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Халықаралық қатынастар және халықаралық құқық сериясында қазіргі кездегі халықаралық қатынастар мәселелері, әлемдік интеграциялық үдерістер, халықаралық қауіпсіздік мәселелері, халықаралық қатынастар және сыртқы саясат тарихы, халықаралық құқықтың өзекті мәселелері, мемлекетішілік құқық, халықаралық экономикалық қатынастар бағыттары бойынша мақалалар жарияланады.

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1-бөлім

ХАЛЫҚАРАЛЫҚ ҚАТЫНАСТАР МЕН ДИПЛОМАТИЯНЫҢ МӘСЕЛЕЛЕРІ

Section 1

QUESTIONS OF INTERNATIONAL RELITIONS AND DIPLOMACY

Раздел 1

ВОПРОСЫ МЕЖДУНАРОДНЫХ ОТШЕНИЙ И ДИПЛОМАТИИ

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THE SCO SPACE IN A GEOPOLITICAL CONFIGURATION OF EURASIA: RAPPROCHEMENT AND CONTRADICTIONS OF ENERGY INTERESTS (THE CASE OF CHINA)

The complex geopolitical processes in Eurasia led to the formation of a new format of regional interdependence of all SCO member-states. One of the complex issues are conflicting energy interests of oil and gas suppliers and consumers. The "middle position" of post-Soviet Central Asian states of Eurasia became a natural geopolitical argument in favor of using the territory of CA as a transcontinental "bridge" between the southeastern part of the SCO and Europe. The participation of Russia, China, India and Pakistan in regional energy policy, as well as SCO observer-states is an important component of Eurasian security, which adds a global dimension to the organization. SCO unites on a common platform exporters and importers of energy resources without the involvement of third countries.

At the same time, there is a contradictory nature of interaction between all participants of the Shanghai process, which has negative consequences and hinders the development of regional cooperation in Central Asia itself. Many projects within the framework of the Chinese megatrend "One Belt, One Way," including the active participation of Kazakhstan, indicate the development of the multilateral format. Considering that the source of China's economic growth is in availability of hydrocarbon resources at the proper level, the policy of China will focus on a wide support of energy projects under SCO.

The purpose of this article is to consider the multilateral format of SCO cooperation as one of the possible ways to reduce the risk of contradictions in the field of energy resources and solve problems through participation in joint energy projects.

Key words: SCO, energy interests, contradictions, Eurasia geopolitics, Central Asia, SCO Strategy, cooperation.

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Еуразия геосаясатындағы ШЫҰ-ның рөлі: энергетикалық мүддедегі жақындасу мен қарама-қайшылықтар (Қытай ісі)

Еуразиядағы күрделі геосаяси процестер ШЫҰ-ға қатысушы барлық мемлекеттердің аймақтық өзара тәуелділігінің жаңа форматын қалыптастыруға алып келді. Күрделі байланыстардың бірі – мұнай және газды жеткізушілер мен тұтынушылар елдерінің қарама-қайшы энергетикалық мүдделері. Еуразиядағы посткеңестік Орталық Азияның «Орталықта орналасу жағдайы» ШЫҰ-ның оңтүстік-шығыс бөлігі мен Еуропа арасындағы трансконтиненталдық «көпір» ретінде ОА аумағын пайдаланудың геосаяси дәлелі болды. Ресей мен Қытайдың, Үндістан және Пәкістанның сондай-ақ ШЫҰ-ға бақылаушы мемлекеттердің өңірлік энергетикалық саясатқа қатысуы, еуразиялық қауіпсіздіктің маңызды құрамдас бөлігі болып табылады, ал бұл ұйымның жаһандық өлшеміне үлкен үлес қосады. ШЫҰ үшінші елдердің қатысуынсыз энергия ресурстарын экспорттаушылар мен импорттаушылардың ортақ платформасын біріктіреді. Бұл ретте Шанхай процесінің барлық қатысушыларының өзара іс-қимылының қарама-қайшы сипаты байқалады. Бұл жағдай теріс салдарларға ие және ОА-ның өзінде өңірлік ынтымақтастықтың дамуын тежейді. Қытай мегатрендінің «Бір белдеу, бір жол» аясындағы көптеген жобалардың болуы, оның ішінде Қазақстанның белсенді қатысуы, көпжақты форматтың дамуын куәландырады. Қытайдың экономикалық өсуінің қайнар көзі тиісті деңгейде көмірсутегі ресурстарының болуын ескере отырып, Қытай саясаты ШЫҰ-ның энергетикалық перспективаларын кеңінен қолдауға шоғырланатын болады.

Осы мақаланың мақсаты: энергетикалық ресурстар саласындағы қайшылықтар тәуекелін төмендетуге және бірлескен энергетикалық жобаларға қатысу арқылы мәселелерді шешуге алып келетін ықтимал жолдардың бірі ретінде ШЫҰ ынтымақтастығының көпжақты форматын қарастыру.

Түйін сөздер: ШЫҰ, энергетикалық мүдде мен қарама-қайшылықтар, Еуразиядағы геосаясат, тестік.

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Пространство ШОС в геополитической конфигурации Евразии: сближение и противоречия энергетических интересов (the case of China)

Сложные геополитические процессы в Евразии привели к формированию нового формата региональной взаимозависимости всех государств-участников ШОС. Одна из сложных связей – это противоречивые энергетические интересы стран поставщиков и потребителей нефти и газа. «Срединное положение» постсоветской Центральной Азии на Евразийском континенте стало естественным геополитическим аргументом в пользу использования территории ЦА в качестве трансконтинентального «моста» между юго-восточной частью ШОС и Европой. Участие России и Китая, Индии и Пакистана в региональной энергетической политике, а также государств-наблюдателей ШОС является важным компонентом евразийской безопасности, что добавляет глобальное измерение организации. ШОС объединяет на общей платформе экспортеров и импортеров энергоресурсов без участия третьих стран. При этом отмечается противоречивый характер взаимодействия всех участников Шанхайского процесса, что имеет отрицательные последствия и сдерживает развитие регионального сотрудничества в самой ЦА. Множество проектов в рамках китайского мегатренда «Один пояс, один путь», в том числе с активным участием Казахстана, свидетельствует о развитии многостороннего формата. Учитывая, что источником экономического роста Китая является наличие углеводородных ресурсов на должном уровне, политика Китая будет сосредоточена на широкой поддержке энергетических перспектив ШОС.

Цель данной – статьи рассмотреть многосторонний формат сотрудничества ШОС как один из возможных путей, который приведет к снижению риска противоречий в сфере энергетических ресурсов и решению проблем через участие в совместных энергетических проектах ШОС.

Ключевые слова: ШОС, энергетические интересы, противоречия, геополитика Евразии, Центральная Азия, Стратегия ШОС, сотрудничество.

Introduction

The energy security issues form a new framework for modern regional and international relations in Eurasia. The growing interdependence and deeply interlacing interests of states and non-state actors present a factor stimulating the multilateralism policy. The configuration of Eurasia in regional terms is very complicated and changeable. The formation of SCO became a natural response to the growing threats such as interstate conflicts of a regional type, threats to territorial integrity, international terrorism, economic and financial crises that appeared in the XXI century. To break negative tendencies, and ensure the regional security, the countries decided to address to *instruments of multilateral cooperation*.

SCO is an organization that has multilateral mechanisms. It is considered to be the largest international regional organization of Eurasia. SCO covers a considerable territory and population of states such as Russia, China, Central Asian republics (except Turkmenistan), India and Pakistan; four observer nations – Mongolia, Iran, Afghanistan and Belarus; and six dialogue-partners such as Turkey, Azerbaijan, Armenia, Cambodia, Nepal and Sri Lanka.

The total area of the SCO states is 30 million km² that is 60 percent of the territory of Eurasia. It includes almost 44% of the world's population, and in terms of GDP is about 25-27% of world's indicator. (Alimov, 2017). All states possess one of the world's largest gas and oil reserves, making 25% of the global oil reserves, over 50% of the gas reserves, 35% of coal and about half of the world's known uranium reserves. SCO has the biggest oil and gas pipeline infrastructure including the Caspian pipeline consortium and the Eastern Siberia – Pacific Ocean (Schafer, 2017).

Despite of the fact that the SCO is a relatively young formation, it is in the process of development with growing impact on continental and world processes. SCO, as ASEAN in Asia, was established in different international conditions. The ongoing meetings between leaders of the organization present some kind of "alleviation channel" of tensions and allow the external balance of relationship between major powers presenting a leverage for control. It should be borne in mind that the state's power over decision-making in Asia leads to immaturity of initiatives and dependence on foreign energy supplies (Nicolas, Godement, Yakushiji, 2008).

The successful implementation of integrational approaches in Asia on the example of ASEAN shows the importance of identification of "interest"as a cementing and a basic element of regional cooperation (Tripath, 2011). The emphasis on informal dialogue and consensus building are the basis of values of the organization that do not require high institutionalization of the legal framework. The "*Shanghai Spirit*" as the proclamation of the "ASEAN Asian values" is a consensual model of interaction between countries as in other regions, including Asia.

It is mportant to highlight also the other area of cooperation defined in SCO Charter - "the support for, and promotion of regional economic cooperation, fostering favorable environment for trade and investments" (SCOa, Charter).

In this context, the security concept of the Copenhagen School of research represents its timely relevance, highlighting the importance of regional level of security of those states that are united by similar geographical boundaries and face common problems, the solution of which will have a direct impact on their national priorities (Buzan, Waever, 2003). This paradigm is of great conceptual significance. To identify the patterns of foreign policy behavior of the actor on regional level, on the example of China, we focused on a system-functional approach using the comparative method.

For the identification of complementary dependence degree of "developing" and "peripheral" states with an insignificant level of economic development but decent resource potential in the region of SCO, we used the geopolitical criterion as used for defining the tension points in the issue of energy interests.

The purpose of this paper is to consider the multilateral format of SCO collaboration as one of the possible ways to reduce the risk of contradictions in the field of energy resources and solve problems through participation in joint energy projects.

Results and discussion

SCO as a "new type of interaction" in the geopolitical configuration of Eurasia

Globalization, with its growing interdependence, deep intertwining of the interests of states and non-state actors became a factor of stimulating the dynamics of integration processes and the policy of multilateralism. The SCO, as declared in its documents, is a non-military political alliance that does not intend to become one (SCO document 1a). One of the features of the SCO is that it is in the status of an intermediate position, which does not oppose any military alliance, such as NATO or ASEAN (Alyson J. K. Bailes et al., 2007)

Today, multilateral interaction and cooperation with organizations in Asia is developing on the basis of a *network scenario.* Also, the Shanghai organization is developing as a multilateral structure, paradoxically combining sustainable gravity with a bilateral format. This two-sidedness under the "roof" of a large multi-vector house with "windows and doors" is open for partnership; the organization does not comply with standards and models such as the integration of the "classic organization". The SCO consists of states with different political systems and regimes, with different political ideologies and values, which are at different stages of their socio-economic transformation.

The main connecting factor is the Eurasian space, since all states are geographically adjacent and have regional geopolitical and geo-economic interests. Often the question arises of the identity of the SCO, which is an important factor, but not yet final. The organization emphasizes multiculturalism and respect for each other's diversity. Geographically, the SCO is in "concentric circles" of special relations. The regional dimension of Central Asia allows us to determine its middle position on the continent as Central Eurasia. The SCO fits into the new security architecture, which is becoming more specific in Eurasia, as well as in the Asia-Pacific region (APR). It has defined new organizational principles, such as "equality, transparency, a legal and non-bloc basis, as well as respect for the legitimate" interests of all states.

If the West emphasizes the uniqueness of "democratic values" and the "open world," the SCO acts as a conservative, offering mutual tolerance in politics, economics, and culture. The SCO, accepts the participation of states with various forms of power, does not accept the Western liberal-univer-

salist model. From 2015, a new direction has been approved in the policy of the SCO states, which "makes shifts" from "Greater Europe" to "Greater Eurasia". This was officially announced by the former Minister of Foreign Affairs of Russia, President of the Russian Council on Foreign Affairs Igor Ivanov at the XX Annual Conference of the Baltic Forum in Riga. "The processes of Eurasian integration and cooperation are gaining momentum. This is the Eurasian Economic Union, the Shanghai Cooperation Organization and the New Silk Road project. The Greater Europe "from Lisbon to Vladivostok" is being replaced by the new Eurasia "from Shanghai to Minsk". "Although the contours of Greater Eurasia are largely vague and unclear, one can already see the objective and long-term nature of the formation of a new transnational economic and political structure. (Ivanov, 2015). The Euro-Atlantic and Eurasian are new centers of global attraction, and relations between them are turning into the main axis of future world politics. Thus, the concept of "Greater Eurasia" is finally fixed in the political-geographical concept.

The philosophy of the *Shanghai spirit* is the leitmotif of the development of the organization. One of the guiding principles set forth in the SCO Charter was the promotion of the *Shanghai Spirit*: "a consolidating component for the development of cooperation in Asia, presenting a source of unity and spiritual strength through a common concept of security" (Depeirot, 2017). The Shanghai spirit, often used by its leaders, has not become a stable term, although it has a semantic meaning of "trust", "mutual benefit", "equality", "coordination", "respect for the diversity of civilizations", "desire for common development" and more.

This concept, which had a great power, was formulated by the first SCO Secretary General and former Chinese Ambassador to Russia, Zhang Peguang. The SCO provides an example of a gradual replacement of traditional diplomacy by the multilateral diplomacy with *Shanghai spirit.* "The processes of Eurasian integration and cooperation are gaining momentum. This is the Eurasian Economic Union, the Shanghai Cooperation Organization and the New Silk Road project. The Greater Europe "from Lisbon to Vladivostok" is being replaced by the new Eurasia "from Shanghai to Minsk". "Although the contours of Greater Eurasia are largely vague and unclear, one can already see the objective and long-term nature of the formation of a new transnational economic and political structure. As stated in the Charter, the Organization functions as a forum to confirm confidence and good neighborly relations between member states, as well as to promote cooperation in the fields of politics, trade, economics, culture, education, energy and transport. It also opens the way to be engages in wide and close cooperation with leading giants - Russia, China and the countries of ASEAN and Southeast Asia. On the other hand, all Central Asian states are adjacent to the "neighbors" of the Eastern European region (EU) and the Transcaucasian republics (Gubaidullina, Yelibayeva, 2016).

The SCO is fairly considered a multilateral intergovernmental organization with a number of features of its development. The SCO became the first regional organization of "a new type" in the XXI century (Pan Guang, 2006 and 2008). In 2004, the SCO initiated an extensive partnership network of multilateral associate partnerships with APR, and now the Organization is developing in accordance with general trends in the formation of a clearly structured and single common regional structure. Today, the multilateral cooperation Asia is mainly based on a network scenario. Last but not least, these concerns are related to the development of a single energy space.

Towards a single and diversified SCO energy market

The structure of the global energy market is represented by two groups - consumers: the West (USA, EU and Japan), Asia (China, India, Asia-Pasific) and exporters (OPEC, Russia and Central Asia). A characteristic feature of energy exporters is their ability to influence world energy prices, as well as multivector foreign policy interests. The growth of new export markets, combined with increased consumption in the EU, in Southeast Asia and North America, has led to the formation of a new type of interaction in the energy market. It is important to note that the desire to diversify hydrocarbon flows determines the policy of main players in Central Asia-the United States, Russia, China, India, Turkey and the EU. Given that Asia is the largest producer and consumer of hydrocarbon resources, this inevitably should lead to inter-regional cooperation. The huge energy potential of the SCO member states, whose stock compared to world oil reserves is 25 percent, more than 50 percent of gas and about 50 percent of uranium, attracts foreign investment in the region (Kassenova, 2010).

The Central Asian oil and gas industry can be viewed through the prism of the Stackelberg model, which is characterized by the presence of a monostructured organization represented by a national company that regulates the price of a monomict export product and political decisions on these issues guaranteed by the state (Horak, 2012).

There are several objective arguments in favor of creating the SCO energy structure: the geo-economic factor will allow us to combine the interests of exporters and importers. First, Russia and China are the largest neighboring emerging markets, influenced by internal and external factors. Up to 30 percent of Russian exports go to China through two main pipelines – from Eastern Siberia to the Pacific Ocean and to Nakhodka, counting the needs of other countries in the region. The second is the potential capacity of Russia, China, Kazakhstan and Uzbekistan in the development of the oil and gas sector. For example, Russia supplies gas to China via the "eastern route" in accordance with an agreement signed at the highest level. In accordance with the 30-year contract (from May 2014), Russia will export 38 billion cubic meters of gas per year. It was a historic breakthrough in joint gas relations. In addition to direct oil and gas trade, China and Russia are actively developing oil and gas cooperation at other levels. This includes exploration and development, as well as product processing and marketing. China became a shareholder of one of the largest oil producers in Russia, the Vankor project (Rosneft). Thus, their interaction is of a long-term nature and interest.

The issues of energy cooperation are addressed in a number of SCO documents. The Program of Multilateral Trade and Economic Cooperation (2003) developed more than 100 projects were developed and identified priority areas of strategic cooperation in the field of energy (SCOb). The SCO Charter defines the necessity to develop energy systems and environmental management in the region through joint programs and projects, but member states pursue their own energy policies, creating a network of bilateral agreements on energy trade in the region. The practical implementation of agreements involves mutually beneficial "pilot" projects with multilateral participation in the energy, transport, and other fields. The Business Council and the SCO Interbank Association are called upon to play a significant role in this process. The formation of the energy component is carried out on the basis of the principle of openness to all interested states and organizations sharing the goals and objectives of the SCO (SCOd).

In 2013, SCO ministers of economic development at the meeting in Aktau (on the shores of the Caspian Sea) proposed a high level of structuring the energy space and correlation of energy strategies of SCO states (Kazinform, 2013). Moreover, these issues opened up prospects for the further enlargement of the Organization - the process of accepting India and Pakistan as full members. This process took several years to come. It is important that another state with an "energy" component is Azerbaijan, which has received confirmation of the status of a dialogue partner. The energy sector again was highlighted as the central direction of the strategic development of the SCO at the summit in Ufa in 2015, which adopted the SCO-2025 Strategy. The Indian Prime Minister Narendra Modi announced in Ufa that an expanded group consisting of India and Pakistan will represent half the world's population, and will serve as a "springboard" for the economy of Eurasia, making it the most dynamic in the world (Radio Free Europe (2015). The SCO Secretary General V. Norov noted that with the adoption of India and Pakistan in 2017, the SCO became the largest trans-regional association in the world, covering more than 44% of the world's population and about 60% of Eurasia.

China's energy pragmatism

The driving force behind the development of SCO is China, whose economy is the second largest in the world in terms of nominal GDP, and in the first place in terms of purchasing power. In matters of energy policy, the Shanghai Organization has become a conductor for Chinese investment and economic policy in the Central Asian region. It positions itself as one of the top economic and trading partners for each Central Asian country, which is also recognized by Central Asian states.

There are four Central Asian states – members of SCO that actively developing their rich energy resources. According to the Asian Development Bank evaluation given in 2010, the main problem of CA states in their limited export possibilities and outdated pipeline infrastructure built in Soviet times. Due to this situation, China expressed its interest in further investment of infrastructure projects. Taking into account the investment picture and instruments of influence, used by China in economic, energy, multi-level security and defence policy, we argue that its policy in Central Asia is of strategic character. To meet the growing demand for energy re-

sources, Chinese government is used transnational companies in promoting its national interests.

The main actors are China National Petroleum Corporation (CNPC), its subsidiaries - China National Offshore Corporation for oil production (CNOOC), the specialization of which lies in the area of foreign investment; the National Corporation for exploration and production of oil and gas (CNODC), as well as oil company SINOPEC, which specializes in investments in the refining of petroleum products. The policy of "going abroad" is an incentive to enterprises in China to find the resources, technology and markets applications. According to Chinese Ministry of Commerce, 13.000 companies have opened their offices in 178 countries and regions, in all sectors of the economy by using Foreign Direct Investments (Fan, Wang, 2014). It should be noted that China used its investment capacity for helping Central Asian states to overcome the consequences of international financial crisis in 2009 by allocating 10 billion USD (SCO Observers Steal, 2009).

The ongoing energy projects in the region are mainly focused on investment of oil and gas pipeline construction based on bilateral agreements due to the enhancing competition and inconsistency of economic strategy that restrains the energy markets integration. Unlike western countries, China does not limit its partnership to establishing additional rules or conditions for granting loans and aid to developing countries. However, the "implementation" of its policy in Central Asian region sometimes is complicated by the "containment policy" of western countries over the Chinese initiatives (Lanteigne, 2010).

Kazakhstan and China operate on the basis of the pipeline built in frames of the bilateral agreement signed in 2004, which has initially attracted $ 700 million. Russia has the same type of agreement; it has built a gas pipeline with a length of 3371 km in 2015 with China. At the same time, China is looking for opportunities for energy deals in the Arab world. Large markets such as China and other Southeast Asian countries are creating space for competition among energy exporters. Accordinng Yang , China controls a quarter of Kazakhstan's oil and is building a pipeline from the Caspian Sea to Xinjiang. Turkmenistan has become the preferred partner for gas exports; Kyrgyzstan has become a quasi-protectorate economy specializing in re-exports of Chinese goods, and Tajikistan is the gateway to Afghanistan. The current situation may describe China's "soft hegemony" and the establishment of "vassal relations" (Yang, 2013).

Chinese President Xi Jinping puts forward four proposals at the XIII SCO Summit in Bishkek. He listed the key points of the Treaty on Long-term Good Neighbourliness, Friendship and Cooperation along with Shanghai spirit. It was agreed to sign the Agreement on Creating Favourable Conditions for International Road Transport Connecting the Baltic Sea with the Pacific Ocean, and Central Asia with the Indian Ocean and the Persian Gulf in the near future. For the stabilization of energy supply and deman relation, PRC planned an establishment of SCO Energy Club (Press releases, 2013). In November 2014, China established the Silk Road Project Investment Fund with a capital of $40 billion.

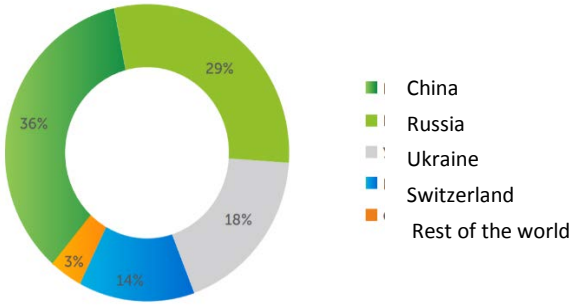
In 2015, China adopted the Development Strategy of the Shanghai Cooperation Organization until 2025, which aimed at estalishment of common approaches in Silk Road Economic Belt initiative and promotion of economic cooperation in the region (SCOc). The Strategy aims to form a common position of SCO States with regard to the Silk Road Economic Belt initiative. This initiative has been named one of the instruments to create favourable conditions for promoting economic cooperation in the SCO region. According to the SCO Strategy, the SCO states will develop mutually beneficial multifaceted cooperation in the field of energy, including the use of renewable and alternative energy sources. The idea of the "New Silk Road" and Xi Jingping's mega-project "One belt, one road" is referred to the complex of transport-logistical and infrastructure projects including the transportation of oil and gas. It was a combination of Eurasian and Chinese projects in the context of growing confrontation between the US and Russia. China has been particularly active in the past few years. Many new trade, economic and energy agreements have been signed at the initiative of China. It should be noted that at the 2015 Ufa Summit, the SCO countries agreed to take steps to establish a regional transport and transit corridor that would expand international logistics centers.

As a result of agreements between Nazarbayev and Xi Jinping in June 2017 in Astana was signed a *Memorandum on the extension of contracts with Chinese companies for oil and gas production in Kazakhstan*. During N.Nazarbayev's visit to China in 2018, the Kazakh leader highlighted the main picture of PRC investment to Kazakhstan, which has investd over USD 16 billion since 1991 and signed 127 documents for a total amount of USD 67 billion. The volume of mutual trade came close to $11 billion. There are 1200 enterprises currently operating

in Kazakhstan with the participation of Chinese capital (including CNPC, CGNPC and CITIC), 22 of them are oil companies among which 10 companies are with almost 100 perent of Chinese participation, another eight - have 50 percent. Nazarbayev said, "25 percent of oil in Kazakhstan is produced by Chinese companies. over the past years there were 100 million tons of oil and 180 billion cubic meters of gas supplied to China through Kazakhstan. They are now raising questions about contract renewals. We will look at it very carefully, because they are good partners" (Kazakhstan Today, 2018).

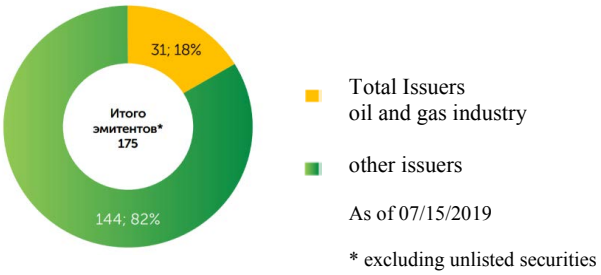
The long-term interest of Kazakhstan is confimed by Kazakh leaders' approval of moving 51 enterprises from China to Kazakhstan. According to the oil and gas sector analyst, after "Exploration Production KazMunaiGas" company acquires from "KazMunaiGas" stakes in "Kazakhoil Aktobe", "Kazakhturkmunai" and "Mangistau Investments B.V.", China's share will grow significantly as China Investment Corporation and a number of other companies under its control already have almost 30% in Exploration Production "KazMunaiGas". Moreover, the Kazakh president confirmed that "we are currently moving 51 enterprises from China to Kazakhstan" (Tengrinews.kz, 2017).

According to the Committee on Statistics of the Republic of Kazakhstan, in January 2019, natural gas exports in physical terms amounted to 3.1 billion m³. The main buyers of natural gas are China, which accounts for 36% (1.1 billion cubic meters), Russia - 16% (888.1 million cubic meters) and Ukraine - 18% (566.9 million cubic meters).



Source: Committee on Statistics of the Republic of Kazakhstan [KASE, 2019]

Figure 1 - Export of natural gas of the Republic of Kazakhstan in January 2019 (in %)



Source: Kazakhstan Stock Exchange JSC [KASE, 2019]

Figure 2 - Share of oil and gas industry issuers in the total number of KASE

Kazakhstan Stock Exchange JSC (KASE) is regularly working on attration of oil and gas companies to the stock market and explains the opportunities for investment.

So, the interest of the Western states in the energy resources of the CA has led to the inevitable response of its closest neighbors - China and Russia. The dynamism of the fast-growing Chinese economy, China's interest in the energy resources of the region and, accordingly, joint project development of deposits, lead to a kind of unification of energy markets within the framework of the SCO.

China, using its investment opportunities, provides political guarantees for the security of the neighboring region and is testing leadership in the new PRC format (Pan Guang, 2008).

The management is guided by China's policy of promoting institutionalization of organizational and economic support for projects, which together help to contain contradictions for the realization of its interests.

SCO Energy Club

The SCO Energy Club today unites several worlds' largest energy producers, namely Russia, Iran, Kazakhstan and Uzbekistan, with the largest energy consumers in the world, China and India. The SCO Energy Club aims to deepen energy cooperation between member states in addition to enhancing energy security and updating energy strategies (Daily Sabah, 2016).

Initial discussions on the Energy Club began in the early of 2000. The main point was the strengthening of the energy security policy in connection with the growing interest in the economic potential. In October 26, 2005, during the SCO summit in Moscow, the Secretary General prioritized the energy projects under SCO, which involved the oil and gas sector, the development of new hydrocarbon reserves and the joint use of water resources. The realization of these projects allowed the creation of the SCO Interbank Council.

Starting from 2006, the question on the creation of Energy Club was often raised due to the necessity coordinate energy policies of member countries and energy cooperation expansion. Shortly after the summit in Shanghai (2006), President V. Putin announced the idea of creating the SCO Energy Club, which would share energy resources among its members and help develop them for export to world markets. This proposal has caused a lot of criticism in the West. Some Western experts suggested that the SCO could become another OPEC or, rather, a gas cartel: the total percentage of oil of the SCO and Iran together make up about 20% of the world's resources, and gas - about 50. Other experts doubted the idea of an Energy Club for several reasons (RIA News, 2006).

A draft Charter document of the Energy Club (Regulation on the Energy Club of the member-states of the Shanghai Cooperation Organization) was proposed at SCO Forum on June 15, 2007. According to Russian proposal, the concept of Energy Club defines it as a platform for an informal exchange of views on the development of the fuel and energy complex. Uzbekistan did not support this version of the concept and refrained from supporting initiatives, confirming its bilateral format preference. Kazakhstan supported the creation of the Club, and expressed it in his concept of the Asian Energy Strategy, elaboation by Kazakhstan International Institute of Contemporary Politics.

The first rounds of official and informal meetings of SCO member-states, leaders of observer-states and other interested parties on the concretization of the Energy Club proposal were conducted in October, 2009. All participants welcomed the idea of the platform for substantive regular discussion of the energy strategy, joint implementation of projects related to the exploration, production, processing, transportation and transit of hydrocarbons. The only question remained was the balance of interests of all parties. The discussion of joint bilateral energy projects, the strengthening of energy security in the region, as well as issues of institutionalization of the SCO Energy Club led to the understanding of necessity to create an "adequate picture of the energy world". The next step in creation of SCO energy structure was Xi'an Initiative of the heads of energy ministries of Russia, China, Tajikistan and Kyrgyzstan on September 23, 2011.

The final decision on the establishment of the Energy Club was officially announced at a meeting of the SCO Council of Heads of Government in St. Petersburg on November 7, 2011. On December 6, 2013, four SCO member-states (Russia, China, Kazakhstan, and Tajikistan) became participants in the Memorandum on the establishment of the SCO Energy Club. After joining the observer and dialogue partners – Afghanistan, Belarus, India, Iran, Mongolia, Turkey and Sri Lanka, the Energy Club today unites eleven members.

The Energy Club, "being a non-governmental advisory body, brings together representatives of states and business circles, as well as information-analytical, research centers that work in the field of the fuel and energy complex of the SCO member states (Fredholm, 2017).

The growing number of participants in SCO Energy Club in the context of globalization has its own arguments. The Energy Club was designed as the platform for discussing issues related to the harmonization of energy legislation, ensuring energy security of member-states, observers and dialogue partners, coordinating the interaction of major regional producers, transit countries and consumers of energy resources, discussing problems pricing in the global energy market.

The global energy market is undergoing major changes. According to an analysis conducted by an energy researcher with the National Development and Reform Commission Zhou Dadi, and information published by China News Service (CNS), these changes occur at two levels (Zhou Dadi). The first is a change of location. The center of energy production is moving west, and the center of consumption is expanding east. Both directions point to Central Asia, where most of the SCO countries are located. The second is a shift in energy structure. Reliance on coal and oil as energy sources is weakening amid growing demand for natural gas and various types of new energy. China, one of the founding members of the SCO, is the largest country in the world in the field of photovoltaic and wind power plants. China is ready to support other SCO members in the field of energy cooperation.

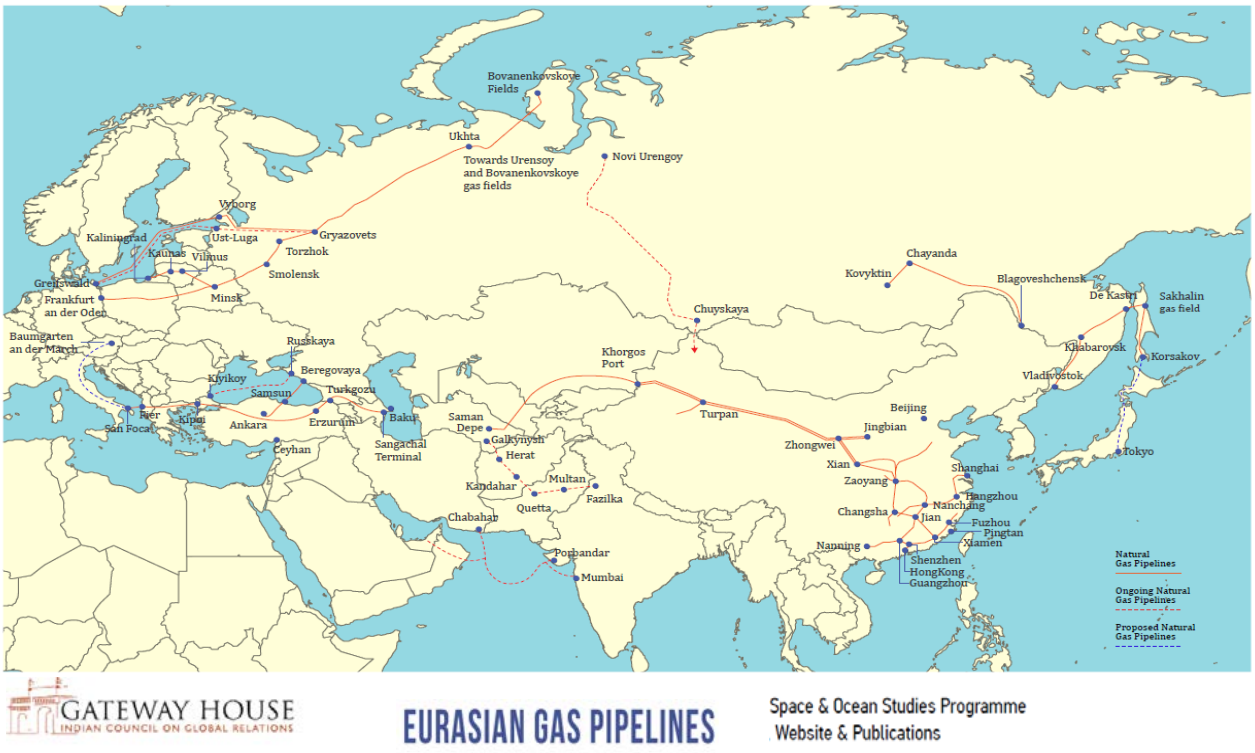


Figure 3 – Gas projects in Eurasia and potential partners of the SCO energy club

Energy cooperation consists of four components: construction of infrastructure; energy transport development; financing of joint and multilateral energy projects; cooperation in research and development in the field of technology. Consequently, the Energy Club according to its concept should harmonize national energy strategies for elaboration of plans of various member-countries, providing a platform for discussion of common programs and projects in the field of energy production. According to the 2018 SCO Development Report published by the Chinese Academy of Social Sciences, cooperation in the energy sector is a must for SCO members. Countries could collaborate in the following three areas to achieve their goal: 1. Stabilize the global energy supply chain and prevent unnecessary blackouts; 2. Create the best platform for negotiations on energy prices; 3. Assist each other in research to find cleaner and cheaper energy sources (Gong Zhe, 2018). In fact, the implementation of this project allows organizing a self-sufficient energy system in both global and regional contexts. Under the auspices of the SCO Business Council, the Eurasian Energy Forum is held annually to discuss strategies and joint approaches. The ongoing energy projects in the region of the SCO member-states are aimed at attracting external and internal investments for the construction of oil and gas pipelines in Central Asia. Basically, agreements on oil and gas pipelines are concluded on a bilateral basis, which leads to increased competition and inconsistency in the overall economic strategy that hinders the integration of energy markets.

The Energy Club can help deepen the interaction between energy producers (Russia, Kazakhstan, Uzbekistan and Iran) and energy consumers (China, Tajikistan, Kyrgyzstan, India, Pakistan and Mongolia). Since the SCO member-states are at the center of the global energy market shift; these countries can improve existing energy supply chains around the world, reaching a new global energy order. The SCO Energy Club may be the first step towards a common energy system.

In addition to multilateral agreements, members also participate in bilateral agreements in the energy sector. Turkey was the chairman of the SCO Energy Club in 2017, that is, the first country - non-member of the SCO. The appointment came after officials from Russia and China gave the green light to Ankara after President Recep Tayyip Erdogan statements that SCO is alternative to Turkey instead of the EU (Turkey's accession to a non-western organi-

zation). Turkey invited all SCO partner countries to take turns chairing the Energy Club for a year. The proposal was accepted and Turkey was unanimously elected Chairman of the Energy Club in 2017 (Daily Sabah, 2016).

Due to the dispersed national energy policy and interests, the proposed energy club can become a useful forum where the interests of exporters and importers will be represented. In matters of energy policy, the SCO can serve as a forum for Chinese investment and economic integration in the region. The energy club of the Shanghai Cooperation Organization does not imply the implementation of specific projects in the energy sector. Along with the Business Council and the Forum of the Shanghai Cooperation Organization, the Energy Club serves as an advisory body and serves as an auxiliary mechanism for organizing multilateral cooperation in the field of energy. At the moment, the Club has not realized its potential until it can promote coordinated energy projects under its auspices. At the same time, the Club can become an excellent basis for deeper coordination of countries in future plans.

Conclusion

A center of world energy and trade is increasingly shifting towards Asia. Asia's success is in unprecedented growth of its economy and sustained growth. China, using its investment opportunities, provides political guarantees for the security of the adjancent region and approbates the leadership in the new PRC format.

Within the framework of the SCO, regions and countries of the Eurasian space are drawing closer together, it is confidently entering into cooperation with ASEAN and the Asia-Pacific countries. The Shanghai Cooperation Organization has the potential to become a global player, a serious center of political decision making. To make it come true, the SCO must assert bigger interaction with other influential international organizations such as the United Nations (Schafer, 2017). The emergence multi-weighty dialogue partners of SCO: Belarus (EU neighbour), Turkey (stable partner and a candidate for EU membership), Sri Lanka (EU South Asian trade partner). All these factors have significantly expanded the geography and the potential of the Shanghai Cooperation Organization and simultaneously expanded the scope for EU possible ties.

When considering the Eurasian dimension of regional issues, we define two basic facts. First, the Central Asian states as full SCO members are in close engagement with major continental actors as Russia and China, which in turn leads to acceptance of their geopolitical insterest, directly effecting all CA states. Second is the nature of SCO that was created in a competition environment with the West.

Whereas some experts say the organization has emerged as an anti-US bulwark in Central Asia, others believe frictions among its members effectively preclude a strong, unified SCO. In any case, due to its relatively new power, the SCO may play a very important role in creating more harmonious relations in Asia, especially as one way of decreasing the risks of war among Asian nations and Western ones, or to solve minor military incidents between Asian nations as well.

The fundamental in SCO cooperation is not the goal of integration, but the potential of organization as structure-forming strand of the region. To break negative tendencies, and ensure the energy regional security, the countries decided to address to *instruments of multilateral cooperation*, for example SCO Energy Club.

The SCO's prospects lie in its comprehensive structure. A phased transition from bilateral to multilateral cooperation frameworks is quite possible, as all member states are aware that the SCO has a powerful potential for access to world markets.

Despite significant changes in China's role and becoming one of the effective hegemons in the region, the unification of Eurasian countries into a single political association under the aegis of China is not seen as a real. Most promising in frames of SCO is the focus on the principles of "open regionalism" (Libman, 2006), which is based on mutual interweaving of projects aimed at achieving specific goals and underlying alternative channels of economic cooperation.

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RUSSIAN-IRANIAN RELATIONS IN THE SCOPE OF NEW GEOPOLITICAL SITUATION

Iranian-Russian relations have a distinct strategic character, but they have not yet reached the level of strategic alliance, and the two parties in the Middle East, Central Asia and the Caucasus are more than they are different. The main organizer of these relations is temporary interests and common challenges, particularly the Western and American challenge. Therefore, there is always a common concern that both countries are likely to converge with the West at the expense of the other. "The study is important in analyzing the nature of relations between Russia and Iran. Both countries have strategic interests in an area of geo-strategic importance both at regional and international levels. The importance of these strategic relations goes beyond regional relations to the extent of the alliance, which makes the two countries on the road to the formation of a global axis, which gives great importance to understanding the nature and level of the relationship between the two countries. This study aims to study the development of Russian-Iranian relations and the nature of the factors influencing these relations in the period. The problem of the research is to try to analyze the nature of the Russian-Iranian relations and the controversy it raised over the dimensions of this relationship and its level and in view of the acquisition of this relationship of strategic importance at the international level. The relations between the two countries and areas of cooperation raised many questions to be addressed in this research. The main outcome of the study was that the two sides agree that the Arab Spring has begun to produce "radical Islamists." Moscow does not favor a Middle East with al-Qaeda in its tracks, and Tehran does not favor radical Salafi control.

Key words: Geopolitics, regional cooperation, internal cooperation, diplomacy, foreign policy initiatives, the main actors.

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Жаңа геосаяси жағдайлардағы Ресей-Иран қарым-қатынастары

Ресей-Иран қатынастары айқын стратегиялық сипатқа ие, бірақ олар әлі де стратегиялық одақ деңгейіне жеткен жоқ, ал Таяу Шығыста, Орта Азия мен Кавказдағы екі жақ та бір-бірінен ерекшеленеді. Бұл қатынастардың негізгі ұйымдастырушысы уақытша мүдделер мен жалпы проблемалар, атап айтқанда, Батыс пен Американың проблемалары. Сондықтан екі ел бір-бірінің есебінен Батысқа жақындай алады деген ортақ қорқыныш әрқашан бар. «Бұл зерттеу Ресей мен Иран арасындағы қатынастардың сипатын талдау үшін маңызды. Екі елдің де аймақтық және халықаралық деңгейде геостратегиялық маңызы бар стратегиялық мүдделері бар. Бұл стратегиялық қатынастардың маңыздылығы аймақтық қатынастардан гөрі екі елді жаһандық ось құру жолында жасайтын одақ екі ел арасындағы қатынастардың сипаты мен деңгейін түсінуге үлкен мән беретін дәрежеде болады. Бұл зерттеу орыс-иран қатынастарының дамуы мен сол кездегі қатынастарға әсер ететін факторлардың сипатын зерттеуге бағытталған. Зерттеудің мақсаты – Ресей-Иран қатынастарының сипатын және осы қатынастардың көлеміне, олардың деңгейіне және сатып алуды ескере отырып туындаған келіспеушіліктерге талдау жасауға тырысу. Халықаралық деңгейде стратегиялық маңызы бар қатынастар. Екі ел арасындағы қатынастар және ынтымақтастық бағыттары осы зерттеуде қарастырылатын көптеген мәселелер болып табылады. Зерттеудің негізгі нәтижесі екі тараптың «Араб көктемі» «радикалды исламшыларды»

шығара бастайтындығымен келісу болды. Мәскеу өз жолында Таяу Шығысты «Аль-Каидамен» қолдамайды, ал Тегеран салафиттердің түбегейлі бақылауын қолдамайды.

Түйін сөздер: геосаясат, аймақтық ынтымақтастық, ішкі ынтымақтастық, дипломатия, сыртқы саяси бастамалар, негізгі қатысушылар.

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Российско-иранские отношения в новых геополитических ситуациях

Российско-иранские отношения имеют ярко выраженный стратегический характер, но они еще не достигли уровня стратегического альянса, и две стороны на Ближнем Востоке, в Центральной Азии и на Кавказе более чем различны. Основным организатором этих отношений являются временные интересы и общие проблемы, в частности, проблемы Запада и Америки. Поэтому всегда существует общее опасение, что обе страны могут сблизиться с Западом за счет другой. «Это исследование важно для анализа характера отношений между Россией и Ираном. Обе страны имеют стратегические интересы в области геостратегического значения как на региональном, так и на международном уровнях. Важность этих стратегических отношений выходит за рамки региональных отношений в той степени, в которой альянс, который ведет две страны по пути к формирования глобальной оси, которая придает большое значение пониманию характера и уровня отношений между двумя странами. Это исследование направлено на изучение развития российско-иранских отношений и характер факторов, влияющих на эти отношения в тот период. Задача исследования состоит в том, чтобы попытаться проанализировать природу российско-иранских отношений и возникшие разногласия по поводу размеров этих отношений, их уровня и с учетом приобретения отношений стратегического значения на международном уровне, а также отношения между двумя странами и в области сотрудничества. Основным результатом исследования стало то, что обе стороны согласны с тем, что «арабская весна» начала производить «радикальных исламистов». Москва не поддерживает Ближний Восток с Аль-Каидой на своем пути, а Тегеран не поддерживает радикальный контроль салафитов.

Ключевые слова: геополитика, региональное сотрудничество, внутреннее сотрудничество, дипломатия, внешнеполитические инициативы, основные участники.

Introduction

The Iranian-Russian relations began first, depending on the line of relations between the two sides with the United States, and secondly related to Moscow and Tehran's view of regional and international changes and the desired role played by each of them. It was logical for Tehran to rush to strengthen ties with Moscow as hostility grew with Washington, especially after the nuclear crisis that began in 2002, and the tightening of Western sanctions over time on Iran, but Russia hesitated long before developing relations with Tehran. While the Iranian-US rapprochement may well ease Russia's burden of not having closer relations with Tehran, it will affect Russia's growing political role in the region. Although US-Iranian talks may not result in friendly relations that erode a long history of enmity, dragging Tehran to the negotiating table means that the Russians are wary of Washington's direct influence on many of the region's files and the declining role of Russia.

The relations between the two countries date back to the era of the Achaemenid Empire, which had relations with the Scythians, but the official relations between the two countries date back to the era of the Russian Empire and the Safavid state. Tsarist Russia fought several wars against the Safavid Empire and occupied several But in the Soviet era relations between the two countries were not good because the Shah of Iran in Pahlavi rule was against communism and suppressed it and his relations with the capitalist liberal west were stronger than his relations with the Soviet Union , But relations between the two countries improved after the Iranian Islamic revolution in 1979, which overthrew the rule of the Pahlavi, which brought back the spirit of Allah Mousavi Khomeini and the rule of Iran, but after the Islamists stood against communism relations again between the two countries and became the Soviet Union is one of the first countries to support Iraq in arms The Iraq-Iran War With the collapse of communism in Russia, Russia's foreign relations were reconsidered and Russia considered

it more appropriate for its interests to restore its relations with Iran, so now Russia and Iran are among the most co-operative countries. Russia today is the first country to support Iran's nuclear project. J stands against Western countries, Russia and Iran have the same point of view in the Syrian crisis, which began since 2011 more understanding of the countries that support the Syrian-led Syrian President Bashar al-Assad, while the West stands against the government, the government.

The relations between Russia and Iran have undergone various stages, as they have witnessed conflicts and tensions, in accordance with the interests of the parties or their divergence, in addition to the geopolitical situation. There are other influential factors that make the building of good-neighborly relations and mutual cooperation necessary. The very rich natural resources of these two countries, especially oil and natural gas as well as manpower and military capabilities and influence in their region and beyond, all make the subject of Russian-Iranian relations an important issue at the international level.

Iran's role in the region of Eurasia cannot be ignored or underestimated. It occupies a central strategic position, overlooking the Caucasus on the one hand and the Persian Gulf on the other, and the Central Asian Soviet region On the third hand. Iran occupies a prominent position in the strategies of major powers, including the Russian Federation, for several reasons, the most important of which is the Russian Federation's dream of reaching warm waters and protecting its interests in the region. Iran is one of the major powers in the Middle East, to preserve their interests in this important region.

On the other hand, Iran is increasingly important to the Russian Federation because of its close geographical location. Iran has become the southern neighbor to be controlled to protect Russia's national security. The geopolitical and strategic geography has made Iran the subject of conflict and the aging of major powers to establish and improve relations with it.

The study is based on the premise that strengthening Russian-Iranian relations in various fields is a strategic necessity for both countries to meet the regional and international challenges and changes facing them.

The cooperation between the two countries in the economic field is practically limited, as the volume of exchange "Russia has geopolitical goals, while Iran has national sectarian goals." Trade in 2016 is about $ 1 billion, and rose 80 percent, Putin said in May 2017 when meeting with President Hassan Rowhani in Moscow. But this figure does not reflect strategic cooperation between the two countries, although Iranian and Russian officials have said there is a $ 45 billion approach to the oil-for-food program for the next 10 years. In addressing the nature of the relationship between Tehran and Moscow, it is useful to take the following observations into account: Russia is a big country, and wants to return an important pole in the world, while Iran is a strong regional state, wants to be independent in its decisions, and not follow any international force. The policy of the regime in Russia after the collapse of the Soviet Union pragmatism, puts its geopolitical interests above all considerations. In Moscow prefer to talk about "partnership", rather than "alliance", this confirms the previous idea of the pragmatism of Russian foreign policy. There is a lack of trust between the two countries, each afraid to sell the other to the West, because both of them dream of improving his relationship with the West.

Research problem

Many ask an important question: Are relations between Russia and Iran strategic or tactical? At least to the stage of relations between Iran and the Soviet Union, we find that it has gone through difficult stages. Stalin tried to occupy Azerbaijan in 1946. Iran's Shah-led relationship with Moscow was very bad, given the Cold War and Iran's involvement in Western alliances (with Britain and America). After the victory of the revolution in Iran in 1979, Khomeini's takeover of power and the announcement of the Islamic Republic, Moscow did not welcome this revolution, fearing its Islamic slogans. Relations remained so, that Ayatollah Khomeini addressed President Gorbachev in 1986 and called on him to cooperate. Relations began to improve after the visit of Iranian Parliament Speaker Hashemi Rafsanjani in 1989 to Moscow and the signing of cooperation agreements.

Relations with the Russian President Yeltsin, who was receiving orders from America, which is known for its very tense relations with Tehran, have gone through a period of ups and downs, until Putin came to open a real page of cooperation between the two countries. Iran has been the third importing country for weapons from Moscow from 2000 to 2005. President Medvedev in 2008 came with his liberal approach closest to the West by stopping cooperation with Iran, especially refusing to provide it with a system, prompting Tehran to file a complaint against Moscow and demanding compensation of $

4 billion. This is a situation that has been displeased by the Russian leadership.

The problem of the research is its attempt to analyze the nature of the Russian-Iranian relations and the controversy it raised over the dimensions of the relationship and its level and in view of the strategic importance of this relationship at the international level, Russia is one of the influential countries in the international political system is a permanent member of the Council Security, economically, is one of the countries that influence the security of the global energy, having large resources of oil and gas, and is one of the largest producers and exporters of weapons, and possesses a nuclear force high technology. Iran is one of the most important regional powers in the region. This force emerged after the occupation of Iraq and Iran's pursuit of nuclear weapons. Iran has significant oil and gas reserves and an important geo-strategic location. The development of relations between the two countries will be reflected directly at the international and regional levels, both for the Central Asian region and the Arab region. The relations between the two countries and areas of cooperation have raised many questions. Therefore, the research problem lies in the great importance of studying the relationship between Iran and Russia, and the nature of the factors affecting these relations.

The main question of this study is: **"What are the relations between Russia and Iran?"**

This main question is subdivided into the following sub-questions:

What role does Iran and Russia aspires to play in the international system?

What are the main factors that contributed to the gradual convergence between Russia and Iran?

What are the determinants of relations between the Islamic Republic of Iran and the Russian Federation?

How do the factors (economic cooperation, Caspian Sea, Caucasus, military cooperation, nuclear cooperation) affect Iranian-Russian relations?

What are the variables controlling the future of the two countries, and will these changes contribute to the abolition of traditional caution, which has governed the bilateral relations between them for a long time?

Literature Review:

The future of Iran-Russia relations is governed by its traditional determinants, the relationship of both sides to the United States, the common interests of both sides, as well as the regional and international rivalries, and the role that Iran and Russia aspire to play in the international system. The "alliance of necessity", the "tactical intersection of interests" and the "transit alliance" remain dominant in Russian-Iranian relations. For four centuries, Iran-Russia relations have witnessed stages of tension and tension, in which the two sides have also witnessed forced cooperation to confront a common enemy. In general, Russian-Iranian relations have undergone four stages:

1. Tsarist Russia and colonial ambitions
2. The Soviet Union and the communist rule
3. Relations after the Islamic revolution
4. The disintegration of the Soviet Union

After the collapse of the Soviet Union and the separation of the Muslim republics from Russia, the Russian bear was not worried about the possibility of Islamic Iran supporting these republics. Although a new form of bilateral relations between Moscow and Tehran appeared on the horizon in 1989 with a visit to Russia by then-president of the Islamic Shura Council Hashemi Rafsanjani, Lilsen, the first Russian president after the collapse of the Soviet Union, had a close view of the West; Tehran waited until 1992 to take a step forward in its relationship with Russia, with the two countries signing a joint cooperation agreement to build the Bushehr nuclear reactor as part of a long-term agreement. Since then, many factors have contributed to the gradual convergence between the two sides, including geographical proximity, common economic interests, and regional rivalries. The two countries have recognized the strategic importance of their joint cooperation, but many of the determinants that have restricted relations between the Islamic Republic and the Russian Federation can not be ignored.

After the collapse of the Soviet Union and the end of the Cold War, Yeltsin sought to placate the enemy of yesterday (the United States) and sought friendship and appeasement, which reflected a chill on the relationship between Moscow and Tehran. Despite initial indications of Russia's desire to regain influence in the Caucasus and Central Asia during the 1990s.

At the same time, economic cooperation between the two countries was strengthened, and Iran signed contracts to purchase Russian weapons. The Russian economic crises played an important role in encouraging Russian companies and industrial complexes to move towards the Iranian market. But US pressure and sanctions on Russian companies led to Moscow's retreat from its military and technological contracts with Iran after the

signing of the Gur-Chernomyrdin Memorandum in 1995, and Moscow suspended a contract to supply Iran with a research reactor in 1998.

Ambience intersects the interests of the two countries

The pivotal moment in the development of relations between Moscow and Washington to take the form it was today when Putin came to power in 2000, then turned Russian policy towards America from dependence to the lack of confidence and frank and declared. Even Putin's third term, we see clear Russian efforts to restore the role of the United States' superpower, which may not be urgent at the global level, but it is already at the regional level.

Russia has begun to consider strengthening its status in Central Asia and returning to the Middle East, prompting it to re-evaluate Iran's geostrategic role and direct influence in the Caucasus, the Caspian Sea, Central Asia and the Middle East.

At the same time, US military operations and the ensuing military presence in Afghanistan in 2001, followed by Iraq in 2003, raised the concerns of Iran and Russia alike. Similar positions and fears of NATO's progress towards the East were raised in the Caucasus, Central Asia and the Caspian region.

Putin tried to form a front against the authoritarian and expansionist policy of the United States, including China, Iran, India and Brazil, to re-create a balance in international relations to end the one-pole policy of the United States.

The partnership between the two countries can be summarized in the following areas:

Economic Cooperation

Iran can be a privileged trading partner of Russia. The trade balance between the two countries in 2012 reached $ 3.65 billion; $ 3.4 billion of which is the volume of Russian exports to the Iranian market, compared to only 0.6 percent of Iranian exports; Of the Iranian partnership.

There are expectations that the volume of trade will increase three times as much as it is now. However, Russia exports only 2.5% of its total exports to Iran, due to the same determinants of relations between the two countries.

There is also a need for political will on the part of the two sides to expand economic cooperation between them, especially in establishing infrastructure to support development in Iran and Russia, as well as in third countries. This includes oil and gas extraction and transmission lines and the establishment of international transport routes for both domestic and foreign goods. The role of Iran in the Caucasus, and the compatibility with Russia

Following the end of the conflict between Russia and Georgia in 2008, Iran followed a successful policy of dealing with Azerbaijan and Armenia in the Nagorno-Karabakh issue. It facilitated travel to its territory and developed bilateral relations with the Caucasus countries. Despite the escalation of the dispute between Iran and Azerbaijan, this did not create a problem for the party Russian territory, and another point to be noted is the fear of some of Iran's support for the Muslims of the Russians; in contrast to what is said, but Iran can not support Sunni groups Salafist, and Russia is aware of this; so try to maintain a specific partnership with Iran In this area without Affected by many other files.

The Caspian Sea

The difference between the Caspian Sea, Russia, Kazakhstan, Azerbaijan, Turkmenistan and Iran is one of the most important factors affecting Iranian-Russian relations.

The treaties of 1921 and 1940 between Iran and the former Soviet Union gave equal rights to both sides of navigation in the Caspian Sea and exploitation of the resources of this water basin. The treaties also prohibited foreign vessels from sailing as a closed sea. But the disintegration of the Soviet Union led to a change in the political map of the region and the emergence of a number of new independent states. Despite the 20-year talks, they have not reached a satisfactory agreement. On the other hand, bilateral and trilateral treaties were organized to divide the northern part of the sea between Russia, Kazakhstan and Azerbaijan, while the southern part, which includes Iran, Azerbaijan and Turkmenistan, remained in dispute. Russia is seeking to extend its influence in a geographically rich location and its wealth was until recently a part of its natural border, but Russia remains a strong competitor to Iran for energy in the Caspian Sea and its export lines. At the same time Moscow sees in the American and Western presence in this strategic region a threat to its status and security, and repeated attempts to contain and encircle; and that is why Moscow supports the positions of Azerbaijan and Kazakhstan in their dispute with Iran.

Military cooperation

Iran is Russia's third partner in terms of military cooperation after China and India. This partnership

began during the visit of former President Mohammad Khatami to Moscow in 2001 to sign a military cooperation agreement between the two countries in the fall of that year. Tehran has been very interested in developing its missile systems through this cooperation, and has aspired to obtain licenses for the manufacture of Russian weapons, unless Moscow is satisfied. Russia classifies all weapons and shipping shipments to Iran as defensive weapons.

During the past years, military cooperation has included deals between the two sides for the purchase of anti-tank missiles, the TOR-M1 rocket system, the SU-25UBT, the MiG-29, the Sukhoi-24 and the military transport helicopters, as well as spare parts and maintenance for the Iranian army. Russian-made tanks.

Russia's profits from military cooperation with Iran are estimated at between $ 11 billion and $ 13 billion. In 2007 alone, Russia signed a contract to hand over five S300 surface-to-air missile systems at a cost of $ 800 million. In 2010, former Russian President Dmitry Medvedev canceled the contract because of US and Israeli pressure, which caused a crisis between the two countries, especially after former President Mahmoud Ahmadinejad harsh criticism of Russian policy, the Kremlin responded violently, and Tehran filed a lawsuit before the International Court of Appeal against the Russian government "Russ Auburnexport" Bug compensation Meh $ 4 billion, due to the cancellation of the company to supply contract s300 systems (IBM or 1) to Iran.

Russian military sources denied a deal was reached during talks between Russian President Vladimir Putin and Iranian President Hassan Rowhani on the sidelines of the Shanghai Cooperation Organization (SCO) summit in Bishkek in September. Asserting that the Russian exporters "are not now looking to supply the system" S-300 Vmtn-2500 "anti-aircraft missiles to Iran, but it can not be ruled out in the future.

Nuclear cooperation

Moscow's possession of nuclear energy technology and reactor construction is one of the most important elements of the Russian economy. Russia is building reactors in Turkey, Iran, Vietnam, China and India. Iranian analysts believe that if sanctions are lifted, and Tehran can extract international recognition of the legitimacy of its nuclear program, Iran can benefit from all its oil revenues to invest in nuclear energy, and thus achieve with Russia a huge trade balance in this area, especially that the Russian partner Russia has been a permanent member of the Security Council. It has not only the technology to build reactors but also can supply Tehran with nuclear fuel for the reactor if it wants to, but since the early 1990s, Past cooperation in Nuclear energy toured between the Islamic Republic and Russia alarmed the United States and Israel, and American pressure led her time to limit this cooperation in the framework of the completion of the Bushehr reactor, which delayed the Moscow handed over more than once. However, Russia will be able to fully defend its economic interests by allowing continued cooperation with Iran in the nuclear power and civilian space research sectors. In view of the importance of this pivotal stage, we recommend that you see the details.

Since the Iranian nuclear crisis was activated in 2002, Russia has sought to strengthen its role as a mediator to help resolve this crisis peacefully. After US and Israeli threats in 2005 to launch a military attack on Iran, Moscow has proposed a uranium enrichment project on Russian soil. Russia's subsequent Security Council sanctions on Iran in 2006, 2007, 2008, 2011; which affected the relations between the two countries to reach a slowdown in Moscow to complete the stages of the Bushehr reactor for more than seven years, as well as the refusal to supply Iran with nuclear fuel, Accession to the Organization of Sheng J. All this raises doubts about the possibility of building strategic relations between the two sides, 18 despite Moscow's hope that Iran will achieve a breakthrough in the Iranian nuclear crisis following the election of moderate President Hassan Rowhani and his followers a new approach to negotiation.

Conclusion

The first is the "Arab Spring" and the Syrian crisis and the solution to solve it. Tehran and Moscow have sided with the Syrian regime in all diplomatic forums. The two countries have never shared a position in this regard, as they did in fact. In this file.

The second is the arrival of Rohani to the Iranian presidency, after years of hard-line approach by his predecessor, Mahmoud Ahmadinejad, whose presidency has seen many positions and policies that have strained relations with Moscow.

Finally, the variable openness of Iran and the US potential, and the future of relations between Iran and the Gulf States, specifically Saudi Arabia. All these variables have not yet yielded results, and

may be waiting to resolve some of them, which are linked in one way or another.

The question remains: if these variables will contribute to the abolition of traditional caution, which has long governed the bilateral relations between them? Here are a number of points: The instability in Syria and the presence of militant groups may shift over time to Russia through Chechnya and the northern Caucasus regions; this will threaten their interests there and adversely affect the extraction of 40 billion barrels of oil from Iran. Caspian Sea. The two sides agree that the Arab Spring has begun to produce "radical Islamists". Moscow does not prefer a Middle East where al-Qaeda roams, nor does Tehran favor radical Salafist control.

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ХО ШИ МИН И СОВЕТСКАЯ СТРАНА

Статья написана в жанре политического портрета и посвящена лидеру вьетнамского народа и первому президенту ДВР Хо Ши Мину, а также теме связей с СССР. Прослеживается эволюция его точки зрения и оценок на советско-вьетнамские отношения, которые закономерно привели к утверждению тесного сотрудничества между странами на современном этапе. На основе анализа фактов из отечественной прессы и политических примеров утверждается, что отношения с Вьетнамом при жизни Хо Ши Мина имели многолетнюю и позитивную историю. Подчеркивается специфика дружественных и конструктивных контактов двух стран в контексте развития интеграционных связей между государствами на всех уровнях. Делается вывод, что всеобъемлющее стратегическое сотрудничество России и Вьетнама является мощным фактором стабильности на Азиатском континенте. С сегодняшнего дня итоги приезда Хо Ши Мина в СССР в июле 1955 г. и последовавшую затем траекторию развития советско-вьетнамских отношений следует учитывать, так как большинство значимых событий признаются таковыми не в момент свершения, а гораздо позже. Объясняется тем, что важность эпизода определяется не эмоциональной реакцией современников, а масштабами порожденных им следствий, проявляющихся лишь по прошествии времени.

Ключевые слова: Хо Ши Мин, Вьетнам, визит в СССР, советско-вьетнамские отношения, стратегическое партнерство.

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Ho Chi Minh and the Soviet Union

The article is written in the genre of a political portrait and is dedicated to the leader of the Vietnamese people and the first President of the Democratic Republ + ic of Vietnam (DRV) Ho Chi Minh, as well as to the topic of relations with the USSR. The author traces the evolution of his understanding and assessment of Soviet-Vietnamese relations, which naturally led to the approval of close cooperation between the countries at that time. The analysis of the facts from the domestic press and different political examples vividly show that relations with Vietnam during the life of Ho Chi Minh had a long and positive history. The author highlights the specifics of friendly and constructive contacts between the two countries in the context of the development of integration ties between the states at all levels. The author comes to the conclusion, that comprehensive strategic cooperation between Russia and Vietnam is a powerful factor of stability in the Asian continent.

Key words: Ho Chi Minh, Vietnam, visit to the USSR, Soviet-Vietnamese relations, strategic partnership.

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Хо Ши Мин және Кеңес Одағы

Аталмыш мақала саяси портрет жанрында жазылып, Қиыр Шығыс Республикасының алғашқы президенті, Вьетнам халқының көшбасшысы Хо Ши Минге, сонымен қатар КСРО тақырыбына арналып жазылған. Қазіргі таңдағы екі мемлекет арасындағы орын тапқан тығыз байланысқа, кеңес-вьетнамдық қатынастардың дамуына берілген бағасының деңгейлік эволюциясы қарастырылады. Отандық БАҚ өкілдері мен саяси оқиғаларға талдау жасай отырып, Хо Ши

Мин кезіндегі Вьетнаммен байланыс ұзақ уақытқа әрі позитивті бағытта ұстанылғанын айтуға болады. Барлық деңгейде екі жақты интеграция жұмыстары қарастырылып, мемлекеттердің конструктивті және достық қарым-қатынасты мақсат тұтқаны анық байқалады. Қорытындылай келе, Азия континентіндегі тұрақтылықтың факторы ретінде Ресей мен Вьетнамның өзара әріптестік стратегиясын қарастыруға болады. Бүгінгі күннен бастап Хо Ши Миннің КСРО-ға 1955 жылдың шілдесінде келуінің нәтижелерін және кеңестік-вьетнамдық қатынастардың даму траекториясын бағалай отырып, көптеген маңызды оқиғалар аяқталған кезде емес, біршама кейінірек танылатындығын есте ұстаған жөн. Бұл эпизодтың маңыздылығы замандастарының эмоционалды реакциясымен емес, уақыт өткеннен кейін пайда болатын салдарлардың масштабымен анықталатындығымен түсіндіріледі. Оның негізінде, Ресей Федерациясының Президенті В.В. Путин қазір жан-жақты стратегиялық серіктестік деңгейіне жетті.

Түйін сөздер: Хо Ши Мин, Вьетнам, КСРО-ға сапар, кеңес-вьетнамдық қарым-қатынастар, стратегиялық әріптестік.

Введение

Первый президент Демократической Республики Вьетнам, как можно прочитать в официальной биографии, родился 19 мая 1890 г. При рождении он получил имя Нгуен Шинь Кунг. Однако за свою яркую жизнь революционера-подпольщика по разным причинам сменил несколько имен и множество псевдонимов. В коминтерновских кругах его звали Нгуен Ай Куок, а мировую известность получил под именем Хо Ши Мин. Становление будущего лидера вьетнамского народа проходило в атмосфере колониальной гнета, который побуждал к поиску способов восстановления социальной справедливости и достижения национальной независимости. Он отправляется во Францию, где окунается в политическую жизнь и левое движение, знакомится с П. Вайен-Кутерье, М. Кашеном, А. Барбюсом и др., вступает в коммунистическую партию.

Уже в 1919 г. получает известность как автор письма к руководителям держав, подписывающих Версальский договор, чтобы они предоставили свободу народам Индокитая. Оно фактически стало политическим манифестом и ознаменовало собой наступление нового этапа в развитии вьетнамского национально-освободительного движения. Текст «прав народов», или «тетради пожеланий вьетнамского народа», стараниями газетчиков из «Юманитэ» попал в Индокитай и произвел должный эффект, вызвав фурор в колониальной администрации.

В июне 1923 г. Хо Ши Мин прибывает в Петроград. Фактически он стал первым посланцем Вьетнама на советской земле. В Москве молодой политик очень хотел лично встретиться с В.И. Лениным, но такой возможности ему не представилось. Советский вождь серьезно болел и вскоре скончался. Хо Ши Мин смог посетить лишь церемонию прощания с легендарным большевиком. Находясь в Москве, работает в Исполкоме Коминтерна и параллельно учится в Коммунистическом университете трудящихся Востока. Поэт О. Мандельштам берет у него интервью, после чего в популярном журнале «Огонек» появляется очерк под названием «Нюэн Ай-Как. В гостях у коминтерщика».

В Советском Союзе Хо Ши Мин активно работал в коминтерновских структурах. Так, в июле 1924 г. он выступал на V Конгрессе Коминтерна по национальному, колониальному и аграрному вопросам. «Правда» в этой связи опубликовала материал под красноречивым заголовком «От слов к делу. Поучительные цифры. Выступление делегата Индокитая Нгуен Ай Куока». Раскрылся как талантливый публицист, регулярно печатаясь в журнале «Инпрекорр». Тогда же написал свою первую книгу «Суд над французским колониализмом», которая увидела свет в 1925 г. уже после отъезда Хо Ши Мина из Москвы.

В 1930 г. он принял решение написать новую книгу о жизни советского народа, которая под названием «Дневник потерпевшего кораблекрушение» размножалась литографическим способом и нелегально распространялась во Вьетнаме. Вернулся в СССР в 1934 г., и был зачислен слушателем Международной ленинской школы, где учился и преподавал под псевдонимом Линов, являясь признанным руководителем вьетнамского землячества. Не терял связь с родиной. Его «письма из далека» чудом проникали во Вьетнам и регулярно появлялись за подписью П.К. Лин в легальной газете «Наш голос». В 1935 г. участвовал в работе VII Конгресса Коминтерна, находясь в числе видных фигур международного коммунистического движения.

Поворотным моментом в истории вьетнамского народа стала Августовская революция с последующим провозглашением Декларации о независимости и созданием ДРВ 2 сентября 1945 г. Затем последовали годы ее отстаивания в борьбе с французскими колонизаторами и их приспешниками. Советский Союз оказывал посильную помощь. Примечательно, что в январе 1950 г. были установлены дипломатические отношения между СССР и ДРВ. Состоялся негласный визит Хо Ши Мина в Москву, где он имел контакты с И.В. Сталиным. Затем последовали годы напряженной борьбы за независимость вьетнамского народа. Важной вехой в его истории явилось образование Демократической Республики Вьетнам, первым президентом которой стал Хо Ши Мин. Уже в качестве признанного лидера вьетнамского народа и международного коммунистического движения он неоднократно приезжал в Советский Союз.

В июле 1954 г. на Женевской конференции были подписаны соглашения о восстановлении мира в Индокитае. Их обнародование означало международное признание суверенитета и независимости ДРВ. Вьетнам настраивался на мирный труд. В июле 1955 г. Хо Ши Мин во главе Правительственной делегации ДРВ снова в Советском Союзе. Предстояло обсудить насущные проблемы мирного строительства и вопросы советско-вьетнамского сотрудничества. Министр иностранных дел СССР А.А. Громыко спустя годы в своих мемуарах дал высокую оценку того, самого первого официального визита. «Отношения между нашими странами, – констатировал он, – достигли расцвета. Но мы помним, что первый практический шаг в сотрудничестве двух стран сделал Хо Ши Мин в те памятные июльские дни 1955 года» (Громыко, 1990).

Дискуссия

Женевское соглашение завершило колониальную войну Франции в Индокитае и наметило принципы политического урегулирования в регионе. В Советском Союзе резонно полагали, что героическая борьба вьетнамского народа завершилась победой Демократической Республики Вьетнам. «1954 год, – утверждалось в международном обзоре журнала ЦК КПСС «Коммунист», – был годом больших и важных событий. Одним из важнейших было женевское совещание по вопросу о Корее и об Индокитае» (Викторов, 1955).

Советское правительство твердо настаивало на строгом соблюдении договоренностей. «Женевские соглашения, – писала 3 июля 1955 г. «Правда», – создали необходимые предпосылки для осуществления политического урегулирования во Вьетнаме». Развернулась сложная дипломатическая игра в связи с подготовкой встречи глав четырех государств в Женеве, когда любой внешнеполитический успех усиливал позиции и авторитет Советского государства. Весомый вклад в этот процесс внесло укрепление межгосударственных связей с ДРВ.

Накануне и по ходу визита Правительственной делегации ДРВ во главе с президентом Хо Ши Мином «Правда» откликнулась серией очерков о жизни вьетнамского народа. Советские читатели узнали об успехах рабочих ханойской фабрики «Вьет-Тханг», о шахтерах Хон-Гая, настроениях прохожих в провинции Тиен-Куан, о жизни деревенской глубинки и первых шагах аграрной реформы. «Вьетнамо-советская дружба, – констатировал спецкор «Правды» П. Ефимов, – крепнет во имя мира и светлого будущего народов» (Ефимов, 1955).

О том, как вьетнамский народ строит новую жизнь и что думает по этому поводу, свидетельствовали зарисовки о конкретных людях, о таких как декан медицинского факультета Ханойского университета Хо Дак Си, который, еще будучи студентом в Париже, распространял газету, издававшуюся Хо Ши Мином. Затем вернулся на родину. Лечил людей и воевал. «Я люблю, – подчеркивал ветеран, – свою родину. Побороть трудности мне помогала бесконечная вера в Хо Ши Мина. Его имя стало олицетворением всего, к чему мы стремились, – к свободе и независимости» (Кожин, 1955)

Газета «Правда» 9 июля 1955 г. официально сообщила, что Правительственная делегация Демократической Республики Вьетнам во главе с президентом и главой правительства Хо Ши Мином из Пекина через Улан-Батор вылетела в СССР. В состав делегации входили генеральный секретарь Партии трудящихся Вьетнама Труонг Шин, министр финансов Ли Ван Гиен, министр промышленности и торговли Фан Ань, министр просвещения Нгуен Ван Гуен, министр здравоохранения Фам Нгок Тхак, земледелия и лесозаготовок Унг Ван Хием, другие официальные лица. Уже сам состав делегации говорил о том, на что высокие стороны сделают акцент в переговорах.

Первая остановка была в Иркутске. Делегацию встречал и затем сопровождал по стране секретарь Президиума Верховного Совета СССР Н.М. Пегов. Примечательно, что среди встречающих не значились первые лица области, которые находились в Москве на проходящем параллельно Пленуме ЦК КПСС. Здесь и в других городах первую скрипку играли в приеме гостей и держали ответную речь председатели исполкомов горсоветов. Тем более, что статус делегации был правительственный, а не партийный.

Пребывание в Иркутске и других важных центрах страны отличалось насыщенной повесткой. Она включала в себя посещение крупных индустриальных и аграрных предприятий, культурных мероприятий и встреч с советскими людьми. В том же Иркутске делегация посетила строительство Ангарской ГЭС, совхоз имени Дзержинского, колхоз «По сталинскому пути», где на деревенской пасеке, по русскому обычаю, для гостей были накрыты столы. Вечером президент Хо Ши Мин присутствовал в пионерском лагере в селе Баклаши на торжественном костре. «На улицах, – сообщала 10 июля 1955 г. «Правда», – президента Хо Ши Мина сердечно приветствовали тысячи жителей Иркутска».

Неординарно прошло посещение Новосибирска, куда делегация прибыла 10 июля 1955 г. Еще в аэропорту президент Хо Ши Мин произнес любопытную фразу: «Мы, очень рады посетить ваш город – замечательную столицу советской Сибири». Осмелимся заявить, что так подчеркнуто о неформальном статусе Новосибирска еще никто из мировых лидеров публично не говорил. Делегация осмотрела город, побывав на строительстве большого моста через Обь. «Советская Сибирь» в тот день опубликовала очерк под названием «Борьба вьетнамского народа за независимость и мир», где красной нить проходила мысль Хо Ши Мина, что вьетнамский народ «всегда поддерживал борьбу против агрессии, в защиту мира во всем мире и твердо верит, что разрешение международных споров мирным путем и мирное сосуществование государств с различными социальными системами и различными взглядами не только необходимо, но и возможно» (Советская сибирь, 1955). А вечером делегация присутствовала на гастрольном спектакле Хабаровского театра музыкальной комедии в здании Театра оперы и балета. Интересно, что с самой новосибирской труппой вьетнамские гости познакомились уже в Москве, когда в Большом театре сибиряки дали балет «Лебединое озеро» в блестящем исполнении.

Визит в Свердловск 11 июля 1955 г. прошел по отработанной схеме. Гости побывали в геологическом музее, на промышленных предприятиях и на представлении в цирке. При посещении флагмана советской индустрии Уралмаша лидера Вьетнама в беседах с рабочими интересовала организация социалистического соревнования на заводе. Делегации была подарена модель шагающего экскаватора. «Сегодня, – отреагировал с оптимизмом Хо Ши Мин, – мы принимаем модель, а завтра нам будет нужен настоящий шагающий экскаватор» (Правда, 1955). Следует подчеркнуть, что мероприятия, так или иначе связанные с Вьетнамом, проходили не только по маршруту делегации, но и Киеве, Ереване, Ташкенте и других городах Союза.

Правительственная делегация ДРВ прибыла в Москву 12 июля 1955 г. В этот же день «Правда» опубликовала фотопортрет Хо Ши Мина и передовую статью под названием «Горячий привет Правительственной делегации Демократической Республики Вьетнам!» «Приезд в Советский Союз Правительственной делегации ДВР, возглавляемой президентом Хо Ши Мином, – говорилось в ней, – имеет огромное значение для дальнейшего укрепления и развития дружбы между советским и вьетнамским народами, для укрепления сил, стоящих на страже мира в Азии и во всем мире».

Делегацию в аэропорту встречали Председатель Президиума Верховного Совета СССР К.Е. Ворошилов и другие руководители Советского государства, военноначальники, дипломаты и представители общественности. Состоялся митинг. В ответ на приветственную речь Хо Ши Мин выразил твердую уверенность в поддержке советского народа в борьбе за мир и территориальную целостность страны. «Мы, – подчеркнул он, – должны восстановить и развивать народное хозяйство, разрушенное восьмью-девятью годами войны, чтобы прийти к достижению независимости и демократии во всей стране» (Правда, 1955)

Любопытно, что среди встречающих фамилия первого секретаря ЦК КПСС Н.С. Хрущева значилась лишь девятой после М.А. Суслова, которому довелось сопровождать в машине генерального секретаря ЦК ПТВ Труонг Шина. Контакты первых лиц двух партий не афишировались. Однако это вовсе не значит, что

Н.С. Хрущев находился вне переговорного процесса и на вторых ролях. Более того, в совместном коммюнике потом официально отмечалось, что с советской стороны приняли участие К.Е. Ворошилов, Н.А. Булганин, Н. С. Хрущев, а затем уже все остальные.

Визит сопровождался взаимными приемами и протокольными мероприятиями. Так, 13 июля вьетнамская делегация посетила Мавзолей Ленина и Сталина и возложила венки. Позднее Хо Ши Мин и его соратники осмотрели Московский государственный университет, атомную электростанцию АН СССР, Всесоюзную сельскохозяйственную выставку, автомобильный завод, совершили прогулку на теплоходе по каналу имени Москвы и побывали в гостях у пионеров под Звенигородом. При этом Хо Ши Мин общался с детьми на русском языке, пошутив, что для них он вовсе не «товарищ», а «дядя».

В кинотеатрах Москвы с успехом демонстрировался специальный киновыпуск о пребывании вьетнамской делегации в СССР. Торжественную встречу Хо Ши Мина в столице оперативно показали по телевидению, что впоследствии расценивалось как первый политический эфир и рождение политических телетрансляций как особого жанра (Надеждин, 2011). Состоялось вручение орденов ДРВ группе советских документалистов во главе с Р. Карменом за создание фильма «Вьетнам». Газеты красочно писали о дружбе советского и вьетнамского народов. «Демократическая Республика Вьетнам, – делала вывод «Известия» за 12 июля, – является ныне важным фактором мира в Юго-Восточной Азии».

Наконец, 18 июля 1955 г. в Кремле состоялось подписание советско-вьетнамского соглашения. Под документом подписи поставили премьер Хо Ши Мин и первый заместитель председателя Совета министров СССР А.И. Микоян. В газетах было опубликовано совместное коммюнике. «Пребывание вьетнамской правительственной делегации в Советском Союзе, – комментировали в передовице «Известия», – вылилось в яркую демонстрацию нерушимой и все более крепнущей дружбы между советским и вьетнамским народом» (Известия, 1955)

Переговоры продемонстрировали единство взглядов сторон как в международной сфере, так и в политическом, экономическом и культурном развитии отношений между странами. Отмечалось, что Советское правительство на восстановление и строительство 25 промышленных и коммунальных предприятий, в том числе оловокомбината в Каобанге, механического завода в Ханое, рыбоконсервной фабрики в Хайфоне и др., в качестве безвозмездной помощи выделило 400 млн. рублей. Вьетнаму предоставлялось помощь в подготовке кадров, проведении геологоразведочных работ и лечебно-профилактических мероприятий. «Оба правительства, – заявлялось в совместном коммюнике, – выражают твердую уверенность в том, что состоявшейся обмен мнениями, несомненно, будет содействовать дальнейшему развитию дружеских отношений между СССР и ДРВ на благо народов обеих стран и послужит интересам укрепления мира и безопасности во всем мире» (Правда, 1955)

Вечером 18 июля 1955 г. вьетнамская делегация вылетела домой. «Мы твердо верим, – заявил перед отлетом Хо Ши Мин, – что с сегодняшнего дня сотрудничество между советским и вьетнамским народами еще более укрепится, а нерушимая дружба между нами будет все крепче и крепче» (Правда, 1955). В Ханое по случаю возвращения Правительственной делегации ДРВ из Москвы прошел массовый митинг. Состоявшийся вскоре Пленум ЦК ПТВ констатировал, что поездка делегации во главе с Хо Ши Мином в КНР, МНР и СССР укрепила дружбу с этими странами, подняла международный престиж Вьетнама и показала полное тождество взглядов на международные проблемы.

После окончания визита Хо Ши Мина в СССР вьетнамская тематика не исчезла из советских газет. Однако приняла несколько иное освещение сквозь призму позиции Советского Союза на переговорах с главами правительств США, Великобритании и Франции. Советские лидеры требовали от западных партнеров выполнения женевских соглашений по Индокитаю. «К сожалению, – подчеркивала 7 августа 1955 г. «Правда», – не было принято советское предложение обсудить на совещании актуальные проблемы Азии и Дальнего Востока. Состоялся лишь неофициальный обмен мнениями между главами правительств четырех держав. В частности такой обмен мнениями состоялся по вопросу об Индокитае в связи с выполнением женевских соглашений 1954 года».

Примечательно, что советской общественности была предоставлена возможность ознакомиться с солидарной позицией вьетнамских руководителей по данной проблеме. «Я думаю, – ответил Хо Ши Мин на вопрос корреспонден-

та агентства «Франс Пресс» по поводу визита в СССР, – что совещание «Большой четверки» способствует ослаблению международной напряженности. Они могли бы также оказать хорошее воздействие на проблемы Индокитая и Вьетнама. Но маневрам тех, кто пытается создать препятствия и сорвать женевские соглашения, должен быть положен конец» (Правда, 1955). Вьетнамский лидер выразил уверенность, что при помощи советского народа страна залечит раны от войны и восстановит мирную жизнь.

В сентябре 1955 г. в советских средствах массовой информации была опубликована серия материалов и заметок о десятой годовщине ДРВ. Теоретический и политический журнал ЦК КПСС «Коммунист» подготовил большую статью по данному поводу. В ней говорилось, что ДВР успешно расширяет экономические и культурные связи с другими государствами. Первой вехой на этом пути явилось установление тесных и всесторонних отношений с Советским Союзом. Посещение СССР Правительственной делегацией ДРВ во главе с Хо Ши Мином оценивалось не иначе, как имеющее важнейшее международное значение. А сами переговоры показали, что основу сложившихся отношений составили взаимные чувства дружбы и солидарности (Васильева, 1955).

На XX съезде КПСС, который состоялся в феврале 1956 г., в отчетном докладе Н.С. Хрущева ДРВ упоминалась в ряду стран народной демократии. В прениях от ЦК ПТВ выступил Труонг Шин, зачитавший под аплодисменты приветствие Хо Ши Мина. В речах советских лидеров тема Вьетнама не поднималась, ибо все казалось ясным. Внимание делегатов обращалось на Индию, Бирму и Индонезию. По тогдашней терминологии, они добились независимости, но в силу исторических условий не сумели полностью вырваться из экономической зависимости от иностранного капитала.

Однако последнее не означало, что уровень отношений с Вьетнамом был принижен. Наоборот, советско-вьетнамские контакты активно развивались. В апреле 1956 г. Ханой посетила советская делегация во главе с А.И. Микояном, а в мае 1957 г. в столицу ДРВ с официальным визитом прибыл К.Е. Ворошилов. В августе того же года Хо Ши Мин сделал остановку в Москве по пути в европейские страны народной демократии.

В июле 1959 г. Хо Ши Мин проводил свой отпуск в СССР, во время которого посетил Москву, Киев, Севастополь, Ялту, Сочи, Тбилиси, Ашхабад, Сталинобад, а также Алма-Ату. Это была вторая встреча вьетнамского лидера со столицей республики. Первый раз коминтерновец Нгуен Ай Куок, впоследствии известный как Хо Ши Мин, негласно посетил столицу Казахстана в октябре 1938 г., после чего он скрытно пересек советско-китайскую границу, двигаясь по направлению к базе китайских коммунистов в Яньани. Теперь его в алма-атинском аэропорту 29 июля 1959 г. встречали руководители Казахстана Д. Кунаев, Ф. Карибжанов, Н. Джангельдин и другие официальные лица. «Мы, – вспоминал Д. Кунаев в книге «О моем времени», – часто и подолгу вели беседы по интересующим его вопросам. Перед отъездом Хо Ши Мин написал большое письмо, где выразил свою благодарность за представленную ему возможность ознакомиться с Казахстаном. Хотелось бы рассказать о такой детали. В связи с приездом Хо Ши Мина в СССР ему были вручены советские деньги для расходов во время пребывания в нашей стране. Но когда визит закончился, Хо Ши Мин вернул все деньги, не истратив на себя ни копейки. Вот таким он запомнился мне: скромным, обаятельным и мудрым» (Кунаев, 1992).

Во время визита в Алма-Ату президент ДВР встречался не только с республиканским руководством или с учеными из Академии наук Казахстана, но и простыми людьми, гуляя по улицам и паркам города. С интересом посмотрел документальный фильм о Казахстане под заглавием «Дума о счастье». Посетил совхоз «Иссык» и совершил прогулку по озеру в Заилийском Алатау. И везде были встречи, проникнутые оптимизмом и верой в светлое будущее вьетнамской нации. «Когда вождь вьетнамского народа президент Хо Ши Мин, – писал заместитель премьера ДВР Во Нгуен Зиап, – говорит, что Вьетнам должен быть и будет единым, он выражает непоколебимую уверенность всего вьетнамского народа в победе своего правого дела» (Правда, 1959). Примечательно, что казахстанцы внесли свой посильный вклад в помощь вьетнамскому народу в его борьбе с американской агрессией. «Я горжусь тем, – свидетельствовал уроженец Кызылординской области, кавалер вьетнамских и советских наград И. Бисенов, – что воевал, что был с вьетнамским народом, отчаянно боровшимся за свободу, в самые трудные для него времена» (Центразия, 2013).

В последующие годы Хо Ши Мин не раз приезжал в СССР во главе делегаций, принимал участие в съездах КПСС и совещаниях представителей коммунистических и рабочих партий, неоднократно проводил в нашей стране свой отдых. Особенно бурно отношения между двумя странами, по свидетельству посла И.А. Огнетова, стали развиваться с 1965 г., т.е. в период, когда вьетнамский народ с оружием в руках решал задачу защиты Отечества и воссоединения страны. За короткий срок Советский Союз поставил ДРВ самое современное оружие, оказав тем самым помощь в создании эффективной противовоздушной обороны. «Если в 1965 и 1966 годах, – вспоминал участник тех событий А.И. Костричко, – боевые расчеты состояли из советских специалистов, то в 1972 г. бой вели, расчеты, составленные из вьетнамских товарищей. Мы находились рядом и, если надо, оказывали помощь. Вьетнамцы никогда не забывали того, что сделали советские военные специалисты» (Костричко, 2011). Заметим попутно, что около 12 тыс. советских военнослужащих, в основном офицеров, прошли через Вьетнам.

Одной из последних крупных работ вьетнамского лидера стала статья в «Правде», посвященная 50-летию Великого Октября. Перед тем, как уйти из жизни, Хо Ши Мин подготовил политическое завещание, проникнутое страстным оптимизмом и верой в грядущее будущее вьетнамского народа. Неоднократно провозглашаемый им священный наказ, что «нет ничего дороже независимости и свободы», и сегодня вдохновляет миллионы вьетнамцев. Его интервью корреспонденту французской газеты «Юманитэ» по случаю приближения 100-летия со дня рождения В.И. Ленина содержит немало теплых слов и в адрес советского народа. Символично, что в СССР в 1970 г. большим тиражом вышла книга Хо Ши Мина под названием «О Ленине, ленинизме и нерушимой советско-вьетнамской дружбе».

С той поры прошло много времени и событий. Сегодня Российская Федерация в меняющемся мире стремится к формированию такой системы мироустройства, которая бы основывалась на геополитических реалиях. Цели ее внешней политики имеют стратегический и неконъюнктурный характер. В этой связи открылись новые горизонты для плодотворных отношений и работы с такими надежными друзьями, как Вьетнам. Еще в 2001 г. стороны в ходе первого визита В.В. Путина в Ханой установили отношения стратегического партнерства, а в 2012 г. подвели их до уровня всеобъемлющего партнерства. «Этот прочный фундамент, – указал тогда вьетнамский руководитель Чыонг Тан Шанг, – служит надежной опорой для дальнейшего углубления и всестороннего развития наших связей» (Шанг, 2017)

На современном этапе Вьетнам рассматривается и в Казахстане как стратегический партнер в Юго-Восточной Азии. «Наши оба государства, – подчеркивал Н. Назарбаев в ходе своего визита в Ханой осенью 2011 г., – являются развивающимися с большим успехом за короткое время. У нас схожие позиции в политическом и экономическом развитии» (Назарбаев, 2017) Примечательно, что стороны подчеркнули важность разработки и подписания соглашения о свободной торговле Вьетнама с Казахстаном в рамках Таможенного союза. «У нас, – солидаризировался с гостем в этой связи вьетнамский руководитель Чыонг Тан Шанг, – схожие позиции по многим международным и региональным вопросам. Хорошо развивается сотрудничество в торгово-экономической и инвестиционной сферах. Таможенный союз Казахстана, России и Белоруссии, безусловно, будет способствовать углублению наших двусторонних контактов» (Алтайньюс, 2015).

В ноябре 2013 г. Президент РФ вновь посетил Социалистическую Республику Вьетнам. Его программа началась с возложения венков к Мемориалу павшим героям и Мавзолею Хо Ши Мина. Ведущие вьетнамские газеты опубликовали статью российского лидера «Россия – Вьетнам: вместе к новым рубежам сотрудничества». В ней утверждалось, что российско-вьетнамская дружба выдержала испытание драматическими событиями XX века, грандиозными переменами в мире и в наших государствах. Но неизменным оставалось главное – уважительное отношение друг к другу, традиции доверия и взаимопомощи. «В этой связи, – делал ударение В.В. Путин, – хочу привести известные слова Хо Ши Мина: «Когда пьешь воду, помни об источнике». Считаю их духовным наказом нынешнему и будущему поколениям граждан наших стран. Нужно обязательно помнить о совместной истории, о том, что нас объединяет. В этом залог преемственности и устойчивости нацеленных в будущее отношений» (Путин, 2013).

Заключение

Надо сказать, что российские политики и дипломаты приняли эту мысль к творческой реализации. В начале декабря 2014 г. в Ханой прибыла делегация Государственной Думы во главе со спикером С.Е. Нарышкиным, который в своих речах отметил, что в РФ хорошо знают, какую роль в обретении Вьетнамом свободы сыграл Хо Ши Мин. «В России, – подчеркнул он, – хранят память об этом выдающемся сыне вьетнамского народа, ярким политиком мирового масштаба, большим другом нашей страны» (Госдума, 2014). Глубоко символичным явилось то, что именно в Музее Хо Ши Мина председатели исторических обществ двух государств С.Е. Нарышкин и академик Фан Хюи Ле подписали меморандум о сотрудничестве. В документе провозглашалось, что высокие стороны будут взаимодействовать в подготовке и проведении мероприятий, посвященных знаковым событиям и памятным датам в истории двухсторонних отношений и мировой истории.

Оценивая с позиции сегодняшнего дня итоги приезда Хо Ши Мина в СССР в июле 1955 г. и последовавшую затем траекторию развития советско-вьетнамских отношений, следует учитывать, что большинство значимых событий признаются таковыми не в момент свершения, а гораздо позже. Объясняется тем, что важность эпизода определяется не эмоциональной реакцией современников, а масштабами порожденных им следствий, проявляющихся лишь по прошествии времени. По своей сути, визит Правительственной делегации ДРВ в Москву и подписание соглашений дали старт многогранному и взаимовыгодному процессу, который, по словам Президента РФ В.В. Путина, дошел ныне до уровня всеобъемлющего стратегического партнерства. Большое видится на расстоянии, гласит старая истина, и с ней сложно не согласиться.

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2-бөлім

ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚТЫҢ ӨЗЕКТІ МӘСЕЛЕЛЕРІ

Section 2

TOPICAL ISSUES OF INTERNATIONAL LAW

Раздел 2

АКТУАЛЬНЫЕ ВОПРОСЫ МЕЖДУНАРОДНОГО ПРАВА

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THE INTERACTION OF WATER AND SOIL IN INTERNATIONAL LAW

The purpose of this scoping is to examine the extent to which international law reflects on the water and soil nexus with special attention to few most relevant issues like pollution, floods, land uses impacting water resources as well as climate change impac t on water and soil. Some of international regulations directly regulate issues related to water and soil nexus. Many others, though water and soil are not necessary a primary subject of their regulation, they support the objectives of protection and suitable development of water and soil.

The extent to which international law regulates the nexus between soil and water will be assessed in respect to four key issues: 1) scope of treaties defining as geographical and functional application of a treaty, which identifies resource in question like watercourse, groundwater, wetland, soil, land, catchment; 2) substantive norms reflecting right and obligations pertaining to management of the relevant resources; 3) procedural norms offering implementation mechanisms enabling effective implementation of the substantive norms, 4) dispute settlement framing the way to peaceful solution of any dispute among the state parties.

Key words: international law, water law, natural resources, climate change, ecology.

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Халықаралық құқықтағы су мен топырақтың өзара байланысы

Осы шолудың мақсаты халықаралық құқық су мен топырақ арасындағы өзара байланыстарға, ластау, су тасқыны, су ресурстарына әсер ететін жерді пайдалану, сондай-ақ климаттың су мен топыраққа өзгеруінің әсері сияқты бірнеше өзекті мәселелерге ерекше назар аудара отырып, көрініс табатын дәрежені зерттеу болып табылады. Кейбір халықаралық ережелер су және топырақ байланыстарына байланысты мәселелерді тікелей реттейді. Көптеген басқалары, су мен топырақ оларды реттеудің қажетті мәні болып табылмаса да, қорғау және су мен топырақтың қолайлы даму мақсаттарын қолдайды.

Халықаралық құқық топырақ пен су арасындағы байланысты реттейтін дәреже төрт негізгі мәселелер бойынша бағаланатын болады: 1) Шарттың географиялық және функционалдық қолданылуы ретінде айқындалатын шарттардың қамту саласы, онда су ағындары, жерасты сулары, сулы-батпақты алқаптар, топырақ, жер, су жинау сияқты ресурстар айқындалады; 2) тиісті ресурстарды басқаруға байланысты құқықтар мен міндеттерді көрсететін негізгі нормалар; 3) материалдық нормаларды тиімді қолдануға мүмкіндік беретін іске асыру тетіктерін ұсынатын іс жүргізу; 4) қатысушы мемлекеттер арасындағы кез келген дауды бейбіт жолмен шешуге жол туғызатын дауларды реттеу.

Түйін сөздер: халықаралық құқық, табиғи ресурстар, су құқығы, климаттың өзгеруі, экология.

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О взаимодействии воды и почвы в международном праве

Целью данного обзора является изучение степени, в которой международное право отражается на взаимосвязи между водой и почвой, особое внимание уделяется нескольким наиболее актуальным вопросам, таким как загрязнение, наводнения, использование земли, влияющим на водные ресурсы, а также воздействие изменения климата на воду и почву. Некоторые международные правила прямо регулируют вопросы, связанные с водными и почвенными

связями. Степень, в которой международное право регулирует связь между почвой и водой, будет оцениваться по четырем ключевым моментам: 1) сфера охвата договоров, определяемая как географическое и функциональное применение договора, в котором определяются такие ресурсы, как водоток, подземные воды, водно-болотные угодья, почва, земля, водосбор; 2) основные нормы, отражающие права и обязанности, связанные с управлением соответствующими ресурсами; 3) процессуальные нормы, предлагающие механизмы реализации, позволяющие эффективно применять материальные нормы; 4) урегулирование споров, создающих путь к мирному разрешению любого спора между государствами-участниками.

Ключевые слова: международное право, водное право, природные ресурсы, изменение климата, экология.

Introduction

Scope of international law on soil and water nexus. Numerous activities related to the use of land can have an impact on the water resources, and vice versa in terms of causing pollution or floods, also the interaction between surface water and groundwater and its role in floods management (recharge and storage of water), developing on wetlands and floodplains, etc. Therefore, an important question to consider in terms of scope is whether international law both on global and basin levels, takes into account the water and soil linkages.

1.1 Watercourses

Global level of regulation

There are 263 transboundary river and lake basins and around 300 transboundary aquifers worldwide and merely some of them are regulated by relevant agreements. International legal status and regime of international watercourses is codified at the global level by the Convention on the Law of the Non-Navigational Uses of International Watercourses of 1997 (UN Watercourses Convention) and The Convention on the Protection and Use of Transboundary Watercourses and International Lakes of 1992 (UNECE Water Convention). These two conventions provide for ecosystemic approach allowing for considering of both, water and soil, within their physical scope of regulation. The UNECE Water Convention includes the requirement for parties to protect environment of transboundary waters within the catchment area (Art. 2 para. 6). Such an approach extends the scope of the Convention beyond water resources including other elements of the environment, such as land (UN , 2013) . The contextual interpretation allows for even further enhancement of this understanding of the Convention's scope while referring to the ecosystemic approach to conservation and restoration parties' obligations (Art. 3 para1, Art. 2 para 2 (d)) without limiting the "ecosystem" to aquatic and water related ecosystems (UN , 2013) . While defining the "transboundary impact" (Art. 1 para1) as any significant adverse effect on the "environment" (emphasis added) the Convention clearly includes here, among others, effects on soil.

The language of the UN Watercourses Convention in a textual definition of its physical scope seems more restrictive in comparison to the UNECE Water Convention. However, the contextual reading in the light of its other relevant provisions (Part IV, Art. 20) as well as of UNECE Water Convention, allows for broad definition of a "watercourse" using the ecosystemic approach to the obligation to protect and preserve. The term "ecosystems" of international watercourses used in the Convention may be therefore interpreted that the obligation of protection covers also land areas (Nollkaempter, 1996) .

Regional level of regulation

On the regional level the recent conventional practice included in the international water treaties reflects a broad ecosystemic approach to the definition of geographical and hydrographical scope of their rules coveting water and soil.

Agreement on the action plan for the environmentally sound management of the Common Zambesi River system of 28 May 1987 (International Legal Materials, 1988) (Botswana, Mozambique, the United Republic of Tanzania, Zambia and Zimbabwe) adopts the Action Plan for the Environmentally Sound Management of the Common Zambezi River System (Art. 1). It provides for co-operation in devising land-use practices, watershed management, soil conservation and development patterns appropriate for conditions in the river basin and its related marine regions (Annex 1, para 29 (I).

Agreement on the Protection of the River Scheldt of 26 April 1994 (Belgium, France and the Netherlands) (Milner, 1995) requires appropriate measures to achieve an integrated management and

sustainable development of the Scheldt drainage area, defined as area, the waters of which run into the Scheldt or its tributaries (Art. 1 and 3).

Convention on Cooperation for the Protection and Sustainable Use of the River Danube of 29 June 1994 (Austria, Bulgaria, Croatia, Germany, Hungary, Moldova, Romania, Slovenia and Ukraine) (International Environmental Law, 1994) applies to the catchment area of the Danube River defined as hydrological river basin as far as it is shared by the Contracting Parties (Art. 3).

Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin of 5 April 1995 (Cambodia, Laos, Thailand and Vietnam) (International Legal Materials, 1995) provides for protection of the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin from pollution or other harmful effects resulting from any development plans and uses of water and related resources in the Basin (Art. 3).

Revised Protocol on Shared Watercourses Systems in the Southern African Development Community (SADC) Region of 7 August 2000 reflects a broad approach to watercourse (Art. 1).

1.2. Desertification

Global level of regulation

The way land resources are managed has direct impact on the water resources. The changes in plants and forest cover add to risk of natural disasters like floods and landslides as well as impacts on the ground water recharge. Climate or anthropogenic driven droughts and desertification emphasise the strong link between soil and water management. The United Nations Convention to Combat Desertification of 1994 (UNCCD) has been adopted by 195 states and lays the ground for global efforts to address the roots causes of desertification, including land management. Convention calls for international cooperation and partnership arrangements, highlighting a need for integrated approach (Art. 2 para 1). The interrelation between water and soil is of primary importance to ensure that a coordinated approach to combat desertification is implement.

1.3. Wetlands

Global level of regulation

Wetlands, soil and water are hydrologically interlinked. Wetlands, being connected with water of basins as well as coastal and marine systems on one side they depend, and on the other side they regulate the water regime, recharge ground waters, play important role in flood control and protection from shore erosion, etc. Protection of wetlands from negative impact from land use has direct impact on water quality. Interconnectedness between wetlands and water and soil is being recognised by the Convention on Wetlands of International Importance of 1971 (Ramsar Convention) (UN, 1971) uniting 168 states. Its scope provides for national activities but also for international cooperation in conservation and wise use of areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed 6 metres (Art. 2). It regulates transboundary wetlands, shared wetland systems, and shared species offering a framework for managing the interrelations between water and soil covered by the wetlands. Endorsements of Ramsar convention's provisions over transboundary Ramsar sites offers a mechanism of water and soil protection and conservation. States are required to designate wetlands of international significance within their territories to be included in the List of Wetlands of International Importance (UN, 2012)

Legal status of wetlands is to be additionally defined referring to the framework of the international climate change legal regulations. States worldwide have already recognised the impact on climate change on wetland ecosystem including the changes in water availability. In order to adopt to climate change countries shall increase capacity of wetlands to better provide their ecosystem services (UN, 1971) There is still a need for bigger recognition of the importance of different wetland types in the global carbon cycle. The degradation of wetlands, especially peatlands, which are even more important carbon store than the forest biomass, will lead to increase of annual seal tool emissions (UN, 1971) Conversion of wetlands, due to increase of biofuel-driven land use, might additionally add to the growth of greenhouse gases (UN, 1971).

1.4. Biodiversity

Global level of regulation

Infrastructure constructed to regulate the river flows for the sake of electricity generation or diversion of water flow for agriculture purposes presents another issue relevant for water and soil combined

management. Such activities impact on the water quality, changing its biological diversity as well as limiting the floodplains areas. Conservation of biodiversity and the sustainable use of its components fall within a scope of the UN Convention on Biological Diversity of 1992 (CBD) It defines biodiversity as the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Article 2 of The Convention on Biological Diversity). This Convention enjoys almost universal participation of 196 states and its endorsement may significantly improve quality of soil resources, and respectively the quality of water.

Increase of soil biodiversity might have significant impact on water filtration and storage as well as reduction of greenhouse gas emissions. The management of soil and its biodiversity can be achieved also by actions undertaken on local scale and guided by national law of countries. Biodiversity of the soil is expected to be seriously impacted by the climate change among others and it will have direct reference to soil carbon sequestration capacity.

Regional level of regulation

Both 1968 African Convention on the conservation of nature and natural recourses as well as its revised version from 2017 provide for well elaborated definition of national recourses, which directly refers to soil and water as well as other recourses interaction and requires parties to regulate the conservation and improvement of the recourses overall status. The 1995 Protocol concerning specially protected areas and biological diversity in the Mediterranean contains in its scope clear reference to terrestrial, marine and other aquatic ecosystem, reflecting on the linkage between water and soil recourses. A similar definition of biological diversity has been included in 2002 into the Black Sea Biodiversity and Landscape Conservation Protocol to the Convention on the Protection of the Black Sea Against Pollution. In 2003 Framework Convention on the protection and sustainable development of the Carpathians provides for sustainable and integrated basin management, including reference to surface and groundwaters, as well as wetlands interaction with soil recourses. In 2005 Agreement on the Establishment of the ASEAN Centre for Biodiversity has provided a platform for international actions on protection of different biodiversity components, including soil and water.

1.4. Hazardous substances

Global level of regulation

Soil and water are both endangered by pollution by hazardous substances and waste. There are number of multilateral environmental agreements serving the purpose of protection from the negative impact of pollution from waste to ecosystem. The first globally adopted agreement was the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989), which requires parties to control and reduce the export and import of hazardous wastes and other wastes (Art. 4). It is encompassing in its scope both soil and water resources in the transboundary context. In terms of management of protection of soil and water from pollution by insecticides and industrial chemical and fertilisers few conventions were adopted, which include in their scope" protection of environment" (emphasis added):

1) Stockholm Convention on Persistent Organic Pollutants (UNTS, 1991), with the goal to protect human health and the environment from persistent organic pollutants (Art. 1);

2) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNTS, 1998) with the goal to support cooperative efforts among parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use (Art. 1);

3) Minamata Convention on Mercury (2013) protecting human health and the environment from the anthropogenic emissions and releases of mercury and mercury compounds (Art. 1).

1.6. Floods

Global level of regulation

Integrated approach to flood management should be undertaken in the whole catchment area. It also applies to transboundary waters. It shall take place within the whole catchment area and its coastal areas rather than focusing merely on management of floods as such (UN, 1994). It also applies to transboundary waters. The holistic approach to flood risk management includes following steps: flood prevention, protection, preparedness, emergency response and flood damage recovery. The operation on relevant technical structures in retention areas should be also approached in a holistic way within the whole catchment area (UN, 2009).

IN the international water law and its watercourses agreements there are provisions directly considering flood management. First of all, in the 1997 UN Watercourses Convention (Art. 27) it requests countries to take appropriate measures to prevent or mitigate harmful water conditions, which might result from the natural causes such as floods and desertification. There are more than 140 other conventions which partly refer to flood management (IFRC, 2003)

Regional level of regulation

There are two regional legal regimes regulating floods. First has been developed by UNECE in the form of Model Provisions on Transboundary Flood Management (UN, 2006). It is designed "to be used as part of either a general bilateral or multilateral normative instrument on transboundary water issues or a flood-specific one among riparian States, in order to address transboundary flood prevention, protection and mitigation and enhance preparedness thereto". Another regional legal document is the EU Flood Directive, which complements the EU Water Policy Directive (Eur. Parliament and the Council, 2007)

As for basin and bilateral agreements, one can mention 1935 Agreement between the United States and Canada on Lake Memphremagog (Rieu-Clarke, 2008) as well as 2002 Agreement on the Incomati and Maputu, both providing for actions in case of floods to mitigate the effects of floods. The 1998 Convention on the protection of the Rhine refers to Rhine ecosystem as a natural floodplain, as well as adopts Rhine Action Plan on Floods to be implemented by 2020. The Danube Convention as well as 1995 Mekong Convention (Rieu-Clarke, 2008) both provide for water law regulations which were extended by flood management regulations after few years of existence, Action Programme on Sustainable Flood Protection in the Danube River Basin (ICPDR, 2004), 2005 Flood Management and Mitigation Programme in Mekong.

1.7. Climate change

Global level of regulation

Land and water management, each of them separately and also in nexus, are central components of states activities aimed at adaptation to climate change. Climate change directly impacts on the quantity and quality of water, and also may have impact over food security. Some of adaptation activities impact even on both - soil and water resources simultaneously. It may happen in case of energy production based on technologies with negative emissions sequestering CO2 in carbon sinks. This technology, and especially bioenergy production based on it, relays on considerable quantities of water, which might lead water shortages. Bioenergy production requires also big amounts of land to grow energy relevant plants which may lead to competition with food production processes (Dombrowsky I., Bauer S., Scheumann W., 2016) United Nations Framework Convention on Climate Change of 1992 (UNFCCC) requires states to cooperate in preparing for adaptation to the impacts of climate change especially preparing plans for coastal zone management, water resources and agriculture as well as for the protection and rehabilitation of areas affected by drought and desertification, as well as floods (UN, 2013). In 2015 UNFCCC adopted the Paris Agreement, which requires states to define their nationally determined contributions (NDCs) intended to achieve to reduce national emissions and adapt to the impacts of climate change. Significant number of NDCs identify water and land use for agriculture as a central component of their adaptation work.

1. Substantive norms applicable to water and soil resources

The multilateral environmental agreements can help to reinforce the protection and sustainable development of water and soil. Their simultaneous implementation strengthens the legal force of the overall recognised principles of international environmental law like: sustainable development, precautionary principle, polluters pays future generation principles, cooperation principle, etc. included by them as well as some principles specific for like water resources including equitable use and no harm principle. Their holistic approach to the concept of "environment" allows to apply the conventions' substantive provisions to the protection of land and water resources.

2. Procedural norms

The interaction between existing legal instruments incorporated by multilateral environmental agreements which are relevant for soil and water nexus can be implemented by contentious application of the cooperation's mechanisms included in these instruments starting from their procedures supporting information exchange, consultation, notifications,

and research up to the transboundary institutional cooperation. Below there is a list of most relevant instrument inherent for legal framework regulating soil and water protection and management.

Information exchange

Most treaties covering in their scope water and soil nexus refer to the obligation of information exchange. Some of them are more specific in the regulation, requesting parties for "widest exchange of information" meaning environmental conditions, best available technologies, some data, waste, also in transboundary context (Article 9 of UNECE Convention) (Dombrowsky I., Bauer S., Scheumann W., 2016)

Some other conventions refer the obligation to state parties to collect information merely for purpose of research and exchange of data. The Desertification Convention requests state parties to information collection, analysis on exchange on related issues to land aggregation. There are some conventions which includes specific requirements regarding the exchange of information, listing required information to be exchanged. Ramsar Convention's states are to inform the Secretariat at the earliest possible time of any changes or likelihood of changes to the ecological character of these wetlands due to technological developments, pollution or other human interference (Article 3(2)).

Consultations

Countries' obligation to conduct consultation were foreseen already in earlier conventions covering the interrelation between water and soil. Some of the conventions expect states to consult on the issues at stake directly, some through jointly established bodies (Article 9 (2) UNECE Convention), or within multilateral consultative processes (Article 13 of the Climate Change Convention.). The main goal of the consultation is to facilitate the cooperation of states in terms of implementing of the interstate legal instruments (UN, 2013) and for the sake of transparency (Article 13 of Paris Agreement). The obligation to conduct consultation may concern the preparation and implementation of subregional or joint action programmes or increasing of the effectiveness of national programmes through interstate cooperation (Article 5 (1) of Desertification Convention). The Basel Convention (Art. 12) prescribes an obligation of states to conduct consultations on liability and compensation for damage resulting from transboundary movement disposal of hasardous wastes and other wastes. It is to be noted that the Ramsar Convention (Article 5(1)) imposes the obligation to consult with contracting parties on domestic wetlands situated within an international river basin.

Notification procedures concerning planned measures

Important procedural obligation includes a mechanism of notification concerning planned measures, which may have significant transboundary impact. Some of the conventions referring to water and soil interrelation have introduced relevant provisions, which are supposed to facilitate interstate consultations in case of measures taken or planned to be taken to prevent transboundary impact . Biodiversity Convention (Article 14) encourages countries to engage public participation in such procedures and to introduce appropriate arrangements to ensure that environmental impact on biodiversity is dully taken into account. Mercury Convention (Article 12 (3 (c)) requires Conference of Parties to adopt guidance on managing contaminating sides that may include environmental risk assessment.

Monitoring and assessment

Monitoring and assessment represent an important mechanism of interstate cooperation according to the international conventions dealing with water and soil. The main goal of monitoring is to deliver information about conditions of the protected recourses (UN, 2013) Monitoring has been used in case of development of plans, implementations of plans, policies (Articles 5, 8, 11 of Desertification Convention) programmes and actions (Article 7 (d) of Paris Agreement). Monitoring and assessment may concern the quality of the resources as well as other data (Article 11 (2) of UN/ECE Convention.). Data delivered by monitoring are requested to be accordingly organized (Article 7 (d) of Biodiversity Convention). The countries of the Mercury Convention draw special attention to research development and monitoring to assess the level of pollution, as well as the level of mercury and mercury's compounds in the populations and environmental media (Article 19 (1) of Mercury Convention). According to Ramsar Convention, the management planning shall incorporate monitoring of the ecological character of Listed and non-Listed wetlands (Art. 3).

Access to public information

Multilateral environmental agreements promote public access to information related to the national resources . The public access to information is related to the status of the resources and shall build capacities of the technical and managerial personnel as well as promote and encourage understanding of the issues related to natural resources.

Development of agreements, harmonised policies, programs and strategies

Most of the relevant conventions dealing with water and soil require countries to develop and implement relevant policies to protect sustainable development of recourses . Most of the conventions require state parties to enter into agreements to facilitate the cooperation on implementation of the convention provisions . UNECE Water Convention (Art 2. Para 6) requires states to develop harmonised policies, programs and strategies. For parties of UNECE water convention it's also mandatory to enter into agreements or other arrangements in order to define their mutual relations and conduct regarding the prevention, control and reduction of transboundary impact, they remain free to define their scope through definition of the catchment areas or part(s) thereof (Art. 9 Para. 1) . Some of the conventional bodies are assigned to promote harmonisation of policies, strategies and similar measures allowing for better implementation of the conventions' requirements (Article 15 of Basel Convention). The Rotterdam Convention requires its Conference of Parties to encourage World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals (Article 13 of Rotterdam Convention).

Transboundary institutional cooperation

Creation of joint bodies is one of crucial means of interstate cooperation recognised by both Convention, however ECE Water convention requires co-riparian to enter into agreements establishing joint bodies for management of international watercourse (Art. 9 para. 2), when the UN Watercourses Convention refers merely to such possibility (Art. 8 para. 2). States parties to water and soil related conventions are required also to facilitate the cooperation through joint bodies, where some of them request parties to establish relevant joint bodies (Art. 9. UNECE Convention). The institutional mechanisms of the Ramsar Convention facilitate the implementation of its obligations, include, inter alia, decision-making bodies, advisory bodies and national focal points. The Ramsar convention provides for an international network of wetlands for the conservation of global biodiversity and requires its contracting parties to establish national networks of Ramsar Sites. The integration of wetland sites management within an overall environmental management plan, including rivers and coastal zones, reflects the interconnectedness between soil, water and wetlands.

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THE UNCITRAL MODEL LAW: A GUIDE FOR REFORMING THE LEGAL REGULATION OF PUBLIC PROCUREMENT

The article presents a General description of the regulation of public procurement by the UNCITRAL Model law on public procurement in 2011 as a tool for interstate integration in this area. Today, the issue of legal regulation of public procurement is relevant all over the world, and the direct subject is the state itself, which is interested in the maximum efficiency of this process. The aim of the authors is to analyze the above-mentioned document, which establishes common standards and norms in the field of regulation of public procurement. This paper presents a comparative analysis of the 1994 UNCITRAL Model law on procurement of goods, construction and services and the 2011 UNCITRAL Model law on public procurement. This article emphasizes the legal and economic significance of public procurement. The authors ' conclusions are based on the work of foreign scientists and experts from international organizations. In conducting this study, the authors used such General scientific methods and techniques as the method of comparative analysis, scientific abstraction, qualitative expert assessments, quantitative assessments, and structural analysis. In their conclusions, the authors note that effective achievement of public procurement objectives can only be achieved through interrelated and consistent procedures based on the basic principles and conditions contained in the 2011 UNCITRAL Model law on public procurement.

Key words: UNCITRAL, public procurement, efficiency, transparency, model law.

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ЮНСИТРАЛ Типтік заңы: мемлекеттік сатып алуларды құқықтық реттеуді реформалауға арналған бағдар

Мақалада мемлекеттік сатып алуларды 2011 жылғы мемлекеттік сатып алулар туралы ЮНСИТРАЛ Типтік заңымен берілген саладағы мемлекетаралық интеграция құралы ретінде реттеудің жалпы сипаттамасы берілген. Бүгінгі таңда мемлекеттік сатып алуларды құқықтық реттеу мәселесі бүкіл әлемде өзекті болып табылады және мемлекеттің өзі бұл процестің максималды тиімділігіне мүдделі. Авторлардың мақсаты мемлекеттік сатып алуды реттеу саласындағы бірыңғай стандарттар мен нормаларды белгілейтін жоғарыда аталған құжатты талдау болып табылады. Жұмыста 1994 жылы тауарларды (жұмыстарды) және қызметтерді сатып алу туралы ЮНСИТРАЛ Типтік заңына және 2011 жылы мемлекеттік сатып алулар туралы ЮНСИТРАЛ Типтік заңына салыстырмалы талдау келтірілген. Бұл мақалада мемлекеттік сатып алудың құқықтық және экономикалық маңыздылығына баса назар аударылады, авторлардың тұжырымдары шетелдік ғалымдар мен халықаралық ұйымдар сарапшыларының жұмыстарына негізделген. Берілген зерттеуді жүргізу кезінде авторлар салыстырмалы талдау әдісі, ғылыми абстракция, сапалы сараптамалық бағалау, сандық бағалау және құрылымдық талдау сияқты жалпы ғылыми әдістер мен тәсілдерді қолданды. Өз тұжырымдарында авторлар мемлекеттік сатып алулар саласындағы мақсаттарға тек 2011 ж. мемлекеттік сатып алу туралы ЮНСИТРАЛ Типтік заңындағы негізгі қағидаттар мен шарттарға негізделген өзара байланысқан және дәйекті рәсімдер арқылы қол жеткізуге болатындығын атап көрсетті.

Түйін сөздер: ЮНСИТРАЛ, мемлекеттік сатып-алулар, тиімділік, ашықтық, Типтік заң.

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Типовой закон ЮНСИТРАЛ: ориентир для реформирования правового регулирования государственных закупок

В статье представлена общая характеристика регулирования государственных закупок Типовым законом ЮНСИТРАЛ о публичных закупках 2011 года как инструмента межгосударственной интеграции в данной сфере. На сегодняшний день вопрос правового регулирования государственных закупок является актуальным во всем мире, и непосредственным субъектом является само государство, которое заинтересовано в максимальной эффективности данного процесса. Целью статьи является проведение анализа вышеназванного документа, который устаналивает единые стандарты и нормы в области регулилирования государственных закупок. В работе представлен сравнительный анализ Типового закона ЮНСИТРАЛ о закупках товаров (работ) и услуг 1994 года и Типового закона ЮНСИТРАЛ о публичных закупках 2011 года. Данная статья подчеркивает правовую и экономическую значимость госзакупок, выводы авторов обоснованы работами зарубежных ученых и экспертов международных организаций. При проведении данного исследования авторы использовали такие общенаучные методы и приемы, как метод сравнительного анализа, научной абстракции, качественные экспертные оценки, количественные оценки и структурный анализ. В выводах авторы отмечают, что эффективное достижение целей в области осуществления государственных закупок может быть обеспечено только с помощью взаимосвязанных и последовательных процедур, основывающихся на базовых принципах и условиях, содержащихся в Типовом законе ЮНСИТРАЛ 2011 г. о публичных закупках.

Ключевые слова: ЮНСИТРАЛ, государственные закупки, эффективность, прозрачность, Типовой закон.

Introduction

Public procurement is a major economic activity for all States, and developing a legal regime that balances often conflicting considerations about competition policy, transparency measures, and performance requirements is an important task.

One of the documents that define the approaches recognized by the international community to the norms of public (public, government) procurement is the model law on public procurement, developed by the UN Commission on international trade law (UNCITRAL). Through the application of this document, States can form their national legislation. It serves as a model for national governments that want to adopt or reform public procurement legislation for their national markets, and provides all essential procedures and principles for conducting various types of procurement processes in the national system. This model law was adopted at the forty-fourth session of the UN Commission on international trade law in July 2011 (Model Law, 2011a).

Relevance of the study

Today, the issue of legal regulation of public procurement is relevant all over the world and the direct subject is the state itself, which is interested in the maximum efficiency of this process.

As Ballard notes, governments spend public movies to secure inputs and resources to achieve their objectives and by doing so, create significant impact on key stakeholders and wider society. In addition, government purchasing impacts both domestic and international trade given that governments spend approximately 10 to 15 percent of their GDP in the procurement marketplace (Ballard, 2012: 2). Other experts agree that purchases can typically account for 45 percent of all government spending and up to 20 percent of GDP (Schapper, 2007: 6).

Unification of legal norms through the establishment of common standards and norms in a particular area of cooperation, the adoption of unified conventions, model treaties or other international legal acts is one of the most important elements of integration between States. The General desire to unify legal norms, both through the conclusion of international agreements of a universal and regional nature within the integration groupings of countries, and through the adoption of model laws by individual States, is characteristic of almost all States today.

The mandate of UNCITRAL is to modernise and harmonise international trade law, through the issue and use of legal texts such as the UNCITRAL Model Law on Public Procurement, with the aim of supporting economic and social development (Nicholas, 2013).

For many developing countries, government procurement reform is a key issue, high on the good governance agenda (Fenster, 2003: 65). Procurement policy is now one of the priorities of reform plans in a growing number of countries at different stages of economic development. This surge in interest in forming a "proper public procurement policy" is caused by a number of interrelated factors. One of them is the current huge and growing need for infrastructure investment in large countries with new and transitional economies. Another factor is the importance of avoiding the dispersion of scarce public resources due to illiterate procurement processes, corruption or collusion between suppliers during bidding. Another factor is the importance of this area as one of the areas where many governments are taking measures to stimulate recovery from the economic crisis and overcome its consequences.

Theoretical-methodological bases of the article

The theoretical basis of the study was scientific research on the regulation of public procurement, General theoretical works of legal scholars on the theory of law, as well as on trade and international law. The research was based on the works of Nicholas, C., Schaper, P., Anderson, R., Kovacic, W., Müller, A. and other authors.

The study was developed using data taken from official websites of international organizations, texts of international legal acts, works of researchers in the field of public procurement, as well as law and Economics.

The methodological basis of the research is the methods and methods of scientific knowledge that established in science. In particular, such general scientific methods as logical, systematic, functional, method of analysis and synthesis, as well as the dialectical method as the fundamental general scientific method of cognition of processes and phenomena of the objective world and the private-scientific method based on ut are used: historical-legal, comparative legal, formally legal.

The content of the 1994 Model law and the 2011.

(a) the UNCITRAL Model Law on Procurement of Goods, Construction and Services, 1994.

The model law on public procurement of 2011 replaces the model law on the procurement of goods, construction and services of 1994 (Model Law, 1994). The purpose of the Model law of 1994 was to provide the most important rules and principles for the implementation of public procurement within the national system, it could be flexibly applied taking into account the specifics of a particular state and simultaneously obtain the desired results, i.e. in this regard, it was aimed more at harmonizing procurement laws, rather than introducing mandatory rules.

In the 2003 UNCITRAL Yearbook, the UNCITRAL model law on procurement of goods, construction and services reflects the various legal traditions of the broad membership of The United Nations Commission on international trade law, including States from all regions and all levels of economic development, and as a result is acceptable to many and different jurisdictions. As a "framework law", the UNCITRAL model procurement law sets out the basic minimum content of an effective procurement system, but does not set out all the rules and regulations that may be required for the implementation of procurement procedures, since it is assumed that enacting States will issue procurement regulations that may take into account specific and possibly changing national circumstances. In addition, the inclusion of options in the UNCITRAL model law on procurement provides flexibility in addressing issues that are considered differently by different States in practice (Yearbook, 2003: 716).

The Commission initiated the development of the UNCITRAL Model law on procurement of goods, construction and services in 1994 due to the fact that some States ' procurement legislation was ineffective or outdated, resulting in inefficiency in the procurement process, abuse, and the inability of a public procurement organization to purchase goods of adequate value in exchange for public funds spent.

Public procurement is a powerful engine of development. In addition to providing the goods and services a country needs, the procurement act itself can strengthen the local economy, support marginalized groups, and increase local capacity for trade (ban Ki-moon, 2012).

The need for a Model law on the procurement of goods, construction and services was felt most acutely in developing countries and countries with economies in transition, and it was these countries that most actively used the text of this law. In States at these levels of development, most purchases are made by the public sector, and a significant share of gross domestic product also comes from public procurement. A significant portion of General procurement may be carried out within the framework of certain projects that

are implemented in the process of economic and social development, and the purpose of procurement may be to accelerate such development and build capacity. In countries with economies in transition, the adoption of procurement legislation is also part of the process needed to accelerate the transition to a market economy.

According to the website of the UNCITRAL Commission, laws based on the 1994 Model law on procurement of goods, construction and services have been adopted in about 30 States (Official website of UNCITRALa).

For developed countries, many of which had adopted procurement legislation prior to the development of the Model law, flexible, non-prescriptive provisions of the Model law could be used as a tool for evaluating and modernizing existing systems and previously adopted legislation, as well as for improving the effectiveness of public procurement (Пересмотренное Руководство).

Although the text of the 1994 law was recognized as an important international reference point for the reform of the legal regulation of procurement, in 2004 the Commission agreed that the law could be usefully updated to take into account new practices, especially those resulting from the use of electronic communications in public procurement, and the experience gained in using the Model law as a basis for law reform. Nevertheless, the principles and basic procedures set out in the 1994 text, which are the basis for its success, have remained unchanged (Official website of UNCITRALb).

b) the UNCITRAL Model law on public procurement, 2011.

As noted in the Guide to the adoption of the 2014 Model law on public procurement, in accordance with its general approach of intergovernmental consensus-building, UNCITRAL has drawn on the experiences of countries from around the world in regulating public procurement when drafting the Model Law and this Guide. This approach also serves to ensure that the texts reflect best practice, and that the provisions of the Model Law are universally applicable. (Guide to Enactment of the UNCITRAL Model Law, 2014: 3).

The new model law on public procurement responds more precisely to the realities of the time, introducing established new procurement technologies into the legal field, as well as improving relations between subjects in the field of procurement in accordance with current social trends. It notes the widespread use of the Internet, the development of electronic forms of trade and automated electronic trading procedures.

Prepared to support the harmonization of international standards in the field of public procurement, the 2011 UNCITRAL model law takes into account the provisions of international documents such as the WTO agreement on government procurement (GPA) (Agreement on Government Procurement, 1994a), the European Union Directive (on procurement and appeal), the UN Convention against corruption (Convention Against Corruption, 2003a), and others.

As noted by the Secretary of the UNCITRAL working group on procurement, K. Nicholas, the main thematic areas of the amendments to the law were as follows:

1) e-procurement;

2) obviously low prices in competitive bids;

3) framework and similar agreements, as well as the use of supplier lists;

4) evaluation and comparative analysis of applications, use of the procurement process for industrial, social and environmental policies;

5) services and alternative procurement methods;

6) simplification and standardization of the content of the Model law on procurement of goods (works) and services;

7) remedies and their application;

8) elimination of conflicts of interest (Nicholas, 2006).

As already noted, the model law allows purchasing entities to use modern commercial methods, such as e-procurement and framework agreements, to ensure maximum cost efficiency. It provides for procedures that allow for standard purchases, urgent or emergency purchases, simple and low-cost purchases, and large and complex projects. All these procedures are governed by transparency mechanisms and requirements in order to promote competition and objectivity. Potential suppliers may challenge decisions and measures taken during the procurement process.

Article 1 of the 2011 Model law specifies that the scope of the law applies to all public procurement (Model Law, 2011b). Article 1 of the 1994 Model law excluded defence procurement and allowed States to exempt other sectors of the economy from its application (Model Law, 1994b). Thus, the 2011 model law represents a significant achievement in terms of coverage. It allows the host state to carry out its internal political tasks, such as promoting economic development, to the extent permitted by the government's international obligations.

Since the adoption of the 1994 Model law, other international instruments relating to public procurement have been adopted that establish obligations that have implications for national procurement legislation in States that are parties to the relevant acts. According to article 3, the operation of the Model law is expressly subject to compliance with any international agreements concluded by the enacting state (Model Law, 2011c), and UNCITRAL has sought to ensure as much as possible compliance with these international texts and the General provisions of regional texts, so that the model law can be used by participants in these documents without the need for any significant amendments.

The effective functioning of public procurement markets necessitates a high degree of both transparency and competition (Anderson, 2011).

The United Nations Convention against corruption (Convention Against Corruption, 2003b) addresses the prevention of corruption by setting mandatory minimum standards for procurement in article 9, which requires each state party to take "the necessary measures to establish appropriate procurement systems that are based on transparency, competition and objective decision-making criteria and are effective, inter alia, in preventing corruption"(Convention Against Corruption, 2003c). Although the model law itself is not a document aimed at combating corruption, its procedures are intended, inter alia, to prevent abuse, which allows many enacting States, for which the Convention against corruption is binding, to meet their obligations under the Convention.

The model law includes procedures and guarantees aimed at promoting objectivity in the procurement process, which in turn contributes to increased participation, competition, fair treatment and transparency. These concepts are key principles that contribute to the basic objectives of the Model law, which are to ensure that costs are justified and that abuse is not tolerated. Both the Convention against corruption (Convention Against Corruption, 2003d) and the GPA (Agreement on Government Procurement, 1994b) are also based on the Declaration of principles of the same high level: the Convention uses words such as transparency, competition and objective criteria for decision – making, while the GPA uses non-discrimination and transparency.

Broad participation of suppliers in procurement at both the domestic and international levels is a prerequisite for competition, and, accordingly, ensuring such international participation is a rule for procurement under the Model law, applied in a subsidiary manner in cases where otherwise is not explicitly specified. The Model law sets out the circumstances in which international participation may be restricted, directly or indirectly. When incorporating these provisions into its domestic law, the enacting state may need to take into account any relevant international trade obligations in relation to international participation in their procurement.

The model law reflects the basic procedures, taking into account all possible circumstances arising in different procurement situations in States with different economic conditions. This document defines a broad framework for purchasing organizations and flexibility in the rules of their work, i.e. state customers.

This document as a legal act implements the budgetary efficiency of public procurement, taking into account such factors as the quality of the product, the service life of the purchased product, the cost of maintenance and, most importantly, the actual provision of the need that predetermined the purchase. This assumes that the purchase price is optimal.

Furthermore, UNCITRAL does not welcome following rules that could reduce the number of potential bidders.

The principle of public and unrestricted participation is implemented in the procedures for reviewing and evaluating tenders, according to which the procuring entity not only does not reject applications on formal grounds, but is obliged to correct their minor and minor (arithmetic) errors or shortcomings that can be corrected without affecting the substance of the tender.

In addition, UNCITRAL applies anti-dumping rules, according to which dumping is considered a violation of the principles of fair competition, and dumping organizations are expelled from the public procurement market, and their submissions are subject to unconditional rejection.

Another important principle of the Model law, which is intrinsically linked to the principle of promoting competition, is the application by UNCITRAL of the concept of fair, equal and impartial treatment of all suppliers and their subcontractors by the procuring entity. In combination with the principle of objectivity of the procurement process, exclusion and prevention of conflicts of interest - these principles of the Model law form the most important quality required of all national procurement systems – the quality of public confidence in these systems (Volkov, 2002: 4).

The UNCITRAL model law on procurement

contains procedures aimed at ensuring competition, transparency, fairness, economy and efficiency in the procurement process, and is an important international reference point for reforming the legal regulation of procurement. The use of the Model law has led to a broad unification of procurement rules and procedures. In this regard, the Commission's attention was drawn to the experience of legal reform based on the UNCITRAL model law on procurement, as well as to the problems encountered in its practical application.

Conclusion

The purpose of the 2011 Model law is to assist States in developing modern procurement legislation. Through the adoption of the Model law, there is an integration of States pursuing these goals, which consider it desirable to regulate the procurement of goods and services.

If all groups of States use the model law, its potential as a tool for harmonization in international trade can be fully realized. Its text was not intended for any particular group of countries or countries at any particular level of development; nor is it intended to promote the dissemination of experiences and approaches used in any one region.

The concept of cost justification in procurement includes both savings (in the sense of the reasonableness of transactional and administrative costs for procurement and the operation of procurement systems) and efficiency (in the sense of the optimal ratio between costs and other factors, which include the quality of the object of procurement). Depending on the nature of specific purchases, the only or main criterion for selecting a winning offer may be the price, or quality factors or other considerations may play a major role. In assessing which costs will be justified for a particular purchase, the procuring entity can use a wide range of elements, such as life-cycle costs (which may include the cost of final disposal of property (sale or write-off)) and the consequences of agreed changes during the administration of the procurement contract. Concepts such as sustainability – costs and benefits for society as a whole, not just for the procuring entity itself, which may include social and environmental aspects of procurement-may also be considered appropriate.

Since decisions on behalf of the government at all levels are taken at their own discretion in public procurement, the nature of procurement necessarily includes the risk of abuse, and the size of the market shows that potential losses can be significant, but procurement also involves the implementation of important projects in the field of health, education and infrastructure development, and all this has a great impact on the economy and development of the country. Therefore, achieving an optimal price-quality ratio in the field of procurement and avoiding abuse is crucial. The UNCITRAL model law is an instrument of inter-state integration that has accumulated all available international experience and practical experience in the field of public procurement in a market economy.

Results

Differences in the laws of individual countries are due to the priorities of economic policy. At the same time, the degree of centralization of the economy has a significant impact. At the level of national legislation, international regulations are clarified and specified, taking into account the specifics of the state's economic policy. In a number of countries, industry regulations are issued that allow for the formulation of specific provisions that reflect the specifics of a particular industry on the basis of General national legislation.

Inadequate legislative regulation of procurement at the state level creates obstacles to international trade, as a significant share of it is accounted for by procurement. The ability of governments to take advantage of the advantages that competitive prices and quality benefits create in the case of international procurement may be partially limited by differences in national legal regimes governing procurement and uncertainty about such regimes. At the same time, the lack of adequate national procurement legislation in many countries and discrepancies in legal regulation present obstacles to the ability and willingness of suppliers and contractors to sell their products to foreign governments.

The effective achievement of public procurement objectives can only be achieved through interrelated and consistent procedures based on these basic principles, in an environment where compliance with these procedures is assessed and, if necessary, enforced. By incorporating the procedures described in the Model law into its national legislation, the enacting state will create an environment in which the public is assured that government procurement organizations will spend public funds responsibly and responsibly. The cost of money will be justified as a result. These conditions will also contribute to the confidence of parties offering their goods and services to the government that they will enjoy fair treatment in the absence of any abuse.

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ON THE INTERNET CONFIRMABILITY OF CRIME OF PICKING QUARRELS AND PROVOKING TROUBLES

Criminal law is an instrument of the state, which protects the interests of society from criminal encroachments, and also prevents crimes. The formulation and interpretation of the criminal law must follow the principle of modesty and adhere to the inherent spirit of the criminal law, which is insurmountable. In the criminal law amendment (nine), the crime of "provoking troubles with the Internet" has caused great controversy in academic circles. Dogmatics of law not only explain the specification of norms, and need to criticize and guide the legislation, criminal law protection has positive value entity, and it can not be completely separated from the value category, it explores the standard value of the guide itself. This paper, from the four layers of legislation, value, social and political philosophy, dealing with the crime of provoking troubles and picking quarrels, aiming at exploring the potential presupposition of "provoking troubles" applied on internet that causes disputes in academical circles. Eventually come to conclusion that "provoking troubles crime" used on internet needs not to be abolished, but must be used with caution.

Key words: legal interest, free of speech, modern crisis, provoking troubles and picking quarrels.

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Интернеттегі жанжал тудыру және арандату мәселелерін қылмыс ретінде мойындау

Қылмыстық құқық – қоғам мүдделерін қылмыстық қол сұғушылықтардан қорғайтын, сонымен қатар қылмыстың алдын алатын мемлекет құралы болып табылады. Қылмыстық құқықтың тұжырымдамасы мен түсіндірмесі ұстамдылық принципін ұстануы және қылмыстық құқыққа тән еңсерілмейтін рухта болуы тиіс. Қылмыстық заңға енгізілген түзетуде (тоғыз) «Интернеттегі мәселелерді қоздыру» қылмысы академиялық қоғамдастықта үлкен пікірталастар тудырды. Құқық догмасы нормалардың ерекшеліктерін түсіндіріп қана қоймайды, сонымен бірге заңнаманы басшылыққа алуды және сынға алуды қажет етеді, қылмыстық-құқықтық қорғаудың оң мәні бар, оны құндылық категориясынан толығымен ажыратуға болмайды, ол басшылықтың өзінің нормативтік мәнін зерттейді. Берілген мақала төрт құраушы тұрғысынан қарастырылады: заңнама, құндылық, әлеуметтік және саяси философия. Мақаланың мақсаты интернетте қолданылатын «арандатушылық мәселелердің» ықтимал алғышарттарын зерттеу болып табылатын және пікірталастар тудырушы жанжал шығарудан және арандатудан болатын қылмыс түрлері қарастырылады. Қорытындылай келе, автор Интернетте қолданылатын «арандатушылықты» жоюға болмайды, бірақ оны сақтықпен қолдану керек деген ұйғарымға келеді. Интернетте «арандату қылмысы» анықталуы либералдар тарапынан қатты сынға алынды. Либералдарды сынаудың себептері Қытайдың дәстүрлі мәдениетіне терең бойлап, терең әлеуметтік тамырларға ие.

Түйін сөздер: заңды қызығушылық, сөз бостандығы, қазіргі дағдарыс, жанжал тудыру, арандату.

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Признание преступлением разжигание ссоры и провокации проблем в интернете

Уголовное право является орудием государства, которым оно защищает интересы общества от преступных посягательств, а также предупреждает преступления. Формулировка и толкование уголовного права должны следовать принципу сдержанности и соответствовать присущему уголовному праву духу, который является непреодолимым. В поправке к Уголовному закону (девять) преступление «провоцирование проблем с Интернетом» вызвало большие споры в академических кругах. Догматика права не только объясняет спецификацию норм, но и нуждается в критике и руководстве законодательством, уголовно-правовая защита имеет позитивную ценностную сущность, и ее нельзя полностью отделить от ценностной категории, она исследует нормативную ценность самого руководства. Данная статья рассмотрена с точки зрения четырех составляющих: законодательства, ценности, социальной и политической философии; рассматривается преступление провоцирования неприятностей и разжигание ссор, целью которого является изучение потенциальной предпосылки «провоцирующих неприятностей», применяемых в интернете, что вызывает споры. В заключении автор приходит к выводу, что «провоцирование преступлений» в Интернете не должно быть отменено, а должно использоваться с осторожностью. Выявление «преступления провокации» в Интернете вызвало резкую критику со стороны либералов. Причины критики либералов глубоко укоренились в китайской традиционной культуре и имеют глубокие социальные корни.

Ключевые слова: законный интерес, свобода слова, современный кризис, провоцирование проблем, разжигание ссоры.

Introduction

Liberalists believe that dogmatic law has the function of leading and helping legislation. «If a law is to have a strong vitality, then the legislator must carefully consider and balance the relationship of life to be regulated, the whole of existing and future norms, and even the impact of the norm on other fields. In this process, the help of law is indispensable, but only concern. People who neglect similar and adjacent disciplines will also have limitations on the development of this discipline. So dogmatics, if it is merely a literal treatment of legal norms and does not delve into the concepts underlying them, or is closely related to sociology, would, as Kirschmann lampooned, «those fallacious, outdated, or random things in the law of reality... We should not be afraid to use all our intelligence and knowledge to defend ignorance. «

From the liberal point of view, the logical premise of the dogmatic analysis is to find out the object category, that is, the former problem. That is to say, we need to find the problem, here, we have to resort to Husserl's phenomenological philosophy. The test of legal justice must refer to the value of its former problematic nature (Husserl, 2012). Restricting dogmatics within the norm can not reveal all the attributes contained in the norm itself profoundly, because the norm itself can not explain the norm, we should find out the former problems through phenomenology to verify whether the norm is in conformity with the norm. Reason. What is the former problem, that is, the rational existence of human beings, or the natural law. Natural law is the ultimate goal pursued by legal norms. The dialectical relationship between natural law and real law weaves the whole legal history. The goal of human beings is to infinitely approach rational real law. Politics is prior to the state, so political nature as the most fundamental characteristic has a deeper meaning than law, so this article will eventually refute the liberals' accusation of this crime through political analysis. The criticisms of liberals on the crime of provocation are mainly manifested in the following aspects.

Methodology of research

This research paper relies mainly on the qualitative method of data analysis in identifying the different variables of the study from the related literature review. The same method was also used in the data collection, where the descriptive method has been utilized mainly in order to describe the variables of the study, while holding a comparison between such variables. The qualitative method functions mainly as means of analyzing the different information that are represented in the literature review, while highlighting the researcher's personal opinion to the topic of interest.

In addition, special research methods were used in the work: comparative legal and statistical methods, including detailed analysis of the existing practice of developed countries with a reorientation of the main conclusions to the legal system of China, as well as concrete sociological and formal legal methods.

Chapter 1 Specification Dimensions Of Crime Of Picking Quarrels And Provoking Troubles

1.1. Legal interest criticism of picking quarrels and provoking troubles

Most liberal scholars believe that the crime of "provocation and trouble" is located in the crime of impairing the order of social management, so the legal interests it protects are "public order" or "social order". "However, public order and social order are very abstract concepts, and the abstraction of the protection of legal interests will inevitably lead to the lack of substantive restrictions on the interpretation of the constituent elements, so that the constituent elements lose their due functions". Therefore, we should understand the specific connotation of "social order" from the specific legal interests of the clause. In the first paragraph of Article 283 of the Criminal Law, beating others at will and pursuing, intercepting, abusing and threatening others in the second paragraph are all violations of personal rights. The third paragraph is the infringement of property rights, and the fourth paragraph is the infringement of public order, the general object of the crime. The protection of legal interests here has a mixed type, "public order" is obviously the first protection as a general legal interest. However, in the network platform, the body is often difficult to be infringed, in judicial practice, the network quarrel is always in the form of "speech", so the legal interests of the real law need to be achieved by controlling speech.

Firstly, the essence of the crime of provocation and trouble is to maintain the stability of order, so its legal interest is one of the basic values of law - "order". The basic function of criminal law is to maintain order and protect human rights, and the relationship between order and human rights protection is dialectical. Without a stable order, human rights will be impossible to implement, but human rights are the ultimate goal, order control only has instrumental value, because without the protection of human rights, then human beings will inevitably lose the momentum of development, order control will not be talked about. Therefore, the protection of order legal interests is based on the protection of human rights. Freedom of speech is the most basic human right. Article 35 of the Constitution stipulates that citizens have the right to freedom of speech. Therefore, we need to find out the boundaries between freedom of speech and crime of speech. Only in this way can we test whether the legal interests of the crime of "cyber aggression" in the positive law are in the critical legal interests of the crime of "cyber aggression".

Secondly, liberals believe that the protection of the legal interests of the crime of cyber aggression is a public order, and the specific legal norms must be set with the surface rigor and certainty of the critical legal interests themselves. Public order is a limited concept, must be "public" order, public must be open, accessible, and must be a public place. To interpret the "public place" stipulated in the "crime of cyber-aggression", we may resort to the provisions of Article 291 of the Criminal Law on "public place": stations, wharfs, civil aviation stations, shopping malls, parks, cinemas and theatres, exhibitions, stadiums or other public places. In the system interpretation of the Criminal Law, there is no virtual one. Network public space. Therefore, judicial interpretation of cyberspace into public space is not consistent with the interpretation of the system itself, because a concept in the criminal law system should have consistency, otherwise the public will be at a loss. So this kind of legal interest is lacking in certainty on the surface.

Thirdly, the mode adopted by the crime of provocation to protect legal interests is to punish speech, but is speech an act? Can it constitute a crime? Speech is the most important way of expression and communication of human thought and emotion, but it belongs to subjective category in content and is not regulated by criminal law. However, speech act will have a certain impact on the external society after the implementation, so speech act is a subjective and objective behavior. Because the simple expression of ideas is not regulated by the criminal law, only after the speech is published to the public and has a certain impact on society, that is, speech has been published behavior, is considered to be the criminal law to adjust the "act". Therefore, liberals believe that speech itself is not an act, speech act is an act, is the object of criminal law adjustment.

However, in combination with daily activities, speech is generally the same or similar, such as daily communication belongs to this mode of behavior. So as Mill said, "Freedom of speech can only be applied if it is morally punishable when it infringes upon the rights of others" (Mill, 1957). How to define whether to infringe on the rights of others, it points to the "clear and present danger" proposed by Justice Holmes.

1.2. Critique of the purpose of criminal law

The purpose of criminal law is to formulate the objective effect of criminal law, if the specific norms of criminal law can not serve the purpose of criminal law itself, there is a danger of being abolished. There is a controversy between "monism" and "dualism" in the academic circles about the purpose of penalty. The "monism" can be divided into "preventive theory" and "disciplinary theory". There is a subjective misunderstanding in the theory of prevention that the definition of criminal acts is advanced, while the theory of punishment lags behind in the punishment of criminal acts. However, in the dualism, there still exists a dispute between "prevention" or "punishment".

"Prevention" as the center of the "dualism" criminal law purposes as the name implies there is a "actor's law" characteristics. The criminal law of the perpetrator must be centered on "prevention". It is not based on the punishment of the consequence of the crime, but on the analysis of the personality of the perpetrator, judging whether the perpetrator has the personality characteristics of a bad person, focusing on the defense of society and the fight against crime. Therefore, the freedom of the perpetrator's law. It's much smaller than the code of conduct, as Roxin says: "A legal system based on the fundamental principles of a free, rule-of-law state is always inclined to the code of conduct". Liberals, in the "perpetrator's criminal law" centered on prevention, the realistic purpose of criminal law has been more fully realized, but its ultimate purpose has been undermined.

Firstly, the legal interests that the crime of cyber-aggression should protect as well as the crime of aggression are the "public order" infringed by the crime. Public order includes social order and management order. Of course, management order includes state management order, so it is necessary to maintain national peace and unity. However, the act of instigating secession means that the perpetrator instigates others by means of language, words and images, with the intention of making them accept or believe what is instigated or to carry out the act of instigating secession. The content of the act must be false and is aimed at "separating the country". Under the subjective state. Whether it is the crime of "Internet provocation" or "split state crime" is a behavior crime. Behavior crime is limited to the result of causing objective material damage. New school scholars believe that "giving priority to general prevention will hinder the realization of special prevention, but giving priority to special prevention will not exclude the effect of general prevention, at most it will only weaken its impact in an unmeasurable way, while minor penalties will be the same. With general preventive effect".

Secondly, liberals point out that social harmfulness is the essence of crime, and social harmfulness is determined by all kinds of factors, which leads to a comprehensive and holistic judgment of social harmfulness. And our country's crime constitution system does not take "illegal" and "responsible" as the pillar of the crime constitution system as the world's common standards, but classifies the elements of the constitution system by "subjective" and "objective" classification. However, social harmfulness is composed of objective harmfulness and subjective malignancy, so long as the objective harmfulness and the subjective harmfulness reach the level of social harmfulness, then it naturally constitutes a crime. The most typical is that when the objective elements can not be determined or do not conform to the conditions of the constituent elements, we must consider whether the actor in the "intentional, negligent" and other subjective aspects of the absence, if in line with the subjective constituent elements, that is to say, the objective elements are also there, which is also the crime theory system "subjectivity" The reflection. There is a danger of "subjective imputation" in the constitutional system of the theory of crime in our country, supplemented by the purpose of the new "prevention center" with "personal danger" as the core, then the boundaries between crime and non-crime will be blurred.

To sum up, liberals believe that under the Chinese criminal theory system, prevention as the center is not advisable, should be "sanctions" as the center, in order to be able to guarantee people's freedom at the actual level of the most expanded.

1.3. Pocket crime policy dependence criticism

"The best legal language is precise, succinct, cold and unaffected by every passionate act". Therefore, the definiteness of the principle of legality is the highest protection for human rights. However, due to various reasons in reality, there are some accusations in the criminal law of China, such as the crime of causing trouble, the crime of endangering public security by dangerous means, and the crime of illegal business operation. The reason why it is called "pocket crime" is mainly due to the following two reasons: first, the impact of legislative centralism, in the cultural aspect of our country by the impact of severe punishment

doctrine, advocating authoritarian flames; secondly, China's specific provisions on charges are not clear.

Since the establishment of the criminal law in China, it has always been guided by the idea of "repression and leniency". However, in our country's criminal constitution system, the core element of the constituent elements is social harmfulness, and then results in such a result. As long as the result of the act is worthless, it can be invoked as illegal and convicted. This is obviously a result-based retrograde law, which negates the homogeneity of behavior and persists in pursuing the homogeneity of behavior results. The theoretical path of pocket crime coincides with this, but also from the results, and then traced back to the perpetrator.

The appearance of "pocket crime" is contrary to the doctrine of "legally prescribed punishment for a specified crime", but the deeper reason is that it reflects the connotation of legislative authoritarianism. In the process of the game between the state's right to punish and the individual freedom of citizens, criminal law can be divided into nationalist criminal law or civil rights criminal law because it tends to one side. State power centralism emphasizes the protection of the country's social stability and order; on the contrary, civil rights-centered law emphasizes the protection of human rights. One of the three theoretical pillars of the legality of crime and punishment is human rights, while the clause of pocket crime itself is relatively unclear, which is contrary to the legality of crime and punishment.

Chapter 2 Value dimension Of Crime Of Picking Quarrels And Provoking Troubles

2.1. Violation of natural law

As an unwritten law discovered by human reason, natural law is an ideal order close to human nature, so any definite law must follow the origin of natural law.

Criminal jurisprudence is bound to be accompanied by its political and moral attributes, presupposing the form of national political system and the permanent operation of power, as well as the legitimacy of the state's appeal to citizens. Liberals like to resort to reason. Thomas Aquinas pointed out in The Summa Theologica that "Eternal law is the eternal law in God's mind controlling the universe, which is the basis of all the order existing in the real world, and the order in this sense existing in the world is the natural law". Kant thinks that natural law is rational law. In today's society where law and morality belong to different classes, natural law does constitute a common factor of law and morality. Natural law is a universal rationality, and our actual law must follow the guidance of this rationality, and the core of this rationality is freedom, including moral, justice, fairness and other values.

Liberalists believe that the reason why man's will is free is that his nature is rational. Freedom is included in reason, and the realization of reason needs freedom. Therefore, the law of fact which guarantees freedom tends to be natural law infinitely. However, the establishment of the crime of cyber-provocation violates the natural law in essence and is an irrational legislation, which is embodied in the following aspects.

First of all, the establishment of the crime of Internet provocation is against the natural law at the level of free value. "Freedom is the sole and original right of everyone according to their human nature". The information conveyed by expression is good or bad, and it can not affect the choice of freedom of will. For "a mind under the control of the will, a mind possessing virtue, cannot be made a slave to excessive desire by what is equal to or superior to it, for what is equal to or superior to it is just. Nor can it be turned into slaves by something inferior to it, because something inferior to it will be too weak. There is only one possibility left - only its own will and free choice can make the soul a greedy companion. Therefore, it is totally unnecessary for the national legislature to restrict the essence of freedom of speech in the name of protecting others' freedom of hearing information from the perspective of external coercion.

Secondly, the establishment of the crime of Internet provocation is against the natural law at the level of justice. The massive application of the crime of Internet provocation and suppression has suppressed the exercise of citizens' right to freedom of expression. A man's purpose, or one set by an eternal command of reason, rather than by a vague and temporary desire, is to develop his abilities to the fullest and most coordinated degree, and ultimately to become a complete and consistent whole, to which every man must constantly strive to approach, and for which he must have That is freedom of speech. "Internet provocation" will be a large number of freedom of speech acts as a crime, not only with the general human feelings and values of the position against, but also the law itself to negate their own values!

2.2. The criticism of utilitarian punishment

Liberals argue that the constitutional right of citizens to freedom of speech, a slightly

improper form of freedom of speech, is subject to imprisonment. This penalty system is not a moral punishment, because retributive punishment is entirely crime-bound, and there is no penalty other than crime, and it is unreasonable to regard innocence as a crime on the basis of utilitarianism. Talk. The purpose of utilitarianism is not whether the crime, responsibility and punishment can be fully adapted, but whether it can play a positive role in crime prevention. The state's imprisonment for individuals is entirely due to the state's ability to reap the corresponding benefits. Even though Beccaria points out that crime prevention is better than punishment, this is the main purpose of all good legislation.

However, such an excessively preventive criminal law would put people at risk of acquittal and passive punishment, and it would also be contrary to Beccaria's subjective will to measure the happiness and disasters of life in an all-round way. Legislation is an art that guides people to enjoy the greatest happiness, or to say, the greatest happiness. Minimize the misfortunes people may encounter.

The basis of the utilitarian punishment is not the crime, but whether it is beneficial to the government. The crime of causing trouble is described as follows: more than 50 persons or more than 500 times of forwarding, the standard of the crime amount is reached. In the age of the Internet, such standards impose extreme stringency on national behaviour, which, in the eyes of liberals, is tantamount to deprivation of liberty. Therefore, "as a possible victim and protector, a criminal law based on danger, the possibility of recidivism, and the purpose of safeguarding the society means to everyone that although the victim is innocent or light punishment, it is unfair rather than protection". At the same time, there may also be excessive punishment, which seriously damages the basic rights of citizens.

Liberals believe that the emergence of the crime of cyber-aggression, in view of its own norms of ambiguity is more convenient for the judiciary, for example, in reality there is such a situation - citizens use the Internet to prosecute illegal acts of government officials, government officials in order to protect their "image" instead of the prosecutor. Showing its authority on the charge of "provoking trouble" completely ignores the basic rights granted to citizens by the

Constitution, which is quite different from the original purpose of utilitarianism itself to safeguard the "maximization of human happiness".

Chapter 3. Social dimension Of Crime Of Picking Quarrels And Provoking Troubles

The study of law has its natural limitations, which can not reasonably explain the full meaning of social behavior. Marx Weber holds that "people's social action tends to some practical norms, including customs, habits, conventions and laws. The boundaries between these social norms are very vague, and they can It's hard to tell which of them leads to a particular order when they coexist and work together. Therefore, he put forward the concept of Sociology of law, and the law will be discussed in sociology. Any crime phenomenon is determined by social existence. "The positivist school is not satisfied with supporting the society against the individual because it seeks to balance individual and social rights. It also supports the individual against the society". Supported by this idea, the sociology of crime believes that punishing offenders is to defend society, and the purpose of criminal law is to prevent crime. Therefore, it is of decisive significance to find out the social root of crime for crime prevention. As Philip said: "Every society has its own crime, these crimes are caused by natural and social conditions, the quality and quantity of which is adapted to the development of each social collective". Therefore, for example, the establishment of the legislation on the crime of cyber aggression has deep social roots in the eyes of liberals, mainly in the following aspects:

3.1. Irrational legal and cultural forms

Formal rationality means that all litigants must follow strict procedures, as long as there are slight errors, it will lead to adverse consequences. From Weber's extreme formalism standpoint, we can see that he attaches great importance to formal rationality. Although there is an inevitable contradiction between abstract formalism of legal logic and the need to satisfy substantive requirements by law, it seems to liberals that formal rationality is in the comparison between formal rationality and substantive rationality. Or occupy a relatively important position.

Liberals point out that Chinese history has always been known as "rule of man", lacking the corresponding tradition of rule of law, so there is no legal logic of thinking. The most superficial defect of the crime of "network provocation and trouble" is the lack of clarity required by the rule of law. First of all, can we see whether cyberspace can be equated with real society? There are two

kinds of viewpoints in the academic circles of our country. The first one is an analogical explanation, represented by Professor Zhang Mingkai (Zhang Mingkai, 2014a), which regards the network society as the same as the real society. The second one is the opposition represented by Chen Xingliang (Chen Xingliang, 1998a), but the first one is the mainstream. Whether this interpretation is extended or analogical, liberals point out that the analogical interpretation of Chinese traditional legal culture is a widely applicable system, which is a tradition.

3.2. Lack of respect for civil rights

Liberals reveal the spiritual roots of pocket crime in legal norms from the perspective of faith reverence. They point out that Chinese traditional culture has a very different view of nature from that of other countries in the world. In essence, it is a kind of reverence, just as in ancient times people did not understand the thunder, lightning, wind, rain and other gods.

The formal sublime nature of this god, human beings continue to explore to discover, so the real discovery of human itself, the Renaissance and the industrial revolution of later generations. "But the Chinese religion is just the opposite. It does not oppose man and God, this shore and the other shore like most of the world's religions. It elevates God by belittling man and denying man's value, man's real character and the interests of real life". This humanistic tendency never regards nature as a pure guest. The physical world of view, nature is not a pure world for the Chinese people to understand, it is entirely related to human survival and its living goals. Chinese religion is essentially human rather than God based. Complete humanism tends to overlook the existence of the omnipotent "God" above man, so the Chinese people do not fear spiritually, and do not fear or even care about the world after death, so greed and perversion of the law is inevitable. The opposition between the government and the people has existed for a long time in history. However, without the active participation of the people in the constitution-making and its implementation, the Constitution can not be transformed into constitutionalism. Therefore, the basic form of democracy can not be realized or realized in such a state.

Liberalists point out that establishing a rational belief requires a correct religion. Faith is the spiritual reflection of religion. "Religion is the reason why I think and admit (Beherzigung und Bekennung) ". Feuerbach believed that religion originated from man's fear of nature. It was man's fear of the unknown that led to his fear of the unknown. Thus the fear of ignorance gradually formed a ritual, which was a subjective desire to request. Only by faith can we have reverence and awe. Therefore, Mr. Hu Shi said: "To solve the spiritual problems of the Chinese people, the most important thing is to find a good religion for the Chinese people to believe in!" For legislators, the absence of faith means that they can freely stifle the freedom of citizens without guilt, and for the judiciary, it means that they can be free of scruple and bullying.

The legal interests of the crime of cyber-provocation and trouble-making are fundamentally the revival of "nationalism". As the executors of state power, legislators and judiciaries are bound to strive to safeguard state power, which is human nature.

China's traditional culture of humanism is divided into strong, any foreign religion will become local characteristics sooner or later. However, this humanistic religion, together with democracy and human rights, is like a flower on the other side, so establish a good religion, especially for legislators and judiciaries in the spirit of reverence, in the belief of good doctrine. In this way, the violation of "human rights" for the sake of "national rights" can be spiritually avoided.

Chapter 4. Political dimension Of Crime Of Picking Quarrels And Provoking Troubles

"Politics is more fundamental than law, and it is the source of all laws. There is no law, and therefore no constitution is the basic political fact, because all laws depend on man. Law should be chosen, maintained and executed by people.

Is philosophy or political philosophy the guide of legal theory research? There are few discussions in the legal field. According to the world, philosophy is the foundation of all human subjects. In the author's opinion, political philosophy, not philosophy, is more closely related to the emergence of law and subsequent research. Because philosophy is a purely intellectual activity of private nature, enjoying full and complete spiritual freedom, and escaping from secular ethics, philosophy is incompatible with society. It ruthlessly mocks all fetters to consolidate its freedom. Therefore, philosophy, as a purely intellectual pursuit, is bound to be dangerous to any political society. Subversive. But the first and central issue of political philosophy is to examine the relationship between philosophy and political society, so political philosophy is also called

"sociology of philosophy". The political philosophy descends the philosophy detached posture to the free person, closely relates with the political society, therefore in the author's view, the political philosophy and the jurisprudence contact is closer than the philosophy.

4.1. Crisis of modernization of legal interest

Chen Xingliang listed Article 6 of the 1922 Soviet Criminal Code in his Theory of Social Harmfulness - A Reflective Review: "All acts or omissions that threaten the basis of the Soviet system and the legal procedures established by the workers and peasants regimes during the transition to the Communist system are considered crimes". And to borrow Bibtov: "The bourgeois criminal code formally defines crime as an act prohibited and punishable by law when it is committed. Soviet legislation is different from this, it is from the substance, that is, from the damage to the legal order, harm to the definition of crime "to prove that the substantive characteristics of social harmfulness led to the class nature of the concept of crime, and eventually to the trend of legal nihilism. So Professor Chen Xingliang put forward the concept of "legal interest" on this basis to save the danger of human rights infringement caused by the substantive concept of "social harmfulness". Professor Chen Xingliang's first criticism of social harmfulness - that is, overemphasis on substantive will lead to excessive class division.

The common will must come from everyone before it can be applied to everyone. The common will that can not decide special things or make special decisions is no longer universal. "The social contract formed among citizens guarantees equality of rights and conditions". As Kant said, "Your human nature should at all times regard the human nature of your own person, and that of others, as an end, and never as a means alone" (Kant, 2013). Rousseau pointed out in On Inequality that property was the ultimate cause of all inequalities, so the proletariat stabilized their dominant position through a more harmonious means, thus forming the law. "This is, or this may be the origin of society and law. They put new shackles on the weak, new powers on the rich, irreversible violations of natural liberties and permanent establishment of laws of ownership and inequality". (Rousseau, 1967). In On Inequality, Rousseau, proceeding from the natural state and on the basis of different natural endowments, gradually evolved into property inequality. In order to safeguard property and life security (avoid state of war) and establish a state by contract, Rousseau ingeniously discovered that laws that only safeguarded the interests of the ruling class could not be enforced. Therefore, the ruling class and the ruling class can reconcile, and finally merge into the will of the ruling class to achieve a perfect state of law, but this substantive inequality is finally established in the form of national will.

The author refers to the "crisis of modernization" as "liberalism" arising from the rebellion of modern political philosophy against classical political philosophy. Modern and contemporary political philosophers believe that "human natural freedom is not bound by any superior power in the world, not bound by the will or legislative power of man". Here the "Natural Right" has gradually changed from the original "natural justice" to "natural rights" and tried to emphasize one thing as much as possible - "the priority of right over good". As Falding pointed out: "A basic evolution of Western moral and political theory since modern times The trajectory is from the so-called natural law to natural rights, and after the depreciation of the word nature, the so-called natural rights become human rights, that is, the so-called human rights today (Zhang Mingkai, 2014b). Liberals emphasize that rights take precedence over good. The root of this lies in the tradition of natural rights, which denies the essential meaning of "natural right" - natural justice or natural correctness. "Modern political philosophy, starting with Machiavelli, subordinates virtue to politics (as if it were only politically useful virtue), and makes philosophy a means of serving the needs of human reality, reducing the possibility of human beings".

Secondly, liberalism almost inevitably moves towards legalism, because the law can exclude all external equal treatment, and liberalism claims that its purpose is to treat all cultures, races and other public things equally, but the result is that all races and cultures become private spheres of affairs, not any more. Meaning has become a dispensable thing. We can see that liberalism's pursuit of rights inevitably leads to nihilism, and as Strauss said, "the more respect for human rational status, the more equal the pursuit of equality, the more it reduces itself to the status of livestock".

Professor Chen Xingliang pointed out in his article "The Theory of Social Harmfulness - A Reflective Review": "In the concept of a crime with unified formal and substantive characteristics, how to deal with the relationship between the substantive characteristics of a crime - social harmfulness and the formal characteristics of a crime - criminal illegality has become a major

question. The question. " (Chen Xingliang, 1998b) and that the existence of social harmfulness in the criminal law will inevitably lead to two standards of conviction, will affect the complete realization of the legality of crime and punishment. Professor Chen Xingliang confessed the irreconcilable conflict between formal rationality and substantive rationality, and eventually established the priority of formal rationality - legally prescribed punishment for a crime (no law is expressly not guilty, no law is expressly not punished) - in order to protect human freedom.

4.2. Critique of modernity crisis

Classical political philosophy is to pursue the most perfect political system and the happiest life. It recognizes the state of human inequality, while modernism recognizes rationality. It holds that man can perfect his rationality through experience, elevate man to the status of the same God and advocate equality for all. The greatest irony of this view is that man is equal to God. It is in the more we cultivate reason, the more we cultivate nihilism, the less are we able to be loyal members of society. The basic motive force or logic of modernity revealed by Koyev is struggle for recognition, that is, the prevailing "politics of recognition" or that the inherent logic or moral justification of modernity lies in "slaves" - all oppressed and enslaved people strive for self-liberation and "recognized" as equal freedom. In the end, this history will point to what Koyev calls the universal and homogeneous state. In this undifferentiated country, it meant that there was no distinction between nobility and lowliness, intelligence and stupidity, that everything was flattened, and that eventually Nietzsche's so-called "the last man". This "low but solid" basis of modernity is bound to lead to the greatest paradox - that modernity was originally intended to elevate man to the status of God, but ultimately to reduce man to the status of animals. Classical political philosophy starts from the political understanding of "pre-science", that is, from the understanding of politics by citizens and politicians. This is the fundamental difference between classical political philosophy and modern political philosophy.

Plato explained the most perfect regime in the Republic as "Everyone does his duty". However, he chose the "wise and moral noble" philosopher in the choice of national political leadership; we have to rethink why he chose not equal elections, but aristocracy, because officially He believes that the environment and self-cultivation and grasp of natural justice are superior to ordinary people, so they can better guide people to find a happier life.

Socrates was searching all over Athens for the "wisest" man, but found that the whole of Athens was boastful. God told Socrates that he was the wisest because he knew he was not wise. From this we can see why Socrates knew he was not wise. Wasn't it because he was wiser than others? Is this not enough to prove that Socrates is superior to wisdom? So he led the search for knowledge in Athens, telling people how to seek justice, how to lead a happier "spiritual" life. Justice is not something that may be prescribed by a foolish law, but something that is good for others. But not everyone knows what is good for people in general, and what is good for everyone in particular.

4.3. Free and equal against the rule of law

"Rule of law" often means "equality and freedom" for all. In a democratic country, public opinion is not only the only guide to individual reason, but also has unlimited power greater than any other country. In democracies, each is equal and free, so no one has to rely on or trust others, but "this similarity can give people almost unlimited confidence in public judgment" 578, because in democracies, everyone feels that they are autonomous and equal in front of their fellow citizens. And so he isolated himself, then he could not resist most actions.

Tocqueville clearly pointed out: "The two tendencies of equality: one is to make everyone's spirit tend to new ideas; the other is to make it easy not to think. I can also see that, under certain legal systems, democratic social conditions promote the freedom of intellectual activity, which can also be abolished by democracy, so that freedom of intellectual activity will be tightly bound by the general will of the majority of the people after shattering the fetters imposed on it by a certain class or some people before. Nietzsche has pointed out that the common will formed by opinions limits noble qualities, and that an abolitionist, by appealing to the natural rights of wisdom, caters to the mediocre and vulgar desires of the masses and induces them to believe in his rights, which, as a result, seems to have more boundless prospects for tyranny than for wisdom. However, on the basis of social contracts, consent between equal sovereigns takes precedence over wisdom, so it is inevitable that wisdom is bound by the rule of law and may even lead to tyranny. Classicism is from the opposite point of view, and wisdom is prior to consent. So for the Classicist, "the best way is for a wise legislator

to make a code that citizens are willing to adopt on the basis of good will". He goes beyond the ordinary existence, because he is wise and the code that he makes should be as constant as possible, so in the view of the Classicist, "The best political system is the absolute rule of the wise; the best practical system is the rule of the noble under the law or the mixed system". Under this practicable system, noble nobles have a good upbringing and a public spirit. They make laws and abide by them, and their society gives them social characteristics in turn. Therefore, there is no need for democracy under freedom equality, or freedom of speech.

However, under the dual influence of liberal theory of natural rights and biblical beliefs, the political nature of natural rights has become vague, or is no longer the original essence of the pursuit of the best system, people live a happy life.

The second level of freedom against the rule of law is the frequent change of law. In On Democracy in the United States, Tocqueville pointed out: "It is not always feasible to call on people to make laws, whether directly or indirectly. But there is no denying that when it is possible to do so, the law will have enormous authority. So once the law is enforced, there are only two ways to subvert it - to try to change public opinion across the country, or to trample on the will of the people. But we have learned that a single will cannot confront public will in a democratic society, so a separate will must follow public opinion. But we can also see the importance of public opinion to the law, that is, as long as the common will changes, then the change of law is taken for granted.

At the same time, the common will, based on contractual democracy, can cause riots among the majority, as Tocqueville put it, if you admit that a person with wireless authority can abuse his power against his opponent, why not admit that the majority can do the same? Because all things are treated equally, the society is either brewing revolution or about to collapse.

The social contract enjoys supreme rights, and this infinite authority is a very dangerous thing. There is no authority in the world that has inviolable power over others. Extreme democracy is not terrible. The terrible thing is that this supreme authority has so little to do with tyranny.

Conclusion

The identification of the "offence of provocation" on the Internet has aroused intense criticism from liberals. The reasons for the criticism of liberals are deeply rooted in Chinese traditional culture and have profound social roots. The proposals put forward by the Liberals should be fully considered by legislators, judiciaries and citizens. The primary purpose of legislators in enacting laws is to maximize the interests of the happiest society. However, unless at special political moments, citizens' basic human rights can not be curtailed or even ignored, no pocket charges or "phenomenal legislation" should be set up, and the legislators should enact any law or any other law. The amendment of any article must be guided by the purpose of the criminal law. Article 2 of the criminal law must be branded in the legislator's mind. All the specific legal norms must be based on the existing legal principles. The state is certainly a sign of political existence, and the law also exists in the political connotation. However, the law is bound to play a guiding and protective role in the regular time, so the humanitarianism of the law is bound to be an indispensable inherent requirement. A kind of legal expression of politics is criminal policy, so the purpose of criminal law also reflects the political appeal, "rule is a test, just as any life is an experiment. Every month, we must place our fate on the foresight of the future, which must be based on imperfect knowledge. Now that this experiment is part of our system, we should always be vigilant against trying to control what we hate and deem fatal unless they are so urgent to interfere with pressing legitimate goals that they require immediate control to save the country. Based on classicism, although the goal of the state is for the benefit of society, we must not blindly reduce the happiness of people's lives. Judiciary should maintain a rigorous attitude when applying the law. Criminal law is the weapon of the law. A little carelessness will result in irreversible consequences.

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