INTERNATIONAL LAW AND INTEGRATION PROBLEMS
(Scientific-Analytical Journal)
№ 3 (61) 2020

CONTENTS

CRIME OF AGGRESSION, TERRITORIAL INTEGRITY, SELF-DETERMINATION AND OTHER INTERNATIONAL LAW PROBLEMS

Sayyad Majidov
(*sayyad.macid@mail.ru*)
Ph.D. in law
(Justice Academy of Azerbaijan Ministry of Justice)

Abstract

The purpose of this article is to analyze the relationship between the basic principles of international law and the crime of aggression. Some important principles of international law are related to the crime of aggression. These principles are imperative in nature and are the legal basis for establishing modern international law. Legal analysis of these issues is important for ensuring peace and security in the system of modern international relations. The directly focused object of the crime of aggression constitutes territorial integrity of states. In this sense, there is an exceptional importance the researching mutual relationship between aggression and the principle of territorial integrity and inviolability of states as one of the main principles of international law.

The article is indirectly reflected in relevant articles of the UN Charter, as well as in Helsinki Final Act of 1975. The universal tendency is that generally accepted in international law, the state territory should not be the object of military occupation as a result of unlawful use of force and each state has the exceptional sovereign power within its territory. It should be noted that the authority of the state which called "territorial leadership" or "territorial superiority" is considered a major component of the country's sovereignty. Considering the close interaction with crime of aggression, in the first place clarified three terms which includes the context of the principle - "territory", "integrity" and "inviolability". Because of the definition and the initial statement of aggression their practical importance is undeniable. According to international law the "territory" means of the earth, water, land, land, which consists of the airspace required for physical presence in every state, shall be regarded as the most important condition. The state territory is that areas where they under the sovereign authority and establishes their legal status of a particular country's laws and international legal agreements. The terms "Territorial integrity" and "territorial inviolability" are controversial issue in international law. "Territorial integrity" by this sense, is considered wider concept than "territorial inviolability".

The article was paid special attention to the problems of elimination of the consequences of military aggression of Armenia against Azerbaijan, right for self-defense of Azerbaijan and counter-attack operations of Azerbaijan.

Therefore, this article is investigated the crime of aggression, territorial integrity, human rights, self-determination, the use of force and some basic principles of international law and other issues.

Keywords: *crime of aggression, territorial integrity, self-determination, human rights, use of force, peace and security, principles of international law.*

The crime of aggression is one of the gravest international crimes against peace and humanity. Aggression, territorial integrity, self-determination, the use of force and some basic principles of international law and other issues are important scientific problems of international law. Of course, it will also focus on the principles of international law that they are as a regulator of the issues like use of force, to intervene in matters within the domestic jurisdiction, human rights and territorial integrity of states. These principles are imperative nature and the legal foundation for making rules of international law. The principles of international law are reflected at the UN Charter in 1945, the 1970 Declaration on the Principles of international law, the OSCE Helsinki Final Act in 1974, the Charter and decisions of the Nuremberg Tribunal. At the same time, the following principles have been developed and systematized by the International Law Commission at the "Code of crimes against the peace and security of mankind" project in 1954 and 1996. The issue of aggression and the principles of international law more detailed commented on the documents about international security and mutual relations between the states in this field which adopted by the different instances of UN. In this context, first of all, we should particularly note the "Declaration on principles of international law," dated 24 October 1970. The document which is considered to be the second for its international law importance than UN Charter is applied for cooperation and friendly relations between the countries and systematized the distinctive special categories of principles of international law. These norms have an

imperative character as jus cogens norms which are the higher legal force for all states and are considered the basic principles of international law. At the same time, the military aggression of Armenia, according to prof. A. Aliyev, "on the one hand, it directly and biasedly violates the norms and basic principles of jus cogens norms of international law, on the other hand, it leads to the emergence of international responsibility for the committing of international crimes, including aggression". [1, p.43] Their sphere of activities both for their scope of the subject, and as well as for the type and area of international relations have a universal character. In other words, the state of its international relations unconditionally comply with the requirements of these principles and signed all international treaties or other international legal acts should be consistent with the principles of the UN Charter and international law. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations in 1970, was established the following principles: the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered, the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, the duty of States to co-operate with one another in accordance with the Charter, the principle of equal rights and self-determination of peoples, the principle of sovereign equality of States, the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter. [5, p.73]

For prohibition of aggression as a crime and non-legal recognition of any territory as a result of the occupation, principles of territorial integrity and inviolability of frontiers mentioned in the OSCE Helsinki Final Act, 1975 and this document have been added another principle - the principle of respect for human rights and fundamental freedoms. Considering the relationship with crime of aggression, it should particularly be noted that, interconnecting and complementing and strengthening each other, these principles have already had erga omnes character in modern international law.

Considering the direct relationship with aggression, first of all it should be looking through in detail of the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State. Prohibition of the use of force in international law was realized on the Rhine Pact which signed between Germany, England, Italy, France and Belgium on October 16, 1925 [3, p.397], and on the abovementioned Briand-Kellogg Pact on August 27, 1928. 63 states joined to multilateral pact Briand-Kellogg in 1939, which prohibits the use of force as interstate law principle. [4, p.460]

For the first time in international law, the prohibition of the use of force as an agreement was made possible by the United Nations Charter. This principle which is of exceptional importance for modern international law, has found its direct expression in paragraph 4 of Article 2 of the Charter of the United Nations. It was noted there that, all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. [10]. At the same time, among the documents which is prescribed this principle it should be emphasized in particular the Resolution of the UN General Assembly, Definition of Aggression, dated 1974 and the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, on 18 November 1987, as an annex to resolution 42/22 adopted by UN General Assembly. The Principle of Refraining from the Threat or Use of Force in International Relations for its philosophical and legal nature first of all prohibits the aggression. In accordance with the resolution on Definition of aggression the use of armed force by the government, first of all, which is considered an international crime and can be assessed as a war of aggression, and in turn, it creates the international

law responsibility for states and criminal liability for accused persons. [13] Acts of the aggressors are made legal assessment as an international crime in the statutes of Nuremberg and Tokyo international military tribunals and at the post-war years the obligation on States to refrain from propaganda war of aggression is also included to the content of this principle [8, p.101].

First of all, it should be interpreted the concept of "power" for clarify the Principle of Refraining from the Threat or Use of Force. According to the UN Charter, "power" means the military, the armed forces. [10.] However, considering the realities of the modern information society, it would be appropriate to add some points to this definition. It can also be possible to concern the opportunities of information and communication technologies (ICT) to the definition of "Power".

Thus, considering close relationship the Principle of Refraining from the Threat or Use of Force with aggression, it should be noted that, according to international treaties the following actions are considered illegal: to violate the borders another State or to solve international disputes, including territorial or border disputes with the use of force the threat of force; reprisals pressure measures by armed force; to blockade the ports of another state by armed forces of one state; the organization of irregular forces or armed gang or to support the organization; organization the civil war in the territory of another state or terrorist acts, or to help them and to take a direct part in them; the illegally occupation of other country's territory by applying the force; to seize the territory of another state by force or threatening to use force; the committing violent acts which deprives the peoples of their right to self-determination, freedom and independence. It should be emphasized that, the most effective fighting against crime of aggression in international law is to universally respect by the states the Principle of Refraining from the Threat or Use of Force.

The directly focused object of the crime of aggression constitutes territorial integrity of states. In this sense, there is an exceptional importance the researching mutual relationship between aggression and the principle of territorial integrity and inviolability of states as one of the main principles of international law.

This principle indirectly reflected in paragraph 4 of Article 2 of the UN Charter, as well as in Helsinki Final Act of 1975 and the main content of this principle is the fact that states must respect each other's territorial integrity and refrain to violate the territorial integrity. [2, p.307]

The universal tendency is that generally accepted in international law, the state territory should not be the object of military occupation as a result of unlawful use of force and each state has the exceptional sovereign power within its territory. It should be noted that the authority of the state which called "territorial leadership" or "territorial superiority" is considered a major component of the country's sovereignty.

Considering the close interaction with crime of aggression (because one of the objects of this crime is territorial integrity of state), in the first place it is necessary to clarify three terms which includes the context of the principle - "territory", "integrity" and "inviolability". Because of the definition and the initial statement of aggression their practical importance is undeniable.

According to international law the "territory" means of the earth, water, land, land, which consists of the airspace required for physical presence in every state, shall be regarded as the most important condition. The state territory is that areas where they under the sovereign authority and establishes their legal status of a particular country's laws and international legal agreements. The terms "Territorial integrity" and "territorial inviolability" are controversial issue in international law.

"Territorial integrity" by this sense, is considered wider concept than “territorial inviolability”. PhD in Law R. Karayev justified notes that, the definition of territorial inviolability of the state constitutes the elements of the concept of territorial integrity of states, and these concepts are part of an integrated whole. [6, p.20]

Professor S.B.Chernichenko is associated mismatch between these terms with style of expression of this concept relates to wording in English and Russian texts of UN Charter. According to him, this term was expressed in Russian the term "territorial inviolability" ("territorialnoy neprikosnovennosti"), and in English the "territorial integrity". [9, p.187]

Certainly, confirming the mentioned statements it should be emphasized that, this term which expressed on Article 2, paragraph 4, of UN Charter (the English text) and Article 1 (a) of the Helsinki Final Act as a separate principle ("the territorial integrity of state"), is more acceptable this concept in the broad sense. And the expression "inviolability" is clarified stated above on Article 1 (a) of the Helsinki Final Act and this special principle (third principle) has been identified there as "inviolability of frontiers".

Thus, according to international law documents, the term territorial integrity is the broader sense than the concept of territorial inviolability and both these concepts is better to be considered as part of an integrated whole. At the same time, territorial integrity as a very important principle of international law was directly related to both a form of aggression - "direct" and "indirect" aggression may be violated by supporting the separatist regimes on the territory of another state, as well as through the use of military force directly against the state.

The principle of equal rights and self-determination of peoples which has great importance of the mutual relationship with aggression is considered a specific legal meaning in international law. Indeed, international law practice proves that the aggressor states try to justify its criminal actions only through this principle differentiating this principle than other jus cogens principles of international law, PhD in law V. Ibayev wrote that "subject of this principle is not a state, but it is a people. That is as for this feature of the same principle is politically more acute controversy and complex legal issues." [2, p.320]

For clarifying the content of the above-mentioned principle it should be paying special attention to two concepts - "people" and "self-determination". In the context of the above-mentioned principles and as for international law, "people" as a rule, cannot understand the ethnic sense. As an international law concept "people" does not means of any national or ethnic group, but means just the entire population of country (or state, illegally deprived of their territory). In general, according to the modern international law, the "people" is understood as a concept which includes itself a specific territory and a government. In other words, "the people" does not understood as an ethnicity, but understood as demos. Due to the modern international relations, the term "people" (or "nation"), is related to "country" or "sovereign state".

Another controversial issue in international law within the meaning of this principle is related to the terms "people" and "nationality". However, according to Ph.D. V. Ibayev, the lack of a common concept does not be an obstacle for the appointment of the subject of the right to self-determination and the issue of self-determination should be resolved by expression of the will of all the people which living in any particular territory-state. [2, p.327] In this sense, we consider that as a subject of right to self-determination does not the nation which manifested is of national character and features, as well as the cultural identity of the nation, but is the society-people, who is consist of different nationalities and has the same rights.

According to international law, people may have the right to self-determination as a whole, but its part, including the national minorities is unacceptable that such a right. At the same time, despite the fact that historically the liberation wars, the great powers sometimes are hesitant to recognize and not receive unequivocally the right of peoples to self-determination and to establish their state the cost of some territories.

Self-determination became the subject of debate at Paris peace conference in 1919, but this right failed recognition as a norm of international law. The issue, as 5th principle of US President Woodrow Wilson's "14 Article", was identified by the provision the "impartial settlement of colonial issues". [14] Meanwhile, this right which are not intended in any provision of the document on rights of colonial and dependent people, considered as a factor that has more poli-

tical shade. Therefore, the US Secretary of State Lansing called political dynamite the right to self-determination of peoples. And the position on the factor of self-determination of officials of the UK, Italy and France was the same. Thus, the principle of self-determination does not be accepted as a norm of international law at the Paris Peace Conference and instead of this mandate system has been applied. And the essence of this system was not something else and not differs from the goals of the aggression and means the "legalization" of new territory and colonies.

After World War II, the new geopolitical factors had allowed this right to appear in international law normative system. The principle of equal rights and self-determination of peoples, as an official term for the first time found its expression in Article 1 of the UN Charter. [10] In the broader sense, the normative content of the principle explained in Declaration on the Principles of International Law, in 1970 and noted there that, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. [7, p.142]

According to the 1970 Declaration all states, respecting the free will of the people, have to duty to refrain from any aggressive action which deprived nation's right to self-determination. The declaration also states that the defending of the principle of self-determination does not be encouraged the separation and dissection of country and this principle can and should be solved within the concrete conditions - under the principles of inviolability of frontiers and territorial integrity of states. Taking into account the possibility of using as an excuse right to self-determination of peoples by any government to use force against another state or to undermine the integrity of the community, the Declaration notes that supporting of this principle should not create a basis for aggression: "Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country". [11]

In order to avoid speculation on the principle of self-determination of the peoples United Nations General Assembly adopted the Resolution A / RES / 47/135 on 18 December 1992, of Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. [12] The principle of self-determination interconnecting to the principle of territorial integrity at The Helsinki Final Act noted that, this principle cannot be regarded as a right of national minorities. This is already officially reflected in the name choice of the principle. [7, p.156] This principle is called at the Final Act "equal rights and the right to dispose of their own destiny of peoples". Apparently, the term "self-determination" has been replaced with the term "peoples' right to dispose of their own destiny", and it means according to generally accepted norms of international law and the logic of modern international relations system, national minorities not using the right to self-determination of within a particular state, but have the right to dispose freely of their own destinies by maintaining their national mentality, culture, language, religion and so on. The final act was determined that the member states should respect this principle "due to the purposes and principles of the UN Charter and relevant norms of international law, including the rules relating to the territorial integrity of states".

As you can see, all of these documents approaches to the principle of self-determination in the context of the principle of territorial integrity and as concepts of sovereignty, territorial integrity and political independence are not only considered the main indicators at the UN Charter, Declaration on the Principles of International Law in 1970 and the Helsinki Final Act, but also other international legal norms. European Convention on Human Rights in 1950 directly noted that the implementation in a democratic society of freedoms prescribed in Convention can be limited by law in condition of "national security, territorial integrity and interests of social stability ...". In this document, as well as paying special attention to the factor of "territorial integrity", it shall be prevailed in the context of the rights and freedoms prescribed in the Convention. In other words, the rights and freedoms protected by the Convention in respect of the

territorial integrity could be limited and this is a document that has adopted the primate of principle of territorial integrity.

Thus, it should be necessary considered to approach in the context of the principle right equality and self-determination of peoples and other important principles of international law, in particular principle of territorial integrity of states. This right not belongs to the nationalities and ethnicities but belong to whole population or people who have its historical territory and legal unity. At the same time, as protection of national minorities, human rights and freedoms, globalization, European integration, legal and geopolitical factors in contemporary international law can justify the violation of territorial integrity of states under no circumstances. Indeed, the loss of balance between these principles can result by the violation peace and security, including by appearing the elements of aggression in the modern world.

The next important principle of international law is the principle of respect for human rights which has a close cooperation with aggression and sometimes observed with attempts to justify this crime. Regardless of the nature of the armed and non-armed, this situation shall be applied to international treaties on human rights. At the same time, this directly linked as a matter of international humanitarian law. In this respect there is an inverse proportionality between the "protection of human rights" and the "protection of territorial integrity, political independence and sovereignty of state".

Of course, according to international law any violation of human rights accompanied by the use of armed force is unacceptable. In this sense N.B.Krılov noted that, "if an attack to citizens on the territory of the country has the military character, it shall be understood as an attack on the territory of another state, and it provides the basis for the use of force by using of the right to self-defense". However, he stresses that the armed protection of its citizens in the territory of another state is not limitless. In other words, this method can be considered acceptable for the government first, if there is a real threat to the life of its citizens, and secondly, the protection of its citizens in the event that the country does not or is unable to defend it, and finally the third, when it is impossible to control the situation through peaceful means. The state cannot conduct military operations for protection its citizens in the territory of another state, because it has violated the country's territorial integrity and political independence. Therefore, military operations which intended for this purpose should comply with the scale of the attack or threat of attack and military forces must leave the territory of that country after completion of their mission. Supporting the ideas of the author it should be noted that, it is unacceptable any military operations in the territory of another state by violation of the territorial integrity and political independence of state and under the name of the protection of civilians.

It should be noted that the main goal of the 44-day counter-attack operations of Azerbaijan in 2020 was to restore the territorial integrity of Azerbaijan and force Armenia to make peace based on other principles of international law. Today, aggression, the principles of international law, counter-attack operations, victory, compensation and other concepts will be presented in a different way.

References:

1. Aliyev AI Azerbaijan as a target of international crimes: legal analysis. (In Azerbaijani, French, English, Russian and Turkish). Baku, "NURLAR" Publishing and Printing Center, 2018, 176 p.

2. Ibayev V.A. The Armenian-Azerbaijani Nagorno-Karabakh conflict is at the level of international law. Baku: Elm, 2006, 696 p. (in Azerbaijani)

3. Celik E.F., Milletlerarası Hukuk, II Kitap, İstanbul 1987. 397 s.

4. Meray S.L., Devletler Hukukuna Giriş II Kitap, Ankara, 1995. 668 s.

5. Applicable international law. In 8 volumes. Compiled by Yu.M. Kolosov and E.S. Krivchikova. Volume 1. M., Publishing house of the Moscow Independent Institute of International Law. 1999. 864 p. (in Russian)

6. Karaev R.M. Correlation of the principles of territorial integrity and self-determination of peoples in the theory and practice of international law. Baku, "Teknur" 2009, 304 p. (in Azerbaijani)

7. International public law. Collection of documents. M. 1996.v.2. 349 p. (in Russian)

8. International criminal law. Under the general editorship of Academician V.N. Kudryavtsev. Moscow "Science" 1999.264 p. (in Russian)

9. Chernichenko S.V. The theory of international law. T. 2: Old and new theoretical problems. M .: Publishing house "NIMP", 1999. 645 p. (in Russian)

10. Charter of the United Nations, http://www.un.org

11. Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, http://www.unhcr.org

12. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, http://www.un.org

13. United Nations General Assembly Resolution 3314 (XXIX Session) "Definition of Aggression" (Resolution 3314) of 14 December 1974. www.newcastle-emlyn.com

14. Woodrow Wilson's Fourteen Points, http://www.historylearningsite.co.uk

Date of receipt of the article in the Editorial Office
(19.11.2020)

ECONOMIC RIGHTS AND THEIR LEGISLATIVE BASIS. (DOMESTIC AND INTERNATIONAL INSTRUMENTS). CONSTITUTIONAL PRINCIPLES OF RESTRICTION OF ECONOMIC RIGHTS AND FREEDOMS

Saftar Rahimli
(*sefterrehimli@yahoo.com*)
Ph.D. in law
(Baku State University)

Abstract

In this article, we will focus on three themes, the economic rights and their legislative basis, institutional provision of economic rights and as a last theme, constitutional principles of restriction of economic rights and freedoms. The argument of the article is that the fair constitutionalisation provides the most effective method for ensuring economic rights, because it addresses an important requirement for application at the domestic level. The existence of economic rights in the Constitution and thus the legislative basis can lead to a broader explanation of the responsibilities of state in terms of economic and social rights and a more communitarian understanding of these rights.

In addition, it is the constitutions that define the responsibility of state in relation to these rights and the obligation that determines the system on the basis of ensuring the material basis of civil liberties.

World experience shows that the state plays a decisive role in ensuring the normal functioning of any economic system. In other words, the legal system influences the behavior of individuals and, through them, the economic system as a whole. The economic system affects both the behavior of individuals and, accordingly, the legal system. This article focuses on the practical implementation of economic, social and cultural rights, and argues that they can be recognized as legitimate rights in national constitutions. Economic, social, and cultural rights are the freedoms, privileges, and entitlements that individuals and communities require to live a life of dignity. These human rights include the rights to food, housing, health, education, cultural identity, and more. Although some economic, social, and cultural rights cannot be immediately implemented. States that have ratified the relevant treaties nonetheless have the obligation to guarantee these rights. (ijrcenter.org)

Moreover, according to general practice, retreats from human rights are mainly related to emergencies. Restriction of some human rights is possible under certain conditions, only in case of emergency situations. The Law on State of Emergency also stipulates a relevant requirement; it means the restriction of human rights and freedoms for a certain period of time. However, here it can be argued that in any case, the state of emergency must be ensured in accordance with the international obligations of state.

Keywords: *economic rights, constitution, international law, human rights, economic rights, Constitution.*

İntroduction

There has been attempted in a special chapter III, Articles 24-71 of the Constitution of the Republic of Azerbaijan to cover the scope of the basic human and civil rights and freedoms. It should be noted that this chapter is given in Section II (with fundamental rights, freedoms and responsibilities). In fact, that Section I (the general provisions), directly referred to as the introductory section, and indicates that the Constitution is based on Section II. The issues identified in Section I also set out the tools and policies to ensure the rights and fundamental freedoms of Chapter III. In particular, state policy has set a standard for all law making, interpretation and application under Article 12.1 of the Constitution. The rule of people (Chapter I), the foundations of the state (Chapter II) determine the form and mechanisms to ensure human rights and freedoms. From a legal point of view, human rights are defined as the total individual and collective rights recognized by sovereign states and enshrined in their constitutions and international law [1].

The purpose of expressing economic rights as a constitutional standard is as follows:

1) The constitution fully and comprehensively establishes human rights and freedoms;

2) Builds the interrelation of these rights with the political system, indicating that these rights are constitutional;

3) Defines responsibilities for state power and local government system;

4) Declares specific means of guarantee of those rights.

It should be noted that immediately after the establishment of ideological-political-legal (democratic, secular, legal ... art.7.1) relations of the Constitution, property (art.13), natural resources (art.14), economic development ... (art.15), social development ... (art.16) provides the basis for economic rights and freedoms.

The priority of human rights and fundamental freedoms (Article 12), the foundations of the constitutional system are stated by the institutions of "free entrepreneurship" (Article 15) and "inviolability of property" (Article 13.1) [15, p.97].

The constitutional guarantee of economic rights is regarded to the fact that in modern times the development of socio-economic legislation is at an early stage, and although many problems they remain, unresolved [16, p.162]. These are the constitutions that determine the responsibility of the state for those rights. A fully justified constitution provides the most effective method to secure economic rights, as it addresses an important requirement for enforcement at the domestic level. It is more difficult to change constitutional rights than ordinary legislation, so they are not responsible for political tendencies. These serve as both principles that create a sense of human rights in a nation and rights that can be protected in court. Mark Bell combines the meaning of constitutionalization with the processes that seek to strengthen certain legal norms and attribute them to a higher status.

The Constitution of the Republic of Azerbaijan forms the basic economic rights and freedoms in a special sphere of public relations by defining the norms on the conditions of realization of economic, entrepreneurial and economic relations. These rights play an independent role in the constitutional legal regulation, but also stand on objective grounds. The constitutional basis of economic rights also affects their legal nature [11].

The nature of these rights is considered in the first chapters of the Constitution. Economic rights, being the basis of other rights, are in fact neither secondary nor derivative and their legal nature in accordance with Part I of Article 24 (Basic Principles of Human and Civil Rights and Freedoms) allowed to evaluate. The rights of property (art. 29), labor (art. 35), intellectual property (art. 30), inheritance (art. 29. II), free assembly (art. 49), the right to association (art. 58), the right to the security of property (art. 31. II), the right to free enterprise (art. 59) and their legal nature in accordance with Part 1 of Article 24 in the third chapter of the constitution are subject to evaluation.

Economic rights as a constitutional standard

İn addition to the fact that economic rights are the basis for other rights, their legal nature as a constitutional standard must be assessed in the context of several articles of the Constitution. The presumption that "everyone has inviolable, and inalienable rights and freedoms from birth" affirmed in Chapter III of the Constitution, as expressed in Part II of Article 24, confirms the beginning of "natural law" for economic rights. Cicero, a staunch supporter of the concept of natural law, stated that rights and freedoms are not given or determined by man, by any will or instruction; these rights belong to him by a nature. In human rights, this natural beginning is further sanctified by religious sources. Verse 3 of the Qur'an states that God is the creator of law. We are not mistaken in saying that Article 24 (II) of the Constitution of the Republic of Azerbaijan also contains the same content.

Assessing Article 24 (II) of the Constitution, Prof L.Huseynov notes that the authors of the text of the Constitution focus almost on all human rights and freedoms recognized by international law. This is undoubtedly a positive factor and cannot be completely compared with the previous Soviet constitutions. The Constitution does not explicitly state that the rights and freedoms enshrined in it are not comprehensive or satisfactory, but such a conclusion can be seen in the broad interpretation of Article 24 (II). This article reflects the concept of human rights as a natural right, "everyone has inviolable and inalienable rights and freedoms from birth."[14, p.20]

This provision implies that human rights exist independently and beyond their normative definition. In other words, the Constitution may not cover the whole spectrum of economic rights, and this must be assessed in the context of "natural law" [5].

The assessment of rights in Chapter III of the Constitution, including economic rights, in the legal regulation should be considered in the context of Article 71 (guarantee of human and civil rights and freedoms). "No provision of this Constitution may be interpreted as a provision aimed at the abolition of human, civil rights and freedoms" (Article 71.V) and "Human, civil rights and freedoms are directly in force in the territory of the Republic of Azerbaijan" (Article 71.VI). The conclusion is that the human rights are based on the concept of natural rights, not on the normative theory. This concept defined the task for the entire system of government in the observance of these rights. The Constitution (Article 71.I) states that « it is the duty of the legislature, the executive and the judiciary to observe and protect human and civil rights and freedoms, including economic rights » [1].

The legal system of the Republic of Azerbaijan is mainly formed by Articles 148 and 10 of the Constitution. Article 148 /II of the Constitution include international agreements to which the Republic of Azerbaijan is a party. Article 12 of the Constitution (the supreme goal of the state) enriches economic rights both in terms of character and content with its Part II (human and civil rights and freedoms listed in this Constitution are applied in accordance with international treaties to which the Republic of Azerbaijan is a party) establishes the "principle of respect for human rights and freedoms" by adopting a possible international protection system.

Article 12 (II) of the Constitution is formed in such a way that international treaty standards in the field of human rights, including economic rights, take precedence over the relevant provisions of the Constitution. Attention is drawn to the need for certain exceptions to this priority. These exceptions or reservations include:

- the article refers not to the general precedence, but only to the ad hoc primate of the norms of the international treaty on human rights over the provisions of the constitution;
- International agreements should be applied only in the event of a conflict between their provisions and the Constitution, and / or in the case of vague or excessively general expression of the latter [14, p.33].

This provision of the Constitution includes not only international treaties on economic rights (for example, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms), but also the application of the case law of the European Court of Human Rights. Economic rights, which are directly expressed as a constitutional norm, also very important in terms of Article 147 of the Constitution. Article 147 of the Constitution (legal force of the Constitution of the Republic of Azerbaijan) states that the Constitution of the Republic of Azerbaijan has the highest legal force in the Republic of Azerbaijan (I); The Constitution of the Republic of Azerbaijan has direct legal force (II); The Constitution of the Republic of Azerbaijan is the basis of the legislative system of the Republic of Azerbaijan (III).

Institutional provision of economic rights. The role of the state in ensuring economic rights.

Functions always reflect the social nature of a particular state. They reflect the real, socially conditioned role of the state in the process of solving the development tasks of the economy, society and the state itself. Sometimes the function of the state is either the activity that characterizes its political essence, or the content of the activity that reflects the essence of the state at different stages of development [12]. Because the functions of the state are complex, synthesizing in nature, and as the main activities of the state, they can never be identified and equated with the state itself or individual aspects of its activities. The content of each function is formed from many homogeneous and uniform aspects of the state's activity.

For example, in contrast to the concept of the "night watchman state" of the capitalist era, the concept of the universal state encourages the state to more actively solve the problems of the economy and society in modern constitutions. At certain stages of development, the functions of state are influenced by its goals and objectives. Depending on the goals and objectives of the state, its internal and external functions are differentiated. The internal function of the state covers all spheres of society and the state, including economic, social, political, religious and other areas [4].

For example, in the sphere of economic activity, the protection of state property, financial control, protection of the rights and freedoms of citizens in the social sphere, the creation of law enforcement rules in society in the legal sphere, can be emphasized. Depending on the political regimes of states, their international obligations on human rights and minorities, and the level of participation in the solution of international problems, the foreign function of states is becoming increasingly dynamic. The development of international law as a means of regulating foreign or international relations has led to innovations in the international legal protection of human rights, and new justice and administrative mechanisms have been created. Subsidiary international bodies are gradually becoming effective law enforcement mechanisms. International courts, first established in Europe and the United States, are accompanied by the creation of the international treaty bodies close to the quality of quasi-courts at the universal level [2].

International treaty bodies have been established as a monitoring mechanism for states' human rights commitments and play an important role in the development of human rights culture in this area [9].

The main feature of the international legal regulation of human rights is that states, along with the obligation to respect human rights, undertake to ensure and protect their normative content in this area within their jurisdiction. The content of the commitment is often determined by an international agreement, and the obligations are presented as a mutual agreement. The fact that human rights have a natural origin also excludes the obligation among states based on mutual benefit. International human rights treaties aimed at protecting universal values (fundamental rights and freedoms) of common interest [8].

The classification of the functions of the state in relation to human rights and freedoms is also done. The distinction between the main and additional functions is related to the position of the state in the implementation of the main goal. No matter how multifaceted the activities of the modern developed countries, the protection of human rights and freedoms is the main goal and task.

As stated in Article 12 of the Constitution of the Republic of Azerbaijan, the idea that "ensuring human and civil rights and freedoms, a decent standard of living of the citizens of the Republic of Azerbaijan is the highest goal of the state" reflects the purpose of sovereignty. As stated in the second part of this article, the application of human and civil rights and freedoms listed in the Constitution in accordance with international treaties to which the Republic of Azerbaijan (qanun.az) is a party also reflects the political course of the Republic of Azerbaijan in relation to international human rights obligations [10, p.51].

International instruments

a) United Nation Chapter II (International Covenant on Economic, Social and Cultural Rights (ICESCR)

b) European social charter

Economic rights and duties of states Article 1 Every State has the sovereign and inalienable right to choose its economic system as well as it political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever. (UN CH/1 1974)

The extent to which individuals can claim legal protection of their economic, social, and cultural rights (ESCR) depends on which treaties have been ratified by their governments, given that the protections for ESCR vary significantly among the universal and regional human rights instruments. However, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the most comprehensive international treaty addressing this area of human rights law, and is also the most widely applicable. As of May 2018, 168 of the 193 United Nations Member States have ratified the ICESCR, implementation of which is monitored by the UN Committee on Economic, Social and Cultural Rights [3, p.7].

The European Social Charter of 1961 is the counterpart of the European Convention on Human Rights in the sphere of economic and social rights. The Charter of 1961 guarantees the enjoyment, without discrimination, of fundamental social and economic rights defined in the framework of a social policy that Parties undertake to pursue, by all appropriate means (Part I) [6]. Of the rights guaranteed by the Charter, the right to work, the right to organize, the right to bargain collectively, the right to social security, the right to social and medical assistance, the right to the social, legal and economic protection of the family, and the right to protection and assistance for migrant workers and their families are regarded as particularly significant (Part II).

Constitutional principles of restriction of economic rights and freedoms.

In general, retreats from human rights are mainly related to emergencies. Restriction of some human rights is possible under certain conditions, only in case of emergency situations. The Law on State of Emergency also stipulates a relevant requirement; it means the restriction of human rights and freedoms for a certain period of time. The constitutions of most states allow for exceptional measures, such as the withdrawal of a number of international obligations during emergencies. In many countries' constitutions such as the Constitution of the Republic of Turkey (Article 13), the Constitution of the Federal Republic of Germany (Article 19), the Constitution of Switzerland (Article 36), the Constitution of Portugal (Article 18) and others, the restriction of the human rights and fundamental freedoms are considered. International standards have also been adopted in this area. For example, in its General Comment No. 29 of 24 July 2001, the Human Rights Committee sought to define the limits of action of States Parties in the event of an emergency. The law reflects the concept, purpose, grounds for application of the state of emergency, measures and restrictions taken during the application of the state of emergency. Unlike the law of the same title of 1992, the law of 2004, the purpose of application of the state of emergency is expanded and the protection of the rights and freedoms not only of citizens, but also of foreigners and stateless persons is expressed.

The Law of the Republic of Azerbaijan on State Emergency was adopted on June 8, 2004 as one of the measures to clarify the general provision on the state of emergency in the Constitution of the Republic of Azerbaijan. [1]

The Committee referred to the Turko (Abo) Declaration on Minimum Humanitarian Standards (1990), the Guidelines for Internally Displaced Persons (1998), etc. recommends taking into account. These documents specify the criteria for restriction, the procedure of justification, the issue of proportionality [13].

Taking into account the commitments arising from international law, the principles of restrictions (m.3.1-3.5) are defined in the Constitutional Law on the regulation of the implementation of human rights and freedoms in the Republic of Azerbaijan. These principles are given as follows:

(a) Human rights and freedoms provided in the Constitution of the Republic of Azerbaijan and international treaties to which the Republic of Azerbaijan is a party may be restricted only by law (Article 3.1);

(b) The law restricting human rights and freedoms must specify the limited right or freedom, as well as the relevant article of the Constitution of the Republic of Azerbaijan (Article 3.2);

(c) Restrictions on human rights or freedoms shall not change the substance of those rights and freedoms (art. 3.3);

(d) Restrictions on human rights or freedoms shall be directed and proportionate to the legal purpose provided in the Constitution of the Republic of Azerbaijan and this Constitutional Law (Article 3.4) [1].

However, emergency measures must be in accordance with the principle of proportionality. Restriction must be in accordance with the principle of proportionality, while respecting the fundamental content of rights and freedoms. The principle of proportionality in relation to the restriction of the exercise of rights and freedoms means that no restriction may go beyond its intended purpose.

More heavy restrictive measures can only be allowed if soft measures are not effective. Issues such as which interests should be protected in the event of a restriction, the extent of the restriction, and the urgent social needs that the state seeks to provide must be addressed.

It is necessary to express the article as a whole in order to determine the appropriateness of the limitation of the relevant article.

The right to strike and the right to associate as a certain category of economic rights, are also may be restricted by law. For example, a restriction on the right to strike may be exercised only in the form set forth in the Constitution (Article 36.II) [1]. That is, the right to strike may be restricted only in cases specified in the Constitution and other legislative acts and in relation to the relevant persons, or the right to strike is not provided for certain persons from the point of view of national security of the relevant field.

One of the most important ideas of the concept of the rule of law is that the restriction on human rights must be regulated by law in any case, that is, in a hierarchical structure, not all normative acts that below the law can be used for this purpose. Only the law can define human rights, and only the law can provide a framework for the exercise of these rights.

Conclusion

Thus, as indicated in the literature and international conventions that States are bound to ensure minimum human rights regardless of their resource constraints. Every government in the world has certain responsibilities regarding its citizens. How are these rights enforced? At the international level, the most effective enforcement mechanisms are international and/or regional conventions, treaties as mentioned in this article and in a domestic level is a state constitution that fully provides the most effective method for securing economic rights. The essence of human rights can help to clarify that economic and social principles are a moral necessity, and therefore it is clear that why they should be protected in national constitutions? The Constitution of the Republic of Azerbaijan occupies the most important and basic place among the sources of economic law.

The Constitution has a high legal force and forms the basis of the legislative system of our republic. All laws and other acts of state bodies shall be adopted on the basis of and in accordance with the Constitution of the Republic of Azerbaijan. The establishment of economic rights in the constitution is associated with the initial stage of development of socio-economic legislation in modern times, although many problems remain unresolved. It is the constitutions that define the responsibility of the state in relation to these rights and the obligation that determines the system for ensuring the material basis of civil liberties. Thus, the Constitution of the Republic of Azerbaijan establishes economic rights as a separate, independent category of human rights and fundamental freedoms, and by establishing these rights on a constitutional basis, confirms their natural legal origin.

Referances:

1. The Constitution of the Republic of Azerbaijan. e-qanun.az (in Azerbaijani)

2. Burnst Weston: The Charter of Economic Rights and Duties of States and the Deprivation of Foreign-Owned Wealth. American Journal of International Law, Volume 75, Issue 3, July 1981, pp. 437 - 475DOI: https://doi.org/10.2307/2200684

3. Charter of Economic Rights and Duties of States GA Res. 3281(xxix), UN GAOR, 29th Sess., Supp. No. 31 (1974) 50

4. Alasgarov F.M. Constitution of the Republic of Azerbaijan and human rights. Human rights, Bulletin 1, Baku, 1998, p.29-31. (in Azerbaijani)

5. Aliyev A.I. International public law. Textbook. Baku, 2015. (in Azerbaijani)

6. European Social Charter Reference (ESC 1965) ETS No.035 https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035

7. https://ijrcenter.org/thematic-research-guides/economic-social-and-cultural-rights-2/

8. Provost R. Reciprocity in Human Rights and Humanitarion Law // The British Yearbook of International Law. 1994, vol. 65, p.453

9. Gasimov A.M. Labor law. Textbook. Baku, "Adiloğlu" 2007. 560 p. (in Azerbaijani)

10. Merciful S.M. Human Rights Committee: theoretical and practical problems. Textbook. Baku: "Baku University Publishing House", 2019. 424 p. (in Azerbaijani)

11. Sadigov AI International economic law. Textbook. Baku University Publishing House, 2008, 396 p. (in Azerbaijani)

12. The subject of Turkish constitutional law. Editor Assoc. Erdal Abdulhakimoğulları. Ankara, Adalet Yayınevi, 2011. (in Azerbaijani)

13. UN Minimum Humanitarian Standards. Turku Declaration. UN.Doc.E/CN.4./Sub.2/1991/55/December 2, 1990. http://www.un.org

14. Huseynov L.G.The Constitution of the Republic of Azerbaijan, human rights and international law. Beynəlxalq hüquq, 1998, No. 1, (p.16-46), p.20 (in Russian)

15. Lukasheva EA Human rights and the processes of globalization of the modern world. / Resp. ed ..: Norma, 2007. 464p. (in Russian)

16. Lukasheva E. A. Human rights. Textbook for universities. Ed.: Norma, 2003. 573p. (in Russian)

Date of receipt of the article in the Editorial Office
(16.08.2020)

INTERACTION OF INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS WITH INTERGOVERNMENTAL ORGANIZATIONS

Elnara Mirzayeva
(*elnaramirzayeva@mail.ru*)
Ph.D. in law
(Baku State University)

Abstract

The article is based on scientific-theoretical provisions, practical cases, statistical indicators and comparative analysis of the relations of international non-governmental organizations with international intergovernmental organizations, including the United Nations. The contribution of international non-governmental organizations to the activities of a number of regional organizations (Council of Europe, Organization of American States) was also touched upon. In modern times, the role of international non-governmental organizations in any sphere, from the protection of human rights to all other spheres of public life, can be clearly seen. This issue necessitates the activities of international non-governmental actors, not only at the domestic level. In this sense, international non-governmental organizations often play an equal role in international governance and decision-making, along with international intergovernmental organizations.

Keywords: *international non-governmental organizations, international intergovernmental organizations, the Council of Europe, the Organization of American States.*

By now, humanity has entered the stage of such a development of international relations, when states are deliberately losing the monopoly of the only subjects of such relations. Other actors, including non-governmental organizations (NGOs), are becoming active participants.

If the XIX century characterized by an increase in the number of national states, the end of the XX century - activation of the NGO, called the "revolution of associations". The activity of NGOs, a steady tendency towards an increase in their number leads to an increase in the popularity of NGOs in the eyes of governments and intergovernmental organizations (IGOs).

The inherent advantages of NGOs in the system of international relations are undeniable. Let's list some of them:

- Better assistance is provided through NGOs in areas where market mechanisms can't be applied. Aid, for example, to OECD countries through NGOs from 1975 to 1999 in percentage terms increased from 0.7% to 5.0% and amounted to USD 2.3 billion;

- the procedure for providing assistance from NGOs is less bureaucratic than the analogous procedure of government agencies or intergovernmental organizations, which, moreover, is often highly politicized;

- NGOs act as a new mechanism to counterbalance state power, in the democratization of society, in the protection of human rights, opening the door to broad participation of the masses and promoting pluralism in society. This led, inter alia, to the creation of the World Union (Forum) for Civic Participation (CIVICUS);

- NGOs are the best means of mobilizing society, but the degree of mobilization directly depends on the extent to which the activities of NGOs are aimed at democratizing the given society.

From the second half of the XX century there was a clear tendency towards an increase in the number of NGOs and their influence on the life of the world community. Moreover, a feature of world politics at the beginning of the XXI century is the growing role and number of international non-governmental organizations (INGOs). For example, if in 1850 there were only five organizations in the world, then in 1914 - 330, in 1939 - 730, in 1970 - 2300, and in 2000 there were already 45,674 INGOs. The reason for this lies in the processes of globalization of the world system. For example, the point of view is expressed that "today some global nongovernmental structures are much more influential in the world than the governments of a good half of the UN member states" [11, p.83].

Among all international non-governmental organizations, the most numerous and easily recognizable are humanitarian and environmental INGOs. The history of the existence of some of them (for example, the International Committee of the Red Cross) goes back more than one decade, and their wide popularity is due to selfless actions of assistance to the population in emergency situations ("Médecins Sans Frontières" or the same International Committee of the Red Cross). It can be said without exaggeration that humanitarian international non-governmental organizations have the greatest authority in the international arena. They have repeatedly received the highest praise for their activities from the world community, and the International Committee of the Red Cross and Médecins Sans Frontières were awarded the Nobel Peace Prize. Thanks to the efforts of such organizations, the idea of providing independent humanitarian aid has become one of the main priorities of international politics in the late 20th and early 21st centuries [4, p.408].

At the present time, when the international situation is devoid of excessive ideologization, confrontation in international relations is giving way to cooperation, and opportunities for increasingly widespread and fruitful cooperation are opening up for INGOs.

The spheres of activity and membership of international non-governmental organizations are distinguished by their pronounced diversity, which, of course, is due to the current situation in the system of international legal relations, which presupposes the active participation of a wide variety of political actors.

It should be noted that the issues of education and activities of INGOs in practice are resolved initially in accordance with the provisions of national law. And at the initial stage of their creation, INGOs aren`t subjects of international law; therefore, there is no question of their international legal personality. There is a point of view that INGOs can`t be considered as subjects of international law, because they are formed in accordance with the norms of the national (internal) law of the state. Supporters of a different approach consider INGOs to be subjects of international relations, but not subjects of international law. According to the third point of view expressed by the researcher E Krivchikova, "many of the international non-governmental organizations have an impact on the formation of the norms of international law and international relations, on national legislation. The existence of non-governmental organizations is unthinkable without the presence of legal institutions, such as the structure, competence of bodies, work procedure, etc. Therefore, international law is directly related to such organizations" [8, p.12].

However, according to E.Kuznetsova, there are several criteria that must be met by INGOs. First, the organization must be non-profit in nature and funded by the members themselves or by voluntary contributions. Even organizations that bring together business representatives lobbying for commercial interests are recognized as INGOs by the Council of Europe and the UN. Thus, the International Maritime Forum of Oil Companies actively cooperates with the UN and the International Maritime Organization as an INGO. Secondly, the organization must not use or promote violent methods. Accordingly, liberation movements, warring or insurgent parties and other armed groups aren`t recognized as INGOs, even if their actions are legitimate from the point of view of international law, for example, the Palestine Liberation Organization (PLO) or the South West Africa People's Organization (SWAPO). Thirdly, the organization shouldn`t be involved in politics for the purpose of a power struggle. This criterion excludes from the circle of INGOs all kinds of political parties and opposition associations of political parties, such as the Liberal International, the Socialist International, the International Union of Democrats, etc. [9, p.27]

K.Coliard believes that INGOs, in their nature are private organizations, because unite individuals, sometimes even statesmen, but not states. [7, p.472]

According to A.Kamynina, INGO is a form of ongoing multilateral international cooperation of the public in various fields of activity. [10, p.95]

The doctrine of international law makes a distinction between non-governmental organizations with specific members and non-governmental organizations with undefined membership. Most non-governmental organizations are the same in composition: their members are national organizations or individuals, or both (the so-called collective and individual membership).

Considering all this, INGOs are conventionally divided into two types: uniting individuals and uniting national non-governmental organizations. However, there are also other types of membership. For example, the membership of the Inter-Parliamentary Union is so unusual that it is considered to be an international association of a semi-official nature. Members of this organization are national parliamentary groups, consisting of voluntarily united members of the parliaments of these states. Representatives of parliamentary groups participating in the work of the union speak on their own behalf, and not on behalf of a national group or parliament.

The term "non-governmental organization" (NGO) entered the international legal lexis in the middle of the 20th century thanks to the 1945 UN Charter.

For the first time, the international legal framework for the activities of non-governmental organizations was defined in 1945 in the UN Charter. Thanks to the active work of two international non-governmental organizations - Rotary Club and the humanitarian organization International Committee of the Red Cross - with the assistance of a group of American consultants, special Article 71 was included in the UN Charter, which stated that the UN Economic and Social Council is authorized to consult with non-governmental organizations. The document literally says that ECOSOC is authorized "... to conduct appropriate activities for consultation with non-governmental organizations interested in issues within its competence. Such events can be negotiated with international organizations, and, if necessary, with national organizations, after consultation with the interested member of the organization" [1, p.98-99].

From that very moment, the legal framework for relations between INGOs and the UN is being built through ECOSOC. It was he who became the first body that made it possible for INGOs to take part in international relations. ECOSOC has developed and implemented a mechanism for granting consultative status to INGOs, endowed them with rights and responsibilities.

Subsequently, ECOSOC adopted a number of resolutions concretizing and consolidating the tasks defined by the UN Charter. These resolutions highlight the signs of INGOs, formulate the concept of an organization and indicate their main characteristics. But the most important thing that needs to be noted is that they define the legal basis for cooperation between INGOs and the UN, as well as the mechanism for interaction of intergovernmental organizations only with such INGOs that have a consultative status.

At the very first session of ECOSOC in 1946, according to the recommendation of the General Assembly, a special committee was created, which ECOSOC instructed to prepare proposals on the implementation of the norms of Article 71 of the UN Charter and submit them to the Council for approval. In accordance with the proposal, an NGO Committee was established, which consisted of five members of ECOSOC and its chairman. Later, the composition of the Committee changed several times. It currently consists of 19 members, elected as representatives of the UN member states for four years in accordance with the principle of equitable geographical representation. According to it, the Committee is composed of five members representing African states: four from Asia, four from Latin America, four from Western Europe, and two from Eastern Europe.

The NGO Committee is endowed with a number of powers, among which are the following:

- consideration of applications of NGOs (both national and international), applying for consultative status;
- ECOSOC recommendations regarding the granting of consultative status to a specific NGO;

- consideration of reports of NGOs already in consultative status;
- ECOSOC recommendations on transferring NGOs from one category to another;
- implementation of the revision of the list of NGOs in consultative status;
- ECOSOC recommendations on hearings and agenda items proposed by NGOs [12, p.48].

It should be noted that obtaining status for an NGO isn`t an easy task. To obtain consultative status, the goals and objectives of NGOs must fully comply with the purposes and principles of the UN Charter. Otherwise, obtaining such an NGO of consultative status is rather problematic. However, today it is the consultative status of INGOs with ECOSOC that is the basis of official relations between the UN and INGOs.

Initially, in accordance with the provisions of ECOSOC resolution 3 (11) of June 21, 1946, INGOs that received consultative status were subdivided into categories "A", "B" and the so-called "List". Then, taking into account the increasing influence of INGOs on international relations, requiring a more accurate and objective reflection of this phenomenon, ECOSOC resolution 109 (XL) of March 4, 1966 was developed and adopted, which introduced a new system of categories of INGO consultative status: the first category (category I), or the so-called general consultative status, the second category (category II) - special consultative status and "list" or "register".

Depending on the category of the consultative status assigned to INGOs, Resolution 1296 (XLIV) of May 23, 1968 established the rights and opportunities for international NGOs to participate in the work of various UN bodies. There are five of them:

a. Rights in relation to the agenda. In accordance with this right, the provisional agenda of ECOSOC and its subsidiary bodies is sent to study the INGOs of all three categories of consultative status. In fact, participation in the agenda is a rather powerful tool for the influence of INGOs on ECOSOC, but this right may be limited by ECOSOC itself.

b. Right of attendance, according to which INGOs of the first and second categories have the right to attend all open meetings of ECOSOC and its subsidiary bodies by sending their representatives there as observers.

c. Right to Submit Written Communications. NGOs in the first category are entitled to submit and circulate written applications of up to 2,000 words to ECOSOC and its subsidiary bodies.

d. The right to oral presentation. The right to speak before ECOSOC is granted only to INGOs with the first category of status, and only after the recommendation of the NGO Committee.

e. The right to file a note. The Statute of the International Court of Justice expressly states that when considering a dispute between states, the court may request from public international organizations information related to the cases under consideration, and also receives such information provided by these organizations on their own initiative.

The practice of filing reports is used to control the activities of international non-governmental organizations. This first happened in 1977, when the NGO Committee invited all INGOs in consultative status to prepare a report on their activities.

Over time, however, the established mechanism of relations between the UN and INGOs has become significantly outdated. The number of organizations formally accredited with ECOSOC was constantly growing (in 1948 42 organizations had consultative status, in 1968 - 377, in 1998 - 1350, in 2005 - 2719).

The increase in the number of INGOs in international relations, the desire of national organizations to declare themselves on an international scale, as well as a number of other factors have created the need to improve the consultative status and mechanism of interaction between INGOs and the UN.

Therefore, in 1996, ECOSOC adopted a new resolution 1996/31, which supplemented and at some points updated the existing rules for holding consultations between ECOSOC and

international non-governmental organizations. This resolution, which is still in force today, defined three types of consultative status: general (or general) consultative status, special consultative status and "list" ("register"). It is necessary to dwell on the consideration of the general (general) consultative status, since most of the INGOs with consultative status with ECOSOC exercise their rights mainly in the humanitarian sphere.

Common (or general) consultative status is granted to organizations dealing with the vast majority of issues within the competence of ECOSOC and its subsidiary bodies, subject to the organizations ability to make a significant contribution to the activities of both ECOSOC and the UN. The activities of such INGOs should be closely related to the social and economic problems of their states. The organization itself must be representative in its composition and must express the views of the main segments of the population. The organizations with general consultative status include most of the large and influential international non-governmental organizations - the International Federation of Red Cross and Red Crescent Societies, Greenpeace International, Medecins Sans Frontieres, the Inter-Parliamentary Union, etc. [6, p.520-522]

Analysis of ECOSOC resolution 1996/31 allows us to conclude that, compared to ECOSOC resolution 1296; it was a definite step forward in the development of relations between INGOs and the UN and recognition of the increased role of INGOs in international relations.

This is confirmed by the fact that, firstly, the circle of non-governmental organizations (at the expense of national and regional NGOs) eligible for consultative status has been increased. This circumstance can be regarded as a certain equalization of the rights of international, national and regional NGOs in relations with the UN. Thus, the legal possibilities for the participation of national and regional NGOs in international relations have increased, and their position in the international arena has become more solid. This fact is a reflection of the emerging objective trend aimed at recognizing international non-governmental organizations as subjects of international law with special legal personality.

Secondly, resolution 1996/31 established a new form of international cooperation between the UN and INGOs - the participation of INGOs in the work of international conferences convened under the auspices of the UN. The legal consolidation of the procedural aspects governing the procedure for participation of NGOs in the preparation and holding of international conferences was a progressive step in the development of international cooperation between INGOs and the UN.

Thirdly, the resolution under consideration normatively consolidated the procedure for the Secretariat and the UN Secretary General to assist the activities of INGOs, which contributed to the further development of their activities as subjects of international legal relations, was a positive factor contributing to the enhancement of the status of INGOs in the international arena.

In general, it can be said that the relationship between NGOs and governments is characterized by rivalry, cooperation or parallel activities. Their cooperation largely depends on the will of the governments themselves and their awareness of the potential constructive capacity of NGOs in various areas of life. Unfortunately, states and intergovernmental organizations assign INGOs only a secondary role in their practical activities, and therefore their relationship is rather of an alternative, parallel nature. However, it was noticed that close cooperation between them (especially with the UN) makes it possible to resolve many of the most acute problems of our time and settle international conflicts much faster and more efficiently. INGOs, to the extent of their capabilities and their inherent means, influence the development, formation and functioning of individual norms and institutions of modern international law. In particular, they form public opinion, international legal consciousness, and take part in the creation of judicial precedents by international courts. And yet, despite the above, the current state of cooperation of INGOs with states and intergovernmental organizations, its level and forms mainly depend on the desire and will of the latter. At this stage of development, it became imperative that the fields of NGOs' activities go beyond the traditional socio-economic and humanitarian fields, as well as the fields

of human rights protection and development assistance. Unfortunately, less than should be paid attention to the fact that NGOs can succeed in maintaining peace and security - the main goal of the UN. In an interconnected world, it is necessary to interpret the problem of preserving peace more broadly; it can`t be tied only to the powers of the UN Security Council or governments. This process should also involve other subjects of international relations, and above all NGOs. They, for example, can successfully cope with tasks such as researching the problem of peace, developing means of assisting states, mobilizing society and accelerating democratic processes [5, p.395]. In the context of the existence of internal conflicts and ethnic clashes, the concept of "peacekeeping" requires expansion. In these conflicts, it is increasingly difficult for the UN to strike a balance between the sovereignty of states and the mandate of legitimate intervention. Moreover, the UN's role in resolving these conflicts can`t be limited to a neutral presence between the belligerents. The purpose of the new UN operations is to contribute to the establishment of peace by rebuilding destroyed infrastructure, to promote the democratization of society, to ensure the protection of human rights, etc. These UN measures presuppose the widespread involvement of NGOs in "peacemaking". NGOs are the best vehicle, for example, in preventive diplomacy, namely in the early warning of conflicts, drawing the attention of governments and international organizations to them. In general, the mobilization of the international community, governments, states and international organizations with the help of NGOs is an essential element of modern international relations.

As for the interaction of NGOs with regional international organizations, the Organization of American States (OAS) and the Council of Europe (CoE) are examples. Within the framework of the OAS, several resolutions have been adopted aimed at improving interaction with INGOs. The OAS adopted the following resolutions: "Guidelines for Civil Society Participation in OAS Events", "Strategies to Increase and Strengthen the Participation of Civil Society Organizations in OAS Events", "On a Special Fund to Support the Participation of Civil Society Organizations in OAS Events and American Summits". Analysis of these documents allows us to draw a conclusion about the established practice of cooperation with INGOs and the existence of various forms of such interaction. In this regard, such forms of cooperation with INGOs as registration with the OAS, conclusion of agreements, and participation in OAS meetings as a "special guest" are being considered. Considerable attention is paid to such a way of cooperation as registration with the OAS. In this case, INGOs are given the opportunity to become part of the OAS system, work in various thematic groups of member states, and gain access to information on political, economic, and social issues. Registration facilitates the exchange of information and experience, which contributes to the development of OAS policies, taking into account the participation and dialogue with civil society. An INGO wishing to engage in technical, administrative and financial cooperation or to develop, finance and implement a joint project with the OAS has the opportunity to enter into a cooperation agreement. There are two types of cooperation agreements: general and special. The general agreements stipulate the obligation of NGOs to provide advice on the main issues of the OAS activities. Special agreements are concluded with the aim of attracting non-governmental organizations to the development and implementation of specific projects, to provide technical, administrative and financial assistance in order to promote any specific OAS programs [2, p.30].

Cooperation with non-governmental organizations also plays an important role in the policy of the Council of Europe (CoE). The work focuses on the problem of improving the mechanism of cooperation between the Council of Europe and INGOs. In 2003, significant changes were made in relation to the cooperation of the Council of Europe with non-governmental organizations. The mechanism for granting consultative status to INGOs was replaced by another form of interaction - INGOs began to be endowed with the status of a participant. This change states the fact that the position of INGOs in the work of the CE has strengthened. The establishment of participant status is aimed at enhancing the role of INGOs in the development and

implementation of policies and programs of the Council of Europe and at strengthening co-operation between the Council of Europe and numerous non-governmental structures operating in the territory of the Council of Europe member states.

Summing up the results of a short review of the activities of national and international non-governmental organizations in the development and implementation of internal policies of European countries, it should be noted that it is already possible to identify areas of internal policy in which INGOs play a significant role. These are issues of state participation in the formation of sustainable development of countries that have insufficiently high economic indicators, the development and implementation of national and international environmental policies, part of which is environmental monitoring carried out by INGOs, research on the use of military force in modern international relations, further deepening of economic and political integration both regionally and globally. The process of globalization that has begun allows us to see the emerging trends in the distribution of functions between the state, TNCs and INGOs, and the already established distribution reflects their objective nature. In general, we can conclude that INGOs have a great future in many aspects - the accumulation of social capital, the growth of employment, a real impact on development, participation in solving the most pressing social problems.

A very active position in the international arena is taken by humanitarian INGOs, taking part in significant events in international life. Perhaps one of the most striking proofs of this fact is the The International Campaign to Ban Landmines (ICBL), or the Kyoto Treaty, initiated by a number of large non-governmental organizations.

On the world stage, humanitarian INGOs actively cooperate with organizations of the UN system, the Council of Europe, or the OSCE, and other IMGOs.

The beginning of the XXI century was marked for the ICRC by a number of major operations in 12 countries of the world: Afghanistan, Israel, Iraq, Colombia, Congo, Lebanon, Russia, Somalia, Sudan (the largest mission), Uganda, Chad, Sri Lanka.

A distinctive feature of the ICRC is that in its activities the organization is strictly guided by a written law - the Geneva Conventions, with all their articles. This attachment to the letter of the law gives the Organization's work precision and discipline, but has also been the subject of criticism from other humanitarian organizations (such as Médecins Sans Frontières) for being overly formal, cautious and neutral. Perhaps this is also due to the fact that the official representatives of the ICRC distance themselves both from other non-governmental organizations working in the same field and from the United Nations.

Thus, modern international relations are characterized by an increasingly obvious increase in the number of international non-governmental organizations. Although relations between states continue today to remain the main form of communication between peoples, they, however, don`t cover the entire variety of ties in public life.

The role of INGOs is growing in assisting states and international intergovernmental organizations in solving numerous political, economic, humanitarian, cultural and other problems. UN structures, in turn, are also interested in developing relations with INGOs, since the activities of UN specialized agencies are multifaceted and in solving numerous issues and problems facing humanity, they are obliged to reflect the views of the widest layers of the public and competent specialists from different countries who are in are abundantly represented in international non-governmental organizations.

No doubt, in addition to the UN institutions, INGOs actively cooperate with other large international intergovernmental organizations - the World Bank, the International Monetary Fund, the World Trade Organization, the European Union, NATO, the OSCE and many others.

In the relationship between INGOs and international intergovernmental organizations, two areas can be distinguished. By interacting with interstate structures, INGOs receive exceptional opportunities in the world arena. They can, for example, make important proposals on the agenda

of international intergovernmental organizations. As you know, many issues related to human rights were raised at the UN precisely at the initiative of the non-governmental sector. They can also supply these structures with useful information, and this ability of nongovernmental organizations is so in demand that some of them (International Committee of the Red Cross, KEA International, Médecins Sans Frontières, etc.) regularly are invited to attend meetings of the General Assembly and the UN Security Council. Some large IMGOs such as the International Labor Organization or the International Tourism Organization allow representatives of non-governmental organizations to take part in the development of the main directions of the activities of these structures [3, p.31].

Global INGOs very actively cooperate with the structures of intergovernmental organizations in practical work. First of all, this concerns the interaction of humanitarian INGOs and relevant UN agencies and agencies.

- The Office of the United Nations High Commissioner for Refugees, the United Nations Development Program (UNDP), the United Nations Children's Fund (UNICEF) and others. Finally, INGOs and international intergovernmental organizations actively interact during the preparation and holding of various colloquia, seminars, conferences and forums on the most pressing problems of our time. Recently, international non-governmental organizations have begun to hold so-called parallel conferences under the auspices of the UN, the Group of 20, the World Economic Forum and other structures. On them, INGO activists work out techniques of collective action and develop recommendations for "main" conferences with participation of states and IMGOs.

The relationship between INGOs and IMGOs, however, isn`t always peaceful, conflict-free. Different goals, different understanding of modern problems of world development, and finally, the different nature of organizations periodically lead to serious disagreements between the two actors of international relations. INGOs are most critical of the activities of global financial institutions such as the World Bank, International Monetary Fund and World Trade Organization, accusing them of pursuing policies that contribute to social inequality and poverty in developing countries. INGOs organize protest actions, create committees to monitor the activities and control of these financial structures (the most famous - created in 1994 committee "Fifty years is enough!", directed against the existence in its current form of the IMF and the World Bank), which, of course, can`t but provoke conflict situations between international intergovernmental organizations and non-governmental organizations.

Nevertheless, crises in relations between the two types of organizations occur quite rarely; more often, their relations are built on the basis of partnership and cooperation. Best of all, as shown above, the mechanism of interaction between INGOs and international intergovernmental organizations has been developed between non-governmental organizations and the UN; the relationship between them serves as a model for establishing contacts between other intergovernmental organizations and INGOs.

References:

1. Alger Ch. The Emerging Roles of NGOs in the UN System: From Article 71 to a People`s Millennium Assembly // Global Governance, 2002, Vol. 8, No 1, pp. 93-117

2. Bykova T.M. Legal status of international non-governmental organizations having consultative status under interngovernmental organizations. Autoabstract of dissertation for the degree of candidate of legal sciences. Moscow, 2012, 33 p. (In Russian)

3. Chimiak G. The Rise and Stall of Non-Governmental Organizations in Development // Polish Sociological Review, 2014, No 185, pp. 25-44

4. Fuentes Véliz. J.A. L'évolution du rôle des organisations non gouvernementales dans le droit de l'environnement // Revue Européenne de Droit de l'Environnement , 2007, n° 11-4 , pp. 401-430

5. Kalyadin A.N. Role of Non-Governmental Organizations in UN Activities for Peace and Disarmament // Bulletin of Peace Proposals, 1987, Vol. 18, No 3 – Special issue: Preparation societies for life in peace, pp. 393-398

6. Kim D. International Nongovernmental Organizations and the Global Diffusion of National Human Rights Institutions // International Organization, 2013, Vol. 67, No. 3, pp. 505-539

7. Kolyar K.A. International organizations and institutions. Translated from French by Z.I. Lukovnikova and A.S. Malikov; Edited and with an introductory article by V.G. Shkunaev. Moscow, Progress, 1972, 632 p. (In Russian)

8. Krivchikova E.S. Foundations of the theory of law of international organizations. Handbook. Moscow, MGIMO, 1979, 82 p. (In Russian)

9. Kuznetsova E.V. Evolution of the consultative status of international non-governmental organizations at the UN Economic and Social Council // Belarusian Journal of International Law and International Relations, 2001, No. 3, p. 27-31 (In Russian)

10. Shagabieva E.M. International non-governmental organizations: their types, peculiarities, categories and characteristics // Power, 2010, No. 9, pp. 94-96 (In Russian)

11. Turner Edward A.L.Why Has the Number of International Non-Governmental Organizations Exploded since 1960? // Cliodynamics, 2010, Vol. 1, Issue 1, pp. 81-91

12. Varella M.D. Le rôle des organisations non-gouvernementales dans le développement du droit international de l'environnement // Journal du Droit International (Clunet), 2005, n° 1, pp. 41-76.

INTERNATIONAL INFORMATION LAW AND REGULATION OF INFORMATION LAW RELATIONS

Ramil Aslanov
(*aslanovam@mail.ru*)
Doctor of Laws
(Baku State University)

Abstract

In a modern society where the informatization processes does not recognize time, space and political boundaries, it is not enough to regulate information relations only by domestic law. It also defines the subject and methods of regulation of international information law. However, the differences in the levels of economic development of the world's countries, the differences in the level of use of information and communication technologies, in general, affect the international framework of information legal regulation. The thesis examines these areas of influence from the legal point of view, makes suggestions and recommendations.

Keywords: *international information law, ICT, information law relation, global information space, legal regulation, information rights.*

The lack of a unanimous approach to the concept of "international information law" in modern literature has led to the existence of several approaches under various titles. Some sources use a term such as "international media law" [10], some sources apply "international internet law" [7], and there are some references to a case as "international telecommunications law" [5]. Moreover, such references as "international regimes for information and communication technologies" [6], "international media law" [8] and etc. can also be come across. The main discrepancy here stems from the issues included in the subject of international information law. Many researchers since they initially link information to mass media tools consider International information law as a part of regulation of information/media relations. For instance, Monroe Price, director of the Annenberg School of Global Communications, said that the content of international media law includes, first, freedom of expression, and then issues related to freedom of expression and the mutual development of technology. [4] A similar approach can be traced in the work of other authors.

The formation of the information society led to the emergence of the "right to information". Considering the fact that information law got its autonomy as an independent field of law, is it feasible to speak here of an independent subject and object of international information law? - Since ICT covers all spheres of human life in modern times, it might be complicated to define the boundaries of the right to information and which relations to include in the subject of this field of law. It is no coincidence that most authors consider the right to information as an integral part of administrative law. [9, p.23] The relations included in the subject of information law are characterized by their complexity. Due to the fact that the process of informatization covers all areas of society, information is distinguished by its leading role in all areas of law. In addition, human behaviour, which is the basis of social relations, manifests itself in a certain form of activity, and a person carries out any activity in a reciprocal form, rather than in isolation from other activities. Therefore, the difficulties in defining the boundaries between the branches of law can be considered normal. Basically, when determining the subject of a particular field of law, attention is paid to the content, object and subject of the relations regulated by it, as well as the applicable legal norms. This general rule should also apply to the right to information.

If the first principle that characterizes separate field of law is its subject, the second principle is the method of regulation applied in that field of law. The method of legal regulation means the method of influence of legal norms on public relations. Methods of information law include both dispositive and imperative methods of influence. Thus, what are the features that distinguish international information law from information law? - In general, international information law also regulates relations in the field of information. Certainly, there may be

similarities in the relationships that are subject to regulation. However, this does not mean that the concepts mentioned have the same meaning. In many cases, domestic law is not enough to regulate relations in cyberspace that does not recognize state borders. In this case, international and regional regulation comes to the fore. In this regard, international information law should be considered as a field of law governing relations in the international information space.

As the global information field is a new one, it is unfeasible to imagine this field without international legal regulation. Therefore, the role of international organizations is irreplaceable, based on the functions of international information law. In this regard, the following two directions should be considered:

First, the formation of the global information space leads to the emergence of new types of relations, the regulation of which is required at the international legal level. As the global information space is not limited to internal borders and has a wide content, this determines the legal attitude of international organizations to the existing secular problems in the information space and defines the implementation of the normative function.

Secondly, the process does not end with the legal regulation of relations arising and developing in the information space. The adoption of international law does not mean the successful regulation of information law. Thus, if the states authorized to apply any method in their jurisdiction do not cooperate with each other, do not create conditions for the safe and accessible exchange of information and knowledge in the global information space, the mechanism of functioning international law will fall to zero. Here one can assert that leaving the provision of such working mechanisms to individual states can lead to chaos. As the traditional inequality between the countries of the world can usher to the "hegemony" of the stronger states over the less developed ones, therefore, international organizations perform an information function that serves the purposeful and effective influence of all existing relations of public life in the information space and their subjects. It is this function that serves to eliminate the existing information inequality between states.

Thus, both functions interact and are interconnected. If the normative function is not performed properly, there will be shortcomings in the exchange of information between states, and international and regional organizations will not be able to ensure the availability of knowledge. On the contrary, if there are gaps in the implementation of the information function, there will be no mechanism to ensure the established international law.

Conflicts and legal contradictions in international information law arise from the interaction of information rights. For instance, the conflict of freedom of information with the inviolability of the personal life, the conflict of information rights with the right of intellectual property, freedom of expression with the protection of honour and dignity, and etc. It would be relevant to report on some of these conflicts.

Every person's right to privacy is enshrined both in international and national law. On the other hand, all norms provide ample opportunities for obtaining any information due to the principle of accessibility of information. In many cases, such opportunities lead to a violation of the right to privacy. Therefore, based on international and regional regulations, national legislation also provides an accurate list of information on personal and family life.

Another notable controversy arises over copyright. The main problem with the protection of intellectual property rights in modern society is that the openness of the Internet, i.e. easy access to information, increases the number of violations of intellectual property rights. The authors even call this conflict the Internet-Copyright conflict. [3, p.198]

There are two approaches to protecting intellectual property rights on the Internet. According to the first approach, there is no need to protect intellectual property rights on the Internet, which can hinder the development of the Internet. At best, recognition of a person's non-property rights is sufficient. The second approach, on the contrary, considers it essential to secure intellectual property rights on the Internet, and for this purpose offers a method of "collective mana-

gement of rights." This method is used when it is difficult to protect copyright and related rights individually. In this case, the objects of intellectual property are used/applied; in return, however, the intellectual property right holders are paid in the prescribed manner. [2, pp.238-252]

Special notice deserves UNESCO's paper on the protection of intellectual property rights. In January 2006, the organization launched a research project, Law and Society in the Digital Age. The main goal of the project was to reach a compromise between intellectual property owners and users. The initial activity began with a survey on rights to digitally expressed intellectual property. According to the results of the survey, few interesting facts were revealed. For example, 51% of rights holders surveyed said that the main reason for the increase in piracy was not only gaps in the legislation, but also the low level of consumer legal awareness. Another example: 46% of users and 44% of right holders advocated that the distribution of pirated products for non-commercial purposes should not be punished at all. On the contrary, they considered it necessary to impose stricter penalties for the production of pirated products for commercial purposes. [11, p.11]

The other compelling issue which is related to the protection of intellectual property rights on the Internet is that, despite the implementation of the above-mentioned protection and securing activities in our country, there are still some legal problems. Thus, although many rules governing copyright have been amended in relation to e-government, the legislature has not yet commented on the "electronic masterpiece (work)", while some norms remain in the old version and need to be updated. For instance, in the Law of the Republic of Azerbaijan "On Copyright and Related Rights", the writing of works or phonograms in electronic (including digital), optical or other machine-readable form for temporary or permanent storage is also considered copying (Article 4). "Publishing" also includes the use of works and phonograms through electronic information systems. However, no changes have been made in other articles related to these concepts. Furthermore, while covering the explanation of the public demonstration of the masterpiece/product, the legislator avoided to touch the issues of its publication on the Internet. Thus, to eliminate these contradictions, there is a need to revise the legislation governing intellectual property rights. Since to guarantee protection of the copyright on a work published on the Internet, it would be more correct to establish a separate regulatory mechanism for such publication.

International information law, which emerged as a result of the formation of the global information society, serves as a complex area of law to regulate the information legal relations that arise in the information space. Thus, the development of ICT has resulted in the emergence of various international relations. First of all, relations have been formed to develop the application of ICT in all spheres of society, as well as to ensure the normal and unimpeded functioning of ICT, and the subjects of these relations are mainly international organizations and their institutions, world-renowned research centres and states (via their representatives). As the application of ICT also introduces new forms of realization of basic human rights and freedoms, this has created conditions for the emergence of new group relations in international legal regulation. For instance, various forms of e-commerce, as well as the prevention of dangerous tendencies in the information society, etc. such issues are regulated by international information law.

The sources of international information law should also be guidance to a domestic law. Otherwise, legal conflicts in practice create problems for the exercise of rights and freedoms. Therefore, the national legislation has not yet clarified many information and legal terms, and the fact that the laws provide for some repetitive provisions also leads to confusion in practice. For example, as can be seen from the name of the Law of the Republic of Azerbaijan "On information, informatization and protection of information", the protection of information is taken as one of the areas of legal regulation. However, the term "information security" is used in all international documents, as well as in the information and legal literature. At the same time,

ensuring national information security is one of the main tasks and activities in the National Strategies for 2003-2012 and 2014-2020. Therefore, we believe that it is expedient to change the name of the law by replacing the term "protection of information" with "information security", as well as to include "information security" in the article giving the basic concepts.

Another point related to the harmonization of the legislation of the Republic of Azerbaijan with international norms is related to freedom of thought and speech. Article 47 of the Constitution of the Republic of Azerbaijan enshrines freedom of thought and speech; however the term "freedom of expression" is used in all international documents. Certainly, it is impossible to determine the guarantee mechanism if the person does not express his views and opinions, as these ideas are internal and do not have the form of external expression. It is through disclosure, that is, through the transmission and dissemination in various ways, that the use of freedom of thought and speech takes the form of an external manifestation. In this regard, the use of the term "freedom of expression" is appropriate. In fact, it is impossible to imagine freedom of expression in isolation from the right to receive and impart information. Because freedom of information and freedom of thought and speech are often realized together. They act as a condition for the emergence of each other, or vice versa. At the same time, given that freedom of thought and speech is exercised in the written or oral form in the media, it is practically incorrect to envisage the principle of freedom of the information in Article 50 of the Constitution, rather than in Article 47. In our opinion, it is more expedient to present freedom of information and freedom of expression in the new edition under a single norm.

Finally, the last point is the recognition of high-speed Internet as a fundamental right. Such a right has already been declared in Canada since 2016. One can assume that the recognition of this kind of a right stems from the requirements of the modern information society, as it is not feasible to talk about the active participation of a person who does not have access to the Internet in the information society. Measures taken to ensure the right to high-speed internet will also eliminate digital inequality.

References:

1. Aliyev A.I., Rzayeva G.A., Ibrahimova A.N., Maharramov B.A., Mammadrzali S.S. Information law. Textbook. Baku: Nurlar, 2019, 448 p.

2. Dutfield G. Global intellectual property law: commentary and materials / Graham Dutfield [and others]. Northampton, MA: Edward Elgar Pub., 2005, pp. 238-252

3. Fiordalisi E. The Tangled Web: Cross-Border Conflicts of Copyright Law in the Age of Internet Sharing. // Loyola University Chicago International Law Review, 2015, Vol. 12, İssue 2, pp. 197-213.

4. International Media Law Reference Database. http://pricemootcourt.socleg.ox.ac.uk/wp-content/uploads/2013/09/International-Media-Law-Reference-Database.pdf

5. International Telecommunications Law / Ed. Dennis Campbell, 2011, 1982 p.

6. Jeffrey A. Hart. International Regimes for Information and Communication Technologies: Towards a New Research Agenda // Indiana University, International Studies Association, San Diego, March 22-25, 2006. http://www.indiana.edu/~globalm/pdf/isa06.pdf

7. Joanna Kulesza. International Internet Law. Routledge, 2012, 196 p.

8. Perry Keller. European and International Media Law: Liberal Democracy, Trade, and the New Media, 2011, 536 p.

9. Kovaleva N.N. Information Law of Russia: Textbook. Moscow: Publishing and Trade Corporation "Dashkov and K", 2007, 360 p. (in Russian)

10. International law: Textbook. Edited by Y.M.Kolosov, E.S.Krivchikova. Moscow: International relations, 2003, 720 p.

11. Tulikov A. Intellectual property in cyberspace: rightholders and society are ready for dialogue. // Intellectual property in cyberspace: A collection of analytical materials from the project “Law and Society in the Digital Age”. IOO WFP UNESCO “Information for All”. Compiled by: Evgeny Altovsky, 2006, p. 9-12 (in Russian)

Date of receipt of the article in the Editorial Office
(18.10.2020)

PROSPECTS FOR IMPROVING THE LEGAL PROTECTION OF THE UNDERWATER CULTURAL HERITAGE, TAKING INTO ACCOUNT INTERNATIONAL AGREEMENTS

Igor Martynenka
(*i.martinenko@grsu.by*)
Doctor of Law, Professor
(Yanka Kupala Grodno State University (Belarus))

Abstract
The article deals with topical issues of the correlation of international and national law regulating the legal protection of underwater heritage. The author analyzes the UNESCO Convention of 2001 "On the Protection of Underwater Heritage" and proves the need to participate in this international agreement by concrete examples. The conclusions and recommendations formulated as a result of the study can be used, can also be used to improve legislation on the protection of archaeological heritage, taking into account the experience of the Republic of Belarus in codifying legislation on culture.
Keywords: *legal protection of underwater archaeological heritage; UNESCO conventions; codification of legislation on culture.*

In recent years, the Republic of Belarus has paid great attention to the protection of archaeological heritage, as evidenced by the adoption of new regulatory legal acts. The Code of the Republic of Belarus on culture [1] (hereinafter referred to as the Belarus Code on culture), which entered into force on 3 February 2017, directly regulates the protection of archaeological heritage located not only underground, but also in underwater.

Art 123 of the Belarus Code of culture contains the following definitions that are directly related to the problem under study: «archaeological artifacts are movable material objects that have arisen as a result of human life and activity more than one hundred and twenty years ago, which have been preserved in the cultural layer or at the bottom of natural and artificial reservoirs, have historical, artistic, scientific or other cultural significance, can meet the criteria for granting the status of historical and cultural value established by the legislation on the protection of historical and cultural heritage, and at the time of their discovery do not have an owner».

Archaeological objects include immovable material objects or their complexes together with archaeological artifacts and cultural layer that have arisen as a result of human life and activity more than one hundred and twenty years ago, - which have been preserved in the earth or at the bottom of natural and artificial reservoirs, - have historical, artistic, scientific or other cultural significance, and can meet the criteria for granting the status of historical and cultural value established by the legislation on the protection of historical and cultural heritage.

Thus, the national legislation of the Republic of Belarus provides for the protection of objects (monuments, artifacts) of archaeological heritage located both in the ground and under water. Model Code about the culture of the States (supposedly, based on the Belarus Code of on culture), adopted by the Interparliamentary Assembly of States, consisting of the participants of the Commonwealth of Independent States on 13 April 2018 [2] retains the same approach. In this international act, the archaeological heritage is defined as a set of material objects that appeared as a result of human activity, preserved in the natural conditions of the surface, in the bowels of the earth and under water, requiring identifying and studying the use of archaeological methods

All these circumstances allow the Republic of Belarus to once again address the problem of the protection of archaeological (including underwater) heritage, taking into account international legal acts, based on the research of lawyers-specialists in the field of legislation on the protection of underwater cultural heritage law [3, 4, 5, 6], as well as historians and specialists in the field of underwater archaeology [7, 8, 9, 10]. It should be noted, however, that in the works of these authors the use of the UNESCO Convention in the Republic of Belarus, to which the

Republic of Belarus has not acceded to, was not considered, which determines the relevance of the proposed study.

For the first time, the definition of «underwater cultural heritage», understood as an archaeological heritage, was introduced into scientific and practical use by the UNESCO Convention about 58 States are parties to this international agreement as of April 2021.

Underwater cultural heritage means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as: sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context; vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and objects of prehistoric character.

The Convention was developed by UNESCO member States as a response to the increasing human damage caused by dredging, pipelining, mining, trawling and port operations, which pose a threat to underwater archaeological sites. It is about the specific protection of traces of human existence found under water that are of a cultural, historical or archaeological nature and respect for their characteristics, taking into account, inter alia, their fragility, accessibility and underwater environment. The purpose of the Convention is to enable States to better protect underwater cultural heritage by setting high standards and promoting cooperation among States. To achieve this goal, States parties shall cooperate in the protection of underwater cultural heritage [11].

For example, on the basis of the provisions of this Convention, the remains of the sunken Titanic acquired the status of an object of underwater cultural heritage on 15 April 2012 («Titanic» is located in international waters, i.e. outside the national jurisdiction of any state) [12]. In addition, the underwater heritage is also considered architectural ensembles and caves with rock paintings under water. Thus, the international agreements (Art 1 of the UNESCO Convention) contain an indication of the centenary period of stay of the object under water for recognition as an object of underwater cultural heritage; the Belarusian legislation (Art 123 of the Belarus Code of culture) sets the upper limit of the time period of stay of the object at the bottom of natural and artificial reservoirs in 120 years. It seems that it is still advisable to adhere at the national and international levels to the same time criteria for the recognition of an underwater object as a hydro archeological monument - an underwater heritage. From a practical point of view, probably more suitable upper limit for the detected object is 100 years of his stay underwater.

The Republic of Belarus is still not a party to the UNESCO Convention and such terminology is not used. It is difficult to share the position that explains this situation by the fact that the Republic of Belarus is landlocked. Sometimes, as an argument, non-participation in the Convention is called the fear to undertake the obligation to disclose information about foreign ships and aircraft sunk in the waters. It seems that it does not take into account that Belarus already has a large number of hydro archeological monuments, among which researchers include flooded settlements; sunken boats and ships; submerged weapons; burials in the water; sunken piers, piers, bridges, roads, mills; treasures in the water. Many of them are put on the state account as historical and cultural values. Thus, in the funds of the Museum of ancient Belarusian culture is stored extracted from the river movable historical and cultural value «coven».

As other examples of the revealed and preliminary surveyed monuments - objects of underwater cultural heritage of Belarus, according to the data of GNU «the Center of researches of the Belarusian culture, language and literature» of the National Academy of Sciences of Belarus received during this research, it is possible to result:

- Knight armor (15th/16th centuries) found in the river Vihra around Mstislavl;
- Objects of water transport, including 3 wooden cargo vessels long about 25 m (the beginning of the 19th century) in Berezina near Borisov;

– Elements of the water transportation infrastructure, including a jetty on Western Dvina River in district D. Luchno;

– Elements of infrastructure of land transport routes, including the dam and the piles of the bridge (the beginning of the 19th century) in the river near the town of Svetlogorsk;

– Buildings functionally associated with water, including water mills on the river Myadelka near the Hocks (19th century);

– Constructive elements of buildings associated with the water portion of the castle bridge over a flooded ditch near the castle of the Gills (beginning of the 17th-18th centuries.); and,

– Settlements and elements of infrastructure flooded, including the village Klushino, the historical road leading to the village.

Of practical interest is the classification of underwater cultural heritage. Analysis of literature sources, normative legal acts and international agreements, taking into account the foreign experience of legislative protection of the underwater heritage , recommendations for the application of the Convention allow to expand the conditional list of objects of underwater cultural heritage, including historical coastal fortifications, ports, historical beacons and hydraulic structures; places of interest (historical river settlements and cities, historical waterways, places of battles, fleets, places associated with the history of the development of new territories); shipwrecks; complexes of hydro technical constructions (systems of locks, channels, etc.); complexes of navigational constructions (beacons, signs, shutters, etc.); memorial complexes (estates etc.); burials (necropolises); underwater parks: natural underwater parks specializing in preservation and demonstration of objects of nature (underwater landscapes and flooded caves); parks sculptures (aesthetic and iconic underwater parks); underwater parks equipment (especially wrecks and aircraft); historical and cultural underwater parks (archeological and historical [10].

In August 2015, the Meeting of the States Parties to the Convention adopted the current operational guidelines for the Convention for the protection of the underwater cultural heritage, which as an Annex contain forms on inter-state cooperation in international waters namely

- Notification of the discovery of underwater cultural heritage;
- Notification of activities in the field of underwater cultural heritage;
- Statement of interest in activities in the field of underwater cultural heritage;
- Application for international assistance; Application for accreditation of organizations; and
- Model form for the register of underwater cultural heritage.

These forms are an important legal tool used in practical activities for the protection of the detected object of underwater cultural heritage.

Let us consider the principles of international legal protection of underwater archaeological heritage, which are contained in Art 2 of the UNESCO Convention and can be used in Belarusian legislation, and then - applicable, in case of accession to the Convention.

Main principles.

Obligation to Preserve Underwater Cultural Heritage: States Parties should preserve underwater cultural heritage and take action accordingly. This does not mean that ratifying States would necessarily have to undertake archaeological excavations; they only have to take measures according to their capabilities. The Convention encourages scientific research and public access. In Situ Preservation as first option. The in situ preservation of underwater cultural heritage (i.e. in its original location on the seafloor) should be considered as the first option before allowing or engaging in any further activities. The recovery of objects may, however, be authorized for the purpose of making a significant contribution to the protection or knowledge of underwater cultural heritage.

No Commercial Exploitation: the 2001 Convention stipulates that underwater cultural heritage should not be commercially exploited for trade or speculation, and that it should not be irretrievably dispersed. This regulation is in conformity with the moral principles that already

apply to cultural heritage on land. It is not to be understood as preventing archaeological research or tourist access.

According to this rule, the possibility of conservation of underwater cultural heritage in situ, i.e. «at the place of location» is considered as a priority option for the authorization of any activity aimed at underwater cultural heritage or prior to the commencement of such activities. The principle of «in situ» in a narrow sense means the preservation of cultural heritage at its original location. In a broad sense, the international legal principle of preservation of cultural heritage "in situ" is the principle of preservation of cultural heritage without separation from a certain culture, territory, etc., and as for movable objects of cultural heritage - from an immovable object of cultural heritage, from a set of cultural heritage objects with which they are directly related. Finally, responsible and harmless access is encouraged to observe or document in situ underwater cultural heritage in order to inform the public about the heritage, value and protection of the heritage, unless such access is incompatible with its protection and management. Respect for all human remains in the sea must be ensured.

Training and Information Sharing: States Parties shall cooperate and exchange information, promote training in underwater archaeology and promote public awareness regarding the value and importance of Underwater Cultural Heritage.

In practice, the extracted underwater heritage is stored, preserved and managed in a way that ensures its long-term preservation. As defined in Art 7 of the Convention, States parties have the exclusive right to regulate and permit activities aimed at underwater cultural heritage in their internal waters, archipelagic waters and territorial sea with respect to their sovereignty (emphasis added). In cases where a national of a state party or a vessel flying its flag discovers underwater cultural heritage or intends to conduct activities aimed at underwater cultural heritage located outside national jurisdiction, that state requires the national or the captain of the vessel to inform him of such discovery or activity (Art 11 of the Convention). The Convention obliges States to take measures to prevent illegal trafficking in underwater cultural heritage and the seizure on its territory extracted in violation of international law of cultural heritage.

One of the key provisions of the Convention is aimed at the need to train specialists in the field of underwater archeology, development of methods of preservation of underwater cultural heritage, transfer of technologies related to underwater cultural heritage. This means that States parties should establish competent authorities or strengthen existing ones, whose activities should be aimed at establishing, maintaining and updating the register of underwater cultural heritage, its effective protection, conservation, public display and management.

Another legal instrument of the Convention is the Rules relating to activities aimed at underwater cultural heritage. They are automatically applied upon the entry into force of the Convention for the state party in respect of sea waters. At the same time, any state party or territory may at any time declare that the Rules apply to its internal non-marine waters. These Rules determine that the priority option for the protection of underwater cultural heritage is the possibility of its preservation in situ. The following provision of the Rules states that commercial exploitation of underwater cultural heritage, speculation or its irrevocable dispersal are incompatible with the protection and proper management of underwater cultural heritage. However, practice shows that in recent years, travel companies organize tours for lovers of scuba diving, taking tourists to the crash site of ships. Underwater treasure hunting is also widespread. The rules determine that activities aimed at underwater cultural heritage should not have a greater negative impact on it than is necessary for the purposes of the project. In the course of such activities are non-destructive methods of treatment and examination that are more preferred than entity extraction. The key provision of the Rules states that activities aimed at underwater cultural heritage should not disturb the peace of human remains and places of worship. Activities aimed at underwater cultural heritage are strictly regulated in order to ensure that the cultural, historical and archaeological information obtained is duly taken into account. Public access to

underwater cultural heritage in situ is encouraged, unless such access is incompatible with the objectives of protection and management. Finally, prior to any activity aimed at underwater cultural heritage, project documentation is prepared, which includes financing plan, project schedule, assessments of previous studies or preliminary work, safety regulations, environmental protection, and publication plan.

Conclusion

Preservation in situ of underwater cultural heritage shall be treated as the first alternative before authorizing or taking up any measures aimed at underwater cultural heritage. The distinguished norm established by the Annex is also manifested in the further terms put on these measures, and it does not exclude the critical matter of exception to the principle of in situ preservation.

The UNESCO Convention needs the states parties to give and assure due respect to all human relics found in marine waters. However, in several cases an equilibrium is required to be created between preserving the sacredness of a site and safeguarding other interests cultural, economic or both. However, the UNESCO Convention does not provide direction in the matter of ownership, and the question is left for national legal regimes to decide.

In conclusion, the following approaches to solve the problem of increasing the effectiveness of legal protection of underwater cultural heritage are proposed:

– Accession of the Republic of Belarus to the UNESCO Convention. Participation in this international agreement will contribute to strengthening the fight against the looting of underwater cultural heritage; the development of the tourism industry, based on activities related to underwater cultural heritage; and broad recognition of the importance of underwater cultural heritage. UNESCO encourages states to become parties to the Convention by ratifying, accepting, approving the Convention (legal actions that can be taken by UNESCO member States) or acceding to it (legal action that can be taken by non-UNESCO member States);

– expansion of international cooperation with States parties to the Convention with practical experience in the management and protection of underwater cultural heritage (hydro-archaeological sites) through participation in various joint programmes, activities and international underwater archaeological expeditions and research;

– Adjustment of the state program «Culture of Belarus» for 2021-2025 (resolution of the Council of Ministers of the Republic of Belarus of 29 January 2021 № 53 [13]) in terms of allocation of funds for identification, research, evaluation, protection and conservation of underwater cultural heritage;

– further development of the regulatory legal framework governing relations in the field of protection, extraction, accounting, use and conservation of archaeological sites, including underwater cultural heritage; addition of the Belarus Code on culture with new standards that allow to introduce into practice such concepts as «underwater archaeological parks», «underwater memorials», and «underwater archaeological reserves». In case of implementation of these provisions on objects of underwater cultural heritage with the status of the memorial, it shall be forbidden to conduct any forms of activity, including underwater excursion, except needs of scientific researches or inventory; and,

– provision of training in the field of legal protection and management of underwater archaeological heritage as part of the historical and cultural heritage, which can be facilitated by teaching in educational institutions on legal and historical specialties of the discipline «Legal protection of historical and cultural heritage». In this regard, the experience of Republic of Belarus can be useful, in which the eponymous special course is taught at two levels of higher education and in two divisions (at the faculty of law and the faculty of history, communication and tourism). As a result, students and undergraduates master the skills of practical protection of cultural values using the entire arsenal of legal means.

This experience can also be useful for Azerbaijan, which is considering the possibility of participating in this international agreement [14].

References:

1. The Code of the Republic of Belarus of the AB of Culture [Electronic resource] : July 20, 2016. legal Internet portal of the Rep. Belarus. – 02.08.2016 – 2/2412.

2. Unified Register of Legal Acts and other Documents of the Commonwealth of Independent States [Electronic resource]: https://iacis.ru/baza_dokumentov/modelnie_zakonodatelnie_akti_i_rekomendatcii_mpa_sng/modelnie_kodeksi_i_zakoni/40.

3. Nikolaev Ivan R. Legal Protection of Underwater Cultural Heritage: Experience of Great Britain // Culture: management, economics, law 2020. №1. Pp. 28– 32.

4. Anisimov, I O. Underwater cultural heritage. Actual problems of international legal protection: monograph / I. O. Anisimov. - 2nd ed. - Moscow: Pero, 2015. 267p.

5. Aznar, M.J. In Situ Preservation of Underwater Cultural Heritage as an International Legal Principle / M.J.Aznar // Journal of Maritime Archaeology. 2018. Vol. 13. Iss. 1. Pp. 67-81.

6. Blake, J. The Protection of the Underwater Cultural Heritage // International and Comparative Law Quarterly. 1996. Vol. 45 (4). Pp. 819-843.

7. Martin J. B., Gane T. Weaknesses in the Law Protecting the United Kingdom's Remarkable Underwater Cultural Heritage: The Need for Modernisation and Reform // Journal of Maritime Archaeology. 2020. Volume 15. Pp.69-94.

8. Encyclopedia of underwater cultural heritage / A.V. Okorokov, L. V. Madikova. - M.: Institute of Heritage, 2020. 516p.

9. Underwater cultural heritage: underwater museums, historical parks and nature reserves / A.V. Okorokov, D. V. Babekin, T. P. Polyakov, O. Yu. Nelzina. M.: Institute of Heritage, 2018. 140 p.

10. Fazaullin, S.M. Underwater parks and preservation of underwater cultural heritage // Bulletin of Tomsk State University. Cultural Studies and Art history. 2015. №2(18). Pp.113- 125.

11. UNESCO Convention for the Protection of the Underwater Cultural Heritage,2001//http://www.un.org/ru/documents/decl_conv/conventions/underwater_heritage.shtml.

12. L' e' pave du titanic est protegée par I' UNESCO 'a parter du 15 avril 2012. WWW. unesco.org/new/fr/culture/ themes/ underwater-cultural- heritage/ the-heritage/did-you-know-/titanic.

13. On the State Program «Culture of Belarus» for 2021– 2025: resolution of the Council of Ministers of the Republic of Belarus. Belarus, January 29, 2021, No. 53 / / National Legal Internet Portal of the Republic of Belarus, 06.02.2021, 5/48756.

14. Azerbaijan is conducting research on joining the UNESCO Convention on the Protection of Underwater Cultural Heritage. WWW http://interfax.az/view/444672.

Date of receipt of the article in the Editorial Office
(19.09.2020)

HUMAN RIGHTS IN TIME OF GLOBAL ECONOMIC CRISIS AND ITS IMPACT ON TRAFFICKING OF HUMAN BEINGS

Rubaba Mammadova
(*rubabeabdulla@yahoo.com*)
Ph.D. Candidate
(Baku State University)

Abstract

The article focuses on the issue of human rights in times of the global economic crisis and its impact on trafficking of human beings which is a very actual and interesting topic. This article provides an overview on the current and potential implications of the global financial crisis on essential human rights, such as, right to work, right to food, right to an adequate standard of living, the right to social security, right to education and it also highlights various types of obligations of states on protection of its people from the effects of crisis. At the same time, the article analyzes that how the violation of these rights affects the growth and occurrence of human trafficking and which measures can be taken by the states to prevent human trafficking and eliminate the negative impacts of crisis.

Keywords: *Human rights, Global Economy, Economic crisis, Employment, Working conditions, Trafficking of Human Beings, THB.*

Global economic crisis poses a severe threat to the enjoyment of human rights. As the financial crisis has spilled over into the real economy, it has had, as we shall see, devastating effects on lives and livelihoods across the world, especially on the poorest people in the poorest countries, with women and children, migrants and minorities bearing the brunt. The economic crisis threatens the full range of human rights. It threatens not only economic, social and cultural rights, including the right to an adequate standard of living and the rights to health, housing, food and education, but also civil and political rights. [1, p.2] From an economic perspective, the harmful impacts of the crisis on human lives and dignity tend to be seen as tragic but inevitable consequences of unpredictable and uncontrollable market forces. [2]

In modern world, with the process of globalization, development of IT and communication technologies, the increasing power of the internet, the speediness of dissemination of information and data through the social networks, the economic imbalances and the worldwide migration movement coming from the war conflicts and the crises areas, global economic crisis have resulted in increasing the trafficking in human beings, both in perpetrators and victims and in occurrence of new phenomenological forms.

Trafficking in human beings is a human rights violation and a heinous crime. The classical forms of exploitation purposes, which are the sexual exploitation of woman and children, as main target groups that are usually marginalized even before becoming victims of trafficking have new and complex forms of means for recruitment [3]. In parallel, there is a trend of increasing of various forms of trafficking for labor purposes, as well as related crimes, such as domestic servitude, forced marriages, trafficking of human organs, mostly targeted at irregular migrants and misusing their vulnerability, and which forms have escalated in the most severe forms of human exploitation and resulted in revival of the modern slavery. These crimes are difficult for revealing, detecting and securing the evidences that impose more closely national and international cooperation, exchange of evidences, information and intelligence data towards detecting suspicious financial transaction that may be indicative for money laundering and human trafficking.

The international financial crisis and human trafficking has affected many countries, but its effects are different, depending on the conditions of each country, the strengths and weaknesses of local economies and how governments deal with them. The economic crisis has had a devastating effect in the right to work. It was clearly threatened by increasing unemployment in countries which already suffered from very high levels of unemployment and underemployment be-

fore the crisis. It is the world's poor and the marginalized, especially women, children, youth and minorities that are particularly vulnerable to the impact of the economic crisis. They are likely to suffer disproportionately from the increases in poverty, loss of jobs and access to social safety nets and services. [4] The global economic crisis also resulted in job losses due to downsizing or business closures and reduced the number of jobs available for the growing number of unemployed. A lack of decent work opportunities at an early age may permanently compromise the future employment prospects of youth. The relative disadvantage of young workers is even more pronounced in developing countries.

As a result of this process, human traffickers take advantage of the vulnerability of people and exploit them to take material benefits. The traffickers earn profits of roughly $150 billion a year for the traffickers. The breakdown of profits by sector is as follows: $99 billion from commercial sexual exploitation, $34 billion are made in civil construction, manufacturing, mining and utilities, $9 billion in agriculture, including forestry and fishing, $8 billion dollars are saved annually by private households that employ domestic workers under conditions of forced labor. [5]

Foreign workers are affected by the crisis as are the rest of the workers, but with some other consequences, the most important being that in the case of sudden unemployment, since they depend on their residence and work permits, they may lose their papers and find themselves in an irregular situation (again). [6, p.44] Migrant workers, already vulnerable to abuse, become further subject to exploitation when they feel their jobs are at risk, including underpayment and nonpayment of wages, as well as physical and sexual abuse. Ordinary workers attempting to form labor unions or complain about working conditions are more at risk of reprisal. Women in all lines of work can expect greater discrimination than usual. [7]

As mentioned, women and girls are especially at risk for several reasons. The reason is that, Trafficking in human beings, when carried out for the purposes of sexual exploitation mainly concerns women, although women can also be trafficked for other purposes. They are the main target group of THB and they are often marginalized even before becoming victims of trafficking. Quite often, they are victims of poverty, unemployment and domestic violence and even sexual abuse in the family. Therefore, measures to protect and promote the rights of women victims of trafficking must take into account this double marginalization, both as women and as victims. Equality must be promoted by supporting specific policies for women, who are more likely to be exposed to practices which qualify as torture or inhuman or degrading treatment (physical violence, rape, genital and sexual mutilation, trafficking for the purpose of sexual exploitation).

At the same time, the crisis and its consequences (unemployment and social unrest) can result in greater violence against women. Women lead in many export industries that have been hardest hit by the global economic crisis. By losing their financial independence women can face sexual violence at home or be fall into sexual exploitation or slavery or other slave-type labor by trafficking. Human trafficking is one of the escalating powers as the economic crisis fuels poverty and unemployment. [8, p.458]

At the 1996 World Food Summit, governments reaffirmed the right to food and committed themselves to half the number of hungry and malnourished from 840 to 420 million by 2015. However, the number has increased over the past years, reaching an infamous record in 2009 of more than 1 billion undernourished people worldwide. Furthermore, the number of people who suffer from hidden hunger - micronutrient deficiencies that may cause stunted bodily and intellectual growth in children - amounts to over 2 billion people worldwide. [9]

The other right is the right to an adequate standard of living. It contains adequate food, clothing, and housing. The percentage of those who do not have adequate food, clothing and housing will go up because of decreasing household incomes. The global economic crisis will increase the number of squatter settlements and slums, which is already a big concern for the population living in slums. Those people suffer from inadequate housing. Global crisis is one of

the reasons why greater poverty, and the hunger that it brings, will threaten the right to health, and even to life, of many of the poor, including even children.

The other important issue is the right to social security which includes the rights of the people to have protection against the risks of sickness, disability, maternity, employment injury, unemployment and old age. As well as, it includes an adequate support both for families and for those without families. Although, they are more needed than ever now, the global economic crisis could further decrease the possibility that countries will create social protection programs and safety nets, and will go on to leave the poor and vulnerable to suffer the effects of the crisis without help.

The next right is the right to education and it may be affected if families do not take their children in school or they are forced to withdraw them from school because they are not able pay school fees or cover other costs, such as materials and clothing, or need their children to work or otherwise help support the family. [10, p.3] The quality of education may be affected by budget cuts. This process will be disproportionately experienced by the poorest and most marginalized in society, including migrants, women and girls and other vulnerable populations.

The global economic crisis may also exacerbate social frustration, as people feel a loss of control over their lives and cannot understand or challenge the reasoning behind policy responses. This risk is heightened where governments do not respect civil and political rights such as the rights to information and to participation in government policy decisions about the crisis and may result in social unrest and violence. [11]

Human rights set out various types of obligations of states. These include the duty to take positive measures to fulfill human rights, as well as the duty to respect human rights (by refraining from deliberate infringement of those rights), and to protect people against abuses of human rights by corporate or other private actors (including by regulating the activities of private actors and ensuring justice and redress to victims of abuses). [12, p.5] While the global economic crisis seriously threatens human rights, at the same time, in their responses to the crisis, governments have the opportunity to increase their commitment to fulfilling their human rights obligations. In the resolution adopted on 23 February 2009, the Human Rights Council stressed that the global economic and financial crises did not diminish the responsibility of national authorities in the realization of human rights. It called upon States, notwithstanding any possible impact of the global economic and financial crises, to respect their human rights obligations and to continue their efforts towards the universal realization and effective enjoyment of all human rights, particularly by assisting the most vulnerable, and in this context urged the international community to support national efforts to, inter alia, establish and preserve social safety nets for the protection of the most vulnerable segments of their societies. The Council reaffirmed that an open, equitable, predictable and non-discriminatory multilateral trading system could substantially stimulate development worldwide, benefiting all countries, particularly developing countries, and thereby contributing to the universal realization and effective enjoyment of all human rights. [13]

States, as primary duty-bearers of human rights obligations, are called on under international law to respect, protect and fulfill human rights as a matter of priority in their public and economic policy. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of human rights at home or abroad. The obligation to protect requires States to prevent human rights abuses by third parties - be they individuals, businesses, banks, hedge funds or other non-state actors. It also means States must hold those responsible for human rights abuses to account and ensure accessible and effective remedies and reparations for those adversely affected. The obligation to fulfill requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of human rights. This involves using the maximum of available resources to create the conditions under which all people living under their jurisdiction can exercise their full range of economic and social rights. Even during a crisis, governments must do all they can to avert retrogression in

the realization of socioeconomic rights, and governments must immediately avoid discrimination in their economic policy. [14]

Given the seriousness of the crisis that we face, it is crucial that States ensure respect for those rights that are essential for the survival of the poor - including the rights to access to social security, water and sanitation, housing and education. States must also guarantee access to work and they must respect labor rights and ensure decent working conditions". The right to engage in work is a fundamental right protected under Article 15 of the EU Charter for Fundamental Rights. In order to respect and protect this right, steps need to be taken to help people back into work as quickly as possible, particularly given the range of adverse side effects of unemployment on physical and mental health. In this regard, the target set by the European Council in its July 2008 Employment Guidelines, part of the Integrated Guidelines for 2008-2010, was that first "every unemployed person is offered a job, apprenticeship, additional training or other employability measure; in the case of young persons who have left school within no more than 4 months by 2010 and in the case of adults within no more than 12 months", and, second, that "25 % of long-term unemployment should participate by 2010 in an active measure in the form of training, retraining, work practice, or other employability measure, with the aim of achieving the average of the three most advanced Member States." The economic crisis made these targets particularly hard to reach, but also highlighted the need for urgent measures to address rising unemployment. [15, p.21]

Social protection is a fundamental right protected under Article 34 of the EU Charter for Fundamental Rights. In order to respect and adequately protect this right through a downturn, social protection systems should seek to continue to provide support at a satisfactory or adequate level "in accordance with national laws and practices" (Article 34.1), so as to fulfill the requirement of Article 34.3 of the EU Charter of Fundamental Rights for social assistance that can provide a "decent existence".

The rights of the child, which are protected under Article 24 of the EU Charter for Fundamental Rights, can also be affected by the economic crisis. Fiscal consolidation measures may lead to budget cuts in services that are important for children, as well as governmental and non-governmental initiatives in regard to, for example, early childhood development, grants or school fee waivers, but also action targeting the most vulnerable children, such as street-children initiatives, action against child abuse and exploitation, and youth programs to avoid marginalization. EU Member States have tried to maintain the level of social benefits at pre-existing levels prior to the crisis.

States must provide certain programs at the minimum essential level to protect vulnerable parts of society to relieve poverty, hunger and homelessness; and protect budgets for the provision of essential goods and services, including those necessary to prevent maternal and child mortality and ensure the completion of primary school education. Another measure that states can take is adopted and implements certain policies in order to promote non-discrimination regarding most vulnerable rights. These measures mainly include the rights of women, children, migrants, minorities and other groups particularly threatened in this crisis. Also it is made to ensure that economic stimulus packages and economic policies (in countries where they are possible) concentrate on limiting the worst human consequences and prioritize the most vulnerable and marginalized in the distribution of resources; compensate for the disproportionate effects of the crisis on different groups to ensure substantive and formal equality. It also must be noted that the states should respect human rights principles and standards in their policy and outcomes and these policies must be compatible with the international principles such as the principles of participation, transparency, accountability and redress into policy and program responses. Another obligation of states is to refrain from violating civil and political rights, including the rights to freedom of expression, freedom of association and the right to information. States should minimize harms caused by economic measures which mean that they recognize their obligation to meet human rights principles. The last stage is to implement human rights principles into natio-

nal economic policymaking, including establishing processes that are participatory and transparent and instituting mechanisms for accountability and redress.

And donor governments must not use the economic crisis as an excuse for reducing international assistance, and that those most responsible for the crisis have a special responsibility to support policy decisions that do not only aim to alleviate adverse effects of the economic crisis, but are founded in human rights principles.

Complexity of the Trafficking in Human Beings (THB) requires different approaches that include holistic, human rights and gender- based approach to victim protection and assistance, increase of successful prosecutions, adequate sentencing of the perpetrators, and ensuring proper and timely compensating of the victims, but in parallel to increase of successful prosecutions, adequate sentencing of the perpetrators and to integrate the fight against trafficking into the broader efforts against transnational organized crime.

Member States are encouraged to continue strengthening and prioritizing their efforts to implement comprehensive policies to combat trafficking in persons and smuggling of migrants while ensuring the rights of trafficked victims and of smuggled migrants are strengthened in the context of wider development policies. Special vulnerabilities of child and women migrants need to be given due attention. Monitoring and research of the effects of the crisis on vulnerability would need to be carried out on a systematic basis.

References:

1. Roth, K. "Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization", Human Rights Quarterly, 26:1, 2004, pp. 64-65; Center for Economic and Social Rights, "Human Rights and the Global Economic Crisis: Consequences, Causes and Responses", [pdf] (Available at: http://www.cesr.org/downloads/CESR-Human%20Rights%20and%20the%20Global%20Economic%20Crisis.pdf f Accessed: 14 January 2013])

2. Bas de Gaay Fortman, "Political Economy of Human Rights: Rights, Realities and Realization", Routledge, 2011

3. EUROSTAT P.10.11.

4. "The Global Economic Crisis through a Human Rights Lens", Interview with Daniel Seymour, Chief, Gender and Rights Unit Division of Policy and Practice UNICEF New York and Professor Radhika Balakrishnan, Professor of Economics and International Studies at Marymount Manhattan College, US, [Online] (Available at: http://hrbaportal.org/archives/insights/issue-no-6-%E2%80%9Cthe-global-economic-crisis-through-a-human-rights-lens%E2%80%9D [Accessed: 15 January 2013])

5. According to a September 2017 report from the International Labor Organization (ILO) and Walk Free Foundation.

6. Eider Muniategi Azkona, Lina Klemkaite, "Local Initiatives to the Global Financial Crisis: Looking for Alternatives to the Current Socio-Economic Scenario", Universidad de Deusto, Apr 10, 2012

7. Kenneth Roth, 2 Apr 2009, "G20: The summit must not forget human rights", [Online] (Available at: http://www.guardian.co.uk/commentisfree/2009/anr/02/g20-world-human-rights [Accessed: 16 January 2013])

8. Zehra F. Kabasakal Arat, "Globalization, Feminisms, and Women's Empowerment: Comments on Rhoda E. Howard- Hassmann's Article, "Universal Women's Rights Since 1970"", Journal of Human Rights, 10/2011

9. Food and Agriculture Organization of the United Nations, The State of Food Insecurity in the World, "Economic crises - impacts and lessons learned1', Rome, 2009; ILO, "Global Employment Trends", January 2009

10. David Kinley, "Civilizing Globalisation", Cambridge University Press, 2009; Center for Economic and Social Rights, "Human Rights and the Global Economic Crisis: Consequences, Causes and Responses", [pdf] (Available at: http://www.cesr.org/downloads/CESR-Human%20Rights%20and%20the%20Global%20Economic%20Crisis.pdf [Accessed: 14 January 2013])

11. Wolfgang Benedek, Koen De Feyter, Fabrizio Marrella, "Economic Globalisation and Human Rights: EIUC Studies on Human Rights and Democratization", Cambridge University Press, 2007

12. Center for Economic and Social Rights, "Human Rights and the Global Economic Crisis: Consequences, Causes and Responses", [pdf] (Available at: http://www.cesr.org/downloads/CESR-Human%20Rights%20and%20the%20Global%20Economic%20Crisis.pdf [Accessed: 14 January 2013])

13. Human Rights Council, 23 Feb 2009, "Human Rights Council adopts resolution on the impact of the global economic and financial crises on human rights", [Online] (Available at:

http://www.ohchr.org/EN/NewsEvents/Pages/DisplavNews.aspx?NewsID=8318&LangID=E [Accessed: 17 January 2013])

14. "Bringing Human Rights to Bear in Times of Crisis: A human rights analysis of government responses to the economic crisis: A human rights analysis of government responses to the economic crisis", Mar 2010, [pdf] (Available at: http://www.unicef.org/socialnolicv/files/Bringing Human Rights to Bear in Times of Crisis.pdf TAccessed: 18 January 2013]); Carmona M., 20 Feb 2009, "The Impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights", [pdf] (Available at: http://www2.ohchr.org/english/issues/povertv/expert/docs/IE Extreme Poverty Statement HRC.pdf TAccessed: 19 January 2013])

15. European Union Agency for Fundamental Rights (FRA), "Protecting fundamental rights during the economic crisis", Dec 2010, [pdf] (Available at: http://fra.euroDa.eu/sites/default/files/fra uploads/1423-FRA-Working-paper-FR-during- crisis-DeclO EN.pdf [Accessed: 19 January 2013])

Date of receipt of the article in the Editorial Office
(05.09.2020)

INTERNATIONAL LEGAL APPRECIATION OF NATIONAL REGULATION ON TRANSNATIONAL CORPORATIONS

Mammad Chiragli
(*hiraglimammad@gmail.com*)
Ph.D Candidate
(Baku State University)

Abstract

This article examines the national law of the USA concerning the regulation of activities of transnational corporations. The USA is the home country for a big number of transnational corporations which makes the lawmaker elaborates effective national acts which have exterritorial effect and are able to regulate their legal entities abroad. This research studies different areas of national law, such as tax law, law on securities and others. The author provides opinion on the importance of this kind of national regulation from the point of view of international law and international economic law. The national law of the USA is shown as a good example of effective regulation of the activity of legal entities which have the major part of their business abroad in order that they could not avoid the national taxation and would conduct their work within the framework of provisions of national law. The author gave special attention to different acts of national law which partly or fully may regulate Transnational Corporations within their foreign investment activity, such as the Hire Act, Securities and Exchange Act, US Corrupt Practices, Foreign Accounts Tax Compliance Act and others. The main advantage given by the American lawmaker to its national acts is the extraterritorial effect of its provisions which help to hold under control the large scope of economic and investment activity and business of its legal entity, which had been registered by the national law of the country or the head office of which is situated in the USA.

Keywords: *law, international law, transnational corporation, national law, tax law, foreign investment, international protection and promotion of investment, North American Free Trade Agreement, extraterritorial law.*

Today, transnational corporations (TNC) have become the driving force behind the globalization of the world economy. On the one hand, their activities give impetus to increasing globalization and economic integration in the world, and on the other hand, globalization processes, which often begin with political integration, create favorable conditions for the successful functioning of TNCs, the main purpose of which is to make a profit.

Many TNCs have achieved monopoly power in their field of activity. Their budgets may exceed the budgets of some states. Their activities can have a significant impact on the economy, daily life or even the politics of a country. The heads of such large corporations most often deal directly with the heads of state. The easy inflow of capital makes it difficult for the government to avoid external influences on state development.

Over the years, multinational corporations in the United States (US) and other developed countries have expanded their operations around the world through large volumes of foreign direct investment. Thus, for these TNCs, the concept of internal and external markets gradually disappeared, which became for them an integral part of the common world market. US leaders have used a variety of foreign policy instruments to expand the scope of US TNCs to foreign countries. The government began to develop special codes for transnational corporations.

As already noted, such a rapid inflow of capital leads to the fact that it becomes more difficult for the state to ensure proper legal regulation. In an effort to attract and retain more foreign capital, the government of the recipient country often makes significant concessions when investing from transnational corporations. Among other things, one can note low pay for work, dangerous working conditions, numerous violations of labor legislation, deterioration of the environmental situation, etc. Multinational corporations seek to maximize profit margins through the above factors.

In response to corporate pressure and lobbying, US policymakers have done everything possible to create an enabling environment for large firms, both at home and abroad. Corporations have the opportunity to receive tax credits and guarantees for investments in foreign countries. Regional and universal trade agreements facilitate the movement of capital and investment for TNCs without taking into account the social conditions in a particular state.

Such factors provoked the activation of various civil and labor societies in order to put pressure on the US government in a clearer and more equitable legal regulation of TNCs. For example, legislative measures were taken in the field of combating corruption, labor legislation and other sectors.

In the 1980s, human rights societies pushed Congress to pass legislation to protect workers' rights. This includes the so-called Generalized System of Preferences, which gives developing countries access to the US market.

A large number of consumer, labor and environmental organizations insist that special provisions on the protection of workers' rights should be an integral part of any trade agreement, especially with the participation of multinational corporations. For example, when preparing the North American Free Trade Agreement (NAFTA), then a US presidential candidate, Bill Clinton proposed including a separate social charter to protect workers' rights in this regional agreement.

Special codes of conduct for TNCs have also been popularized. An example is the General Anti-Apartheid Act [11], passed in 1986, which mandated US corporations operating in South Africa to treat black workers more fairly by providing the same working conditions, wages, and recognition of their union associations. The government intended to adopt a code of conduct for multinational corporations operating in China. Instead, the US Department of Commerce has developed Model Business Principles, which have proven to be less effective.

Despite the fact that the NAFTA agreement is a step forward in the development of regional integration and trade, nevertheless, it can hardly be called the best example of the legal regulation of TNCs. This is manifested in the fact that instead of choosing corporate behavior as an object of regulation, attempts are instead made to strengthen government bodies. The United States has taken many multilateral initiatives to regulate corporate transactions and protect workers' rights.

As a country of origin of a large number of multinational corporations, the United States has extensive experience in the field of legal regulation of their activities. For some time, the government did not severely restrict transnational corporations in their activities, believing that what is good for transnational corporations is good for the country as a whole. In addition, attempts at internal regulation of the activities of transnational corporations have often been unsuccessful.

Mainly due to pressure from civil communities and human rights organizations, the United States began to pay attention to more detailed and comprehensive regulation of the activities of TNCs in various aspects.

Restriction of entrepreneurial activity by the United States is possible in the absence of a mutually beneficial trade agreement, where certain advantages would be provided. If restrictions are imposed in the event of normal mutually beneficial economic agreements, then this will already become a violation of the norms of the World Trade Organization (WTO).

Both the US government and many corporations have responded to the growing civil society concern about TNCs. This has been demonstrated through the popularization of codes of conduct. Some of the measures taken by the Government, in turn, were not so successful and were more of an incentive rather than a regulatory one.

Rather than monitoring activities, the US government typically requires multinationals to report on various aspects themselves.

As a state with colossal experience in regulating TNCs, the United States is an active participant in multilateral negotiations in this area. The United States is acting as initiators of various measures, for example, the adoption of some acts in the field of international labor law with the participation of the International Labor Organization (ILO).

At one time, the Administrations of Presidents Reagan and Bush constantly demanded from the United Nations (UN), in particular the UN Center for TNCs, to take decisive steps to create a code of conduct for transnational corporations.

The United States continues to maintain its dominant position in terms of the number of bases for the largest transnational corporations in the world, as well as in terms of the export of capital abroad in the form of foreign direct investment. It should be noted that these indicators only increase from year to year. Of course, such a turnover, which is ensured through the activities of large TNCs, will bring tremendous benefits not only to the companies themselves, but also to the state of their nationality - the United States (many people speak of US TNCs as a "second economy"). In addition, transnational corporations often play the role of political levers for the US government, which is achieved through economic pressure.

One of the main factors determining the dominance of the United States in many areas of modern international relations is the activity of its transnational corporations in a large number of countries around the world. At the same time, TNCs have become active participants in international production. If you look at their methods of operation, you can see that trends have changed somewhat over the past decades. So, for example, if earlier the expansion was carried out through the creation of new branches abroad, today the preference is given to the processes of mergers and acquisitions of smaller foreign enterprises. Of course, each of these applied methods requires the existence of completely different forms of legal regulation both at the domestic level for the country of nationality and the recipient country, and at the international level. In today's global economy, US transnational corporations also often form strategic alliances with other companies to expand their market.

The United States is a federal state with a multi-level and multilateral legal and regulatory system that regulates business organizations with local and foreign activities. Regulation in key areas such as environmental and labor law includes the work of both federal and state institutions.

The United States is party to three major international human rights treaties, and has signed but not ratified the next four. The United States has ratified two of the eight fundamental conventions of the ILO.

The United States is periodically rated highly by the international community in various ratings regarding the rule of law in the country [17] and the fight against corruption [18].

With regard to the need for domestic legal regulation of the activities of transnational corporations of the country that conduct their economic activities abroad, in the United States, this issue is given wide attention both in legal doctrine and in legislation. There are many spheres of public life that can be affected by the activities of TNCs. In each of these areas, illegal actions may be committed, which are regulated by legal acts of the relevant area. Thus, the study of the domestic legal regulation of the activities of transnational corporations in accordance with legislative acts adopted in various fields, along with the corresponding international legal obligations of the United States assumed in these legal relations, seems to be the most appropriate way for a comprehensive analysis and assessment of US state legislation on transnational corporations.

Many lawyers say that the activities of transnational corporations play a large role in the growth of global corruption. Despite all the attempts of the international community, the presence of domestic laws and international legal acts in this area, it is quite difficult to combat this phenomenon. In the United States in 1977, the Anti-Corruption in International Activities Act [11] was adopted. This law prohibits issuers, businesses (including local TNCs) and certain others from giving bribes to foreign officials. In addition, issuers are required to maintain proper accounting records and exercise effective accounting controls.

The main feature of this law is its extraterritorial nature of action. The law applies directly to US entities and individuals, as well as to those companies that have registered their securities in accordance with the Securities and Exchange Act [10, Article 12] or that are required to submit accounting records to the US Securities and Exchange Commission in accordance with the provisions of the same law [10, paragraph 15]. The Law on Fighting Corruption in International Activities provides for a mechanism whereby a parent company can be held liable for violation of the law by a subsidiary, although this does not directly sanction the subsidiary for

illegal actions. In addition, the law stipulates that it is the parent companies that must maintain the proper accounting records of their subsidiaries that operate abroad.

The provisions of the 1977 law are also reflected in the Law on Combating Terrorism [13]. This Act includes a violation of the 1977 Act as a violation of the anti-money laundering provisions. The law "On the fight against corruption in international activities" prohibits the offer, promise and permission to make a payment for the purpose of giving a bribe, direct or indirect provision of any value, transfer of business to any person in order to assist a legal entity in maintaining a business or in obtaining unlawful advantages in the conduct of business activities, as well as a requirement on the part of the company from a foreign official to use his official powers for purposes beneficial to the company through corruption. In addition, the law prohibits the willful conduct of illegal activities through third parties, such as contractors, business partners, agents, consultants and others.

In late 1997, the Organization for Economic Cooperation and Development adopted the Convention on Combating Bribery of Foreign Officials in International Business Transactions [8]. In 1998, the Law on Combating Corruption in International Activities was amended to bring the provisions in line with the aforementioned convention. These changes expanded the extra-territorial nature of the law. Now the law began to regulate all actions of a corrupt nature on the part of US transnational corporations that take place exclusively outside the country.

The law establishes a list of prohibited payments, which, however, is not exhaustive. Of course, not all types of payments are included here, but only those that have the purpose of influencing the official actions of the person who receives the payment or persuading him to use his official influence "in order to assist the issuer or local enterprise in obtaining or retaining business for any person, with any person or transfer of business to any person" [11]. In addition, the law does not make any exceptions on the basis of the value of valuables provided for illegal purposes.

However, "facilitating payments" fall into a separate category in the law and are not prohibited under its provisions. This includes those payments that are made available to foreign officials to expedite government action, which are formal processes, as opposed to an official's actions that are made on his own initiative for the benefit of a bribe-paying multinational corporation.

Attention should be paid to two provisions of the law, which can be used to defend persons accused of breaking the law. According to the first provision, the fact that the payment made is legal under the laws of the foreign state in which the company operates (and within which the payment was made) can be considered. TNCs cannot use this provision in their defense in the absence of an appropriate written law of a foreign state, and also referring to the fact that making such a payment is a widely accepted practice in this state. The second provision provides for the possible qualification of payment as reasonable and bona fide expenses associated with the execution of the provisions of an agreement with a foreign state or the promotion of the company's goods and services on the market of the state where the business is conducted.

As already noted, the law also prohibits payments that are made through third parties (that is, indirect payments). In this case, we are talking about the actions of a third party on behalf of or on behalf of the company in violation of the provisions of the law, if the company is aware or convinced that such actions will take place. Willful ignorance [14], willful negligence [15], and willful acknowledge [16] may be grounds for a company to be found guilty of violating the 1977 law.

The law itself does not oblige transnational corporations to carry out due diligence related to the possible presence of illegal elements in the company's actions, but this is the only possible means for TNCs to avoid violating the provisions of the law. When examining the facts, all the circumstances conducive to a particular action of the company should be taken into account, since in the event of charges being brought by the US government authorities, the circumstances

and facts will be comprehensively studied in order to obtain complete and most reliable information about the presence of violations of the law.

Particular attention should be paid to the tax conditions for the activities of transnational corporations. Of course, their taxation is complicated by the fact that they, being, for example, a legal entity created in the United States, receive the bulk of their income as a result of activities that are conducted in a foreign country. Thus, it turns out that TNCs operate in different tax systems. These tax systems can be fundamentally different from each other in their terms. In addition, the question arises: should transnational corporations pay taxes on their profits in the country where they operate and in the nationality country at the same time? Taxation affects many areas of activity of TNCs, in particular, the organization of structural units, investment activities, money transfers, lending, and others.

Taxes play an important role among redistribution instruments. According to statistics, more than 90% of all revenues go to the US federal budget through the tax system [5, p.3].

The legislator has chosen the "principle of incorporation" as a fundamental criterion. Thus, in the United States, corporations created on the territory of the country, regardless of the place of their main activity, are considered domestic, and those incorporated outside the country are considered foreign. In the case of the "theory of incorporation," subsidiaries abroad, which are usually created in accordance with the laws of another country, do not become subject to US taxation until the funds are transferred to the parent company. However, this approach is undoubtedly the main reason for the abuse of TNCs in their ability to divert most of their profits from taxation by holding funds abroad. This situation requires a clearer and more detailed legal regulation of the activities of transnational corporations in the field of taxes.

US tax legislation has specific features that distinguish it from the laws of other countries. Its main characteristic feature is again the extraterritorial nature of the action. The operations of a foreign branch of a multinational corporation are accepted as part of the parent company's activities and are therefore also taxed. However, the legislator provides for the possibility of deferring taxation of profits earned abroad until the moment when this income is transferred to the parent company.

For a long time, American lawmakers have been looking for the best approach to taxing the income of US individuals and legal entities received in a foreign country. One of the measures in this direction was the adoption of the law "On the motivation of hiring in order to restore jobs [9]." Within the framework of this law, a separate chapter was devoted to the implementation of tax requirements for foreign accounts (Foreign Accounts Tax Compliance Act - FATCA). The provisions of this law set requirements for individuals and legal entities in the United States to fully disclose information about foreign assets. At the same time, the law obliges some foreign financial institutions to provide relevant information on such assets to the Internal Revenue Service.

The successful application of the FATCA rules required adequate international support. In this direction, the US government has taken a number of measures to ensure support of FATCA requirements from foreign countries. So, for example, declarations on cooperation in this area were concluded with such states as France, Germany, Spain, Italy, Switzerland, Japan. In 2012, within the framework of a bilateral international agreement with Great Britain, a similar declaration was also adopted.

The legal basis for the operation of FATCA is also provided by a number of technical documents that have been adopted in the United States to ensure the effective and comprehensive application of these provisions.

The essence of the provisions of FATCA boils down to the fact that transnational corporations are obliged to provide appropriate tax reports, taking into account all foreign assets. The range of FATCA subjects also includes other persons: US citizens, permanent US residents, all US legal entities, foreign companies, if at least 10 percent of the share in the authorized capital belongs to US participants - that is, US individuals and legal entities, as well as residents.

Tax credits provided by the US tax authorities in relation to profits earned overseas are designed to avoid double taxation. In this vein, the state concludes bilateral international treaties to avoid double taxation with other states.

It is worth noting that double taxation can arise both internationally and within the national tax system [5, p.21]. This is particularly the case in the United States, where the definition of an income tax object differs from state to state. Domestic double taxation is certainly easier to eliminate than international double taxation. At the international level, through the conclusion of relevant agreements, two methods are used: exemption with succession and ordinary deduction. In US practice, both methods are encountered. In the first case, the parties agree that the tax on a certain type of income is levied exclusively by one state, while the other method implies reduced double taxation.

The regulation of TNC operations requires a mix of local, domestic and international measures. Global corporations are increasingly beginning to control the global economy, not allowing domestic legislation to exert due influence on their economic activities. The United States must also ensure that TNCs are safer for society. Despite the fact that TNCs are international in nature, they still depend on the state government to provide their services and develop their own infrastructure.

Finally, the US needs to make fundamental financial reforms. As long as campaigning is tied to the flow of corporate cash, politicians will always be influenced and protected by the interests of multinational corporations.

References:

1. Boguslavsky, MM International private law: textbook. for universities in the specialty "Jurisprudence". 5th ed. M.: Jurist, 2004. (In Russian)

2. Gradobitova, L. D. Transnational corporations in international economic relations: textbook. allowance / L. D. Gradobitova, T. M. Isachenko. M.: Ankil, 2002. (In Russian)

3. International law: textbook / maj. ed. A. N. Vylegzhanin. - M.: Higher Education, Yurayt-Publishing, 2009. (In Russian)

4. International law on the protection and promotion of foreign investment / D.K. Labin. - M.: Walters Kluver, 2008. (In Russian)

5. Kozyrin A. V. “Tax law of foreign countries. Questions of theory and practice "- 1993. (In Russian)

6. Vereshchetin N. S. "General legal field of the modern world" / Vereshchetin N. S. // Soviet journal of international law, 3-4 – 1991 (In Russian)

7. Velyaminov, GM International economic law and process: Acad. course: textbook. M.: Walters Kluver, 2004. (In Russian)

8. The OECD Convention "On Combating Bribery of Foreign Public Officials in International Business Transactions", adopted on November 21, 1997.

9. Hire Act of 18.03.2010.

10. Securities and Exchange Act of 1934.

11. US Corrupt Practices Act of 1977.

12. Comprehensive Anti-Apartheid Act, 1986.

13. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, 2001; known also as «USA Patriot Act»

14. United States v. London case, the third series of judgments of the US federal courts of appeal.

15. United States v. Kaplan case, the second series of judgments of US federal appeals courts.

16. United States v. McAllister case, the second series of judgments of the US federal courts of appeal.

17. URL: http://worldjusticeproject.org/country/united-states

18. URL: http://cpi.transparency.org/cpi2013/results/

Date of receipt of the article in the Editorial Office
(28.04.2020)

THE INSTITUTION OF REPRESENTATION IN CIVIL PROCEEDINGS: DIVERSITY OF DOCTRINAL VIEWS

Huseyn Asgarov
(huseyna28@mail.ru)
Ph.D. Candidate
(Baku State University)

Abstract

The article deals with issues related to the place of representation in various legal systems in the civil process. The institution of representation in civil procedure originated in antiquity and developed in parallel with the dynamics of the development of legal relations in society. Representation in civil proceedings is a broad concept and is assistance or simply representation provided by capable persons in order to protect or restore civil rights and freedoms of legal entities and individuals in the event of their violation. The doctrinal base of the mission is based on the theory of identification in the Anglo-Saxon system (doctrine of identity). In the Romano-German system, civil procedural law defines criteria based on the powers granted to it in the legal status of the representative. Representation as a legal institution is still being formed, and changing the relations between economic relations, trade and, most importantly, changing relations between people, has a significant impact on the development of representation.

Keywords: *civil process, institution of representation, Roman-Germanic, Anglo-Saxon, history, development, formation, judicial system, pluralism, doctrine, legal representation.*

Introduction.

Studying the history of the formation of the institution of representation in the civil process allows us to express a common opinion about the sphere, which is one of the ancient institutions of law and now retains its theoretical and practical significance, its development, advantages and disadvantages. In the context of such important factors as the development of a democratic state governed by the rule of law, free market relations, and the building of e-government, the protection and promotion of human rights and freedoms are always at the forefront. In this regard, special attention should be paid to the study of aspects of the formation of the institution of representation in the civil process, the main purpose of which is the protection of human rights and freedoms. The study of the history of the above-mentioned legal institution creates conditions for its material and legal modernization, as well as increasing its effectiveness in law enforcement practice, effective protection of the rights and legitimate interests of individuals and legal entities.

In general, the institution of representation is directly related to the development of society. To be more precise, the emergence and development of different types of relations in society leads to the emergence of different norms governing those relations. Observance, use and application of these norms is not easy for all people, and it is necessary to help people from outside, i.e. people who know the application of substantive and procedural law. As a result of this necessity, the institution of representation was formed.

Comparative analysis of legal systems.

There are various legal systems in the world today. Often, in parallel with the concept of the legal system, the concept of the legal family is also used; in fact, the legal family forms the type of legal systems. The family of law, being one of the central concepts of comparative law, unites a set of national legal systems, the sources of law, the basic concepts, the structure of law and the historical path of its formation. The term legal family was introduced into scientific circulation by the German scholar Gottfried Leibniz in his work Nova Methodus Discendae Docendaeque Iurisprudentiae, published in Latin in 1667[2, p.327].

Each legal system is unique, but comparative jurisprudence allows us to clarify their similarities and differences and determine the typology of legal systems. Thus, the types of legal systems called the legal family are formed. The main criteria for such formation are a) the use

and comparison of sources of law, b) the role of the judiciary in setting precedents, c) the origin and development of the legal system.

In addition to historical significance, the division of legal systems allows us to focus on specific legal concepts, use rich foreign experience, understand the general trends of legal development of mankind, and enrich their legal and political culture.

The most common classification of legal systems was made by the French scholar Rene David:

Romano-Germanic legal system;

Anglo-Saxon system;

Religious legal system (Muslim, Jewish and others);

The legal system of socialism;

Traditional law and others. [3, p.125]

Among these legal systems, the Roman-German and Anglo-Saxon legal systems are the most widespread and studied. In the Roman-German legal system, legal norms develop from the general to the specific, while in the Anglo-Saxon legal system, on the contrary, they develop from the general to the general [1, 19]. While the Anglo-Saxon legal system is based on the legal norms formed in judicial practice, the Roman-German legal system based on Roman law prefers written laws and codes.

In the countries of the Anglo-Saxon system, the doctrinal basis of representation is based on the theory of identity. According to this theory, the representative is, in a sense, the alter ego-water of the represented and receives powers from the represented and acts within these powers [6, p.15]. The essence of this concept is that representation is not seen as an abstract element. Representation is a very general concept that covers any situation, when one person acts in favor of another; representation is a consensual relationship between these two people [7, p.43].

Nowadays, when analyzing any private-legal institution in comparative jurisprudence, the description of the differences between the Anglo-Saxon and continental approaches is not surprising. However, this does not exclude the existence of features in the legal regulation of any sphere of relations in the national law of specific states united under the wing of one legal family. In this sense, the right of representation is not excluded. Difficulties in the unification of representative relations are widespread in world jurisprudence, and such problems arise in an attempt to bring the Romano-Germanic and Anglo-Saxon legal systems closer together. However, in a number of specific countries of continental Europe, there are differences in the comparison of the legal regulation of these relations, the study of which is of interest for comparative jurisprudence and procedural law.

In the Romano-Germanic system, civil procedural law determines the criteria for the legal status of a representative based on the powers granted to him. On this basis, the representation is divided into legal and voluntary positions. If legal representation arises from the instructions of the law, voluntary representation arises on the basis of a contract [8, p.6]. This trend is also characteristic of the Azerbaijani legal system.

The rights and responsibilities of a volunteer representative are regulated by a power of attorney issued to him / her. Therefore, the volunteer does not have the opportunity to create rights and responsibilities. In a legal representation, the situation is completely different, as the legal representative does not need the existence of a counterparty to create rights and obligations; this possibility arises from the instructions of the law or a court decision (paternity decision, etc.).

Legal representation serves several purposes in the legal system of each country, and therefore the term covers a number of categories of representation. The most important of these are representation on behalf of minors and representation on behalf of incapacitated (or limited) persons. Representation also arises in connection with the regime of common joint ownership and, if necessary (representation in the interests of others without assignment (negotiorum gestio)), representation also belongs to the types of legal representative.

In Anglo-Saxon law, voluntary representation is formed from the realization of the principle of "expression of will" and is formalized on the basis of a specific agreement. It should also be noted that in Anglo-Saxon law there is also an agency by operation of law [5, p.494]. This institution is mainly related to the representation of husband and wife.

The interests of minors with disabilities in U.S. civil proceedings are represented by legal representatives. If the rights of these persons are represented by state bodies or organizations, these bodies may file an independent claim in court or act as a defendant. Under U.S. procedural law, in the absence of a legal representative of a minor with limited legal capacity, their interests may be represented in court by a defense attorney (next friend) or a guardian ad litem, who may be appointed by the court [4, p.99].

In both Romano-Germanic and Anglo-Saxon legal systems, the institution of representation is distinguished by the criteria of direct and indirect. Only the direct representation form is used in civil proceedings. Indirect representation is of a purely civil nature and occurs when the representative speaks on his own behalf. (eg commission agreement). Such a division of voluntary representation in the Romano-Germanic legal system is conceptual. Direct representation is carried out by issuing a power of attorney. In this case, the representative tries to defend his rights and interests in court, acting "on behalf of another person."

The traditional history of the emergence of most legal phenomena in the continental system dates back to Roman law. Classical Roman law did not recognize the concept of representation as an opportunity to acquire civil rights and responsibilities by foreign actions (influences). "alteri stipulari nemo potest" Due to the principle of the personal nature of the obligations expressed in Maxim, it was impossible to apply the contract in favor of a third party, as well as its representation as a free legal category. The mandate agreement, which later became an example of direct representation in civil law, did not entitle the representative to enter into a third party with the person he represented. Only in special cases did Roman law recognize the legal consequences of the mediator's actions. To some extent, these events can be compared directly to representation.

The direct participation of the representative in the civil process, in other words, the Dutch jurist Huguo Grotius did a great job in developing the concept of direct representation. It was he who, for the first time, separated the contract of representation from the contract in favor of a third party [9, p.45-46]. This step is still valid in the legislation of countries with a continental legal system.

Specific features of the institution of representation.

In general, it should be noted that the countries of the continental legal system (Germany, Italy, France, Russia, including Azerbaijan) that benefited from the Roman legal system consider the participation of a representative in civil proceedings as an important condition for the effectiveness of the process and justice in general.

In addition to the conceptual finding, the school of natural law, based on the content of the theory of natural law and guided by the principle of free will, substantiated the civil-legal origins of the institution of representation. In accordance with the provisions of civil and civil procedural law of the countries of continental Europe, the representative should not be based solely on the existence of authority. The continental system has a special requirement for the establishment of a representative relationship: the representative must act on behalf of the person he represents; he must not act on his own behalf. This is the principle of openness, which has been partially introduced and justified by the school of natural law.

The Anglo-American concept of representation has its own specific features. In contrast to the countries where the dualist system of private law is based, there is a division of public and commercial representation in England and the United States. The division of direct and indirect

representation is not inherent in Anglo-American law. Relations known as indirect representation in the law of continental European countries are not included in the concept of representation in Anglo-American law, because the activity of the representative creates direct legal consequences for the person he represents. The addition of some purely tortuous relations to the sphere of representation is characteristic of the Anglo-American concept. Thus, a person who can create a tort liability for another person can be recognized as an agent.

In the Anglo-American legal literature, the term "representation" is used in two senses: broad and narrow. Representation in the broadest sense includes any relationship in which one person acts in favor of another person in a relationship with third parties, in which case the representative may act on his own behalf or on behalf of the representative, and in this process the representative must perform actual or legal actions. not.

Representation in the narrow sense or representation in the purely legal sense means that the representative performs actions on behalf of and specifically represented. The legal relationship arising from these actions has legal force for the representative. It should also be noted that in the Anglo-Saxon legal system, such representatives must be distinguished from the "legal representatives" inherent in both legal systems.

From a specific civil-legal point of view, many jurists in the United States and Britain (U.Sivi, H.Reuscheylen, U.Gregory, B.Marquesins, R.Mandi) mean representatives (agents) who can create delicacy for others by their actions. . In this regard, D. Friedman notes that the agent creates mandatory legal consequences for the principal through the conclusion of contracts, disposal of property.

Continental law distinguishes between external and internal aspects of representative relations. The foreign side of the relations between the representative and the third party is regulated by the rules established by the general part of the Civil codes of the European states. In Azerbaijan, this issue is regulated by Chapters 16 (Representation in Transactions) of the Civil Code and Chapter 6 (Representation in Court) of the Criminal Procedure Code. The French Civil Code deals with the issue of authorization within the framework of a special agreement [10, 434]. Mandate and authority in the Romano-Germanic legal system are two independent concepts recognized by the results of independent law, and the development of these categories has had a significant impact on jurisprudence and positive law. Such provisions are enshrined in the national legislation of Germany, Switzerland, Sweden, Italy, Greece, Japan and the Netherlands.

In both Romano-Germanic and Anglo-Saxon law, subsequent approval of an act in the process of execution is possible without the provision of preliminary powers. Such an agreement has two consequences: 1) it creates a retrospective relationship between the represented and the representative, and 2) it creates a retrospective relationship between the represented and third parties. The person represented is obliged to give consent for the representation, which he did not authorize in advance and for the ongoing representation, i.e. for the activity of the representative. The representative must act openly in favor of the representative. If a third party has the impression that the agent is acting in his favor, he is deprived of the opportunity to confirm the actions of the representative.

Conclusion.

Representation in civil proceedings is a complex legal institution that has its own historical development trend and embodies the norms of substantive and procedural law. This legal institution arose from the inability of the subject to appear in court independently for objective reasons. The development trends of procedural representation allow us to conclude that the institution of representation has developed in an ever-increasing line due to the growing demand for it.

In the objective sense, the institution of representation is a complex legal institution. On the one hand, this institution consists of substantive and procedural legal norms created in

different forms; on the other hand, the legal norms that form this institution belong to different areas of law.

In the subjective sense, civil procedural representation is the assistance provided to legal entities and individuals in need of legal protection in order to protect and restore their rights and freedoms and legitimate interests in the courts in accordance with the law. Representation is important in the realization of important rights such as access to justice, equality before the law, access to a lawyer and a fair trial.

References:

1. Abolonin Q.O. Civil procedural law of United States. Wolters Kluwer Russia, 2010, 422 p.

2. Crisp Roger. The Oxford Handbook of the History of Ethics. OUP Oxford, 2013, 920 p.

3. David René, Camille Jauffret-Spinosi, Marie Goré. Les grands systèmes de droit contemporains. Dalloz, 2016, 560 p.

4. Eilionóir Flynn. Disabled Justice?: Access to Justice and the UN Convention on the Rights of Persons with Disabilities. Routledge, 2016, 192 p.

5. Miller Roger LeRoy, Gaylord A. Jentz. Cengage Advantage Books: Business Law Today: The Essentials. Cengage Learning, 2010, 864 p.

6. Pelichet M. Rapport sur la loi applicable aux contrats d'intermédiaires // Conférence de la Haye de droit international privé. Actes et documents de la Treizième session. V. IV. 1978. P. 15.

7. Rigaux F. Le statut de la représentation, étude de droit international comparé. 1963. P. 43.

8. Verhagen H.L.E. Agency in Private International Law, the Hague Convention on the Law Applicable to Agency. Dordrecht: Martinus Nijhoff Publishers in cooperation with the T.M.C. / Asser Instituut, The Hague, 1995. 431 p.

9. Zimmermann R. The Law of Obligations, Roman Foundation of the Civilian Tradition, Juta &Co.; Ltd. Wetton, 2000. 656 p.

10. Zweigert K and Kotz H. Introduction to Comparative Law, Third Revised Edition, trans. Oxford T. Weir; Clarendon Press, 1998. 744 p.

Date of receipt of the article in the Editorial Office

(30.09.2020)