satisfies Turkey. İ. İnönü also emphasised that "this is the organisation of a group of nations that belong to European culture and civilisation. Only those nations that are governed by democratic methods are allowed here" [2, p. 42].

Despite the fact that Turkey had a friendship with the United States and alliance with Britain and France, it was obvious that this was not enough for the allies to see Turkey in their ranks. By the way, territorial claims from the USSR did not disappear. Therefore, the Turkish leadership was considering the option of revising its place in the system of international relations through expanding ties with Western countries. New and more determined policies were needed to achieve concrete results. And now the new president of the country, C. Bayar, at a meeting of the Council of Ministers, uttered prophetic words: "Get ready, brothers, we will join the Atlantic pact"[8]. His government had concrete plans.

Following the declaration of war on the Korean Peninsula, the UN called on member countries to participate in the formation of peacekeeping forces. Turkish minister of foreign affairs M. F. Köprülü on 30 June 1950, addressed the meclis on this issue. The government, in response to the UN call, decided to send a military contingent of 4 500 people to Korea. In this regard, US senator H. Kane, who was in Ankara, later noted that this decision facilitated Turkey's entry into the Atlantic pact. Turkey was the second country after the United States to respond to the call of the UN. In its 27-year history, this was the first time that the Republic of Turkey sent troops outside the country. The government attributed this to the fact that in the event of aggression against Turkey, it would ask the UN's assistance to the same extent that would be provided to South Korea. Rather, these were propaganda statements. Only the UN Charter imposes certain obligations on mem-

[8] *Saray M.* Sovyet Tehdidi Karşısında Türkiye'nin NATO'ya Girişi. III Cumhurbaşkanı Celal BAYAR'ın Hatıraları ve Belgeler. Ankara, 2000. P. 95–97.

bers of the organisation. In fact, the Bayar – Menderes team simplified the course towards NATO membership by getting into the Korean War.

But Turkey's entry into NATO did not happen right away. The Turks had to wait three years after the official application for joining the alliance. As diplomatic talks about membership continued, the success of Turkish soldiers in Korea provided real arguments for Turkish membership. This reinforced the ambitions of the democratic government in their desire to join NATO, while at the same time depriving the trump cards of opposition to criticise the government for participating in the war.

To justify sending the contingent to Korea, prime minister A. Menderes and minister of foreign affairs M. F. Köprülü put forward the following arguments: "1. The meclis' decision is not required to send troops to Korea, since this is not a declaration of war, but measures for peace-keeping. 2. The actions of the government are fully consistent with the 43rd article of the UN Charter. 3. Sending Turkish troops to Korea strengthens the United Nations and thereby enhances Turkey's security" [5, p. 102]. Both leaders have repeatedly stated that the nature of the request by opposition politicians and their interpretation of the UN Charter is more in line with the anti-Turkish point of view of the Soviet Union than the position of most UN member states.

The entry of Turkey and Greece into NATO was issued on 15 October 1951, in London. The USSR got this fact extremely critical: on 31 October the Politburo of the Central Committee of the All-Union Communist Party of Bolsheviks (CPSU) approved the text of a note to the Turkish government. It noted that the invitation of Turkey to the bloc, which has nothing to do with the North Atlantic, pursues the goal of the imperialist states to use its territory for aggression against the Soviet Union and create a military base near its borders. The Soviet government demands an explanation from the Turkish side and announces that, as a neighbouring state, it will not remain indifferent to this issue[9]. It was a belated reaction. In 1952, Turkey applied for full membership of NATO (the decision came into force a year later), and it was largely a reaction to the unfriendly policies of the USSR and its territorial claims against Ankara.

Only after the death of J. Stalin, the new government of the USSR made an adjustment of its position. Moscow began to call the problem of the straits and territories of Kars and Ardahan as unresolved issues of Soviet-Turkish relations. The Soviet Union began to build a more realistic policy towards Turkey, abandoning the territorial requirements for it [8].

The Soviet Union in an official note to Turkey, already a full member of the alliance (dated 30 May 1953) stated that "in the name of maintaining good neighbour relations and strengthening peace and security, the governments of Armenia and Georgia found it possible to abandon their territorial claims against Turkey. As for the issue of the straits, the Soviet government revised its previous opinion on this issue and considered it possible to ensure the security of the USSR, as for the straits, on conditions equally acceptable for both the USSR and Turkey. Thus, the Soviet government declares that the Soviet Union has no territorial claims against Turkey"[10].

A peculiar emotional assessment of the Stalinist policy towards Turkey was made by N. S. Khrushchev at the June 1957 Plenum of the CPSU Central Committee: "Ruined the Germans. Our heads went round. Turks, comrades, friends. No, let's write a note, and they will immediately give the Dardanelles. There are no such fools. The Dardanelles are not Turkey, there is a knot of states. No, we took a special note, wrote that we cancel the friendship agreement, and spat in the face of the Turks... This is stupid. However, we have lost friendly Turkey and now we have American bases in the south that keep our south under fire"[11].

It is hard to imagine if Turkey would become unfriendly to the Soviet Union if Moscow in those years did not exert unprecedented political and diplomatic pressure on it; if it did not threaten the sovereignty and integrity of the Turkish state. It is obvious that the rapprochement between Turkey and the West was the result of the anti-Turkish policy of J. Stalin and V. Molotov.

Turkey's participation in the Korean War became a reason only for rapprochement with the West. But at the same time, it cannot be denied that such UN peacekeeping contingents continued to play an important role in local conflicts and wars in the following decades; for example, in the Congo (1960–1964); the first (operation "Desert storm", 1991) and the second war in Iraq (since 2003), where military units of more than a dozen states took part. And the Turkish military contingents, except for the Korean War, participated in UN missions in Somalia (1993–1994); Bosnia and Herzegovina (1993–1995); Albania (1997); Lebanon (2006), and several other countries. In 2010s Turkey, as a member of NATO, participates in peace consolidation operations in Afghanistan (570 militaries) and Kosovo (280 militaries). Except for that, it has military bases in countries like Somalia, Sudan, Iraq, Qatar, Syria, Northern Cyprus, Azerbaijan, Albania, Bosnia and Libya[12].

[9]Решение Политбюро ЦК ВКП(б) о заявлении турецкому правительству в связи с приглашениями Турции в Атлантический блок. 31.10.1951 // Рос. гос. арх. соц.-полит. истории. Ф. 17. Оп. 3. Д. 1091, 1. С. 266–267.

[10]Советский Союз на международных конференциях периода Великой Отечественной войны, 1941–1945 гг. : сб. док. в. 6 т. Т. 6. М. : Политиздат, 1984. С. 514.

[11]*Гасанлы Д. П.* СССР – Турция: полигон «холодной войны». Баку : Адиоглы, 2005. С. 509–554.

[12]Relations between Turkey and NATO [Electronic resource]. URL: http://www.mfa.gov.tr/turkiye-nato-iliskileri.tr.mfa (date of access: 29.04.2020).

## In addition to NATO membership, Turkey has its own geopolitical priorities

Turkey has a unique geopolitical location, which has been preserved throughout the entire period of membership in the alliance, which means that Ankara should follow not only the NATO strategy but pursue a multi-vector foreign policy, within the context of constant tension, instability and uncertainty in the Middle East region. It is reasonable that its political decisions and reaction to regional and world events will differ, for example, from the Netherlands', Portugal's or Canada's, around which a more or less calm situation remains.

This unique policy does not entail a change in the fundamental course or direction of Turkey in the modern multipolar world system, in contrast to the so-called axial dislocation. As a part of NATO, Turkey provides serious support to the alliance's strategy and operations, making a significant contribution to the implementation of its basic principle of indivisible security.

Moreover, like any other member of the alliance, Ankara naturally defends its national interests, as well as its own geopolitical priorities. Being united as a whole, they do not always in particular match up with the position of NATO allies. This is evidence that Turkey is far from being a satellite state neither in the alliance, nor international politics in general.

One of the best examples of that is the Cyprus issue. Cyprus peace operation is the name in the Turkish official sources for the 1974 event on this island. The same operation in the West and in Russian-language sources is called the Turkish invasion of Cyprus. One way or another, this event is perhaps the most striking example of Turkey's independent (for some, even "naughty") foreign policy.

The island of Cyprus was part of the Ottoman Empire from 1571 to 1914. Later it became a part of the British colonial possessions and on 16 August 1960, gained independence. But the format of independence was limited by the Zurich – London agreements, according to which Greece, Turkey and the United Kingdom were declared the guarantors of the "independence, territorial integrity and security" of Cyprus, which gave these states the opportunity to intervene in its internal affairs[13].

In the summer of 1974, a military coup took place on the island with the support of the Greek military junta. President Makarios III was removed from power, and control of the island passed to N. Sampson, a representative of the Greek underground organisation EOKA-B, which advocated the accession of Cyprus to Greece, that is to say, the so-called enosis. The coup was bloody. Due to the impossibility of a peaceful settlement of the conflict and for the protection of the Turkish community, the Turkish government sent troops to Cyprus, contrary to the resistance of the international community. No Western country has confirmed the legitimacy of this operation. One should notice that Ankara acted clearly against the will of NATO.

A significant part, approximately 37 % of the island's territory, came under the control of Turkish troops, which de facto led to its split into two parts. In 1983, the northern Turkish community declared independence and acquired the name Turkish Republic of Northern Cyprus. The Turkish part of the island is recognised only by Turkey as an independent state [14].

Negotiations on the unification of the island have been going on since the landing of Turkish troops in Cyprus. The solution to the problem, as proposed by the UN, was presented at a referendum in 2004. According to its results, 75 % of Greek Cypriots voted against the union, and 69 % of Turkish Cypriots voted in favour. Despite the clear desire of the majority of the Turkish community for unity on the island, in 2004 the Greek part of Cyprus and unilaterally joined the European Union alone[15].

From the first day, the international community opposed the Turkish landing in Cyprus, and in the 2010s the situation did not change. Today the alliance does not share Ankara's position. The Cyprus issue remains one of the most difficult knots of Turkish diplomacy, and for many years the country has faced sanctions because of it. It is widely believed that one of the reasons for the long-term extension of the decision on Turkey's accession to the EU is the so-called Turkish occupation of part of Cyprus. However, Turkey does not change its position only because of pressure from the international community, continuing its presence in the north of the island.

The Cyprus issue is not the only example of the significant difference in the positions of Turkey and NATO. In a number of other events, Ankara has proved its principled independent foreign policy. Thus, Turkey did not respond to the call of the United States to participate in the alliance's invasion of Iraq in 2003. The Turkish parliament refused to support its ally, moreover, it did not allow its territory to be used during the war[16]. Ankara's independent policy was confirmed, which is not necessarily in parallel with Washington's policies.

[13]London – Zurich agreements of 1959 [Electronic resource]. URL: http://www.mfa.gov.tr/garanti-antlasmasi-_zurich_11-subat-1959_.tr.mfa (date of access: 29.04.2020).

[14]*Sibel A.* Formation, development and results of the Cyprus peace operation from a military perspective [Electronic resource]. URL: http://web.archive.org/web/20161226213555/http://arsivbelge.com/yaz.php?sc=71 (date of access: 29.04.2020).

[15]History of the Cyprus issue [Electronic resource]. URL: http://www.mfa.gov.tr/kibris-meselesinin-tarihcesi_-bm-muzakerelerinin-baslangici.tr.mfa (date of access: 29.04.2020).

[16]Influence of the May 1 parliamentary resolution on sending military forces on Turkish politics [Electronic resource]. URL: http://archive.is/Z9uJ9 (date of access: 29.04.2020).

During the conflict in South Ossetia in 2008, Turkey maintained a balanced policy within international law. It spoke out against the aggression of Georgia in the region, and the invasion of the Russian army in Georgia. And in the process of the conflict, Turkey prevented the delivery of US aid to Georgia through the Turkish straits. It did not allow the American squadron to go to the Black Sea, referring to the Montreux Convention.

Despite the close relations with Russia, Turkey's position in a number of situations is not consistent with Moscow. The events in 2014 on the Crimean Peninsula in Ankara, are called as the invasion of the Russian Federation, and the occupation is not recognised. Ankara unequivocally supports Ukraine in this matter[17]. Further: when Turkey decided to purchase a Russian-made S 400 missile system, which is cheaper than existing equivalents, its Western allies began to threaten sanctions for the military industry. This did not stop Ankara, and the country acquired this defensive system in 2019[18]. As one can see, against the backdrop of the confrontation between NATO and Russia, there is a conceptual difference in relations between the latter and Turkey.

Turkey met very critical assessments on the part of many member countries of the alliance due to its conduct in the second half of the 2010s military operations in northern Syria and Iraq. The operations, and among them such as "Claw" in Iraq, "Olive branch", "Shield of the euphrates", "Source of peace", provoked the most severe criticism in the West; in some circles, they even started discussing the likelihood of Turkey's exclusion from NATO[19]. But Ankara, seeing the need for them as a means of ensuring its national security, purposefully continued its actions in neighbouring countries.

The Turkish leadership sent troops to northern Syria to create a security zone for the voluntary return of refugees of up to 2 million (in Turkey there are more than 4 million refugees). Official Ankara emphasises that the operation complies with international law, UNSC resolutions 2249, 2254 and Art. 51 of the UN Charter on the right to individual and collective self-defense. At the same time, a special emphasis boils down to the fact that Turkey respects the territorial integrity of its neighbours, including Syria, which was one of the reasons for the operation "Peace spring" in 2019[20].

## Conclusion

The difficult global situation in the first years after the World War II required the Republic of Turkey to clarify its geopolitical priorities through the choice of NATO membership. This strengthened Turkey's national security, but the regional situation in the Middle East remained permanently tense. The failure of the Alliance earlier and at the present stage to reduce the crisis potential there predetermined the non-standard membership of Ankara in this military bloc. Often, Turkey – contrary to NATO's strategic precepts, takes actions that are inconsistent or even contrary to principles of the organisation; this behaviour is associated with "critical westernisation"; allegations emerged that Turkey was moving away from the West. In fact, the Turkish leadership, like the governments of several other states, considers it justified, avoiding confrontation with the allies, to take nationally motivated steps in creating a safe and favourable external environment for harmonious internal development.

The package of measures taken by Turkey to restore stability in the Middle East is called by Ankara as a contribution to the creation of sustainable peace. In order to maintain its own regional weight, the country is guided by its deeply rooted state traditions, demonstrates an independent position, while upholding the principles of equality between states, the value of good neighbourliness, friendship, cooperation and alliance.

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## THE LONG AND WINDING ROAD OF BELARUS TO SOVEREIGNTY AND RECOGNITION

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The path of Belarus to its sovereignty and international recognition has been long, difficult and trying. Elements of international subjectivity originating from limited sovereignty have been present at different historical periods before Belarus' gaining full-fledged independence in 1991. The authour studies external perception and legal view of the limited status of Belarus as a subject of international relations during the Soviet period through analysing a failed legislative effort in the US Congress to recognise and establish diplomatic relations with Byelorussian Soviet Socialist Republic.

***Keywords:*** Belarus; the United States; sovereignty; international recognition; diplomatic relations; resolution 58.

## ДОЛГИЙ И ТЕРНИСТЫЙ ПУТЬ БЕЛАРУСИ К СУВЕРЕНИТЕТУ И ПРИЗНАНИЮ

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Путь Беларуси к суверенитету и международному признанию был долгим, трудным и тревожным. Элементы международной субъектности, проистекающие из ограниченного суверенитета, уже присутствовали во внешней деятельности нашей страны в разные исторические периоды до обретения Беларусью полноценной независимости в 1991 г. Автор исследует внешние оценки и правовой взгляд на ограниченный статус Беларуси как субъекта международных отношений в советский период путем анализа неудавшейся законодательной попытки Конгресса США признать и установить дипломатические отношения с Белорусской Советской Социалистической Республикой.

***Ключевые слова:*** Беларусь; США; суверенитет; международное признание; дипломатические отношения; резолюция 58.

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## Introduction

Belarus as the majority of other nations has gained independence as a result of a lengthy and difficult historical process based on the people's will and effort to self-determine and self-rule, shaping through centuries of development of language, culture, and identity, participation in wars and alliances, attempting to achieve statehood, acquiring experience by contributing to statehood of other entities as a part, and gradually understanding the value of independence as an ultimate prize in international relations.

The goal of this article is to research the role of the elements of statehood and international subjectivity that Belarus enjoyed as a part of the USSR, in the wider process of Belarus' historical progression to forming a nation and a state. A specific case of the legislative effort in the United States Congress to recognise and establish diplomatic relations with the Byelorussian Soviet Socialist Republic (Byelorussian SSR) will be used in order to look into the ways a combination of political will and opportunist legalistic thinking revealed more vividly some international legal grounds for potential recognition of Belarus. The analysis of the American approach at the time should also be instrumental in defining how the limited international activities of the Byelorussian SSR, mandated by the Soviet constitution and the Soviet government, gradually led or at least contributed to strengthening the international role, status, and subjectivity of Belarus.

The long path of Belarus to independence is well-researched by the outstanding Belarusian legal scholars, namely professor Yazep Yukho [1], professor Taisiya Dovnar [2], and professor Grigory Vasilevich [3], who also wrote on the topic jointly [4]. Some Western scholars have researched the history of Belarus with a focus on the process of the nation's formation through different historical periods: Nicholas Vakar (Nikolai Platonovich Vakar) [5], Timothy Snyder [6], and Per Anders Rudling [7]. A book called "A history of Belarus" by Lyubov Bazan has become an important addition to the Western understanding of the Belarusian nation's origins and its way to independence [8]. Important to this research, a detailed outline of the path of Belarus becoming a UN Charter member is presented in the writings of Belarusian researchers, professor Vladimir Snapkousky [9] and professor Nikolai Myazga [10]. The place of Belarus in US Congressional activities before 1990 has been generally little researched, although is well documented in an article by Tat'yana Kulakevich called "Belarus in the Congressional record 1873–1994" [11].

The recent history of Belarus started when the country gained independence as a result of the Declaration on state sovereignty of the Byelarusian Soviet Socialist Republic on 27 July 1990. At the same time, the statehood of Belarus as well as its participation in international relations have a much longer history.

Professor V. Snapkousky highlighted stages of the foreign policy of Belarusian states in different historical periods as follows: ancient Belarusian principalities, the Great Duchy of Lithuania, the Polish-Lithuanian Commonwealth, the Belarusian People's Republic, the Byelorussian Soviet Socialist Republic, and the Republic of Belarus [12, p. 9–10].

We believe that elements of statehood and international activity during different historical stages, the ethnic and national identity of the Belarusian people, including the Belarusian language, as well as the realisation of the will of the people in different formats of state formations, are to be recognised at least as important constituents of the historical path of the Belarusian people to the full-fledged sovereignty and independence of the Republic of Belarus.

Without those constituents, the establishment of the Byelorussian Soviet Socialist Republic within the USSR would have been unlikely. During the Soviet times, Belarus exercised some international subjectivity and elements of independent foreign policy as a Charter member of the United Nations. The status led to the idea of formal recognition and establishing diplomatic relations between the United States and Byelorussia, as a part of the Soviet Union without direct encouragement of seceding.

## Legislative effort in the United States Congress

There have been several initiatives in the United States Congress related to formal recognition and establishment of diplomatic relations between the US and republics of the Soviet Union. Some, and rather numerous, related initiatives were more political and less legalistic, from calling for "liberation of the peoples of the Soviet Union" to asking the Soviet Union to "lift the iron curtain so as to inform the Soviet people of the peaceful purposes of the American people and the American government", without attempting to ensure any international legal consequences[1].

A fewer number of legislative efforts stands out as being specifically aimed at full formal recognition of certain Soviet republics by the United States, without challenging the unity of the USSR. The rationale for these initiatives was two-fold: based on Byelorussia's and Ukraine's recognition as United Nations Charter members along with other sovereign nations – subjects

[1] 82nd Congress. Survey of activities of the Committee on Foreign Relations. 1952. P. 29.

of international law, as well as the sovereignty and independence of the republics as set forth in the USSR Constitution of 1936 which provided the right freely to succeed from the USSR reserved to every Union republic and the right to enter into direct relations with foreign states ad to conclude agreements and exchange representatives with them.

The most well-known, considered, and discussed initiative was sponsored by representative Lawrence H. Smith of Wisconsin in 1953 in the form of the House concurrent resolution 58 "Favoring the extension of diplomatic relations with the Ukraine and Byelorussia"[2].

United States senator H. Alexander Smith and Robert Chiperfield, chairman of the Committee on Foreign Relations of the House of Representatives, supported the initiative by officially requesting the state department's opinion on the advisability of this step. Representative Michael Feighan of Ohio called the Committee on Foreign Relations to act immediately on the House concurrent resolution 58, while addressing the House of Representatives on 6 January 1954.

Representative Leonard Farbstein of New York introduced a House joint resolution 355 in 1955, and a House joint resolution 428 in 1963, both documents calling for establishing diplomatic relations between the United States and Byelorussia and Ukraine. The texts of both resolutions were rather similar to the text of House concurrent resolution 58 sponsored by representative H. Alexander Smith.

Further related discussions in the United States Congress were held in the context of initiatives calling to the expulsion of Byelorussia and Ukraine from the United Nations, based on their "not being sovereign nations, not having diplomatic relations with any other sovereign nation in the world, and not conducting foreign relations separate of those of the Soviet Union". In 1955 Representative H. Alexander Smith argued against those legislative actions, citing his being a part of the Congressional hearings on the extension of diplomatic relations with those two nations two years prior.

The Congressional initiatives were widely supported by the diasporas, which leading representatives participated in hearings as witnesses and provided political and factual information to back US congressmen and senators sponsoring the resolutions. A thorough study leads to a conclusion that Lev Dobriansky, professor of economics at Georgetown University, a Ukrainian-American, was the leading force behind the legislative effort[3] [13–15; 16, p. 231; 17, p. 300].

## House concurrent resolution 58

House concurrent resolution 58 "Favoring the extension of diplomatic relations with the Ukraine and Byelorussia" was submitted by representative H. Alexander Smith on 9 February 1953. The resolution consisted of a preamble of twelve paragraphs and the text of the resolving clause of one paragraph.

The resolving clause reads: "That is the sense of the Congress that the Government of the United States in support of a policy of liberation should proceed to establish direct diplomatic relations with the Government of the Ukrainian Soviet Socialist Republic and the Government of the Byelorussian Soviet Socialist Republic, and in the creation of posts of representation in the capitals of Kiev and Minsk, respectively, consistent with the diplomatic procedure in such matters".

The twelve paragraphs of the preamble indicate the underlying reason for the measure, including political and legal reasons. Ten out of twelve paragraphs are of legal nature mostly, and only two are mostly political. The Treaty of Riga of 1921, the first union constitution of the USSR, the constitution of 1936, specific rights, like the right to secede, to enter into direct relations, to conclude agreements and exchange representatives, as well as to have its own republican military formations, set forth in the constitution for every union republic, recognition of delegations of Byelorussia and Ukraine as accepted members of the United Nations, which provides an opportunity to establish direct diplomatic concourse with their capitals, are among the legal reasons. The appearance of independent will and status fostered through "propaganda media", and recognising the sovereignty being in harmony with the ideas of the Declaration of independence of the US and the American people standing ready to assist the peoples in the Soviet Union for the strengthening of their freedoms and their economic development, carry more political than legal reasoning.

## Views at the United States Congress

The hearing held before the special subcommittee for House concurrent resolution 58, on 15 July 1953[4], represents the comprehensive overview of opinions in congress, academia, and diasporas on potential formal recognition of Byelorussia and Ukraine, allowing to understand a more general perception in the US regarding the extent of the sovereignty of Byelorussia and other republics and their international subjectivity.

Byelorussia and Ukraine were considered as once independent and then, starting from 1918, captive

[2]Proceedings and debates of the 83rd Congress. Vol. 99. Part 1. 1953. P. 963.

[3]Favoring extension of diplomatic relations with the Republics of Ukraine and Byelorussia. Hearing. Committee on Foreign Affairs. House of Representatives. 83rd Congress. 1953. 1418-5. P. 22–88.

[4]Favoring extension of diplomatic relations with the Republics of Ukraine and Byelorussia. Hearing. Committee on Foreign Affairs. House of Representatives. 83rd Congress. 1953. 1418-5.

nations. As compared to other union republics, Ukrainian and Byelorussian nations were seen as the most willing to free from Soviet rule.

The Soviet Union's effort to ensure seats at the United Nations was viewed not as a measure to increase influence at the UN, but as an internal policy attempt to appease the two nations, by providing them some practical elements of international subjectivity while other republics were given only norms in the constitution.

It was understood that, despite the constitutional provisions and seats at the UN, Byelorussia and Ukraine were not sovereign in terms of the sovereignty of international law subjects, and the constitutional rights for Union republics were cited less to make a case, and more to demonstrate "the hypocritical character" of the constitution by revealing lack or rather full absence of realistic rights to secede, or exchange representatives.

The initiative was an attempt to use the congress' legislative power to facilitate future independence of Byelorussia and Ukraine for the diasporas, and more a measure to confront the Soviet Union for the congressmen and the academics.

Not ruling out a possibility of the Soviet government accepting the proposal, the resolution's sponsors and supporters [18] saw potential advantages in acquiring two "listening posts", because "with alert observers stationed in these two capitals, much could be learned about developments in the western non-Russian periphery of the Soviet Union".

It was believed that even if the initiative is accepted, it would not constitute a verification of genuine sovereignty and independence, for Byelorussia and Ukraine, with American ambassadors in Minsk, in Kiev, would not be more functionally independent than were Poland or Hungary. Clarence Manning from Columbia University called the US position the false legalism during the hearings. He also did not consider Poland, Hungary, and Czechoslovakia as to any extent more independent than Byelorussia and Ukraine, and used that argument to support the resolution and establishment of the diplomatic relations.

The proponents of the action though it would also open the way for US allies to establish diplomatic relations with Byelorussia and Ukraine.

There were doubts voiced if the establishment of diplomatic relations would constitute a "recognition of Soviet territorial acquistions"[5]. A possibility of expanded representation of union republics in the UN and other international organisations was another concern.

The sponsors understood the high probability of the Soviet authorities rejecting the proposal to allow the establishment of diplomatic relations, and still thought the initiative would yield some advantages. They saw merit in the simple posing of the question to the Soviet authorities, which in their view would reflect "the beginning of American recognition of the tremendous power resident in the centrifugal forces operative within the fabric of the Soviet Union <…> signalising in concrete and specific form our interest in the eventual freedom of these two nations <…> this circumstance will formally expose the fraud built on the alleged independence of these two major, captive non-Russian nations in the union <…> a Soviet refusal would provide an additional lie to its protestations of peace on which we stand to capitalise throughout the entire free world <…> we will have gained a powerful propaganda weapon"[6].

During the hearing, a failure of the British attempt in 1947 to establish direct diplomatic relations with Ukraine was recalled as suggesting that acceptance of the US proposal was unlikely. Additional comparative research of subjectivity of Belarus and Ukraine during the Soviet times may be based on the suggestion that Winston Churchill agreed with accepting Byelorussia and Ukraine as charter members of the UN because he saw similarities between the status and the future of those nations and Australia and Canada [19, p. 297].

The status and credibility of Byelorussian and Ukrainian delegations to the United Nations were believed to be significantly affected in the case of refusal. "This step would undoubtedly produce an acute embarrassment for the highly vocal, puppet delegations representing the Soviet Ukraine and Byelorussia in the UN"[7].

Bob Considine supported the draft resolution and opined that if the Soviet government refuses the proposal, "we could with justification demand that UN expel the Ukrainian and Byelorussian delegations as impostors"[20].

Minsk was made aware of the idea of the establishment of diplomatic relations between the US and Byelorussia. Students of the Georgetown University international relations club sent a letter to the BSSR delegation to the UN on 20 April 1953, informing of the draft House concurrent resolution 58 and asking whether the independent nation of Byelorussia was open to US diplomatic representation[8] and received no reply, according to professor Dobriansky.

## Advice of the Department of State

The extent of sovereignty and international subjectivity of Byelorussia as seen by the Department of State as a part of the executive branch in terms of potential action and consequences of the action for US interests

[5]Favoring extension of diplomatic relations with the republics of Ukraine and Byelorussia. Hearing. Committee on Foreign Affairs. House of Representatives. 83rd Congress. 1953. 1418-5. P. 9.
[6]Ibid. P. 71–72.
[7]Ibid. P. 71.
[8]Washington Star. 18 May 1953.

demonstrates a rather restrained position in comparison with congress, academia, and diasporas.

US senator H. Alexander Smith in his letter of 9 June 1952 requested the Department's of State view concerning the advisability of establishment of diplomatic relations with Byelorussia and Ukraine.

Assistant secretary of state Jack K. McFall responded on 26 June 1952[9]. As indicated in the letter, the department had considered the question of the establishment of diplomatic relations with constituent republics of the USSR many times in the past. The United States has agreed to the admission of the BSSR and the Ukrainian SSR to the UN without taking the position that these republics were to be considered independent states for other purposes, such as bilateral relationships among nations. The United States decided that establishing diplomatic relations with those two nations would not contribute in any substantial way toward the advancement of American interests.

The propaganda effects would be negligible, according to the Department of State opinion, as it would not be published in the USSR. If brought to the attention of the Soviet people by the Voice of America or any other external media, then the Soviet government would disseminate through all means a distorted version of the American action.

The Department of State also believed that should the Soviet government chooses to reject the proposal, it would probably come in the name of the Byelorussian and Ukrainian governments, thus maintaining the friction of constitutional sovereignty for the constituent republics and their theoretical right to exist as independent states. The department thought this would serve to support the Soviet government in a future effort to obtain agreement for one of the union republics to participate in international organisations and committees, when such participation served the particular purposes of the Soviet government.

Assistant secretary Jack K. McFall argued the establishment of two missions would be unusually costly because of the "artificial ruble exchange rate maintained by the Soviet government", and, whether accepted or not, the proposal "would arouse adverse sentiment and criticism on the part of a large segment of American people which would offset any possible benefits which might be derived from such an overture". The Department's of State considered opinion was that the benefits do not outweigh the disadvantaged, and therefore, advised against the introduction of the proposed resolution.

In response to the letter of Robert Chiperfield, chairman of the Committee on Foreign Relations of the House of Representatives of the US Congress, of 9 March 1953, assistant secretary of state Thruston B. Morton on 13 March 1953[10] used largely the same arguments as in the above-mentioned letter by assistant secretary Jack K. McFall of June 1952. This was strongly criticised by professor Dobriansky during the congressional hearings as proof of the department's officials not having studied the matter to satisfy the request of representative Robert Chiperfield. Professor Dobriansky also expressed his disappointment with the fact that the position of the Department of State has stayed the same despite the change of administrations as a result of the 1952 presidential election (republican Dwight D. Eisenhower won a landslide victory, ending Democratic party wins from 1932).

It is especially interesting to see how George Kennan, an architect of the US containment policy regarding the Soviet Union, and his like-minded colleagues at State Department were accused by professor Dobriansky of being the reason for the department's rejection of the resolution, when he asks, "is it the same group under Mr. Kennan, for whom the Soviet Union has always been identical with Russia, and remnants of that group in the State Department, that are responsible for this letter to Mr. Chiperfield?"[11]

Despite the effort and the criticism, Washington seemed to rely on George Kennan's vision: "If we both politically and economically take offensive actions not only against the Soviet regime but also the strongest and most numerous ethnic element on the traditional lands, and do so in the name of national extremists among whom no unity can be imagined and who will never be able to remain in power without relying on American bayonets… to withstand the pressure of Russian revanchism, this would mean absurdity on such a grand scale that even the recent adventure in Vietnam loses its significance" [21, p. 99].

## Conclusions

Legislative initiatives at the United States Congress did not result in any Congressional resolution expressing the sense of Congress that the Government of the United States should proceed to establish direct diplomatic relations with Byelorussia. The main reason for the failure of those efforts seems to be the position of the Department of State, which had a different, less idealistic, and rather more realistic take on this idea. To some extent, given the motion that happened almost 70 years ago, this example may be indicative of a

[9]Favoring extension of diplomatic relations with the republics of Ukraine and Byelorussia. Hearing. Committee on Foreign Affairs. House of Representatives. 83rd Congress. 1953. 1418-5. P. 77–78.

[10]Favoring extension of diplomatic relations with the Republics of Ukraine and Byelorussia. Hearing. Committee on Foreign Affairs. House of Representatives. 83rd Congress. 1953. 1418-5. P. 78–79.

[11]Ibid. P. 85.

nuanced difference of approaches of the legislative and executive branches of power of the United States when it comes to foreign policy initiatives.

Nevertheless, the House concurrent resolution 58 sponsored by representative H. Alexander Smith was the first legislative attempt to formally recognise the sovereignty of Belarus by establishing diplomatic relations with it of the United States. This attempt was definitely driven by political rather than legal reasons, and more by reasons of competition if not confrontation with the Soviet Union than by considerations of facilitating independence of Belarus. At the same time, the form of the legislative initiative was overwhelmingly legalistic.

This example may be useful as a demonstration of a complex character of the US foreign policy decision-making process, competition between idealism and realism in American foreign policy, case-making legal logic behind foreign policy decisions, and, most important, an acknowledgement of the availability and Belarus' exercising certain though limited elements of international subjectivity and sovereignty during the Soviet period, as a constituent of the longer political and legal process of international recognition of Belarus' sovereignty.

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# NEGATIVE IMPACT OF UNILATERAL SANCTIONS ON THE ENJOYMENT OF HUMAN RIGHTS IN THE COVID-19 PANDEMIC

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The article is aimed to provide an overview of sanctions imposed by individual states and regional organisations without or beyond the authorisation of the UN Security Council in the course of COVID-19 pandemic and assess their impact on the enjoyment of different categories of human rights, identify the most vulnerable groups of population and efficacy of humanitarian exemptions as well as the availability of delivery of humanitarian aid. The article is based on the materials collected by the UN special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights in the course of preparation of the annual report to the UN General Assembly but reflect a personal academic assessment of the authour and cannot be viewed as the position of the United Nations organs.

***Keywords:*** unilateral sanctions; human rights; COVID-19; humanitarian exemptions; the most vulnerable categories.

# НЕГАТИВНОЕ ВЛИЯНИЕ ОДНОСТОРОННИХ САНКЦИЙ В УСЛОВИЯХ ПАНДЕМИИ

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Дается обзор санкций, применяемых государствами и региональными международными организациями в условиях коронавируса без санкции Совета Безопасности ООН, оценивается воздействие таких санкций на соблюдение различных категорий прав человека, выявляются наиболее уязвимые группы лиц, исследуется эффективность применения гуманитарных исключений, а также возможность и достаточность поставляемой гуманитарной помощи для защиты прав человека. Статья основывается на материалах, собранных специальным докладчиком по негативному влиянию односторонних принудительных мер на права человека в рамках подготовки ежегодного отчета в Генеральную Ассамблею ООН, однако при этом в работе отражено личное академическое мнение автора, которое не может рассматриваться в качестве позиции органов ООН.

***Ключевые слова:*** односторонние санкции; права человека; COVID-19; гуманитарные исключения; наиболее уязвимые группы населения.

The COVID-19 pandemic constitutes a global challenge to the world community and the whole system of human rights. It challenges the ability of states and international organisations to work together in the spirit of multilateralism, cooperation, and solidarity to guarantee that no one will be left behind and deprived of medical help, especially the most vulnerable, including persons with disabilities and older persons, who are at much higher risk when contracting the disease. COVID-19 is threatening to overwhelm public health care systems and is having devastating impacts across the world on all spheres of life.

A number of countries all around the world faced shortages of medical items because of the increased

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demand, prices rise, and disruption of the regular shipping schemes. The problems of medicines, medical equipment, food, and other vital supplies turned to be particularly severe for countries targeted by unilateral sanctions that already hindered their participation in the international trading system. Moreover, the number, scope, forms, and consequences of unilateral sanctions have changed so much recently, that the legality of every specific form of it shall be assessed separately.

The problem of the negative impact of unilateral sanctions on the enjoyment of human rights in the course of the COVID-19 pandemic has not been considered in the legal doctrine yet despite its urgent nature. This article thus is based on the documents of the United Nations, other governmental and non-governmental organisations, as well as positions of states.

Negative humanitarian effects of economic or other sanctions against states had been recognised by the United Nations already in 2000, despite their undoubted legality when applied by the UN Security Council acting under chapter VII of the UN Charter. UN Secretary-General expressly admitted that "the existence of a sanctions regime almost inevitably transforms an entire society for the worse"[1]. Since then, the UN Security Council has sought to apply sanctions restrictively (in the form of targeted sanctions mostly) to minimise the negative humanitarian effects.

The UN Charter does not provide for any possibility to impose sanctions without authorisation of the UN Security Council. At the same time, today the World community witnesses the expansive application of unilateral sanctions by states and international organisations, quite often without or beyond the authorisation of the UN Security Council. It concerns not only targeted but rather sectoral or blanket sanctions more and more frequently, which include economic, financial, and trade embargoes, restrictions on transportation, shipments, bank transfers, and cyber services, enforced by secondary sanctions and followed by an increasing level of over-compliance.

The negative effect of such unilateral sanctions exacerbates during the pandemic. As a result, a number of the UN high officials (the UN high commissioner for human rights[2], UN Secretary-General[3]) followed by the UN special procedures[4], other international organisations (European Union[5], Group of 77 and China[6]) and civil actors (ICRC[7], Human Rights Watch (HRW)[8], other non-governmental organisations (NGOs)[9]) requested to lift, suspend, waive or at least easy all unilateral sanctions that obstruct the humanitarian responses of sanctioned states, in order to enable their health care systems to fight the COVID-19 pandemic and save lives or to work together in the spirit of multilateralism, cooperation and solidarity at least (UN General Assembly resolution 74/270[10]).

It has appeared, however, that sanctioning states chose to evaluate the mechanism of humanitarian exemptions and to provide humanitarian aid, rather than to easier the existing sanctions regime. As a result, human rights of the targeted population have been affected even more due to the deteriorating economic situations in the targeted countries, the impossibility to buy or deliver the necessary equipment, food, or medication, and the increasing level of over-compliance when banks and organisations reject to deal with targeted state entities out of fear of violating sanctions regimes, even if specific entities are not listed.

Responses of states and findings of international organisations demonstrate that all categories of human rights are affected by the application of unilateral

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[6]Statement by the Group of 77 and China on the COVID-19 pandemic [Electronic resource]. URL: https://www.g77.org/statement/getstatement.php?id=200403 (date of access: 01.08.2020).

[7]"COVID-19 a wake-up call to international community. Urgent need for global solidarity to prevent poverty and food insecurity around the world," says IFRC president [Electronic resource]. URL: //media.ifrc.org/ifrc/press-release/covid-19-wake-call-international-community-urgent-need-global-solidarity-prevent-poverty-food-insecurity-around-world-says-ifrc-president/ (date of access: 01.08.2020).

[8]US: ease sanctions on Iran in COVID-19 crisis [Electronic resource]. URL: https://www.hrw.org/news/2020/04/06/us-ease-sanctions-iran-covid-19-crisis (date of access: 01.08.2020).

[9]Lift sanctions, save lives [Electronic resource]. URL: https://www.liftsanctionssavelives.org/ (date of access: 01.08.2020).

[10]Global solidarity to fight the coronavirus disease 2019 (COVID-19): resolution adopted by the General Assembly on 2 Apr. 2020 [Electronic resource]. URL: https://undocs.org/pdf?symbol=en/A/RES/74/270 (date of access: 01.08.2020).

sanctions. The purpose of this article is, however, to identify rights, which are most affected in the course of the COVID-19 pandemic.

**The right to the highest attainable standard of physical and mental health** of every individual is generally cited as the most endangered[11]. Art. 12 of the International covenant on economic, social and cultural rights (ICESCR) includes, inter alia, "the reduction of infant mortality; the healthy development of the child; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and the creation of conditions that would ensure access to all medical services and medical attention in the event of sickness". ICESCR General comment 14 (2000) refers to availability, physical, economic and information accessibility based on non-discriminatory criteria, acceptability and quality as integral elements of this right (para 12)[12].

It shall be taken into account that the economies of targeted states could already be in a critical state before the pandemic. Venezuela's healthcare system e. g. is recognised to be in crisis since 2014[13]. Contemporary developments, however, show that the ability of targeted countries to fight the pandemic has been highly hindered because of the sanctions. In particular, some targeted countries face an insufficiency of medical personnel who migrated to more stable states (Venezuela[14]), and shortages of medications and medical equipment necessary for diagnosis and treatment of COVID-19 and other diseases, including oxygen supplies and ventilators (Sudan[15], Cuba[16], Venezuela[17], Iran[18]), protective kits (Cuba)[19], spare parts, software (Syria, Sudan[20], Cuba), fuel, electricity, drinking water and water for sanitation (Venezuela[21], Syria[22]). Due to the economic crisis and ever-tightening economic, financial, trade, and transportation sanctions, HRW reports that disinfectants including soap are "virtually non-existent" in Venezuelan hospitals. Moreover, shortages of water for drinking, hygienic and sanitary purposes make washing hands, the prophylactic means recommended by the World Health Organisation (WHO), impossible[23].

Due to the imposed restrictive measures, Syria is only able to do 100 COVID-19 tests per day since the beginning of the pandemic, which is insufficient for assessing the progression of the disease. The country is suffering from the absence of medicine, protective kits, medical equipment and software[24]. Measures affecting the electricity sector result in extensive damage to other

[11]Call for submissions: UCM-study on impact of unilateral sanctions on human rights during the state of emergency amid COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/EN/Issues/UCM/Pages/call-covid.aspx (date of access: 01.08.2020).

[12]General comment No. 14 the right to the highest attainable standard of health (article 12 of the International covenant on economic, social and cultural rights) [Electronic resource]. URL: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLuW1AVC1NkPsgUedPlF1vfPMJ2c7ey6PAz2qaojTzDJmC0y%2B9t%2BsAtGDNzdEqA6SuP2r-0w%2F6sVBGTpvSCbiOr4XVFTqhQY65auTFbQRPWNDxL (date of access: 01.08.2020).

[13]Human rights violations in the Bolivarian Republic of Venezuela: a downward spiral with no end in sight. P. 39–46 [Electronic resource]. URL: https://www.ohchr.org/Documents/Countries/VE/VenezuelaReport2018_EN.pdf (date of access: 01.08.2020).

[14]Venezuela: urgent aid needed to combat COVID-19 [Electronic resource]. URL: https://www.hrw.org/news/2020/05/26/venezuela-urgent-aid-needed-combat-covid-19 (date of access: 01.08.2020).

[15]Submission by the Coalition of sudanese doctors abroad for SR UCM-study on the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/SudaneseDoctorsAbroad.docx (date of access: 01.08.2020).

[16]Note of the Permanent Mission of Cuba to the United Nations office in Geneva and the international organizations in Switzerland No. 252/2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/CUBA.docx (date of access: 01.08.2020).

[17]Input of the Bolivarian Republic of Venezuela for the study regarding the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Venezuelapart1.docx (date of access: 01.08.2020).

[18]Responses and comments from the Islamic Republic of Iran of 15 June 2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Iran.docx (date of access: 01.08.2020).

[19]Impact of unilateral sanctions imposed by the United States of America of the health situation and COVID-19 pandemic preparedness and response in Sudan [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/SudaneseDoctorsAbroad.docx (date of access: 01.08.2020).

[20]Ibid.

[21]Input of the Bolivarian Republic of Venezuela for the study regarding the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Venezuelapart1.docx (date of access: 01.08.2020).

[22]Responses be the Syrian Arab Republic to questions in the questionnaire circulated by special rapporteur on the negative impact of unilateral coercive mesures [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Syria.doc (date of access: 01.08.2020).

[23]Venezuela: urgent aid needed to combat COVID-19 [Electronic resource]. URL: https://www.hrw.org/news/2020/05/26/venezuela-urgent-aid-needed-combat-covid-19 (date of access: 01.08.2020) ; Input of the Bolivarian Republic of Venezuela for the study regarding the "impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Venezuelapart1.docx (date of access: 01.08.2020) ; Infection prevention and control during health care when coronavirus disease (COVID-19) is suspected or confirmed [Electronic resource]. URL: https://apps.who.int/iris/rest/bitstreams/1284718/retrieve (date of access: 01.08.2020) ; Critical preparedness, readiness and response actions for COVID-19 [Electronic resource]. URL: https://apps.who.int/iris/rest/bitstreams/1283590/retrieve (date of access: 01.08.2020).

[24]Responses be the Syrian Arab Republic to questions in the questionnaire circulated by special rapporteur on the negative impact of unilateral coercive mesures [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Syria.doc (date of access: 01.08.2020).

spheres, including health, food and education. To be able to guarantee minimal standards of health protection, Cuba earmarked 27.5 % of its budget for the health sphere in 2020[25]. Office of the United Nations high commissioner (OHCHR) Sudan reports that only 33 % of health facilities offer the complete basic healthcare package, and 30 % are absolutely non-functional[26].

Restricted access to foreign dollar reserves needed to import medicine and medical equipment, and the impossibility to use frozen bank assets or make bank transfers are named as being among very strong impediments to the exercise of the right to health in Iran, Venezuela, Syria and other targeted states[27]. Delays and increasing costs of bank transfers and deliveries result in the rising prices of medical equipment, food and other essential goods, in particular in Venezuela[28]. The cost of oxygen cylinders "skyrocketed from $US 55 to 110" in Sudan[29].

Some medical equipment and medicine are reported (Syria[30], Cuba[31], Iran[32], Sudan[33], etc.) not to be available for purchase at all because of the absence of financial resources, the rejection of manufacturers to make transactions with targeted states and companies, the reluctance of banks to permit bank transfers or the enormous extension of transfer terms, as well as the unwillingness of other companies to be involved in transactions because of the fear of secondary sanctions even when companies in targeted countries are not included on sanctions lists (over-compliance). In particular, due to the US sanctions, Cuba was unable to buy pulmonary ventilators necessary to fight COVID-19 from the manufacturer as soon as the latter was acquired by the US company and suspended all commercial relations with Cuba[34]. Iran is referring to impediments in buying anesthetic, respiratory, ophthalmological, cardiac, endoscopy and other pharmaceutical equipment; ventilators, computer tomography scanners, dialysis, continuous renal replacement therapies, extracorporeal membrane oxygenation, digital radiology, electroshock, reverse transcription polymerase chain reaction, video laryngoscope and portable sonography equipment, tests, protective kits and advanced wound dressings[35].

Sixteen transfers have reportedly been blocked from the BANITSMO bank in Panama that were to be used for humanitarian purposes in Venezuela[36]. Moreover, the time to process bank transfers from (to) Venezuela increased from 2 to 45 days, as bank fees rose from 0.5 to 10 %[37]. In April 2020, Swiss banks blocked donation transfers to Cuba made by Swiss organisations MediCuba-Suiza and Asociacion Suiza-Cuba to fight the pandemic[38]. Targeted countries (Syria, Cuba, Iran,

[25]Note of the Permanent Mission of Cuba to the United Nations office in Geneva and the international organisations in Switzerland No. 252/2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/CUBA.docx (date of access: 01.08.2020).

[26]Submission to the special rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/OHCHRSudansubmission.docx (date of access: 01.08.2020).

[27]Joint submission to the special rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights from the Centre for Economic and Policy Research, the Charity&Security Network, and the American friends service committee [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/JointCommentsCSN-CEPRandAFSC.docx (date of access: 01.08.2020).

[28]Input of the Bolivarian Republic of Venezuela for the study regarding the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Venezuelapart1.docx (date of access: 01.08.2020).

[29]Impact of unilateral sanctions imposed by the United States of America of the health situation and COVID-19 pandemic preparedness and response in Sudan [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/SudaneseDoctorsAbroad.docx (date of access: 01.08.2020).

[30]Responses be the Syrian Arab Republic to questions in the questionnaire circulated by special rapporteur on the negative impact of unilateral coercive mesures [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Syria.doc (date of access: 01.08.2020).

[31]Note of the Permanent Mission of Cuba to the United Nations office in Geneva and the international organisations in Switzerland No. 252/2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/CUBA.docx (date of access: 01.08.2020).

[32]Responses and comments from the Islamic Republic of Iran of 15 June 2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Iran.docx (date of access: 01.08.2020).

[33]Impact of unilateral sanctions imposed by the United States of America of the health situation and COVID-19 pandemic preparedness and response in Sudan [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/SudaneseDoctorsAbroad.docx (date of access: 01.08.2020).

[34]Note of the Permanent Mission of Cuba to the United Nations office in Geneva and the international organisations in Switzerland No. 252/2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/CUBA.docx (date of access: 01.08.2020).

[35]Responses and comments from the Islamic Republic of Iran of 15 June 2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Iran.docx (date of access: 01.08.2020).

[36]Joint submission to the special rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights from the Centre for Economic and Policy Research, the Charity&Security Network, and the American friends service committee [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/JointCommentsCSN-CEPRandAFSC.docx (date of access: 01.08.2020).

[37]Input of the Bolivarian Republic of Venezuela for the study regarding the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Venezuelapart1.docx (date of access: 01.08.2020).

[38]Note of the Permanent Mission of Cuba to the United Nations office in Geneva and the international organisations in Switzerland No. 252/2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/CUBA.docx (date of access: 01.08.2020).

Sudan, etc.) uniformly report on the impossibility to buy medical equipment for the treatment of COVID-19 as well as other illnesses.

The right to health has also been impeded by the interruption of electricity, which prevents the normal functioning of hospitals (Iran, Venezuela), and the absence of fuel, preventing people from being able to get to hospitals or ambulances to be used[39].

The economic nature of the majority of unilateral sanctions, especially those which are taken with the purpose to "impose maximum pressure", results in the violation of the **right to food** in the targeted states, which depend on food imports because unilateral sanctions disrupt existing food supply chains (Venezuela, Sudan, Syria[40]), or may occur in the future due to the insufficiency of agricultural production and transportation (Venezuela[41]). The rise of transportation, banking, and other costs and the decline of imports is reportedly resulting in increasing prices for food (Syria). As reported by OHCHR Sudan, economic sanctions keep prices for food very high even in the harvest season[42].

**Access to information** plays an important role in the fight against pandemics[43], including information concerning symptoms, diagnostics, and means of treatment[44]. In practice, however, existing statements are mostly focusing on the obligation of states to guarantee access to information in the country, while measures preventing citizens of targeted states from accessing COVID-19 related and other vital information remains out of sight.

The impact of unilateral sanctions on the access to information in the course of the COVID-19 pandemic is twofold. Services and software cannot be used for commercial internet services, connectivity, etc. (para D)[45], even for non-commercial activity, as the result of service agreements (as concerns Syria, Iran, Cuba, North Korea and Crimea citizens) or through US legislation[46], even for contacts and coordination among doctors to exchange their experiences on symptoms, diagnostics and means of treatment[47]. While in the non-COVID period access to information may also be impeded by visa and travel restrictions[48], the establishment of open access via online platforms has appeared to be vital in the course of the pandemic. The same restrictions refer to the prohibition of the export of technology, necessary, *inter alia*, for computer tomography and ventilators[49].

It has been also reported that Iranian citizens cannot get access to information on COVID-19 and its symptoms, even from the Iranian government, due to Google's censoring of the AC19 (an Iran-developed App)[50]. Iranian doctors cannot get access to medical databases (Pub Med) after its server had been transferred to Google[51]. Venezuela refers to the impediment to the access to information via television due to the cessation of operation of DirecTV Venezuela, which represented 43 % of the market, because of the US sanctions, in May 2020[52].

Another impediment to the access to information refers to the insufficient access of individuals to information about sanctions – being listed, mechanisms of getting licenses, humanitarian exemptions and humanitarian aid – as far as these are not transparent enough. This traditionally results in over-compliance from the side of private actors even if sanctioning states have not imposed specific sanctions.

[39]Venezuela: urgent aid needed to combat COVID-19 [Electronic resource]. URL: https://www.hrw.org/news/2020/05/26/venezuela-urgent-aid-needed-combat-covid-19 (date of access: 01.08.2020).

[40]Responses be the Syrian Arab Republic to questions in the questionnaire circulated by special rapporteur on the negative impact of unilateral coercive mesures [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Syria.doc (date of access: 01.08.2020).

[41]Input of the Bolivarian Republic of Venezuela for the study regarding the "impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Venezuelapart1.docx (date of access: 01.08.2020).

[42]Submission to the special rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/OHCHRSudansubmission.docx (date of access: 01.08.2020).

[43]COVID-19: governments must promote and protect access to and free flow of information during pandemic – international experts [Electronic resource]. URL: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25729&LangID=E (date of access: 01.08.2020).

[44]Access to COVID-19 tools (ACT) accelerator [Electronic resource]. URL: https://www.who.int/publications/m/item/access-to-covid-19-tools-(act)-accelerator (date of access: 01.08.2020).

[45]Sanctions programmes and country information [Electronic resource]. URL: https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl_9.pdf (date of access: 01.08.2020).

[46]Zoom terms of service. Para 12 [Electronic resource]. URL: https://zoom.us/terms (date of access: 01.08.2020).

[47]Executive order 13606 of 22 April 2012 "blocking the property and suspending entry into the United States of certain persons with respect to grave human rights abuses by the governments of Iran and Syria via information technology" [Electronic resource]. URL: https://fas.org/irp/offdocs/eo/eo-13606.htm (date of access: 01.08.2020).

[48]Note of the permanent mission of the Republic of Belarus to the United Nations office and other organisations in Geneva No. 02-16/721 of 17 June 2020.

[49]Infection prevention and control during health care when coronavirus disease (COVID-19) is suspected or confirmed [Electronic resource]. URL: https://apps.who.int/iris/rest/bitstreams/1284718/retrieve (date of access: 01.08.2020).

[50]Responses and comments from the Islamic Republic of Iran of 15 June 2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Iran.docx (date of access: 01.08.2020).

[51]Ibid.

[52]Input of the Bolivarian Republic of Venezuela for the study regarding the "impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Venezuelapart1.docx (date of access: 01.08.2020).

Aligned with the abovementioned statements of the UN and WHO officials, Venezuela[53], Syria[54], Namibia[55], the Russian Federation[56], Cuba[57] and Iran[58] responded that the impossibility to get access to proper medicine, medical care, food, electricity and fuel results in the violation of the **right to life** of those who are infected by COVID-19, and those who cannot get medical help and medication while suffering from other diseases, are malnourished, or are unable to get to hospitals because of the absence of money, fuel or other reasons[59]; this is a clear violation of para 7 of the General comment 36, requesting states to protect and ensure the right to life against "reasonably foreseeable threats and life-threatening situations that can result in loss of life"[60].

It shall be taken into account that General comment 36 does not refer to the impact of unilateral sanctions on the enjoyment of the right to life. At the same time, the abovementioned reasons hinder the ability of states "to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity", including "the prevalence of life-threatening diseases <…>, widespread hunger and malnutrition and extreme poverty and homelessness <…> to ensure access without delay <…> to essential goods and services such as food, water, shelter, health care, electricity and sanitation" (para 36 General Comment 36). The right to life is also reported to be violated by visa restrictions when specific types of medical care can only be found in the targeting country[61].

The above rights thus are considered to be the most affected in the course of the COVID-19 pandemic. It shall be taken into account that other categories of rights do not stay untouched too.

In particular, **the prohibition of discrimination** constitutes an integral part of the exercise of the right to health (para 12 of General comment 14 (2000)) and the right to life. The HRC president's statement of 29 May 2020 expresses deep concern that the COVID-19 pandemic perpetuates and exacerbates existing inequalities[62], but unfortunately does not address the fact that existing and operational unilateral sanctions, imposed against about 20 % of UN member states, exacerbate today, even more, the aforementioned calamities and thus discriminate against populations of targeted countries.

It has been reported by numerous respondents (Sudan[63], Venezuela[64], Syria[65], Namibia[66], Iran[67], Belarus[68],

[53]Input of the Bolivarian Republic of Venezuela for the study regarding the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Venezuelapart1.docx (date of access: 01.08.2020).

[54]Infection prevention and control during health care when coronavirus disease (COVID-19) is suspected or confirmed [Electronic resource]. URL: https://apps.who.int/iris/rest/bitstreams/1284718/retrieve (date of access: 01.08.2020).

[55]Information on the negative impact of unilateral coercive measures on the enjoyment of human rights in the context of the COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Namibia.docx (date of access: 01.08.2020).

[56]Information from the Russian Federation in response to a request by the UN Human Rights Council Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights regarding the impact of unilateral sanctions on human rights during a state of emergency in the context of the COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Russia.docx (date of access: 01.08.2020).

[57]Note of the Permanent Mission of Cuba to the United Nations office in Geneva and the international organisations in Switzerland No. 252/2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/CUBA.docx (date of access: 01.08.2020).

[58]Responses and comments from the Islamic Republic of Iran of 15 June 2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Iran.docx (date of access: 01.08.2020).

[59]Note of the Permanent Mission of Cuba to the United Nations office in Geneva and the international organisations in Switzerland No. 252/2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/CUBA.docx (date of access: 01.08.2020).

[60]General comment No. 36. Article 6: right to life [Electronic resource]. URL: https://www.refworld.org/docid/5e5e75e04.html (date of access: 01.08.2020).

[61]Note of the permanent mission of the Republic of Belarus to the United Nations office and other organisations in Geneva No. 02-16/721 of 17 June 2020.

[62]PRST 43/…Human rights implications of the COVID-19 pandemic [Electronic resource]. URL: https://undocs.org/A/HRC/43/L.42 (date of access: 01.08.2020).

[63]Submission to the special rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/OHCHRSudansubmission.docx (date of access: 01.08.2020).

[64]Input of the Bolivarian Republic of Venezuela for the study regarding the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Venezuelapart1.docx (date of access: 01.08.2020).

[65]Responses be the Syrian Arab Republic to questions in the questionnaire circulated by special rapporteur on the negative impact of unilateral coercive mesures [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Syria.doc (date of access: 01.08.2020).

[66]Information on the negative impact of unilateral coercive measures on the enjoyment of human rights in the context of the COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Namibia.docx (date of access: 01.08.2020).

[67]Responses and comments from the Islamic Republic of Iran of 15 June 2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Iran.docx (date of access: 01.08.2020).

[68]Note of the permanent mission of the Republic of Belarus to the United Nations office and other organisations in Geneva No. 02-16/721 of 17 June 2020.

a number of NGOs) that deteriorating economic situations are badly affecting the exercise of **economic and labour rights,** including the right to an adequate standard of living Art. 11 of ICESCR and the right to work Art. 6 of ICESCR.

Violations of the **right to education** are cited in Iran[69], Sudan and Venezuela[70] because of the impossibility to use online platforms for educational purposes, and secondly in the long term with a view to the deteriorating economic situation. OHCHR Sudan reported that unilateral sanctions in the course of COVID-19 are very probably affecting school enrolment and increase the school drop-out rate[71].

It has also been generally reported (Cuba[72], Sudan[73], Venezuela[74], Syria[75], Iran[76]) that economic hardships exacerbated by the application of unilateral sanctions and the pandemic impede not only individuals but also collective rights, including the **right to development**.

As mentioned above sanctioning states are generally express their adherence to human rights and agree that unilateral sanctions shall not under the basic need of the targeted population and country's ability to fight COVID-19[77]. They are proposing and providing significant humanitarian aid and provide instructions to get humanitarian exemptions as regards the basic needs especially in the course of the pandemic.

EU sanctions on Syria, for example, allow humanitarian exemptions for respirators, disinfectants, hand sanitizers or detergents that can be necessary in responding to the pandemic. At the same time, the applicant shall prove that they will not be used to fabricate chemical weapons or conduct internal repression[78]. Both the US[79] and the European Union[80] issues explanations to clarify in some way mechanism for humanitarian exemptions.

It has been reported, however, that humanitarian exemptions and mechanisms to supply humanitarian aid are usually complex and confusing. In particular, the US factsheet on the provision of Humanitarian Assistance and Trade to Combat COVID-19 is informational but does not have the force of law, and does not supersede the actual legal provisions cited[81]. Targeted governments insist that such humanitarian exemptions are costly and nearly non-existent. A similar assessment is given by some research institutions[82]. In particular, a license issued by the US Department of the Treasury in February 2020, exempted some humanitarian trade transactions with the Central bank of Iran but did not

[69]Responses and comments from the Islamic Republic of Iran of 15 June 2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Iran.docx (date of access: 01.08.2020).

[70]Input of the Bolivarian Republic of Venezuela for the study regarding the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Venezuelapart1.docx (date of access: 01.08.2020).

[71]Submission to the special rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/OHCHRSudansubmission.docx (date of access: 01.08.2020).

[72]Note of the Permanent Mission of Cuba to the United Nations office in Geneva and the international organizations in Switzerland No. 252/2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/CUBA.docx (date of access: 01.08.2020).

[73]Impact of unilateral sanctions imposed by the United States of America of the health situation and COVID-19 pandemic preparedness and response in Sudan [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/SudaneseDoctorsAbroad.docx (date of access: 01.08.2020).

[74]Input of the Bolivarian Republic of Venezuela for the study regarding the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Venezuelapart1.docx (date of access: 01.08.2020).

[75]Responses be the Syrian Arab Republic to questions in the questionnaire circulated by special rapporteur on the negative impact of unilateral coercive mesures [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Syria.doc (date of access: 01.08.2020).

[76]Responses and comments from the Islamic Republic of Iran of 15 June 2020 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Iran.docx (date of access: 01.08.2020).

[77]EU contribution to the study on the "Impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic" by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/EU.docx (date of access: 01.08.2020) ; Réponse de la Suisse au questionnaire adressé par la Rapporteuse spéciale pour les impacts négatifs des sanctions sur les droits de l'homme en vue de son prochain rapport sur l'impact des sanctions unilatérales sur les droits de l'homme durant l'état d'urgence dans le contexte du COVID-19 [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Switzerland.docx (date of access: 01.08.2020).

[78]Syria: EU sanctions are not impeding Syria's medical response to COVID-19 [Electronic resource]. URL: https://eeas.europa.eu/topics/sanctions-policy/79173/syria-eu-sanctions-are-not-impeding-syria%E2%80%99s-medical-response-covid-19_en (date of access: 01.08.2020).

[79]Fact sheet: provision of humanitarian assistance and trade to combat COVID-19 [Electronic resource]. URL: https://www.treasury.gov/resource-center/sanctions/Programs/Documents/covid19_factsheet_20200416.pdf (date of access: 01.08.2020).

[80]Para 25–28 of Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy [Electronic resource]. URL: https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf (date of access: 01.08.2020).

[81]Fact sheet: provision of humanitarian assistance and trade to combat COVID-19 [Electronic resource]. URL: https://www.treasury.gov/resource-center/sanctions/Programs/Documents/covid19_factsheet_20200416.pdf (date of access: 01.08.2020).

[82]*Sarfati A.* The impact of sanctions on humanitarian Response to COVID-19 [Electronic resource]. URL: https://theglobalobservatory.org/2020/04/impact-of-sanctions-on-humanitarian-response-to-covid-19/ (date of access: 01.08.2020).

exempt some crucial medical devices. Approval of the special licence for such devices can take up to 77 days if granted[83]. The above problems are exacerbated by the over-compliance from the side of private actors even if sanctioning states did not impose specific sanctions.

In the long-term perspective and in a view of the all-expanding character of unilateral sanctions, unclear and non-transparent mechanisms of getting licenses including for humanitarian exemptions, targeted countries are prevented from the development of their economies, including labour, health and educational facilities and become dependent on the foreign humanitarian aid. In some cases, however, even the delivery of humanitarian aid by international organisations and states may be hindered, because e. g. means of transportation (Sudan, Iran) or oil products (Syria) could still remain the subject of sanctions even if the exemption licence is granted for delivering items or goods.

The abovementioned brings us to the following conclusions.

The COVID-19 pandemic revealed the short-term and long-term impacts of unilateral sanctions on the enjoyment of all categories of civil, economic, social and cultural rights. Due to the limited scope of the article, it was unable to consider in details the impact of unilateral sanctions over specific categories of population, especially the most vulnerable ones: women, children, elderly and persons with disabilities (paras 21–26 of General Comment 24 (2000) to the ICESCR[84]) medical personnel, migrants and refugees, people with chronic deceases, unemployed and self-employed people, as well as those with low income, but targeted population as such is mostly subjected to the violation of the highest attainable standard of health, right to food, right to an adequate standard of living, right to access to information, labour rights, that consequently results in the violation of the right to life and the right to development.

Despite the repeated and numerous calls for solidarity, cooperation and the lifting, suspension or easing of sanctions in the course of the pandemic, sanctioning states chose to act through the mechanisms of humanitarian exemptions and humanitarian aid, which, however, remained hard to exercise, non-transparent and low-effective. They also make populations dependant on humanitarian aid, hinder targeted countries' ability to respond to COVID-19, and prevent their economic recovery in the long term through the development and maintenance of necessary infrastructure.

The increasing internationalisation of unilateral sanctions, combined in some cases with their complexity and the vigor with which they are enforced, result in over-compliance. This can cause parties to act with restraint in ways that negatively impact their own enjoyment of human rights out of fear of potential penalties.

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[83]Submission to the special rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/OHCHRSudansubmission.docx (date of access: 01.08.2020).

[84]General comment No. 14. the right to the highest attainable standard of health (article 12 of the International covenant on economic, social and cultural rights) [Electronic resource]. URL: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLuW1AVC1NkPsgUedPlF1vfPMJ2c7ey6PAz2qaojTzDJmC0y%2B9t%2BsAtGDNzdEqA6SuP2r-0w%2F6sVBGTpvSCbiOr4XVFTqhQY65auTFbQRPWNDxL (date of access: 01.08.2020).

*UDC 341*

# MINORITY OPINIONS IN THE DECISIONS OF THE INTERNATIONAL CRIMINAL COURT

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When exercising in a particular field of competence, the work of every judge lies in his inalienable freedom to pronounce the law, whether he expresses his own opinion separately or with a panel. Saying so introduces well our paper called "Minority opinions in the decisions of the International Criminal Court". Indeed, it emphasises a finding among the decisions issued by the judges of the International Criminal Court and reflects an analysis of the jurisprudence of this court. It sheds light on what interest there can be in minority opinions that embrace matters relating to a mode of exercising jurisdiction. In other words, how to explain the admissibility of minority opinions? This topic is very relevant given the extent of the practice of minority opinions in most international jurisdictions, whereas in international criminal law it is a matter not sufficiently studied by scholars.

***Keywords:*** Anglo-Saxon system; common law; continental system; core crimes; dissenting opinions; impartiality impunity; independence; individual opinion; International Criminal Court; international criminal law; judges; jurisprudence; majority opinion; minority opinion; Roman law; separate opinions; victims.

# МНЕНИЕ МЕНЬШИНСТВА В РЕШЕНИЯХ МЕЖДУНАРОДНОГО УГОЛОВНОГО СУДА

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Деятельность каждого судьи в рамках определенной области компетенции предполагает его неотъемлемую свободу выносить решения независимо от того, выражает ли он собственное мнение отдельно или в составе коллегии судей. Как следует из темы, в исследовании рассматриваются выводы из решений, вынесенных судьями Международного уголовного суда, и проводится анализ соответствующей судебной практики. Выясняется, чем вызван интерес к мнению меньшинства в вопросах, касающихся способа осуществления юрисдикции. Объясняется допустимость принятия мнения меньшинства. Актуальность темы очевидна с учетом масштабов существующей практики выражения мнений меньшинства во многих судах международной юрисдикции, в то время как в международном уголовном праве этот вопрос недостаточно изучен учеными.

***Ключевые слова:*** англосаксонская правовая система; общее право; континентально-европейское право; особо тяжкие преступления; особые мнения; беспристрастность; безнаказанность; независимость; индивидуальное мнение; Международный уголовный суд; международное уголовное право; судьи; юриспруденция; мнение большинства; мнение меньшинства; римское право; особые мнения; жертвы.

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## Introduction

The International Criminal Court (ICC), governed by the Rome statute[1], the first permanent, treaty-based international criminal court established to help end impunity. In 2020, 123 countries are states parties to the Rome statute of the ICC (the Statute). The ICC is an independent international organisation and is not part of the United Nations system[2]. The ICC has jurisdiction over the most serious crimes[3] of concern to the international community as a whole, namely genocide, crimes against humanity war crimes, and crime of aggression[4]; and the Statute "shall apply equally to all persons without any distinction based on official capacity"[5] (heads of state or government, members of a government or parliament, etc.). The ICC is intended to complement, not to replace, national criminal justice systems[6]. 18 judges make up the three divisions of the ICC[7]. They are responsible for ensuring that the trials are fair and that justice is properly administered.Their duties also concern the procedure for determining access to reparation for the victims[8].

At the ICC, when a pre-Trial, a Trial or an Appeal Chamber decides with a panel of judges involved, the judges who disagree with the majority vote may supply their own written opinions, expressing their reasons for dissenting. It is a matter still understudied by scholars, which would lead to understanding the institutional and functional significance of a judgment. In a similar vein, there is a need to conduct further and more profound substantial research into dissenting opinions with the aim of discovering possible directions of development for international criminal justice.

So, our paper entitled "Minority opinions in the decisions of the International Criminal Court" underlines a finding through the analysis of the decisions issued by the judges of the ICC and provides an overview of the jurisprudence of this court. The issue is very relevant given the extent of the practice of minority or separate opinion in most international jurisdictions, where it is subject to lengthy debates, namely at the International Court of Justice (ICJ), which has a long tradition in this matter. In this regard, Art. 57 of its Statute provides that "[i]f the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion"[9]. Art. 95(§2) of the Rules of ICC recalls that any judge may, if so he desires, attach to the judgment a concurring or dissenting opinion, or merely a statement[10]. The existing studies of the individual opinions in the ICC's system tend to propose three types of solutions to the debate surrounding this practice. The typical proposal is to abolish individual opinions and to establish a rule of the anonymous unanimous decision. The second typical proposal is to prohibit the publication of individual opinions. And the third typical proposal is to maintain the existing system of individual opinions while increasing the level of transparency of the process of deliberations of the ICC [1, p. 5].

This debate concerning international criminal jurisdictions is poorly known or rare. In the Rome statute of the ICC, Art. 74 ("Requirements for the decision") provides the possibility of judges joining a minority opinion as it clearly states: "2. The Trial Chamber's deci-

[1]On 17 July 1998, the international community reached an istoric milestone when 120 states adopted the Rome statute, the legal basis for establishing the permanent International Criminal Court. The Rome Statute entered into force on 1 July 2002 after ratification by 60 countries.

[2]The international community has long aspired to the creation of a permanent international court and, in the 20th century, it reached consensus on definitions of genocide, crimes against humanity and war crimes. The Nuremberg and Tokyo trials addressed war crimes, crimes against peace, and crimes against humanity committed during the World War II. In the 1990s after the end of the Cold War, tribunals like the International Criminal Tribunal for the former Yugoslavia and for Rwanda were the result of consensus that impunity is unacceptable. See: Assembly of state parties to the Rome statute [Electronic resource]. URL: https://asp.icc-cpi.int/EN_Menus (date of access: 18.05.2020).

[3]The Office of the Prosecutor of the International Criminal Court is responsible for determining whether a situation meets the legal criteria established by the Rome statute to warrant investigation by the office. For this purpose, the OTP conducts a preliminary examination of all communications and situations that come to its attention based on the statutory criteria and the information available. Ongoing preliminary examination at the ICC: Columbia, Nigeria, Republic of the Philippines, Ukraine, Venezuela II. Situations under investigation: Democratic Republic of the Congo, Uganda, Darfur, Sudan, Central African Republic, Libya, Bangladesh (Myanmar).

[4]The ICC may exercise jurisdiction over such international crimes only if they were committed on the territory of a state party or by one of its nationals. These conditions, however, do not apply if a situation is referred to the prosecutor by the United Nations Security Council, whose resolutions are binding on all UN member states, or if a state makes a declaration accepting the jurisdiction of the ICC. The Assembly of states parties is the court's management oversight and legislative body and is composed of representatives of the states which have ratified or acceded to the Rome statute.

[5]Art. 27 of the Statute. See also: *Nakoulma M. V.* Heads of state international criminal immunity, what's wrong? [Electronic resource]. URL: https://hal-unilim.archives-ouvertes.fr/hal-01580298 (date of access: 18.05.2020).

[6]Art. 1, 17 of the Rome statute. The court can prosecute cased only if national justice systems do not carry out proceedings or when they claim to do so but are unwilling of unable to carry out such proceedings genuinely. This fundamental principle is known as the principle of complementarity.

[7]Pre-trial, trial and appeal.

[8]Rule 94 of the ICC's rules of procedure and evidence about victims' application to participate in proceedings or for reparations.

[9]Also Art. 95(2) of the Regulation of the ICJ ; *Guillaume G.* Statements attached to the decisions of the International Court of Justice. The Hague : M. Ruda, 2000. P. 421.

[10]Art. 107 (§ 3) of the Rules of ICC.

sion shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial. 3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges. 4. The deliberations of the Trial Chamber shall remain secret. 5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority (emphasised)".

But what is the significance of minority and then dissenting opinions? What are their functions and interest? Are there any drawbacks in practice in terms of jurisprudence? Are separate opinions desirable, particularly in criminal matters? Minority opinion means any separate opinion, any comment or remark attached by a judge to a decision or a judgment. It may be a statement, an individual, a separate, concurring, or dissenting opinion. One or more of one judge can join their views in a joint minority opinion or joint dissenting opinion.The distinction between them is not irrelevant. Concerning the ICC, its particularity is that it prosecutes the alleged perpetrators of serious crimes and to fight against impunity[11]. In such a context of prosecuting serious crimes or mass atrocities with thousands and thousands of victims, is it appropriate to have the practice of minority opinions?

If the states parties to the Rome Treaty have decided to provide such a mechanism in the Rome statute, they have done so for reasons they deemed legitimate. From our point of view, minority opinions in the ICC's practice are a path of the international and Anglo-Saxon system; and they constitute an essential exercise in the legal and judicial debate. This may explain why ICC judges widely use them.

## A path from the international and Anglo-Saxon system

**The legal basis.** ***Brief historical recall.*** The authors of the Rome statute of the ICC which combines both Anglo-Saxon and civil law systems[12] have proposed and then endorsed the faculty for a judge, who is a member of a college, to express his views through a dissenting opinion as an expression of minority opinion. The term "shall" in the provision of Art. 74 cited below (*supra*) clearly manifests that a judge is not obliged to express an individual opinion. It is a simple faculty of discretionary nature. The acceptance of this ability was not so evident in the drafting of the Statute of the ICC. Indeed, supporters of the legal tradition of the countries of continental Europe, dominated by the inheritance of Roman law, had to confront those of the Anglo-Saxon tradition of the common law. According to the traditional conception of civil law states of romanistic tradition, judgment is the work of the majority of a court. The well-known old adage is that the judge is only "the mouth that pronounces the words of the law"[13]. Accordingly, there is no room for a "Schismatic" statement of the law. For lack of better, it is the majority. The minority is therefore in error. In this sense, in the majority of the countries of the continental system, the opinion of each of the judges involved in the decision-making is not disclosed. Only the overall judgment, which is collegial, is revealed (except of course in the cases of the single judge).

In 1942, Edward Dumbauld had already written that "[t]o the Anglo-American lawyer, dissenting opinions are a familiar feature of the judicial process. Indeed, they may constitute one of its glories. To many continental European jurists, on the other hand, dissenting opinions are regarded as anomalous, if not anathema" [2, p. 929]. How can this divergence be explained? [3, p. 819]. And then, what can be the status of minority opinions? According to him, "to a greater extent than his English or American colleague, the Continental European magistrate considers himself as a public official, instead of as the authentic expositor of the law"[14].

In the Roman law conception, there exists the idea of law as a general rule laid down by the lawgiver in advance, as a complete and closed system[15]. Moreover, for the strictest conception, a court acts as a judicial body. As explained by Edward Dumbauld, the deliberation remains secret[16]. The names of the judges who voted for or against a device should not be known[17]. On the contrary, in the Anglo-Saxon conception, which is distinctly more individualistic, judgment is above all a work of eminent magistrates operating on an individual basis. The judgment constitutes a connection of their expressions and is based on the sum of their opinions that one must study one by one. This conception should not deny the importance of recognising that judicial institutions are

[11]ICC. Art. 5 and Preamble of Rome statute.
[12]Art. 36 ("Qualifications, nomination and election of judge") § 8: "The states parties shall, in the selection of judges, take into account the need, within the membership of the court, for (i) The representation of the principal legal systems of the world". Cf: Art. 50(2) of the Rome Statute ; *Bourdon W.* The International Criminal Court. The Rome Statute. Paris : Seuil; 2000. P. 139.
[13]*De Montesquieu C.* The spirit of law. Geneva : Barrilot & Fils, 1748. Chap. VI.
[14]*Jèze G.* The general principles of administrative law. Paris : Dalloz, 1926. P 23–26.
[15]*Langenieux-Tribalat A.* The separate opinions of judges of the French judicial order. Limoges : University of Limoges, 2007.
[16]Art. 200, 304 of the French Criminal Procedure Code of 2020.
[17]For the French doctrine, the confidentiality of deliberation tends to protect judges.

independent legal phenomena and not merely agencies for the mechanical application of substantive law.

Judges from many national, supranational or international jurisdictions [4, p. 788–808], such as the Supreme Court of the United States of America (USA), the European Court of Human Rights (ECHR) in Strasbourg [5] and the ICJ [6, p. 229], use minority opinions, including dissenting opinions, when exercising their jurisdiction. We find this possibility afforded to judges in Art. 74(§2) of the Rules of the European Court of Human Rights on the contents of the judgment which states that "[a]ny judge who has taken part in the consideration of the case by a Chamber or by the Grand Chamber shall be entitled to annex to the judgment either a separate opinion, concurring with or dissenting from that judgment, or a bare statement of dissent" [7, p. 37–60].

It was on the North American continent that the custom of separate opinions developed. Qualified as concurring opinions, these are themselves inherited from British tradition (House of Lords)[18]. However, it is established that the practice of minority opinions has gradually spread in the majority of European countries[19]. More than twenty states allow it to a greater or lesser extent in their jurisdictions[20]. In the countries of the Anglo-Saxon tradition, and in particular in the United Kingdom [8] and the United States of America[21], the practice has long been that a judge who disagrees with the majority of his colleagues and thus with the judgment has the right to make public his individual opinion. The judges have the right to draft a separate, dissenting or concordant opinion, which might be attached to the text of the judgment published.

In Luxembourg, at the Court of Justice of the European Union (CJEU), the rule is reversed: separate opinions do not exist and, logically, the judgments never say whether they have been adopted unanimously or by majority. The same is the case in the courts of Belgium or France, such as the courts of Cassation. In Belgium, as in France, it is the confidential nature of the deliberation which justifies that no dissenting opinion can be disclosed. French judicial tradition strongly opposes the expression of separate opinions. Even if his role has greatly evolved, the judicial judge is historically conceived as an interpreter of the law and not as a creator of the rule of law. In the Statute of the ICC, not only is the practice of minority opinion endorsed, but it also encases plural types of views.

***Plural designation.*** The authors of the Statute have enshrined minority opinions in the Rome Treaty as it is in the common law countries or certain international jurisdictions. There have been many minority opinions in the decision-making of ICC judges since it began exercising its jurisdiction (2002). The expressions used to express minority opinions espouse various designations. Each of them reveals the content of the separate opinion.

Minority opinion can be a statement, usually very brief in which the judge succinctly exposes his agreement or disagreement with the decision, without entering a tight motivation. By an individual opinion or separate concurring opinion, the judge specifically shares the conclusions which the majority expresses in the operative part but bases them on different reasoning. This is noticeable in the *Separate concurring opinion of Judge Erkki Kourula* in which he agreed with the majority's conclusion to reject the requests for disqualification and with the conclusion of the majority opinion, that "Mr Kilolo's submissions do not meet the required threshold for the disqualification of the Prosecutor with respect to the specific allegation of her appointment of the same staff members to the Bemba and Bemba et al. cases"[22]. Finally, Judge Erkki Kourula, particularly, in that case, agreed with the majority's statement that, notwithstandingthat holding, "it is generally preferable that staff members involved in a case are not assigned to related Art. 70 proceedings of this kind…"[23].

By a dissenting opinion [9, p. 167], which can be partial, the judge expresses his disagreement with the ICC's findings in his disposition and sets out his own conclusions and reasons[24]. It means that the judge's opinion diverges from the motivation and all or part of the majority's decision. Judge Sang-Hyun Song expressed his dissenting opinion on the decision on the admissibility of an appeal against the decision on the application for the interim release of certain detained witnesses[25]. Judge Sang-Hyun Song disagreed with that decision in the context of the case Prosecutor v. Mathieu Ngudjolo Chui[26].

In a partly dissenting opinion, the same judge agreed with the majority of the Appeals Chamber "that it is appropriate to reject the Prosecutor and Mr. Lubanga's respective appeals against the Sentencing Decision"[27]. Judge Sang-Hyun Song further agreed with the majority that, based on Art. 78(1) of the Statute and Rule 145(1)(c) and 145(2) of the Rules of proce-

[18] *Gourmelen L.* The virtues of dissenting opinions. Opportunity to allow dissenting opinions at the Belgian Constitutional Court. Louvain : Catholic University of Louvain, 2016. P. 5.
[19] *Riviere F.* The Separate opinions of judges at the European Court of Human Rights. Brussels : Bruylant, 2005.
[20] *Raffaelli R.* Study on the divergent opinions within the supreme courts of the member states. Brussels, 2012. P. 33.
[21] See: The case opinions in Barentblatt v. United States. 360 US 109 (1959).
[22] ICC-01/05-01/13-648-Anx121-10-20141/3RH PT OA. 22 Aug. 2014. Para 1.
[23] Ibid.
[24] Legal dictionary [Electronic resource]. URL: from https://legaldictionary.net/dissenting-opinion (date of access: 19.05.2020)
[25] Prosecutor v. Katanga. ICC-01/04-01/07-3424 (OA 14).
[26] Decision on the application for the interim release of detained Witnesses DRC-D02-P0236, DRC-D02-P0228 and DRC-D02-P0350. ICC-01/04-02/12-158-Anx20-01-20141/1NM. 20 Jan. 2014. Para 1.
[27] ICC-01/04-01/06-3122-Anx101-12-20141/3NMA4 A6. ICC-01/04-01/06 A 4 A 6. 1 Dec. 2014. Para 1.

dure and evidence, a Trial Chamber should weigh and balance the following factors when determining a sentence: the gravity of the crime, all the mandatory factors listed in Rule 145(1)(c), any relevant aggravating and mitigating factors, and the individual circumstances of the convicted person[28]. He also agreed with the majority's statement that "the Court's legal texts provide for several potential interpretations of the interaction between the factors of Art. 78(1) of the Statute and those of Rule 145(1)(c) of the Rules of Evidence and Procedure"[29]. However, he disagreed with the majority that it was not necessary in the context of that appeal to determine which of the possible approaches to the interaction between the factors of Art. 78(1) of the Statute and those of Rule 145(1)(c) of the Rules of procedure and evidence was correct[30]. In his view, to ensure a consistent sentencing practice, the Appeals Chamber should have provided further guidance on how a Trial Chamber should take these factors into account when determining sentence.

Concerning majority opinions, it is a ruling agreed upon by more than half of the judges on the panel. A majority decision means that it is the one that will become binding. It might be issued orally then written. At the ICC, the content of each minority opinion depends on the views of the judges involved. The dissenting opinion is necessarily linked to a "vote" contrary to the majority. Among minority opinions, this is the most radical form of disagreement a judge can express. Minority opinions are designated differently according to the content which the judge intends to give to his opinion. As explained, it can be a separate concurring opinion, dissenting opinion, or partially dissenting opinion. In these last years, the latter two are most commonly used in minority opinions at the ICC. Indeed, of all the minority opinions analysed for this article, more than half are thus designated. At the ICC, there is a growing and increasing use of minority opinions.

**A growing use in question.** ***A risk of a diminishment of the ICC's authority ?*** Is there a correlation between the existence of the practice of minority opinion sand a possible diminishment of the ICC's authority? Some arguments prevail in considering that individual opinions in one way or another lead to a diminishment of the ICC's authority. Firstly and specifically, dissenting opinions might create a schism. That's why in romanistic tradition the dissenting is considered as being in error. The bet is not to be taken to allow the dissenting judge to ventilate his error by spreading the confusion. In such a view, it would be unacceptable to allow dissenting judges to manifest "schism" outwards because the image of the judge as the servant of the law, the prestige of the courts and the public confidence in a procedure which is confined to enforce the law would suffer a fatal weakening.

Secondly, dissenting opinion might "split court", as a result of that "schism". The practice of separate opinions could introduce division between judges. A person by his dissenting opinion can be considered an opponent against the majority, which can lead to a bad co-working climate. To avoid this situation, a judge even convinced of an individual opinion might hesitate to express it, even if he does not agree with the majority. This reasoning is purely theoretical, and this is not so relevant since the purpose of dissenting opinions is not to express alien opinions on the interest of justice. Each judge pursues the rules that govern the jurisdiction of the ICC. Sometimes the difference in perception of the application of the rules is very profound. But it allows judges to introduce dynamism into decision-making mechanisms.

In this matter, one of the emblematic separate opinions was the dissenting opinion of Judge Herrera Carbuccia[31] to the Chamber's Oral Decision of 15 January 2019 on the Requête de la Defense de Laurent Gbagbo afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée and on the Blé Goudé Defence No Case to Answer Motion. Judge Herrera Carbuccia disagreed with the decision of the majority (judge Cuno Tarfusser and judge Geoffrey Henderson). Firstly, she reproached the majority for having delivered an oral decision without any reasoning. Secondly, she criticised their conclusion to grant the defence motions for judgment of acquittal on the basis that there was no evidence capable to sustain a conviction for either one of the two accused in the cited case. As such, it seems that her approach tends to recall the fight against impunity and the interests of victims in the criminal justice system. But, the ICC is not under the government of individual opinions. They don't lead to a "split court". Dissenting opinions system is a guarantee against bias.

***A risk of bias?*** Is the practice of dissenting opinions a subject of bias? In other words, when a judge issues an individual opinion, is that faculty a manifestation of a bias? Art. 36(3)(a) of the Statute of the ICC is very obvious: "The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective states for appointment to the highest judicial offices". In principle, international criminal tribunals particularly require high standards of judicial impartiality and independence.

[28]ICC-01/04-01/06-3122-Anx101-12-20141/3NMA4 A6. ICC-01/04-01/06 A 4 A 6. 1 Dec. 2014. Para 61.
[29]Ibid.
[30]Ibid.
[31]ICC-02/11-01/15-1234 15-01-2019. No. ICC-02/11-01/15. 15 Jan. 2019.

At the ICC, a judge's impartiality can be the subject of a recusation[32] most often introduced by the defence[33]. As it is abundantly well recalled in judges' response of having been face with the question of recusation:[34]"The disqualification of a judge is not a step to be undertaken lightly, and a high threshold must be satisfied in order to rebut the presumption of impartiality which attaches to judicial office, with such high threshold functioning to safeguard the interests of the sound administration of justice. When assessing the appearance of bias in the eyes of the reasonable observer, unless rebutted, it is presumed that the judges of the Court are professional judges, and thus, by virtue of their experience and training, capable of deciding on the issue before them while relying solely and exclusively on the evidence adduced in the particular case"[35].

Closely linked with Art. 36, 40 and 41 of the Rome Statute are the provisions to be referred to in the areas of judicial independence and impartiality. In accordance with Art. 40, judges shall be independent in the performance of their functions. Indeed, "judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence". In addition, they "required to serve on a full-time basis at the seat of the court shall not engage in any other occupation of a professional nature". Related to Art. 41(2)(a) of the Statute[36], "a judge shall not participate in any case in which his or her impartiality might reasonably be doubted onany ground…".

A feature necessary for the continuation of judicial independence and impartiality is the immunity afforded to judges. However, this does not mean that judges are not accountable. First, judges are bound by the rule of law. They must decide cases in accordance with the evidence before them and the law. The decisions are subject to appeal and, if warranted, correction or modification by the Appeal Chamber. The reasoning in judicial decisions and the conduct of proceedings are subject to criticism by courts of appeal, by other judges, the legal profession, academics, and by the press and the public [10, p. 173].

According to the jurisprudence of the ICC, there is also a presumption that each judge of the court is capable of determining whether his or her prior undertakings could reasonably raise a doubt of bias about the case assigned to him. This presumption was established by the majority of the judges in the Decision on the motion to challenge Judge Silvia Fernandez in the case of the prosecutor v. Thomas Lubanga Dyilo[37]. In sum, to the question: is the practice of minority, and in particular ofdissenting opinions, a subject of partiality? The response is no. The Core texts of the ICC guarantees the independence and impartiality of judges. Dissenting opinions don't constitute a risk of bias. They serve the interest of justice.

## An essential exercise in the legal and judicial debate

**The perils.** ***Related to the understanding of the cases.*** When judges can make their separate opinions known, the principle of secrecy of deliberation is distorted. Each judge can be criticised either for implicitly approving the majority solution or for having diverged from it. Beyond that, it could be an issue for the understanding of the case. In the ICC's system, the public has the right to know the decisions or the judgments[38]. Decisions are public[39]. This situation could be considered as topical for the victims because one can naturally imagine that in a context of mass atrocities, it is useless to see how during the making-decision process, judges of the ICC are opposed.

Moreover, the possibility for judges to join a separate opinion might relativise the scope of the decisions. In fact, the understanding of the decisions of a court is also the result of how one can feel or perceive a dissenting opinion as a transparency[40], an opposition, or a mistake, thereby questioning the relevance of the jurisprudence of thiscourt as well. In their joint dissenting opinion[41], judge Ekaterina Trendafilova and judge Cuno Tarfusser expressed their regret that they

[32]Decision of the plenary of judges on the defence application for the disqualification of judge Silvia Fernández de Gurmendi from the case of the prosecutor v. Thomas Lubanga Dyilo. 3 Aug. 2015. ICC-01/04-01/06-3154Anxl.

[33]Judge Sophie Alapini-Gansou. Pre-Trial Chamber I. 6 Aug. 2019. ICC-01/12-01/18-Red. Para 4.

[34]Decision of the plenary of judges on the defence application of 20 Feb. 2013 for the disqualification of judge Sang-Hyun Song from the case of the prosecutor v. Thomas Lubanga Dyilo. 11 June 2013. ICC-01/0401/06-3040-Anx. Para 9. See also: Decision of the plenary of judges on the defence request for the disqualification of judge Kuniko Ozaki from the case of the prosecutor v. Bosco Ntaganda. 20 June 2019. ICC01/04-02/06-2355-AnxI-Red. Para 11.

[35]Judge Sophie Alapini-Gansou. Pre-Trial Chamber I. 6 Aug. 2019. ICC-01/12-01/18-Red. Para 5.

[36]1st and 2nd International criminal law conferences. The establishment of an International Criminal Court (1975). 20 et seq.

[37]The prosecutor v. Thomas Lubanga Dyilo. 3 Aug. 2015. ICC-01/04-01/06-3154Anxl. Para 35.

[38]The latter expression ("the judgment") has been reserved in the ICC framework to the decisions of the Appeals Chamber, under Art. 83. Final decisions of the Appeals Chamber on the guilt or innocence of the accused may be sufficiently distinguished as "final judgment". Cf: Rome Statute. Art. 84(1).

[39]But according to the cases (security of the witnesses, ect.), they can be redacted. So only the redacted versions are public.

[40]See: Mistry H. A performative theory of judicial dissent in international law? [Electronic resource]. URL: https://voelkerrechtsblog.org/event/a-performative-theory-of-judicial-dissent-in-international-law-dr-hemi-mistry-university-of-nottingham (date of access: 19.05.2020).

[41]ICC-01/04-02/12-271-AnxA27-02-20152/26NMA. 27 Feb. 2015.

were unable to join the majority of the Appeals Chamber in confirming the judgment pursuant to Art. 74 of the Statute, rendered by Trial Chamber II of the ICC, in the case against Mathieu Ngudjolo Chui[42]. According to their view, the majority judgment failed to adequately address questions at issue in the appeal which were of fundamental importance for the case, as well as for the jurisprudence of the ICC. They stated that given that the proper resolution of the questions ensuing from the grounds of appeal "shall affect the court's operation for the years to come, they find ourselves judicially compelled to dissent from the majority".

Notwithstanding the controversies, we estimate that minority opinions lead to a better understanding the decisions, the rules or the applicable principles by the ICC, as it is demonstrated by the dissenting opinions of judge Christine Van den Wyngaert of 21 November 2012, and 20 May 2013[43]. She disagreed with her colleagues because according to her, the majority of the chamber had applied Regulation 55 of the Regulations[44] in a manner that exceeded the scope of the charges[45] and violated the rights of Mr. Katanga, the accused[46].

In her dissenting opinion to the Chamber's oral decision of 15 January 2019, judge Herrera Carbuccia stated that the right of the accused to be tried without undue delay must be weighed with other fundamental rights to a fair trial, including the right to know the reasons for the judgment and the right to appeal. She pointed out that these rights do not only belong to the accused. The right to a fair and impartial trial is a paramount pillar of international justice. Without these fundamental rights the prosecutor's obligation to act before the court pursuant to Art. 42(1) of the Statute and on behalf of the international community is hindered. The victims'right to seek justice and ultimately reparations is equally thwarted[47].

In comparison with the Statute of the ICC, Art. 23 of the Statute for the International Criminal Tribunal for the former Yugoslavia (ICTY) and its Rules correspond widely with the regulations in Nuremberg and the various Drafts presented since then. While Rule 29 for the ICTY emphasises the private and secret character of the deliberations, Rule 87 states when the hearing shall be closed and that the majority of the Trial Chamber has to be "satisfied that guilt has been proved beyond reasonable doubt". Rule 98ter outlines the conditions and contents of judgments, permitting expressly under "separate or dissenting opinions" which have to be translated if necessary for the accused in a language which he understands: because such separate opinion may contain valuable hints to decide upon reasons for and expectation of an appeal[48].

***Related to the mastering of the rules.*** Judges from many national or supranational jurisdictions use minority opinions. In the system of the ICC, dissenting opinions issued prove that judges master the rules governing the jurisdiction. In another dissenting opinion of judge Christine Van den Wyngaert[49], she underlined that like judge Usacka, she was regretfully unable to join the majority of the Appeals Chamber in confirming the decision on the defence's application for interim release. Her point of view highlighted that the Pre-Trial Chamber II erred in its sole reliance on anonymous hearsay evidence contained in press releases, blog articles and two United Nation reports of the expert groups. In her view, such evidence must be treated with utmost caution in the context of a criminal trial and without considerably more, independently verified.

In the individual opinion against a decision delivered on 29 April 2016 issued by the majority of Pre-Trial Chamber II, judge Marc Perrin de Brichambaut[50] noted that the chamber dismissed the defence request, which contained five issues within the meaning of Art. 82(1)(d) of the Statute[51]. While he could follow his colleagues' reasoning in respect of the first and last two issues contained in the defence request, he could not agree with them on the third issue raised by the defence[52] namely insufficient reasoning of the Decision on the confirmation of charges[53]. *Inter alia,* in that case, the defence emphasised that such a vague decision lacking precise evidentiary citations will cause

[42]Trial Chamber II. Judgment pursuant to Art. 74 of the Statute. ICC-01/04-02/12-3-tENG. 18 Dec. 2012.
[43]ICC-01/04-01/07-3388-Anx. 26 June 2013. p. 1 ; Annex to the Décision relative à la transmission d'éléments juridiques et factuels complémentaires. 20 May 2013. ICC-01/04-01/07-3371-Anx.
[44]Décision relative à la mise en œuvre de la norme 55 du Règlement de la Cour et prononçant la disjonction des charges portées contre les accusés. 21 Nov. 2012. ICC-01/04-01/07-3319.
[45]ICC-01/04-01/07-3319. Paras 12–24; ICC-01/04-01/073371-Anx. Paras 5–26.
[46]ICC-01/04-01/073371-Anx. Paras 27–34.
[47]Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law : resolution of 21 March 2006 60/147 : adopt. by the General Assembly principles 11–12.
[48]*Triffterer O.*, *Ambos K*. The Rome Statute of the International Criminal Court. A commentary. London : C.H. BECK. Hart. Nomos, 2015. P. 1828.
[49]ICC-01/04-02/06-271-Anx2, 05-03-20141/2NMPT OA.
[50]ICC-02/04-01/15-428-Anx-tENG 14-09-2016 ; ICC-02/04-01/15. 10 May 2016.
[51]This article entitled "Appeal against other decisions" states that "a decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings".
[52]ICC-02/04-01/15-423. Paras 25–35.
[53]ICC-02/04-01/15-423. Paras 30, 31.

confusion throughout the rest of the proceedings, especially as it grants the prosecution too much leeway[54].

Another example of dissenting opinion as a demonstration of mastering of the rules appears with judge Ibáñez Carranza's separate opinion to the *judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan*[55]. Judge Ibáñez Carranza appended a separate opinion to this judgment[56] in relation to the interpretation of Art. 15 and its relationship with Art. 53 of the Statute as discussed in paragraphs 29–33 of this judgment[57]. As she clearly explained: "In my view, there are clear norms in the Statute that should be interpreted and applied contextually in the present case in light of the Statute's objects and purpose in a way that grants victims standing – in accordance with Art. 21(3) – in a decision rejecting a request for authorisation to investigate. The Statute is centred on the victims and many of the provisions under its statutory framework state that they have a central role, in particular, at the initial Art. 15 stage. Additionally, victims have internationally recognised human rights to access to justice and to obtain effective remedies, which at the initial phase emerging from a request for investigation…"[58].

Minority opinions don't become a binding precedent. Sole the Core texts of the ICC and the legal principles guide the judicial work. Moreover, dissenting opinions don't lead to the weakening of the authority of decisions issued in the context of fighting against impunity and prosecuting the alleged perpetrators of crimes against humanity, crime of genocide, war crimes and, one day, crimes of aggression. They are the symbol of the integrity of a criminal judicial system. In this, it is necessary to analyse further the merits of this system in the judicial work of the ICC.

**The Merits.** ***Minority opinions as a guarantee of judicial transparency.*** The aspect of the reflection consisting in the analysis of the positive aspects of the existence of the system of minority opinions in the judicial work of the ICC can be appreciated in many ways, in particular about the way in which the law is applied at the court. The advantage of this practice is, *inter alia*, to transparently and thoroughly expose the different viewpoints possible on the same judicial questions (procedure and applicable law). This aspect of the topic is interesting for the lawyers, legal representatives of the victims (LRV), legal officers and, of course, for the judges themselves. The law is not an exact science; it is a science that applies the law to the facts.

It is useful that each participant in the proceedings before the ICC knows all the answers raised by the applicable law (to a person or a situation) and the view of each judge, when expressed. In this regard, we are of the view that minority opinions are a guarantee of judicial transparency. Especially, dissenting opinions work as a symbol of judicial transparency and acumen.

In his partially dissenting opinion on the oral rulings on Mr. Ntaganda's absence and request for adjournment (requested by the Defence on 13 September 2016), Judge Robert Fremr recalled that the defence's request was partially granted, namely "to the extent of appointing a medical expert to assess Mr. Ntaganda's fitness pursuant to Rule 135 and in accordance with [the Chamber's] obligation under Art. 64"[59]. He agreed with the majority that a waiver of the right to be present and follow the proceedings need not necessarily be explicit, or made in writing, and can be inferred from an accused's actions. However, he clearly explained that when information is limited at the time of making a decision, a Chamber should not consider itself to be in a position to conclude that an absence should be interpreted as a voluntary waiver of the right to be present and to follow the procedure. Under such circumstances, the Chamber must adjourn for a short period of time to allow for more information, he wrote[60].

We consider minority opinions, even if dissenting, as an important path in decision-making. Minority opinions are also a pledge to enrich the legal and judicial debate.

***Minority opinions, a pledge to enrich the legal and judicial debate.*** The mechanics by which minority opinion operates emphasises judges' statutory duties at the ICC and shows a democratic aspect of the judicial authority. Separate opinions enrich the legal and judicial debate. This is a guarantee of judicial dynamism mentioned above.The function of the system of dissenting opinions, for example, can be a source for interpretation or elucidation of the decision of the ICC; even if they don't constitute the jurisprudence of the ICC.

Indeed, although a judge may issue a dissenting opinion, expressing his or her opposition to the ruling of the majority in a case, nothing in that opinion becomes law. While it may be used in the future by others in an attempt to explain or justify their positions on specific legal issues, no chamber of the ICC is bound by

[54]ICC-02/04-01/15-423. Paras 33, 35.
[55]Judgment on the appeal against the decision on the authorisation of aninvestigation into the situation in the Islamic Republic of Afghanistan. ICC-02/17 OA4. 5 March 2020.
[56]Situation in the Islamic Republic of Afghanistan, dissenting opinion to the majority's oral ruling of 5 Dec. 2019 denying victims' standing to appeal. ICC-02/17 OA OA2 OA3 OA4. 5 Dec. 2019.
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[58]Situation in the Islamic Republic of Afghanistan, dissenting opinion to the majority's oral ruling of 5 Dec. 2019. P. 3. Paras 1, 2.
[59]Partially dissenting opinion. ICC-01/04-02/06. 14 Sept. 2016. P. 4. Para 5.
[60]Idid. P. 4. Para 4.

opinions expressed in dissent. Nevertheless, there are some assumptions that individual opinions form part of the judgment of the ICC.

This reasoning also leads to the conclusion that individual opinions indirectly provide a significant contribution to the development of law [10]. It is due to the richness of the debate which can happen between the dissenting judges and the majority. In turn, this faculty can encourage academics to review the ICC's decision-making actions and processes. Sometimes the decisions of the ICC may be better understood in the cross-reading and cross-checking of minority or individual opinions of judges who have disagreed either with the device or (and) with the reasoning of the majority.

Concordant, concurring, and dissenting opinions have the advantage of clearly determining the contours of legal issues. They contribute to the *ratio decidendi*. Thus, dissenting opinions have often been the real drivers of legal discussion, preparing for further judicial developments by advancing innovative arguments. Minority opinions are more of a breakdown in numbers than a break in what is the essence of the vitality of the judicial debate. The richness of the legal and judicial debate is nourished by all of the issues in link with the prosecution, the protection of the witnesses, a fair and just trial for victims, the rights of the defence, etc.

As it has been indirectly indicated by some of the minority opinions quoted in this paper, the judges deal with all the judicial questions, such as the rights of the defence in the jurisdiction of the ICC. That shows that judges are free to make decisions based on the facts and the law in each case, and to exercise their role as protectors of the human rights, without any pressure or interference[61]. In furtherance of its objects, the system of the ICC (Satute, Rules of procedure and evidence, Regulation, etc.) guarantees the responsibility, transparency, freedom and independence of the judge.

## Conclusion

When justice is done by a single judge, in that case, there is no issue. When there is more than one judge, the faculty for judges to express individual opinions can be considered irrelevant. This point of view is normatively unproblematic since judges are free to make impartial decisions based on the facts and the law in each case, and to exercise their role. They contextually interpret and apply each case in light of the Statute's objects. In our view, minority and specifically dissenting opinion are the sign of the internal independence of judges, that is, their autonomy from their peers, on the one hand. On the other hand, it is a way of preserving their intellectual integrity[62]. The practice of minority opinions signals the vitality of the ICC's judicial activity. The dynamism it reveals means that judges are particularly interested in the cases and legal questions they have to deal with. Ideas developed in these opinions may pave the way for future considerations for case law.

Yet, this vitality of the court is less perceptible with regard to its universality in the prosecution of serious crimes[63]. It is a crucial issue the ICC is currently facing. Actually, of the five permanent members of the Security Council, major non-member states exist: Russia, China and the United states of America[64]. *Prima facie*, the ICC therefore has no jurisdiction over them. This does not mean that the court is «forbidden» to prosecute the international crimes of genocide, crimes against humanity, war crimes, and aggression crimes committed by their nationals. Regarding the United States, they are facing off the ICC by announcing sanctions on its senior officials, after the permission of the ICC to open an investigation in Afghanistan[65].

As Carsten Stahn said, international criminal law has witnessed a rapid rise after the end of the Cold War. That progression was identified as the birth of a new "age of accountability". But certain historical objections, such as selectivity or victor's justice, have never fully gone away. Various critiques have emerged in socio-legal scholarship or globalisation discourse, "revealing that there is a stark discrepancy between reality and expectation. Today, the Court is being criticised for having a racist agenda, a flawed investigation process and a prosecutorial strategy, as well as suffering from unacceptable delays" [21]. Nonetheless, the ICC's commitment remains still useful as the United Nations even indicates an increase in war crimes and crimes against humanity (Libya, Syria, Yemen, North Korea, etc.).

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