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GEOPOLITICS AND NATIONAL SECURITY IN THE GLOBALIZING WORLD

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Abstract

The article analyzes the impact of geopolitical factors on the conceptualization of national security in the globalization era. How does this impact differ from one type of state to another? The author holds that the trend toward the development of postindustrial societies in the contemporary world, which is living through a period of globalizing transformations, weakens the effect of geography-related factors on security. A question is raised of how sustainable this trend is; an attempt is also made to retrace factors contributing to the restoration of dominant influence of geopolitics in the way security is perceived in the states of the globalizing world.

Keywords: *geopolitics, security, globalization, traditional state, post industrialism, postindustrial society.*

Introduction

The contemporary world and the state as its part are living through changes that are normally comprehended from the standpoint of globalization. These changes have inevitably affected the concept of security, and the extent to which security is influenced by geopolitical factors. In the absence of globalization, the problem of delimiting the concepts of security and geopolitics would have been less important. In the postindustrial states, security and geopolitics are interconnected in a different way from in the traditional states.

So far, the contemporary world is still preserving its diversity, even though there is an obvious trend toward the development of “unified globalization standards.” Rather, this is the only historical stage at which the industrial, preindustrial, and postindustrial states co-exist side by side. At the same time, the states’ historical movement toward post industrialism is accompanied by noticeable shifts in security, the most significant of them being associated with re-consideration of traditionally dominant geopolitical factors of national security.

Geography and Security for the Traditional State

Anyone analyzing the role of geography in national security inevitably comes to grips with the question posed by the historical evolution of each state, as well as the ideas about security. Definitely, the social and political systems of states progressed from the preindustrial to the postindustrial stage together with readjusted ideas about the threats and the role of geography. Under Louis XIV, the French ideas about security differed greatly from what this nation thinks about its security today. This observation is not limited to the relatively secure contemporary European states.

It was not so much their geography that changed as the political component of their relations with the neighboring states. There is any number of theoretical explanations of this. Some academicians point to intensified and qualitatively different trade and economic contacts, as well as to interstate relations and so-called complex interdependence [5, 21-22]. Others point to the emerging intersocial contacts of trust, mutual respect, unity, and the “community feeling” based on the internal sociopolitical, institutional, and socioaxiological development of states [3, 5]. From the empirical point of view, this relates to the states/regions normally described as Western or, to be more exact, to those that belong to the Western civilization. Today, Western Europe and North America are the most graphic examples of the already developed regional interstate constellations. On the whole, however, the states located in less successful regions (South Asia,

the Middle East, and Central Eurasia) also have their share of changed perceptions of security, albeit of a less radical nature.

The impact of geography on the conceptualization of security and the relevant behavior of the states are best illustrated by Nicholas Spykman's famous formula "geography is the most fundamental factor in foreign policy because it is the most permanent." [8, 41]. The relative stability of the states' geographical context imposes more or less immutable ideas on society about its vulnerabilities and threats, as well as about the mechanisms it should use to prevent the threats or at least reduce the risks. We tend to agree with one of the theses on which the classical geopolitical doctrine rests about the different political lines of island (maritime) and continental (land) powers, which also betrayed themselves in their rivalry. This is graphically demonstrated by the traditional stakes they placed either on navies (maritime powers) or on land forces (continental powers). Helford Mackinder goes even further by ascribing inborn ideals to the two types of powers [6, 433].

The traditional states are affected to the greatest degree by their geographical context, which determines the stable perception of security, and corresponding securitization of threats and vulnerabilities, i.e. geosecuritization. This means, in theory, that any state that moves away from traditional sociopolitical and economic organization undermines its geosecuritization.

For better comprehension of the development of the state from the traditional to postindustrial stages, as well as the changes in its perception of security, it is essential to turn to the typology used by Barry Buzan and Ole Wæver based on the identification of three types (development levels) of states: premodern, modern, and postmodern. The authors distinguish three types of sociopolitical development of contemporary states: premodern states (with a very low level of inner sociopolitical cohesion and state organization, weak governmental control over territory and population); modern states (with strong governmental control of society, limited openness, sanctity of sovereignty and independence complete with their attributes—including territory and borders, placing stakes on self-sufficiency, self-assistance, and national identity), and postmodern states (a moderate attitude toward sovereignty, independence, and national identity, economic, political and cultural openness when dealing with the outside world) [2, 23-24].

The state structures of the premodern states are fairly amorphous with respect to the range of the subjects they control, which means that there is not enough centralization and sustainable perceptions of national security (including those related to geography). In the premodern state, the ideas about threats differ from one domestic group to another for the simple reason that they do not originate outside the state, but are generated by rivaling subnational groups.

The modern and postmodern states, on the other hand, have physically, institutionally, and ideologically strong state structures, which means that they are centralized enough and are fairly consistent when it comes to assessing national security threats. The impact of geographic factors, or rather the perception of geography-related threats and vulnerabilities, differs from country to country.

This means that the modern state is much more inclined toward geosecuritization, which is explained not only by the specifics described above: indispensable development priorities, such as sovereignty, independence, territorial integrity, and self-sufficiency. It should be said that the regions with modern states normally consist of modern states, which means that all of them, or at least most regional states, share development priorities and strive to achieve similar goals. Theoretically this can create the following situation:

1. To strengthen their independence, sovereignty, and territorial integrity, these states will build up their might (in the military sphere, as well as in other spheres), which will develop or intensify the security dilemma in their relations. Placing stakes on the continued closed nature of their societies (in an effort to isolate them from the outside world or, rather, from one another) will contribute to the general atmosphere of mistrust and mutual threats and exacerbate the security dilemma.

2. Placing stakes on the mercantile strategy of economic security will undermine economic interdependence among the regional states. This will prevent the emergence of the “complex interdependence” mechanism, which, according to Robert Keohane and Joseph Nye, reduces the threat of war.

3. The policy of strengthening national identity, ethnic and cultural isolation, and limited ethnocultural mobility in the ethnically and/or religiously heterogeneous regions will increase the conflict potential both inside the states and in their relations with one another.

This creates a more or less clear picture: the modern states have to accept the lot of living in the Waltzian World [9; 10; 11], the world of wars, balance of power, and self-help, in which external (military) threats dominate on the national security agenda. This makes the closest neighbors, the size of one’s own territory that permits adequate defense, natural obstacles, which might prevent an aggressive war on one’s own territory, an outlet to the sea, and many other geographic factors critically important.

Geopolitics and Security for the Postindustrial State

Surely, the globalized world is a world of predominantly postindustrial or postmodern states. This world reveals or, at least, presupposes a cardinaly different picture. Any researcher will probably find it much more difficult to support his theoretical constructions with empirical data: as distinct from the preindustrial and industrial stages, this stage is far from being completed. It was relatively recently that the world crossed the threshold of the postindustrial stage, which means that an assessment of the impact of the geography-related factors on the security perceptions in the postindustrial state and the specific features that place them apart from the two other types will necessarily be more speculative.

The movement toward postindustrialism was accompanied by a gradual movement away from the traditional national security paradigms, as well as the de-securitization of certain threats and vulnerabilities from which these paradigms had emerged in the first place. Significantly, it was the military threat (the main one within the traditional approaches to security) or the war and aggression that were mainly affected by de-securitization, while the economic, environmental and sociocultural threats gradually moved to the fore. Surely, this also affected the perception of the vulnerabilities. Threats and vulnerabilities are not merely interconnected they form the key parameters of the assessment of national security [1, 112].

We all know that any threat is really dangerous under conditions of certain weaknesses or inadequate development of one of the security sectors, which creates vulnerabilities the perception of which is as stimulating as the perception of threats. The modern, or industrial, state that operates using traditional approaches finds it natural and logical to remove or decrease military threats. This means that it should also work toward decreasing its vulnerability in the face of external aggression. Kal Holsti describes vulnerability within the traditional approach as “potential avenues for military invasion.” [4, 84] From this it follows that vulnerability in the face of military threats is largely geography-related vulnerability, while the state’s efforts to reduce such threats primarily stem from the conceptualization of geography.

The postindustrial states that shift the accent from the traditional military aspects of security to the economic, environmental, and social sectors are shifting their attention from the factors (geographic factors included) that determine security in the military sphere to the sectors that look more security-related at any given moment. For example, 100 or even 50 years ago, Switzerland looked differently than it does today (when it joined the postindustrial epoch) at its stronger neighbors (where the classical parameters—territory, population, resources, industrial potential, etc. - are concerned) and the natural obstacles (the mountains that made military aggression less possible).

Qualitative changes in the postindustrial states’ economic and political regime played a key role in de-securitization of the military security sector. Postindustrialism, together with other economic dimensions, made the key sources of the states’ material prosperity transnational and

de-territorial. The same happened to the postindustrial states' political regimes: functional democracy developed into the political regime paradigm.

By developing the commonly accepted thesis about the peaceful nature of democracies, Max Singer and Aaron Wildavsky offered an interesting explanation of the fact that the post-industrial democracies are less inclined toward aggressive wars than the traditional industrial states: "High-quality economies also tend toward peace because they greatly reduce the importance of some of the things that people used to fight about. Modern mass wealth does not come from physical resources, which can be taken from others and must be defended; it comes primarily from people's productive behavior, from a society and culture that encourages productive relationships. Countries become rich essentially by learning how to develop attitudes and relationships that enable people to work productively.... One implication is pervasive: it does not make sense to sacrifice people to get territory or raw materials because people are more valuable" [7, 17-18]. This means that countries which seek continued prosperity of their societies (this happens under conditions of functional democracy) that are not territorially generated and therefore should not be protected against encroachments and the military-strategic vulnerability of which should be reduced are less exposed to geographic factors and their impact on the national security agenda.

However, it would be too hasty to believe that geopolitics no longer affects the current security ideas in the postindustrial states. Though its impact on this process has lost some of its former urgency.

Geography remains more or less topical in the postindustrial states - it has not been removed from the political and security agenda altogether. In the short-term perspective, energy or, rather, access to its sources (particularly gas and oil) will remain the link between geography and security. This is true not only of the postindustrial states. Energy as a whole is coming to the fore as a security and geopolitical factor. The states with traditional societies are much less exposed to the energy-related content of geopolitics and security in the sociopolitical sense than the postindustrial states. The largest share of energy resources is found in states that have not yet reached the postindustrial stage, which means that until the postindustrial states create profitable alternative energy sources they will inevitably remain involved in the struggle for the traditional energy sources and the geographic territories on which they are found.

Conclusion

The processes of globalization in the contemporary world and the early postindustrial development stages demonstrated a trend toward de-securitization of the geography-related factors along with appreciable easing of military threats and vulnerabilities. Today this still remains to be one of the key features of the security sphere of the postindustrial states, which distinguishes them from the traditional states.

It would be appropriate to speak of sustainability of this tendency, if not a few "but's" – irreversibly reducing energy resources of the planet, rise in consumption and related impetuous and universal securitization of energy problems. The postindustrial states have not yet learned to reproduce oil and gas reserves, the basic element of the contemporary energy sphere. They remain territorially-conditioned, which adds a geopolitical dimension to the rivalry over access to them. This, in turn, makes it possible to newly comprehend interrelation between security and geopolitics in the world moving toward globalization.

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THE PRINCIPLE OF NON-DISCRIMINATION CONCERNING DISABLED PEOPLE ACCORDING TO BASIC PROVISIONS OF THE AGREEMENT ON THE RIGHTS OF DISABLED PEOPLE

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Abstract

Physically disabled people face a huge number of the problems connected with realization of their rights. Protection, promotion of the rights of disabled people and their realization – a current problem as for all international community.

The analysis of a problem of disability as social phenomenon demonstrates that, having passed the way from the idea of isolation of "disabled" members of society before attraction them to full-fledged life in society there was a need to reject classical approach to a disability problem as to a problem of "disabled people" and to present her as a problem, mentioning all society, but not separate "category" of people. Especially important in this direction legal regulation of the rights and freedoms of disabled people. As a basis to such regulation also serves the principle of non-discrimination. An example of legal use of the principle of non-discrimination concerning disabled people is the Convention on the rights of disabled people of 2006 year.

The purpose of the Convention consists in encouragement, protection and ensuring full implementation by disabled people on an equal basis of all human rights. She covers a number of such key questions as availability, individual mobility, health, education, employment, an habilitation and rehabilitation, participation in political life and also equality and non-discrimination.

Keywords: non-discrimination, disabled people, human rights, United Nations Organization, disability

The problem of legal aspect of protection of the rights of disabled people is a current problem of modern society [1].

United Nations Organization (further in the text – the UN) from the moment of the basis works over improvement of the situation and life of disabled people, on protection of their rights and freedoms. The fundamental principles regulating questions of the rights and welfare of disabled people contain in such international treaties as the UN Charter and the International bill of human rights (includes three documents): Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966) and International Covenant on Civil and Political Rights (1966) and two additional protocols to it, etc. [2]

The above-stated contracts have universal provisions in the field of human rights which promoted further completion of the international legal standards on the widest range of questions, including the rights of disabled people [3].

In our opinion, one of the most important principles in the field of protection of the rights of vulnerable categories of the population, namely disabled people, is the principle of non-

discrimination on the basis of race, skin colors, a floor, language, religion, political or other convictions, a national or social origin, property, birth or other status.

Active work of the UN of promotion of the rights and wellbeing of people with physical defects has begun in the 40th and has continued in the 50th of the XX century. The UN helped the governments of the countries in prevention and rehabilitation of disability by means of consulting missions, the training seminars for personnel and creation of the rehabilitation centers [4, 20].

However the United Nations only in 1970 has accepted the international concept of human rights focused on disabled people and equalizing opportunities for this category of persons which has shortly begun to win the international recognition. It is important to note that in 1969 the Declaration of social progress and development says about "need of acceptance of appropriate measures for restoration of working capacity of persons with intellectual or physical defects ... creation of social conditions in which disabled persons wouldn't be exposed to discrimination because of the shortcomings" [5]. In 1971 the United Nations General Assembly has adopted the Declaration on the rights of mentally retarded persons which has proclaimed: "the mentally retarded person...has the same rights, as other people". Provisions of this Declaration have been sent on assistance to mentally retarded persons in development of their abilities in various spheres of activity. Further, in 1975 the United Nations General Assembly has adopted the Declaration on the rights of disabled people which has formed "the general basis and the management for protection of these rights of disabled people". The Declaration contains definition to the concept "disabled person" and also the equal civil and political rights which disabled people can use irrespective of race, skin color, a floor, language, religion, political or other convictions, a national or social origin, financial position, the birth or any other factor are proclaimed. The recommendations stated in the Declaration on the rights of disabled people are directed to taking measures at the national and international levels [4, 23].

In 1976 the United Nations General Assembly has proclaimed 1981 - The international Year of Disabled people. This year has been devoted to achievement of a number of the purposes directed to equalizing of opportunities of disabled people, rehabilitation and prevention of disability. Besides, it was offered to all member states and relevant organizations to pay attention to development of measures and programs for implementation of The international Year of Disabled people is more whole. Acceptance by the United Nations General Assembly on December 3, 1982. The World Programme of Action concerning disabled people became the main result of this year. The fundamental purpose of the World Programme of Action concerning disabled people "consists in assistance to effective measures for prevention of disability, restoration of working capacity and realization is more whole than "equality" and "full participation" of disabled people in social life and development". To provide terms during which the governments and the organizations can carry out the actions recommended in the World Programme of Action the General Assembly has proclaimed 1983-1992. Decade of disabled people of the United Nations. During this period the United Nations General Assembly has adopted "The Tallinn Guidelines for Action on Human Resources Development in the Field of Disability" [6] and the Principles of protection of mentally sick persons and improvement of mental health services. Nevertheless, adoption of Standard Rules on the Equalization of Opportunities for Persons with Disabilities which have been developed on the basis of the experience gained during Decade of disabled people became one of the main events. The purpose of Standard rules is in that disabled people as members of society, would have the same rights and duties, as other persons, and "the girls, boys, men and women who are disabled people as members of society would have the same rights and obligations, as other persons" are more specific ", imposed on the states of the obligation for removal of obstacles, preventing disabled people to participate on equal terms in life of society" [7].

Basis for adoption of Standard Rules on the Equalization of Opportunities for Persons with Disabilities of steel the International Bill of human rights, the Convention on the Rights of the Child, the Convention on elimination of all forms of discrimination against women and also the World Programme of Action concerning disabled persons. These rules aren't obligatory though they can become norms of the international common law if are applied by a large number of the states which have expressed desire to observe international law. These Rules provide the control mechanism expressed in appointment of the Special rapporteur who annually submits reports of the Commission of social development. In turn, reports have to contain the conclusions concerning promotion and control of implementation of Standard rules and also the recommendations for their further development submitted at the request of the Commission [8].

The critical period in the course of disability recognition as international legal question has been marked by adoption on December 13, 2006 of the The Convention on the Rights of Persons with Disabilities and its Optional Protocol (further-Convention). The convention represents the first comprehensive contract in the field of human rights of the XXI century and is the first convention on human rights open for signing of integration by the regional organizations. Her purpose consists in encouragement, protection and providing to all disabled people of all human rights and fundamental freedoms.

Important achievement of the Convention consists in the maintenance of the concept "disabled person". According to Art. 1 "to disabled people persons treat with steady physical, mental, intellectual or touch violations which at interaction can interfere them with various barriers with full and effective participation in life of society on an equal basis with others". Besides, the general distribution of disabled people on categories is presented in the Convention: disabled women and disabled children [10].

The present Convention contains not only all categories of the rights and freedoms, but also explains and defines methods of application of these rights and freedoms to disabled people. So, for disabled people realization of the right for education without discrimination and on the basis of equality admits. In turn, the State Party of the Convention has to provide access to inclusive education at all levels and training during all life. The main objective of the Convention consists in providing to disabled people of guarantees of implementation of the same rights, as all other people, to lead full-fledged life of citizens who not only use the same opportunities but also can make the contribution to society. The convention on the rights of disabled people and the Optional protocol to her accepted by the General Assembly of the United Nations on December 13, 2006 are the last on time documents which have added the set of fundamental international legal documents in the field of human rights [9, 23].

There by it is possible to tell that adoption of the Convention on the rights of disabled people recognizes disability as a human rights problem. Also it should be noted that provisions of the Convention on the rights of disabled people occurred in earlier documents, such as: General Recommendation No. 18: Disabled Women accepted by Committee on elimination of discrimination against women; General comment No. 5 (1994) on persons with disabilities accepted by Committee on the economic, social and cultural rights and also adoption of such regional contracts as the Inter-American Convention On The Elimination Of All Forms Of Discrimination Against Persons With Disabilities (1999). In all these documents the principle of non-discrimination on various signs was on the first place.

Mentioning article 1 of the Convention on protection of the rights of disabled people, considered earlier, the principle of non-discrimination become directed "to effective participation in life of society on an equal basis with others" For people with physical disability barriers to participation in life of society various factors, for example, an uneven land relief, steps, heavy doors or narrow passes can [8].

In article 3 of the Convention is defined the complex of the fundamental principles. They serve as the management for interpretation and implementation of all Convention, covering all

questions. They are a reference point for understanding and interpretation of the rights of disabled people, a basis for realization of a main goal of the Convention which "consists in encouragement, protection and ensuring full and equal implementation by all disabled people of all human rights and fundamental freedoms and also in encouragement of respect of the advantage inherent in them".

The principle of non-discrimination is a basis of human rights and is the principle enshrined in all other human rights treaties. "Discrimination on the basis of disability" is defined by the Convention as "any distinction, an exception or restriction on the disability reason, the purpose or which derogation or denial of recognition, realization or implementation on an equal basis with others is result of all human rights and fundamental freedoms in political, economic, social, cultural, civil or any other sphere. She includes all forms of discrimination, including refusal in reasonable adaptation". The states have to exclude discrimination and in the right, reflected in the legislation, and in practice, for example discrimination methods at work. However the states are allowed to establish discrimination for the benefit of disabled people, when necessary for ensuring equal opportunities of disabled people and other persons.

Also a little specific principle is reflected in the Convention - it is the principle of respect of features which means acceptance of other people on the terms of mutual understanding. It means also adoption of disability as a component of human variety and a part of mankind. Despite some visible or obvious distinctions, all people have the identical rights and advantage. It should be noted that in spite of the fact that the principle of non-discrimination covers each provision of the convention, she is directed to prevention not of disability (that is medical approach), and discrimination on the basis of disability that is more social approach.

As for medical approach, namely the right to health of disabled people, Art. 25 of the Convention says that disabled people have the right for the highest level of health, but besides without discrimination on the basis of disability. It is important to note that in the field of health care the Convention considers the reproductive rights of disabled people and is the first international human rights treaty which considers a problem of sexual and reproductive health. Also Discrimination in the field of marriage, family and the personal relations isn't allowed. Disabled people are given equal opportunities to enter different relations, to act as parents, to start a family, to marry, etc. [1]

The Convention on the rights of disabled people is the extensive human rights treaty covering all range of the civil, cultural, economic, political and social rights. In the Convention the new rights for disabled people aren't established; instead in her reveals that the existing human rights mean for disabled people, and are specified obligations of the State Parties for protection and promotion of these rights, for creating favorable conditions for implementation of the rights of disabled people.

Especially it should be noted that within the principle of non-discrimination by Convention about the rights of disabled people the right of disabled people for participation in political life is marked specially out, in particular to participate in vote at parliamentary elections and also in cultural life, for example to participate in cultural and sporting events and in other types of leisure. At the same time realization of the right for participation sometimes demands from the state of acceptance of special measures, control of which realization lies on the state.

As for the economic, social and cultural rights, in the Convention on the rights of disabled people the obligation of the states to gradually provide their implementation is confirmed as it has been already recognized in article 2 of the International Covenant on Economic, Social and Cultural Rights. It is important that in the Convention the fact that for achievement of equality of disabled people it is necessary to achieve shifts in public consciousness and perhaps full inclusion of people with disabilities in public life is admitted.

It is important to note that article 30 of the Convention has provided that the State-parties take all appropriate measures for providing that disabled people had access to such places of

cultural actions or services as theaters, the museums, movie theaters, libraries and tourist services and also had access to the monuments and objects having the national cultural importance in the most possible degree [10].

The Convention on the rights of disabled people contains articles devoted to working capacity and employment of disabled people but at the same time disabled people aren't involved in one country of the world completely in labor market. Most of them or the unemployed, or have lost an incentive to active job searches. Among those who work many work at conditions of part-time, receive the salary lower than the level of minimum wage or perform work which doesn't correspond to their qualification. This lack of an opportunity to participate in economic activity seriously is reflected in life of disabled people, and especially contradicts the principle of non-discrimination.

It should be noted that the questions concerning vulnerable groups of the population including disabled people will have more often social character, but the decision to adopt the Convention on the rights of disabled people, was on the present not only theoretical fixing of that fact that disabled people can apply for all human rights, but also at last all this has gained legal aspect for protection of these rights.

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IMPLEMENTATION OF INTERNATIONAL STANDARDS OF FIGHT AGAINST LEGALIZATION OF CRIMINALLY OBTAINED FUNDS OR OTHER PROPERTY IN CRIMINAL LEGISLATION OF REPUBLIC OF AZERBAIJAN

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Abstract

International organizations have developed international standards against the legalization of criminal proceeds. These include but are not limited to standards, conventions and norms introduced by the UN and the FATF. To fulfill international obligations in this area, these norms have been implemented in the legislation of the Republic of Azerbaijan.

Keywords: *Implementation, money laundering, international standards, legalization of criminally obtained income, FATF standards.*

Even the history of laundering illicit gains started within one state (the USA), this phenomenon has gained international aspect. This can be proved with standards, draft laws and conventions created by international organizations. However, existence of these norms related to money laundering is not enough for properly application of them in practice. Therefore, it is crucial to examine these norms in accordance with implementation of them in national law.

There are two basic schools on the relationship between international law and national law, “monist” and “dualist”. According to “monist” school international law and national law are parts of single field, and whenever there is conflict of norms international law has supremacy. On the other hand “dualist” school shares the thought that international law and national law exist separately, therefore there cannot be conflict between them as they regulate different fields.

There is general rule stated in the Vienna Convention on the Law of Treaties, that regulation of the norm by internal law in different way is not justification for the failure of performance of a treaty [28, article 27]. There can be general and specific obligations in international treaties for parties. To take necessary legislative, administrative and other actions are general obligations, and States do not have responsibility for violating these norms. However, if an international treaty obliges parties to adopt or abolish certain law or norm, States will carry liability for not doing so [14, 62-63]. Moreover, the principle of “pacta sunt servanda” states that states should perform treaties; they are part of, in good faith [28, article 26]. The Republic of Azerbaijan also makes efforts for fulfillment of obligations of international treaties [17, article 15]. Therefore, it is important to analyze the process of application of international law within the state, or implementation of international law.

Implementation is realization of international obligations in the state level, for which a state uses normative and organizational-legal tools. There are two types of implementation. First is incorporation, when after recognition of the international treaty by the state, international law norms enter into the national law. The second type of implementation is transformation, when international is not ipso fact included to the national law and special law is needed for this. Unless special law has not been enacted, international law does not have effect in the state. The Republic of Azerbaijan joins international treaties after resolution by the parliament if

ratification is needed, or by the President or other executive power body if ratification is not needed [17, article 14]. Moreover, according to the Constitution, international treaties are internal part of our legislative system [2, provision 148]. It should be mentioned that the 1977 USSR Constitution did not allow the direct operation of international law within the domestic setting. A major change had been introduced by the 1989 Law on Constitutional Supervision. For the first time in Soviet history, this Law provided a mechanism for the direct incorporation of various international rules into the Soviet legal system. CIS countries, and so the Republic of Azerbaijan gradually “opened” the domestic legal systems to international law after gaining independence. Many of them have rejected the traditional Soviet dualist approach of implementation of international law in domestic legal systems and proclaimed international law to be part of domestic law.

Main international documents relating anti money laundering and financing of terrorism have been created by the United Nations and Financial Action Task Force. Those are:

- UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention);
- International Convention for the Suppression of Financing of Terrorism (1999) (SFT Convention);
- Convention against Transnational Organized Crime (2000) (Palermo Convention);
- Convention on Corruption (2003) (Merida Convention);
- FATF Forty Recommendations on Money Laundering (2003) (FATF 40 Recommendations); and
- FATF Nine Special Recommendations on Terrorist Financing (2001) (FATF Special Recommendations). In this paper we will try to examine main provisions of these international laws and evaluate the implementation of them in national law of Azerbaijan Republic.

The Republic of Azerbaijan is a party of these conventions since 1993, 2001, 2003 and 2005 respectively. Moreover, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) (Strasbourg Convention) was ratified in 2003. Furthermore, Azerbaijan is member state of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) of the Council of Europe, which is entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. The FATF was recognized main international standards setter in this field, so is will mainly focus on these Recommendations in this paper. The FATF also recommends becoming party to and implementing fully the Vienna Convention, the Palermo Convention, the United Nations Convention against Corruption and the Terrorist Financing Convention. Where applicable, countries are also encouraged to ratify and implement the Council of Europe Convention on Cybercrime, 2001; the Inter-American Convention against Terrorism, 2002; and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005 [10, R 36].

The UN was one of the first international players in the field of anti-money laundering policy. Consequently, first international instrument which required states to establish criminal offence for money laundering was Vienna Convention adopted by the UN in 1988. Apart from stating criminal offences related narcotic drugs and psychotropic drugs, the Convention also established criminal offence for laundering of proceeds of these crimes [26, article 3]. Moreover, proceeds of those criminal offences should be subjected to confiscation [26, article 5]. The Criminal Code of Azerbaijan established criminal offences for the crimes connected to illegal circulation of narcotics and psychotropic substances, which is compatible with the Convention [7, chapter 26].

SFT Convention requires states to take measures to protect their financial systems to be used for the purposes committing terrorist activities and proceeds of these activities [13, article 8]. Therefore, international cooperation is crucial for prevention of the financing of terrorism.

Another international document requiring states to criminalize laundering of the proceeds of crime was Palermo Convention 2000. However, minimum standard for predicate offences in the Convention were only those associated with organized criminal groups [5, article 6]. Possibility of confiscation of proceeds of crime was also included to the Convention [5, article 12]. If another State receives relevant request for confiscation, measures should be taken to identify, trace and freeze or seize proceeds of crime [5, article 13]. Merida Convention also requires States to have adequate measure to combat money laundering [5, article 14].

It is obvious from the examples above that combating money laundering is crucial to prevent other crimes. However, these documents were not enough for proper creation of national or international anti money laundering regime. Firstly, they were designed for combating individual crimes. Even some set all serious crimes as predicate offences for money laundering there were not detailed explanation of how these measures should be carried out. Moreover, different anti money laundering regimes in States do not result in effective money laundering fight.

Another effort by the UN to tackle this problem was drafting of model legislation in this field in 2005. The model legislation gives different variants of provisions for the States. For instance, proceeds of crime can be from any offence or from an offence punishable by a maximum penalty of imprisonment for more than one year, or for more than six months [27, article 1.3]. Moreover, definitions of financial institutions designated non-financial businesses and professions, beneficial owners were given, which includes wide range of subjects [27, article 1.3]. Minimum five years was stated as record keeping duration [27, article 2.2.9], establishment of financial intelligence unit (FIU) and role of it in anti-money laundering and financing of terrorism policy [27, article 3.1.1], access to information for the accomplishment of its functions [27, article 3.1.4] was set in the model legislation. Apart from FIU, another central body should be established for seizure and confiscation [27, article 5.4.1], which administers and manages these funds and property [27, article 5.4.2].

The first co-operative and global policy response to the threats posed by money laundering was by the G7 group of countries who established the FATF in 1989. The main international standards in the field of combating money laundering and terrorist financing were created by the Financial Action Task Force, therefore it is known as “policy-making body”. The FATF recommendations are applicable to all countries. The core documents of the FATF are, “The revised FATF 40 Recommendations on Money Laundering, Terrorist Financing and Proliferation Financing” (“the standards”) which includes interpretative notes, “Methodology for assessing compliance with the standards”, and “Best Practice Guidelines for implementation of the standards”. These standards have been internationally accepted as the global policy benchmark for anti-money laundering, anti-terrorist financing and anti-proliferation financing measures by the United Nations, International Monetary Fund, World Bank, Asian Development Bank and many other international organizations and bodies. First Recommendations were issued in 1990, which were revised several times to be more detailed. By now there are 40 Recommendations and 9 Special Recommendations related to financing of terrorism issued by the FATF. Even Azerbaijan is not member of the FATF; MONEYVAL is associate member of the FATF, which assesses compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation in the member States, so Azerbaijan.

Taking into account wide range of recommendations, i will examine implementations of main standards of the FATF in this paper. The core of the AML/CFT policy is to designate central authority and to have national cooperation and coordination of relevant competent authorities [10, R 2]. Financial Monitoring Service was established in Azerbaijan in 23 February

2009, which is central authority functioned in this field, under Financial Markets Supervision Chamber [9]. Moreover, Commission on Combating Corruption was established in 2004, which also takes part in the national AML/CFT policy. Coordination of competent authorities, and control over the implementation of state programs on AML/CFT are carried out by the CCC. [23, provision 5.8]. Investigation of crimes related to money laundering carried out by the Head Department on Combating Corruption under the Chief Prosecutor's Office. Investigations of terrorist financing offences are carried out by the State Security Service. Therefore, designated law enforcement and investigative authorities were also established in Republic of Azerbaijan [10, R 30] which has sufficient powers to identify, trace, and initiate freezing and seizing of assets [20, provision 30.5].

The main principle at the legislation level is to criminalize money laundering on the basis of the Vienna Convention and the Palermo Convention. All serious offences should be applied to predicate offences [10, R 3]. Predicate offences for money laundering should be extended to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically (20, provision 3.6). Money laundering is a criminal offence according to the Criminal Code of Republic of Azerbaijan [7, article 193-1]. Legalization of money proceeds or other property obtained through criminal acts is punishable up to 12 years of imprisonment in Azerbaijan. Therefore, the Criminal Code sets all crimes as predicate offences, what is compatible with the FATF standard. Crime shall be admitted as a socially dangerous action (action or inaction), forbidden by the Criminal Code, under threat of punishment on guilty [7, 14].

The main purposes of the policy in this field are to punish launderers and to take back proceeds of crime. Competent authorities should have authority and competence for confiscation and provisional measures [10, R 4]. Decision on the confiscation of proceeds is carried out by the court order according to the Criminal Code. Law on the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism sets the rules of provisional orders as seizure and freeze of assets. Within the framework of the fight against financing of terrorism, assets of the persons in the sanction list are frozen even they don't have connection with any terror actor financing of terrorism [19, 11-1.2]. This was also mentioned in the FATF standards [10, R 5]. If the Financial Monitoring Service finds out from suspicious activity report enough ground, it gives resolution on primary freeze of assets and send it to the Prosecution Office. It examines the activity, and if there is criminal offence, prosecutor takes actions, for instance, gives provisional orders, seizures of proceeds of crime, addresses the court for freeze order.(19, 19-1) Moreover, the FMS can give resolution on the suspension of the operation after SAR and send it to the Prosecution Office for further legal procedural actions [19, 19]. It should be mentioned that in some countries, including the United States, the obligation of financial institutions is to report "suspicious activities" rather than "suspicious transactions" [11, P 42] or "indication of money laundering" [4, Article 6]. The term of "suspicious activities" is broader than "suspicious transaction", which is more related to reports of financial institutions. Report can be done electronically or in paper form. The FMS of Azerbaijan accepts both forms, signed and stamped paper report or electronic report approved with electronic signature [25, 9.1].

By reporting to the FMS monitoring entities can disclose information protected by law. This can lead some legal challenges from the clients. Therefore, FATF set a standard of financial institution secrecy law – which regulates that FATF standards have preference on the secrecy law [10, R 9]. This means that STR cannot be abandoned on the basis of any secrecy law [19, 16.1]. If the report was done in good faith, criminal and civil liability should be exempted [10, R 21]. There are two aspects to this immunity. First is exemption from legal requirements of professional secrecy and confidentiality. Second is protection against potential liability to the persons named in there ports [11, P 51]. Moreover, there should not be any provision in national

law impeding the transfer of customer information from a host bank branch or subsidiary to its head office or parent bank in the home jurisdiction for risk management purposes, including ML/FT risks [3, Paragraph 92].

The volume of financial transactions makes it impossible to report and examine all of them. Moreover, there is no such a need, as even there are many who wants to launder their illicit gains, legal transactions have majority on them. Therefore, there should be some legal standards, which set rule for report. First of all, financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names. This makes impossible to determine if that person involved in any illegal activity. Secondly, customer due diligence should be undertaken: which includes - customer and beneficial owner identification, purpose and intended nature of the business relationship and ongoing due diligence on the business relationship and scrutiny of transactions. These measures are carried out when establishing business relations, so which are wire transfers, an occasional transaction if it equates to EUR 15,000 or more, or to several transactions which, combined, equate to the same amount, there is suspicion on illegal activity or doubts about the costumer information [10, R 10]. This Recommendation is also regulated by Law in Azerbaijan [19, 9]. Amount of minimum limit for CDD in Azerbaijan was set 15000 manats, which was also set by the Law. CDD information may be obtained by third parties; however, in this case all responsibilities still remain on the financial institution [10, R 17]. Azerbaijan legislation does not have such norm, which allows financial institutions rely on the information provided by the third party. One of the effective solutions to tackle huge amount of transactions is to have IT monitoring systems against risks and abnormal situations [3, Paragraph 26].

A bank should have clear customer acceptance policies and procedures which should include all relevant factors such as a customer's background, occupation, source of income and wealth, country of origin and residence, use and purpose of accounts, linked accounts, business activities or other customer-oriented risk indicators [3, Paragraph 30]. Identity of the customer and beneficial owner can be verified before or during the course of establishing a business relationship or conducting transactions for occasional customers. Verification can be completed after the establishment of the business relationship, if this occurs as soon as reasonably practicable, if this is essential not to interrupt the normal conduct of business and if the ML/TF risks are effectively managed [20, provision 10.14]. When problem arises which cannot be resolved, after business relationship has been established, the bank should close or otherwise block access to the account [3, Paragraph 38].

In every case there should be clear understanding of customer's profile and behavior. When there is high risk, enhanced due diligence should be required, [20, provision 10.17] for instance regard to higher-risk countries [10, R 19]. In case of lower risk factors, such as by the country or the financial institution, simplified CDD can be carried out [20, provision 10.18]. When the customer or beneficial owner is politically exposed person, or family member or close associate of such PEPs, additional measures are conducted for appropriate risk management and approval of senior management is needed [10, R 12]. All information on transactions by PEPs should be presented to the FMS [19, 7.2.3]. Moreover, if there is suspicion or enough ground for suspicion on ML/FT, including attempted transactions, it should be reported to the FMS [19, 7.2.1]. This provision of the law is implemented from the FATF Recommendation [10, R 20] and the relative Methodology of FATF [20, provision 20.2]. In this case amount of the transaction is not important. (15, R20) The information about the report cannot be disclosed [10, R 21].

Additional identification and verification measures are also required for cross-border correspondent banking and other similar relationships to fully understand AML/CTF policy of the respondent bank [10, R 13]. Relationship with respondent shell banks should be prohibited and there should be proper information that respondent banks are not permitting their accounts to be used by shell banks [20, provision 13.3]. Additional verification measures should be carried

out on transactions through correspondent accounts of foreign banks [19, 9.13.4]. All the information about the bank's AML/CFT system should be checked when opening correspondent accounts of foreign banks at local banks, [24, provision 8.1.6] and this should be refused if correspondent banks have relations or operations with shell banks [24, provision 9.3.7] Prohibition for countries to establish relationship with shell banks was also set in the FATF Recommendation [10, R 26].

Moreover, special attention should be paid to the use of legal persons for ML/FT. Therefore, information on beneficial owner and control of legal persons should be examined, in order to fully understand and evaluate risk in this field [10, R 24]. For effectiveness of this recommendation countries should oblige all legal persons to be registered in company register, where all relevant information on a legal person can be obtained, which is publicly available [20, provision 24.3]. Information about a legal person can be obtained from legal persons register for AML/CFT measures by the FMS, monitoring entities and DNFBPs. [18, 15.9.3]. Moreover, information can be obtained from mass media, internet, official publication and it should be verified with information submitted before [19, 9.9]. All this measures should be taken by monitoring entities in order to mitigate ML/FT risks. Without adequate steps taken against ML/TF, financial institutions may become subject to reputational, operational, legal and concentration risks, which can result insignificant financial cost [8, Paragraph 1].

Information obtained through the CDD measures should be kept for at least 5 years [10, R 11]. Sometimes AML/CTF measures make possible to identify and prosecute criminals. In some cases the process can be vice versa, while during the prosecution suspicion on ML/TF can also arise. Therefore, it is essential to keep this information in order to enable them to the competent authorities, both domestic and international. Duration of 5 years was set by the Law for all the information on the client, beneficial owner and authorized representative and etc. after termination of the customer's account or termination of the legal relationship with the customer, after the operation was carried out and after CDD measures was carried out on the suspicious transactions. These terms can be prolonged by the FMS and supervision authorities [19, 10]. If accounts are closed, in the event of ongoing investigation or litigation; all records should be retained until the closure of the case [3, Paragraph 48].

Furthermore, statistics should be maintained, which should include statistics on the STRs received and disseminated; on money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for cooperation. Statistical information on the offences related to the legalization of criminally obtained funds or other property and the financing of terrorism in Republic of Azerbaijan is submitted to the FMS on semiannual basis [19, 18.1].

To have proper regulation in the field of AML/CFT is not enough to be successful against launderers. One of the reasons is that not all employees of a financial institution are lawyers and familiar with regulation in this field. Therefore, it is crucial to have proper internal controls within the institution [10, R 18] that should be approved and overseen by the board of directors [3, Paragraph 15]. This includes internal rules and procedures, identification, assessment and mitigation of risks, training programs of employees, determination of red flags, to have proper internal audit system, compliance office and mechanisms and rules of report of relative information to the FMS [19, 12.1]. This requirement is a part of the banks' general obligation to have sound risk management programme to mitigate all kinds of risks, including ML/FT risks [3, Paragraph 12] Moreover, relative guidance and feedback should be established to assist financial institutions and DNFBPs. [10, R 34].

The CDD and record-keeping requirements are also applicable to designated non-financial businesses and professions [10, R 22]. The list of DNFBPs services of FATF Recommendation is same with the Law of Azerbaijan [19, 5.1]. To have fully implementation of this norm Trust and Company Service providers can be added to the definition of DNFBPs. [19, 1.0.8]. DNFBPs

monitor transactions and apply AML/CFT measures when they engage in activities set in the Recommendations with clients. Designated threshold only apply to dealers in precious metals and dealers in precious stones [10, R 23]. This rule also applies to DNFBPs in Azerbaijan [19, 5.1]. However, professional secrecy has privilege on this rule [19, 5.3].

Success of AML/CFT policies depends not only on how financial institutions and DNFBPs follow rules and regulations, but also on how they are supervised and regulated. This is part of the duty of supervisors to protect the integrity of their national banking/financial system [8, Paragraph 62]. Starting point of this process is licensing and registration of them by the State and continuing monitoring by the FIU [10, R 26]. Supervisors should have adequate powers to conduct inspections, request for any information essential for supervision and monitor, and impose sanctions for failure to comply with the rules and policies [10, R 27]. Implementation of a system requiring disclosures of suspicious transactions on the part of financial institutions created the need for a central office or agency for assessing and processing these disclosures [12, page 1]. Therefore, a Financial Intelligence Unit should be established, that serves as a national center for the receipt and analysis of suspicious transaction reports, and other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis [10, R 29]. All this information can be used for operational analysis for specific targets, and strategic targets to identify relative trends and patterns [20, 29.4]. Countries can choose any model of FIU [15, R29]. The FIU should be member of Egmont Group, [20, 29.8] which is a united body of 155 Financial Intelligence Units. The Egmont Group provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing. The FMS of Azerbaijan became full-fledged member of the Egmont Group in 2011. The FMS was given right to ask for information from financial institutions, DNFBPs and authorities if there is a need to monitor an operation [19, 17.3]. In case of not complying with regulations, the FMS has to send such violation to relative supervision authority [19, 17.6].

Other competent authorities should also be part of AML/CFT policy. One of the important fields in AML/CFT measures is physical cross-border transportation of currency and bearer negotiable instruments. Adequate measures and competent authorities should be in place in order to detect, stop or restrain the ones which are related to terrorist financing, money laundering or predicate offences, or that are falsely declared or disclosed [10, R 32]. One of them is the implementation of a declaration system or a disclosure system [20, 32.1]. Criminal, civil or administrative sanctions can be imposed for false declaration or disclosure [15, 6].

If suspicion on ML/FT arises during transportation of currency values into and from the Republic of Azerbaijan, the State Custom Committee should take adequate measures, and send information about it to designated law enforcement and investigative authorities and the FMS [19, 8.1]. Moreover, if amount of cash brought into Republic of Azerbaijan exceeds 50.000 USD, relevant information should be presented to the Central Bank, the FMS and the Ministry of Taxes [16, 9.3, 11.4].

Success of AML/CFT policies is also depended on sanctions imposed to financial institutions and DNFBPs, and to their directors and senior management for violating the law [10, R 35]. In the Republic of Azerbaijan there is criminal responsibility for illegal disclosure of information on ML/FT [7, 316-2]. For other violations of ML/FT legislation requirements there is sanction of administrative penalty of officials and legal persons [1, 598.1]. It is crucial that legislative body would clarify some definitions, especially when there is responsibility for violating those requirements. One of these definitions is the suspicion or suspicious transactions/activity, which need to be expressed in the clearest terms possible [11, P 43].

Taking into account the international nature of ML/FT, international cooperation is essential for counter measures against it. Therefore, countries should have widest possible range of mutual legal assistance and treaties, arrangements or other mechanisms to enhance

cooperation [10, R 37]. The differences between national supervisory practices make it also essential to obtain international agreement to a Statement of Principles to which financial institutions should be expected to adhere [21, P2]. Azerbaijan is also cooperating with foreign authorities in the sphere of information exchange, investigation, prosecution and execution of court decisions [19, 20.1]. This can be refused on the basis if it is against national law or national interests [19, 20.3]. Therefore, when requesting information for ML/FT cases, at a minimum the reason for the request, the purpose for which the information will be used and enough information should be disclosed to enable for determining whether the request complies with its domestic law [22, Paragraph 10]. All these actions are carried out in accordance with national legislation and the international treaties to which the Republic of Azerbaijan is a party [19, 20.5]. One of the main parts of cooperation is confiscation (10, R 38), which is also carried out in accordance with national legislation and the international treaties to which the Republic of Azerbaijan is a party [19, 20.6], and extradition [10, R 39], that is carried out in accordance with the Law of Republic of Azerbaijan "On Extradition" from 2001.

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FEATURES OF MUTUAL AGREEMENT PROCEDURE AS AN INSTRUMENT OF INTERACTION BETWEEN TAXPAYERS AND FISCAL AUTHORITIES

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Abstract

The mutual agreement procedure is an integral part of the mechanism for maintaining a balance between private and public interest in resolving tax disputes arising in the international arena. This is done by entering into an agreement between the competent authorities of the contractual jurisdictions in cases where the tax is levied or may be levied not in accordance with the provisions of the tax treaty, as well as in order to ensure the unambiguous application of its provisions. The publication defines the legal nature of the mutually agreement procedure, outlines the circle of its participants with a list of their rights and responsibilities, in addition, analyzes the order of its implementation, as well as current trends in the use by European countries.

Keywords: *taxation, public and private interest, mutual agreement, double taxation treaties, contractual jurisdiction, tax authority, competent authority, taxpayer.*

Introduction. The relationship between taxpayers and tax authority varies in complexity, subordinate and have a dominion character. Both taxpayers and tax authorities are interested in mutually beneficial cooperation and support. At the same time, the multivectoral interests of these subjects are often a consequence of a tax dispute that can be resolved either in an administrative or judicial manner, or through the use of additional or alternative mechanisms. At the current stage of economic and legal development, tax and legal controversies are effectively overcome due to the actions of the respective participants in the coordination of positions of the obligated subject (taxpayer) and the authorized body (tax authority). An integral and key instrument for resolving tax disputes related to the application of double taxation treaties is the mutual agreement procedure (MAP).

In the domestic developments in the field of law, outlined question still did not find its comprehensive study, except of the works of V. Kruglyak, O. Lepetyuk and P. Selezen, who in some publications considered the problems of transfer pricing, the institutional cooperation of the states in the sphere of taxation, the double taxation treaties, etc. Foreign authors, including R. Ismer, S. Kim, E. Christians, M. Lombardo, M. Nittel, have devised their publications directly or through the prism of the study of instruments for resolving tax disputes. In the context of considering the main aspects of international tax relations, the interdependence procedure becomes known from academic and scientific literature, edited by V. Gidirim, O. Ilyin, L. Polejarova, O. Shakhmametiev, and others. The study of problems associated with the formation, implementation and protection of private and public interest in the context of tax legal relationship is conducted in the works of V. Belous, E. Dmitrenko, A. Zadorozhnya, M. Kucheryavenko, E. Laku-

sheva, A. Nechay, N. Prishva, L. Trofimova and others, but the mutual agreement in accordance with the double taxation treaties is not mentioned in them.

The purpose of this publication is to identify the features of the mutual agreement procedure as an instrument for interaction between taxpayers and tax authorities, which may be initiated by situations that lead or may lead to taxation not in accordance with the rules of double taxation treaties.

Presenting of the main material

The mutual agreement procedure is a legal instrument for the interaction of taxpayers and tax authorities aimed at preventing and resolving disputes related to the interpretation and application of double taxation treaties. The number of such agreements concluded by Ukraine (more than 70) testifies the desire to coordinate the actions of the tax authorities and avoid conflicts in the future, which may result from the obligation to pay taxes in more than one state. The overwhelming majority of them contain provisions similar to Art. 25 Model Tax Convention of the OECD, which enables taxpayers to initiate a coordinating procedure in certain cases [1]. The domestic norms of the Ukrainian state do not foresee the order of its conduct to this day, despite the fact that in 2016, an official letter of accession to the BEPS Plan was taken on an obligation to implement its minimum standard. One of the steps of the Plan (Step14) is directly aimed at developing mechanisms for resolving disputes through MAP. The mutual agreement procedure has grounds for understanding as a set of procedural actions carried out by the competent authorities within the limits of their powers in order to resolve disputes concerning the interpretation and application of double taxation treaties. The competent authority in contractual jurisdictions, as a rule, is the main financial or fiscal authority of the state. For example, in Germany for the purpose of mutual agreement procedure a taxpayer is authorized to apply to the Federal Tax Service of Germany (Federal Central Tax Office (Bundeszentralamt für Steuern – BZSt)), since it is the German Federal Ministry of Finance granted the powers in this area [2]. In Spain, within the Spanish Tax Agency's (AEAT) is the International Taxation Office as the competent authority for conducting a transfer pricing interchange procedure. In all other cases, the Deputy Director of the Directorate General for International Taxation of the Ministry of Finance and Public Administration of Spain [3] serves as the competent person.

Since in Ukraine this procedure is not formalized, the concept and procedure of conducting are urgently required to be fixed at the regulatory level. Functions of the competent authority are appropriate to allocate to the central executive body implementing the state tax and customs policy - the State Fiscal Service of Ukraine. A taxpayer has the right to demand the initiation of a MAP in order to ensure that situations are resolved which leads or may lead to the taxation inappropriate in accordance with the rules of double taxation treaties. The role of a taxpayer in the mutual agreement procedure is insignificant as it begins and ends at the same time as the application is filed. Its function is to provide the necessary information and documents on the facts and circumstances that give rise to the grounds for the MAP, and, moreover, it does not participate in bilateral negotiations of contractual jurisdictions and its position may not always be heard.

At the same time, there is a constant interest among taxpayers in using the potential of the relevant procedure, as evidenced by the large number of new appeals appearing each year (only in 2016 Germany started the procedure in 353 cases and completed – in 350 cases [2], the number of new applications in Spain increases every year, and on the date of December 31, 2016, 300 applications were awaiting consideration [3]).

A taxpayer is solely responsible for the full disclosure of the circumstances of his case, their description and, where necessary, the provision of additional documents for substantiating his own position. The competent authority must notify the taxpayer of the status and the course of the mutual agreement procedure. In turn, the taxpayer has the right to apply, comment on facts and circumstances that are relevant to the MAP, as well as to be submitted by an authorized third

party. Any documents or materials received by the competent authority from the taxpayer during the MAP can not be disclosed or made public without the consent of the taxpayer. Thus, the information provided by the taxpayer to the competent authority in the framework of the mutual agreement is subject to the confidentiality regime.

Therefore, it is reasonable to assert that if a taxpayer considers that the actions of one or both parties to the contract lead or will lead to the fact that for him the taxation will not comply with the provisions of the relevant tax agreement, such a taxpayer may, irrespective of the remedies provided by the national legislation of the contracting states, to request a mutually agreed procedure. This right is enshrined in Art. 25 of the UN Model Double Taxation Convention between Developed and Developing Countries [4] and Art. 25 OECD Model Tax Convention on Income and on Capital [5]. The main difference between the provisions on access to the interconnection procedure laid down in the articles of the Convention is that if, under the United Nations Convention, such entities are residents and only exceptionally – citizens and legal entities registered in a particular contracting state, which are generally grouped together in a category "nationals", then under the OECD Convention, any person who considers that the actions of one or both of the contracting states result or will result in taxation not in accordance with the provisions of this Convention. In addition, the provisions of the two conventions limit the right of a taxpayer to apply to a co-ordinating procedure for a period of three years from the time when he became aware of taxation or the possibility of taxation not in accordance with the requirements of contractual norms in the field of taxation. However, contractual jurisdictions in the tax treaties themselves determine such a period, its range varies from two to four years. For example, the provisions of the German double taxation agreement with Belgium limit the possibility for a taxpayer to apply for a two-year interdependence procedure from the moment when he becomes aware of taxation or the probability of taxation not in accordance with the requirements of the contractual norms in the field of taxation, but the provisions of German agreement on double taxation with the United States – for a period of four years [2, 86-88].

The subject of the mutual agreement procedure is the elimination of taxation or the probability of taxation not in accordance with the contractual norms. Most often it can be initiated:

- in the event if a particular person has made a statement that the actions of one or both of the contracting states lead or may lead in taxation not in accordance with the provisions of the tax agreement;
- to avoid problems and misunderstandings that arise in the interpretation and application of tax treaties by the treaty partners;
- In the case of double taxation in situations that are not directly covered by the tax agreement.

The mutual agreement procedure begins when there are contradictions in the application of the provisions of the double taxation treaties and cannot be eliminated by the authorized body in the field of taxation independently without the participation of another contractual jurisdiction. That is, before the commencement of the mutual agreement, the possibility of unilaterally removing the grounds for recourse to the taxpayer, that is, without involving the competent authority of another contractual jurisdiction, is determined. In case of recognition of the validity of the position of the taxpayer, the competent authority carries out the necessary actions aimed at eliminating the grounds for the corresponding request of the taxpayer. Otherwise – the competent authority of the contracting partner state is involved in order to negotiate.

Taking into account the following procedural stages of the MAP, the scientific literature conditionally distinguishes between two stages of the interconnection procedure, namely the internal, based on the interaction of a taxpayer and the competent authority immediately after the corresponding appeal, and the external (interstate), which takes place at the level of relations between the two states after the appeal of one state to another [6, 19]. The proposed deadline for

consideration of an application for an internal mutual agreement is 30-60 days from the date of receipt. The external (interstate) interconnection procedure can take about 2 years.

For the timely implementation of the mutual agreement procedure, taxpayer's application must contain, in particular, but not exclusively:

- Surname, name, address, tax number, information about the local tax authority, in which the taxpayer is registered;
- Detailed information on the facts and circumstances of the case;
- The tax period to which the subject of the mutual agreement applies;
- Copies of tax advice, inspection report or other similar documents indicating the existence of double taxation;
- Detailed information on pre-trial or judicial appeal, as well as relevant foreign court decisions;
- the taxpayer's statement on the substance of the request indicating in what state the tax is not in accordance with the terms of the tax agreement.

The fact that the appeal in accordance with the established procedure under domestic law is still incomplete or the possibility of an internal mechanism for resolving the dispute has not yet been exhausted does not preclude the submission of an application for a mutual agreement procedure. However, it should be noted that the domestic law of some states does not allow for a mutual agreement procedure if its outcome differs from the decision of the national court. In this case, the applicant should independently decide whether it is advisable to initiate the mutual agreement procedure. This is explained by the desire of efficiently use of MAP resources and, therefore, the mutual agreement procedure should take precedence in comparison with the domestic mechanism for appealing decisions of the tax authorities.

As part of the mutual agreement procedure in foreign practice, such measures are used as the oral exchange of positions of the competent authorities, the creation of a special commission from the representatives of the competent authorities for the purpose of the exchange of opinions or identification of a person who, on the basis of experience, can facilitate mutual agreement, including through the preparation of his/her appeal to the competent authorities.

The result of the mutual agreement procedure is fixed in writing and submitted to the taxpayer who has the right in case of disagreement abandon certain conditions. In this case, the relevant mutual agreement will be deemed to have not been achieved. Upon completion of the MAP, the issue of the implementation of the decision of the two states at the national level remains open. Its conditions should be provided in domestic law.

Thus, the characterization of the current state and trends of the mechanism for resolving disputes regarding the implementation of contractual requirements in the field of taxation, using the mutual agreement procedure, is extremely relevant. The growth of tax conflicts led to the search for new ideas to solve them. The mutual agreement procedure is a set of procedural actions carried out by the competent authorities within the limits of their powers in order to resolve disputes concerning the interpretation and application of double taxation treaties. Taking into account the peculiarities, which are fairly distinguished by P.Selezen and M.Nittel, of the mutual agreement, it is necessary to note the following:

1) the opportunity of its use is fixed by a normative article of double taxation treaties similar to those of article 25 of the Double Taxation Convention between Developed and Developing Countries or article 25 OECD Model Tax Convention on Income and on Capital;

2) it is used primarily to resolve disputes arising from the interpretation and application of the provisions of double taxation treaties;

3) on its results an agreement on mutual consent is agreed upon in the interpretation and application of the provisions of the double taxation treaty;

4) it is the last resort to resolve the dispute on the basis of reciprocity and without the use of diplomatic channels [7, 164].

In addition, P. Selezon points out that the long-standing practice of using this tool leads to its improvement, namely: «A significant step in the development of the provisions on the mutual agreement procedure since the development of the model rules of the OECD and the UN in the field of taxation was the adoption of the rules on arbitration in case of the impossibility of reaching agreement between the parties on issues raised in the framework of the mutual agreement. The arbitration procedure should not be understood as an alternative to the mutual agreement procedure, but is a continuation of the latter in the event that the competent authorities cannot reach agreement between themselves» [7, 167].

For Ukraine, the introduction of a transparent mechanism for resolving disputes regarding the application of double taxation treaties will be in line with the fulfillment of the commitments made in November 2016 on the implementation of the minimum standards for counteracting the erosion of the tax base and the transfer of profits in low tax jurisdictions. Access to the MAP in Ukraine will be possible under the following conditions: revision of the double taxation treaties of Ukraine in the context of updating the wording of the article on the mutual agreement procedure and developing clear guidelines and recommendations on access to it and the procedural rules for its use. As to the first step on this path, with the signing by Ukraine in 2018 of the Multilateral Convention to Implement of Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI"), the requirements of the relevant treaty norms for the entire network of tax treaties are efficient. In some cases Ukraine is obliged to update them accordingly with the results of bilateral negotiations.

Conclusion

In the context of fulfilling the tasks of the modern Ukrainian state to improve the business climate, updating the mechanism of public administration and deepening international cooperation, as well as protecting the legitimate interests of taxpayers and states, the introduction of a mutual agreement procedure is an important step towards sustainable development of the Ukrainian tax system. At the same time, as noted by international taxation specialists, the classical provisions of the mutual agreement procedure (or MAP) become ineffective in terms of time and results. As branch reporter of the International Fiscal Association F.-S. Anton notes: «MAP with an OECD country could take more than three years to resolve a tax conflict, if it was resolved at all. This timing in a non-OECD country could be multiplied by three. Such a situation with the base erosion and profit shifting (BEPS) background, and its action number 14, makes the situation untenable» [8, 635].

Therefore, taking into account the above, it should be noted that today the main legal instrument for interaction between taxpayers and tax authorities aimed at preventing and resolving disputes related to the interpretation and application of double taxation treaties is the mutual agreement procedure. At the same time, according to data of the monitoring both taxpayers and the tax authorities face a range of problems associated with its implementation. States acknowledging them and taking into account the positive world experience and recommendations of the OECD regarding the effective use of the relevant mechanism try to improve the mutual agreement procedure by creating the necessary internal conditions.

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**RETHINKING SEXUAL HARASSMENT WORLDWIDE IN THE LIGHT OF
“THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING
VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE”
(SO CALLED ISTANBUL CONVENTION)**

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Abstract

Precise understanding of sexual harassment has never been clear. Ranging its definition from being sex-based discrimination according to the US legislation to qualifying it as dignitary harm under Continental Europe Doctrine, it has always been the subject of contentious disputes in sexual harassment law. In this regard, “The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence” addresses the issue boldly and enables for re-conceptualization of sexual harassment. The introduced article proposes to establish a pattern to re-think and re-define sexual harassment through scrutinizing in the holistic and coherent way the platform of the Istanbul Convention. It supports outlawing any exposure of gender-based violence, simultaneously fighting against discrimination and upholding “the principle of substantive equality between women and men”. Significantly, the article describes the phenomenon of sexual harassment not as gender-neutral, but as gender stipulated conduct.

Keywords: *gender inequality, sex-discrimination, gender-based violence, sexual harassment, the Istanbul Convention.*

Conceptualization of sexual harassment has been the contentious issue and subject to acute debates across the globe. However, it is the groundbreaking “The Council of Europe Convention on preventing and combating violence against women and domestic violence”, distinguished by its exhaustive gendered nature that enables for the best interpretation and condemnation of the issue. Before enactment of the Istanbul Convention a range of international or regional documents had served as a mean for empowering women and for condemning discrimination and violence against women. Still, the most recent and powerful tool in this respect, the Istanbul Convention, with its explicitly established concepts and definitions, is the major instrument for the further elaboration of the understanding the issue of sexual harassment [1, 17].

While being unique in terms of its scope and approach, which is based on a gendered understanding of violence against women, the Istanbul Convention outlines the explicit linkage between the gender stipulated violence and discrimination - an interaction - which the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) failed to accomplish, even though this inaccuracy was redressed later on through the General Recommendation No. 19 [2, 601-602]. Moreover, the Istanbul Convention not only codifies embraces and develops understanding of violence against women as elaborated in the CEDAW General Recommendation No. 19, but going further, it defines it both as “a human rights violation” and as “discrimination against women”. The Convention equates these phrases to all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Article 3(a) the Istanbul Convention).

Since sexual harassment is a relatively new concept in international law, there has been no significant backlash as has occurred in some jurisdictions. Indeed, it has received a little

attention at the international level compared with the other issues of women human rights such as other forms of violence against women, reproductive rights, and crimes committed against women in armed conflict [3, 656]. It was the Istanbul Convention that gave a particular attention to the inevitability of explicit condemnation of sexual harassment alongside such inadmissible practices as “female genital mutilation (FGM), one of the criminal offences that break with principle of gender neutrality” [4, 34]. Since the formulation of the concept of sexual harassment in the US, where the conduct was recognized to constitute a form of sex-discrimination, affecting and outraging gender-equality, - the scrupulous examination of this phenomenon, implanted from the US into European legal culture with its re-shaped, and thus bifurcated character raised many discussions among the field experts and resulted in a different conclusion in line to a legal culture or a doctrine, each of those scholar were advocating for. The reason for such a bifurcation is the well-established value of dignity, a fundamental point of the European law which is contemplated as a main target of the sexual harassment legislation applicable across the EU simultaneously preserving formal anti-discrimination framework borrowed from the US.

Even though in the US, some of the scholars, such a Viki Shultz [5] Anita Berstain [6, 450-454] and Rosa Ehrenreich [7, 3-6, 14-16, 22, 53-64] attempted to re-conceptualize sexual harassment and re-think sexual harassment law framework, yet it has been maintaining its cornerstone, created by Catharine Mackinnon, the main authority in the field, grounding sexual harassment on inequality point. Thus the focus on equality on its side is one of the elements in sexual harassment analysis in this study. Mackinnon defined sexual harassment as “unwanted impositions of sexual requirements in the context of relationship on unequal power” [8, 1]. By focusing her analysis on the different power of men and women, Mackinnon showed that sexual harassment in employment and education both reflects and reinforces broader inequalities between the sexes [9, 517].

While the US stayed adherent to anti-discrimination frame, such approach has been continuously losing its recognition in the European Union through making a shift on merely dignitary aspects. In EU this tendency has reaffirmed the tradition to speak of “dignity” rather than “discrimination”. At the same time, bans on harassment discrimination are being kept, but discrimination is not “the main target” in practice [10, 5-6]. The equivocal discourse on dignity-equality dichotomy can be seen through the decryption and analysis of Georgian legislation too, with an inference that unless re-conceptualized through the consideration of gender-specific nature of the IC, enabling to build the connection between those two, the current practice will rather lure to an ambiguity, than to bring to the elucidation of such a two-fold construction of the sexual harassment legislation framework [11, 114].

To elucidate the stated problem of bifurcation in sexual harassment law analysis, which is noticeable to a certain extent in the legislations of the different EU members states described in this article as well as in the law of Georgia, my work focuses on analysis on how it becomes possible to interrelate to dignity and equality for a substantive analysis on sexual harassment without a serious disregard or removal of any of them from the discourse. Through the contradiction and examination of the equality based (US approach) and dignity based (EU approach) approaches, the study inferred that despite cultural, traditional, doctrinal and other differences between those two Western legal cultures - the US and the EU - the notions of dignity and equality are not mutually exclusive and in opposite, can be seen and proved to be interrelated, which on its side will assist much to comprehend the discriminatory nature and consequences of sexual harassment [11, 115]. Designing and availability of such a scheme on interrelatedness is highly considerable, because albeit formally designed and named as sex-discrimination under relevant European Directives on equality issues, and consequent national acts, yet “features of sexual harassment law in Europe reveal that dignity-based approach tends to address only inadequately the problem of discrimination. The same is true for theoretical attempts to conceptualize sex-discrimination in gender-neutral, dignity-like terms”. When

applying a notorious “Dignity Harm Approach”, structural (and individual) oppression of women in society remain invisible [10, 2].

Based on such solid arguments and analysis as well as through scrutinizing in the holistic and coherent way the platform of the Istanbul Convention on outlawing any exposure of gender-based violence simultaneously fighting against discrimination and upholding “the principle of substantive equality between women and men”, - my thesis proposes to establish a pattern for re-conceptualizing sexual harassment, available through the far reaching gendered nature and goal of this international instrument. Despite the Conventions articulated (Article.40) reference to the dignity as to only affected right, valid to claim sexual harassment violations, - expansion of this legal framework, that prevents from its limitation only to dignitary harm, enables to promote gender equality and tackle against gender-based violence too through condemnation of sexual harassment, if developed the following pattern of interrelated chain on dignity-equality-discrimination-gendered-based violence alignment under the holistic interpretation of the Istanbul Convention, available for the sexual harassment analysis [11, 116].

Moreover, the vision developed in this article, goes further and describes the phenomenon of sexual harassment not as gender-neutral, but as a gender stipulated conduct evoking sex-discrimination. My position to address and interpret the issue of sexual harassment as something being stipulated by the gender (sex) of the victim and thus being actionable under anti-discrimination law, rather than being a mere administrative infraction, or an infringement of the disciplinary character under labor code actionable as a tort, or even a crime against a person, - grounds on and backs up by the Explanatory Report of the Istanbul Convention, which states that as far as the Convention “firmly establishes the link between achieving gender equality and the eradication of violence against women”, hence “it recognizes the structural nature of violence against women and that it is a manifestation of the historically unequal power relations between women and men”. By including such important term “structural”, the Convention can be asserted to be a first in a multilateral treaty on women’s issues, aspiring to acknowledge that violence against women can be explained and understood in various manners at structural, group and individual levels [4, 5].

While the laws themselves are gender neutral, in most national contexts sexual harassment cases have taken predominately heterosexual and opposite-gender forms, with women more often the ones reporting harassment by men, in part, because men continue to be more often in positions of power. Women bring the largest percentage of complaints in every country where sexual harassment laws exist [12, 924]. Surveys conducted around the globe has documented that sexual harassment in the workplace is an issue for women and, to a lesser extent, men. Studies show that harassers do not victimize women on the basis of their physical attractiveness, but rather harass individuals who are the most vulnerable. While some commentators criticize United States law as reflecting puritan notions of sex, governments around the world are realizing that sexual harassment is not about sex, but about sex as a vehicle to discriminate, to subjugate women, and to assert power [13, 143]. Although both men and women experience sexual harassment, it is well documented that women are overwhelmingly most often its victims. Sexual harassment has been called "one of the most pervasive and accepted forms of oppression of women." To create effective legislation protecting women from sexual harassment, it is important to understand its nature and consequences [14, 229].

Examined studies underpin the idea on recognition of gendered nature of the sexual harassment under Article 40 of the Istanbul Convention regardless its gender neutral construction, and about the availability to condemn it as one of the forms of gender-based violence. Such proposal does not discard, deny or contradict to the presumption on existence of other types of sexual harassment, such as same-sex harassment, that also could be actionable under Title VII in the US. Ascribing sexual harassment to gendered-based violence does not

preclude from its applicability in relation to men likewise the term “domestic violence”, given in the Istanbul Convention, which is regarded to be “a gender neutral definition that encompasses victims and perpetrators of both sexes,” but with largest percentage of women victims reporting the crime in practice. The research shows that the selection of the measures to outlaw sexual harassment vastly relies on the conceptual model, that the states choose for regulating the issue and thus enables for the further elaboration in terms of implementation of the Istanbul Convention.

While American laws are highlighting group nature of the conduct under discrimination framework, European legislation shift its focus on personal, private harm because of placing the dignity and dignitary harm in the center of analysis [15, 238]. What is moved forward here in the European laws is a moral sphere and dignity of the person. As the study showed, in Italy, for the analysis of sexual harassment, both, the case law and the constitution referred to the moral personality of the victim, which also includes that of human dignity, albeit with the failure by courts to define how dignity or moral personality should be interpreted [11, 119]. Also in France, sexual harassment is legally categorized primarily as a deviant individual attack, that is physically, psychologically, morally harmful and violates the victims free will, rather than a form of group based discrimination [16, 137]. As for Germany, structured German law defines sexual harassment as a crime rather than a social phenomenon, within a structure of sex-based disadvantage [17, 593].

Such a focus on a private, moral aspect of the problem and referral to personal harm inter alia dignitary harm in sexual harassment cases in Europe, contends and requires for the application of criminal legislation to sanction the outrage [11, 120]. This trend was clearly shown in the study on the examples of Germany and France [16, 928]. Also, Italy is one of the members States to directly legislate on sexual harassment. Similar to Frances' legislation, Italian legislation only provides for fines and criminal sanctions" [17, 89]. In Georgia, it is a general lack of legal experience on anti-discrimination and gender-equality laws, that are responsible for equivocal application of respective laws, alongside with the deficiency of definition and lack of precise conceptualization of sexual harassment. Naturally, such an inaccuracy undermines prescription and establishment of legal measures as well as enforcement mechanisms.

Provided broad review of the countries in the US and EU has been deemed to be necessary to show that depending on the type of conceptual legal framework used by particular country the legal responses with relevant regulations vastly vary. This inference is needed to further the interpretation of Article 40, through enlightening different kind of legal measures for the regulation of the sexual harassment [11,120]. Insofar the drafters of the Istanbul Convention decided to leaving to the Parties to choose the type of consequences the perpetrator would face when committing this specific offence, the Parties are free in their contemplation to deal with sexual harassment under the laws of their own considerations at national level [4, 35]. Above-mentioned analysis on peculiarity of “conceptual legal framework” and “subsequent legal responses” interaction enables to conceive the vision on how and through which legal measures should sexual harassment be dealt with and curb in an efficient way without affecting and altering its millstone – worldwide recognition of being a form of sex-discrimination.

In a quest of an answer, what kind of measures should be used, criminal sanctions or others for a prohibition of such violation, this article favors implementing anti-discrimination laws for the condemnation of sexual harassment. Such a preference is conditioned by two different aspects: the first is the gendered nature of the conduct and the second is the legal frame of the explanatory report of Article 40 of the Istanbul Convention. Consideration of gender-based nature of sexual harassment requires for an application of anti-discrimination framework, constituting only efficient tool to detect and highlight the group, not only personalized harm in these cases [11, 121].

As Mackinnon explains, designating incidents of sexual harassment as personal and (therefore private) was a way of “removing the events from the social and political arena, hence from scrutiny, criticism, and regulation by legal intervention [8, 83]. More specifically, by portraying sexual harassment as personal, courts in early cases were able to conclude that the challenged actions were directed at an individual rather than an entire gender and therefore could not be a form of sex discrimination.” [18, 106-110]. So, one of the major achievements of Mackinnon’s work was that it took a phenomenon that was considered personal and revealed it to be an instance of systemic discrimination against women as a class [9, 517]. Also in Europe, “the background and spirit of the Discriminatory Approach is to eliminate structural as well as individual discrimination. To harass women sexually in not only “bad manner”, it reflects and reinforces societal gender hierarchies.” [10, 2]

Sharing such vision on understanding of sexual harassment provided by MacKinnon and European experts, backs up the proposal given in this research, which asserts that assessment of sexual harassment as a form of gender based violence under the IC, does not contradict with the relevant provision of the convention, Article 40, even though this provision articulates the “purpose or effect of violating the dignity of the victim”, which is therefore private and personalized in nature. Such attitude is based on an argument, that apart from considering this particular provision, the spirit and far-reaching goal of the convention must be taken into account on a whole and given a credit, because both of them – the stance and the overall goal of the convention – aim to eradicate the evils of discrimination, which *per se* establishes inequality, - also fought against by the convention, - that ultimately leads to a gender-based violence. Sexual harassment is one of such outrages and thus, the proposed chain on dignity-equality-discrimination-gendered-based violence alignment can be used for re-conceptualizing of sexual harassment under the IC [1, 122].

This article advocates for preservation and implementation of the bans on sexual harassment as on acts of discrimination under the Istanbul Convention, simultaneously meaning to be equated to gendered-based violence, as it can be inferred from the definition of this term given in Article 3 of the Istanbul Convention, as well from the Article 6 of the General Recommendation No. 19 and paragraph 19 of the Commission on Human Rights resolution 2003/45 on Elimination of violence against women, urging the integration of a gender perspective into all efforts to eliminate impunity [19]. “Anti-discrimination law may be characterized by the so-called individual complaints-led model, but the background or rather the spirit of such legislation is to come to terms with and eliminate structural discrimination” [10, 7].

It is cruel to uphold such a vision as far as “discrimination against women provides a breeding ground for tolerance towards violence against women. Any measures taken to prevent and combat violence against women need to promote equality between women and men as only substantive equality will prevent such violence in the future” [4, 9].

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JUVENILE JUSTICE: EXPERIENCE OF AZERBAIJAN AND OTHER COUNTRIES

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Abstract

Presently, with the continuing development of a rule-of-law state and creation of a civil society in the Republic of Azerbaijan, the implementation of requirements of Azerbaijan's Constitution and its other laws aimed at protecting life, health and human rights has acquired a special significance. The norms and rules set in international legal acts constitute the principles that form an approximate mechanism for implementation of juvenile justice.

Under the term "juvenile justice" we understand the whole system of state bodies that administer justice in relation to crimes among minors, control the correction and rehabilitation of adolescents who have problems with the law. In this article, the author argues that in the states where there is a standalone (autonomous) system of juvenile justice, the judicial proceedings relating to children have more clear specifics.

Keywords: *crime, Constitution, human rights, offenses, UN Convention, minors, international instruments, justice, children*

Presently, the Azerbaijani society is undergoing a renewal in all areas of its life, and with the continuing development of a rule-of-law state and creation of a civil society, the implementation of requirements of Azerbaijan's Constitution and its other laws aimed at protecting life, health and human rights has acquired a special significance. "Everyone has the right to protect his/her rights and freedoms using ways and means not prohibited by law ... The state shall guarantee the protection of rights and freedoms of everyone," says one of the fundamental requirements of the Constitution of the Republic of Azerbaijan [1, Article 26].

Combating crimes and offenses, which negatively impact the development of the society, has always been a focus of attention of the President of the Republic of Azerbaijan. The Decree on Measures to Enhance the Fight against Crime and Strengthen the Rule of Law of August 9, 1994 and the Decree on Measures to Ensure the Human and Citizen Freedoms of February 22, 1998, laid the foundations for a new policy to combat crimes and offenses.

The theory of law asserts that the concept of human rights should be viewed as an all-embracing category, combining supranational and universal requirements and standards of individual freedom. In this case, human rights are not a state legal or a concrete legal category, but a general social concept. Respecting human rights, which are bestowed at birth, is the fundamental goal of any civilized rule-of-law state that seeks to ensure the freedoms, safe living and well-being of its people. A person's human rights, along with his/her duties are an integral part of the society's life and activity as they are meant to ensure order, stability and qualitative change of the whole mankind. Here human rights apply to both men and women, and to children. Essentially, a society as well as its individual members live and develop under the same laws of life, starting their path from birth, continuing to childhood, adolescence and adulthood, and ending with an inevitable old age. As N.P. Meleshko notes, childhood is a very important phase in a person's life. A civilized society's actions must be based on the priority of preparing children for a full-fledged life in the society, developing their socially significant and creative activity, and nurturing high moral qualities and civisms in them. Childhood is a matter of continuation of the human race and a matter of shaping the personality of the society's future members [2, 287].

It is well known that developing the future generation's morality, culture, spirituality and its physical education are the main goals of any civilized society, since it is impossible to build a progressive rule-of-law state without worthy successors endowed with high morality and sense of justice. Spirituality is the most important part in upbringing a new person. Hence raising a comprehensively developed, conscious, moral and socially active person is of special concern for the state. The new person should be morally rich, brought up in the synthesis of national and universal moral and ethical values.

From the social and legal perspective human actions are a kind of social behavior in general, so, accordingly they obey the psychological laws inherent in any conscious act of an individual. A person is a spiritually free human being, whose freedom is possible only within the actual political and legal systems. A human is born as a biological being, but must leave this world as a person [3, 7]. The opinion that "a human being is naturally born free" causes much doubt, since such "freedom" is putative and invalid, and it acquires its validity, its "actual existence" only with the help of the law. So, obviously, even after having committed an offense, a child remains a child, and it is not possible to apply the same penalties to him/her as to adults. This is why there is the juvenile justice system, which incorporates state bodies, local self-government bodies, state and municipal institutions, officials, and non-governmental non-profit organizations that carry out actions aimed at implementing and securing the child rights, freedoms and legitimate interests based on the procedures set by the law [4, 323]. However, being one of the most vulnerable groups of the population, children are often victims of unscrupulous parents, officials and citizens, who violate their rights and freedoms with impunity, and the inability of children to defend their rights and legitimate interests on their own, and the inaccessibility of qualified lawyers and other professionals bring forth the need to find a reliable and effective mechanism for protecting the rights and legitimate interests of children. As recognized by the world community and enshrined in the UN Convention on the Rights of the Child, children as a special group, are at the same time a very significant part of the society, who need special mechanisms to protect their rights [5].

The Republic of Azerbaijan, as many other countries, is implementing projects on juvenile justice. The relatively new concept of juvenile justice, even as a term, has recently been adopted by the Azerbaijani society. This term originates from two Latin words: *iuvenilis* (juvenile, young) and *iustitia* (justice, fairness). V.N.Tkachev [6] and K.V.Lisukova [7] note that nowadays there are two directions for development of the definition of juvenile justice – in the narrow and broad senses. In the narrow sense, juvenile justice is understood as the activity of a juvenile court, while in the broad sense it means the activity of all the bodies and institutions related to protection of the rights of minors, including the participation of civil society. Under such an unusual justice system, we understand the whole system of state bodies that administer justice in cases of crimes among minors, control the correction and rehabilitation of adolescents who have problems with the law.

Also, it should be noted that juvenile justice appeared a long time ago: the special attitude of society towards the persons below the age of adulthood was enshrined even in the laws of the Roman Empire. The Renaissance and the subsequent humanization of the law changed attitudes towards juvenile offenders: along with mitigation of punishment, a system of juvenile justice began to be formed, which included special law enforcement agencies, courts, prosecutors, lawyers, etc. So far, only several components of the juvenile justice system are developing in Azerbaijan, while the United States of America is considered a pioneer in the creation and promotion of the ideas of juvenile justice. Back in 1899, the first juvenile court was established in Chicago under the law of the State of Illinois on the abandoned, homeless and delinquent children and looking after them. Then, to deal with the cases of minors, a relatively new concept of delinquent was introduced, which is different from the concept of criminal, and the status of a minor offender became a subject of juvenile justice.

It should be noted that the following international documents, which were also ratified by the Republic of Azerbaijan, have had a significant impact on the formation of the principles of juvenile justice:

1) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by General Assembly resolution 40/33 of November 29, 1985 [8];

2) The United Nations Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of November 20, 1989 [5];

3) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of December 14, 1990 [9];

4) The *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*, adopted by General Assembly resolution 45/112 of December 14, 1990 [10];

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules, is the first international legal instrument to set out the basic principles of juvenile justice. As a development of the ideas of the Beijing Rules, the UN Convention on the Rights of the Child was adopted on November 20, 1989. The Beijing Rules are in fact a universal international treaty establishing the basic civil, political, socioeconomic and cultural rights of children until they reach adulthood, as well as the obligations of states to respect and guarantee these rights.

This convention includes the following new human rights:

✓ for survival and development of the child (Article 6);

✓ for preserving the child's identity (Article 8);

✓ for the child deprived of liberty to maintain contact with his or her family (paragraph c, Article 37);

✓ for not taking a direct part in hostilities (Article 38);

✓ for physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts (Article 39).

The norms and rules set out in international legal instruments constitute the principles that shape an approximate mechanism for delivering juvenile justice. Recognized, concretized and supplemented by the national legislation of a particular country, these principles form a specific model of juvenile justice.

According to the second part of the Article 148 of the Constitution of the Republic of Azerbaijan, the international treaties, to which Azerbaijan is a party, are an integral part of the legislation system of the country [1]. Also, the Milli Mejlis (Parliament) of Azerbaijan, with a law of May 31, 2002, approved the Regulations on the Commission for Minors' Affairs and Protection of their Rights, while the *Law on Juvenile Homelessness and Delinquency Prevention* was adopted on May 24, 2005. In addition, the adoption of the Law on Social Protection of Children who *have lost* Parents and deprived of Parental Care on August 30, 1999 and other documents such as the 2014-2020 State Program for Improving Mother and Child Health, the Azerbaijani Family Strategy, the National Strategy for Children, and the Law on State Assistance to Large Families are of great importance in implementation of the constitutional norms related to children and their rights. In principle, juvenile justice was established in Azerbaijan in 2005, when the President of the Republic of Azerbaijan signed the law on prevention of child neglect and delinquency. To implement the law, UNICEF, the OSCE Mission in Azerbaijan, the Ministry of Internal Affairs of the Republic of Azerbaijan, together with the Azerbaijan NGO Alliance for Children's Rights and the Reliable Future organization, in 2007 established Azerbaijan's first rehabilitation center for minors who were previously involved in various offenses. In addition, Azerbaijan got its first juvenile law clinic. The Ministry of Justice of the Republic of Azerbaijan undertook the main burden in eliminating the problems faced in development of juvenile justice. One of the clearly visible results is the creation of two specialized judge teams (six judges) for juvenile justice in the Baku Court for Grave Crimes.

According to the information from the Penitentiary Service under the Ministry of Justice of the Republic of Azerbaijan, only 47 people are serving their sentences in the Baku correctional facility for minors. Not so long ago, the number of juvenile convicts serving their sentences in the aforementioned correctional facility was 200.

In most countries of the world, as in Azerbaijan, the age of majority is 18, while in some other countries minors are the persons who have not reached 15, 17, 20 or 21 years of age. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted December 14, 1990, are based on the provision that the deprivation of a minor's liberty should be applied as a last resort. The Rules are aimed at setting the United Nations minimum standards for the protection of minors deprived of their liberty in accordance with human rights and fundamental freedoms. The United Nations Guidelines for the Prevention of Juvenile Delinquency, also known as the Riyadh Guidelines, *set activities for the prevention of crime among young people*. The Riyadh Guidelines are applied in the framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) [11, 10, 14].

In the Beijing Rules of November 29, 1985, the age of majority is set at 18 or above, with a reservation that unless another age is set by each national legal system (8). Each national legislation sets the principles of juvenile justice by concretizing or supplementing international principles, as well as by establishing its own principles of juvenile justice. In the states that have a standalone (autonomous) juvenile justice system, the judicial proceedings relating to *children* have more clear specifics. In such countries, as a rule, the principles of juvenile justice are enshrined in special laws. For example, Germany has a law on the administration of juvenile justice, adopted on August 4, 1953 [12, 49]. In the states that have no standalone system of juvenile justice and no corresponding legal framework (in our case, in the Republic of Azerbaijan), the specifics of judicial proceedings relating to *children* and the principles of juvenile justice are discernible in the peculiarities of the court proceedings. For example, in Azerbaijan, the criminal proceedings relating to minors are regulated by the norms set in the Special Chapter of the Code of Criminal Procedure of the Republic of Azerbaijan of July 14, 2000, which is titled as "Proceedings Concerning Minors" (articles 428-435) [13].

Among the European countries, England was the first to establish a separate juvenile court in 1905. At present, along with England most of the European countries, for example, Germany, Sweden, France have standalone juvenile courts not connected with the system of general jurisdiction courts. In some other European countries, for example, in Ireland, Italy, and Switzerland the general jurisdiction courts have specialized teams authorized to deal with the cases relating to minors. To date, there are several different models of juvenile justice, conventionally called Continental, Scandinavian and Anglo-Saxon.

In France, the juvenile court includes three types of courts different in composition and category of the criminal cases considered (a single judge for juvenile cases, a board of judges, and a jury for juvenile cases). The juvenile justice system in France has a special educational service. This educational service, which is a psychological and pedagogical organization, implements patronage of children in danger, juvenile delinquents, and young adults (18 to 21 years of age). The educational service of the juvenile justice system in France is an effective resource for implementation of youth policy strategies, promoting a conflict-free integration of young people into the modern society, working closely with families. Training of educators for the educational service of the French juvenile justice is carried out by the pedagogical education system. France has accumulated extensive experience in the training of educators (juvenile educators) for the educational service of the juvenile justice system.

Meanwhile, in Poland, the church has played a major role in creating a system for helping orphans and delinquents, and implementing a special regime for their upbringing. Italy was the first European country where the church initiated a special institution for juvenile offenders.

It is worth noting that in the Commonwealth of Independent States (CIS) the attitude towards adoption of a standalone law on juvenile justice is ambiguous. For example, the Republic of Kazakhstan has juvenile courts, which are the first specialized courts for the cases of minors in the history of the Kazakh justice system. At the moment, Kazakhstan is the only country in the post-Soviet area that has juvenile courts and where a system of juvenile justice has widely spread with 19 juvenile courts operating there.

Meanwhile, in the Code of the Kyrgyz Republic on Children, dated July 10, 2012, the 11th chapter is devoted to juvenile justice (articles 86-102), that is, the term “juvenile justice” is officially used in the articles of this chapter. The Article 86 of the Code, titled “The Notion of Juvenile Justice”, states: “Juvenile justice denotes a system of measures for children in conflict with the law, which includes crime prevention, administration of justice, rehabilitation and social reintegration, taking into account gender, age, intelligence, physical and mental characteristics of their development [14].

In the Russian Federation, which has usually played the role of a generator of ideas in the post-Soviet area, work is underway to implement a juvenile justice project (as well as in Belarus and Ukraine). Despite the fact that there is no a standalone law on juvenile justice (although its draft was prepared long ago, in 1999), in April 2000, the parliamentary hearings in the State Duma of the Russian Federation, discussed the drafts of the “Fundamentals of Legislation on Juvenile Justice in the Russian Federation” and the “Federal Constitutional Law on Amending the Federal Constitutional Law on the Judiciary of the Russian Federation”. However, to date these laws have not been adopted.

This is while, a special training course, called Juvenile Law, was introduced in the law faculties of many higher educational institutions in the Russian Federation. Juvenile Law is an emerging branch of law with a special subject – legal relations involving the minors. The aforementioned training course focuses on juvenile justice and there juvenile justice is understood as an independent legal institute. Meanwhile, the Russian scholar K.I.Smelovtsev justifiably suggests the following definition of juvenile justice: “Juvenile justice is a system that forms a set of legal mechanisms, medical-social, psychological-pedagogical and rehabilitation procedures and programs, designed to ensure the protection of rights, freedoms and the legitimate interests of minors, as well as persons responsible for their upbringing, and implemented by states and non-state bodies, institutions and organizations” [15, 27].

Juvenile justice, as a form of administration of justice, differs from the general justice (general criminal law and general civil law) for its specific principles – increased legal protection of the rights and interests of minors (due to the peculiarities of the subject under consideration, i.e. the peculiarities of the mental processes of the minors).

Unfortunately, today only internal affairs bodies deal with the prevention of juvenile delinquency. This is while many foreign and domestic experts believe that prevention is primarily the job of the family, schools, public and religious organizations, i.e. the institutions of civil society. Family is the backbone of a society – a human being is shaped as a person in his/her own family. Family, especially in the early stages of personality formation, plays a crucial role in the crime prevention. It is a kind of micro-state with its own system of upbringing, persuasion and punishment, and prevention of antisocial behavior.

Although we traditionally call the family “a state within a state”, it cannot be completely isolated from the impact of positive and negative processes occurring in the society. And the family itself is quite capable of influencing the processes in the society. The society itself should be interested in the positive impact of the family on its development. The more material, cultural and other opportunities are created for the normal functioning of the family, the higher will be the level of crime prevention. Experience shows that in those societies where there is a cult of

family, parents and children, there is a lower crime rate. Of course, the family, as an executor of crime prevention, successfully operates with the state via well-established interaction – through the local preventive and law enforcement authorities, educational and children’s institutions.

It seems that the main burden in legal upbringing should lie on the targeted, consistent and systematic legal education, which starts at the high school. It is even possible that this process should start from the kindergartens, where the children are taught what is good, what is bad, what can be done and what cannot be done. However, the full legal education should be carried out at the school, and the single program for the legal education of young students should cover all actions taken by the state bodies, public organizations and educational institutions with an aim to nurture high legal culture and lawful active behavior in adolescents and young people. Of course, any legal training course should contain materials that familiarize students with the basics of constitutional law, the legal status of an individual, and the special rights of young students. But priority needs be given to training in the use of rights, the ability to live fully in the world of rights and duties, and the ability to use the rights and duties in specific life situations.

Ideally, our schools should give the society a spiritually rich personality, oriented to universal human values, with a developed sense of political and moral responsibility. Now, we must admit that the schools by keeping their previous quality continue to shape lack of initiative, social apathy, and disrespect for the law. The foundation of this state of affairs was laid back in Soviet times, “when the feminization of the school pedagogical corps, among other results, led to the nomination of girls to all the ‘responsible’ public positions in the Pioneer and Komsomol organizations and school self-government: ‘girls are more obedient and more effective’” [16, 114]. The current state of affairs is not very different from the Soviet period, with the same conditions for the suppression of the male students’ desire for search and self-approval. “After all, a man can be raised only if he actively absorbs ‘male’ social roles: leadership, responsibility, care for the ‘weak’ females, solving collective tasks, etc.” [16, 114]. In our country, gender equality is ensured for women and men in all areas of social life. However, this does not mean denying that traditionally burden of household, upbringing of children fall upon women. The moral formation of adolescent girls also differs from the education of boys in a number of aspects.

Juvenile justice is designed to ensure that the juvenile offender is not punished, but re-educated, i.e., measures alternative to imprisonment are a priority here. This concept in itself is sound: after all, a teenager, especially a child, is not fully able to take responsibility for his/her actions. Therefore, for what was done, a juvenile offender for the beginning deserves not so much a punishment, as a strict inculcation. We believe that it is advisable, using the positive experience of other countries that have a standalone system of juvenile justice, to adopt – using the international juvenile justice principles - the Law of the Republic of Azerbaijan on the Administration of Juvenile Justice, with a provision on establishment of standalone juvenile courts. Because the activity of autonomous juvenile courts, unlike other bodies, is aimed at both protecting and restoring the rights of the child, and preventing new crimes and punishing the perpetrators.

Perhaps, in every country juvenile justice is still far from a national conceptual framework that could be considered as optimal. This especially applies to law enforcement. The experience of someone else cannot be blindly copied. The experience of someone else is not the only right path, although at the same time, it is not a path to the unknown. In creating their own systems of juvenile justice, young states, including Azerbaijan, need, in our view, to rely very much on their own legal achievements, cultural and historical experience, ignoring which is fraught with great dangers.

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RISE OF THE TERRORISM UNDER THE GUISE OF ISLAM DURING THE COLD WAR

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Abstract

The analysis of main factors and history of the rise of terrorism under the guise of islam during the cold war is held. The fact that process of emergence of radical movements in the near and middle east countries was derived from both internal socio-political and external global geopolitical processes is shown.

It is mentioned, that after the gain of state independence Muslim countries stuck between two world poles, and Islam, in different versions matched with nationalism, in dependence with the nature of ruling regime showed itself in various forms. Social and political discontent of the population in these countries translated into cultural field through refusal of nationalist ideology of ruling regimes and its substitution by Islamic system of views. As a result juxtaposition of nationalist ideology with religious system of views in Muslim countries brought to international arena Islamic movements.

It is maintained, that the Soviet Union in its fight for geopolitical supremacy on the near and middle east, as well as in the south Asia supported elaboration and interpretation of some Islamic dogmas in socialist way. The west headed by the USA, in its turn, actively used it as a tool against the spread of leftist ideas in these regions.

Invasion of the soviet troops in December 1979 to Afghanistan became a real reflection of aggravation of the global ideological confrontation, which turned into open armed clash. Engagement of thousands of foreign fighters from different countries in Afghanistan war stimulated creation of transnational network to “protect Muslims from threats”, what in next decades turned into global network of activists of so called “salafi jihadism”. most of these “jihadists” participated in conflicts, first in Bosnia, then in Chechnya, the south-east Asia, the horn of Africa, and finally, in Iraq and Syria. They as an ideological basis of the activity used certain Islamic dogmas, artificially separated from their religious, philosophical and spiritual context.

Keywords: *terrorism, Muslim brotherhood, Arab nationalism, Islamism movement, afghan services bureau, al-Qaida, foreign fighters*

In the early 90^s of the 20th century the world experienced fundamental changes. The collapse of the USSR, once a powerful state, as well as the failure of socialist block and communist ideology marked, at the first stage, the end of the global ideological confrontation era, called “the cold war”. Secondly, a number of new independent states appeared on the world map, followed by ethnic conflicts arose on the territory of the majority of them. Many international terrorist organizations of ethno-national and separatist nature were involved in these conflicts and led sabotage-terroristic war on the side of separatist movements.

This period is also remarkable with the growth of terrorist organizations in whose activities religious motives became more dominant, and the best-known terrorist acts were executed namely by these organizations. as Bruce Hoffman said, “in 1994, for example, a third (sixteen) of the forty-nine identifiable international terrorist groups active that year could be classified as religious in character and/or motivation; and in 1995, their number grew yet again, to account for

nearly half (twenty-six, or 46 percent) of the fifty-six known active international terrorist groups” [8, 91].

The last quarter of the 20th century was marked by emergence and rise of international terrorism, which at the beginning of 21st century turned into a global threat under the guise of one of the world religions - Islam. A problem related to a growth of terroristic activities of these organizations under the veil of Islam on the border of 20-21st century became so acute, that it gradually gained geopolitical tones, where Islam, interpreted in a particular way by radical groups, got a place of ideological foundation of these extremist organizations. They constantly try to justify their violent actions referring to the Quran – holy Islamic book, as well as act under the slogan of jihad against non-Islamic and moderate Islamic part of the world community.

Present article gives an analysis of the main factors which lead to an emergence of terroristic organizations under the concealing of Islam at the second part of 20th century. This problem is also considered within global ideological confrontation of world leading states. Given approach mostly derives from the fact that terrorism was always used and continuous to be used by political powers and governments of various states, including leading powers, to reach their own geopolitical targets.

Socio-political processes in the Middle East in the second part of 20th century

The development of terrorism after the World War II in a certain extent was stimulated by anti-colonial struggle of peoples, which was caused by a natural historical stage of development of their national self-awareness. Peoples of Asia, Africa and America stepped forward for their self-identification and state independence.

Situation on the international arena in that period was characterized by great socio-political crises and emergence of opposed military-political and ideological blocks headed by the USA and USSR, sustainable anti-military and anti-colonial demonstrations along with the collapse of once powerful empires. In this period through to the downfall of the USSR, which was called “the cold war”, superpowers were engaged in problems of global confrontation, neglecting the interests of other countries and regions. Namely global military-political and ideological confrontation along with their race for geopolitical superiority in certain world regions, according to academician Y.M.Primakov, “foreordain striving of each of them, often without any scruples, to attract to their side as many movements and organizations as possible” [17, 16].

The socio-political situation, shaped in the 60s in the North Africa and Near East, was associated with the fact that countries of those regions, after breaking free of colonialism, were trying to find independent ways of development. *From one side*, social movements and youth organizations, which declared their intention to support in every way possible a fair Palestinian struggle for returning their occupied by Israel territories, were trying to get an active involvement into construction of a state in their own countries. *From the second side*, the Soviet leadership, which was given a priority by those regions’ countries, trying to keep an initiative in a contest for influence, rendered them economic and military-technical assistance. Meanwhile the North African and Near East leaders, looking up to the USSR with its official atheistic stance, clearly understood that they would not be able to avoid the issue with Islam. *From the third side*, the West, in the course of confrontation with the Soviet Union, was calculating possible scenarios and intimidate with Marxist ideology, emphasizing exactly an anti-religious nature of this doctrine. So, all these factors created multi-vector nature of socio-political development in these states.

In post-war period a majority of Muslim countries (except Muslim republics of the former USSR and Bosnia) gained the state independence. In the 60s, the ruling regimes there, according to their attitude to Islam, were divided in two groups, which by their preferences and political orientations in a certain degree reflected the balance of power between the two ideological blocs. The group of states, which supported close relations with the USSR, restricted activities of traditional Islamic institutions, trying to turn them into conductors of socialist ideology among

religion-oriented masses. In the other group of countries, which were allied with the Western bloc, headed by the USA, the attitude to Islam, depending on position of political power, varied from fusion of the state and religion (Saudi Arabia) to secularism (Turkey). So, towards the end of 60s Muslim countries stuck between two world poles, and Islam, matching in different variations with nationalism, showed itself according to nature of regimes.

The USSR establishment supported countries which led the national liberation struggle and anti-colonial wars. However, in antagonism with the West along with them it also helped radical organizations, which were intended to untie an armed confrontation under nationalist and religious slogans. As a result, in 60-70s, parties and united patriotic fronts in Arabic countries consisting of communists and nationalists started to emerge, which pointed at their involvement in the orbit of communist camp and the spread of the USSR influence in this region. That time a struggle for “socialist synthesis” of Islam, elaboration and interpretation of its dogmas in socialist mode in Islamic countries started to occur. Leaders and several representatives of national liberation movements and organizations in Muslim countries proved, that Islam from its very beginning held socialist ideas [6, 474]. In all these, they saw an opportunity to spread and establish the socialism among faithful, so the basics of philosophy of Islam had been passed to masses through socialist prism. For example, the President of Egypt Nasser in 1965 on one of the sessions of the Arab Socialist Union claimed that Islam like Marxist teaching rejects exploitation of man and from such perspective Islam is “for 100% a socialist religion” [15, 113]. As another example, the attempt to mix Islam with Marxism by ideologists of the People’s Mojahedin Organization of Iran (PMOI) Ali Shariati and Ayatollah Teleghani can also be given, where social equity, struggle against imperialism and exploitation of a man by another man as well as building of classless society were taken as a foundation [16]. However, economic projects, implemented with the help of the USSR did not influence the socio-economic situation in the countries of the region as it was expected, what was mainly caused by a lack of knowledge on the region and use of an obsolete technology.

An important, if not the main role, in formation of the Islamic mentality and actions in the 60s belongs to the Society of the Muslim Brothers (*al-Ikhwan al-Muslimin*, a.k.a. *Muslim Brotherhood*), founded by Hassan al-Banna in 1928 in Egypt. At the first stages they welcomed Nasser’s accession to power in July 1952, but his nationalist project soon contradicted their Islamic ideology. In 1954 the Society was dissolved and defeated, its members were arrested and exiled, where the majority of them moved mainly to Saudi Arabia and Jordan. The rest of them, who lived outside Egypt, in 20 years managed not only to restore their power and improve, but also to turn into a rich and mass-scaled organization. Thus, many members of the Society who came to Saudi Arabia, which had already started to receive a significant income from the oil trade, made a class of better educated personnel than the most of Saudis. The Society members also had a great influence in the Medical University, where ideas of the Muslim Brotherhood were taught to students, who came from all over the Muslim countries. This led to a popularization of their ideas. During the stay in Saudi Arabia the most of the Society members made a fortune and went back to Egypt after Nasser’s death in 1970, where they started to invest in construction of the Islamic banking system which financially supported movements [11]. So, by the beginning of 70s a movement which foundation was consisted of Wahhabi ulama and intellectuals of the Islamic movement of the Muslim Brotherhood occurred, and it is clear that in times of global geopolitical confrontation this enemy of the President of Egypt Nasser’s socialist ideas could not stay away from the Western block’s attention.

The defeat of the Arab countries in the war with Israel in 1967 changed the perspective in views of regional population. If earlier Nasser’s revolutionary-nationalist policy of stimulating the regional economic growth had better popularity in the Arab countries, after the recent events Saudi Arabia, which due to the oil production and increasing oil prices turned into a state with financial power, became the example of prosperity. In that period consensus on nationalist ideas of development in the Arab countries started to crack at the seams, and the Islamist ideology of

the Muslim Brotherhood along with other protest ideologies tried to cover occurred cultural gap. It was the same time when radical nationalist and religious organizations which earlier cooperated with the USSR under the pretense of support to the fair struggle of Palestinian people began to apply to Saudi Arabia for help.

It needs to be emphasized, that founded in 1960 by the initiative of Saudi Arabia, Kuwait, Iraq, Iran and Venezuela the Organization of the Petroleum Exporting Countries (OPEC) also had a great influence on the socio-political situation in the region. By the first half of 70^s OPEC controlled nearly 20% of world oil production. When in 1973 Israel once again defeated the military coalition of the Arab countries, the Persian Gulf oil magnates raised the oil prices 6-7 times, trying to exert pressure on its allies and protect interests of their states. All these resulted in economic crisis in Europe, and as Russian orientalist V.N.Plastun notes, “transnational corporations had no power to confront this unexpected move. It turned to become a weapon of the Arab (Islamic) world against non-Muslim West” [16]. The Gulf countries, particularly Saudi Arabia, decided to increase oil production in future as this way leads to quick and large profiteering. Eventually, these regimes “gradually lost their ability to mobilize the society” and, as A.Ignatenko noted in his interview, “till 70s Wahhabism existed in local rural version. An ordinary person could get an impression, that if Wahhabis possessed Holy city Mecca, it meant that they embodied true Islam. However, when oil dollars brought this sort of Islam to the political arena, it became clear what and whom the world faced. Ideas of Wahhabism started to penetrate the mind of Muslims in Egypt, Algeria and almost throughout whole Muslim world” [24].

In the second half of 1960s a generation born at independence in the most Muslim countries became adults. It did not take part in the struggles against colonial oppression, which legitimized nationalist ruling regimes, and did not witness all those events. It was mainly gathered in poor quarters of city suburbs and hardly suited social structure of the country. As a result, cultural and social gap between youth and old generation became as big as it never was throughout whole history of Islam. Thus, social and political dissatisfaction displayed itself namely in the cultural field through rejection of nationalist ideology of ruling regimes and its substitution by the system of Islamic views. This process arose among students. Student quarters, which, until the end of 1970s, were under the control of nationalist groups, were passed to Islamic movements. At that time Islamic intellectual class formed out of students began to take shape. It asserted itself from the beginning of 1970s in student campuses in Egypt, Malaysia and Pakistan, and then spread throughout the whole Muslim world. Islamist intellectuals did not consist of homogenous social groups with clear targets. Started with cultural breach with nationalism it continued with turning Islamism into a fight for political dominion. These all let the movement attract followers from various social segments with different class interests [11].

The same period the Western countries headed by the USA were worried on the growth of the USSR influence what made them have intense consultations among them as well as with various Arab regimes. To fight the dispersal of communist ideology close cooperation of secret services of France, Egypt, Iran, Saudi Arabia etc. was organized. According to prof. A.Ignatenko, all these efforts ended up in the shaping of an informal group, which members consistently used Islam to achieve different given goals. This group included the head of SDECE (France’s external intelligence agency) Alexandre de Marenches, the President of Egypt in 1970 Anwar Sadat, the Shah of Iran Mohammad Reza Pahlavi, the King of Morocco Hasan II and the former director of the general intelligence directorate of Saudi Arabia Kamal Adham. In September 1976 abovementioned intelligence services signed an agreement where the fight against spread of communist ideas as well as measures to prevent the Soviet influence in the Third World countries and emergence of regimes with “socialist orientation” was determined as the main goal [10]. Due to the successful activities of this group, a reorientation of Egypt to the West took place and in 1972 the Soviet military experts were expelled from the country; Somali

rejected the services of the Soviet military experts and started the war against Ethiopia which proclaimed the “socialist orientation” etc.

Moreover, in some Arab countries, the organizations against communism have been created, which supported “anti-Soviet slogans” such as “let’s bring the Muslims of the USSR back to Islam” [14]. Islam was used as an ideological foundation for these organizations in their struggle against communist ideology. The use of Islam in the anti-communist struggle became possible as the Soviet Union supported non-religious leftist political regimes and organizations in the countries of the Near East. By the time of expansion of the Soviet influence in the Arab countries Islam did not prevent the spread of the left-wing ideas. In these circumstances, as prof. A. Ignatenko fairly noted, to prevent this ideological expansion another sort of Islam was needed, which would not only get in the way of leftist ideas, but simultaneously could become an alternative for already existed weak in political perspective Islam [10].

A great role in the spread of different Islam from the early 1970s was played by the processes taken place in Egypt. After Anwar Sadat’s accession to power this process was accelerated. In 1971 he met the members of the Muslim Brotherhood whose activities were banned in Nasser’s times. During the meeting Anwar Sadat declared the “common goals in the struggle against atheism and communism” [4]. Soon, in Algeria, Sudan, occupied Palestinian territory, Lebanon and other Arab countries numerous radical Islamist groupings and unions began to take shape.

Afghan armed confrontation

In the second half of 1970s several significant historical events which played an important role in international relations and in further aggravation of geopolitical confrontation of the leading states in the Near and Middle East took place.

First, in April 1978 military coup d’état called “the Saur (April) Revolution” took place in Afghanistan and brought to power pro-Soviet the People’s Democratic Party led by Taraki. After this coup many of Afghani regions were plagued by rebellion. It was the time when the first foreign fighters started to come to Afghanistan to fight the communist regime. As noted Anthony Hyman, referring to the period between the April 1978 coup and the December 1979 Soviet invasion, that even in the first phase of the struggle against the Soviet-backed Kabul regime there was a small foreign Muslim presence, composed of Pakistani, Egyptian and other Arab volunteers, including medical doctors as well as fighters. Some black American Muslims and Muslim Filipinos from Mindanao also came to fight [9, 74].

Second, in 1979 the Islamic Revolution in Iran won followed by the overthrow of the Shah regime what led to a weakening of positions of the abovementioned anti-communist labour group. NATO’s Southern flank also appeared under the threat, so the Western countries headed by the USA had to look for a new base to transfer earlier placed in Iran powerful tracking devices used in monitoring the territory of the Southern regions of the USSR [5, pp.187-235]. On the other hand, signing by the President of Egypt Anwar Sadat, who led a pro-American policy, a treaty with Israel and his visit to this country in the mid-1970s draw the indignation and protests in the Arab countries, where the population interpreted the friendly embraces between an Arab and a Jew as a betrayal of Islam. These circumstances forced young radicals to look for another way out of the crisis, and they saw it in Iran, where the Islamic Republic was established and the Shah’s regime was overthrown. The Iranian revolution became an example for them in strengthening Islam’s role in political games and turning it into the state policy, as well as in confronting the influence of the Western countries, particularly the USA, in the Near and Middle East. Soon, on the occupied Palestinian territories, a number of organizations financed and monetarily assisted by Iran were formed.

Third, in November 1979 nearly 1500-3000 radical Islamists from Egypt, Sudan, Kuwait, Iraq, the North and South Yemen under the lead of Juhayman al-Otaybi executed the Grand Mosque seizure of the Masjid al Haram in Mecca. According to Bodanski, they were trained in

Iran and a majority of them were taught by instructors from GDR, Cuba and the Popular Front for the Liberation of Palestine (PFLP). The rebellion was defeated in 22 days by government army with the help of France's Special Forces. During the operation 2700 people of the state army and 450 people of rebels died. In January 1980, 63 participants of the rebellion including Juhayman al-Otaybi were executed [2, 49-50], [10]. This event became an evidence of presence of explosive religious extremist potential inside the country. It might also influence young radicals and ensure them in idea, that protection of the Islamic world and establishment of the Islamic ruling system is possible only through violence.

Fourth is that the USA began rapprochement with China and installation of a tracking station on the border with the Soviet Union to monitor its territory. Preparations for military cooperation between the US and China began [5, 187-235].

Fifth, April 1978 military coup d'état in Afghanistan alarmed governments of the Western and Muslim countries as most of them saw this event as evidence of Soviet encroachment into the region. Six month prior to the entry of Soviet forces in Afghanistan, on 3 July 1979, the US President Jimmy Carter signed a command on secret aid to pro-Soviet Kabul regime opponents [10]. According to Robert Gates, US President authorized \$500,000 in covert aid to the Afghan rebels [7, 143].

Thus, in the late 1970s, the situation around Afghanistan which from geopolitical perspective was a part of the USSR's influence zone was changing rapidly. Amin's 1979 coup forced the Soviet leadership to take drastic measures which ended up in decision to send the Soviet forces to Afghanistan. Analysts are inclined to think that this decision was made particularly under the influence of deliberate actions of the USA which used "also "extraordinary" methods of the National Security Agency (NSA), CIA and diplomacy", what forced the USSR to meet enormous expenses [5, 187-235].

The entry of Soviet forces in Afghanistan was deemed by the world community to be not other than a violation of the principles of international law and aggression against sovereign state, while Muslim countries perceived this decision as an act of armed violence of the atheistic superpower against the Islamic state. The US also qualified the decision of the Soviet leadership as Moscow's desire to get a control over the energy resources of the Near and Middle East – the region which was declared a zone of the US vital interests. These circumstances created a base for rapprochement of the US with Muslim countries which evaluated the entry of the Soviet troops in Afghanistan as an aggression against Islam.

The Soviet invasion radically changed a situation also inside Afghanistan. Afghans, some spontaneously, some for ideological and political reasons, en masse joined the ranks of anticommunist resistance forces. There also were some who joined because Soviet military operations destroyed their houses, crops, cattle and villages what made them leave the country. The leadership of Afghanistan's anti-Soviet Islamist movement emerged during the 1960s from a group of scholars of Islamic law who were students and postgraduates of Cairo's al-Azhar University, the preeminent institution of religious learning in the modern Sunni world [20, 182].

The leaders of Afghanistan's Islamist movements as students and postgraduates of al-Azhar University came under the ideological influence of the Muslim Brotherhood and develop links with its followers. Therefore, the Egyptian strand of Islamist thought associated with the Muslim Brotherhood defined the ideological basis of activities of Afghanistan's anti-communist movement. This fact helps to explain the predominance of Egyptian Islamism in the intellectual roots of al-Qa'ida and other groups born out of Afghani anti-Soviet resistance movement [19, pp.69-83]. In general, the Afghan anti-Soviet resistance was represented by a coalition of seven parties, which received financial and material support from overseas including weapons, ammunition and various subsidies. In support for anti-Soviet resistance preference was given to groups closer to Wahhabism and the Muslim Brotherhood [25].

Russian (Soviet) researchers assert that on a rapidly changing geopolitical background, ideology against Soviet expansion led to the formation of a paradoxical alliance between

Americans, Chinese, pro-Western Muslims and anti-Western radical Islamists who in the struggle against the Soviet Union decided to play a religious card - Islam. So, to confront the Soviet Union in Afghanistan, along with the national-liberation struggle against the aggressor and his puppet regime, was created an international coalition. This coalition included the United States, China, Pakistan and Saudi Arabia. The real reason for creating an anti-Soviet coalition and organizing an armed struggle against the USSR was hidden in the very essence of the global confrontation between the two super-powers, in which the West used the religious factor for its political purposes. As analysts note, in this global confrontation of great powers in the Middle East and South Asia, Saudi Arabia, Pakistan, China and Egypt had their own interests. In particular, Saudi Arabia was keen not only to export its internal extremist potential, but also to intercept Iran's initiative to support Islamists around the world. The entry of Soviet troops in Afghanistan became a real opportunity for Saudi Arabia to redirect an impulse of Islamic radicalism accumulated within the country, and with the use of slogans of "Muslim solidarity" and call for jihad against communism, Riyadh and Washington successfully moved the assets of the radical Islamism from the Near to the Middle East and to the South Asia. A heavy financial flow from Saudi Arabia to Afghanistan, military assistance by weapons, volunteers along with specially formed for the war in Afghanistan the Arab expeditionary corps was executed. Pakistan, using a unique opportunity as well as military and financial assistance from the US, planned to create a zone of influence between the USSR, Iran and India. China, in its turn, in order to modernize its economy and increase its military-strategic potential, also counted on receiving from the US the corresponding support [5, 187-235].

According to O.Moldaliev, for the greater effectiveness of the war against the Soviet troops in Afghanistan, it was decided to obtain a symbol of the anti-communist movement of Muslims. He notes that "one of the princes of Saudi Arabia, the custodian of the two Holy Mosques of Muslims, was chosen to become that symbol... However the royal family had its own views on this matter and rejected the offer of its leadership of the jihad against the infidels, proposing as a compromise, a member of a confidant to the throne family... Osama bin Laden" [14]. The Arab oil-producing countries and the US allocate for these purposes, according to analysts, 285 million dollars per year [16].

Academician E.M. Primakov writes that after the introduction of Soviet troops in Afghanistan, the personality of Osama bin Laden, one of the 52 children of Mohammad bin Laden, the head of the construction company "Saudi bin Laden Group", which branched in the oil, chemical industry, and banking, telecommunications and satellite communications, has become increasingly important in the Islamist radical movement. Osama bin Laden went through the Afghan war until the withdrawal of Soviet troops, financed the recruitment, training and dispatch to Afghanistan of foreign militants, who became known as "Afghan Arabs" [17, 17].

It is important to emphasize, that views of Western and Russian (Soviet) researchers on the role of Osama bin Laden and foreign fighters in organization of anti-Soviet resistance differs from each other. Thus, in the first half of 1980 after the entry of the USSR's 40th army the flow of volunteers from the Muslim countries to fight communists was negligible and role of foreign fighters was unnoticed. The first years of anti-Soviet struggle passed under the informational propagandist campaigns initiated within Afghanistan of special people who were in charge of recruitment of foreign fighters. But by 1984, the resources being poured into the conflict by other countries - especially Saudi Arabia and the United States – had become much greater [21]. Only then observers began to distinguish a presence of foreign volunteers. A key role in attracting foreign fighters to the Afghanistan's struggle against the Soviet aggression belonged to Abdullah Azzam. He was born in 1941 in the North of Palestine, in 1959-1966 he studied Sharia in Damascus, in 1959 joined the Muslim Brotherhood, in a year managed to become their leader in Syrian University. He participated in Arab-Israel war in 1967, in 1970 he broke up with the Palestine Liberation Organization (PLO). Few years later Azzam was expelled from the Syrian University and moved to Saudi Arabia where he became a lecturer at King Abdul Aziz

University in Jeddah. There Azzam got into contact with the Muslim World League and took a position of Head of education sector. Young Osama bin Laden was one of his students in King Abdul Aziz University. In early 1980s Azzam came to Afghanistan. Kepel J. notes, that according to some sources, Azzam was sent to Islamabad by the League to teach in the International Islamic University, which was established in 1980 and was under the control of the Muslim Brotherhood [11, 143-144].

To support mujahidin in 1984 Azzam moved to Peshawar which was a central city of the North-West province of Pakistan located on the border with Afghanistan. He was disappointed that by 1984 to fight the Soviets in Afghanistan only “ten or twenty men” had come, so he called upon the Brothers to send mujahidin. When the leadership demurred, preferring to send weapons and humanitarian aid, Azzam publicly broke with the group [13, 105]. The same year in 1984 he established the *Maktab al-Khidamat* or *Afghan Services Bureau*. This organization was engaged in raising funds and volunteers for the Afghan Jihad throughout the world why they created recruitment offices everywhere. Osama bin Laden and Ayman al-Zawahiri joined the anti-Soviet struggle via the Services Bureau, and following Azzam’s assassination in 1989, the organization was transformed into al-Qaida [22].

Fighters were recruited in various ways all over the world. Magazines, newsletters, itinerant speakers, conferences and the existing socio-political networks of Islamist organizations like the Muslim Brotherhood were used to attract potential mujahidin in their fight for survived coreligionists. Simultaneous growth of revolutionary Islamists movements in other parts of the world helped to prepare the foundation for this recruitment. Moreover, governments of some countries hosting such radicals encouraged their troublesome Islamist subjects to join the Afghanistan’s fight. In some cases, these governments “emptied their prisons” of militant Islamists and sent them to fight the Soviets [1, 24]. Pakistan gave instructions to its embassies to grant visas without restriction to anyone who applies to join the Afghan Jihad against aggression. Training camps were established near the Afghanistan border, which ultimately processed tens of thousands of foreign fighters [21, 199].

In all, there is no exact number of “Afghan Arabs”, who fought in anti-Soviet armed conflict (1979-1989), and estimation varies from 25 to 100 thousand. For instance, Milton Bearden supposes that during 1980s “as many as 25.000 Arabs” may have fought and/or trained in Afghanistan [1, 24]. This number can be also met in Anthony Hyman’s work [9, 79]. Anthony Davis thinks that the number was well over 40.000 people [3]. Ahmed Rashid writes, that “Muslim radical from 43 Islamic countries”, which participated in armed conflicts in Afghanistan, were 35.000, while the number of “Muslim radicals, who had direct contacts with Pakistan and Afghanistan and were influenced by the Jihad” made more than 100.000 people [18, 130]. Barnett Rubin refers to a former brigadier general of Inter-Services Intelligence of Pakistan (ISI) who stated that “80.000 mujahidin passed through training camps for the Afghan Jihad between 1983 and 1987” [21, 199]. According to the Egyptian Minister of Interior, who stated in April 2002, that “as many as 80.000 people may have been trained in Afghanistan under bin Laden” [23, 98]. So, a flow of outside fighters to Afghanistan for anti-Soviet struggle had a nature of transnational movement.

In general, the war in Afghanistan became a real reflection of the aggravation to the level of the global ideological confrontation, which turned into the open armed conflict. However, the reality of this war, as Prof. A. Ignatenko writes, was that it was “above all, a civil war, where Soviet troops fought along with Muslim Afghans against other Muslim Afghans, which were supported (in various degrees and forms) by the USA, the Great Britain, Pakistan, China, Saudi Arabia, Israel, France. Foreign mujahidin - those who supposedly had to possess highly developed and keen religious consious - had no other choice but to kill their brothers in faith. For mujahidin volunteers from the Arab countries they had to look for religious, Islamic justification (even a need) of this act - killing Muslims, citizens of another county, and this justification should not have a nature of political publication, but appeal to Sharia (Islamic law – **R.S.**). He

also notes, that the participation of Arab expeditionary corps which consisted mainly of those who fought for religious motives, explaining their decision by Islam solidarity and its protection against infidels during Jihad, led to serious “mutations” in Islam and influenced the future evolution of Islam itself [10].

Thus, in 1980s troops of foreign mujahidin in Afghanistan were formed as a tool to increase an influence of Western countries headed by the US in this geopolitical region and to prevent the spread of communist ideas. However, as future events showed, after the collapse of the USSR and the end of cold war these troops turned into an independent and self-sufficient power with own interests in region, own perspective on the role and place of Islam in evolution of the civilization. These claims today are spread beyond political borders of Afghanistan, through all Muslim countries.

Foreign fighters called “Afghan Arabs” perhaps were not an indicative factor in the USSR’s military failure; however, a flow of thousands of outside fighters to Afghanistan for the anti-Soviet fight proved that a local conflict can be used to provide a common focus point for the fighters all around the world. The Soviet withdrawal did not lead to demobilization of “Afghan Arabas”. According to Lawrence Wright, some countries simple refused to let the fighters return. “They became a stateless, vagrant mob of religious mercenaries” [22, 163-164]. In January 1993 Pakistan authorities ordered the closure of mujahidin offices and foreign fighters must leave the country as their visas were no more valid [13, 106]. Pakistan’s decision exacerbated the state of foreign fighters.

Transnational movement of foreign fighters which was after Azzam’s assassination transformed by Osama bin Laden into al-Qaida in existing situation needed to re-group and re-orient its power, as they thought, to “protect Muslims from threats”. Evan F.Kohlmann notes that leading persons were looking for other conflicts which could be easily “framed in terms of an apocalyptic, one-dimensional religious confrontation between Muslims and non-Muslims” [12, 27-28]. Bosnia turned to be that place.

Subsequently, the "Afghan Arabs" began to take part in conflicts in various parts of the world, and most of them were involved in terrorist activities. The international networks created to support the anti-communist struggle in Afghanistan in the 1980s, in the following decades, turned into a global network of activists of the so-called "Salafi Jihad". Many of these "jihadists" took part in the conflicts, first in Bosnia, then in Chechnya, South-East Asia and the Horn of Africa, and finally, Iraq and Syria.

The long ideological and strategic resistance of the USSR with the countries of the West headed by the United States, the entry of the Soviet Union troops into Afghanistan led to frustrating results: Osama bin Laden created the transnational terrorist network al-Qaida consisted mainly of foreign participants of Afghan war - the so-called "Afghan Arabs".

The war in Afghanistan brought to the Soviet Union not only the huge material, but also enormous political, moral, psychological damage, which marked the beginning of the final stage of its decay, while Afghanistan paid hundreds of thousands of lives.

As a result of this war, international terrorism acquired another center besides the Middle East - South Asia, where many terrorist organizations for a long time continued to use the territory of Afghanistan to train the terrorists, planning and execution of terrorist acts in various countries around world.

Prior to the overthrow of the Taliban regime by the anti-terrorist coalition headed by the United States, Afghanistan remained the primary base for terrorists or a transit point for many terrorist organizations. Some of the most dangerous terrorist groups that emerged over the last decade were headquartered in Afghanistan, and their comrades today continue to participate in terrorist acts and threaten stability in many real and potential "hot spots" around the globe.

Another sinister turn was the emergence of a terrorist grouping of the so-called "Islamic State" (IS) or "Islamic State of Iraq and the Levant" (ISIL) during the Iraq-Syrian conflicts in the

first decades of the 21st century which turned into a global threat to the very existence of the civilized world.

Conclusion

Thus, the emergence of terrorist organizations under the guise of Islam during the Cold War was due, firstly, to socio-political processes in Muslim countries, secondly, to confrontation of ideological blocs. In the Muslim countries the opposition of the nationalist ideology of ruling regimes to the Islamist system of views had brought to the international arena Islamist movements consisting mostly of well-educated young men. On the other hand, Islam as one of the world's religions was used in the ideological confrontation as an instrument of geopolitical aspirations which were headed by the USSR and the United States. One party in the struggle for geopolitical superiority in the Near and Middle East, as well as South Asia, advocated the "socialist synthesis" of Islam, the development and interpretation of certain of its definitions in the socialist spirit. The other party, in its turn, began to actively use Islam as an instrument against the spread of leftist ideas and against the emergence of relevant organizations, socio-political movements and states. As a result, some of the provisions of Islam, artificially separated from religious, philosophical and spiritual content, became the weapon of political struggle of various forces.

This, in turn, led to tragic consequences on a global scale - by the beginning of the third millennium, separate provisions of Islam, artificially separated from their religious, philosophical and spiritual content, integrated into the consciousness of the certain part of Muslims, became the ideological basis of extremism. As a result, the confrontation of the ideology of democracy in the form of modern Western values and a secular form of government with the ideology of extremism under the guise of Islam has become an ominous reality of our time.

Comparison of the ideologies of nationalism and Islam in Muslim countries and the use of Islam as a tool of global ideological confrontation for the world community turned into a sort of boomerang after their termination which was accompanied by a relative decrease in the probability of interstate conflicts and a corresponding increase in terroristic threat. During this period, international terrorism under the guise of one of the world's religions Islam took the first place by its activity and uncompromising attitude.

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