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### THE ROLE OF WOMEN IN PEACE DIPLOMACY: ADVANCEMENT AND CHALLENGES

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We consider the role of women in strengthening of international peace and security. Specifically, we examine how this role has evolved in history and is performed at present. There is abundant evidence to show that a gender-inclusive and well-integrated peace process increases the probability of lasting peace. In light of this evidence, we present an argument for more extensive involvement of women in peace diplomacy as politicians and diplomats.

**Keywords:** peace diplomacy; negotiations; peacebuilding; peaceful settlement; conflict resolution; UN; UNSCR 1325; women, peace and security agenda; national action plan; OSCE; security sector.

### РОЛЬ ЖЕНЩИН В МИРНОЙ ДИПЛОМАТИИ: ДОСТИЖЕНИЯ И ПРОБЛЕМЫ

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Изучается роль женщин в укреплении международного мира и безопасности. Анализируются эволюция и степень участия женщин в процессах миростроительства. Как показывают многочисленные исследования, гендерно-инклюзивные и интегрированные мирные процессы повышают вероятность успешных переговоров по мирному урегулированию и таким образом увеличивают шансы на достижение устойчивого мира и стабильности в зонах вооруженных конфликтов. В этом контексте эффективное вовлечение женщин-политиков и дипломатов в практику мирной дипломатии в условиях конфликта имеет решающее значение.

**Ключевые слова:** мирная дипломатия; переговоры; миростроительство; мирное урегулирование; урегулирование конфликтов; ООН; Резолюция Совета Безопасности ООН № 1325; повестка дня «Женщины, мир, безопасность»; национальный план действий; ОБСЕ; сектор безопасности.

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## Introduction

Recent international developments have exacerbated multiple threats to global and regional security, including social and political instability, health insecurity, displacement, climate change and humanitarian crises. They have also drawn attention to women's participation in foreign affairs as a strategy for building of international peace and security.

Women face elevated risks to their safety and livelihoods in violent conflicts. They are also more vulner-

able to the negative consequences of foreign policy decisions, especially during economic, environmental or health crises, including the recent COVID-19 pandemic.

The potential of women to contribute to the peaceful settlement of conflicts and crises can no longer be neglected. Gender-inclusive peace processes and addressing the under-representation of women in leadership positions in peace diplomacy are being proposed as prospective areas of progress.

## International instruments for women's inclusion in peace diplomacy

For generations, women have been pushing for a greater role in peace diplomacy. As early as 400 BC, the Greek poet Aristophanes in his famous comedy "Lysistrata" portrayed a group of women with outstanding diplomatic skills. When their husbands failed to stop the Peloponnesian War, their wives took their place. They successfully negotiated the terms of the peace and restored national unity in the process. World history offers numerous examples of successful peacemaking by women.

In the face of persistent male domination in foreign policy and diplomacy, women have pressed for more equal representation in building peace and stability. In 1915, women from all over Europe met in the Hague (Netherlands) to protest against the war and advocate for women's participation in peace and security. That historical meeting gave rise to a women's congress that dedicated itself to building mechanisms for mediation that would end World War I and address its root causes. The congress was subsequently renamed the Women's International League for Peace and Freedom. The league has since served as a platform for opposing wars and armed conflicts and a vehicle for involving women in peace and security.

The international community has evolved a battery of instruments and procedures to make women integral stakeholders in peacebuilding and take their concerns, perspectives, and capabilities into account. The United Nations mechanisms include the UN Commission on the status of women (CSW), Declaration on the protection of women and children in emergency and armed conflict of 1974, UN world conferences on women of 1975, 1980, 1985, 1995, Convention on the elimination of all forms of discrimination against women of 1979, often called "the international bill of rights for women", etc. As a deputy chair of the CSW from the European block of countries during the 4<sup>th</sup> World conference on women in Beijing (1995), I encountered a large number of dedicated women activists from different continents who worked hard on behalf of the world's women

for the recognition of their essential role in peace and development.

To keep the momentum of the Beijing declaration and platform for action going, a special session of the UN General Assembly was convened in 2000. It was titled "Women 2000: gender equality, development and peace for the twenty-first century". The key message of the outcome document was a call for women's full participation in peace diplomacy at all levels. As a follow-up to the session, the UN Secretary-General created an ad hoc panel of experts to review UN peace and security activities. The panel's report on UN peace support operations acknowledged the need for equal representation of men and women, notably in leadership positions. The Windhoek declaration – based on the report's findings – called for gender mainstreaming in UN peace support operations, including equal access and representation of women and the advancement of women to leadership positions. The UN Security Council adopted in 2000 the landmark resolution 1325, on women, peace and security (UNSCR 1325)<sup>1</sup>, underlining the decisive role of women in the prevention and resolution of conflicts, peacebuilding, and maintenance and promotion of peace and security. It also encouraged the national-level implementation of the women, peace and security agenda, including through national action plans (NAPs), national-level strategic documents outlining objectives and activities that countries take to secure the human rights of women and girls in conflict settings and ensure meaningful participation of women in peace and security. Some 98 countries have developed NAPs for the implementation of the WPS agenda<sup>2</sup>. Numerous countries have also developed third-, and even fourth-generation NAPs, building on the work and lessons learned from previous plans. Frequently, NAPs are aligned with national sustainable development agendas, gender equality policies, and other relevant policy frameworks. However, countries take very different approaches to NAPs planning, development and implementation. NAPs differ

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<sup>1</sup>Resolution 1325 (2000) adopted by the Security Council at its 4213<sup>th</sup> meeting on 31 October 2000 [Electronic resource]. URL: [https://undocs.org/S/RES/1325\(2000\)](https://undocs.org/S/RES/1325(2000)) (date of access: 30.08.2022).

<sup>2</sup>Women and peace and security: report of the Secretary-General [Electronic resource]. Para 80. URL: <https://undocs.org/S/2021/827> (date of access: 30.08.2022).

in goals, timelines, topics and, most importantly, in allocated budgets. Only 35 countries to date have allocated budgets to their NAPs, according to the UN<sup>3</sup>.

Since UNSCR 1325, the UN Security Council has adopted nine additional resolutions reaffirming the role of women in peacekeeping<sup>4</sup>, further advancing gender mainstreaming in UN peacekeeping. Women have joined the UN military, police and civilian peacekeeping missions in growing numbers. From 1993 to 2000, the share of women in the UN peace force grew from 1 % to 4.8 % in the UN military and 10.9 % in the UN police forces. Women are serving the local populations in conflict zones in leadership positions and also as military observers, staff officers, and military personnel<sup>5</sup>.

Women's presence in UN senior leadership positions has also improved. In January 2022, UN Secretary-General A. Guterres appointed E. Spehar from Canada to the position of assistant Secretary-General for peacebuilding support in the department of political and peacebuilding affairs. Seven distinguished women have served with distinction as special representatives of the UN Secretary-General, notably, V. Gamba de Potgieter (Argentina), D. Lyons (Canada), B. Keita (Guinea), C. Ziadeh (Lebanon), H. Ruth Meagher La Lime (Mauritius), N. Gherman (Moldova), J. Antoinette Hennis-Plasschaer (Netherlands). Major General K. Lund of Norway participated in the peace process in Cyprus as the first female commander of the UN Peacekeeping Force there. Her example has inspired many more women to become involved in peace diplomacy. During her tenure, women represented over 75 % of the force's designated officials and about half the leadership group<sup>6</sup>. Women's NGOs deserve acknowledgement for their work in conflict zones and their role as facilitators in peace negotiations. According to UN Women, a peace settlement is 64 % less likely to be jeopardised if an NGO, including a women's group, had participated in its negotiation [1].

Outside the UN, the international community's effort to bring more women into peace-building has also targeted the OSCE, one of the world's most prominent regional security organisations with a mandate to build sustainable peace and economic prosperity in the OSCE region. The OSCE's integrated approach to building security includes full integration of women in peace di-

plomacy at all stages of the conflict cycle. All 57 participating states of the OSCE are bound by UNSCR 1325 and the WPS agenda. Both serve as essential mechanisms to guarantee that women can bring their multifaceted talents and versatile capabilities – including in peace diplomacy – to peacemaking and post-conflict reconstruction, in day-to-day political and military operations in conflict and post-conflict situations inclusive. Since the adoption of UNSCR 1325, the OSCE has facilitated the WPS agenda among its participating states and encouraged them to enhance the role of women in the security sector as some of its key priorities and key constituents of its comprehensive security approach. Tools such as the focal point network are already in place across its executive structures, including field missions. To date, more than 73 % of the OSCE participating states (43 out of 57) have developed NAPs for implementing the WPS agenda. The organisation has named the advancement of women in the security sector as a top priority for field operations.

However, women's capacity for participation in OSCE-led peace negotiations remains under-utilised [2, p. 12]. The OSCE has mediated three unresolved conflicts: in the Transdniestrian region (as a part of the 5 + 2 talks), in and around Nagorno-Karabakh (as a participant in the Minsk process), and in Georgia, as a part of the Geneva international discussions launched in August 2008. All three efforts at mediation have virtually excluded women. Through my work in senior positions in OSCE field operations in the Western Balkans and Central Asia, I have encountered many women with impressive talent and capabilities for preventive diplomacy, peaceful conflict resolution and post-conflict recovery, which should definitely be used in the OSCE's work on peace diplomacy.

Nevertheless, the OSCE leadership has made a significant effort to give strategic and practical guidance to the participating states on gender in international relations, including through the relevant Ministerial Council decisions, the 2004 OSCE Action plan for the promotion of gender equality, the OSCE Guide on gender-sensitive mediation (2017). However, translating these valuable documents into reality will require political will and enhanced budgeting capacity from the OSCE participating states.

### Challenges and barriers to gender-inclusive peace diplomacy

Despite the existence of a range of international mechanisms for women's participation in peacebuilding, and the extensive opportunities that they open,

significant gaps remain. According to UN Women, from 1992 to 2019, women numbered on average only 13 % of negotiators, 6 % of mediators, and 6 % of signatories

<sup>3</sup>National action plans: at a glance. Women's International League for Peace and Freedom (WILPE) [Electronic resource]. URL: <https://1325naps.peacewomen.org/> (date of access: 30.08.2022).

<sup>4</sup>Global norms and standards: peace and security [Electronic resource]. URL: <https://www.unwomen.org/en/what-we-do/peace-and-security/global-norms-and-standards> (date of access: 30.08.2022).

<sup>5</sup>Women in peacekeeping [Electronic resource]. URL: <https://peacekeeping.un.org/en/women-peacekeeping/> (date of access: 30.08.2022).

<sup>6</sup>New policy brief by Kristin Lund: reflections from the first female force commander in UN history [Electronic resource]. URL: <https://www.prio.org/news/2629> (date of access: 30.08.2022).

to major peace agreements<sup>7</sup>. One barrier to the participation of women leaders in peace negotiations could be the influence of gender and cultural stereotypes and prejudices affecting perceptions of women's competence and professionalism. Documentation from several peace negotiations suggests that women's groups seeking a place at the negotiating table face multiple challenges to their credibility, competence and qualifications. Conflicts impact women's daily lives differently from men's, and women's negotiation strategies emphasise consensus building. More often than men, women show opposition to violence by advocating peaceful solutions centred on reconciliation, education, socio-economic development, and the root causes of the conflict. During violent conflicts – often accompanied by sexual and gender-based violence – women tend to be more connected to their communities, which puts them in a better position than men to mediate conflicts<sup>8</sup>. A frequent barrier to women's participation in peacebuilding is traditional inequalities and discriminatory power structures, as in Afghanistan<sup>9</sup>. Lack of experience and training in mediation and monitoring and evaluation of the post-conflict gender agenda also presents difficulties for women's peace groups and movements, especially at the local level.

Too often, official delegations negotiating the resolution of armed conflicts have very few women. Yet, despite the lack of official recognition of their input,

women still play prominent roles in the peace process in their countries. They act as advisers to official negotiators, build grassroots support by acting as observers, taking part in consultations, participating in commissions, and enhancing their skills at problem-solving, mediation and monitoring by attending workshops. In places as diverse as Congo, Libya, Israel-Palestine, Sudan, Mali, Afghanistan, Myanmar, Ethiopia, and Ukraine, women were largely excluded from formal negotiations on peace<sup>10</sup>. Examples of women leading peace negotiation teams are indeed scarce. In the Israeli-Palestinian conflict, T. Livni served as Israel's lead negotiator in several rounds from 2007 to 2014, and H. Ashrawi was the lead negotiator for the Palestine Liberation Organisation in the 1990s. In Libya, no woman participated in the formal peace negotiation. However, after a 2020 UN campaign for engaging women in peacebuilding, women came to number 23 % of the negotiators from the UN-funded Libyan forum for political dialogue, a significant improvement from the past years<sup>11</sup>.

In a recent meeting with women activists in June 2022, the UN Secretary-General A. Guterres welcomed the participation of women in negotiating the South Sudan's historic Juba independence agreement, the settlement in Sudanese Darfur, the peace talks in the Central African Republic, and Mali. He hailed the meetings of women from the Greek and Turkish communities in Cyprus that helped expand dialogue and build trust<sup>12</sup>.

## Conclusion

Despite considerable progress in engaging women as direct and equal partners in the peace process, success is still elusive, and the gender perspective is still not reflected in most peace agreements. Women's skills and capabilities at securing peace, dialogue and mediation – which they have displayed over centuries – remain under-utilised.

Harnessing this peace-building potential of women is essential. Women contribute a unique perspective to peace negotiations by emphasising mediation and problem-solving. Historical evidence suggests peace agreements are 35 % more likely to last longer than 15 years if women participated in negotiating its terms<sup>13</sup>.

International relations – including peace diplomacy – remain a largely male-dominated area. However,

it is also undeniable that women leaders across countries and regions have been pushing for a new kind of diplomacy, in which men and women are represented more equitably based on their merits and strengths, as evidenced by the growing number of women heads of state, prime ministers, and foreign ministers. All of this gives reason to hope that eventually, women will put their talents as diplomats and negotiators to good use and add a uniquely female perspective to the search for global peace and stability.

Belarus has achieved a high level of gender equality. According to the 2019 UN Human development report, it ranks among the world's 22 countries with the human development index for women equal to or higher than for men. Belarus takes 27<sup>th</sup> place out of 162<sup>14</sup> by its gender

<sup>7</sup>Women and peace and security: report of the Secretary-General [Electronic resource]. Para 15. URL: <https://undocs.org/S/2021/827> (date of access: 30.08.2022).

<sup>8</sup>Ibid. Para 37.

<sup>9</sup>Women and peace and security: report of the Secretary-General [Electronic resource]. Para 4. URL: <https://undocs.org/S/2021/827> (date of access: 30.08.2022).

<sup>10</sup>Women's participation in major peace processes [Electronic resource]. URL: <https://www.cfr.org/womens-participation-in-peace-processes/> (date of access: 30.08.2022).

<sup>11</sup>Women's participation in major peace processes 1992–2019, explore the data. Case study [Electronic resource]. URL: <https://www.cfr.org/womens-participation-in-peace-processes/explore-the-data> (date of access: 30.08.2022).

<sup>12</sup>António Guterres (UN Secretary-General) on women and peace and security. Security Council, 9064<sup>th</sup> meeting [Electronic resource]. URL: <https://media.un.org/en/asset/k14/k149o9fdsb> (date of access: 30.08.2022).

<sup>13</sup>Women's participation and a better understanding of politics [Electronic resource]. URL: <https://wps.unwomen.org/pdf/CH03.pdf> (date of access: 30.08.2022).

<sup>14</sup>Beyond income, beyond averages, beyond today: inequalities in human development in the 21<sup>st</sup> century: Human development report 2019 [Electronic resource]. URL: <https://hdr.undp.org/content/human-development-report-2019> (date of access: 30.08.2022).

equality index. Women's proactive role in facilitating progress on the UN sustainable development goals (SDG) – including SDG 5 on gender equality and SDG 16 on peace, justice and strong institutions – contributes to Belarus' performance in the global rankings. Belarusian women are in a good position to contribute to international peace diplomacy to raise the status of women in the world and strengthen global peace and security.

As shown in this paper, women are still poorly represented in formal peace negotiations, despite the abundance of theoretical and practical arguments in favour of women's participation in peace diplomacy. International and national decision-makers should empower women to contribute to peace-building by creating appropriate legal frameworks, removing institutional barriers and addressing deep-rooted discriminatory stereotypes.

UN member states should concentrate on meeting their commitments under UNSCR 1325 as a priority. They should also take steps to develop and implement national action plans for implementing the WPS agenda. International and national efforts should also address inadequate funding for capacity-building programmes for women, supported by governments and NGOs. Clear official commitments on nominating and appointing women to key negotiating positions would be a helpful measure. Negotiating parties should be encouraged to include women leaders in their official delegations. Local women's organisations should be consulted at different stages of the peace negotiations, and parties should be encouraged to incorporate the gender perspective in the texts of the peace agreements to increase their long-term viability.

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## PROJECTING CULTURE: CULTURAL DIPLOMACY OF EUROPEAN STATES IN THE AGE OF INDUSTRIAL IMPERIALISM (1871–1914)

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Industrial imperialism set the stage for the emergence of cultural diplomacy and its institutions. Departments responsible for cultural diplomacy proliferated in the foreign ministries of multiple European countries, and many colonial powers and imperial states scrambled to establish their overseas cultural institutions. Countries viewed schooling as one of their most effective instruments for the pursuit of their civilising mission. At the beginning of the 20<sup>th</sup> century, education, academic exchange and research came to the central stage of the global competition among countries for economic and political influence. Where the government was too cautious to proceed, non-government actors (organisations and individuals) filled the void. Countries relied on diplomats to steer the work of their overseas cultural institutions but used considerable discretion in doing so.

**Keywords:** foreign cultural policy; cultural diplomacy; industrial imperialism; cultural institutes abroad; cultural propaganda.

## ВНЕШНЯЯ КУЛЬТУРНАЯ ПОЛИТИКА КОНТИНЕНТАЛЬНЫХ СТРАН ЕВРОПЫ В ПЕРИОД ИНДУСТРИАЛЬНОГО ИМПЕРИАЛИЗМА (1871–1914 гг.)

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Период индустриального империализма положил начало институционализации внешней культурной политики отдельных (особенно имперских) государств. В министерствах иностранных дел некоторых стран были созданы подразделения, занимающиеся культурно-образовательным сотрудничеством, открыты первые постоянно действующие учреждения культуры за рубежом. Эффективным инструментом цивилизационной миссии империализма стали школы. В начале XX в. школы и научные учреждения превратились в средство борьбы за политическое и экономическое влияние в определенных регионах. В условиях ограниченной государственной инициативы общественные институты и организации, а также отдельные лица являлись важными субъектами внешней культурной политики. Дипломаты поддерживали деятельность культурных учреждений за рубежом, хотя государство старалось не афишировать этот факт.

**Ключевые слова:** внешняя культурная политика; культурная дипломатия; индустриальный империализм; культурные учреждения за рубежом; культурная пропаганда.

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## Introduction

Industrial imperialism accelerated colonial expansion. The rise of monopolies intensified competition among the world's industrial nations. The great powers escalated their struggle for supremacy in the world's regions. In this competitive environment, culture was quickly emerging as a flexible and effective tool in the pursuit of political and economic objectives, and cultural diplomacy entered the mainstream of international relations. Many states proceeded to establish overseas cultural missions and institutions.

The era of industrial imperialism was the time when cultural diplomacy was beginning to take shape. K. Düwell observes: "From a historical perspective, an instrumentally developed foreign cultural policy as a sub-discipline of foreign policy only came about after a certain "critical mass" of cultural or cultural-political external activities and (or) institutions had been put in place"<sup>1</sup> [1, S. 63]. European states were pursuing different strategies of cultural diplomacy, but each formed an integral part of this "critical mass".

There is a dearth of generalised historical reviews on the pursuit of cultural diplomacy in specific regions or countries during the period of industrial imperialism. The works of A. Haigh are rare examples of such research [2]. A wider body of scholarship exists on foreign cultural policies of individual countries [3–7], cultural aspects of the colonial policy of imperial states [8; 9], international activity of cultural institutions [10–12], and policies to support the cultural life of the diasporas [13]. Some scholars have covered specific areas of cultural diplomacy in certain countries, such as education in the colonies [14–17], overseas cultural institutions [18], and academic exchange [19].

Based on a review of facts and events specific to select countries and regions, we map the approaches to cultural diplomacy in an era of industrial imperialism and identify the main trends in the practice of cultural diplomacy, with a focus on colonial and imperial states.

## Governmental institutions for cultural relations

During the period under study, countries were creating within their government structures divisions responsible for cultural relations. For example, the Imperial Fund for the Promotion and Support of German Schools Abroad (*Reichsschulfond*) was established in 1878 under the German foreign ministry [20, S. 307]. Likewise, the Bureau for French Schools and Works Abroad (*Bureau des écoles et œuvres françaises à l'étranger*) was formed in 1909 within the structure of the Ministry of foreign affairs of French Republic, and the National Bureau for French Universities and Schools (*Office national des universités et écoles françaises*) was instituted in 1910

[21, p. 34]. The German foreign ministry founded the subdivision of schools and school education abroad (*Schulreferat*) as a unit within its legal department and transformed it into a full-fledged department in 1906<sup>2</sup>. Previously, in about 1896, the German foreign ministry had created a department of art and science (*Referat für Kunst- und Wissenschaft*). However, as F. Schmidt remarked, "the department of art and science never pursued any cultural and political activities until it was closed at the end of the World War I. It did not even manage to organise German art exhibitions, which the commercial department reserved for itself" [5, S. 252].

## Non-governmental institutions as actors in cultural diplomacy

In cultural diplomacy, non-government actors also played an indispensable role. Schools and cultural institutions relied on the support of non-governmental sponsors to operate overseas. The *Alliance Française*, established in 1874, became a vehicle for projecting French culture worldwide. By propagating its culture abroad, France was hoping to reverse its decline as a world power and recover its political influence. The geographical priorities of the alliance expanded. In 1890 it established a separate Levant-Egypt commission, and a year later a commission for Africa. Previously, it had been pursuing extensive activity in its committees. In 1885, alliance committees were established in Cairo and Alexandria. There was also a committee in Thessaloniki, active from 1886, and Constantinople and Smyrna, from 1888. By 1913, the alliance had 13 active

committees in the Ottoman Empire alone. As of 1914, its total number of committees was estimated at 274, with roughly 50,000 members in France and abroad [10, p. 768]. For a time, the alliance remained a key vehicle for the exercise of French influence in Latin America, where French diplomatic presence remained limited despite the large numbers of French immigrants [10, p. 768, 777].

Initially, the alliance worked in two main areas. It supported schools and evening courses, administered scholarships and evaluated academic credentials. These functions were predominant in the work of the Levant, Spain, and South America committees. It also organised cultural and academic events, including conferences and theatrical performances, and maintained libraries. The latter set of activities was most prominent for the alliance's committees in the United States. In 1894,

<sup>1</sup>Hereinafter translated by us. – D. K.

<sup>2</sup>Waibel J. Die deutschen Auslandsschulen – Materialien zur Außenpolitik des Dritten Reiches : Dissertation zur Erlangung des Doktorgrades. Frankfurt (Oder) : Europa-Universität Viadrina, 2010. S. 64.

the alliance launched its summer school programme as a distinct new area of its operations [10, p. 773–774].

Not infrequently, the work of the committees was steered by French diplomats. In its two circular letters, in 1884 and 1885, the Ministry of Foreign Affairs of French Republic instructed members of French diplomatic missions to assist the alliance committees unofficially [10, p. 772]. F. Chaubet observes: “Pretty much everywhere, consuls made themselves indispensable to the committees, first of all by creating them, by calming the discords, by blowing on the embers of a dying group, by delivering conferences, and above all, by distributing the subsidies from the ministry of foreign affairs” [10, p. 772–773].

As the main vehicle for spreading Germany’s cultural influence, the German unions began to spring up across the world in the 1880s. About 50 unions were active at the beginning of the World War I. Some notable examples included the Pan-German Union (*All-deutscher Verband*, 1891–1939), the German Colonial Society (*Deutsche Kolonialverein*, 1887), the Society for Ethnic Culture (*Deutsche Gesellschaft für ethnische Kultur*, 1892) [22, p. 26], Association for the Propagation of German Culture in East Asia (*Ausschuß Zur Förderung der Deutschen Kulturarbeit in China*, 1906) [15, S. 139], succeeded by the German-Chinese Union (*Deutsch-Chinesischer Verband*), in 1914, the German-Turkish Society (*Deutsch-Türkische Gesellschaft*) in Berlin and the Turkish-German Society in Tehran [22, p. 31].

One of the leaders of the German-Turkish society E. Jäckh noted the goals of the organisation as follows: “We should start exporting spiritual goods in order to bind the hearts and minds of the local population to us. Every Ottoman who speaks our language, who reads German books, who found convalescence in a German hospital, becomes a friend of our culture, abuyer of German goods. <...> Cultural policy has the task of promoting German economic policy. Germany should also compete with other powers in cultural policy” [23, S. 200].

The French Secular Mission (*Mission laïque française*), established in 1902, was a new type of organisation distinct by its global reach. It aimed to spread the French language and culture throughout the world through secular, multilingual and intercultural education [24]. To strengthen the global appeal of French culture and way of life, the International Union of Friendship with France was founded in 1909 [20, S. 63].

For many European states, the end of the 19<sup>th</sup> century was a period of intense nation-building and consolidation of nation-states. Many of these states chose to target national diasporas outside their borders with cultural diplomacy. Italy was a case in point. At the turn of the 20<sup>th</sup> century, a movement for the annexation of the borderline regions of Austro-Hungary with

predominantly Italian population was gaining ground. These irredentist aspirations were reflected in the founding declaration of the Dante Alighieri Society of 3 July 1889, which stated: “To achieve the political unification of the nation, we Italians seem to have forgotten so far that the mother country was not yet wholly within the physical boundaries of the state”<sup>3</sup>. The society maintained its presence mostly in countries of Western Europe, and North and South America with significant émigré communities. Only two branches, in Tripoli (1898) and Benghazi (1906) operated in Italy’s colonies [18, p. 277–278].

After a few decades of independence, cultural diplomacy of Greece was also influenced by irredentist sentiments. It targeted in large part the Greek population in Macedonia, then a part of the Ottoman Empire [25, p. 96]. The communiqué of the Greek minister of foreign affairs to the Greek consuls called for support to Greek schools in large Macedonian communities. The funds for the undertaking came from Greek charities, the government of Greece and the Association for the Propagation of Greek Letters (*Συνελλογος προς διαδοσιν των Ελληνικων Γραμμασεων*), established in 1869. The latter supported multiple education projects in Macedonia and Thrace, scenes of the national struggle of Bulgarians and Greeks for independence from the Ottoman Empire. In 1888, the president of the association asked the Greek minister of foreign affairs to provide scholarships for the training of priests, teachers and other local activists in Macedonia [25, p. 93]. Between 1878 and 1905, the number of Greek schools in Macedonia increased by 81 % [25, p. 97].

Cultural diplomacy in united Germany upheld the ideology of *Deutschtum* (Germanness), which meant, *inter alia*, promoting the German language and culture among the German expatriates. In 1881, the General German School Union (*Allgemeiner Deutscher Schulverein*) was founded (renamed in 1908 to the Union for German Abroad (*Verein für das Deutschtum im Ausland*)) [12, S. 165, 169]. It financed the construction and upkeep of German schools abroad, supported cultural activities outside the empire (such as the establishment of kindergartens and libraries), and facilitated student exchange.

G. Paschalidis views these activities of the Italian, Greek and German organisations as clear examples of anti-assimilationist nationalist politics: “...politics that aim to prevent expatriate or same-language communities from being integrated into foreign states, and to maintain them as potential foreign policy instruments, either in relation to territorial claims or to the procurement of economic and political advantage” [18, p. 278].

Individuals and non-government players often conducted cultural diplomacy in areas that governments found too sensitive. In July 1913, the German chancel-

<sup>3</sup>Manifesto di fondazione della Società Dante Alighieri [Risorsa elettronica]. URL: <https://ladante.it/images/attualita/2016/07-lug/ManifestoFondazioneSDA.pdf> (data di accesso: 04.04.2022).

lor T. von Bethmann-Hollweg issued a circular decree to the Reich offices outlining further steps on cultural diplomacy and instructing them to revise their present strategies by involving corporate bodies, societies, clubs, academics and businessmen interested and able to fund cultural activities abroad. In effect, T. von Bethmann-Hollweg confirmed the broad approach of the Wilhelmstrasse to funding the activities of German institutions on propagating the German culture and language among non-Germans. F. Stremmel reports:

“Bethmann also instructed the state secretaries in the ministries that independent bodies should be used... to create the impression that there was no official German cultural diplomacy. The Reich ministries were expected to provide some financial support and, indirectly via the boards, steer the course of the societies and clubs that engaged in cultural activities abroad. The reason for this, of course, was the fear of antagonising western neighbours, which an aggressive expansion of cultural diplomacy might trigger” [26, p. 54].

### Education as a target for the exercise of soft power

As suggested by the names of the various divisions of foreign ministries responsible for cultural policy, the world's empires were devoting much of their attention to education, as a part of their “civilising” mission. For a long time, education had been the mainstay of religious missionaries. Now, governments were stepping in to establish public school networks. Britain was the first colonial power to reform education in its dominions. The reform began in 1835. In India, it lasted until 1882 for secondary education (Indian education commission) and 1904 for higher education (Government resolution on education, Indian University act) [14, p. 8–12]. The Spanish government planted the roots of the modern system of education in the Philippines in 1863 [27, p. 508]. The two-tiered system of Indonesia was established by a decree of the king of the Netherlands in 1893 [14, p. 70]. In French West Africa, the school system took shape in 1903<sup>4</sup>, and in 1906, the colonial administration implemented an education reform in French-occupied Vietnam<sup>5</sup>.

Support for missionary schools and their public funding was still common practice. At the time when the Belgian parliament took control of the Congo in 1908, Roman Catholic missionary schools were receiving state subsidies and enjoying privileged official status<sup>6</sup>.

Yet some metropolises implemented drastic changes. For example, a decree of 1871 prohibited state subsidies for denominational schools in Dutch India [28, p. 12]. The colonies began to create non-denominational public schools, funded by the budget of the metropolis. The unintended effect of such policies was the decline of mass primary education. Aware of the risk, France continued to support religious congregations despite the prevalence of anti-clerical and secular sentiments at home. When the legal separation of the church and state became law in 1905, the government continued to subsidise French Catholic schools abroad out of necessity: there were simply not enough secular schools in the

colonies to replace the Catholic ones. De-funding them would have diminished access to education, and with it, the cultural influence of France [2, p. 31].

Colonies differed in the way they were implementing public education systems, but all did so for the same reasons: to teach the population the language of the empire, attune them to European values and the culture of the metropolis, and train local administrators to fill lower-ranking positions in the colonial administrations. J. Furnivall observes: “...education had a more practical side. It furnished government with cheap subordinates and the people with well-paid jobs. The government wanted schools to train clerks, and the people wanted schools to obtain clerkships. There was an economic demand for schools. <...> Educational progress was dominated by the economic laws of demand and supply” [29, p. 123].

Some colonial schools (termed propaganda schools by their critics), used a combination of the language of the metropolis and the local language as languages of instruction. The French opened the first Franco-indigenous school in Kohichin, South Vietnam, in 1861<sup>7</sup>. A plan to establish Russian-indigenous schools was implemented in the Turkestan region of the Russian Empire in the 1880s. The schools combined the traditional curriculum of a Muslim school (Mekteb) with that of a Russian literacy school (Russian and indigenous classes) [3, p. 82]. Still, the number of such schools was small by comparison with public primary schools, with instruction in the local languages and the language of the empire taught as a separate subject. For example, Dutch-indigenous schools in Indonesia had a total of 1308 students in 1914, and primary schools had 713.5 thousand [30, p. 264].

In 1909, there were 98 Russian-indigenous schools in Turkestan, with 3077 students [3, p. 320]. To encourage the students of these schools to study the Russian language, the Turkestan authorities arranged excursions for them to Central Russia [3, p. 216].

<sup>4</sup>Education in British colonies and former colonies [Electronic resource]. URL: <https://www.britannica.com/topic/education/Education-in-British-colonies-and-former-colonies> (date of access: 12.04.2022).

<sup>5</sup>Indochine française. Enseignement [Ressource électronique]. URL: [https://fr.wikipedia.org/wiki/Indochine\\_française#Enseignement](https://fr.wikipedia.org/wiki/Indochine_française#Enseignement) (date de la demande: 04.04.2022).

<sup>6</sup>Education in British colonies and former colonies [Electronic resource]. URL: <https://www.britannica.com/topic/education/Education-in-British-colonies-and-former-colonies> (date of access: 12.04.2022).

<sup>7</sup>Indochine française. Enseignement [Ressource électronique]. URL: [https://fr.wikipedia.org/wiki/Indochine\\_française#Enseignement](https://fr.wikipedia.org/wiki/Indochine_française#Enseignement) (date de la demande: 04.04.2022).

In most places, however, secular schools still represented a small minority of schools, and missionary or traditional schools remained prevalent. The British dominions of Africa were a typical example. In 1899, only 33 of 8,154 primary schools in Nigeria, were secular. Only 9 out of 136 secondary schools, and 13 out of 97 normal schools were government-run. Similarly, in the Gold Coast in 1914, the government was responsible for only 8 % of the schools. In Kenya and Uganda, all the schools were run by religious missions<sup>8</sup>.

In the 20<sup>th</sup> century, colonial decision-makers began to give added weight to ethics and the welfare of the subjects in their policies. The Netherlands pioneered the transition by abandoning its old doctrine of winge-west, which viewed profit for the metropolis as the key consideration for policy-making. Instead, it adopted a new set of principles more in line with the present views on international development. Other colonial powers, however, still held on to the old approaches, which viewed the colonial powers as fulfilling a civilising mission towards its colonies. The old approach emphasised the spread of culture, but the new strategy relied more on education<sup>9</sup>.

In Germany, the priorities for cultural policy also shifted from *Deutschtum* (i. e. keeping the German language and culture alive among its expatriates) to bringing schooling and German culture to non-Germans. To Germany, education also became an instrument of soft power, which it engaged with the primary aim of fomenting pro-German sentiments and maximising Germany's economic and political influence [26, p. 50].

Germany's approach was informed in large part by the successes of France in using schools as instruments of political and economic influence in regions such as

the Ottoman Empire. In 1868, France reached an agreement with the Ottoman authorities to establish its first lyceum in Galata-Sarai with instruction in French [23, S. 33]. Other countries joined the struggle for influence. This struggle reached peak intensity by 1914, as evidenced by a large number of foreign schools. Of a total of 1000 active schools with 90 000 students, 67 were Italian with 5000 students, 126 with 10 000 students were English, 273 with 18 000 students were American, 530 with 54 000 students were French and 23 with 3000 students were German [23, S. 200].

China was another region with a growing educational presence of the world's big powers. In 1907, the Prussian ministry of spiritual, educational and medical affairs (*Preußischen Ministerium für Wissenschaft, Kunst und Volksbildung*) opened a Chinese-German university and medical school in Shanghai [5, S. 253]. In 1909, a German-Chinese university opened in Qingdao (Shandong province) [31, S. 245]. To prepare a contingent of prospective students of German universities, the German foreign ministry launched a network of German-Chinese preparatory schools (*Zubringerschulen*) in 1907. According to F. Schmidt, the establishment of these schools was the first cultural and political event engineered by the German foreign ministry. The Imperial school foundation financed the schools, the school department of the ministry administered them, and the German consuls in China supervised the schools [5, S. 254].

As a counterweight to Germany, France established in 1908 a Franco-Chinese university in Shanghai [21, p. 33]. In secondary education, Britain was the obvious leader, with 241 active schools in 1912, as compared to Germany's 15<sup>10</sup>.

## Research and academic exchange

Academic institutions and exchanges were also a tool for projecting culture. F. Schöbe writes: "The rivalry (perceived in an almost Darwinian way) between certain major research institutions, especially archaeological ones, between schools established abroad, and ultimately between the languages themselves that have become instruments of expansionism, became one of the elements of common European consciousness" [10, p. 770].

As early as March 1878, B. von Bülow, then attaché of the German embassy in Paris and a member of the secretariat of the Berlin Congress, called for a programme of cultural expansion abroad, citing as an example the German Archaeological Institute in Rome [10, p. 770]. Founded in 1829, the institute became an imperial institution in 1874. According to the agreement on cultural

cooperation of 1874 (which, incidentally, was Germany's first international agreement in the field of culture), German archaeologists received the right to conduct excavations in Greek territory, and in 1875 the Institute established a branch in Athens [3, p. 106]. From 1902, Germany provided regular support to the Institute of Art History in Florence (Villa Romana), through its ministry of interior (the institute was registered in Berlin) [3, p. 104]. From 1894, the German imperial budget allocated funds to the African fund (*Afrikafonds*), to facilitate the study of Central Africa and other countries [3, p. 106].

In this academic expansion, Germany was taking its cue from its rival France. From 1846, France financed the French Archeological Institute in Athens through its foreign ministry. It had also established a similar

<sup>8</sup>Education in British colonies and former colonies [Electronic resource]. URL: <https://www.britannica.com/topic/education/Education-in-British-colonies-and-former-colonies> (date of access: 12.04.2022).

<sup>9</sup>Dutch ethical policy [Electronic resource]. URL: [https://en.wikipedia.org/wiki/Dutch\\_Ethical\\_Policy](https://en.wikipedia.org/wiki/Dutch_Ethical_Policy) (date of access: 15.04.2022).

<sup>10</sup>Stenographische Berichte zur Verhandlungen des Deutschen Reichstags, XIII. Legislaturperiode, I. Session, Bd. 289 (von der 131. Sitzung am 3. April 1913 bis zur 150. Sitzung am 26. April 1913). Berlin, 1913. S. 4808.

institute in Cairo (1880, *Institut français d'archéologie orientale*) and for the Far East (1898, *École française d'Extrême-Orient*) [32, p. 125].

The Eastern Seminary (*Seminar für Orientalische Sprachen*) based at the University of Berlin trained teachers and colonial officials, with half of the cost borne by the German state. F. Stremel observed: "The institution was unique, as neither France nor any other country that conducted cultural diplomacy had a government-run training institute. The only institution that came close to the Seminar für Orientalische Sprachen in training colonial officials was London's School of Oriental Studies, which was not founded until 1916" [26, p. 57].

In 1905, the English ministry of education signed agreements with France and Prussia on the exchange of teaching assistants. Similar agreements were reached with Scotland in 1906, Saxony and Austria in 1907, and Bavaria and Hessen in 1912. All held great promise for cultural diplomacy. Under their terms, the teaching assistants taught their language in a participating school, and also shared their culture. They also studied the language of the host country, which they would teach after their return [2, p. 31].

In 1904, a group of German scientists and educators travelled to Buenos Aires at the invitation of the Ar-

gentine government to assist it in establishing a system for the training of teachers for Argentine's secondary schools. The members of the group formed the core of the teaching staff at the National Institute of Secondary School Teachers (*Instituto Nacional del Profesorado Secundario*) [5, S. 252].

In 1910, the newly founded Imperial University in Beijing received a large group of professors from German universities. In Persia, a German school was established with government funding to educate Persians. The Turkish University in Istanbul admitted a group of German professors to its staff. North American universities were expanding their academic exchanges with the universities of the German Reich, which reached its highest point at the beginning of World War I [33, S. 111].

Simultaneously, French lecturers and professors also went to teach at foreign universities, facilitated by the French culture centres (*Instituts Français*). From the beginning, these French institutes had a dual purpose: to enable French research students to conduct on-site research and to enable French-speaking natives to deepen their knowledge and understanding of French culture. The first centres of French culture opened in Athens (1907)<sup>11</sup>, Florence (1907)<sup>12</sup>, Madrid (1909)<sup>13</sup>, London (1910)<sup>14</sup>, New York (1911)<sup>15</sup>, and Saint Petersburg (1911)<sup>16</sup>.

## Conclusion

Industrial imperialism set the stage for the rise of the institutions of cultural diplomacy. Divisions responsible for international cooperation in culture and education proliferated in the foreign ministries, and many states opened their first overseas cultural institutions.

Schools provided an effective tool for colonial powers in the pursuit of their civilising mission. Colonial education systems and school networks were modelled on the metropolises. Some European states targeted their cultural diplomacies at their diaspora. For Germany, it was an element of the *Deutschtum* policy. In Italy and Greece, where irredentist sentiments were influential, the emphasis was on education in the neighbouring states. At the dawn of the 20<sup>th</sup> century, cultural diplomacy became a means for the exercise of soft power, and schools, research and academic exchanges were its primary vehicles. Imperial powers were vying to promote their achievements in science and culture in as many countries and to as many people as possible. This new approach had

a favourable response from the recipient societies and also enhanced the economic and political influence of the European states. The Netherlands made its presence in education a part of its new development policy.

Where government activity in cultural diplomacy was limited, non-governmental institutions and individuals stepped in to fill the void. Multiple non-governmental groups active in cultural diplomacy emerged, e. g. *Alliance Française*, *Mission laïque française*, *Allgemeiner Deutscher Schulverein zur Erhaltung des Deutschtums im Ausland*, *Società Dante Alighieri*, and *Συνελλογος προς διασδοσιν των Ελληνικων Γραμματοςτων*, among others. Individuals, not the state, provided funding, and strategic and day-to-day management of these organisations. The geographical presence of these institutions reflected the foreign policy aspirations of a particular state, such as nation-building or the struggle for global influence. Countries relied on diplomats to support their overseas cultural institutions while using considerable discretion in doing so.

<sup>11</sup>Institut français de Grèce [Ressource électronique]. URL: [https://fr.wikipedia.org/wiki/ Institut\\_français\\_de\\_Grèce](https://fr.wikipedia.org/wiki/Institut_français_de_Grèce) (date de la demande: 03.05.2022).

<sup>12</sup>Institut français de Florence [Ressource électronique]. URL: [https://fr.wikipedia.org/wiki/Institut\\_français\\_de\\_Florence](https://fr.wikipedia.org/wiki/Institut_français_de_Florence) (date de la demande: 03.05.2022).

<sup>13</sup>Collignon M. L'inauguration de l'Institut Français de Madrid [Ressource électronique]. URL: [https://www.persee.fr/doc/jds\\_0021-8103\\_1913\\_num\\_11\\_5\\_4060](https://www.persee.fr/doc/jds_0021-8103_1913_num_11_5_4060) (date de la demande: 03.05.2022).

<sup>14</sup>Institut français du Royaume-Uni [Ressource électronique]. URL: [https://fr.wikipedia.org/wiki/Institut\\_français\\_du\\_Royaume-Uni](https://fr.wikipedia.org/wiki/Institut_français_du_Royaume-Uni) (date de la demande: 03.05.2022).

<sup>15</sup>L'Alliance française de New York, un écrin pour la culture française aux Etats-Unis [Ressource électronique]. URL: <https://www.canalacademies.com/emissions/partager-le-savoir-le-francais-en-partage/les-alliances-francaises/lalliance-francaise-de-new-york-un-ecrin-pour-la-culture-francaise-aux-etats-unis> (date de la demande: 03.05.2022).

<sup>16</sup>Institut français de Saint-Petersbourg [Ressource électronique]. URL: [https://fr.wikipedia.org/wiki/Institut\\_français\\_de\\_Saint-Petersbourg](https://fr.wikipedia.org/wiki/Institut_français_de_Saint-Petersbourg) (date de la demande: 03.05.2022).

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## MUSLIM COMMUNITIES IN THE UNITED KINGDOM, IRELAND AND THE BENELUX

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This article examines the origins and evolution of Muslim communities in the United Kingdom, Ireland and the Benelux countries, selected as case examples for the region. Their Muslim communities' characteristics and similarities are examined, along with the composition and structure of their Muslim communities. The analysis revealed several related but sometimes contradictory trends. The rise of polarisation and radicalisation coexists with the search for dialogue and interaction, and the failure of multiculturalism coincides with relatively successful integration paradigms. The study of Muslim societies in countries such as Great Britain, the Netherlands, Belgium, Luxembourg and Ireland seems very important, even urgent, for any European country.

**Keywords:** the United Kingdom; the Benelux; Ireland; Muslims; community; ethnicity; Islam; migration; multiculturalism; interculturalism.

## МУСУЛЬМАНСКАЯ ДИАСПОРА В СОЕДИНЕННОМ КОРОЛЕВСТВЕ, ИРЛАНДИИ И БЕНИЛЮКСЕ

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Рассматривается возникновение и развитие мусульманской диаспоры в Великобритании, Ирландии и государствах Бенилюкса. Исследуются состав и структура мусульманских общин этих стран, их особенности и схожие черты. В ходе анализа выявлены некоторые взаимосвязанные, но отчасти противоречивые тренды: поляризация и радикализация сочетаются со стремлением вести диалог и взаимодействовать, провалы политики мультикультурализма – с примерами довольно успешной интеграции. Изучение мусульманской диаспоры в таких странах, как Великобритания, Нидерланды, Бельгия, Люксембург и Ирландия, представляется несомненно важным и актуальным для любой европейской страны.

**Ключевые слова:** Великобритания; Бенилюкс; Ирландия; мусульмане; община; этническая принадлежность; ислам; миграция; мультикультурализм; интеркультурализм.

### Introduction

The EU member states have large and visible Muslim communities. Contemporary European societies exhibit ethnic tensions in their relations with host populations. In this article, we explore these patterns, using several European states as case examples.

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The countries in this study were among the founders of the European Union. The United Kingdom has since left the union. The Netherlands, Belgium, and Luxembourg form the Benelux group. The fifth is the Republic of Ireland. The history and status of the Muslim communities vary across these states, but there are also important similarities. Awareness of these differences and commonalities may deepen our understanding of inter-ethnic politics in Western Europe.

The research can contribute to the ongoing debate in Europe about multiculturalism. Some scholars and politicians have been sceptical of its achievements, while others have been defended it. But is the perceived success of multiculturalism related in any way to the history of colonialism? Britain and the Netherlands were great colonial empires, with countries like France, Spain, Portugal among their main historical rivals. British and Dutch Muslim communities began to form early through

immigration from the colonies. Belgium's African colonies had almost no Muslims. Luxembourg had no colonies altogether while being almost identical in most other respects to the Netherlands and Belgium. Ireland, on the other hand, appeared to many Muslims almost like a "fellow victim" of colonialism.

This research is based on statistics, opinion poll data and publications in the European media. In addition, H. Ansari's monograph on the Muslim community in the UK [1], O. Sharbrodt's monograph on the Muslim community in Ireland [2], J. S. Nielsen's monograph on Muslims in Western Europe [3], and J. Rath [4], K. Damhuis [5], S. Teich [6], T. De Raedt's monograph on Muslims in the Benelux states provided insights and observations [7]. Russian-language scholarship on the subject has been limited so far. However, we have been influenced in our findings by scholars such as R. Landa [8], L. Sadykova [9], S. Altukhova [10].

### The Muslim communities

Muslim immigration to Britain and the Netherlands began as early as the 16<sup>th</sup> century. By the 19<sup>th</sup> century, the foreign dominions of both countries had large Muslim populations, but the number of Muslims settling in both metropolises was still too small to be called diasporas.

By the 19<sup>th</sup> century, Muslim quarters had appeared in Britain in the East End of London and several large industrial cities in the Midlands, including Manchester, Birmingham, and Liverpool [1, p. 4]. There were also significant numbers of settlers from Malaya, Yemen, Somaliland and Cyprus, whilst the majority came from British India (which then encompassed present-day Pakistan and Bangladesh). Muslim immigration to Britain was distinct by this diversity, despite the prevalence of migrants from Hindustan. Most were traders or sailors, but there was also a growing number of students settling in Britain after completing their studies. Muslim arrivals increased with the opening of the Suez Canal in 1869, but they were still quite small.

The first mosques in Britain were established in 1860 in Cardiff (Wales) and in 1889 in the town of Woking (Surrey, England) soon followed by one more in Liverpool (designed by a British convert to Islam), though the first London mosque was built only in 1924. By that time, a moderate inflow of Muslim immigration took place after the World War I when significant numbers of officers and soldiers mobilised in the colonies and decided to stay in Britain.

Ottoman merchants (Jews, Christians, Muslims) first arrived in the Netherlands in the 16<sup>th</sup> century and settled mostly in Amsterdam and other major ports. The first "provisional" Dutch mosque was established in Amsterdam in the 17<sup>th</sup> century, centuries before the country's first "permanent" mosque opened in Almelo, a small provincial town, in 1975. The Netherlands exhibited remarkable tolerance towards the newcomers,

encouraged by its alliances with the Ottomans and Morocco against the common enemy, Spain. Both Islamic states enjoyed trade privileges from the Dutch. In the Netherlands, Turks and Moroccans predominate among Muslims for historical reasons. Some new Muslim immigrants were refugees from Spain and Portugal who had adopted the religion of their ancestors, and some were sailors returning from Muslim captivity where they had converted to Islam. In the 18<sup>th</sup>–19<sup>th</sup> centuries, they were joined by a small number of Muslims from the Dutch East Indies (present-day Indonesia). At the beginning of World War II, however, the Muslim community in the Netherlands remained small: less than 0.1 % of the total population. Still, it was influential enough to establish the Dutch Islamic Association in 1932<sup>1</sup>.

Overall, pre-World War II, Muslim immigration to Britain and the Netherlands was ongoing, even if small and barely visible. In contrast, Belgium and Luxembourg received no Muslim immigrants, and Muslim immigration to Ireland (a part of the UK until 1922 and then its dominion until 1938) was sporadic.

In Britain, the situation changed dramatically after World War II. A Labour government came to power in 1945 to pursue an agenda of social reforms and decolonisation. The first wave of immigration began, including from Muslim countries. The 1948 British nationality act created the status of national of the United Kingdom and colonies, granting its subjects born in the colonies equal residence and employment rights with its British-born nationals. Part of the motivation was to satisfy the post-war demand for labour. The act coincided with substantial population movements from India and Pakistan (which then included Bangladesh before it became independent in 1971), and most Muslims who settled in Britain at that time came from that region. Hindustan alone accounted for approximately 10 000 Muslim immigrants annually in the 1950s [3, p. 39]. Significant

<sup>1</sup>Islam in the Netherlands (factsheet). Berlin : Dutch Ministry of Foreign Affairs, 2002.

numbers of immigrants were also coming from British possessions in Africa, the Middle East, West India, Ceylon, Malaysia, Cyprus, etc. Ethnic Hindustani formed a significant proportion of the immigration from Britain's colonies in East Africa and South Africa, where they had settled before independence.

In Ireland, the Muslim community emerged by the late 1950s, consisting mainly of college students from Pakistan, India, Malaysia, and the Arab states. Many Muslims arriving from South Africa were of Hindustani origin. The Irish Muslims established the Dublin Islamic Society in 1959. Subsequently renamed the Islamic Foundation of Ireland, it became Ireland's first Muslim association. In 1976, it opened the Dublin mosque, the first in the country, with support from King Faisal of Saudi Arabia [2, p. 52].

Immigration to the Benelux was also rising. The Netherlands signed bilateral labour force agreements with Turkey (1965), Morocco (1969), Algeria, Tunisia and Yugoslavia. Belgium entered similar agreements with Turkey and Morocco (1964), Tunisia (1969) and Algeria (1970). Luxembourg signed a labour force agreement with Yugoslavia in 1970 and received its first Muslim immigrants from Bosnia and Herzegovina, Sanjak and Kosovo. As in Britain, the motivation was to meet the demand for low-skilled labour, as the host country nationals were increasingly training for service and high-skilled jobs. However, unlike Britain, most Muslim immigrants to Benelux were from Maghreb, Turkey and Yugoslavia. By comparison with Britain and the Benelux, the situation in Ireland was remarkably different. Still a country of emigration, not immigration, its demand for an immigrant workforce remained low until it reinvented itself as the Celtic Tiger in the 1990s.

The United Kingdom was the first of five countries to experience the downside of mass immigration. Liverpool, Manchester, and London were the first cities to see clashes between immigrants and British youth in the late 1940s and in the 1950s. Groups of right-wing radicals established a White Defense League and launched the keep Britain white campaign [11, p. 40]. Working-class Britons feared competition for jobs, housing and social benefits with the immigrants. Because the immigrants were more prepared to accept lower pay and harsher working conditions, some working-class Britons were concerned for their welfare. In response, the Conservative government initiated legislation to limit migration. The Commonwealth immigrants act of 1962<sup>2</sup> set an annual immigration quota of 61 000 for holders of Commonwealth passports. However, despite its electoral support among immigrant populations, the

following Labour government reduced this quota and introduced a new Commonwealth immigrants act<sup>3</sup> – which was enacted in 1968 – further reducing the right of Commonwealth citizens to migrate to the UK. Children born outside the UK and those with foreign-born parents lost their automatic right of abode. The act's unintended effect was to encourage migrants to bring in more of their family members. The Immigration act of 1971<sup>4</sup> and the British nationality act of 1981<sup>5</sup> further tightened the restrictions: for example, the 1981 law abolished the automatic acquisition of British citizenship by those born in the territory of the UK. Instead, the law provided that a person born outside of the UK or the qualifying territories on or after 21 May 2002 was a British citizen at birth only if, at the time of their birth, either parent was a British citizen otherwise than by descent [12, p. 102]. Human rights activists and organisations including the European Commission of Human Rights have criticised this legislation as discriminatory. Critics were ignored so that the act could serve its purpose – to stem immigration from former British possessions.

With this new legislation, the situation of the Muslim community in Britain changed. Natural growth and the entry of migrants' families now drove its expansion. In the mid-1970s, the oil crisis and the turbulence in the Middle East, Libya, Afghanistan and Iran created another wave of Muslim migration. In response, the Conservative government introduced the Immigration act of 1988<sup>6</sup>, which imposed the sufficient sustenance requirement on overseas family members of UK residents. As a measure against polygamy, the law allowed only one wife or widow of a UK resident to enter.

In the Netherlands and Belgium, the situation of the Muslim community also changed in the mid-1970s, albeit more slowly and gradually. As the economy deteriorated, the previous policy of "benevolent neglect" towards immigration was no longer feasible. Both countries tightened the rules for the entry of unskilled workers and discontinued the overseas recruitment of unskilled workers. Apart from that, citizenship and family unification policies remained liberal. In Belgium, up to 113 800 migrants from Muslim-majority countries (not all of them Muslims<sup>7</sup>) became Belgian citizens from 1985 to 1997. In the mid-1990s the Netherlands and Belgium experienced a sharp increase in the number of asylum applications received from nationals of Islamic countries, including Afghanistan, Iraq, Somalia and Bosnia.

"Benevolent neglect" was succeeded by multiculturalism, and the Benelux states became its strongholds. For Muslims, it meant an official acknowledgement of

<sup>2</sup>Commonwealth immigrants act. 1962 [Electronic resource]. URL: <https://www.freemovement.org.uk/wp-content/uploads/2018/04/CIA1962.pdf> (date of access: 12.08.2020).

<sup>3</sup>Commonwealth immigrants act. 1968 [Electronic resource]. URL: [https://www.legislation.gov.uk/ukpga/1968/9/pdfs/ukpga\\_19680009\\_en.pdf](https://www.legislation.gov.uk/ukpga/1968/9/pdfs/ukpga_19680009_en.pdf) (date of access: 22.08.2020).

<sup>4</sup>Immigration act. 1971 [Electronic resource]. URL: <https://www.legislation.gov.uk/ukpga/1971/77/contents> (date of access: 19.08.2020).

<sup>5</sup>British nationality act. 1981 [Electronic resource]. URL: <https://www.legislation.gov.uk/ukpga/1981/61> (date of access: 24.08.2020).

<sup>6</sup>Immigration act. 1988 [Electronic resource]. URL: <https://www.legislation.gov.uk/ukpga/1988/14/contents> (date of access: 30.09.2020).

<sup>7</sup>Islam in Belgium [Electronic resource]. URL: <http://www.euro-islam.info/country-profiles/belgium/> (date of access: 22.05.2022).

their presence. In 1974, Belgium was the first Western European state to recognise Islam as one of its official religions. This decision created, among other things, the right to government subsidies for Muslim communities and clergy [13, p. 9]. As well as Roman Catholicism, Belgium also recognised Protestantism, Anglicanism (as distinct from other Protestant denominations), Orthodoxy, Islam, Judaism, and secular humanist groups by 2008. Each recognised denomination receives state subsidies and incentives through its coordinating body, and the government pays salaries and pensions for their clergy.

The Dutch government followed the Belgian example. In 1983, it published a memorandum on its Ethnic minorities policies, acknowledging the presence of new religions for the first time in Dutch history [14, p. 54]. Historically, churches had played dominant roles in both states. Belgium was considered a purely Catholic state, and in the Netherlands, even trade unions and political parties were organised along religious lines, with Catholic or Protestant chapters among them. By the late 1970s, this situation changed as a result of immigration and the decline of industrial labour: in the Netherlands, for example, the share of manufacturing industries in total employment declined from 18 % in 1979 to only 2 % in 1985.

Both states named the integration of their immigrant minorities – including Muslims – as a key task of their multiculturalism policies. In a 1994 programme document called “Ethnic minorities’ integration policy”, the Dutch Christian democrat government outlined a vision for a multicultural society in the Netherlands. The policy called, among other things, for state funding of Muslim associations, schools and media, the introduction of minority language education and the study of minority cultures and religions, focusing specifically on Turks and Moroccans as the largest ethnic communities.

Belgium and the Netherlands classify their populations as autochthons (of Dutch or Belgian origin) and allochthons (of foreign birth). Allochthons are further divided into Western and non-Western. In 2010, there were more than 1.5 mln non-Western allochthons in the Netherlands, including 800 000 to 850 000 Muslims [13, p. 161]. This division was criticised in both countries because it led to de facto segregation in education, housing, and other key sectors, thereby undermining multiculturalism.

The Belgian nationality law of 2000 granted the right to citizenship to every person born in the country to a Belgian citizen or a permanent resident of Belgium of at least seven years if they met certain linguistic criteria. In 2004, legislation was enacted to give the right to vote in local elections to foreigners residing in Belgium for five years subject to a written pledge to respect Belgian law. Up to 120 000 people have used this right. Similar laws were introduced in the Netherlands, Ireland, and the Scandinavian states.

In the 2000s the Benelux states tightened their immigration policies in the wake of the 11 September attacks in the United States and several acts of terror committed by young Muslim radicals. The Netherlands introduced a law in 2004 limiting family reunification: foreigners who marry Dutch now had to take a language and culture test in their country of residence, and their partners in the Netherlands must be at least 21 years old, with an income of at least 120 % of the subsistence level. In 2007, the Dutch law on integration obliged most migrants (including spouses or relatives of Dutch citizens) to learn the Dutch language and pass an exam a few years after their arrival [13, p. 10]. Amendments to Belgium’s law provided that an immigrant from outside the EU could fill a job vacancy only if a candidate from an EU country has not claimed this vacancy<sup>8</sup>. In 2011, Belgium tightened the family reunification rules and introduced new provisions to immigration under the guise of a fake marriage.

Immigration to the Benelux decreased in the wake of these measures. For example, the number of immigrants to the Netherlands from Turkey decreased from about 6700 in 2003 to 3100 in 2006, and from Morocco, from about 4900 to 2000 respectively. In Belgium, the number of asylum seekers fell from 42 700 in 2000 to 11 100 in 2007 [13, p. 12].

Immigration to Ireland – including of Muslims – was remarkably different from the UK and the Benelux. From the mid-1990s to the late 2000s, it experienced a period of intense growth that created a high demand for skilled labour. The government’s immigration policy favoured skilled workers, and the Irish Muslim community had a large number of professionals, such as medical professionals. Also, it was considerably smaller than in the UK, the Netherlands or Belgium and therefore less visible to the public. Furthermore, the government’s policy of interculturalism (as distinct from) emphasised mutual adjustment of the majority and the minorities, as exemplified in the establishment in 1998 of a National Consultative Committee on Racism and Interculturalism (NCCRI) [15, p. 88]. Nevertheless, the Irish government eventually turned to more restrictive immigration policies like the other five states. The immigration acts of 1999, 2003 and 2004 tightened the rules on deportation, while the 2004 referendum revoked the automatic acquisition of Irish citizenship at birth. After the referendum, the children of immigrants could acquire citizenship only if their parents had lived in Ireland for at least three years, excluding the time of study or asylum seeking. After 2008, the NCCRI and other bodies responsible for the immigrants’ integration had their mandates significantly reduced or revoked [16, p. 211].

After 2001, all five countries experienced an increase in radicalism from the Muslim communities and host populations, accompanied by rising tensions and mutual antagonism. In response, governments continued to emphasise integration and multiculturalism while

<sup>8</sup>Islam in Belgium [Electronic resource]. URL: <http://www.euro-islam.info/country-profiles/belgium/> (date of access: 22.05.2022).

being receptive to criticism and stepping up measures to combat extremism.

Belgium, for example, declared the integration of immigrants its national priority in 2012. In 2013, it enacted new legislation with stricter criteria for naturalisation (e. g. residence in the country for at least five years, participation in the Belgian economy, knowledge of at least one official language and successful socialisation) [6, p. 9]. Previously, naturalisation preceded integration, now it became a prerequisite to integration.

In all the five states under study, it took less than a few decades for Islam to become one of the largest religious denominations after Christianity. According to the 2011 British national census, Muslims constituted 4.4 % of the UK population (2 516 000)<sup>9</sup>. A large European study found that Muslims numbered 5.2 % (3 372 900) of all believers in Western Europe, making Islam the third most numerous denomination in relative terms, and the sixth largest in absolute figures<sup>10</sup>. In Belgium, Islam was the fourth largest religion by the number of followers (879 400 as of 2022) and the sixth largest by percentage share (7.6 % of the total population). At the beginning of 2022, the Netherlands had Europe's sixth-largest Muslim community, with nearly 800 000 followers, or 5.1 % of the total population. The Muslim diasporas in Ireland and Luxembourg were considerably smaller, 70 900 (1.4 %) and 18 100 (3 %), respectively, as of 2022. However, in Ireland, the Muslim community doubled in size between 2006 and 2022, as it did in Belgium from 2005 to 2014<sup>11</sup>.

The majority of Muslims in Britain are Asian, including Pakistanis, Bangladeshis, and Indians, followed by significantly smaller numbers of Turkish and Arab Muslims (including descendants from Iraq, Egypt, Yemen, Morocco, Jordan, etc.), African Muslims from Nigeria, Somalia and Sudan, and Malaysian, Bosnian, Kosovo, Cyprus, among many others<sup>12</sup>. Indo-Pakistani languages like Punjabi or Bengali and Arabic, are among the top ten most spoken languages in the UK. Turks and Moroccans dominate: in 2006, Turks constituted 38 %

of the Dutch Muslim community, Moroccans – 31 %, followed by Muslims ethnically from former and present possessions in the Antilles and Surinam<sup>13</sup>. The number of Syrians is growing in both countries. In Luxembourg, in 2013 up to 60 % of Muslims were Bosnians, Albanians or Kosovars and migrants from other Balkan countries, and 15 % more – from other European regions including native converts. Only 20 % of Muslims in Luxembourg were from the Middle East, Asia and North Africa (led by Turks and Moroccans), and about 5 % were from Sub-Saharan Africa<sup>14</sup>. According to the 2016 census, the Irish Muslim community displays remarkable ethnic diversity for its size. It represents more than 40 ethnicities, with descendants from the Middle East and Asia numbering more than 42 %. The most numerous ethnic groups are Pakistanis (11.4 %) followed by Afghanis, Bangladeshis and Arabs. African ethnicities number 17.1 %. Remarkably, 17.7 % of Irish Muslims are European, including the Irish who converted to Islam<sup>15</sup>.

By faith, most Muslims in these five countries are Sunni (80–85 %). Statistics on Muslims in the Benelux countries are approximate, as religious groups are not subject to official estimates by government organisations. British Muslims are dominated by followers of the Deobandi and Barelvi movements, rooted in British-ruled Hindustan and widespread in Pakistan and Bangladesh. In 2017, the former controlled more than 40 % of mosques in the UK, while the latter around 25 %<sup>16</sup>. The Muslim diaspora in the Netherlands is characterised by a relatively large proportion of Alevis (about 15 %) with roots in Turkey. Turks control almost half of the 475 mosques in the Netherlands, and Moroccans (mainly Sunni Muslims) about 150<sup>17</sup>. Observers point to the growing influence of Salafism and its strict Islam on the Muslim community in Great Britain and the Benelux countries. For example, the adherents of Salafism control more than 9 % of mosques in Great Britain<sup>18</sup>. In the Netherlands, the number of Salafist mosques increased from 13 in 2014 to 27 in 2018. Another prominent group

<sup>9</sup>2011 census: quick statistics for England and Wales, March 2011 [Electronic resource]. URL: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/2011censusquickstatisticsforenglandandwales/2013-01-30#tab=Main-language> (date of access: 02.02.2015).

<sup>10</sup>Muslim population of England passes the three million mark for the first time as the numbers of Christians continues to decline, figures reveal [Electronic resource]. URL: <https://www.dailymail.co.uk/news/article-7850073/Muslim-population-England-passes-three-million-mark-time.html> (date of access: 02.02.2020).

<sup>11</sup>Muslim population by country. 2022 [Electronic resource]. URL: <https://worldpopulationreview.com/country-rankings/muslim-population-by-country> (date of access: 03.04.2022).

<sup>12</sup>British Muslims in numbers: census analysis [Electronic resource]. URL: <https://mcb.org.uk/report/british-muslims-in-numbers/> (date of access: 25.02.2022).

<sup>13</sup>The position of Muslims in the Netherlands: facts and figures [Electronic resource]. P. 7. URL: [https://ec.europa.eu/migrant-integration/sites/default/files/2009-09/doc1\\_9492\\_789052313.pdf](https://ec.europa.eu/migrant-integration/sites/default/files/2009-09/doc1_9492_789052313.pdf). (date of access: 03.04.2022).

<sup>14</sup>Muslim population by country. 2022 [Electronic resource]. URL: <https://worldpopulationreview.com/country-rankings/muslim-population-by-country> (date of access: 03.04.2022).

<sup>15</sup>Census of population 2016 [Electronic resource]. URL: <https://www.cso.ie/en/releasesandpublications/ep/p-cp8iter/p8iter/p8rnc/#:~:text=There%20were%2063%2C443%20Muslims%20in,2006%20and%2049%2C204%20in%202011> (date of access: 10.08.2017).

<sup>16</sup>UK Mosque statistics / Masjid statistics [Electronic resource]. URL: [http://www.muslimsinbritain.org/resources/masjid\\_report.pdf](http://www.muslimsinbritain.org/resources/masjid_report.pdf) (date of access: 07.05.2019).

<sup>17</sup>The position of Muslims in the Netherlands: facts and figures [Electronic resource]. P. 9. URL: [https://ec.europa.eu/migrant-integration/sites/default/files/2009-09/doc1\\_9492\\_789052313.pdf](https://ec.europa.eu/migrant-integration/sites/default/files/2009-09/doc1_9492_789052313.pdf) (date of access: 22.05.2022).

<sup>18</sup>UK Mosque statistics / Masjid statistics [Electronic resource]. URL: [http://www.muslimsinbritain.org/resources/masjid\\_report.pdf](http://www.muslimsinbritain.org/resources/masjid_report.pdf) (date of access: 07.05.2019).

within the Muslim community in the countries surveyed is the Ahmadiyya, who are considered infidels by mainstream Islam. Their caliph lives in London and in 2017 they numbered 30 000 in the UK. In Ireland, the Ahmadiyya has two mosques, one of which (in Galway city) is run by an Irish convert<sup>19</sup>.

There were as many as 1700 mosques in the UK in 2017, with imams mainly from Pakistan (over 50 %), Bangladesh and India (over 35 %). In Ireland, the Muslim community had about 50 mosques in 2015 [2, p. 53], 475 in the Netherlands, and 380 in Belgium in 2018. In the Benelux countries, almost half of the mosques are led by imams of Turkish origin, subordinated to the Turkish government agency "Diyanet". There are six mosques in Luxembourg's largest city and municipality.

Western European Muslims are concentrated in large urban areas. In the United Kingdom, according to the 2011 census, 37 % of Muslims live in Greater London (including 53 % of the Bangladeshi community and 41 % of the Middle Eastern diaspora), while some 25 % live in other parts of the South East of England. Large communities are present in major Midland cities such as Birmingham, Manchester or Liverpool. Thus, the absolute majority of immigrants live in England: 2 786 635, or 5 %, of the population in 2011. There are 76 737 Muslims in Scotland, 45 950 in Wales (most of them in Cardiff)

and only about 4000 in Northern Ireland. In Ireland, over 50 % of Muslims reside in Greater Dublin (27 586 in 2016), Cork (3633), Limerick (3432) and Galway (2047)<sup>20</sup>.

In the Netherlands, Muslims are concentrated in the metropolitan area of Amsterdam (about 140 000 people or up to 17 % of the population), in the urban areas of Rotterdam, the Hague and Utrecht<sup>21</sup>. In Belgium, in 2016, Muslims numbered 26 % of the total population of Brussels (about 300 000, including more than half of the country's Moroccans) and 17 % of the population of Antwerp. The highest concentration was observed in the Molenbeek district of Brussels, known for its slums. Half of the Belgian Turks live in Flanders, mainly in Antwerp and Ghent. In 2008, Muslims represented 5.1 % of the population of Flanders (39 % of the Muslim community in Belgium) and 4.9 % of the population of Wallonia (21 % of the diaspora), with the rest living in the Brussels region<sup>22</sup>. In Luxembourg, 70 % of municipalities are located in the five largest cities, including the capital. Muslim communities in all five countries are relatively young. In England and Wales, for example, 33 % of Muslims are under the age of 16, according to a 2015 survey, well above the average for both regions<sup>23</sup>. In Belgium, according to the 2020 census, 35 % of the population of Turkish and Moroccan origin is under the age of 18<sup>24</sup>.

## Conclusion

In our analysis of the origins and evolution of the Muslim community in the UK, Ireland and the Benelux, we have discovered a variety of interrelated but sometimes contradictory trends. The failures of multiculturalism coincide with relatively successful examples of integration, illustrating the polarisation and radicalisation of the world today.

There is no doubt that even in the context of civilisational discourse, socioeconomic factors alone do not adequately describe the situation of a Muslim immigrant to Western Europe adapting to a different civilisational context and building a new life in this novel environment. Islam remains a core part of the immigrants' identities and they consider following its norms to be important. Many Muslims have struggled to live in a secular society while following Islam's rules. Some have strengthened adherence to Islam while forming parallel structures in most spheres. Others have secularised to become full participants in the social, economic,

cultural, and political life of their new home. Some have been drifting into radicalisation and extremism.

In the UK, the Commonwealth and former colonies have been significant sources of Muslim migration. Several countries in the Benelux have signed labour agreements with Turkey, the Maghreb, and several other countries to import low-skilled labour.

In this comparison, Ireland stands out. It had more skilled workers and professionals among its immigrants than the other four countries, and mass immigration to Ireland did not begin until the so-called Celtic Tiger era of the 1990s and 2000s [17, p. 148]. The Irish Muslim population is not dominated by any single ethnic group, as is the case in Britain, the Netherlands, Belgium or Luxembourg.

Muslim immigrants to Ireland have seen it as a fellow victim of Western colonialism. This sentiment influenced Ireland's policy toward many Arab issues, including the Israeli-Palestinian conflict. Ireland has

<sup>19</sup>Ahmadiyya. Muslim Association. Ireland [Electronic resource]. URL: <http://www.islamahmadiyya.ie/about-ahmadiyya-muslim-association-ireland.php> (date of access: 07.01.2020).

<sup>20</sup>Census of population 2016 [Electronic resource]. URL: <https://www.cso.ie/en/releasesandpublications/ep/p-cp8iter/p8iter/p8rnc/#:~:text=There%202020were%2063%2C443%20Muslims%20in,2006%20and%2049%2C204%20in%202011> (date of access: 10.08.2017).

<sup>21</sup>The position of Muslims in the Netherlands: facts and figures [Electronic resource]. P. 10. URL: [https://ec.europa.eu/migrant-integration/sites/default/files/2009-09/doc1\\_9492\\_789052313.pdf](https://ec.europa.eu/migrant-integration/sites/default/files/2009-09/doc1_9492_789052313.pdf) (date of access: 22.05.2022).

<sup>22</sup>Islam in Belgium [Electronic resource]. URL: <http://www.euro-islam.info/country-profiles/belgium/> (date of access: 22.05.2022).

<sup>23</sup>British Muslims in numbers: census analysis [Electronic resource]. URL: <https://mcb.org.uk/report/british-muslims-in-numbers/> (date of access: 25.02.2015).

<sup>24</sup>Belgium population [Electronic resource]. URL: <https://www.worldometers.info/world-population/belgium-population/> (date of access: 04.06.2021).

avoided many of the pitfalls associated with multiculturalism. Its political arena has been free from anti-Islamist or Islamist movements, or extremist rhetoric on both sides. The Muslim minority's coexistence with the host society has largely been successful, although not free from problems.

European societies are in search of their new identity in a rapidly changing world, influenced by numerous national and international factors. The position of Muslim minorities is one of these key factors that

have significant implications for European societies, culture, politics, and civilisation. While this study only included five Western European countries, any European country could benefit, including Belarus which shares a common border with the EU, hosts a sizable Muslim diaspora, and has the potential to become an important route for international migration. The results of this research can support national migration and cultural policies, depending on the specific characteristics of a country.

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## SANCTIONS, THE WORLD TRADE ORGANISATION AND THE EURASIAN ECONOMIC UNION: EXAMINING THE LEGAL INTERRELATIONSHIPS

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The legal framework and practices of World Trade Organisation are examined with relevance to the settlement of disputes over the application of unilateral trade-restrictive measures. Changes are described in the interpretation of the nature of the security exemptions provided in art. XXI of General agreement on tariffs and trade and similar provisions of General agreement on trade in services and Agreement on trade-related aspects on intellectual property rights and invoked by states as justification for trade and economic sanctions. Specifically, there is a tendency to reject – in doctrine and case law – the interpretation of the security clause as self-judging, or not subject to judicial review. It is argued that the necessity test and the principle of good faith should preferably underlie adjudications on the legality of invoking the security exemption. Experiences of the EAEU states with the WTO dispute settlement procedures are considered, and recommendations are made on the merits of the observer status for EAEU at the WTO. Finally, approaches are proposed to consolidate the positions of the EAEU member states on interpreting and applying WTO law in regard to restrictive measures.

**Keywords:** Dispute settlement body; economic sanctions; Eurasian Economic Union; security clause; World Trade Organisation.

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## САНКЦИИ, ВСЕМИРНАЯ ТОРГОВАЯ ОРГАНИЗАЦИЯ И ЕВРАЗИЙСКИЙ ЭКОНОМИЧЕСКИЙ СОЮЗ: ПРАВОВЫЕ ВЗАИМОСВЯЗИ

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Раскрываются правовые основы, существующие в рамках Всемирной торговой организации, практика разрешения споров в данной организации в связи с применением односторонних ограничительных мер к торговле. Освещаются изменившиеся подходы к характеру оговорки о безопасности (ст. XXI Генерального соглашения по тарифам и торговле и аналогичные положения Генерального соглашения по торговле услугами, а также Соглашения по торговым аспектам прав интеллектуальной собственности) как к возможному обоснованию введения торговых и экономических санкций: в доктрине и в практике разрешения споров наблюдается устойчивая тенденция отказа от восприятия оговорки об исключениях по соображениям безопасности как не подлежащей судебной оценке. При анализе правомерности применения исключений по соображениям безопасности сделан акцент на целесообразности оценки соблюдения критерия необходимости и принципа добросовестности. Уделяется внимание опыту государств – членов ЕАЭС по взаимодействию и разрешению споров в ВТО, также дается рекомендация о потенциальном статусе наблюдателя для ЕАЭС в данной организации. Сформулированы предложения по консолидации подходов государств – членов ЕАЭС при толковании и применении норм права ВТО по вопросам ограничительных мер.

**Ключевые слова:** Орган по разрешению споров; экономические санкции; Евразийский экономический союз; оговорка о безопасности; Всемирная торговая организация.

### Introduction

According to the WTO Secretariat's ongoing monitoring, 55 measures prohibiting or restricting exports of food, feed, fuels and fertilisers have been introduced by 30 WTO members and observers from February 2022. Of these 55, 15 measures have been phased out, but 40 are still applied by 25 members and observers<sup>1</sup>. From October 2021 to May 2022, 43 members and 1 observer maintained 71 specific trade and trade-related sanctions against the Russian Federation alone, according to the WTO report dated 27 July 2022. There are no similar statistics on Belarus, as it is not a member of the WTO. However, one can safely assume the extent of the sanctions to be significant, knowing that the WTO does not track all the sanction packages, secondary sanctions, or the effects of over-compliance in trade and finance. Economic sanctions have become routine, even though they are by nature inconsistent with the principles of free trade and non-discrimination that lie at the heart of the global trading system.

Essentially, economic sanctions act as discriminatory trade barriers, and their legality within the WTO framework is not an idle question. WTO's 164 member states include partners of Belarus in the Eurasian Economic Union: Kyrgyzstan joined the WTO in 1998, Armenia in 2003, Russia in 2013, and Kazakhstan in 2015. The WTO instruments have been incorporated into the legal system of the EAEU, effectively making their provisions binding on Belarus. To the extent possible, Belarus has aligned its WTO accession commit-

ments with those of the other EAEU member states. This research aims to explore the limits for the imposition of sanctions, review the treatment of the security exception clause in WTO case law and examine the potential responses of the EAEU and its member states to the trade restrictions within the framework of the WTO.

This paper is divided into three parts. In the first part, we review the basis for trade restrictions in WTO law, notably, art. XXI of General agreement on tariffs and trade (GATT) and similar articles of General agreement on trade in services (GATS) and Agreement on trade-related aspects on intellectual property rights (TRIPS).

In the second part, we examine how states have invoked the national security exceptions to justify their trade restrictions and exempt themselves from their free trade obligations, and how the resulting disputes have been adjudicated in WTO case law, including the tendency to treat such exceptions as non-self-judging. Finally, we underline the need for coordination among the member states of the EAEU in the invocation of exceptions and participation in the WTO dispute settlement procedures.

We employ general and domain-specific methods of research, including historical and comparative legal analysis, synthesis, and generalisation. We review the relevant case law, paying attention to the norms invoked, and the effectiveness and soundness of the adjudications. The theoretical and historical framework for our analysis is grounded in the works of A. Kern, P. van Bergeijk and C. van Marrewijk [1; 2]. The opinions of WTO officials,

<sup>1</sup>WTO members secure unprecedented package of trade outcomes at MC12 [Electronic resource]. URL: [https://www.wto.org/english/news\\_e/news22\\_e/mc12\\_17jun22\\_e.htm](https://www.wto.org/english/news_e/news22_e/mc12_17jun22_e.htm) (date of access: 24.08.2022).

including from the appellate body were taken into consideration [3; 4]. With recourse to B. Pirker, D. H. Regan [5; 6], we considered the implications of our analysis for the criteria applied in the “weighing and balancing test” of the trade-restricting measures taken under the security exemption. The paper draws on A. Douhan’s

fundamental positions on sanction regimes [7], adapted to reflect their specificity in the WTO framework. Our analysis of the practice of sanctions – including in the regional context – and the application of the WTO rules is grounded in the interpretation of the terms from GATT, GATS and TRIPS proposed by D. Boklan, et al [8].

### Sanctions within the multilateral trading system

Trade sanctions and retaliation have been known since ancient times. In the Peloponnesian War Pericles, the ruler of Athens, imposed sanctions against Megara [1, p. 9–10]. Throughout history, states have repeatedly resorted to sanctions to secure their foreign policy objectives, despite the heavy cost and the often painful unintended consequences.

Even though sanctions have a long history, their common definition is still missing, and their legality is uncertain. Practice and economic modelling have produced extensive evidence that sanctions are ineffective and can be damaging to the parties that imposed them. The doctrine has questioned their usefulness. For example, as P. van Bergeijk and C. van Marrewijk concluded as far back as 1994, economic sanctions have only a very limited capacity to serve their intended objectives, furthermore, “intensified use of the sanction instrument, in general, may impair its effectiveness” [2, p. 168]. Likewise, M. Smeets from the WTO Institute of training wrote in 2018: “Economic sanctions generally inflict economic costs to all countries involved in the sanction episodes, including those taking the sanctions, thus shooting themselves in the foot” [3]. However, despite their well-known and widely acknowledged negative effects, states continue to use sanctions on a large scale.

Sanctions conflict *prima facie* with the most favoured nation principle, applied to all 164 member states of the WTO. So can sanctions be reconciled with the obligations of membership in the WTO, and to what extent? What remedies are available to a member state targeted by the sanctions? Let us examine the use of sanctions *de lege lata* and the limits to their legality under the WTO legal framework.

The GATT expressly permits WTO members to impose sanctions in certain situations. It’s para c of art. XXI (“Security exceptions”) definitively covers sanctions mandated by the UN Security Council resolutions under chapter VII of the UN Charter: “Nothing prevents any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security”. A similar exemption is also provided in art. XIV bis of GATS and art. 73 of TRIPS.

Under para b of art. XXI of GATT, states have the discretion to apply unilateral sanctions on national security grounds. Specifically, a member state may take “any action which it considers necessary (accent mine) for the

protection of its essential security interests”. As the WTO Panel in Russia-traffic in transit stated, “essential security interests... may generally be understood to refer to those interests relating to the quintessential functions of the state, namely, the protection of its territory and its population from external threats, and the maintenance of law and public order internally”<sup>2</sup>.

Such interests are delineated in subparas i, ii of art. XXI(b) as “relating to fissionable materials or the materials from which they are derived” and “to the traffic in arms, ammunition and implements of war and such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment”.

Subpara iii of art. XXI(b) of GATT relates to the essential security interests “taken in time of war or emergency in international relations”. While it allows the member states more discretion, it is also open to interpretation. This provision has rarely been invoked. Furthermore, the jurisprudence concerning its invocation suggests that it is not totally self-judging: the Dispute settlement body (DSB) has jurisdiction to review its application and determine if a balance has been achieved.

A. Mitchell also refers to “hybrid” sanctions, a distinct type of trade restrictions that relate to but exceed the scope of the Security Council’s resolutions under chapter VII [9]. As underlined by A. Douhan, the UN Charter rules out the imposition of sanctions without the approval of the UN Security Council. However, states and international organisations have resorted to sanctions on an increasing scale in the absence of the Security Council’s authorisation or transgressing the boundaries of such authorisation [7, p. 79].

A. Mitchell considers examples when states invoked art. XXI(c) of GATT to justify a part of their sanctions regime, and relied on art. XXI(b) of GATT to justify the rest. In these cases, it must be established that the sanctions decision addresses an essential security interest and that the trade restrictions were indeed necessary to protect it [9].

Similarly, para 7(iii) of the Ministerial declaration adopted on 29 November 1982 states: “The contracting parties undertake, individually and jointly... to abstain from taking restrictive trade measures, for reasons of a non-economic character, not consistent with the General agreement”.

<sup>2</sup>Article XXI. Security exceptions [Electronic resource]. URL: [https://www.wto.org/english/res\\_e/booksp\\_e/gatt\\_ai\\_e/art21\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art21_e.pdf) (date of access: 24.06.2022).

Clearly, the national security exception provided by art. XXI of GATT cannot be invoked to justify any unilateral economic sanction. The context and rationale for its application are subject to strict legal scrutiny to test the proportionality of the consequences of the trade restrictions. As P. van den Bosche and D. Prevost declare, “the security exceptions of article XXI of the GATT and article XIV of the GATS are formulated in a manner that

leaves a lot of discretion to WTO members. Furthermore, unlike the general exceptions under article XX of the GATT 1994 and article XIV of the GATS, these security exceptions are not subject to the requirements of a chapeau to avoid their misuse by WTO members” [4, p. 112]. The jurisprudence of WTO DSB can shed some light on the changing scope of the application of the security clause.

### WTO jurisprudence on the invocation of security clause

The WTO DSB is an essential part of the WTO dispute settlement mechanism. However, since the United States blocked the appointments to the appellate body in 2019, the parties to disputes have been effectively precluded from appealing the findings of most panel reports. They have been left to appeal “into a void”. Still, “the WTO is a suitable international forum to scrutinise the legality of unilateral sanctions not only because the majority of them entail economic restrictions but also because alternatives are either unavailable or impractical for states” [10, p. 171–172].

Options to revive the WTO mechanism exist, including through an *ad hoc* arbitration mechanism under art. 25 of the Understanding on rules and procedures governing the settlement of disputes annex 2 of the WTO agreement (hereinafter – DSU). Turkey made recourse to this procedure in a recent pharmaceutical case<sup>3</sup>. Disputes have been successfully referred to other WTO institutions. In the well-publicised Huawei dispute in 2019, the USA invoked the national security clause to blacklist Huawei and prohibit all transactions with it for American companies. China reacted immediately by raising the ban at the meeting of the WTO’s market access committee. Overall, despite the difficulties, recourse to WTO remains an effective way to resolve trade disputes, even when alternatives to the DSB have to be utilised.

For many years, states have invoked art. XXI of GATT in exceptional circumstances. Nicaragua went to the WTO in 1986 to challenge the legality of the US trade embargo against it. Remarkably, the panel in the Nicaragua case (1986) did not judge the validity or motivation for the invocation of art. XXI of GATT by the United States. Regarding the invocation, the panel noted: “Embargoes such as the one imposed by the United States, independent of whether or not they were justified under article XXI, run counter to basic aims of the GATT, namely to foster non-discriminatory and open trade policies, to further the development of the less-developed contracting parties and to reduce uncertainty in trade relations”. The panel noted that the GATT

protected each contracting party’s essential security interests through art. XXI and that the GATT’s purpose was therefore not to make contracting parties forego their essential security interests for the sake of these aims. However, the panel considered that the GATT could not achieve its basic aims unless each contracting party, whenever it made use of its rights under art. XXI, carefully weighed its security needs against the need to maintain stable trade relations (para 5.16)<sup>4</sup>.

The European communities challenged the legality of the Helms – Burton act under the WTO rules. The DSB established a panel at its meeting was held on 20 November 1996. On 25 April 1997, the chair of the panel informed the DSB that the panel had suspended its work at the request of the European communities. The Panel’s mandate expired on 22 April 1998, pursuant to art. 12.12 of the DSU<sup>5</sup>.

Recently the Russian Federation successfully invoked art. XXI of GATT as the respondent in a case brought by Ukraine<sup>6</sup>. In 2016, Ukraine challenged the restrictions imposed by Russia on traffic in transit to Kazakhstan and Kyrgyzstan via its territory, claiming that they violated art. V of GATT (freedom of transit). Russia argued that art. XXI(b)(iii) was self-judging in the sense that its invocation was immune from scrutiny by a WTO dispute settlement panel. The third parties disagreed with this interpretation. However, the United States filed a submission that was essentially in agreement with Russia’s interpretation.

The panel found it had jurisdiction to review the nature of the measures taken by a party invoking art. XXI of GATT. This finding established a persuasive precedent that limited the parties’ discretion to interpret the national security exemptions as totally self-judging. Other economic judicial authorities have taken a similar view, understanding the self-judging nature of a provision as being limited in scope. Even where a tribunal found a security exception clause to be self-judging (e. g. in investment disputes), such a finding did not preclude it in practice or doctrine from testing the validity of its

<sup>3</sup>DS512: Russia – measures concerning traffic in transit [Electronic resource]. URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds512\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm) (date of access: 24.06.2022).

<sup>4</sup>EU wins WTO case against Turkey’s discriminatory practice on pharmaceuticals [Electronic resource]. URL: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4670](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4670) (date of access: 24.08.2022).

<sup>5</sup>United States – trade measures affecting Nicaragua: report by the panel [Electronic resource]. URL: [https://www.wto.org/gatt\\_docs/English/SULPDF/91240197.pdf](https://www.wto.org/gatt_docs/English/SULPDF/91240197.pdf) (date of access: 24.08.2022).

<sup>6</sup>DS38: United States – the Cuban liberty and democratic solidarity act [Electronic resource]. URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds38\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds38_e.htm) (date of access: 24.08.2022).

invocation. Instead, tribunals have declared themselves to be bound by duty to apply the test of good faith as the proper standard of review to prevent the abuse of such clause [11].

In Russia-traffic in transit the panel concluded that although Russia's actions to restrict traffic in transit would have been inconsistent with its WTO obligations, had they been taken "in normal times", the measures were justified under art. XXI of GATT. Justification of the invocation is in the national domain, provided that the government acts in good faith, and not in deliberate circumvention of its international trade obligations. The obligation of good faith also requires that the measures at issue meet a minimum requirement of plausibility in relation to the proffered essential security interests, i. e. that they are not implausible as measures protective of those interests.

Assessing the balance in this case the panel found *inter alia* that "the bans were imposed specifically to prevent the circumvention of the import bans imposed by the respondent under one of the legal instruments at issue in the dispute, which, itself, was a response taken by the respondent to the sanctions imposed on it by other countries during the relevant period in response to the emergency in international relations" (para 7.143).

The panel determined that the "set of circumstances described in the enumerated subparagraphs" operate as limiting qualifying clauses: "If one considers the logical structure of the provision, it is apparent that the three sets of circumstances under subparagraphs (i) to (iii) of article XXI(b) operate as limiting qualifying clauses; in other words, they qualify and limit the exercise of the discretion accorded to members under the chapeau to these circumstances"<sup>7</sup>.

The view that the self-judging nature of the security exception is in fact limited has prevailed in the WTO. However, a reliable legal test is still necessary to determine that the restrictive measures do not undermine the purpose of the WTO agreements. The jurisprudence to date gives an indication as to the principles and criteria on which to base such a test, with the good faith principle applied throughout the weighing and balancing process.

Concluding his formal review of the elaboration of balancing test by different judicial authorities on international trade, in light of the institutional context of the WTO and the supremacy of the interest of trade central to the justification for judicial review, B. Pirker observes: "The necessity-based balancing test which prevails in WTO law appears justified, as it provides the necessary weight that is given to other public interests" [5, p. 316]. This necessity-based approach revolves around the understanding of the term "necessary" in art. XXI of GATT, central to the weighing and balancing process performed

in the judicial review. Several scholars (e. g. D. H. Reagan [6]) have offered interpretations of the term "necessity" in the context of art. XX, but a similar debate has yet to take place with reference to art. XXI of GATT. Because the latter text is also steeped in the language of necessity ("any action which it [the state party] considers necessary"), necessity-based "weighing and balancing" still merits the attention of scholars, given the unmet need for greater formalisation of this process.

D. S. Boklan, V. V. Absaliyev and Yu. S. Kurnosov suggest that terms such as "essential security interests", "exigent circumstances in international relations" and "necessary for protection" are open to interpretation, and should be defined on the basis of general international law and the findings of the appellate body, whereby an earlier interpretation would direct the understanding of similar concepts in another WTO agreement [8]. While this element of the "objective" step is valid, it tends to be limited in practice to the principle of good faith, which, in the argument of these three scholars, should also apply to deliberations at the "subjective" step. In our view, the subjective step must consider the criteria of necessity together with the principle of good faith.

The security exception was also invoked in another dispute brought before WTO in 2018, in which Qatar disputed the alleged failure of Saudi Arabia to provide adequate protection of intellectual property rights held by a Qatar-based entity<sup>8</sup>. The settlement of this dispute exemplifies a different approach, grounded in the regional context.

Saudi Arabia denied Qatari nationals access to civil remedies through its courts, including by preventing domestic law firms from representing Qatari-based entities seeking to enforce their intellectual property rights (unauthorised distribution and streaming of its licensed media content were alleged). Saudi Arabia invoked art. 73 of the WTO TRIPS, which is the equivalent of art. XXI of GATT.

The dispute was recently terminated. On 21 April 2022, Qatar notified the DSB that it had agreed to terminate this dispute and that it would not seek the adoption of the panel report. On 29 December 2021, Saudi Arabia sent a communication to the DSB in which it confirmed the suspension of the appellate proceedings in this dispute, pursuant to the terms of the Al-Ula declaration signed on 5 January 2021. In its communication, Saudi Arabia further confirmed the suspension of any further proceedings to adopt the panel report in this dispute, according to the said declaration. On 31 December 2021, Qatar informed the DSB that Qatar was in receipt of Saudi Arabia's letter of 29 December 2021, requesting a suspension of the appellate proceedings in this dispute and that Qatar agreed to the proposed suspension

<sup>7</sup>DS512: Russia – measures concerning the protection of intellectual property rights [Electronic resource]. URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds567\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds567_e.htm) (date of access: 24.08.2022).

<sup>8</sup>DS567: Saudi Arabia – measures concerning the protection of intellectual property rights [Electronic resource]. URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds567\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds567_e.htm) (date of access: 24.08.2022).

of the appellate proceedings under the terms of Al-Ula declaration. Qatar further confirmed the suspension of its submission to the aforementioned appeal dated 17 August 2020, and of any further proceedings to adopt the panel report, while the mutually agreed suspension remains in place.

Al-Ula declaration seeks to promote cooperation and stability in the region. It has been notified as a treaty at the UN. Para 2 of the declaration reads: “All claims, complaints, measures, protests, objections and disputes

shall be terminated at the end of the first year from the date of signature of the present declaration. Such claims, complaints, measures, protests, objections and disputes shall be suspended or frozen with the entities in question (i. e. the courts, agencies, committees, authorities and other domestic, regional and international entities) within one week of the signature of the present declaration”<sup>9</sup>. Al-Ula declaration is an example of lifting restrictive measures, and abandoning all claims on a regional level as a solution for peace and overcoming difficulties.

### Strengthening regional coordination: options for EAEU

The WTO is a multilateral trading system, but it is becoming increasingly regionalised [12, p. 3, 9–10]. Sanctions against individual states also have an impact on the regional trade agreements to which they are parties. The differential effects of sanctions on Regional Trade Agreement (RTAs) and RTAs on sanctions have been a subject of debate among economists [13].

The Eurasian Economic Union is a notified regional trade agreement within the WTO. The provisions of the treaty of the union have been widely discussed under the transparency mechanism for RTA in the WTO<sup>10</sup>. The remedies can have implications for the common market of the EAEU. The EAEU is not a party to WTO, like the European Union, and it cannot reserve or request third party rights with the DSB WTO. However, the EAEU has other open options in WTO, independent of its membership.

Applying for observer status is one. In the observer status, international intergovernmental organisations may observe and follow discussions in the WTO on matters of direct interest to them<sup>11</sup>. For example, the European Free Trade Association is an observer for a range of negotiating or review mechanisms in WTO. Therefore, some common institutional measures can be addressed even without full membership.

Similarly, the individual member states can pursue their shared interests by coordinating their actions in different WTO mechanisms, e. g. as third parties in disputes.

The Republic of Belarus has negotiated its accession to the WTO since 1993. Still, it is not a member,

and the WTO dispute settlement mechanisms are not available to it. In recent years, the accession talks have intensified. Expected in 2020, the accession could not be finalised because of the COVID epidemic. The epidemic also delayed until 2022 the discussion of the 5<sup>th</sup> edition of the draft of the Working party report and the final discussion of Belarus’ commitments to the WTO. On his visit to Switzerland, the minister of foreign affairs of the Republic of Belarus V. Makei met on 20 April 2021 with the director general of the WTO, Ngozi Okonjo-Iweala. At the meeting, he confirmed Belarus’ determination to follow through on its accession negotiations<sup>12</sup>. He also warned against politicising the accession talks with prospective members, as that would be incompatible with the principles of an international system of free trade<sup>13</sup> and could itself become a barrier to trade.

Independent of Belarus’ membership in the WTO, the other members of the EAEU have recourse to the DSB. Alternatively, they may raise complaints over an alleged obstacle to trade and request consultations. As a recent example of the EU and the UK demonstrates, a request for consultations can be an effective mechanism<sup>14</sup>.

Russia has been an active player in the WTO dispute settlement system. To date, it has taken part in 116 procedures, including in 97 as an interested third party. Russia brought eight complaints against other WTO members (four against the EU, two against the United States and two against Ukraine), and stood as a respondent in eleven (six from the EU, three from Ukraine, one

<sup>9</sup>Al-Ula declaration [Electronic resource]. URL: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002805b2870> (date of access: 26.08.2022).

<sup>10</sup>Factual presentation. Treaty on the Eurasian Economic Union (goods and services) [Electronic resource]. URL: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=247772,247762,247773,247690,247198,247057,246747,246770,246600,246477&CurrentCatalogueIdIndex=6&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=247772,247762,247773,247690,247198,247057,246747,246770,246600,246477&CurrentCatalogueIdIndex=6&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True) (date of access: 27.08.2022); Treaty on the Eurasian Economic Union (goods and services). Questions and replies [Electronic resource]. URL: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=249843,249646,249465,249424,249422,249423,249239,248933,248931,248912&CurrentCatalogueIdIndex=3&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=249843,249646,249465,249424,249422,249423,249239,248933,248931,248912&CurrentCatalogueIdIndex=3&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True) (date of access: 27.08.2022).

<sup>11</sup>International intergovernmental organisations granted observer status to WTO bodies [Electronic resource]. URL: [https://www.wto.org/english/thewto\\_e/igo\\_obs\\_e.htm/](https://www.wto.org/english/thewto_e/igo_obs_e.htm/) (date of access: 24.08.2022).

<sup>12</sup>Ministry of Foreign Affairs of the Republic of Belarus [Electronic resource]. URL: [https://mfa.gov.by/en/press/news\\_mfa/a39d-2f35e41e9aa6.html](https://mfa.gov.by/en/press/news_mfa/a39d-2f35e41e9aa6.html) (date of access: 12.06.2022).

<sup>13</sup>Belarus slams politicisation of WTO accession talks as unacceptable [Electronic resource]. URL: <https://eng.belta.by/politics/view/belarus-slams-politicization-of-wto-accession-talks-as-unacceptable-149792-2022/> (date of access: 07.06.2022).

<sup>14</sup>EU and UK agree on the way forward in the WTO dispute concerning UK’s green energy subsidy scheme [Electronic resource]. URL: [https://policy.trade.ec.europa.eu/news/eu-and-uk-agree-way-forward-wto-dispute-concerning-uks-green-energy-subsidy-scheme-2022-07-01\\_en](https://policy.trade.ec.europa.eu/news/eu-and-uk-agree-way-forward-wto-dispute-concerning-uks-green-energy-subsidy-scheme-2022-07-01_en) (date of access: 29.08.2022).

from Japan, one from the United States)<sup>15</sup>. In the spring of 2022, Russia announced that it might challenge the trade sanctions against it at the WTO. So far, there have been no indications as to whether it would act on its intention. However, nothing prevents Russia from doing so at a later time. Whatever its decision, it must first request consultations with the WTO concerned. If that does not lead to a settlement, Russia may seek the establishment of a panel by the DSB.

Armenia stood as a respondent in two disputes at the WTO. In both cases, Ukraine was the complainant. At issue were the measures put in place by the Decision of the Collegium based on the findings of the EEC department for internal market defence (Decision of 2 June 2016 No. 48 “On the extension of the anti-dumping duties on certain types of steel pipes originating in Ukraine and imported into the customs territory of the Eurasian Economic Union” and the Finding of 4 October 2017 No. 2017/89/AD1R3 “On the outcomes of the interim review of anti-dumping duties on certain types of steel pipes originating in Ukraine and the need to adjust the levels of such duties in light of new circumstances”). Admittedly, the dispute has not progressed beyond a request for consultations from Ukraine<sup>16</sup>. Similar disputes

were brought against Kazakhstan and Kyrgyzstan in 2017 and 2018<sup>17</sup>. Kazakhstan acted as a third party in 35 disputes, including with Russia as a party. These examples can be treated as models for further coordination.

Building on their experience of previous disputes in the WTO over trade measures, including with the invocation of the national security exception, the EAEU members can move towards a more precise definition of their common position on these matters. As V. Slepak observes, the EAEU agreements have no general exemption clauses for national security matters matching those of art. 346, 347 of the EU Treaty on the functioning of the European Union. The states parties still apply distinct approaches to the use of such exemptions across multiple areas of Eurasian integration [14]. However, common practices are beginning to take shape, in light of recent jurisprudence, including decisions of the EAEU Court on exemptions from free trade (these go beyond the scope of this article, and have not been analysed here). It is nevertheless essential to elaborate a shared position on the interpretation of the national security exemption and the limits to its use, to be advocated in the multilateral trading system and WTO structures, such as the DSB or the review mechanism.

## Conclusion

States parties apply restrictive measures, despite the apparent contradiction of this practice with the objective of facilitating trade and not hampering it, central to the WTO as a multilateral trading system. WTO law provides security exceptions. However, these security exceptions – contained in art. XXI of GATT and similar articles of GATS and TRIPS – cannot be used at the unfettered discretion of the invoking party, nor can they be construed as totally self-judging. The use of these provisions is subject to reasonable limits, and there is a strong need to formalise the legal test to determine whether the restrictive measures are still consistent with the purposes of the WTO agreements. Persuasive arguments have been presented at the WTO in favour of the good faith approach. Simultaneously, the weighing and balancing process in the legal test should apply the “necessity” criteria.

It is recommended that the member states of the EAEU elaborate common approaches to postulating their essential interests and other concepts not defined in WTO texts, elaborate a common position and

present it before various multilateral fora. As of today, the union is not a party to the WTO agreements and is largely treated in WTO as an autonomous regime within international law. Still, regional consolidation will be a necessary move to overcome fragmentation.

Already, the EAEU members – four out of five of them members of the WTO – are acting in concert as parties to pending disputes or third parties in disputes with other EAEU member states. Continuation of this practice is advised.

The union itself, may, at a minimum, apply for observer status. The advantages and disadvantages of WTO membership for EAEU – possibly on a par with the EU – is a topic for further research. However, the legal interrelationships between RTAs and WTO make the observer status a realistic possibility for EAEU as a notified RTA.

More broadly, the regional context seems important for regional states interested in reciprocal support and the pursuit of coherent approaches in the WTO as a multilateral trading system.

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## LEGAL FOUNDATIONS FOR COOPERATION IN THE INTELLECTUAL PROPERTY DOMAIN WITHIN THE BELT AND ROAD INITIATIVE

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Intellectual property is studied in relation to the Belt and road initiative. The legal procedures and arrangements that maximise the economic benefits of regional cooperation are defined. Diverse and complex interrelationships between national and international intellectual property law are explored using the comparative legal research method. Key attention is drawn to the different levels of protection and enforcement of intellectual property rights in the context of the development of intellectual property systems in the participating countries. It is concluded that national intellectual property regimes retain objective distinguishing qualities. Recommendations for intellectual property disputes settlement are offered to provide countries and firm with a more transparent and accessible infrastructure in the multi-jurisdictional environment of the Belt and road initiative.

**Keywords:** Belt and road initiative; intellectual property rights; international intellectual property protection; economic interests; regional cooperation; China; territoriality of intellectual property.

## ПРАВОВЫЕ ОСНОВЫ СОТРУДНИЧЕСТВА ПО ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ В РАМКАХ ИНИЦИАТИВЫ «ОДИН ПОЯС, ОДИН ПУТЬ»

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Изучается проблема интеллектуальной собственности в рамках инициативы «Один пояс, один путь». Определены юридические процедуры и механизмы, которые повышают экономические выгоды регионального сотрудничества. Разнообразные и сложные взаимосвязи между национальным и международным правом интеллектуальной собственности исследованы посредством сравнительно-правового метода. Ключевым вопросом является различие уровней охраны и защиты прав интеллектуальной собственности в контексте развития систем интеллектуальной собственности в странах – участниках инициативы «Один пояс, один путь». Сделан вывод о том, что национальные режимы интеллектуальной собственности сохраняют объективные отличительные черты. Предлагаются рекомендации по урегулированию споров в области интеллектуальной собственности для обеспечения стран и организаций более прозрачной и доступной инфраструктурой в мультиюрисдикционном пространстве инициативы «Один пояс, один путь».

**Ключевые слова:** инициатива «Один пояс, один путь»; права интеллектуальной собственности; защита интеллектуальной собственности; экономические интересы; региональное сотрудничество; Китай; территориальность интеллектуальной собственности.

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## Introduction

The Belt and road initiative (BRI) was launched by Chinese president Xi Jinping in 2013. The past nine years have seen remarkable achievements. 149 countries and 32 international organisations have joined as of March 2022<sup>1</sup>. Today, within the framework of this cooperation programme, an effective basis for shared economic growth is being created for all partners. The specifics of the relationships emerging within the initiative have attracted scholarly interest. According to several scholars, the initiative has the potential to connect more than two-thirds of the world's population and put in place new infrastructure to revitalise global trade links between Asia and other regions [1]. As the trade and cooperative economies have grown, so has the turnover of intellectual property, which is inextricably linked to almost all products and services in the modern information society.

Increasingly, intellectual property plays a key role in economic and technological relationships and transactions as a competitive resource. According to statistics provided by the Chinese Patent Authority, 6198 patents were filed in 22 countries along the BRI in 2020, an increase of 17.1 % over the previous year. In 2020, 74 countries filed 23 000 invention patent applications in China, representing an increase of 3.9 %. By comparison, Singapore has recorded a 21 % increase in invention patent filings on a year-over-year basis<sup>2</sup>.

The National Centre of Intellectual Property of the Republic of Belarus publishes annual statistics on Chinese entities' intellectual property protection activities in Belarus. As of December 2021, China ranked second in patent applications filed for the most traded intellectual property objects – inventions and trademarks – behind Russia, with which the Republic of Belarus has long-standing and well-established cooperation, and ahead of countries like Germany and the United States, which are traditional leaders in foreign patents<sup>3</sup>. It is important to note, however, that China's patenting activity in Belarus does not represent the trends in the registrations and filings of Chinese companies in China and other countries. The BRI appears to have a positive impact on the expansion of intellectual property activity, albeit within a specific legal context. According to the experts, a wide range of agreements that define the legal framework for the initiative, particularly the primary agreements, leave a wide margin for manoeuvre and flexibility since they do not constitute clear legal commitments and are like instruments of flexible law without specific strict obligations [2]. Because of this, it

is difficult to decide which legal mechanisms contribute to promoting successful and mutually beneficial technological and innovative development – as the main objective of the initiative – particularly in terms of creating, registering and utilising new inventions, trademarks, and industrial property models.

In 2018, China and the Eurasian Economic Union signed an Agreement on economic and trade cooperation (hereinafter – the EAEU – China agreement)<sup>4</sup>. The parties to the agreement recognised that the EAEU cooperation and the BRI must be linked.

Intellectual property is extensively covered in the document. The chapter on intellectual property (chapter 7) has 27 articles. It presents a fairly advanced and modern understanding of intellectual property. As an example, the EAEU – China agreement outlines measures to optimise the management of digital intellectual property rights, and the rules are quite precise and relevant to practice. A graphical user interface is protected as an industrial design under art. 7.17. Patent applications may be filed electronically in accordance with art. 7.18. However, there are no new standards for national legislators to incorporate into law or any other details in the agreement. It is possible that avoiding certainty in legal instruments is a part of the Chinese soft power policy to promote cooperation.

To succeed in the BRI, China must build on its experience with EAEU partners. The initiative is a completely new phenomenon. It is being implemented with tools rooted in new values, meanings, and understandings, as the literature rightly points out. These need to be crafted in the absence of any concrete norms on specific aspects of intellectual property, and in a landscape that resembles a blank slate [3, p. 290]. The article proposes legal mechanisms for avoiding and resolving intellectual property complications. It is hypothesised that intellectual property is a point of contention between a variety of stakeholders, including infringers and right holders, competitors protected under different jurisdictions, and between the frameworks for intellectual property protection in these jurisdictions and the legal specificities of the BRI.

In the Belarusian legal literature, there is little discussion of the issue of intellectual property in the context of the BRI. In the debate on the use of intellectual property in the BRI region, the main focus has been on the forms and methods by which the various actors involved will cooperate, rather than on the details of legal regulation [4, p. 35, 71, 85]. Economists and experts

<sup>1</sup>Building “One belt, one road” together [Electronic resource]. URL: <http://fec.mofcom.gov.cn/article/fwydy/zgzx/202205/20220503310813.html> (date of access: 29.09.2022).

<sup>2</sup>Chinese total investment in countries along the B&R by 2020. A profitable layout shows momentum against the trend [Electronic resource]. URL: [https://www.cnipa.gov.cn/module/download/down.jsp?i\\_ID=169839&colID=88](https://www.cnipa.gov.cn/module/download/down.jsp?i_ID=169839&colID=88) (date of access: 29.09.2022).

<sup>3</sup>NCIP. Annual report 2021 [Electronic resource]. URL: <https://ncip.by/upload/iblock/3fe/3fe6e1c68f770566a1fa280b5b03dae4.pdf> (date of access: 29.09.2022).

<sup>4</sup>Agreement on economic and trade cooperation [Electronic resource]. URL: [https://docs.eaeunion.org/docs/en-us/01517817/iatc\\_21052018](https://docs.eaeunion.org/docs/en-us/01517817/iatc_21052018) (date of access: 29.09.2022).

from other fields have considered intellectual property in the BRI in terms of economic benefits and geopolitics. However, the use of intellectual property is relevant to practically every area of cooperation. For example, copyright issues will inevitably arise with the growing popularity of Belarusian musical culture in China in the context of the BRI [5].

Intellectual property and intangible assets cannot exist without a clear legal framework. There is thus a need to understand the legal specifics of the intellectual property issue in the context of the BRI to properly address it.

In the BRI, each country has distinctive characteristics, but general patterns can be identified. Numerous Chinese authors and international organisations have observed that Chinese cooperation goes far beyond the BRI. In many BRI countries, intellectual property and innovation are weak and uncompetitive, and intellectual property protection standards are low. As a whole, there is a significant variation in intellectual property protection along the BRI, with Central and Eastern Europe and Southeast Asia being the exceptions. According to the Global innovation ranking for the intellectual property and the Global innovation index 2019, only four countries of the BRI rank among the world's most advanced economies<sup>5</sup>: Singapore, South Korea, Israel, and Luxembourg [1]. Therefore, the evolution of the doctrine on intellectual property along the BRI consistently underlines a radical change in China's international image from a country that has traditionally been associated with large-scale piracy and counterfeiting to a country that promotes and develops innovative processes based on legitimate uses of intellectual property [6]. The legal foundations for Chinese cooperation with its partners and their expectations regarding intellectual property are greatly influenced by these circumstances. The founding acts of the BRI, for example, call for a common understanding of the need for more effective intellectual property protection and enforcement [2].

As far as intellectual property and its legal framework are concerned, Belarus and China have much in common with respect to their economic policy goals, objectives

and priorities<sup>6</sup>. World Trade Organisation (WTO) standards are guiding the commercial aspects of intellectual property in both countries. China and Belarus are fully committed to making sure the key international treaties on intellectual property are enforced as stipulated in art. 1–3 of the WTO Agreement on trade-related aspects of intellectual property rights (TRIPS) for China, and art. 90 of the EAEU Treaty for Belarus. Moreover, both countries participate in a wide variety of systems for cooperation on patent and industrial property registration to provide legal protection for intellectual property rights internationally. There is also a high level of development in national legal systems. The legal foundations are in place domestically and internationally enabling Belarusian and Chinese enterprises to use intellectual property rights safely and transparently.

The importance of analysing common problems based on previous experience cannot be overstated. It seems that one of the most problematic areas in the BRI is the transfer of intellectual property across its jurisdictions, as evidenced by the difficulties that many entrepreneurs face. In a variety of national legal systems, there is a wide range of interpretations of the origin of intellectual property, resulting in conflicts between competitors and partners from different countries and often causing problems in the normal flow of business activities. The way to resolve these problems is by addressing the territoriality of intellectual property.

Orienting themselves towards the standards of the industrialised countries, as defined in instruments of international law like TRIPS, China and Belarus have similar visions for their IP systems. Belarus might be interested in the Chinese experience of dealing with long-term pressure from developed nations over its alleged "intellectual property leakage", a problem that has been examined from three different perspectives: the state, the world market, and the socio-cultural dimension [7, p. 42]. For China, cooperation on intellectual property along the BRI is less about protecting intellectual property than it is about preventing conflict and disputes.

### Theoretical foundations and research methods

In the context of the BRI, many Chinese authors discuss the controversies surrounding intellectual property protection, including the risks associated with doing business with intellectual property overseas. These authors include D. Fu [8], G. Wang [9], F. Yu [10], P. K. Yu [3; 6], A. Majid and L. Li [11], L. Zhang [12]. Authors from other countries are also exploring these issues. For example, B. Suprabha, R. Nadia, and R. Michele published a study on the topic, commissioned by an in-

ternational institution [13]. In the paper, comparative analysis is used as the main method of research due to the complexity of the legal systems, as well as the hierarchical nature of the sources of intellectual property law along the BRI. We are most interested in the empirical aspects of effective intellectual property uses.

All participants at all levels, including national, regional and global, are expected to benefit from the BRI, which fulfils the expectation of shared development

<sup>5</sup>Global innovation index 2019 [Electronic resource]. URL: [https://www.wipo.int/global\\_innovation\\_index/zh/2019/index.html](https://www.wipo.int/global_innovation_index/zh/2019/index.html) (date of access: 29.09.2022).

<sup>6</sup>Сопряжение стратегии развития ЕАЭС и китайской инициативы «Один пояс, один путь» [Электронный ресурс]. URL: [https://eec.eaeunion.org/upload/medialibrary/822/Doklad\\_Kitay\\_short\\_17.08.pdf](https://eec.eaeunion.org/upload/medialibrary/822/Doklad_Kitay_short_17.08.pdf) (дата обращения: 29.09.2022).

dividends. The states along the BRI are enhancing their intellectual property systems to attract investments and facilitate business projects with intellectual property components. In doing so, they must confront their particularistic approaches through regional cooperation. Foreign right-holders should be supported in their efforts to adapt to their new environment, consistent with the BRI principle of equal respect for all stakeholders. However, different players perform differently, and some advance more than others. In traditional intellectual property transfer between developed and developing countries, however, developed country rights holders are far more experienced in intellectual property use and protection, coming from countries that pioneered the concept of exclusive rights.

The BRI has no fixed geographic or national boundaries and is not a strategy. It is open to all, but also has its core regions, and most participants are developing nations. At present, 65 member countries, including China, are on board. They represent five global regions: Central and Eastern Europe, West Asia and North Africa, Central Asia and Mongolia, Southeast Asia, South Asia, and Northeast Asia. The diversity among the countries and regions, each with unique legal traditions, creates significant variations in intellectual property protection regimes and institutions<sup>7</sup>.

Intellectual property protection is territorial, and a thoughtful combination of a variety of legal regimes – national, regional and global – is essential. Cooperation under the BRI gives rise to specific standards and models of behaviour. Businesses with limited experience with intellectual property in international markets may have difficulty adapting and acting on these standards. Governments must respond by expanding their services, enhancing procedures and developing more tools for intellectual property protection and enforcement. Digitalisation and the rise of intellectual property ecosystems are illustrative of these trends. As an international authority in intellectual property protection, the World Intellectual Property Organisation commended the BRI on its contribution to fostering interactive links among patent services and strengthening global innovation networks<sup>8</sup>.

Belarus is situated in a region with a well-developed system for registering intellectual property rights and protecting them against infringements, and with a high overall standard of property protection. However, even countries with already good performance can benefit from membership in the BRI to advance further. Decreasing inequalities in the standards of intellectual property protection – coupled with the growth in international patents and registration – will benefit all parties by facilitating more effective management of

intellectual property, greater convenience of the infrastructure for protection and enforcement of intellectual property rights, and improvements in patent research. For the success of the international route, intellectual property rights should meet essential legal criteria, notably, be valid in different jurisdictions and not interfere with international trade in goods and services. With relevance to the BRI projects, intellectual property should not be evaluated exclusively within the scope of national jurisdictional determinants, Belarusian or Chinese. A partner's past or prospective behaviour in a project should rather be assessed from a multi-jurisdictional perspective.

Disparities in the development of patent systems and intellectual property services persist among the states of the BRI, and likewise, inequalities are observed in regional patent cooperation. West Asia and North Africa have divergent legal environments for intellectual property, with Israel being the most advanced. Overall, the infrastructure for patent documentation provides an insufficient degree of compatibility throughout the region.

Central Asia, where the influence of the European Union and the Eurasian patent systems is stronger, has been more successful at building interlinked connections for intellectual property networks. Kazakhstan and Kyrgyzstan that built comprehensive legal systems, are participating in Eurasian patent cooperation, these countries have adapted their standards of protection to the demands of the TRIPS. Elsewhere in the region, the situation is different. Turkmenistan and Uzbekistan are not WTO members, and Uzbekistan is not a party to any regional cooperation on patents. In Southeast Asia, Singapore, Thailand, Malaysia and the Philippines have modern and well-developed intellectual property systems, while Cambodia, Laos and Vietnam still have important gaps, and have not progressed beyond the initial stages in many areas. Also, they have very limited involvement in patent cooperation.

In South Asia, India is a clear leader. Well integrated into the Chinese market, it is an important jurisdiction for the protection of intellectual property of Chinese companies expanding overseas. Otherwise, the region as a whole is still relatively weak in terms of intellectual property utilisation and its legal and judicial protection.

In Northeast Asia, Japan and South Korea are highly competitive in the intellectual property market, with some of the most advanced intellectual property systems. The national patents issued by the national patent offices are valued objects of intellectual property. Japanese and Korean patent offices participate in patent cooperation with some of the most advanced patent cooperation networks, including the IP5, an association of the world's top five patent offices.

<sup>7</sup>Silk Road diplomacy [Electronic resource]. URL: <https://www.silkroadfutures.net/silk-road-diplomacy-index> (date of access: 29.09.2022).

<sup>8</sup>WIPO director general visits China for series of high level meetings and participates in Belt and road summit [Electronic resource]. URL: [https://www.wipo.int/about-wipo/en/offices/china/news/2019/news\\_0002.html](https://www.wipo.int/about-wipo/en/offices/china/news/2019/news_0002.html) (date of access: 29.09.2022).

In a broad sense, China is a country in the Asia region. Chinese partners are likely to begin their international operations with intellectual property in Asia before expanding worldwide. Clearly, differences in the conditions for intellectual property protection and procedures such as substantive patent examination can lead to variations in the quality of the intellectual property objects, including their value and legal viability in the markets along the BRI. A review of the present systems of patent protection of China's partners would be useful at this point, including with regard to their ability to apply protection criteria such as novelty.

China has studied the intellectual property system in the United States, Japan and other developed economies since it launched the reform of its intellectual property system in 2008. The results informed its proactive effort to update its rules and strengthen the protection of intellectual property rights as a national policy objective, including in the context of the BRI. Despite recent improvements, some shortcomings remain, even at the government level. For example, several weaknesses have been identified in the Chinese intellectual property law of 2008: the law remains too basic, and lacks sufficient transparency and clarity; the quality and quantity of indigenous (Chinese) intellectual property are inadequate, e. g. many patents are for objects that have not been substantively researched. As a result, inventions represent 85.7 % of all patents obtained by foreign applicants and only 26.1 % by domestic ones. There is still too little familiarity with the intellectual property system, even among entrepreneurs: for example, about 60 % of companies have never applied for a patent and do not own a trademark. Enforcement systems are still weak, and opportunities for abuse of intellectual property rights (e. g. in the patenting of utility models) are still broad. Finally, patent attorneys and other intellectual property management professionals are still in short supply, and procuring professional assistance in filing for a foreign patent is still difficult in some remote provinces [12]. On the other hand, these issues are typical of many intellectual property systems, given their complexity. They are present in any jurisdiction. For example, in the United States, "patent trolling" is a relatively common abuse. The responses of the Chinese government to these problems also encompass the BRI, making it a convenient and flexible framework for identifying risks and elaborating advanced strategies for addressing them.

After more than a decade of intellectual property reform, the above shortcomings have largely been addressed, giving cause for China's partners along the BRI to revise their old approaches. Intellectual property rights have come to the top of the priority list, and Chinese companies in foreign markets will be less

complacent about protecting their intellectual property assets, even though they may not need to worry about patents and trademark registration when operating domestically.

Conversely, companies entering the Chinese market should take note of the impressive progress achieved in strengthening the system for enforcing intellectual property rights in China. It consists of three main actors: the judiciary, the executive and the police. China has established specialised intellectual property courts in its major cities (Beijing, Shanghai and Chongqing), as a policy to concentrate hearings of intellectual property cases in areas where such cases represent the highest proportions of the caseload. Recognising the need to build the relevant expertise and jurisprudence, the state has assigned intellectual property cases to regional intermediate people's courts in all remaining jurisdictions.

China's Patent office has expanded its geographic presence to maximise access to administrative adjudication of disputes arising from intellectual or industrial property procedures. The Chinese National Intellectual Property Administration operates from several locations, including Beijing, Shanghai and Shenzhen. It also considers petitions on matters related to intellectual property involving parties from Hong Kong, Macau and Taiwan through its department of international cooperation<sup>9</sup>.

Chinese customs is also active in the enforcement of intellectual property law. In 2021, it enhanced its systems for enforcement and took extensive practical steps that reflected positively on its performance statistics. Throughout 2021, the customs reported taking 84 000 administrative actions, delaying 79 000 shipments and seizing 71 828 mln items<sup>10</sup>. The customs services are building their digital capabilities to meet the challenges of growing e-trade. In 2021, customs seized nearly 2 mln suspicious items delivered internationally via e-commerce. For example, Suzhou Customs apprehended 120 items with the NBA logo while monitoring outgoing mail.

In its efforts to strengthen the components of its intellectual property protection system, China is motivated in large part by its international commitments. For example, the upgrading of the enforcement capabilities of its customs administration is consistent with China's obligations under section 4 of part III of TRIPS. Specifically, increased inspection by the customs of mail deliveries emulates the examples of developed countries, such as the EU member states and the United States.

Since the start of the reform, China has expanded its participation in international agreements on intellectual property rights. In addition to the main universal

<sup>9</sup>CNIPA. About us [Electronic resource]. URL: <http://english.cnipa.gov.cn/col/col2968/index.html> (date of access: 29.09.2022).

<sup>10</sup>China custom enforcement of intellectual property rights [Electronic resource]. URL: <http://english.customs.gov.cn/topic/customs12/Default.aspx.htm> (date of access: 29.09.2022).

international agreements (to which China acceded when it joined the WTO), China is a party to an increasing number of bilateral and regional agreements. In 2001, it concluded an intergovernmental agreement with Belarus on the protection of intellectual property rights, which laid the foundation for bilateral collaboration in this area. Under art. 2 of this agreement, each party undertakes to accord effective protection of the intellectual property of the other party, subject to the laws and regulations of their respective jurisdictions and the international agreements to which they are parties. After joining the WTO, China made several revisions to its copyright law, patent law and trademark law and promulgated multiple implementing regulations to comply with the TRIPS agreement.

In 2021, China rose to the 10<sup>th</sup> place in the Global innovation index ranking, from 12<sup>th</sup> place in 2020<sup>11</sup>. By joining the Patent cooperation treaty, China reached the top of the ranking by the number of international proceedings and international registrations of trademarks on the basis of the Madrid system.

China is building an important intellectual property jurisdiction in terms of protection, means of enforcement, geographical coverage and scope of protected intellectual property. Internationally, trademarks and inventions are protected by the Madrid system and Patent cooperation treaty, respectively. Since so many intellectual property objects are protected, a closer assessment of their quality and competitiveness is necessary with relevance to the Chinese market. As a minimum, the tests of non-coincidence with analogous inventions and similar trademarks will need to be improved.

A new type of competition is beginning to emerge in the Chinese intellectual property market. It is already evident that in order to conduct a patent search and perform patent research, one has to deal with unprecedented amounts of information, even in the earliest stages of the process.

With different levels of economic development in the countries involved in the BRI, the same basic intellectual property agreements, and even the same international regimes would likely be effective in some isolated cases. For any specific project, national legislation will always prevail. A country-by-country strategy will be required to facilitate industrial property procedures under international universal and regional mechanisms. In this regard, a specific agreement on intellectual property in the BRI would not substantially add to the existing sources of law in any meaningful way.

On the other hand, the BRI can be an opportunity for creators, rightsholders, and user-producers to escape the win – lose scenario, as is often the case with the traditional distribution of the roles. It may provide

a common core of cooperation for partners with similar positions and experience [11, p. 674].

Legal research into intellectual property strategies across the BRI should consider the territorial dimension. No protection mechanisms provided by international or domestic law, or reciprocity regimes can guarantee an appropriate solution where all parties want intellectual property used and protected. Adjusting the quality of intellectual property objects according to the circumstances of the competition is fundamental, not just the level of protection or the set of measures needed to obtain it.

There is no better solution than joint scientific, technical, and experimental research since the parties alone cannot steer their project in a win – win direction, even when they have the necessary capabilities. By working together, they can achieve success and reduce the dependence on the party that transfers the technology, as is usually the case in the win – lose model. Therefore, many regional and bilateral agreements dealing with intellectual property in the BRI include joint research provisions and other details, such as confidentiality, as in the EAEU – China agreement or the Belarus – China agreement.

Perhaps the greatest challenge for the legal framework for cooperation within the BRI is the possibility of legal disputes over intellectual property. In some respects, it reflects the domestic situation [10, p. 6]. Specific dispute resolution mechanisms are addressed in the context of free trade agreements. Most free trade agreements include dispute settlement provisions, including those relating to intellectual property. In 2009 China and ASEAN concluded a Memorandum of understanding on intellectual property cooperation and in 2014 signed a Framework agreement on dispute settlement mechanism for comprehensive economic cooperation to clarify the issue<sup>12</sup>. It was noted by the parties that there was a lack of regulation on the details of a dispute resolution system (only the principles of such a system have been outlined) or the mechanisms by which it would work. Private parties – such as businesses and individuals – did not have direct access to the arbitration process, possibly leading to a significant increase in the cost of enforcing intellectual property rights.

Typically, intellectual property disputes between private parties are settled under domestic jurisdiction or, if such parties wish to use alternative instruments, by special commitments. China and most other participating states are members of the WTO, which offers dispute settlement mechanisms that can be utilised in the BRI. Belarus is one of ten countries that are not WTO members or TRIPS parties out of 65 participating in the BRI.

<sup>11</sup>GII 2021 results [Electronic resource]. URL: [https://www.globalinnovationindex.org/userfiles/file/reportpdf/GII-2021/GII\\_2021\\_results.pdf](https://www.globalinnovationindex.org/userfiles/file/reportpdf/GII-2021/GII_2021_results.pdf) (date of access: 29.09.2022).

<sup>12</sup>The China – ASEAN Memorandum of understanding on intellectual property cooperation and 2014 China – ASEAN Framework agreement on dispute settlement mechanism for comprehensive economic cooperation [Electronic resource]. URL: [https://www.fmprc.gov.cn/web/wjbxw\\_673019/202201/t20220105\\_10479078.shtml](https://www.fmprc.gov.cn/web/wjbxw_673019/202201/t20220105_10479078.shtml) (date of access: 22.09.2022). Chinese.

Although the WTO dispute resolution process is exclusively available to states, its transparent and flexible rules still allow private parties to represent their interests. This and other arrangements can compensate for the absence of a mechanism for resolving intellectual property disputes. As for the EAEU and Belarus in particular, these possibilities remain closed. Consultations are the only method of resolving disputes under the EAEU – China agreement. The BRI legal environment can be enhanced by improving dispute settlement arrangements in the EAEU. Ideally, a dispute adjudication body should operate at an intermediate level, separate from the Chinese authorities, those of the member states, or EAEU bodies (e. g. the Eurasian Economic Commission, Court of the EAEU). Possible formats include a commission of intellectual property experts. The EAEU – China agreement will need an addendum outlining procedures for forming the commission, referring disputes, and presenting basic principles for private parties to submit claims and interests to their states' competent authorities. When the parties to a project hold divergent positions on an intellectual property issue and their respective jurisdictions provide different remedies, the addendum will make it possible for these parties to access state support.

Using an intermediate-level dispute resolution body would provide the extra benefit of involving government bodies in enforcement and other tasks over which they have exclusive authority under domestic mandates and (or) at the stage of cross-border trade. Putting electronic platforms in place to connect national governments, international bodies, and individuals could facilitate and simplify communication at different stages of a dispute resolution process.

It has been discussed previously that digital capabilities are essential for the protection and enforcement of intellectual property rights by national and international bodies (e. g. National Centre for Intellectual Property, China National Intellectual Property Administration)

and international business organisations. China's ministry of commerce has set up a public service platform "Go global". Comparative analysis suggests that while the digital trading platforms of developed countries are advancing, Chinese platforms are lagging [8, p. 10]. Consequently, most Chinese enterprises are uncertain about what kinds of support they can expect from the state if they go global. Due to concerns about the time and financial costs of defending your rights in international intellectual property disputes, many Chinese businesses decide not to defend their rights. For example, when the big Chinese companies chose to litigate<sup>13</sup> they discovered that this can be a lengthy process (up to eleven years in the latter instance). Smaller companies are intimidated by these experiences.

Litigation is generally viewed as detrimental to Chinese companies' international strategies due to significant time costs and significant risks. The pressure from their international counterparties may overwhelm them before they even begin to litigate, and they may interpret it as a means of gaining a competitive advantage rather than genuinely seeking to protect their intellectual property.

China's government has built an extensive infrastructure for the going global policy [3]. A 167 % increase over the previous year was recorded for the National intellectual property public service website in 2021, with an estimated 2.15 mln visitors<sup>14</sup>. The results to date indicate the issues needing to be addressed in pursuing a systematic state policy to encourage the globalisation of Chinese businesses and carry out the BRI.

Mediation and arbitration are alternative dispute resolution mechanisms that not only resolve disagreements but also increase responsibility for intellectual property as an innovative component of a business. Countries taking part in the BRI must provide realistic dispute resolution mechanisms, including as a means of enhancing the protection of international intellectual property.

## Conclusion

Intellectual property rights are crucial to the BRI. The source of competitive advantage for practically any product and service today is innovation. Intellectual property is protected by appropriate international legal instruments and current national legislation. By addressing the same practical issues that industrialised countries face, regional and bilateral agreements already contribute to better protection and enforcement of intellectual property rights.

In the multijurisdictional environment of the BRI, the legal mechanisms for protecting and enforcing intellectual property rights are based on the Bern convention, Paris convention, Patent cooperation treaty, and Eurasian patent convention, as well as other international and regional instruments governing copyright, intellectual property, and industrial property rights. Several agreements are in place that lay the groundwork for cooperation among many of the participating countries

<sup>13</sup>Wang Zhihe Group's case to defend trademark rights and anti-unfair competition [Electronic resource]. URL: <https://china.findlaw.cn/chanquan/chanquananli/haiwaiweiquan/18014.html> (date of access: 29.09.2022) ; Inter Digital's Second 337 Investigation into China: "3G set-up for filing" [Electronic resource]. URL: <http://ip.people.com.cn/n/2013/0204/c136655-20423619.html> (date of access: 29.09.2022) ; Patent dispute between Honda Giken Co [Electronic resource ]. URL: [https://code.fabao365.com/law\\_46214.html](https://code.fabao365.com/law_46214.html) (date of access: 29.09.2022). Chinese.

<sup>14</sup>CNIPA annual report 2021 [Electronic resource]. URL: <https://english.cnipa.gov.cn/col/col2936/index.html> (date of access: 29.09.2022).

within the framework of the BRI (e. g. the EAEU – China agreement). As a result, there seems to be no need for detailed agreements or legal solutions borrowed from other members of the BRI. Belarus and China, in particular, are developing their national intellectual property systems as part of their economic and social development strategies. At this point, it is too early to talk about transferring Chinese practices to Belarus and Belarusian practices to China.

In the BRI, businesses are taking well-planned, systematic and properly balanced steps to navigate the complexities of using intangible assets in a multi-jurisdictional setting, and their ability to do so constitutes the uniqueness of the intellectual property situation. Rather than new rules for protecting and enforcing intellectual property rights, there is a need for institutional improvements and better organisation. These should be achieved, inter alia, on the basis of public-private partnerships, in dialogue with the government and business.

As a means of resolving disputes and competing interests arising as a result of the international movement of intangible assets and intellectual property – including in the context of BRI and projects – it is best to

form specialist commissions and panels consisting of qualified representatives from relevant national bodies to achieve the most effective mediation. Private parties will be able to file their claims through electronic platforms and systems used by these panels in their operations.

Providing adequate protection of intellectual property rights requires neither special international agreements nor special national laws, but only a stronger infrastructure. As intellectual property in the BRI is subject to international protection and enforcement, adding new provisions (addendums, annexes, etc.) to the EAEU – China agreement will ensure its intellectual property institutional framework is safeguarded. In a similar manner to the dispute resolution panels of the WTO, this instrument should guide the consideration and resolution of intellectual property disputes by specialist commissions or panels composed of officials from the patent, customs, and other competent authorities. Using an appropriate electronic recourse algorithm would reduce the time and money costs of international intellectual property protection and the uncertainties of cross-border disputes.

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## HARMONISATION AND UNIFICATION AND THEIR INFLUENCE ON THE EVOLUTION OF NATIONAL LEGAL SYSTEMS

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The author of the article explores the concepts of harmonisation and unification. Both are used in legal texts and doctrinal sources, but the distinctions among them and the implications for the evolution of the national legal systems are still poorly understood. The aim of the research is to clarify the similarities and differences between these and related concepts and understand how the processes to which they refer influence legal change. It is concluded that harmonisation and unification are uneven and fragmentary processes, even though they are often equated. National legal systems retain substantial differences and specificities precluding the assimilation of many legal norms from other jurisdictions and creating formidable barriers to harmonisation. We also find that shared history, legal traditions and commonalities in the legal order and elements of legislation facilitate harmonisation, and international organisations lay the groundwork for harmonisation. We present examples of successes in the unification of material and procedural law and highlight the essential role of supranational bodies such as the Court of Justice of the European Union and the Court of the Eurasian Economic Union in the uniform application and interpretation of the common rules.

**Keywords:** harmonisation; unification; convergence; national legislation; international law; private international law.

## ГАРМОНИЗАЦИЯ И УНИФИКАЦИЯ И ИХ ВЛИЯНИЕ НА ЭВОЛЮЦИЮ НАЦИОНАЛЬНЫХ ПРАВОВЫХ СИСТЕМ

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Анализируются понятия «гармонизация» и «унификация», которые используются как в нормативных правовых актах, решениях и консультативных заключениях международных судов, так и в доктринальных источниках, однако зачастую им не дается определение, не проводится их разграничение, а также не выделяются особенности явлений, обозначаемых этими понятиями, виды и способы их влияния на эволюцию национальных правовых систем. Целью исследования является разграничение указанных и смежных понятий, выделение их видов и способов влияния на эволюцию национальных правовых систем. Сделан вывод о том, что гармонизация и унификация, которые иногда отождествляются, носят фрагментарный характер и в настоящее время невозможно говорить о гармонизации национальных законодательств, так как некоторые положения не могут быть восприняты в силу особенностей национальных правовых систем, принадлежащих к различным правовым семьям. По этой причине основой для гармонизации и унификации должна быть общность исторических и правовых традиций, основ правового порядка и отдельных элементов законодательства в рамках международных организаций, субъектов глобальной правовой системы, реализуемая при помощи традиционных международно-правовых механизмов. Определенных результатов достигла унификация как норм материального права, так и процессуального права. Единообразное применение и толкование норм, которое обеспечивает международный суд в рамках международных организаций, например, Суд Европейского союза и Суд Евразийского экономического союза, вынося консультативные заключения и решения, имеет определяющее значение.

**Ключевые слова:** гармонизация; унификация; сближение; национальное законодательство; международное право; международное частное право.

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Harmonisation and unification of law are subjects of a lively debate among lawyers. Legal texts use diverse terms – “convergence”, “harmonisation”, “unification” and many others – but the distinctions among them are still poorly understood. For example, art. 2 of the Treaty on the Eurasian Economic Union, dated 29 May 2014, defines harmonisation as the “approximation of the legal frameworks of the member states that creates similar or comparable legal provisions in select areas of concern”. The treaty text also refers to “convergence”, understood as the movement towards identical mechanisms of legal regulation in the areas of concern enumerated in the Treaty on the Eurasian Economic Union. The Proposals on enhancing the organisational and legal mechanism for implementation and systematisation of legislation in the Eurasian Economic Community, approved by the Resolution of the Bureau of the Interparliamentary Assembly of the Eurasian Economic Community of 17 November 2005 No. 7, interprets harmonisation as a process of legal change that creates common procedures for specific areas of concern by incorporating community legislation into national legal acts in member states consistent with the principles shared by the member states while recognising the precedence of the peremptory norms of general international law. Harmonisation seeks to create uniformity (homogeneity) between the provisions of national law and the legal acts of the community in content, orientation, legal consequences and principles of legal regulation. Convergence, on the other hand, implies that states commit themselves to bring their national legislation into basic conformity with the legal acts of the community, to the extent that all contradictions among them are removed, while in unification they agree to act to make their national legal acts identical (fully corresponding) to the statutory norms and provisions of the community. Similar definitions of harmonisation, unification, and convergence of national legislations can be found in other community instruments, including the Procedure for implementation of international treaties and decisions of the bodies of the Eurasian Economic Community, adopted by the Resolution of the Bureau of the Interparliamentary Assembly of the Eurasian Economic Community of 14 June 2005 No. 7, and the Concept of the legal framework for energy security in the Eurasian Economic Community, approved by the Resolution of the Bureau of the Interparliamentary Assembly of the Eurasian Economic Community of 23 December 2011 No. 7.

As suggested by the above legal definitions, all three terms (harmonisation, convergence, and unification) presuppose that the member states will act towards some degree of legal approximation. However, the terms are dissimilar in the sense that the scope of such actions and the mechanisms engaged may differ widely.

N. Garoupa and A. Ogus define convergence as the coalescence of legal systems, concepts, principles or norms,

and harmonisation as the approximation of national or state laws pursuant to a law or regulation. In this framework, unification appears to be an “extreme” example of harmonisation, as it demands uniformity and leaves no room for diversity or flexibility in an area of concern. Otherwise similar to W. van Gerven [1, p. 343; 2], their position also considers competition as a driver of legal change. For example, domestic industries may push for changes in the law if their costs of regulatory compliance exceed those of their international counterparties and competitors in international markets. Where the barriers to the export of capital and relocation are low, the threat of relocation to other markets may put significant pressure on lawmakers. To the extent permitted by domestic and private international law, companies may select various jurisdictions for their business transactions. In small countries dependent on international trade, lawmakers will be particularly sensitive to such pressure, conscious of the need to attract multinational corporations and firms from other jurisdictions to provide foreign direct investments and generate demand for labour, and tax revenue [1, p. 340].

R. Ghetti describes three paths towards the convergence of law [3, p. 817]. The first, states may amend their legislation unilaterally, by transplanting a law from another jurisdiction. This practice requires no cooperation with the country from which the law originated. Therefore, it is often referred to as “non-cooperative adaptation” [3, p. 817–818].

The second, harmonisation, occurs when two or more member states delegate some of their sovereignty to a supranational body, vested with the power to lay down the principles that the participating states must incorporate in their national legislation. For example, the European Union directives are a key tool for the harmonisation of law within the European Union [3, p. 818].

The third path, unification, takes place when a multilateral treaty or an act of a supranational body lays down uniform detailed rules, with direct and immediate effect, binding on the territory of all participating jurisdictions. This is typically the case with the European Union regulations [3, p. 818].

As opposed to a unilateral amendment, harmonisation and unification have an element of cooperation intrinsic to them. By cooperating, states accept constraints on their legislative autonomy. A unilateral amendment imposes no constraints on such autonomy. Harmonisation is more restrictive, as it commits a state to a set of binding principles, and harmonisation places the highest constraints, as the states agree to be bound by the objective of the legislative measure and the means for attaining it. The legal policy mechanisms for the convergence of law are provided by the continuum from autonomy to heteronomy [3, p. 818].

In R. Ghetti’s model, there are three distinct tools of convergence of company law: full legal unification, mere harmonisation, and regulatory competition [3, p. 813].

While the first two elements are consistent with the models that have been highlighted above, the third element, “regulatory competition”, is an addition appearing as a “less typical” form of convergence in some domestic legal contexts.

By addressing multiple areas of concern, the harmonisation of law has a tendency for fragmentation. As observed by I. M. Zhmurko, instruments of international law are essential to the approximation of law, as it is not possible to put in place a common set of regulatory prescriptions outside a system of international legal obligations of states or a regulatory framework, especially to provide progress of the interstate cooperation towards the goals of integration [4, p. 575]. Modern instruments are quite comprehensive and address a fairly broad sphere of relations. States use a variety of legal means for coordination of interests, expression of agreed positions and fixation of common rules. These are conventions, treaties, uniform and model laws, recommendations, guidelines, decisions of judicial bodies, set of customs, etc.

In our opinion, in the modern science of private international law, there has emerged a need to establish patterns that affect the choice of specific tools, in particular, the optimal set of legal instruments for solving a specific problem by similar, identical or uniform rules. According to I. M. Zhmurko the concrete solution for legal approximation will depend on factors like the number of parties, the scope of the agreement, or the level of detail [4, p. 575–576]. Paying due attention to the technical side of the problem, in particular defining an interdependence of material and procedural law in the process of harmonisation or unification, this author still insufficiently dwells on the legal nature of the relations, for which such norms are being developed.

The deepening of research in this direction should be carried out taking into account the developments of the doctrine on the classifications of the fields of the correlation of material and procedural law. Noting the asynchrony in the unification of material and procedural law, D. I. Krymsky proposes a typology of solutions for legal unification, including internal or external (taking place between states or within states), autonomous or derivative (proceeding independently of unification of material law or conditional on it), full or partial (covering the geographic area or the issues of concern fully or partially), ideal or practical (in terms of the nature of its objectives) [5, p. 221]. This approach allows us to conduct empirical research and reveal the reasons for the unification in legal acts on the codification of uniform substantive and procedural norms for specific relations. D. I. Krymsky noted as examples that Regulation (EC) of the European Parliament and of the Council of 21 April 2004 No. 805/2004 creating a European enforcement order for uncontested

claims, Regulation (EC) of the European Parliament and of the Council of 12 December 2006 No. 1896/2006 creating a European order for payment procedure, Regulation (EC) of the European Parliament and of the Council of 11 July 2007 No. 861/2007 establishing a European small claims procedure, did not preempt the relevant procedures in national legislations but contributed substantially to supranational regulation of civil proceedings [5, p. 223].

At present, the study of this issue covers more general problems, without going into a detailed differentiation of certain types of relations. According to D. I. Krymsky, unification can be grounded in common history, shared legal traditions, foundations of the legal order, or individual elements of legislation [5, p. 224]. As observed by I. M. Zhmurko, shared norms are a compromise that takes into consideration the national specifics and approaches to legal regulation in a given area and the desire of every state for an optimal regulatory regime after convergence [4, p. 576]. Meanwhile, the specificity of some issues of international relations is manifested in practice, for instance in the process of rulemaking. During the debate on amendments to the uniform law on the international sale of goods at the 6<sup>th</sup> Plenary meeting of the 1980 Vienna diplomatic conference, Mr. Sami (Iraq) proposed to exempt oil from the scope of the law because “international oil trade was too important matter to be covered by it”<sup>1</sup>. Mr. Sami added that unless that amendment was accepted, certain OPEC countries would not be able to accede<sup>2</sup>. In the end, the Iraqi proposal was rejected, but that did not stop Iraq from joining the Vienna convention on contracts for the international sale of goods. This example explains why the elaboration of international treaties can take decades.

International treaties are a very popular and convenient tool for harmonisation. Their provisions significantly influence the jurisdictions of the states that have consented to be bound. For the international norms to work, participating states must implement them in national legal systems. This begs the question whether every norm of international law must be incorporated into national law to become enforceable nationally. L. V. Pavlova argues that only self-executing norms of international law are directly enforceable without transformation into national law, and these must meet the following criteria [7, p. 4]:

- to have the status of a norm of international law, independent of the type of instrument that contains it (treaty, custom or decision of an international organisation);
- to be directed at the subjects of national law (physical and (or) legal persons) by virtue of their content;
- to be directly enforceable in the territory of the state, without the assistance of a domestic legal act.

<sup>1</sup>United Nations Conference on contracts for the international sale of goods: official records [Electronic resource]. URL: <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/a-conf-97-19-ocred-eng.pdf> (date of access: 10.04.2022).

<sup>2</sup>Ibid.

Based on these criteria, the European Union regulations and decisions of the Eurasian Economic Union Commission are examples of instruments that establish self-executing norms, as they were written as directly applicable and enforceable in relation to a determinable range of subjects. However, whether they are instruments of international law is less certain. As the Court of Justice of the European Union has underlined in several rulings (e. g. *Flaminio Costa vs. E.N.E.L.* dated 15 July 1964), the EEC Treaty has created its own legal system which, on the entry into force of the treaty, became an integral part of the legal systems of the member states, which their courts must apply. Regulations adopted pursuant to art. 189 of the EEC Treaty are binding in their entirety. They are directly enforceable in all the member states and refusal to enforce them has no basis in national law. Consequently, the legal system of the European Union is a special legal order, which is neither international nor national but is of supranational character. However, the legal system of the European Union is not a global system, in the understanding of V. M. Shumilov<sup>3</sup>.

As acts of primary law, the Treaty on the Eurasian Economic Union and other treaties of the union, the EEC Treaty or the Treaty on the functioning of the European Union, have direct enforceability with regard to an act of domestic law and the domestic legal order, as M. N. Marchenko and E. M. Deryabina opine [6]. The technical regulations of the Eurasian Economic Union are directly enforceable in the territory of the union pursuant to para 2 of art. 52 of the Treaty on the Eurasian Economic Union, and can also be described as self-executing.

Uniform interpretation and enforcement are essential to the effective unification and harmonisation of law in regional integration organisations. International courts contribute to the uniform interpretation of the law by issuing advisory opinions. Importantly, in some of its opinions, the Court of the Eurasian Economic Union refers to decisions of the Court of Justice of the European Union, an invaluable practice that facilitates legal conversion. In its landmark Advisory opinion of 4 April 2017, the Court of the Eurasian Economic Union affirmed that the antimonopoly regulations of the union are uniform under art. 76 of the treaty, and the Protocol thereto. Para 2 of art. 74 of the treaty establishes the general rules of competition in cross-border markets, these general rules act as self-executing norms of an international treaty. Furthermore, the Treaty on the Eurasian Economic Union does not entitle the member states to amend unilaterally the admissibility criteria for vertical agreements.

The opportunities for harmonisation and unification within the framework of regional integration are wider for those relations that are directly related to that pro-

cess. Despite the fact that corporate relations are closely related to the fundamental pillar of integration in the form of the freedom of movement of capital, the patterns of establishing uniform rules are not sufficiently systematised. As the European Union has a long history of harmonisation and unification of corporate law, for the Eurasian Economic Union it is not yet so obvious.

Legal harmonisation of corporate law is possible in spite of significant disparities between national legal systems, but obstacles may arise. For example, British courts have refused to adopt the definition of legal entity from the European Union law, and have stuck to the use of the common-law term “corporation”. In distinctly different legal systems (Muslim, liberal, socialist, etc.), harmonisation remains implausible while these systems retain their antagonistic components [8, p. 27]. However, even in the absence of fundamental differences between laws of different states, there may be some domestic legal specificity that turns international norms and standards into antagonists for a domestic legal system. The doctrine notes that the problem of antagonism can be identified by constitutional provisions [9, p. 129]. Meanwhile, the formation of integrated markets and other multi-jurisdictional spaces in one way or another requires interstate legal convergence. Settlement should be found by focusing on the common goals of cooperation in the context of cooperation (integration) and through the mutually recognised principles. Thus, national legal systems have a mutual influence on each other, contributing to the progressive development of law in the multistate dimension.

Harmonisation and unification are sometimes identified, but their processes in the details of implementation and patterns of development remain uneven and fragmented. The differences between national legal systems and legal families are still deep. The specificity of different relations sets the features of harmonisation and unification of law. International organisations and instruments of international law contribute to the convergence of both substantive and procedural law, and the modern trend is to unite the corresponding results into one legal act. The development of research for certain types of relations, in particular in the field of corporate law, must rely on the priority of goals of harmonisation and unification over the differences in national laws. That is ensured by the freedom of movement of companies. Convergence in the Eurasian Economic Union can be achieved through the gradual elimination of differences in national laws that prevent the realisation of that freedom beyond the framework of antagonistic constructions. A uniform understanding of such a framework for unification and harmonisation can be provided by the Court of the Eurasian Economic Union, as was done by the Court of Justice of the European Union.

<sup>3</sup>Шумилов В. М. О «Глобальном праве» как формирующейся правовой суперсистеме // Моск. журн. междунар. права. 2015. № 4. С. 4–17.

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