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Original paper

BETWEEN GEOPOLITICS AND GEOECONOMY – THE SILK ROAD DISCOURSE IN DIPLOMACY OF JAPAN

Slobodan POPOVIĆ[1]

Abstract: The main purpose of the paper is to critically analyze the manifestation of the Silk Road discourse in Japanese foreign policy behavior on both diplomatic and practical levels. That will be done through usage of the content method analyses and approaches which stem from critical geopolitics and geoeconomic thoughts. Proposed methodological framework and theoretical approach have been chosen with an aim to attest the general hypothesis of the paper, which is: Japan uses the Silk Road discourse as a tool to improve its geopolitical and geoeconomic position and interconnectivity in the Central Asian region. The first part of the paper will tackle the meaning of discourse as a social construction and its interlacement with strategic moves of foreign policy. This part of the paper will be helpful to understand the reasons why the Silk Road as a social construction and diplomatic discourse possesses enormous importance to Japanese geopolitical and geoeconomic strategies towards the Central Asian region. The second part of the paper will analyze the development of diplomatic relations between Japan and the Central Asian states since the collapse of the Soviet Union, with a focus on multilateral diplomatic initiatives that Japan has triggered and still pursues in the Central Asian space. The third part of the paper will be dedicated to the analyses of infrastructural projects that Japan has implemented in Central Asia. In the Japanese case, those projects express the conditionality between geopolitics and geoeconomy.

Key words: Japan, Central Asia, Silk Road discourse, diplomacy, geopolitics, geoeconomics, interconnectivity, infrastructural projects.

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INTRODUCTION

The subject of this paper is the analyses of the Japanese version of the Silk Road discourse and its manifestation. Our main focus will be on the Central Asian republics.[2] The time frame will be the dissolution of the USSR onward. Through this paper, the following questions will be answered. Why is this discourse important regarding Japan's national interests? What kind of changes has this discourse experienced through the time? Why did those changes occur? Why is Central Asia important to Japan in terms of geopolitics and geoeconomy? What is the Japanese perception of the Central Asian republics? What is the Japanese perception of the New Great Game? What is the role of the above-mentioned discourse for the Japanese perception of both domestic and international security concept?

Although Japan started much earlier than China to invest in Central Asia with the aim to develop their neglected infrastructure and other types of interconnectivity, academia was more biased towards analyzing Chinese interests in that region.[3] Consequently, Japanese geoeconomic and geopolitical influence among the Central Asian states as a scientific category among scholars is unjustly undervalued, downplayed, overlooked, under-researched and defined as a `newcomer`. Asia is not Sino-centric, yet, it is multipolar. Japan, as an independent state and until recently the first Asian economy and the main American ally in Asia, is trying to reinforce its influence in regional security architecture, especially now with Abe`s Doctrine and *Abenomics* as the official politics (Mitrović, 2015). It is quite expected that Japan will try to boost its advantages and to soften disadvantages when it positions itself in Central Asia, especially in sectors which it defined as strategically important. But, it is familiar that advantages and disadvantages are two faces of god Janus. In this concrete case, geography, history and balance of power can be underlined. Japan and the Central Asian states do not share a common border. History does not record Japanese expansionist and militaristic intentions towards the Central Asian states. Some scholars, but also Japanese politicians, used these geographic, strategic and historical facts to emphasize that Japanese actions towards Central Asia are not motivated by traditional selfish and geopolitical interests. Contrarily, they represent Japanese efforts to boost economic, infrastructural, social and

[2] Central Asia has been chosen as a spatial part of the paper due to the fact that Japan under the administration of Prime Minister Nakasone Yasuhiro was trying to implement the above-mentioned discourse amongst ASEAN member states. The main tool was the New Asian Industries Development Plan (New AID), (Marushkin, 2018)

[3] Since the 90s Japan has been presented in Central Asia through Central Asia Regional Economic Cooperation (CAREC). Besides Central Asian and other former Soviet Republics, the Program included Xinjiang, Mongolia, Pakistan (Paramanov, Puzanova, 2018; Moore, 2013).

educational power of the ex-Soviet republics.[4] But, it would be very naïve if one state invested money abroad without any aims regarding national interests. Japan through diplomacy, geopolitical and geoeconomic initiatives, succeeded to obtain support from the Central Asian republics to become possibly a permanent member of the UN Security Council. Furthermore, those states supported the Japanese view on the North Korean nuclear weaponry issue. Also, Japan imposed itself as the first buyer of Central Asian uranium. Besides historical and geographical factors, Japanese strategies towards Central Asia are also shaped by the balance of power in this part of the ex-Soviet Union. In addition to the Russian traditional presence, China is emerging on both bilateral and multilateral levels and in both geopolitics and geoeconomy. Aside for Chinese and Russian influence, Japan faces the influence of Turkey, India, America, the European Union (UN) and recently South Korea in Central Asia. Through the Silk Road discourse, Japan is seeking to obtain better position amongst the Central Asian countries as an independent state or a suitable partner to states that have similar or even different geopolitical and geoeconomic intentions and strategies towards the same region.

DISCOURSE, GEOPOLITICS AND GEOECONOMICS

According to Timur Dadabaev, the notion of the Silk Road has changed from the static concept of a historical trade route into a product of social construction upon which various states have built their relations with the Central Asian region and beyond. Thus, the Silk Road as a term has come to represent the various CA engagement strategies of a number of powerful states – strategies that are constantly shaped, imagined and socially constructed (Dadabaev, 2017, p. 32). Furthermore, according to Nikolay Murashkin, the New Silk Road's definition has been ambiguous, both in terms of function and geography. Functionally, the post-Cold War discourse on NSR initially focused on the politics of international oil and gas pipelines and then shifted to connectivity, transport and logistics in a broader sense. Geographically, NSR initially designated CA and was sometimes extended to the Caucasus (including in

[4] The unselfishness of Japanese involvement in Central Asia was accentuated by former Foreign Minister Kawaguchi, when she gave a speech, *Adding a New Dimension: Central Asia plus Japan,* on August 26, 2004, at the University of World Economy and Diplomacy in Tashkent. Namely, she said, "I can tell you emphatically that Japan has no selfish objectives towards Central Asia. A country that does not engage in the use of force and a country with no political, territorial or other potential sources of conflict with the countries of Central Asia, Japan is a natural partner for Central Asia, and the foundation has already been laid. In a reflection of Central Asia`s geopolitical importance, Japan has a major interest in securing peace and stability in this region, as it affects the peace and stability of the entire Eurasian continent" (Takeshi, 2007, p. 80).

Japanese diplomatic rhetoric) and to South Asia (SA) (Murashkin, 2018, p. 457). It is becoming more obvious that the Silk Road discourse has been socially constructed and then used as an engine to promote its geopolitical and geoeconomic influence amongst the Central Asian republics. In line with that, states which have the Silk Road discourse within its foreign policy manifest are trying to impose developmental models, institutional arrangements, soft power ideas within this space (Junbo, 2018, Stanojević, 2016, Janković, 2016). That is also the case with the Japanese Silk Road discourse. This is why it could be presupposed that, under the "catchword" of the Silk Road discourse and overlapping of the new and old security interests, Central Asia is becoming, once again, a field of the New Great Game.

Perceiving the Silk Road discourse as a bridge between ideas and strategies and as a bridge between states and the Central Asian region will be our theoretical base. In line with that, our theoretical approach will be based on the traditions which stem from geoeconomic thoughts and critical geopolitics. Discourse is the platform of critical geopolitics. This kind of geopolitics argues that geopolitical thinking must include discursive practice. That is induced by changes brought by the different position of media and military within the context and usage of hard and soft power. The security of one state is a very complex puzzle composed of the traditional and non-traditional set of challenges. Besides territorial sovereignty, it presupposes energy, economic, food, technological and social security. Thus, providing security just by traditional geopolitical tools is obsolete and non-sufficient, and in the case of Japan – not possible. Thus, geopolitics, some will argue, is the first and foremost about practice and not discourse; it is about actions taken against other powers, about invasions, battles and deployment of military force (Tuathail, Agnew, 1992, p. 90). Geopolitical influence can be achieved by discursive and diplomatic practices, boosted by strategic and geoeconomic initiatives which will be demonstrated by the Japanese case. In that sense, without geoeconomic resources and carefully selected diplomatic discourses, Japanese geopolitical influence amongst the Central Asian states would not be possible. This gives us insight that geopolitics and geoeconomics are inseparable and mutually intertwined. Geoeconomics is a very useful tool for obtaining geopolitical *rasion d`etre*, without or evading the usage of military means (Blackwill, Harris, 2016). This can help us to understand why the Silk Road as a social construction and diplomatic discourse possesses enormous importance to Japanese geopolitical and geoeconomic strategies towards the Central Asian region.

JAPANESE "SILK" DIPLOMATIC SEARCH FOR CENTRAL ASIA

Analyzing Japanese Diplomatic Bluebook 2018, it can be understood that the Central Asian republics have a very important geopolitical and geostrategic position because they connect Asia, Europe, Russia, and the Middle East. The stability of these states influences the stability of the whole region. According to the above-mentioned document, Japan is supporting the "open, stable and self-sustainable development" of Central Asia, which is geopolitically important and is promoting the development-support diplomacy with the objective of contributing to the peace and stability of the region (Ministry of Foreign Affairs of Japan, 2018). Japan is confirming that the Central Asian region is obtaining high value in its Panoramic Respective of the World Map (Mitrović, 2013).

Japan's bilateral diplomacy towards the Central Asian space begins after the dissolution of the Soviet Union.[5] Namely, after the end of the Cold War, five independent Central Asian states – Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan - were pushed to pursue the independent foreign, security and economic policy. That was a great challenge, but also an opportunity for Japan. At the very beginning, Japan mixed two approaches. On the one side, Japanese understanding of the Central Asian space was influenced by `wait-and-see` what would happen approach (Ferguson, 2007). But, at the same time, the end of the Cold War encouraged a rebirth of "Japan`s Asian Policy" with a change in the international environment during the 1990s (Takeshi, 2007, p. 68). This mixture, as an interpretation of inconsistency of the Japanese administrations, triggered the question whether Japan had a coherent and well-planned long-term strategy towards the region or its diplomatic initiatives were primarily aimed at short-term political objectives defined by each new prime minister? (T. Dadabaev, 2013, p. 513).

[5] According to data available on the Ministry of Foreign Affairs of Japan, official Tokyo established diplomatic relations with three Central Asian states on January 26, 1992, only exceptions were Tajikistan and Turkmenistan. With these states Japan established bilateral relations in February and April 1992, respectively. Embassies, also, were not opened in the same period. For example, the Embassy of Japan opened in Bishkek on January 27, 2003. The Embassy of the Kyrgyz Republic opened in Tokyo in on April 22, 2004. With Kazakhstan, diplomatic relations were established on the same date, but the embassies were opened earlier. Namely, the Japanese Embassy in Kazakhstan was opened on January 20, 1993. The Embassy of the Republic of Kazakhstan opened in Tokyo on February 22, 1996. Regarding Uzbekistan, Japan opened its Embassy in Tashkent in January 1993. Uzbekistan opened the Embassy in Tokyo in February 1996. Japan opened the Embassy in Ashgabat in January 2005. Turkmenistan opened the Embassy in Japan in May 2013. Japan opened the Embassy in Dushanbe on January 26, 2002. The Republic of Tajikistan opened the Embassy in Tokyo on November 28, 2007 (Ministry of Foreign Affairs of Japan).

The first noticeable change in Japan-Central Asia relations occurred when Obuchi Keizo paid a visit to Russia, Turkmenistan, Kyrgyzstan, Kazakhstan, and Uzbekistan from June 28 to July 9, 1997. In the history of Japanese diplomacy, this was known as the *Obuchi Mission*. The main goals were to discuss the development of Japanese-Russian relations with their Russian counterparts in Russia, especially within the framework of the Asia-Pacific perspective and to visit four Central Asian countries to discuss with leading figures the development of relations between Japan and these countries, seeking a future of cooperative relations (Takeshi, 2007, p. 70). The Obuchi Mission report was the platform for Eurasian diplomacy initiated by Hashimoto Ryutaro (Ministry of Foreign Affairs of Japan, 1997).[6] Later, this diplomatic initiative as the first one with so wide geographic realm after World War II was supported by the Silk Road Action Plan. This Plan, released in 1998, was a product of joint efforts of the Ministry of Foreign Affairs, the Ministry of Finance and the Ministry of Trade and Industry. Eurasian diplomacy proposed three areas of engagement in Central Asia: strengthening political dialogue, providing economic and natural resource development assistance, and cooperation in facilitating regional democratization and stabilization (Dadabaev, 2013, p. 515). This was also part of the `Krasnoyarsk Process`, previously developed during the G8 Summit in Denver. According to Togo Kazuhiko, Hashimoto's Eurasian diplomacy can be boiled down to a single strategic principle, to draw Russia into the Asia Pacific and introduce a new regional dynamic that would give Japan more room to maneuver vis-à-vis China and the United States. In the process, he meant to resolve the single biggest outstanding issue in Japanese international relations: the territorial dispute with Russia over the Northern Territories, four islands north of Hokkaidō seized by the Soviet forces in the final days of World War II (Kazuhiko, 2014). Anyway, this diplomatic initiative did not achieve great success, although it was expected very much from it. Oleg Paramanov and Olga Puzanova said that `Hashimoto's Eurasian Doctrine` did not live up to the high hopes it engendered in the world community. Never a fully developed concept, the doctrine was purely public and declarative in nature (Paramanov, Puzanova, 2018, p. 137). The reasons for that could also be found in Japanese geographical and strategic focusing on the East Asian region.[7] Besides that, the reason could be

[6] But even before these initiatives, Togo Kazuhiko, then deputy director general of the Department of European and Oceanic Affairs, had realized the geopolitical importance of the Caucasus and Central Asia and proposed that Japan should not fall behind in filling the vacuum in this region. It was argued that Japan's clout there would benefit her diplomacy vis-à-vis Russia, China, and the Middle East, even if there was little specificity about what benefits actually might be realized. (Kawato, 2007, p. 230).

[7] Even Hashimoto Ryutaro emphasized that the basic objective of Japan's foreign policy is to maintain the peace and prosperity of the Asia-Pacific region (Kantei, 1997).

the Japanese blurry bureaucracy, especially the sector for relations with the Central Asian region.[8] In addition, many scholars emphasize the Asian financial crises from 1997 and the murder of a Japanese UN observer and political advisor, Akino Yutaka, in Tajikistan.[9] Also, according to Yuasa Takeshi, Eurasian diplomacy was not, after all, an everlasting concept. Although it adapted positively during the Hashimoto administration and its successor the Obuchi administration (from July 30, 1998 to April 5, 2000), the chance of presenting the concept as a specific direction of Japanese foreign policy decreased with time, while the Krasnoyarsk Process failed to meet the deadline to conclude the bilateral peace treaty (Takeshi, 2007, p. 74).

Furthermore, Japanese strategic thinking towards Central Asia was questioned once again when China initiated the SCO and the USA announced the war on terror. At the same time, Japan faced great challenges and opportunities. Regarding the SCO and the `Shanghai Spirit`, Japan understood that it was promoting Western fateful values such as democracy, human rights, market economy, and did not offer anything from its rich history and tradition (Paramanov, Puzanova, 2018). At the same time, Japan used the war on terror to change some laws regarding the deployment of the military. As Peter Katzenstein notices, after the 9/11 attacks the Diet passed legislation, in record time, permitting the dispatch of the Japanese navy to the Indian Ocean to provide logistical support for the US-led coalition forces in Afghanistan. After the US invasion of Iraq, the Diet enacted legislation permitting the deployment of the Japanese army to Iraq to aid in reconstruction, and the stationing of the Japanese navy and air force in the Persian Gulf to provide logistical support for the American war. In 2003 the Japanese government agreed to acquire a ballistic missile defense system which should be fully operational by 2011. And legislation introduced in 2005 gave the prime minister and the military commanders the power to mobilize military force in response to missile attacks without cabinet deliberation or parliamentary oversight (Katzenstein, 2008, p. 15). As it is known, America used the war on terror to widen and boost its military presence on a global level, which by its geographic realm included Central Asia as well. Namely, the Bush administration established military bases in Uzbekistan and Kyrgyzstan.

[8] The proposal to transfer Central Asian diplomacy from the European Affairs Bureau (called the "European and Oceanian Affairs Bureau" until 2001) to the Middle Eastern and African Affairs Bureau was rejected. (Tomohiko, 2008, p. 107).

[9] As additional factor Timur Dadabaev appends the deficiency in Japanese governments' information gathering and crisis-management capacity in and with regard to Central Asia became obvious when, in 1999, several Japanese geologists were taken hostage in Kyrgyzstan; this put Japan in a very difficult situation with very few options (Dadabaev, 2011, p. 446).

This could be a very good reason that Japan enriched its Silk Road discourse by military and security means.

However, Japan continued to develop relations with Central Asia mainly through financial means, building the "peak" of relations. In July 2002, the Japanese government organized the Silk Road Energy Mission headed by Sugiura Seiken. This was based on a speech that Junichiro Koizumi gave on the Boao Forum on April 12, 2002. Koizumi wanted to use the possibilities offered by the Central Asian geographical position and mineral richness. From 2002 onward, Japanese diplomacy towards Central Asia was enriched with the "Silk Road Energy Mission". This mission was comprised of Japanese industry, government and academic experts, to encourage further cooperation between Japan and Central Asia (Ministry of Foreign Affairs of Japan, 2002).

Department for Central Asia at the Ministry of Foreign Affairs, run by Michii Rokuichiro, in 2003 expressed the will to improve relations with the region. After the strategic calculations, Yoriko Kawaguchi paid a visit to Uzbekistan, Kazakhstan, Kyrgyzstan and Tajikistan. The result of this visit was establishing of the "Central Asia plus Japan Dialogue" (Dialogue) in 2004. But, Japan faced an obstacle stemming from the rivalry between the Central Asian republics. Namely, both Uzbekistan and Kazakhstan expected from Japan to recognize them as the region`s leading economic and political states. Their rivalry forced Japanese diplomats to announce the scheme in Uzbekistan but to hold the first meeting in Kazakhstan, satisfying the ambitions of both countries (T. Dadabaev, 2013, p. 512). In line with that, the first meeting was held in Astana on August 24, 2004. Up to now, within the Dialogue, six Foreign Minister Meetings were held. However, the predicted schedule of having meetings every two years did not come to life, that is, the member parties did not follow it. It seems that the member states do not perceive the Dialogue as an important asset in foreign policy. Also, it can be perceived that member states are not yet sure about cooperation fields. Thirdly, they presumably want to boost bilateral relations with Japan, and in line with that the Dialogue is just a "plan B".

During the first meeting, three main principles of cooperation were defined. They are following: respect diversity, competition and coordination and open cooperation (Ministry of Foreign Affairs of Japan, 2004). Also, five main areas of cooperation were defined: strengthening of peace, stability, and democracy in the Central Asian region; strengthening of the region's economic foundations, promotion of reform and the social development of the region, including the correction of intra-regional disparities; strengthening of intra-regional cooperation by the Central Asian countries; maintenance and development of good relations between Central Asia and neighboring regions as well as with the international community; cooperation between Japan and Central Asia with

respect to both regional issues and issues having international dimensions (Ministry of Foreign Affairs of Japan, 2004).

The second meeting was held in Japan in 2006. Intra-regional cooperation, stabilization of Afghanistan, fighting terrorism, drug smuggling, cross-border organized criminals and appeasing the consequences of natural disasters and improving the Central Asian sectors, such as agriculture and water resource management, were re-emphasized. Representatives of Afghanistan were also the participants of this meeting. Afghanistan shares borders with the Central Asian republics, therefore, Japan wanted to become proactive in achieving peace and stability in Afghanistan. Representatives of the member states discussed possible ways to include Turkmenistan without breaking his policy of neutrality (UN, 2017). The main result of the second Meeting was the adoption of the Action plan. The Plan specified more clearly five areas of cooperation and emphasized the importance of interconnectivity through infrastructural projects (Paramanov, Puzanova, 2018). Here, it is important to accentuate that in the same year, 2006, Taro Aso, former Minister of Foreign Affairs of Japan gave the speech known as *Central Asia as a Corridor of Peace and Stability*. Through this initiative Japan, once again, denied the recognition of the New Great Game. Japan recognized `open regionalism` among the Central Asian states as a platform for collaboration based on the three following guidelines: approach region from a broad-based perspective; support for "Open Regional Cooperation'; seeking partnership rooted in holding universal values in common (Aso, 2006). The main intention of Japan was to give the opportunity to act independently in foreign policy. Japan cannot allow Central Asia to be tossed about by or forced to submit to the interests of outside countries as a result of the New Great Game. The leading role must be played by non-other than the countries of Central Asia themselves (Aso, 2006, p. 491). In another speech, the "Arc of Freedom and Prosperity" that Aso gave on March 12, 2007, for the 20th anniversary of the founding of the Japan Forum of International Relation INC., Central Asia was once again highly ranked. Namely, Aso wanted to create an Arc from Northern Europe, crossing the Baltic States, Central and Eastern Europe, then through the Caucasus and Central Asia, with rays through Afghanistan, India, Turkey and the Islamic nations of the Middle East. Moreover, the Arc continues farther to the north and east (Ministry of Foreign Affairs of Japan, 2007). Quite understandable and predictable, China raised the question of containment strategy. Even in this initiative, Japan was still insisting on the universal Western values as the best choice for Central Asia.

The third meeting was held in Tashkent on August 7, 2010. The meeting was held in working and stimulating atmosphere with the aim to ameliorate, deepen and widen the cooperation between Japan and Central Asia. For the first time, there was the representative of Turkmenistan. It was Soltan

Pirmuhamedov, Ambassador Extraordinary and Plenipotentiary of Turkmenistan to the Republic of Uzbekistan. During the meeting, delegates of the member states analyzed achieved results and introduced new developmental plans. They also discussed security, economic, cultural and political situation on both regional and global levels. At the meeting, a consensus was built that a permanent dialogue among the countries in the region was crucial for regional stability and prosperity. In this regard, the delegates shared the view that they would hold a Senior Officials' Meeting (SOM) annually within the framework of the "Central Asia plus Japan Dialogue" and utilize the meeting as a forum to exchange views in a timely manner (Ministry of Foreign Affairs of Japan, 2010). Also, during the meeting delegates agreed to organize Japan-Central Asia Economic Forum as a supplementary tool for promoting economic cooperation, the flow of goods, capitals, ideas, and peoples between Japan and this region.

The fourth meeting was held in Tokyo in 2012. But, on the website of the Ministry of Foreign Affairs of Japan, there is no information about it.

The fifth meeting of the Dialogue was held in Bishkek on July 17, 2014. For the first time, the Minister of Foreign Affairs of Turkmenistan participated. This meeting was also the 10th anniversary of the Dialogue. During the meeting, Japanese Minister of Foreign Affairs, Fumio Kishida, presented Japan's vision of the development of the Dialogue for "the next 10 years". He stated that he was very proud to sign the Joint Declaration, which included words and ideas such as "proactive contribution to peace" based on the principle of international cooperation and the importance of a peaceful solution of conflicts on the basis of international law (Ministry of Foreign Affairs of Japan, 2014). Besides the Joint Declaration, delegates also signed the Road Map for Cooperation in Agriculture. Nevertheless, delegates underlined the importance of the Action Plan adopted on the second meeting of the Dialogue.

In 2015 Abe announced a new vision for achieving interconnectivity in Asia, mainly by Japanese export, as a part of Abenomics.[10] Namely, on May 21, 2015, Abe uncloaked the plan for infrastructural development of Asia. This infrastructural promotion was based on Partnership for Quality Infrastructure – Investments for Asia`s Future. In the first phase of this plan, Japan pledged $110 billion, which would be invested in high-quality infrastructure during the next five years (Ministry of Foreign Affairs of Japan, 2015a). However, it was understandable that Japan was facing the fiercest competition from China. In the same year, Japanese Prime Minister visited all five Central Asian republics

[10] For Japanese infrastructure companies, overseas markets are still unexplored territory," Tadashi Maeda said. "The government and other public bodies need to get involved in individual projects to promote cooperation between the public and private sectors" to increase infrastructure exports (Nikkei, Asian Review, 2016).

and stated that Japanese diplomacy towards Central Asia was based on the following principles: dramatic strengthening of bilateral relationships; involvement in efforts to resolve challenges common to the countries in the region; and partnership on the global stage (Ministry of Foreign Affairs of Japan, 2017). During this visit, Abe accentuated instead of value-oriented diplomacy the importance of economic development and social stability. Abe was eager to promote a more goal-oriented practical approach to cooperation with CA. Focus on functionality and the practical outputs has been prioritized over the value-based approach (Dadabaev, 2017, p. 35). The result of the visit was signing the contracts and agreements worth more than $27 billion. As it was planned, Partnership for Quality Infrastructure was gaining the momentum. Contracts were mainly focused on the energy sector, telecommunications, logistical support and modernizing the existing infrastructure or development of new – railways, pipelines, high-ways (Paramonov, Puzanova, 2018). After that, official Tokyo established Japan Infrastructure Initiative Company Limited in 2017. The main shareholders were Hitachi Capital Corporation 47.55%, Mitsubishi UFJ Lease & Finance CO., Ltd 47.55% and MUFG Bank Ltd 4.90% (Japan Infrastructure Initiative). Support for public-private partnerships also stemmed from Japan Bank for International Cooperation, the Nippon Export and Investment Insurance and Japan Overseas Infrastructure Investment Cooperation for Transport and Urban Development. By establishing all these institutions, Abe was trying to transmute the geoeconomic strength into geopolitical power. In Japanese terms, Abe was trying to connect Abenomics with Abe's Doctrine. But, transformation and connection are limited due to the American security umbrella, new Chinese influence and the traditional Russian presence amongst the Central Asian states.

The sixth meeting of the Dialogue took place in Ashgabat on May 1st, 2017. Participants signed the Joint Statement which tackled the North Korean unpredictable situation, terrorism, cross-border organized crime, and Japanese intentions to become a permanent member of the UN Security Council. The above-mentioned Partnership influenced the meeting. Participants signed the Roadmap for Regional Cooperation in Transport and Logistics, which consolidated cooperation in the transport and logistics field, the direction of further cooperation, and specific projects based on the belief that strengthening mutual connectivity inside and outside the region would contribute to regional development. Minister Kishida came out with the Initiative for Cooperation in Transport and Logistics on the basis of which Japan would undertake concrete cooperation in this field, and based on it, he announced that Japan would provide approximately 24 billion yen of assistance (Ministry of Foreign Affairs of Japan, 2017a). The meeting was also colored by the statement of Shinzo Abe at the 23rd International Conference on the Future of Asia that Japan might contribute

to BRI as an inter-continental infrastructure blueprint of development, but under certain conditions (The Japan Times, 2017; Pollmann, 2017, Chotani, 2017, Nagy, 2018).

Besides Foreign Ministers` Meeting, the Central Asia plus Japan Economic Forum and Senior Officials Meeting, within the Dialogue exist other sub-mechanisms such as Intellectual Dialogue (Tokyo Dialogue), the Meeting of Experts, and the Exchange between Foreign Ministers.

THE SILK ROAD DISCOURSE IN PRACTICE – JAPANESE GEOPOLITICS AND GEOECONOMICS IN CENTRAL ASIAN REGION

The main purpose of the Silk Road discourse as a geopolitical, diplomatic, geoeconomic and practical concept is to boost the economy, people-to-people and ideas exchange through interconnectivity. One way of creating interconnectivity is to develop infrastructure among countries. Infrastructural development is also one of Japan's foreign policy goals. In order to respond to infrastructure demands mainly in emerging countries and promote infrastructure exports by Japanese companies, a "Ministerial Meeting on Strategy Relating to Infrastructure Export and Economic Cooperation," consisting of relevant cabinet ministers with the Chief Cabinet Secretary serving as chair, was established within the Cabinet Secretariat in 2013. This approach is thoroughly presented in Japan's Diplomatic Bluebook 2017. Since then, a total of 28 meetings has been held as of the end of 2016, to focus on individual issues, including specific countries and regions, railways, and information communication, in addition to discussing the laying down of "Strategy for Exporting Infrastructure Systems" and following up on them, with the aim of strengthening qualitative and quantitative support through expansion of the risk-money supply, the speeding up of yen loans, expansion of targets for overseas loans and investments, implementing of strategic PR (Ministry of Foreign Affairs of Japan 2017b, p. 310).

When it comes to the Dialogue, infrastructural development was emphasized on many occasions and documents. The Action plan stressed the Dialogue. The fourth Tokyo dialogue was named "Future Improvements to Logistics Infrastructure in the Central Asia Region". Also during the latest, i.e. the 12th Senior Official Meeting held in Dushanbe on 26 January 2018, the importance of transportation and logistical support was underlined (Ministry of Foreign Affairs of Japan, 2018).

Infrastructural projects are financed by ODA programs, ADB injection of capital, Japan Bank for International Cooperation (JBIC), through CAREC and

many other financial institutions and funds. But, among those institutions, projects and areas are overlapping. For example, CAREC demonstrated impressive progress between 1997 and the mid-2010s, evolving from the initial idea of improving regional cooperation between China, Kazakhstan, Kyrgyzstan, and Uzbekistan (ADB 1998) to six fully-fledged connectivity corridors among ten countries. The corridors are both latitudinal (East-West, including China—similarly to GMS) and longitudinal (North-South, including Afghanistan and Pakistan). Regarding infrastructural connectivity, CAREC adopted two main strategies - Railway strategy and Road safety strategy (CAREC). Nevertheless, similar strategies were adopted by ODA. The CAREC's corridors exhibit a degree of similarity with the subsequently launched Silk Road, Economic Belt (2013-present). The similarities between CAREC and more recent BRI disprove the interpretation of Japan's recent infrastructural initiatives as purely catching up with China`s (Murashkin, 2018, p. 464). Also, according to the data available on the CAREC site, ADB, CAREC and the United Kingdom Department for International Development (DFID) have developed the Hasan Abdal-Havelin Expressway (E-35). That is a part of Pakistan economic corridors which was jointly developed by ADB and DFID (ADB, 2017). Furthermore, JBIC pledged to invest $2billion in the port of Turkmenbashi. According to the investment agreement and plan, new shipyards, terminals and additional port infrastructure will be included within the port's construction. The project forms an important part of the Turkmenistan government's strategy to create new high-capacity regional transport infrastructure (Port Technology, 2015). This can be very important for Japan for three main reasons. Firstly, Japan can export infrastructure, `know-how` and modern technologies. From the other side, Turkmenistan is very rich in natural gas, thus Japan can ease the dependence on the Middle Eastern sources where America dictates the conditions of extractions and conveyance (Mitrović, 2005). Finally, this can be a new chapter in Sino-Japanese cooperation or competition, regarding Chinese and Japanese intentions for regional and global orders.

Tetsuro Fukuyama, State Secretary of Foreign Affairs of Japan, stated that Japan through ODA programs implemented numerous projects in the Central Asian region. He underlined renovation, modernization, and enhancing the capacities of airports in Kazakhstan, Kyrgyzstan and Uzbekistan. Furthermore, railway constructions, according to him, were adjusted to geographical and strategic features of landlocked Central Asia. Regarding the fact that railway shipping constitutes 80 to 90% of ground transportation, Japan supported railway construction project in the area between Tashguzar and Kumkurgan in Uzbekistan (Ministry of Foreign Affairs of Japan, 2010a).[11] Besides railways,

[11] The modernization of railway network in Uzbekistan is part of two broader programs known as Railway Rehabilitation Project and Railway Modernization project financed by ADB (ADB, 2010).

ODA programs were also focused on the road infrastructure. In line with that Japanese capital was a big part in the renovation of the road from Bishkek to Osh and the Kok-Art River Bridge on it. The effects were visible in revitalizing north-south passage in Kyrgyzstan, which had been hindered by treacherous mountains. Moreover, a renovation project on the West Kazakhstan road that runs east-west through the country has contributed to smooth distribution in the country's expansive land area. This route is positioned to connect Central Asia with Russia and Europe, and it also functions as a distribution route to neighboring countries. From this viewpoint, promoting efforts towards constructing a Central Asia "Southward Route" in parallel with efforts towards stability in Afghanistan is critical to the continued stability and development of the region (Ministry of Foreign Affairs of Japan, 2010a, Official Development Assistance by Region – Ministry of Foreign Affairs of Japan). It can be underlined that through the Silk Road discourse the infrastructural connectivity will move from individual projects, scattered throughout the region, to the more integrated system of projects spread through the entire region (Janković, 2016, p. 7).

Building and enhancing the infrastructural network is a big part of Japanese efforts to create the Arc of Freedom and Prosperity and to position Central Asia as a Corridor of Peace. Consequently, Central Asia in Japanese discursive perception is defined as a gateway, instead as a shatter belt.[12]

CONCLUSION

Japan wants to establish a double impact on the Central Asian states both in geoeconomy and geopolitics. Simultaneously, Japan is an example of how diplomatic and discursive initiatives supported by geoeconomic resources and strategic thinking can produce beneficial geopolitical influence. Still, Japan has to be more cautious while selecting projects which it will implement in the Central Asian republics. The projects should be based on the needs of both sides, bilaterally or multilaterally, because the improper identification of the field of cooperation will make Japanese involvement less effective despite the scale of the financial resources that may be committed for such projects (Dadabaev, 2008, p. 133).

Introducing *Abenomics* and Abe's Doctrine, Japan changed its course. Namely, from value-oriented diplomacy, official Tokyo started to pursue a pragmatic and functionalistic approach amongst the Central Asian states. As a result, the Silk

[12] According to operational definitions shatterbelt is strategically oriented region that are both deeply divided internally and caught up in the competition between great powers of the geostrategic realms. Gateway states play a novel role in linking different parts of the world by facilitating the exchange of peoples, goods, and ideas. (Cohen, 2008, pp. 48-54).

Road discourse instead of enhancing the Western system of values, such as democracy and human rights, is now more biased towards pragmatic, goal-oriented and Asian business and political practice. Japan understood that through a more pragmatic Silk Road discourse, it would achieve stronger geopolitical, geoeconomic, diplomatic and security influence amongst Central Asian academia, public policy makers and citizenship as well.

In essence, Japanese stronger influence within Central Asia can promote this region more as a geopolitical gateway rather than a shatter belt. The confirmation that Japan perceives Central Asia as a gateway, we can also find in myriads of documents released by Japan or signed with the Central Asian republics. Here we can underline Central Asia as a Corridor of Peace and Stability, the Roadmap for Regional Cooperation in Transport and Logistics, Future Improvements to Logistics in the Central Asian Region and important position of Central Asia within Japanese endeavors to create the Arc of Freedom and Prosperity. The latest confirmation represents the Japanese initiative known as the *Asian Gateway Initiative* whose main geographical scope overlaps with the Central Asian space (Kantei, 2007). It is understandable that official Japan wants to stabilize and enhance the position of the Central Asian republics and the Japanese position amongst them through geoeconomic means. Furthermore, Japan showed us that for geopolitical influence military means are not necessary. It can be achieved through carefully selected and implemented diplomatic initiatives, reinforced by geoeconomic power and interconnectivity projects. In other words, the Silk Road discourse represents the nexus between domestic capital accumulation and intentions to accumulate overseas geopolitical influence through geoeconomic means.

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IZMEĐU GEOPOLITIKE I GEOEKONOMIJE – DISKURS PUTA SVILE U DIPLOMATIJI JAPANA

Apstrakt: Glavni cilj rada je da se kritički osvrne i analizira manifestaciju puta svile u Japanskom spoljnopolitičkom ponašanju, uključujući istovremeno i ravan diplomatije, ali i oblast praktičnih poteza. To će biti učinjeno korišćenjem metode analize sadržaja i pristupa na kojima se zasnivaju kritička geopolitika i geoekonomija. Predloženi metodološki i teorijski okvir su izabrani sa ciljem potvrđivanja generalne hipoteze rada: diskurs puta svile je u službi ojačavanja japanskog geopolitičkog i geoekonomskog pozicioniranja i interkonektivnosti u centralnoazijskom regionu. Prvi deo rada će se baviti analizom značenja diskursa kao društvene konstrukcije i njegove umreženosti sa strateškim manevrima na spoljnopolitičkoj ravni. Ovaj deo rada će nam biti od veliki pomoći prilikom uočavanja važnosti diskursa puta svile u geopolitičkim i geoekonomskim strategijama kreiranih i sprovedenih od strane Japana u regionu Centralne Azije. Drugi deo rada će analizirati razvoj diplomatskih odnosa između Japana i centralnoazijskih država, vremenski počinjući od raspada Sovjetskog Saveza pa sve do današnjih dana. Fokus će biti na multilateralnim inicijativama, na kojima Japan insistira radi ojačavanja bilateralnih veza sa centralnoazijskim republikama. Treći deo rada će biti posvećen predočavanju, objašnjenju i analizi infrastrukturnih projekata koje Japan implementira na teritorijama centralnoazijskih republika. U slučaju Japana, projekti umrežvanja ukazuju na nepobitnu uslovljenost na relaciji geopolitika-geoekonomija.

Ključne reči: Japan, Centralna Azija, diskurs puta svile, diplomatija, geopolitika, geoekonomija, infrastrukturni projekti umrežavanja.

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Review paper

THE IMPORTANCE OF GENDER EQUALITY IN THE COUNTRIES OF LATIN AMERICA AFTER *BREXIT*

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Abstract: The paper points to the importance of gender equality in the Latin American countries after *Brexit* from the standpoint of the profound and tight interconnection of this aspect of equality with normative heterosexuality. Also, the paper offers an explanation for the long-ago introduced hegemonic masculinity which not only led to the formation of society and a state but also contributed to the emergence of capitalism in the period of conquest and colonisation of the future Latin American countries. Capitalism contributed to the creation of capital-based complex and diverse relationships which enabled the processes of national and sub-regional integration to unfold due to the (unwritten) law of hegemonic masculinity. The work of some international organisations, particularly those dealing with economic issues, tacitly relies on the law of hegemonic masculinity. Unlike legal and political sciences in which the gender equality has found its place, the economy still indicates that relationships among individuals within society and a state continue to depend on hegemonic masculinity. It means that economic understanding of gender equality is linked with gender inequality that features old binary relations of public-private, superiority-subordination and productive-reproductive between men and women. Such relations are also characteristic of the Latin American countries.

Key words: gender equality, Latin America, *Brexit*, normative heterosexuality, society, state, international organisations, hegemonic masculinity.

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A NEW PARADIGM ON GENDER EQUALITY AND A STARTING POINT FOR A MORE COMPREHENSIVE UNDERSTANDING OF OVERALL RELATIONS WITHIN A STATE AS WELL AS INTERNATIONAL RELATIONS AFTER BREXIT

Consider the relationships among individuals with equal social status as the basis for establishing a new paradigm on gender equality and a starting point for a more comprehensive understanding of the overall relations within a state as well as broader international relations. The main argument for this assumption, particularly bearing in mind the *post-Brexit* transition period (the 2016 referendum on the United Kingdom exit from the European Union) is not ungrounded: thanks to them, individuals maintain long-term, multiple and intricate ties which are the basis of intra-state relations. The above paradigm and the starting point should be considered in the context of the most recent period of human history after *Brexit,* drawing on this fact.

As research from selected literature indicates, relationships within a state are the result of the dynamics of overall relations development. However, due to the development of transport outside the borders of a state, as well as the improvement of international trade, the national borders have been overcome, leading to the complexity of international relations and the inevitable establishment of the world-system of autonomous states. It can rightly be noted that international relations in the 21st century reached a level of complexity that was unimaginable until the end of the Cold War.

One of the aspects of intra-state relationships is a relationship between genders. The development of the overall relations in a state is based on the fact that both genders build and cultivate mutual relations for the sake of meeting biological and other needs by using natural resources. Dujić (2016, pp. 309-310) gives an explanation of natural resources according to Webster's Dictionary, which refers to 'the natural wealth of a country consisting of land, forests, mineral deposits, water [...]'.

Men and women are the anchors of intra-state relationships, not only because of the exploitation of natural resources but also because of the tendency of their relations to grow into diverse, complex social relations. These are economic, cultural, political, and social relations that, according to Paxton, Hughes and Green (2006, p. 899), were the result of the development of a positive discourse in favour of the general aspiration for '[...] acquisition of political power [...]' of women. Such a discourse led to the perception of the economy, especially the global political economy (GPE), as a concept that reveals that since ancient times, complex social relations within a state, as well as international relations, have been based on laws tacitly established by men.

Gender equality, as a universally accepted global discourse, conceals the paradox that complex social relations within a state, as well as international relations, have not changed much in their essence. Evidence for such a claim includes '[…] gendered configurations of power, knowledge, representation, and identity [...]' (Griffin et al., 2012, p. 5; Griffin, 2010, p. 10). As it will be seen in this paper, social relations continue to be based on the greater role of men compared with women in defining the overall relations in one state, but also international relations, which is contrary to the global discourse on gender equality.

Why is this new paradigm of gender equality the basis for a more comprehensive understanding of the overall relations in one state, as well as international relations? If we perceive *Brexit* as one of the most important events in world history, we note that it did not develop without the greater role of men. Gender equality – an institution of the modern era, generally approved by bilateral and multilateral treaties and ratified in the form of laws in all countries of the world – implies several meanings in itself as a notion, depending on how it is defined. This paper will consider its political, legal and economic aspects, especially in the GPE, which entails a new paradigm of gender equality.

From a political science perspective, the notion of gender equality is related to the definition and continuous implementation of policies that give the possibility and/or provide greater space for the participation of women in the political life of a state. Studies conducted by, for example, Paxton, Hughes and Green show that the discourse on the participation of women in the political life of a state has evolved into a global discourse, regardless of the fact that women are '[...] substantially underrepresented in politics [...]' (Paxton et al., 2006, p. 898). This means that, despite significant progress regarding gender equality, the position of women in a country is still determined by codes imposed by men millennia ago, which have occasionally negatively reflected on the global comprehension of the women's position in a state and in international relations.

The legal aspect of gender equality implies that states are obliged to protect the institution of gender equality through laws and other rules. On the other hand, based on the decisions of international organisations, it is clear that there is a strong global institutionalisation of gender equality. The tendency of universal and general international organisations to address the issue of gender equality is observed, for example, in the preamble of the Charter of United Nations emphasising that it is necessary to '[...] reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small [...]' (The 1945 Charter of United Nations, par. 2).

Unlike in political and legal sciences, in the economy, especially the GPE, gender equality is understood differently. This claim is supported by the fact that the work of certain universal and special international organisations, such as the Organisation for Economic Co-operation and Development, the World Bank and the World Trade Organisation, represents '[...] prominent (...) examples of global governance, which takes shape in a variety of forms.' (Griffin, 2010, p. 87). Although they always publicly advocate the promotion of global discourse on gender equality in the world, in their work these international organisations tacitly rely on an entirely different discourse that is otherwise difficult to notice: normative heterosexuality that tends to become and remain a truly global phenomenon. This discourse, no matter how paradoxical it seems, is also supported by the countries of Latin America.

Gender equality as one aspect of equality in general and as a global discourse is grounded in the long-established normative heterosexuality. It is a very old phenomenon related to '[...] identities and practices of (...) privileged (men, hegemonic masculinity) and subordinated (women, the feminine) [...]' (Spike Peterson, 1999, p. 56). It is a pattern of behaviour accepted in most societies and states for the sake of their survival, according to which the relations between men and women are defined in a way that they are considered desirable and where men are seen as the primary holders of privileges and hegemony in relation to women. From an economic, but also sociological standpoint, regardless of gender equality, these relations are defined as relations with an everlasting tendency to transcend into the sphere of binary divisions of roles between the genders and that are expressed through mutually opposed relations: the current, now tacit old public-private, superior-subordinate and productive-reproductive relations.

The Status of the Latin American Countries Regarding Gender Equality after Brexit

The social status of individuals has for centuries been tied to the status of men as the primary basis for the development of society and a state. The traditionally narrow view that men, thanks to their privileges and hegemony, are solely responsible for the dynamics of the development of society and a state shows how strongly it impeded the establishment of the institution of gender equality. However, this understanding has found its foothold in the discourse of universal but also regional international organisations dealing with economic issues, as can be seen in the implementation of '[...] policy interventions that are intrinsically sexualised, that is, predicated on a politics of normative heterosexuality.' (Griffin, 2007a, p. 221).

Is hegemonic masculinity, in addition to normative heterosexuality, the basis for the social contract and the creation of society and a state? In an effort to provide a positive answer to this question, in her research Youngs points to the existence of a '[...] hierarchy (sexual contract) that has traditionally framed politics (and economics) as predominantly public spheres of male influence and identification [...]' (2004, p. 81). The sexual contract-based hierarchy, in which men are a significant factor in the formulation of politics and economy, is confirmed by the privileges and hegemonic masculinity in the always regulated public-private relations, and the identification of male influence.

The fact that men are a factor in the formulation of politics and economy constitutes the basis for analysing the status of women in society and a state. In their research, Griffin, Parpart and Zalewski point out that '[...] men are persistently deemed to be largely responsible for the perpetration of violence against women [...]' (Griffin et al., 2012, p. 4). This means that privileges and hegemonic masculinity – as a pattern in the formulation of politics and the economy – other than positive, have a negative side that is manifested as violence against women.

The magnitude of the problem of violence against women in the Latin American countries is seen in the fact that, together with Canada and the United States (US), these countries have adopted an important international treaty to protect the institution of gender equality – the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convención de Belém do Pará). The treaty contains a provision which obliges the countries of Latin America to

> "[...] condenan a todas las formas de violencia contra la mujer y convienen en adoptar, por todos los medios apropiados y sin dilaciones, políticas orientadas a prevenir, sancionar y erradicar dicha violencia […]" (OAS, Convención de Belém do Pará 1994, Artículo 7).[2]

The countries of Latin America ratified the Convention in the period from 1994 to 2005 (OAS, Tratados Multilaterales). It is a legally binding international agreement.

Although the Convention is a legally binding international agreement for the Latin American countries, the Inter-American Development Bank (IADB) does not essentially support the generally accepted global discourse on gender equality but advocates a tacit discourse on normative heterosexuality. Promoting and continually advocating the economic growth as an idea finds

[2] '[…] condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence […]'.

its foundation in normative heterosexuality, as well as in hegemonic masculinity. Pointing to the importance of the fully integrated regional market of the Latin American countries (LACFTA), the IADB states that this market, provided it is established as an international organisation and trading block, has '[...] the potential to boost scale, efficiency, productivity, exports, and growth with likely modest economic and political costs.' (IADB, 2017, p. 74).

The capacity of the Latin American countries to work, both individually and collectively, on increasing volumes, efficiency, productivity, exports and growth with the aim of reducing economic and political expenditure, is based on normative heterosexuality. In fact, the promotion of the idea of economic growth by the IADB is fully in line with the increase in the volume, efficiency, productivity, exports and growth of the Latin American countries and is based on an established '[...] logic of compulsory (normative) heterosexuality, where 'sex' produces the 'sexual' to revolve around the signifier of 'sexuality' as heterosexuality.' (Griffin, 2007b, p. 229). The work grounded in the logic of compulsory normative heterosexuality not only of the World Bank, as a universal international economic organisation – which is the subject of thorough research by Griffin – but also of the IADB is related to neo-liberalism that supports the tacit discourse on heterosexuality.

If we relate neo-liberalism to Smith's view, who saw capital as a means of supporting the development of the domestic industry with the aim of gaining the benefit, we observe that capital as a concept is more widely comprehended. Among other things, it relates to the man's satisfaction of his own interests for the better functioning of the community. According to Smith, '(b)y pursuing (man's) own interest he frequently promotes that of the society more effectually than when (the man) really intends to promote it [...] (in order) to trade for the public good.' (2007 [1776], pp. 349-350). This great scholar and the pioneer of contemporary economic thought understood capital more widely - as a public good created by joint efforts in which a man is an essential factor in the achievement of profit, regardless of the far greater importance of his education in the contemporary society and a state.

In terms of the logic of normative heterosexuality, capital can be grasped not only as a public good but also as a tacit reason for the manifestation of hegemonic masculinity – expressed in the form of (unwritten) society and state's laws. A man – as it happens in most cases – strives to remain an (in)direct master in the sphere of public, superior, and productive. However, it is interesting that when instead of a man a woman comes to the sphere – who, according to the logic of normative heterosexuality, cannot become or remain the mistress, for the sake of establishing and maintaining the ancient, overcome hegemonic femininity – the attitude towards capital remains the same. We can find the reason for this in the fact that everything works in

favour of the hegemonic masculinity which strives to put a public good into the sphere of the public, superior, and productive.

On which ground can we see that the law of hegemonic masculinity still exists despite the universally accepted global discourse on gender equality? Although gender equality is ratified by international treaties and state's laws as a desirable aspect of overall relations, the economy and politics consider this institution only an illusion as to the real gender roles in society and a state. As evidence that it is actually a matter of gender inequality in society and a state, we can take, for example, research done by McGuire and Olson, where it is observed that hegemonic masculinity has led to the fact that a man '[...] use(s) some of the (natural) resources (that) he controls to provide public goods that serve the whole society.' (1996, p. 80).

Male endeavour to remain the essential factor – who by means of control uses natural resources for the purpose of making public goods available – contributes to achieving a long process of multi-level integration of society and a state. In the Latin American countries, it is manifested in the definition and implementation of policies aimed at using public goods for the long-term connection of state spaces. Perhaps Argentina is a good example of investing in public goods, such as transport, communications and technology, which is in line with its plan to earmark USD 26.5 billion for this purpose by 2022 on the basis of public-private partnership revenues (MercoPress, 2017).

The result of investing in public goods positively influences the process of multi-level integration of society and state and, consequently, is the basis for the process of sub-regional integration. Together with the countries of South America, Argentina participates in the process of sub-regional integration, *inter alia*, through making defence-related decisions and the strengthening of the gender equality institution in the member states of the Union of South American Nations (Unión de Naciones Suramericanas – UNASUR). In accordance with the UNASUR Constitutive Treaty, the member states have committed themselves to enabling "[...] desarrollo de una infraestructura para la interconexión de la región y entre nuestros pueblos de acuerdo a criterios de desarrollo social y económico sustentables" (Tratado Constitutivo de la UNASUR, Artículo 3, pár. e).[3]

Acting collectively in the international arena, the UNASUR member states strive to achieve mutual physical integration. The proof of their solidarity in the international arena is confirmed by the establishment of the Initiative for the Integration of the Regional Infrastructure of South America (Iniciativa

[3] '[…] development of infrastructure for the interconnection of the region and among our peoples, based on sustainable criteria of social and economic development'.

para la Integración de la Infraestructura Regional Suramericana – IIRSA) at the end of the 20th century. The following step towards South American states co-operation was the establishment of one of the many types of councils within the UNASUR – the South American Council on Infrastructure and Planning (Consejo Suramericano de Infraestructura y Planeamiento – COSIPLAN).

The importance of the COSIPLAN for achieving physical integration of the countries of South America can be seen in the fact that, together with the IADB, it supported the digging of the new tunnel 'Agua Negra' which will link together the road traffic of Argentina and Chile (IIRSA, 2017). This is one of the projects aimed at overcoming the existing geographical barriers to the integration of the UNASUR member states. The confirmation of further cooperation between Argentina, Chile and other South American countries, even after *Brexit,* is reflected in the efforts of these countries to equally include representatives of both sexes in the implementation of mutual integration.

However, while the UNASUR member states, as well as other Latin American countries, can often boast with the progress achieved with regard to the development and improvement of the institution of gender equality, the reality has demonstrated even before *Brexit* that, from a sociological point of view, gender inequality still prevails. The current discourse on normative heterosexuality – which does not exclude the countries of Latin America – encourages the division of roles among the genders that has been created for hundreds of years. The involvement of the countries of Latin America in the actualisation of discourses on normative heterosexuality is undeniable before, during and after their gaining independence.

The institution of gender equality is not only relevant to the Latin American countries individually but also collectively because international organisations – acting as trade blocks – assume the significant participation of women in their work. How the role of women in the work of international organisations of the Latin American countries is important can be seen, for example, in the operation of the UNASUR. According to the provisions of the UNASUR Constitutive Treaty, it is stipulated that the functioning of the trade block depends not only on the participation of men but also women (Tratado Constitutivo de la UNASUR, Artículos 4, 6, 7, 8, 9 y 10).

The participation of women in determining the fate of the societies and states of Central America depends partly on political (in)stability that characterises this part of Latin America. The general opinion is that the states of Central America show a greater inclination towards internal political difficulties and crises. In order to avoid these conditions, the Central American countries participate in the work of the bodies of the transnational

international organisation – The Central American Integration System (Sistema de Integración Centroamericana – SICA) for the sake of collective resolution of individual economic, political and social problems. This includes, in particular, the resolution of gender equality issues both individually and collectively through the SICA body responsible for the strengthening and legal protection of gender equality – The Council of Women's Affairs Ministers (Consejo de Ministras de la Mujer de Centroamérica y República Dominicana – COMMCA).

The introduction of the institution of gender equality in the Latin American countries did not imply the suppression of the dominant role of men and the abandonment of the tacit discourse on hegemonic masculinity – on which the majority of societies and countries of the world are based. Perhaps the best proof for this claim is, as Barry observes, quoted by Rich, a century old and partially overcome phenomenon manifested in the form of '[...] the primacy and uncontrollability of the male sexual drive.' (Rich, 1980, p. 645). The creation and constitution of the Latin American states, as separate territories, on the basis of the sexual drive of men before, during and after gaining independence, is not a novelty: thanks to the greater role of men, these countries are the product of hegemonic masculinity in economy, politics and law.

The explanation of the sexual drive of men, as an essential and lasting component in the functioning of countries, in particular the countries of Latin America, starts from new studies conducted by Blackwood, quoted by Borneman, stating that '[...] the trope of the dominant heterosexual small rests at the core of kinship.' (Borneman, 2005, p. 31). The meaning of the term 'dominant heterosexual man' must not be limited only to kin relations; it must also be extended to the domain of other relations, especially economic and political relations. Normative heterosexuality rests on the domination of men, while women are an irreplaceable link in the sphere of reproduction that is impossible without the sexual desire of the stronger gender.

Studies show that the continuous development of society and state does not depend so much on gender equality, as it is presented in some state and international reports, but also on the tacit discourse on normative heterosexuality. This is supported by the Human Development Report (HDR) published annually by the United Nations Development Programme (UNDP). According to the latest data, Chile and Argentina are ranked 38th and 45th, respectively, and fall into the group of countries with very high human development (HDR, 2016, p. 200).

Other member states of the UNASUR and wider Latin America are ranked into the countries with high and medium human development (HDR,

2016, pp. 200-202). The HDR does not raise the question of the actual importance of gender equality in Latin America and the world but takes the purchasing power parity (PPP) as one of the important criteria for evaluation and, accordingly, the country's ranking by the level of human development. The measurement of PPP of a state is based on the minimum participation of both genders in determining its economic power, which points to the great importance of gender equality.

A deeper analysis, however, reveals that gender equality is not a factor in determining and achieving the economic power of states. More recent research shows that gender equality as an institution was the object of defining relations in society and a state, as well as interstate relations, even before *Brexit*. In the case of the Latin American countries, it is seen that the institution of gender equality is an inseparable part of the development of Latin America, thanks to the legal commitment of the ratified bilateral and multilateral treaties stipulating this form of equality.

Regional Conference on the Status of Women in Latin America and the Caribbean held in 2013 undoubtedly confirms that the Latin American countries are continually working on the cultivation and development of gender equality as an institution. The aim of this meeting was to point out the need to reduce and/or stop violence against women, especially when they find themselves in the public and not the private sphere (UNDP, 2017a, p. 72). Women's endeavour to be equal in the public sphere and, together with men, participate in the dynamic development of society and state leads to the need for the prevailing normative heterosexuality to be gradually redefined in the direction of partial alleviation or complete eradication of hegemonic masculinity for the purpose of giving more room to the institution of gender equality.

In addition to the need to reduce and/or stop violence against women, the UNDP points to a significant tendency to promote the institution of gender equality in the public administration as something belonging to the public sphere. The result of this tendency is '[...] to improve trust between state and society.' (UNDP, 2017b, p. 19). It is possible to build trust between the state and the society, provided that the institution of gender equality is the main pivot in increasing the participation of women in the public sphere.

The discussion on how important the institution of gender equality is in the Latin American countries after *Brexit* can also be held in the context of encouraging the further analysis of the process of national and sub-regional integration of these countries. The selected literature shows that the discourse on gender equality in the Latin American countries supports a gradual process of spreading the global discourse on equality between men and women. The arguments strong enough to support the spread of this

discourse can be found in contemporary research conducted by Paxton, Hughes and Green, stating that '[...] the global institutionalization of women's equality powerfully affects country-level attainment of political power for women.' (Paxton et al., 2006, p. 911).

Global institutionalisation of women's equality implies the attempt to redefine current normative heterosexuality in order for it to be in line with the institution of gender equality. In a rapidly changing world, the global institutionalisation of women's equality aims to allow the participation of women in the political life of a state in the name of compensating for theirs, from a historical point of view, largely marginal role in the public sphere. Observed at the level of general development, the Latin American countries have a chance to build and strengthen a positive attitude towards women's participation.

However, some new research suggests that the Latin American countries do not have a positive attitude towards women's participation in the political life of a state, but shows a tendency to '[...] demonstrate significantly more negative gender ideology views.' (Kunovich and Paxton, 2005, p. 519). These views of gender ideology in the Latin American countries prevent better, more efficient and even more equal participation of women in political life. To overcome this, a state should have a developed democracy and political culture in order for its life to depend on every type of diversity, including gender.

The answer to the question why the Latin American countries do not have a positive attitude towards women's participation in the political life of a state lies in capitalism and relations arising from it, which is characterised by '[...] the dominant mode of production (...) (as) the result (...) a long historical process.' (Navarro, 1979, p. 115). Establishing a dominant mode of production, thanks to a positive attitude towards men's participation, meant creating complex relations: this later inevitably led to the establishment of capitalism, coinciding with the period of conquest and colonisation of the future states of Latin America. Based on the above, it can be concluded that due to the much larger participation of men in its creation and maintenance, capitalism – as a form of capital-based relation – is responsible for the lack of a positive attitude towards the participation of women in the political life of the Latin American countries.

The emergence of capitalism contributed to the affirmation of normative heterosexuality as a strong link in capitalist relations. From the historical point of view, the period of conquest and colonisation of Latin America was characterised by the need for normative heterosexuality to be linked to hegemonic masculinity in order to establish the necessary order resulting in the creation and overall constitution of the Latin American countries. The

fact that current hegemonic masculinity has lost significance to gender equality means that the economic, political and legal establishment of the Latin American countries in most cases does not depend on the full participation of men in the functioning of these states.

Gender equality, as a recognised institution in the world, including the countries of Latin America, does not have the same importance in the economy and in political and legal sciences. The GPE completely differently interprets the institution of gender equality due to the connection with the neoliberal discourse of solving social issues in society and a state (Griffin, 2007a, p. 222). In fact, the GPE relies on a discourse on hegemonic masculinity where social issues are viewed as the reason for the implementation of the (unwritten) law of hegemonic masculinity and which does not exclude the countries of Latin America.

Based on the above, the question to be answered by future research is whether gender equality, as a generally accepted global discourse, is justified given the exceptional importance of the GPE. Hegemonic masculinity, even after *Brexit*, continues to be a key factor in determining the fate of society and a state, including Latin America, for the simple reason that gender equality has not found its foundation in the economy, especially in the GPE. From this, it follows that hegemonic masculinity is *per se* a dogma of the man's irreplaceable role in the creation of society and state, the implementation of the man-created laws and the use of the privileges that make up the world of the man, regardless of whether a man or woman is in power.

CONCLUSION

The equality of individuals among the male population by their social status has for centuries been the basis for the development of society and a state, as well as for the maintenance of established international relations. The involvement of the Latin American countries in the development of societies and states could not be effected without the role of men who confirmed the importance of hegemonic masculinity and normative heterosexuality. Therefore, it can rightly be said that contemporary relations in a state, as well as international relations, continue to be characterised by the prevailing normative heterosexuality, as well as by the institutionalisation of the global discourse on gender equality.

Bearing in mind that normative heterosexuality is an important part of the long process of globalisation, the key question is raised as to whether the countries of Latin America and international organisations deliberately want to extend the actuality of hegemonic masculinity for the sake of a greater

scale of the economy, productivity, labour, and the like. The significance of this issue is based on the analysis of the reality that is often not in line with the explicit global discourse on gender equality. Connell, quoted by Griffin, relates the discourse on hegemonic masculinity to 'transnational business masculinity' characterised by '[...] increasing egocentrism, very conditional loyalties (...), and a declining sense of responsibility for others [...]' (Griffin, 2012, p. 14). While the development of relations in a state and beyond, including the states of Latin America, flows with a certain dynamics, gender equality has found its place in political and legal sciences and contradicts hegemonic masculinity that continues to play the role of an important factor in the economy, especially in the GPE.

The significance of gender equality in the Latin American countries after *Brexit* depends on what their actual attitude towards normative heterosexuality is. If gender equality is one of the necessary prerequisites for the development of modern society and a state, then the established hegemonic masculinity should give way to various forms of equality, including the gender equality, in the GPE as well. This means that the current discourse on normative heterosexuality should be in line with gender equality in order for the countries of Latin America to benefit from the equality of men and women from an economic point of view as well.

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ZNAČAJ POLNE RAVNOPRAVNOSTI U DRŽAVAMA LATINSKE AMERIKE NAKON *BREXIT-a*

Apstrakt: U radu se ukazuje na značaj polne ravnopravnosti u državama Latinske Amerike nakon Brexit-a s aspekta duboke i tesne povezanosti ovog oblika ravnopravnosti s normativnom heteroseksualnošću. Osim toga, u radu se daje objašnjenje na osnovu koga je davno uspostavljen hegemonistički maskulinitet doveo ne samo do formiranja društva i države, već je doprineo i nastanku kapitalizma u periodu osvajanja i kolonizacije budućih država Latinske Amerike. Kapitalizam je uslovio stvaranje raznovrsnih i složenih

odnosa zasnovanih na kapitalu koji je omogućio procese nacionalnih i (pod)regionalnih integracija zahvaljujući (nepisanom) zakonu hegemonističkog maskuliniteta. Rad pojedinih međunarodnih organizacija, posebno onih koje se bave ekonomskim pitanjima prećutno se zasniva na zakonu hegemonističkog maskuliniteta Za razliku od političkih i pravnih nauka u kojima je polna ravnopravnost našla svoje mesto, ekonomija i dalje pokazuje da odnosi među pojedincima u društvu i državi nastavljaju da zavise od hegemonističkog maskuliniteta. To znači da se ekonomsko poimanje polne ravnopravnosti vezuje za polnu neravnopravnost koju karakterišu stari binarni odnosi javnog-privatnog, nadređenosti-podređenosti i produktivnog-reproduktivnog između muškarca i žene. Ovi odnosi su takođe karakteristični za države Latinske Amerike.

Ključne reči: polna ravnopravnost, Latinska Amerika, *Brexit*, normativna heteroseksualnost, društvo, država, međunarodne organizacije, hegemonistički maskulinitet.

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ALTERNATIVE DISPUTE RESOLUTION IN CULTURAL HERITAGE DISPUTES – TOWARDS A SPECIALISED TRIBUNAL?

Vanja PAVIĆEVIĆ[1]

Abstract: This paper deals with problems arising from a deficiency of an effective mechanism dedicated to alternative resolution of disputes regarding cultural heritage. Firstly, it analyses relevant international cultural heritage conventions and dispute resolution procedures contained therein. Secondly, it examines the alternative dispute resolution methods often used in this area, and finally, it presents contemporary proposals in this regard and suggests the establishment of a new, specialised arbitral tribunal.

Key words: Cultural heritage disputes, UNESCO Conventions, good offices, negotiation, conciliation, mediation, arbitration, specialised tribunal, culture-sensitive approach.

INTRODUCTION

With the beginning of the 20th century, a growing awareness has emerged regarding the need for a specific legal regime devoted solely to the protection of cultural heritage, which led to the recognition of its special legal status within a national level. However, having in mind the cross-border character inherent to cultural heritage and cultural objects[2], on the one side, with the frequent

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[2] In this paper, notions of 'cultural heritage', 'cultural objects' and 'cultural property' will be used interchangeably, although they may carry different meaning which exceeds the scope of this subject matter.

incompetence of domestic courts when dealing with specific questions, on the other, the establishment of international rules of procedure became a strong necessity. The result of this gradual process is that the international law concerning cultural heritage has emerged as a distinct field of international law (Chechi, 2014, p. 65).

Consequently, in the last thirty years, alternative dispute resolution (ADR) has gained increased attention, especially because the international cultural heritage law suffers from a deficiency of an effective mechanism dedicated to the resolution of disputes. The following sections will be devoted, firstly, to the analysis of the relevant international cultural heritage conventions and dispute resolution procedures contained therein. The second section will be devoted to the alternative dispute resolution methods which are often used in this area, and finally, the third section will deal with the proposal to establish a new arbitral tribunal specialised for cultural heritage disputes. The relevant international conventions which will be analysed in this regard have been adopted within the auspices of UNESCO and address different questions of cultural heritage protection, hence, providing a complex-web of conventional structures (Forrest, 2010, p. 388): those are the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (henceforth: the Hague Convention), the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (henceforth: the 1970 UNESCO Convention), the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (henceforth: the 1972 UNESCO Convention), the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (henceforth: the 1995 UNIDROIT Convention), the 2001 Convention on the Protection of the Underwater Cultural Heritage (henceforth: the 2001 UNESCO Convention) and the 2003 UNESCO Convention.

RELEVANT INTERNATIONAL CULTURAL HERITAGE CONVENTIONS

The Convention for the Protection of Cultural Property in the Event of Armed Conflict

The unprecedented destruction wrought in the First World War and the wholesale destruction, pillage, plunder and looting of cultural heritage during the Second World War, galvanised international action to create an international regime that would protect cultural heritage during armed conflicts - the 1954 Hague Convention (Forest, 2010, p. 56). The aim was, *inter alia*, to overcome the shortcomings in the Hague Conventions from 1899 and 1907, but also to

introduce the revolutionary notion of '*the cultural heritage of all mankind',* which was emphasised in the preamble.

However, despite success in mentioned areas, the Hague Convention did not impose a binding mechanism for dispute resolution. Instead, in its Article 22 it states: 'Protecting Powers shall lend their *good offices* in all cases where they may deem it useful in the interests of cultural property, particularly if there is disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention or the Regulations for its execution', while Article 14 of the Regulations for the Execution of the Convention establishes the procedure in the case of objection given by the State Party regarding the registration of cultural property in the International Register of Cultural Property under Special Protection.

Therefore, this Convention is supplemented with the First Protocol, which imposes strict prohibitions for retaining cultural property as war reparations, and the Second Protocol, which is especially relevant due to the following facts: 1) it enhances the scope of application to the event of an armed conflict not of an international character which occurs within the territory of one of the Parties; 2) it establishes individual criminal responsibility for serious violations; 3) and the most important, for this paper's purpose, it offers various alternative possibilities for dispute settlement. Conciliation and mediation powers are distributed between the Protective Powers and the Director-General, while the chairman of the newly-established Intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict 'may propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for the protection of cultural property, if considered appropriate, on the territory of a State not party to the conflict.'

The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property

The 1970 UNESCO Convention was the immediate response to the concern with the growing market demand for cultural heritage and the resulting illicit trade, thus probably it represented the most important international instrument dealing with the problem of the illicit movement of cultural heritage, during peacetime. Therefore, it is somewhat surprising that the question of dispute settlement is being addressed at only one point – Article 17 (5) states that 'at the request of at least two States Parties to this Convention which are engaged in a dispute over its implementation, UNESCO may extend its *good offices* to reach a settlement between them' (Forrest, 2010, p. 166).

The emphasis on 'diplomatic cooperation' rather than the judicial settlement of disputes was confirmed in 1978 when The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP) was created (Chechi, 2014, p. 102). Its mandate was, *inter alia*, to 'assist the UNESCO Member States in dealing with cases falling outside the framework of existing – non-retroactive – conventions, such as the disputes concerning historical cases of cultural objects lost as a result of colonial or foreign occupation, or as a result of illicit appropriation prior to the operation of the 1970 UNESCO Convention'.

However, in 2005 the Statute of the Committee was amended, thus the Committee was empowered to 'submit proposals with a view to *mediation* or *conciliation* to the Member States concerned'. The UNESCO Member States and Associate Members of UNESCO could represent not only their own interests, but also the interests of public or private institutions located in their territory or the interests of their nationals. Nevertheless, this provision confirms the State-centric approach of mediation and conciliation procedures: States remain the protagonists of the dispute settlement process - as a result, the mediatory and conciliatory functions of the Committee will not apply to cases where the holder of a contested object is an individual (Chechi, 2014, p. 106).

The Convention on Stolen or Illegally Exported Cultural Objects

Having in mind the fact that the 1970 UNESCO Convention, among other shortcomings, does not deal with private actions, the 1995 UNDIROIT Convention is drafted in order to reach a compromise between market states[3] and source states[4], but at the same time, to provide a framework for international litigation (Blake, 2015, p. 41) – claims for restitution of stolen objects can be filed by States, individuals, and legal entities, while in the case of illicitly exported cultural objects only States can be entitled to submit a claim. The 1995 UNIDROIT Convention provides in its Article 8 that claims 'may be brought before the courts or other competent authorities of the Contracting State where the cultural object is located, in addition to the courts or other competent authorities otherwise having jurisdiction under the rules in force in Contracting States' and that the state parties 'may agree to submit the dispute to any court or other competent authority or to arbitration', but still with no instruction regarding arbitration rules.

[3] States which usually advocate universal attainability and free market of cultural goods, such as the US, Japan, Germany, Switzerland etc.

[4] States which own plenty of cultural heritage and thus take a retentionist, nationalist view towards preserving it, such as China, Italy, Mexico, etc.

However, the 1995 UNIDROIT Convention has succeeded in achieving a delicate compromise between the different interests of the source and market nations and between civil and common law jurisdictions, (Chechi, 2014, p. 108) personified in the clash between the *nemo dat quod non habet*[5] principle and *bona fide* of the purchaser. It is important to emphasize that the 1995 UNIDROIT Convention does not attempt to pre-empt the 1970 UNESCO Convention, rather the two treaties tend to complement each other, thus to create a legal amalgam constituted of public and private law mechanisms.

The Convention Concerning the Protection of the World Cultural and Natural Heritage

The idea of '*cultural heritage of all mankind',* which was introduced in the 1954 Hague Convention, was further elaborated in The Convention Concerning the Protection of the World Cultural and Natural Heritage, known as the 1972 UNESCO Convention. This document recognized the interest of humankind as a whole, therefore it established an international regime of cooperation and assistance between State parties, in order to protect the cultural and natural heritage of 'outstanding universal value'. While it has been emphasized that international community carries the duty to cooperate in this regard as an *erga omnes* obligation, the 1972 Convention still remains silent regarding dispute settlement clauses, thus it has often been described as a soft law instrument. The most effective enforcement mechanisms do not, therefore, lie in the hands of State Parties, but in the hands of the World Heritage Committee, which is established as an executive body of the Convention with the power to place a cultural heritage site on the Danger List[6] and the power to remove a property from the List itself (Forrest, 2010, p. 278). Evidently, a diplomatic way of dispute settlement is characteristic for UNESCO, but it is also subjected to certain criticism for the fact that the Committee is composed of State representatives, hence loaded with political considerations.

[5] *Nemo dat quod non habet* (literally meaning "no one gives what he does not have") is a legal principle which states that the purchase of a possession from someone who has no ownership right to it also denies the purchaser any ownership title.

[6] Under the 1972 World Heritage Convention, a World Heritage property can be inscribed on the List of World Heritage in Danger by the Committee, when it finds that the property is being exposed to ascertained or potential danger.

The Convention on the Protection of the Underwater Cultural Heritage

In 2001, the UNESCO Convention was enacted by the General Conference of UNESCO, in order to, *inter alia*, deal with the problems left unresolved by the United Nations Convention on the Law of the Sea (UNCLOS), but also as the first legal framework created to internationally protect underwater cultural heritage. As far as the dispute settlement is concerned, Article 25 establishes that disputes between contracting states concerning the interpretation or application of the Convention are subject to 'negotiations in good faith and other peaceful means of settlement of their own choice'. If negotiations do not settle the dispute within a reasonable amount of time, the state parties may agree to submit it to UNESCO for mediation.

If the parties do not resort to mediation, or if mediation fails, the dispute settlement provisions provided in UNCLOS apply *mutatis mutandis* to any dispute between states parties to the 2001 UNESCO Convention, concerning the interpretation or application of the 2001 UNESCO Convention, whether or not they are also parties to UNCLOS. In that case, the State parties could choose between four dispute settlement procedures: The International Tribunal for the Law of the Sea, the International Court of Justice, an arbitral tribunal constituted in accordance with Annex VII, or a special arbitral tribunal constituted in accordance with Annex VIII to UNCLOS. However, the 2001 Convention dispute settlement is limited to inter-State claims, whereas strictly private disputes, such as those between competing salvors, lie beyond the treaty's competence (Chechi, 2013, p. 185).

MOST FREQUENTLY USED ADR OPTIONS IN CULTURAL HERITAGE DISPUTES

Good offices and mediation

As illustrated above, provisions on good offices are provided by the 1954 Hague Convention, its Second Protocol, and by the 1970 UNESCO Convention. Good offices are often understood as a mere form of mediation. However, there is a difference – a third party while lending its good offices acts as some sort of courier aiming to bring disputants, which are not in contact due to the unresolved issues, to the negotiating table. On the other side, if the offer of good services is accepted successfully, mediation occurs where the active role of a neutral third party (a state or an individual) is important in reaching a compromise solution. Thus, it may be asserted that good offices represent more likely a stage towards mediation rather than a synonym.

Passing to mediation, the ability to create value through the meditation process is particularly suitable to Holocaust-era disputes as well as disputes between first nations or indigenous peoples and drug/pharmaceutical companies, and/or large-scale companies and power providers (Hoffman, 2006, p. 464). The reason behind it is that indigenous and traditional communities consider themselves in a weaker bargaining position than industry members, thus they will rather choose neutral, affordable and third-party assistance proceedings (Wichard, Wendland, 2006, p. 476). Mediation certainly represents a highly flexible, informal and effective manner through which disputants can obtain a mutually satisfactory solution while addressing not only their legal positions but also numerous ethical, moral and cultural issues.

The International Council of Museums (ICOM) and the World Intellectual Property Organisation Arbitration and Mediation Center (WIPO) have developed a special mediation process for art and cultural heritage disputes with a clear and efficient procedural framework set out in the ICOM-WIPO Mediation Rules. ICOM and the WIPO Center also provide their "Good Offices" to ease the relations between the parties to a dispute and provide procedural advice to facilitate the submission of disputes to mediation on a confidential basis. Additionally, disputants have the possibility to combine this ICOM-WIPO Mediation procedure with other procedures under the auspices of the WIPO ADR Service for Art and Cultural Heritage (such as WIPO Arbitration, Expedited Arbitration or Expert Determination.) Nevertheless, it has been emphasized that since cultural property disputes are often politically loaded, the involvement of ICOM in this arena would jeopardize the organisation's prestige (Shehade, 2016, p. 347).

Negotiation and conciliation

Conciliation, on the other hand, appears not to be so widespread in this field. It involves a procedure in which a body (often called the commission), examines the dispute, and concerning all the legal and factual circumstances suggests the non-binding solution, thus representing a combination of mediation and inquiry commission. Conciliation seems particularly appropriate in sensitive cases where no legal basis exists, for example, where the statute of limitations has expired but also as an instrument for avoiding disputes. Negotiation represents the most frequently employed means of dispute resolution with respect to restitution claims and has also sometimes led to bilateral arrangements between disputants.[7]

[7] One of the most notable in this regard is the agreement between Italy and the United States from 2001.

It allows the disputants to participate in direct negotiations rather than leaving the outcome to a third party, therefore, it encourages mutual understanding, dialogue and respect for the different backgrounds of the parties.

Arbitration

In the cultural heritage law, much attention is dedicated to this settlement method because, *inter alia*, it represents a combination of formal and binding decisions,[8] like in the court proceedings, but also manifests a certain amount of flexibility. It is often underlined that only through an international arbitration tribunal, contesting parties will be able to achieve the best and most equitable results because arbitration represents a superior forum to resolve the legal questions raised in a cultural property dispute under the current international framework (Gegas, 1997, p. 154). Arbitration shares some common advantages with mediation, such as confidentiality and efficiency,[9] but still, there are some differences – while in mediation the parties can negotiate and resolve any possible issue related to the dispute, the arbitral tribunal is limited to the request for relief and cannot go outside of its scope.

TOWARDS A SPECIALISED ARBITRAL TRIBUNAL AS AN APPROPRIATE FORUM?

Having in mind that the role of UNESCO in the normative conventional regimes is rather modest, limited to requests for technical assistance (Forrest, 2010, p. 418) and the States' hesitations in filing a dispute to the existing international organisations, it became obvious that centralised, efficient and independent authority is a necessary element in international cultural heritage disputes. Therefore, scholars and professionals in this area have put forward different solutions. Chechi, for example, argues that cross-fertilization, the practice through which judges - whether belonging to the same legal system or not – refer and borrow decisions from each other in order to better cope with the disputes pending before them, together with the common rules of adjudication might ultimately lead to the development of a *lex culturalis* – that is, a composite body of rules aiming to enhance the protection of cultural heritage. He suggests that UNESCO could play a decisive role by introducing two new

[8] The Arbitral tribunal renders a final and binding decision on the dispute which can be internationally enforced under the 1958 New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards.

[9] However, recent trends show that arbitral awards tend to be published, except in the cases when the parties are explicitly against.

instruments: a list of rules to guide adjudicators as they handle cultural heritage disputes and a database of successful examples of adjudication (Chechi, 2014, pp. 200-312).

On the other hand, some scholars advocate for establishing a new, international court with exclusive jurisdiction over cultural property issues in a form of a supranational body, which would have the ability to perform government-like functions (Parkhomenko, 2001, p. 159). However, in the realm of international relations, it seems that States are reluctant to endanger their sovereignty by accepting the compulsory jurisdiction of the new international court. Cultural heritage disputes involve many branches of international law, such as human rights law, environmental law, the law of State succession, treaty law, etc. thus it could be argued that disputants would be reluctant to agree on submitting a dispute to a specialised court because of the belief that it would be unable to understand and accommodate their concerns (Chechi, 2014, p. 213). Also, differences between market and nation states are sometimes irreconcilable, so the reluctance of former colonial powers to entrust the control over the proceeding to a new court certainly does not contribute to dispute settlement. According to *ArThemis*[10], states are more inclined to resolve a dispute via the alternative dispute resolution methods, rather than traditional, adversarial litigation, as evidenced by the great number of cases resolved through negotiations and diplomatic channels. Moreover, with the exception of the European Court of Human Rights and the European Court of Justice, international courts are generally not an appropriate forum for the non-state entities. In the end, whether it is the judicial or the non-judicial means of the settlement being chosen by the states, that choice is voluntary. However, plenty of available alternative dispute settlement options and a possibility to combine them while at the same time controlling the course of the dispute, makes alternative means of cultural heritage dispute resolution a more suitable option.

An appropriate solution for the wide range of cultural heritage disputes would be the composition of a new, specialised arbitral tribunal. The tribunal could be equipped with specific rules of procedure and a multistage structure. For example, in the first instance, disputed parties would enter into the negotiation or conciliation phase. In the case of an unsuccessful outcome, they would proceed towards mediation. Eventually, in the absence of the agreement disputants could choose arbitration as a final and binding stage in the process of resolving a dispute. Disputants would have the chance to choose experts, scholars and practitioners on cultural heritage law as conciliators, mediators or

[10] ArThemis is a fully searchable database containing case notes about art and cultural property disputes settled through alternative resolution methods or traditional judicial proceedings.

arbitrator, which is a great advantage compared to litigation where judges are often not equipped with much needed expertise on this subject. An alternative dispute resolution system which is confidential and tailored to the parties' needs, but still binding in the last (arbitral) instance, would offer them a possibility to participate actively in resolving their dispute, while at the same time controlling the proceedings course.

Furthermore, with the exception of the 1995 UNIDROIT Convention, none of the above instruments allow non-state entity claims, which is a major setback. The field of cultural heritage law is pervaded with numerous stakeholders and their multiple interests - individuals, states, indigenous populations, museums, galleries, auction houses, libraries, academic institutions, ethnic groups, etc. Including non-state entity claims would represent an added value and could be more efficiently achieved through a specialised tribunal. In addition, it is of the utmost importance to acknowledge not only legal and political facts, but also ethical, moral, historical, and cultural considerations which shaped the dispute in question, which can be achieved by applying the culture-sensitive approach.

Moreover, this multistage, consensual structure of the tribunal would certainly encourage an amicable solution, cooperation and an open-dialogue atmosphere in comparison to the traditional adversarial litigation based on a strictly legal approach where antagonism between the parties is inevitable. The tribunal would represent an attractive and neutral forum, capable to tackle all aforementioned factors, but also to provide an incentive to states, which are often hesitant in giving their trust to national courts and to the often passive international organisations. In that manner, the tribunal could contribute to reconciliation through practicing cultural diplomacy, thus having a positive impact on the reputation and mutual trust between states and other disputants. However, in order to ensure that cultural heritage disputes are impartially and effectively resolved, it is important that these disputes be submitted to a single arbitral body embodied in a specialised tribunal. Otherwise, the multiplicity of authorised tribunals would surely decrease the possibility of reaching a legitimate solution through uniform interpretations of UNESCO conventions. At the present moment, in the absence of such specialised tribunal, it seems that the Permanent Court of Arbitration (PCA) may serve as an excellent example of an international body capable of handling cultural heritage disputes, given its widely accepted membership,[11] as well as the variety of offered legal services. PCA represents the first permanent intergovernmental body founded to assist States in resolving disputes through peaceful means, such as arbitration,

[11] At the moment (December 2018) PCA has 121 Contracting Parties which have acceded to one or both of the PCA's founding conventions (1899 and the 1907 Convention for the Pacific Settlement of International Disputes.)

conciliation, mediation and fact finding, but in time, has expanded its jurisdiction to private parties also. Furthermore, in 2003, PCA organized its Fifth International Law Seminar, choosing as its topic: "The Resolution of Cultural Property Disputes". It was noted that PCA may be well positioned to act as an effective platform for resolving cultural heritage disputes (Daly, 2006, p. 465).

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ALTERNATIVNO REŠAVANJE SPOROVA U PRAVU KULTURNOG NASLEDJA – KA SPECIJALIZOVANOM TRIBUNALU?

Apstrakt: Ovaj rad prikazuje problem koji proističe iz nedostatka efikasnog mehanizma posvećenog alternativnom rešavanju sporova iz oblasti kulturnog nasleđa. Prvo, analiziraju se relevantne međunarodne konvencije I procedure za rešavanje sporova koje su u njima sadržane. Zatim, ispituju se alternativni metodi rešavanja sporova koji su najčešće korišćeni u ovoj oblasti, I konačno, izlažu se savremeni predlozi u tom pogledu, te se predlaže uspostavljanje novog, specijalizovanog arbitražnog tribunala.

Ključne reči: Sporovi u oblasti kulturnog nasleđa, UNESKO Konvencije, dobre usluge, pregovori, mirenje, posredovanje, arbitraža, specijalizovani tribunal, kulturno osetljiv pristup.

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Review paper

RESERVATIONS TO MULTILATERAL TREATIES IN THE FIELD OF HUMAN RIGHTS IN THE PERSPECTIVE OF THE FRAGMENTATION OF INTERNATIONAL PUBLIC LAW

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Abstract: The present work deals with the institution of reservation, as established in the Vienna Convention of the Law of Treaties of 1969, and its application to human rights treaties. To this end, an analysis of the general aspects of reservations according to general international law is made to demonstrate how its application to regional rights treaties, fundamentally by the jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights, entails their own criteria and re-conceptualizations that have become signs of the phenomenon identified as the fragmentation of International Law across institutional and substantive dimensions. However, the article also expresses doctrinal positions and practices that defend elements of complementarity between the system of general international law and the subsystem of human rights in relation to reservations, so that the application of the general regime of reservations to this type of treaties takes into account their characteristics with regard to their object and purpose.

Key words: reservations, multilateral treaties, admissibility, restriction, fragmentation, Vienna Convention on the Law of Treaties, European Convention on Human Rights, American Convention on Human Rights, European Court of Human Rights, Inter-American Court of Human Rights.

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INTRODUCTION

A treaty is a source of international law, and, as such, governs to a substantial degree the relations existing between the independent States of the world (Meek, 1955, p. 40). The States thus willingly undertake their obligations by concluding treaties among themselves. However, not all States want to undertake new obligations for different reasons: sovereignty conception, political reasons, human rights conception, etc. In those cases, they want to exempt themselves from particular provisions of one treaty. In these cases, they use their *right to reservations*.

From the very beginning, it was admitted that the matter of reservations is one of the most complex areas of international public law. Reservations present the formal limitation of the legal effect of a part of the whole treaty provisions in terms of their particular aspect (Milisavljević, 2010, p. 13). More concretely, according to Article 1.1 of the Guide to Practice on Reservations to Treaties, "'Reservation' means a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty or by a State when making a notification of succession to a treaty, whereby State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization". Thus, international public law formally gives the possibility to the States to decide upon their duties.

Before the codification of the rules on treaties by three Vienna conventions (Vienna Convention on the Law of Treaties, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations and Vienna Convention on Succession of States in Respect of Treaties) and within them, regarding the rules on reservations, States developed a certain practice considering the use of reservations. Some of these rules converging from States practice can be seen as customary law (Owen, 1929, pp. 1086-1114). But multilateral treaty reservations are generally linked to the United States of America's declaration relating to the acceptance of the compulsory jurisdiction of the International Court of Justice (Laam, 2006, p. 332). With the foundation of the United Nations, and with its work on the huge contribution to the codification of international law (a particular tribute to the International Law Commission), the States participated in negotiation and conclusion of numerous treaties with an aim to regulate their rights and obligations as primary subjects of international public law.

However, the proliferation of international relations based on the United Nations Charter and its principle of promotion of cooperation among States

also pushed forward the specialized cooperation. Specialized cooperation is to be translated into two directions: regional and particular cooperation. While regional cooperation results in the creation of intergovernmental organizations assembling States of one region such as the Council of Europe, Organization of American States, etc., the particular cooperation results in the proliferation of specialized areas of international public law such as International human rights law, international humanitarian law, international environmental law, etc. All those are attempts of States to elaborate more concrete rules on particular provisions of universal international public law. For example, while the International Covenant on Civil and Political Rights, accepted by almost all States in the world, elaborate the right to life permitting the existence of capital punishment, the Council of Europe system of human rights protection, based on the European Convention on Human Rights and its Protocols, does not permit the existence of the capital punishment. While the United Nations Charter contains the principle on the promotion and respect to human rights, a series of international treaties elaborate particular human rights provisions.

Even if it can be considered that the proliferation of international law rules enriches international law itself, the problem of proliferation of the above-mentioned rules was recognized as problematic to the unity/universality of international law, because international law is supposed to be applied equally on all its subjects (at least on its primary subjects - States, based on the principle of sovereign equality of States). With regard to the *right to reservations*, it cannot be said that all the subjects of international law can be equal, because some of them undertake particular obligations, and others hesitate to do it or constantly refuse to do it. As the human rights treaties do not imply the principle of reciprocity when one Contracting Part is not executing its obligation, because of its noble character - to protect human beings, but however a lot of them give the possibility to Contracting Parties to formulate reservations, it would be of interest to analyze the impact of reservations to human rights treaties to the fragmentation of international public law.

Firstly, it is important to consider the criteria for the admissibility and restrictions to reservations with regard to the Vienna framework and then to analyze the relationship among Contracting Parties when a valid reservation is formulated. Following the assessment of reservations, the formal and substantive aspects of the fragmentation will be introduced. Finally, the fourth part of the article will be dedicated to concrete examples of the case-law of the European and the Inter-American Court for Human Rights regarding their interpretation of reservations to the European and American Convention on Human Rights with regard to the fragmentation of international public law.

ADMISSIBILITY AND RESTRICTIONS TO RESERVATIONS

The notion of admissibility in this part of the article mainly refers to the situations when a reservation can be used by contracting parties and the notion of restriction is related to the particular and limited number of cases when a reserve is prohibited.[3] Admissibility criteria is a validity test denoting when the formulations of reservation can be made in relation to objective law norms, so it does not deal with the opposability of reservations.

Not all reservations to multilateral treaties are acceptable under the Vienna Convention on the law of treaties (VCLT). Article 19 of the above-mentioned Convention cites three cases when reservations are acceptable: when reservations are not prohibited by the treaty, when the treaty provides that only specified reservations which do not include the reservations in question may be made or in cases not falling under two previously mentioned situations, and when reservations are not compatible with the object and the purpose of the treaty. First two situations seem to be very clear: the treaty itself permits or prohibits reservations. For instance, the Rome Statute of the International Criminal Court contains the explicit prohibition of the use of reservations in its Article 120: *No reservations may be made to this Statute*. The second situation when a treaty provides that only specified reservations can be made means that some reservations are explicitly permitted while all others are implicitly prohibited. At the time of the adoption of the European Convention on Human Rights, State Parties formulated the article 64 as follows: "Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision, Reservations of a general character shall not be permitted under this article" (Korkelia, 1951, p. 442). In this case, reservations were permitted in case of incompatibility with national laws of Contracting Parties, which concretely means that there were particular conditions to the formulation of reservation.

However, some treaties do not contain provisions on either permission or prohibition of reservations. This legal lacuna triggered the International Court of Justice to deliver its consultative opinion on "Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide" (1951) where it underlines, while taking into consideration the object of the Convention as well, that "the object and purpose of the Convention thus limit

[3] Special Rapporteur Alain Pellet for the law and practice relating to reservations to treaties opted for the neutral notion in the Guide to Practice on Reservations to Treaties by using the term validity.

both the freedom of making reservations and that of objecting to them".[4] Furthermore, the Court stated that "…on account of its abstract character, cannot be given an absolute answer. The appraisal of a reservation and the effect of objections that might be made to it depend upon the particular circumstances of each individual case".[5] This advisory opinion, without doubt, influenced the provision of Article 19 (c) which says that the reservation must be compatible with the purpose and the object of the treaty, and it contributed, generally speaking, to the unification of the law of reservations (Milisavljević, 2010, p. 9). It also affirms the traditional rule on reservations which excludes the general reservations meaning that one State cannot be Contracting Party of a treaty while refusing to accept its core provisions (Pellet, 2002, p. 487).

The already mentioned provision on the admissibility of reservation of the VCLT is confirmed in the Vienna Convention on the Law of Treaties between States and International Organizations and States or between International Organizations (1986). Furthermore, the Vienna Convention on Succession of States in Respect of Treaties (1978) confirms the VCLT definition of the admissibility of reservations. However, although the three conventions contributed to the codification of the law of reservations, their use in international legal life used to reveal practical difficulties of their use. The incomplete and sometimes obscure character of the rules embodied in the Vienna Conventions motivated the inclusion of the law and practice relating to reservations to treaties to the agenda of the International Law Commission (ILC) in 1993 (Pellet, 2013, p. 1063).

One of the major challenges of the ILC's work on its Guide to Practice on Reservations to Treaties was to find the middle way between the claim that human rights law is a special regime and the unity of international public law (Pellet, 2013, p. 1077). That stand on the exclusion of reservations is particularly underlined in the Human Rights Committee's General Comment No. 24 (Ziemele, Lasma, 2013, p. 1136).[6] Its general claim is that human rights need special rules rather than the outdated Vienna framework (Milanović,

[4] Advisory Opinion of May 28th, 1951, "Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide", Reports of Judgements, Advisory Opinions and Orders, 1951, p. 24. Accessed 19 January 2019, from https://www.icj-cij.org/files/case-related/12/012-19510528-ADV-01-00-EN.pdf .

[5] Ibid., p 26.

[6] UN Human Rights Committee (HRC) (1994, 4 November), CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, CCPR/C/21/Rev.1/Add.6. Accessed 19 January 2019, from https://www.refworld.org/docid/453883fc11.html.

Sicilianos, 2013, p. 1057). In the perspective of the unity of international public law, this exception cannot be acceptable. So, the Special Rapporteur Allain Pellet did its best to conciliate two positions, without changing the provisions of the Vienna Conventions. According to the Guide, Article 19 VCLT should be regarded as laying down *objective* criteria for the validity of reservations, while subjectivity is still left to the interpreter.[7]

The Pellet's guidelines also deal with reservations to provisions setting forth rules of *jus cogens* non-derogable rules. The most important observations are that "A State or an international organization may not formulate a reservation to a treaty provision which sets forth a peremptory norm of general international law" and "A State or an international organization may formulate a reservation to a treaty provision relating to non-derogable rights provided that the reservation in question is not incompatible with the essential rights and obligations arising out of that provision. In assessing the compatibility of the reservation with the object and purpose of the provision in question, account must be taken of the importance which the parties have conferred upon the rights at issue by making them non-derogable".[8] The second case once again gives voice to the interpretation of the object and purpose of the treaty.

It is important to mention that States are not always willing to renounce of the part of its sovereignty and sometimes they use other unilateral acts different from reservations - declarations which are not defined by the Vienna law of treaties (1969, 1978 and 1986 Conventions) (Milisavljević, 2010, pp. 52-73; Šošić, 2014, pp. 641-665). The Guide to Practice on Reservations to Treaties thus deal with interpretative declarations too. The fact that States and International Organizations have right to formulate reservations (*right to reservations*) does not mean, however, that those unilateral acts will be opposable and it implicates the right to oppose to those reservations, which will be discussed in the following part of the article.

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[7] United Nations. (2005, June). Reservations to Treaties. Tenth report on reservations to treaties by Mr. Alain Pellet, Special Rapporteur, DOCUMENT A/CN.4/558 and Add.1–2, p. 175.Accessed 19 January 2019, from http://legal.un.org/ilc/documentation/english/a_cn4_558.pdf . "The non-derogable nature of a right protected by a human rights treaty does not in itself prevent a reservation from being formulated, provided that it applies only to certain limited aspects relating to the implementation of the right in question; but it draws attention to its importance and constitutes a useful guide for assessing the criterion of the object and purpose of the treaty."

[8] Ibid., p. 176.

MUTUAL RELATIONS OF HIGH CONTRACTING PARTIES AND SUBSTANTIVE FRAGMENTATION OF INTERNATIONAL LAW

Even though it is admitted that there is a right to formulate reservations as unilateral acts related to one or more provisions of the treaty, it does not mean that those reservations produce legal effects themselves. The legal effect of reservations depends on the reaction of other contracting States meaning that the mutual consent is necessary even when a particular State wants to avoid undertaking international obligations under particular articles of a treaty. It means that the unilateral nature of reservations has nothing to do with its legal effect because reservations are opposable by other contracting parties. Further, it means that relations among contracting parties become more complex because evidently not all of them undertake the same obligations under the same treaty.

The question of the acceptance of reservations and the formulation of objections is regulated in Article 20 of the VCLT. If a reservation is explicitly authorized by the treaty, the posterior acceptance by other States Parties is not necessary - it is understood that the acceptance had been given at the time of the treaty conclusion. Also, a reservation is meant to be accepted tacitly if no State make an objection. Further, where a state makes a reservation, other contracting parties may put objections to that reservations and even specify that the treaty will not enter into force between the reserving and the objecting parties (Baratta, 2000, p. 413). There are two other effects of the objection: when the objector wants to exclude the application of a reservation and when the objector wants that the reserving party changes a reservation.[9] All those situations can be sometimes very difficult to understand and separate them from each other, and usually, it is required from objectors to specify the intention of the objection.

Given the mentioned difficulties, according to the Guide to Practice on Reservations to Treaties, assuming that the VCLT is silent on the consequences of invalid reservations, proposes the following solution: Objections have real legal effect only if they are made against reservations which are objectively valid. Furthermore, such a reservation is null and void. However, it does not resolve the reserving states' status with regard to the treaty (Milanović, Sicilianos, 2013, p. 1058). It will depend on the intention of the objector. With no intention to go into details about the theoretical approach to the object and the purpose of the treaty, useful in terms of

[9] Yearbook of the International Law Commission. (2005). Report of the Commission to the General Assembly Vol. II, Part 2, p. 186.

interpretation when a reservation can be valid, and without discussing the competent authorities to decide upon incompatibility of reservations, the legal effects of reservations change the relationship between contracting parties.[10] Legal consequences of reservations and objections are described in Article 21 of the VLTC. It modifies for the reserving State in its relations with that other party the provisions of the treaty to which reservations relate to the extent of reservations, and it modifies those provisions to the same extent for that other party in its relations with the reserving State. Further, Article 21 (3) also says that when a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which a reservation relates do not apply as between the two States to the extent of a reservation. As consequence, it leads to a misbalance among States regarding their obligations being subjects of international public law. Their relation becomes special because they refused to accept either certain provisions of the treaty or reservations on those provisions and the treaty itself has a "mini-treaty" inside.

Maybe the most interesting example is to comment on the signature of the Revised European Social Chart (RESC). Many States are not prone to recognize collective rights and especially some specific economic and social rights. Only two States ratified the RESC at its whole (France and Portugal) and only fifteen out of forty-three States accepted the collective complaints mechanism while others put various reservations on the core provisions of the RESC. Clearly, States Parties to the RESC are not equal before the protection and promotion of particular human rights. This inequality with regard to the obligations of the States leads to the substantive fragmentation of international law given the fact that the ILC assessed that the emergence of a functionally limited treaty-system creates problems of coherence in international law.[11]

[10] In two cases Belilos v. Switzerland and Loizidou v. Turkey, the European Court of Human Rights found that reservations were incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms. See: Belilos v. Switzerland, European Court of Human Rights, (1988) Series A, Vol. 132 and Loizidou v. Turkey, the European Court of Human Rights, (1995) Series A, Vol. 310.

[11] International Law Commission. (Apr.13, 2006). Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law – Report of the Study Group of the International Law Commission, UN Doc. A/CN.4/L.682 as corrected UN Doc. A/CN.4/L.682/Corr.1, p. 17. Accessed 20 January 2019, from http://legal.un.org/ilc/documentation/english/a_cn4_l682.pdf.

FROM SUBSTANTIVE TO INSTITUTIONAL FRAGMENTATION OF THE INTERNATIONAL LAW: A BIRTH OF REGIONAL SYSTEMS OF INTERNATIONAL HUMAN RIGHTS LAW

The revolution in the protection of human rights, of John P. Humphrey, emphasized in 1970 and occurred at the end of the Second World War, has highlighted the emergence of autonomous regimes for the protection of human rights in various regions of the world, with the installation of courts in charge of supervising and controlling the obligations assumed by the States parties in the respective human rights conventions (Humphrey, 1975, p. 205-216). Of particular note in this regard are the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Rome Convention) and the American Convention on Human Rights of 22 November 1969 (Pact of San José), and their respective jurisdictional mechanisms for the protection of the rights contained in both conventions. In this case, these are the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights (IACHR), with functions to interpret the norms contained in these Treaties and settle controversies in relation to the position of the States regarding the obligations contained in both Treaties.

In the same way that the proliferation of international tribunals can be beneficial, as Thomas Buergenthal expressed in the past, because "(i)t has contributed to the development of international law and increased its relevance to the conduct of contemporary international relations to a much greater extent than in the past, and that is certainly a welcome development", it can also have adverse consequences for the development of International Law, taking into account that "the jurisprudence of the different international tribunals can erode the unity of international law, lead to the development of conflicting or mutually exclusive legal doctrines, and thus eventually threaten the universality of international law" (Buergenthal, 2001, p. 272). The emergence of specific norms and spheres of specialized and autonomous legal practices, each with its own principles and institutions, originates the debate on the fragmentation and unity of International Law represented by the human rights regime in Europe and America and International Law and which has been identified in the report that the ILC sent, in 2006, to the General Assembly of the United Nations, under the name "Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law".[12]

In this order, the process of humanization of International Law, where basic considerations of humanity affect "upon more traditional areas of

[12] Ibid.

International Law, which were in the past approached, almost invariably, from the angle of the 'will' of States" and that is "indicative of the new times, and a new mentality centered on the ultimate addressees of international norms, the human beings", have allowed the development of own principles and values in the existence of the Human Rights Treaties that have led to the existence of singular autonomous regimes (*self-contained regimes*) (Trinidade, 2013, p. 429). It is a phenomenon that tends towards the fragmentation between this subsystem of international law, such as that referring to the protection of human rights and general international law, and which also detects problems of this nature between the regional systems of American, European and African protection (Buckley, Donald, Leach, 2016). Although it is good to insist that, despite the fragmentation in the institutional level that supposes the existence of the ECHR and the IACHR, there is a fruitful judicial dialogue between both.[13] In particular, the issue of reservations in the regional sphere of human rights protection constitutes one of the focal points in the discussion on the fragmentation and unity of international law, based on what is established in both the American Convention on Human Rights and the European Convention of Human Rights, as well as by the pronouncements developed by the ECHR and the IACHR and its relationship with the Law of Treaties of the Vienna Convention, conceived for the Treaties based on classical international law.

FUNDAMENTAL HUMAN RIGHTS AND THE CASE LAW OF THE IACHR AND THE ECHR

In the inter-American sphere, there was a clear intention of the drafters of the Convention not to depart from the rules on reservations established in the VCLT. However, the Court's few pronouncements on the subject take into account the particularities of the Human Rights Treaties to establish a regime that departs somewhat from the conclusions that may result from the regime established in the VCLT, in matters such as the acceptance and objection of reservations and the legal effects of invalid reservations. The American Convention on Human Rights established in its article 75, that "(t)his Convention shall be subject to reservations only in conformity with

[13] Consejo de Europa/Tribunal Europeo de Derechos Humanos & Corte Interamericana de Derechos Humanos (2015). Diálogo transatlántico: selección de jurisprudencia del Tribunal Europeo y la Corte Interamericana de Derechos Humanos, Wolf Legal Publishers. [Council of Europe/European Court of Human Rights & Inter-American Court of Human Rights: Transatalantic Dialogue: Selection of case-law of the European Court of Human Rights and the Inter-American Court of Human Rights].

the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969." The IACHR, in the Advisory Opinion OC-2/82 The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75), of September 24, 1982, has ruled on which of the articles of the VCLT referred to reservations, in this case, articles 19 and 20, were applicable in the case of the American Convention. Regarding article 19, the Court considered that it referred only to subparagraph c) of article 19 of the VCLT.[14] This was because clauses a) and b) were not applicable, since the American Convention did not prohibit or specify the reservations that were allowed.

In the same sense, the Court emphasized that only paragraph 1 of Article 20 of the VCLT was relevant in applying Articles 74 and 75 of the American Convention, because when Article 20.2 of this VCLT has established that "(w)hen it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties", the Court considered that "is inapplicable, *inter alia*, because the object and purpose of the Convention is not the exchange of reciprocal rights between a limited number of States, but the protection of the human rights of all individual human beings within the Americas, irrespective of their nationality."[15] In the case of Article 20.3 of the VCLT, the Court considered that the Convention is not the constitutive instrument of an international organization, so this article was inapplicable.

With regard to article 20.4 of the VCLT, the Court reasoned that "the principles enunciated in Article 20 (4) reflect the needs of traditional multilateral international agreements which have as their object the reciprocal exchange, for the mutual benefit of the States Parties, or bargained for rights and obligations", but it emphasized, having as an important precedent the Advisory Opinion of the International Court of Justice on the Reservations to the Genocide Convention "that modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the

[14] Article 19 on "Formulation of reservations": "A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless: (a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty".

protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction."[16]

In this way, reservations that States can formulate to the Human Rights Treaties must be analyzed taking into account the particularities to determine the object and purpose of this type of treaties. The ECHR and IACHR have been emphatic, on more than one occasion, in highlighting the peculiarities inherent in the interpretation of the norms contained in the Human Rights Treaties, which in some way accommodate for this sector of international law the own rules of interpretation of general international law contained in the VCLT. In this regard, they have stressed that the object and purpose of human rights treaties is the protection of the fundamental rights of human beings regardless of their nationality and administrative status *vis-à-vis* their own State or any other.[17]

The court also had the opportunity to rule on a specific manifestation of incompatibility of reservations by States with the object and purpose of the

[15] I/A Court H.R., The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, paragraph 27.

[16] I/A Court H.R., The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, paragraphs 28-29. See also Reservations to the Convention on Genocide, Advisory Opinion: I.C. J . Reports 19-51, p. 15, p. 23: "The objects of such a convention must also be considered. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention the contracting States do not have any interests of their own; they merely have, one and au, a common interest, namely, the accomplishment of those high purposes which are the raison d'être of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions."

[17] I/A Court H.R. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, paragraph 41.

Treaty in its Advisory Opinion OC-3/83, Restrictions to the death penalty (articles 4.2 and 4.4. the Convention), considering that any reservation intended to allow the State the suspension of fundamental rights, should be considered as incompatible with the object and purpose of the Convention and, consequently, not authorized by it, in accordance with the provisions of Article 27 of the Convention, which allows States Parties to suspend their obligations under the Convention in case of war, public danger or another emergency that threatens the independence or security of the affected State.[18]

In addition, the Court considered that the entry into force of the Convention for the reserving State did not depend on the acceptance and objection of reservations on behalf of the States parties, well "(v)iewed in this light and considering that the Convention was designed to protect the basic rights of individual human beings irrespective of their nationality, against States of their own nationality or any other State Party, the Convention must be seen for what in reality it is: a multilateral legal instrument of framework enabling States to make binding unilateral commitments not to violate the human rights of individuals within their jurisdiction."[19] And it adds: "In this context, it would be manifestly unreasonable to conclude that the reference in Article 75 to the Vienna Convention compels the application of the legal regime established by Article 20 (4), which makes the entry into force of a ratification with a reservation dependent upon its acceptance by another State. A treaty which attaches such great importance to the protection of the individual that it makes the right of individual petition mandatory as of the moment of ratification, can hardly be deemed to have intended to delay the treaty's entry into force until at least one other State is prepared to accept the reserving State as a party. Given the institutional and normative framework of the Convention, no useful purpose would be served by such a delay."[20]

Thus, although the Court in this Advisory Opinion, taking into account that the case in question referred only to issues related to the entry into force of the Convention, did not consider "necessary to deal with other issues that might arise in the future in connection with the interpretation and application

[18] I/A Court H.R., Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights). Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, paragraph 61.

[19] I/A Court H.R., The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, paragraph 33.

[20] I/A Court H.R., The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, paragraph 34.

of Article 75 of the Convention and which, in turn, might require the Court to examine the provisions of the Vienna Convention applicable to reservations not treated in this opinion", it was clear that "(t)he States Parties have a legitimate interest, of course, in barring reservations incompatible with the object and purpose of the Convention. They are free to assert that interest through the adjudicatory and advisory machinery established by the Convention. They have no interest in delaying the entry into force of the Convention and with it the protection that the treaty is designed to offer to individuals in relation to States ratifying or adhering to the Convention with reservations."[21] For that reason, it concluded that the Convention entered into force for a State that ratified or adhered to it with or without reservations, on the date of the deposit of its instrument of ratification or adherence.

At the European regional level, specifically within the framework of the Council of Europe, the European Commission and the ECHR have also had the opportunity to take a decision on specific aspects of the particular regime of reservations established in the European Convention on Human Rights, at the beginning in its Article 64 that with Article 2.1 of Protocol no. 11 of May 11, 1994, became Article 57. With regard to the competence to decide the validity of a reservation, the European Commission in the case Telmelhasch v. Switzerland did not consider it necessary to examine the case if a reservation had been expressly accepted or objected by one of the States parties.[22] For its part in the Belilos case, the ECHR also declared itself competent to decide the validity of a reservation, even before the allegation (of the Swiss government) of the absence of objections by the Secretary General of the Council of Europe as the rest of the States parties to the Convention, while "(t)he silence of the depositary and the Contracting States does not deprive the Convention institutions of the power to make their own assessment."[23]

In this case, the ECHR has applied the doctrine of divisibility, while the State is bound by the Convention when reservations have been declared invalid.[24] Similarly in case Loizidou v. Turkey, the Court, in discussing the validity of territorial restrictions to the Convention made by Turkey, and the legal effects of its invalidity, considered at the outset "the special character of

[21] I/A Court H.R., The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, paragraphs 38-39.

[22] Telmelhasch v. Switzerland, Temeltasch v. Switzerland, Application N 9116/80, Report of 5 May 1982, paragraph 60.

[23] Belilos v Switzerland, 29 April 1988, series A, No.132, paragraph 47.

[24] Belilos v Switzerland, 29 April 1988, series A, No.132, paragraph 60.

the Convention as an instrument of European public order (*ordre public*) for the protection of individual human beings and their mission, as set out in Article 19 (article 19), 'to ensure the observance of the engagements undertaken by the High Contracting Parties"', so, among other reasons, he considered that he was "in favor of the severance of the impugned clauses since it is by this technique that the rights and freedoms were set out in the Convention may be ensured in all areas falling within Turkey's 'jurisdiction' within the meaning of Article 1 (art. 1) of the Convention."[25] The Court after examining "the text of the declarations and the wording of the restrictions with a view to a determination whether the impugned restrictions can be severed from the instruments of acceptance or if they form an integral and inseparable part of them" he concluded that "(e)ven considering the texts of Article 25 and 46 (art. 25, art. 46) declarations taken together, it considers that the impugned restrictions can be separated from the remainder of the text leaving intact the acceptance of the optional clauses."[26]

CONCLUSION

It cannot be ignored that the decisions of the ECHR and the IACHR regarding reservations take into account the particularities of the Human Rights Treaties, which largely depart from the regime established in the VCLT. It is a subject treated with important judgment by Cançado Trindade, when he emphasized that "Such a system leads to a fragmentation (in the bilateral relations) of the conventional obligations of the States Parties to multilateral treaties, appearing inadequate to human rights treaties, which are inspired in superior common values and are applied in conformity with the notion of collective guarantee. That system of reservations suffers from notorious insufficiencies when transposed from the law of treaties in general into the domain of the International Law of Human Rights. To start with, it does not distinguish between human rights treaties and classic treaties, making abstraction of the *jurisprudence constant* of the organs of international supervision of human rights, converging in pointing out that distinction" (Trinidade, 2013, p. 436).

Despite this evident example of the fragmentation between the domain of human rights and general international law, it is possible to conclude that certain aspects are traceable to general international law of the VCLT. In this

[25] Loizidou v. Turkey (Preliminary objections)- 15318/89 [1995] ECHR 10 (23 March 1995), paragraphs 93 and 96.

[26] Loizidou v. Turkey (Preliminary objections)- 15318/89 [1995] ECHR 10 (23 March 1995), paragraph 97.

case, the Special Rapporteur of the ILC Alain Pellet, for whom the general regime of reservations under the VCLT "is flexible enough to provide the appropriate solutions in respect to human rights as well as for any other kind of treaties", even goes so far as to show the process of integration of the particular (represented in human rights) to the general in this matter (treaty law of the Vienna Convention), when the practice and pronouncements of the supervisory bodies of human rights and human rights courts drew important conclusions for the development of the Guide to Practice on Reservations to Treaties (Pellet, 2013a, p. 324).

In this order, the solutions provided to one of the most important gaps in the Vienna Convention regime were taken into account, as is the absence of a clear provision guiding the legal effects that should be attributed to an invalid and inadmissible reservation, for the purpose of declaring a reservation that does not comply with the formal requirements of validity and permissibility, and thus preserving the integrity of the treaty, void and consequently without legal effects (Pellet, 2013a, p. 329).[27] In the same way that the Guide subscribes to the doctrine of the divisibility exposed by the jurisprudence of human rights before an impermissible reservation, by which the State that has formulated an invalid or non-permissible reservation is fully bound by the Treaty.[28] Pellet explained that "For a long time, that issue represented one of the most raging disputes between human rights treaty bodies, on the one hand, and defenders of the Vienna reservations regime, on the other hand. Even though the

[27] Guide to Practice on Reservations to Treaties. (2011). Report of the International Law Commission on the work of its sixty-third session (A/66/10, para. 75), Yearbook of the International Law Commission, vol. II, Part Two. 4.5.1 Nullity of an invalid reservation: A reservation that does not meet the conditions of formal validity and permissibility set out in Parts 2 and 3 of the Guide to Practice is null and void, and therefore devoid of any legal effect.

[28] Guide to Practice on Reservations to Treaties. (2011) Report of the International Law Commission on the work of its sixty-third session (A/66/10, para. 75), Yearbook of the International Law Commission, vol. II, Part Two. 4.5.3 Status of the author of an invalid reservation in relation to the treaty1.The status of the author of an invalid reservation in relation to a treaty depends on the intention expressed by the reserving State or international organization on whether it intends to be bound by the treaty. 2. Unless the author of the invalid reservation has expressed a contrary intention or such an intention is otherwise established, it is considered a contracting State or a contracting organization without the benefit of the reservation. 3. Notwithstanding paragraphs 1 and 2, the author of the invalid reservation may express at any time its intention not to be bound by the treaty without the benefit of the reservation. 4. If a treaty monitoring body expresses the view that a reservation is invalid and the reserving State or international organization intends not to be bound by the treaty without the benefit of the reservation, it should express its intention to that effect within a period of twelve months from the date at which the treaty monitoring body made its assessment.

severability presumption has been adopted by human rights bodies and mainly advocated in the 'human rightist' doctrine, it serves more general purposes" (Pellet, 2013a, p. 330). In the same way that the existence of monitoring bodies to evaluate the validity of a reservation, as represented by the ECHR and IACHR, falls within the general regime of the reservations of the Vienna Convention -which does not establish anything in this respect-, and "consequently a clear progress in the application of the Vienna rules and therefore contribute to the integrity of human rights by permitting an objective assessment of the compatibility of a given reservation to the object and purpose of the treaty"(Pellet, 2013a, p. 337).

In any case, it is clear that in the matter of reservations to treaties, the general regime established in the VCLT does not fully conform to the reservations regime of human rights treaties, but neither can it be argued that there is a rupture total or absolute incompatibility between the two regimes. The subsystem of human rights, like any integrating element of a whole, demands its own developments in the content of its concepts and categories and adaptation of criteria or general positions to the specific regulation scope, with the purpose of fulfilling the purposes for which it exists and it develops, without implying a total disconnection from the sphere in which it is born and makes sense.

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REZERVE U MULTILATERALNIM UGOVORIMA IZ OBLASTI LJUDSKIH PRAVA U PERSPEKTIVI FRAGMENTACIJE MEĐUNARODNOG JAVNOG PRAVA

Apstrakt: Članak obrađuje institut reservi na višestrane ugovore, onako kako je definisano Bečkom konvencijom o ugovornom pravu (1969), kao i njihovu primenu na višestrane ugovore u oblasti međunarodnog prava ljudskih prava. U tom smislu, autori prvo izlažu opšte aspekte rezervi u međunarodnom pravu kako bi navedeno primenili na ugovore iz oblasti ljudski prava, s posebnim osvrtom na jurisprudenciju Evropskog suda za ljudska prava i Interameričkog suda za ljudska prava, kojom su uspostavljeni sopstveni kriterijumi u pogledu primene rezervi („rekonceptualizacija"). Time autori nastoje da prikažu i fenomen fragmentacije međunarodnog javnog prava, kroz njegovu institucionalnu i materijalnu dimenziju. Međutim, članak takođe ukazuje i na doktrinarno viđenje da je praksa pokazala da postoji komplementarnost opšteg međunarodnog prava i njegovog podsistema međunarodnog prava ljudskih prava u pogledu rezervi, tako što se prilikom primene opšteg režima rezervi u okviru ovih višestranih ugovora uzima u obzir njihova priroda odnosno cilj i predmet ugovora.

Ključne reči: rezerve, višestrani ugovori, dopustivost, ograničenja, fragmentacija, Bečka konvencija o ugovornom pravu, Evropska konvencija o ljudskim pravima, Američka konvencija o ljudskim pravima, Evropski sud za ljudska prava, Interamerički sud za ljudska prava.

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BOOK REVIEW

INITIATIVES OF THE 'NEW SILK ROAD' – ACHIEVEMENTS AND CHALLENGES

Duško Dimitrijević, Huang Ping (Eds). *Initiatives of the 'New Silk Road'- Achievements and Challenges,* Institute of International Politics and Economics, Belgrade, 2017. pp. 529.

The Collection of papers "*Initiatives of the 'New Silk Road'- Achievements and Challenges"* represents a research study composed of academic articles dealing with global Chinese development strategy known as the *"*New Silk Road*"*. This collection of papers was created during the international conference which took place in Belgrade on 12 and 13 July 2016. Besides the distinguished scientists from Serbia and China, the conference was attended by respectable experts and researchers from Russia, the USA, Great Britain, Germany, Bulgaria, Romania, Poland, Greece, Montenegro and Bosnia and Herzegovina. This collection of papers has 529 pages, and it was published in Belgrade in 2017. The articles are organized in 3 sessions. The sessions are: "New Silk Road"- Chinese Strategy of World Development, Geopolitical Visions and Actions of the "New Silk Road" and Geoeconomic, Legal and Cultural Visions and Actions of the "New Silk Road" Initiatives.

The first session is composed of fifteen scientific articles. In these articles is emphasized that the "New Silk Road" is a big project for intensified economic, cultural and scientific cooperation among the nations of the world, also stating that it is a new platform for peace through global development. The articles analyze the importance of the "New Silk Road" for world peace. Furthermore, they provide a brief overview of the progress of the Belt and Road Initiative (BRI) and point out the main challenges facing the BRI. Additionally, this section has also analyzed the relationship between the BRI and the UN 2030 Agenda and their importance for the realization of the Sustainable Development Goals.

In the first session are presented the priorities of the BRI project. These priorities are the coordination of security policy, infrastructural connectivity, unimpeded trade, financial integration and people-to-people connection. As the most important BRI principle stands out human development which transcends above the short-term economic or political interests and recognition, and it is supported by all participating countries. In the first session are presented the

potentials of economic exchange and cooperation between China and other countries along the "Belt and Road". In this part, the authors point to the importance of the BRI project for local development, like in Southeast Europe.

The book in the first session analyzes the current relations between China and the EU. It also describes the relationship and political influence of China on the countries of Central and Eastern Europe, which stems from economic cooperation and infrastructure investment, which represents a source of fear for the EU. The authors believe that in the future there will be significant cooperation between the EU and China, which will affect the development of this region.

In the second session are contained studies on the potentials of the "New Silk Road" project for the development of border regions, especially given the current trend of globalization and greater autonomy of the region in relation to the central government. China sees these regions as very attractive for investment. At the end of the first session of the collection of works, the authors analyze the cooperation between Greece, Poland, Bulgaria and China and their contribution to the "New Silk Road".

At the end of the first session, it is concluded that the BRI is a complex project with enormous potential, but some various risks must be overcome. The text analyzes the perspectives of the project, in particular, infrastructure investments and the possible role of the project in the future. The importance of the BRI project is reflected in the fact that the majority of the world's population is critically dependent on the existing and planned infrastructure.

The second session is composed of ten scientific articles. In the introductory text of the second session, the authors point out that China is a new globalist. Then the authors analyze the confrontation of the great powers along the "New Silk Road". In this part, it is noted that the great powers China and the USA have agreed to establish a strategic partnership to prevent possible confrontations between themselves and control of all threats to military interventions. Further analysis examines the influence of China in the Balkans through the cooperation mechanism 16+1 and China's relationship with other great powers in the region. This part of the book draws attention to the geostrategic importance of cooperation between Russia and China.

Subsequently, the papers describe the risks and disadvantages that the "New Silk Road" faces. Above all, they emphasize the risks of building the Eurasian Economic Corridor. The articles describe the significance of energy in the "New Silk Road". This part of the book supports the opinions that energy cooperation under the "Belt and Road" initiative is all-dimensional and multi-tiered and has made fruitful achievements, offering vast potential for development in the future.

At the end of the second session, the authors have concluded that one of the challenges and security risks which will appear in the "New Silk Road"

project might be caused by migrant workers. Particular attention is devoted to migration that takes place along the Balkan route and security challenges that it brings with special emphasis on Serbia.

The third session is composed of fifteen scientific articles. This session analyzes the change in the Chinese economic development strategy and emphasizes the significance of the "New Silk Road" for the construction of transport infrastructure at the regional level, with particular reference to Serbia's experience in cooperation with China in this area.

In this part, the authors point out that the initiative includes 16 + 1 cooperation in various areas between the countries of Central and Eastern Europe and China. After a comprehensive analysis of the cooperation of each individual country and China in all areas, the authors have concluded that not all countries have used the opportunities provided by this initiative in the same way. In the articles of the third session, the authors have also considered the economic effects of the "New Silk Road" initiative and the Eurasian Union cooperation, as well as the opportunities for regional cooperation in the Western Balkans within the New Silk Road project.

The third session brings an interesting comparison between the EU, Serbia and China as signatories to various treaties devoted to the protection of the environment. The main noticeable difference is the speed of the adoption of certain protocols and amendments adopted and the speed of implementation of the agreement. This session analyzes the cultural dimension of the 16 + 1 project as well as the model of cultural dimensions developed by Geert Hofstede which is used to conclude if cultural differences can be the obstacle for mutual cooperation.

In the end, we need to mention an article dedicated to cooperation between Serbia and China on food safety. Highlights of the signed agreements allow for greater export of Serbian food to the Chinese market and investments of China into Serbian agriculture. The last article deals with the modern character of diplomatic protection and disadvantages occurring in the EU. The contribution and impact that the "New Silk Road" has on diplomatic protection are described.

The collection of papers "Initiatives of the 'New Silk Road' - Achievements and Challenges" should be read because it provides a comprehensive, detailed analysis of the largest economic and political project in history. The opportunities and potentials for improving this project as well as the challenges it faces are very well presented. The most interesting observation after reading the collection of works is that we can more clearly understand China's foreign policy and how China has come to be one of the leading economic powers of the world.

Ljubomir TINTOR

PRACTICE THEORY AND THE STUDY OF DIPLOMACY: A RESEARCH AGENDA

Vincent Pouliot, *L'ordre hiérarchique international, les luttes de rang dans la diplomatie*, Presses de Sciences Po (Relations internationales), Paris, 2017, pp. 220

Multilateral relations, as well as their reflection in practice – multilateral diplomacy, are from their very beginning analysed by international law and political science, not only because of the richness of practice and complexity of relations but also as the author would say because of their "social theater" characteristics. To obtain a better understanding of the unequal ground where the international hierarchical order and multilateral relations are built and rebuilt, this book invites us to the inside of the negotiation rooms of the world politics machinery.

Firstly, multilateralism is a notion that has been evolving from the League of Nations to the UN arena which the author puts under sociological and philosophical scrutiny throughout the chapters. Nevertheless, this book is not focused on the historical evolution of international hierarchical orders. It is, therefore, first and foremost, a study of the present. The starting point is that this aforementioned "theater" represents social and political reality as such. International hierarchical orders are relentless social facts, and multilateral relations are at their core and thus dominate the international community.

The author demystifies a myth of international actors entering their multilateral relations on the basis of international rules that guide hierarchical order rather than on the basis of power. "*Les rapports de force*" or the balance of powers is the centre of relations of "unequal actors in equalising institutions" of the world order. Mr. Pouilot then continues by citing the authors Robert W. Cox and Harold K. Jacobson and their "anatomy of the influence" syntagma to explain in a very detailed manner the decision-making in international organisations.

Furthermore, the author demonstrates the importance of permanent missions to International organisations, such as the missions to the "Parliament of the Men"- the United Nations, referring them as one of the most important achievements in multilateral diplomatic practice. Following the introductory part and after having explained the structure of the relations that differ from bilateral relations and unify diplomatic actors, Vincent Pouliot, specifically focuses on the role of legal and diplomatic practice that rule international interaction. The reader learns why and in what manner the practice of permanent missions or diplomatic staff, ambassadors and even chiefs of states shape international legal and political dynamics in the multilateral world.

Moreover, Pouliot builds on his earlier work on the similar topic[1] by presenting numerous tables and figures that show institutional and bureaucratic procedures, as well as diplomatic practices, i.e.: the coalition building, the "intra-bloc" diplomacy, the dynamics of a clan, the power of veto and abstention, etc. After explaining the basics that can be depicted using a metaphor that in multilateral diplomacy the individual delegate and the country represented are "two sides of the same coin", the author, in subsequent chapters, goes on and focuses on two notions: social stratification and "sense of place" in the international order.

Aware of the particular complexity of social stratification in the hierarchical legal orders where power vectors prevail, the author suggests that the notion of the "sense of the place" is both the foundation and the revealer of social inequality which stems from the accumulated practice and diplomatic experience. The author emphasizes that this is especially important for small states because through that very notion that everyone has their role it helps national representatives to set reasonable expectations, realistic goals and also adjust their marge de manœuvre in international relations.

In this respect, Pouliot portrays the hierarchy of legal order through the practice of consensus established in NATO as an example how certain practices in an international organisation anchor others, and how the "sense of place" implies choosing one's battles. It should be noted that this part of the book shows a reader why understanding "in which direction the wind blows" when it comes to multilateral relations is crucial, but also the importance of collective interest over national, which does not quite often meet expectations in practice. As previously pointed out, the author insists that international hierarchical orders operate not only between permanent missions' representatives and diplomats in closed negotiation rooms but also between (member) states in international organisations, where each organisation can be seen as a separate multilateral field where national interests are expressed in various ways.

Pursuant to the above-mentioned, this book could be a very useful guide to the understanding of the complex international hierarchical order outside the plethora of rules and regulations. It can be especially valuable to students, early career scholars and diplomats, who will be led through numerous examples from practice to the conclusion that to exist in multilateral diplomacy it is often necessary to play a game with deeply unequal rules.

Marija VLAJKOVIĆ

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[1] Vincent Pouliot and Jérémie Cornut, "Practice Theory and the Study of Diplomacy: A Research Agenda", *Cooperation and Conflict, Special issue: Diplomacy in Theory and in Practice*, 50/3, 2015, p. 297-315.

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Research papers should not exceed 6000 words including abstracts, references,acknowledgements and footnotes.

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A separate title page should be attached. This will be detached during the refereeing stage to maintain the anonymity of the author. The title page should include: The name(s) of the author(s); a concise and informative title; the affiliation(s) and address (es) of the author(s); the e-mail address of the author (s); the author(s) academic biography, up to 150 words, in the third persons. If the first author is not the correspondingauthor, this should be clearly indicated.

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Tumulty, K. (2006, April). Should they stay or should they go? *Time*, 167(15), 3-40.

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Citing a general website article without an author:

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Article title. (Year, Month Date of Publication). Retrieved from URL

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Teen posed as doctor at West Palm Beach hospital: police. (2015, January 16). Retrieved from http://www.nbcmiami.com/news/local/Teen-Posed-as-Doctor-at-West-Palm-Beach-Hospital-Police-288810831.html

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World Bank.(2010). World development report—Development and climate change.The World Bank, Washington, D.C., USA.

United Nations. (2006, November 9). Delivering as one. Report of the Secretary-General's HighLevel Panel on UN System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment, New York.

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