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ESSAY

THE APPLICABLE LAW TO THE SUBJECT MATTER OF THE DISPUTE IN INTERNATIONAL INVESTMENT LAW ACCORDING TO THE ICSID CONVENTION AND GEORGIAN LAW[1]

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Abstract

International investment law is of particular importance for each country's economic development and Georgia is not an exception in this issue. While discussing international investment law investment dispute settlement should ultimately be considered. The present article deals with the issue of applicable law to the subject matter of the dispute in international investment disputes. The whole article is dedicated to the practical aspects of the determining applicable law. More precisely, Georgian regulations and respective provisions of certain international regulations will be covered. The research is done using a comparative, systemic, logical and analytical method. The use of each method in different parts of the article ensures demonstration of rules existing towards determination of applicable substantive law, which is the purpose of the present article.

Key words: *Applicable Law, Investment Dispute, Private International Law, Conflict of Laws*

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INTRODUCTION

In the modern world it is intensively argued in doctrine that applicable law to the subject matter of the dispute in international investment law is very complicated as the problems arise when disputing parties are foreign investors and host states. There are many practical issues which should be resolved during this process.

The research paper is dedicated to the mentioned issue. Furthermore, the main purpose of the research is to estimate the practical issues related to determining applicable law to the subject matter of the dispute. Consequently, there are two topics covered in the present paper. The first part is related to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. More precisely, there is a detailed analysis of Article 42 of the International Center for Settlement of Investment Disputes (hereafter - ICSID) Convention.

The second part concerns to Georgian law which does not sufficiently satisfy modern trends and requires several amendments regarding determining applicable substantial law. In addition, Georgia has concluded more than twenty Bilateral Investment Treaties (hereafter - BITs) with other countries, which stipulate articles about applicable law. These BIT's are very important legal tools in investment disputes because they stipulate applicable law to the dispute which arises between foreign investor and the host state. Therefore, due to the abovementioned issues this research is very important for Georgia and foreign investors in Georgia as well.

1. ICSID ARBITRATION AND CRITERIA FOR DETERMINING APPLICABLE SUBSTANTIVE LAW ACCORDING THE ICSID CONVENTION

International investment law is one of the most important and practical field. Investment disputes between a foreign investor and the host state represent rather problematic issue. This matter involves determination of applicable substantive law as well.

The present chapter of the research paper points out different international investment acts and international investment practice, which through various methods and principles stipulate applicable substantive law to a dispute. The most widespread one among these principles is "close connection rule," [Begic 2005: 134; Dolzer et al. 2012: 288][2] which is rather commonly used in modern investment disputes.

As a rule, the application of "close connection rule" leads to the applicable law which is the host state's law. The mentioned rule is indeed common to most (national) conflict of laws system [Kjos 2013: 83].[3] Except of "close connection rule," "center of gravity" test is outlined in investment law and practice. It reflects general principles such as *lex loci contractus, lex loci solutionis, lex loci delicti, lex loci actus, lex situs, lex domicilli* principles. Using those principles the applicable law was

[2] For example, in UNCITRAL arbitration Case Wintershall v. Qatar, the arbitration tribunal noted the absence of the agreement on choice of law between the parties. However, it only affirmed that considering the close links of investment product to Qatar the law of Qatar had to be applied.

[3] Applicable substantive law was established according "close connection rule" in case Ministry of Defense and Support for Armed Forces of the Islamic Republic of Iran v Westinghouse Electric corp.

established in one of the cases, which turned out to be the substantive law of the host state.[4]
Most investment treaties do not contain an express choice of law articles. If such choice exists, the situation may broadly be categorized as follows. Almost always the dispute is to be decided in accordance with the provisions of the agreement [Yannaca-Small 2010: 197].

1.1 Article 42(1)[5] of the ICSID Convention

1.1.1 The First Sentence

The ICSID Convention expressly recognizes the parties' general freedom to agree upon the substantive law governing their dispute [Born 2014: 2155]. According to Article 42(1), the Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable. Article 42 authorizes only the substantive law to be applied and does not deal with procedure [Diehl 2012: 284]. At first glance the rule stipulates very simplified procedure which helps arbitrators to determine the applicable law.
The first sentence of Article 42(1) at the first sight without any problem or question states applicable law determined by the parties. However, there are some issues related to rules on conflict of laws. More precisely, whether the article implies or not that particular country's rules on conflict of laws which ultimately are the part of that county's law.
It is deemed that the parties' agreement on the application law comprises of provisions of conflict of laws, unless the parties expressly agree otherwise [Weiler 2005: 250]. Article 42 is designed to give guidance to the ICSID tribunal in choosing the proper law. The tribunal's first task is to ascertain whether the parties have chosen a system of law or individual rules of law. This choice may extend beyond legal rules *sensu stricto* to principles of equitable justice. Only after determining that there is no agreement on applicable rules of law may the tribunal resort to the residual rule referring it to the law of the host state and to international law [Schreuer 2009: 554].

1.1.2 The Second Sentence

The wording of the second sentence of article 42(1) also clearly demonstrates that both domestic and international law should have a role [Diehl 2012: 284].

[4] Economy Forms Corporation v. Government of the Islamic republic of Iran; Award No. 55-165-1 (13 June 1983).
[5] Article 42 of the ICSID Convention: (1) The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable. (2) The Tribunal may not bring in a finding of *non liquet* on the ground of silence or obscurity of the law. (3) The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute *ex aequo et bono* if the parties so agree.

Accordingly, the second sentence of Article 42(1) of the ICSID convention may conventionally be divided into two parts. The First one is related to the application of the disputing state's law and the second deals with the international law provisions which from the point of arbitrators are expedient. To consider the given regulation, the result which is on the one hand, caused by applying disputing state's law and on the other hand, by applying international law should be apprised. Although, it should be determined whether the arbitral tribunal should unconditionally apply provisions of international law or the latter should be applied as the supplementary provisions of domestic law. This discussion brings into light the various views expressed as to the role of international law in the context of Article 42(1).

1.1.2.1 Disputing State's Law

In the absence of parties' agreement regarding governing law the law of the disputing state is of essential importance. In such case the dispute should be resolved according the law of the host state. However, if dispute arises investors always try to avoid application of host State's domestic law [Tsertsvadze 2013: 268]. Using the law of the host state may give the state a decisive advantage should a dispute arise, as the laws of the host state may be favourable to the host state vis-à-vis the investor [Diehl 2012: 258].

If investors missed or expressly did not choose governing law then the dispute should be resolved exactly according to the law of the host state. Notwithstanding the simplicity of this issue it should be ascertained whether the application of the law of the host state implies or not the conflict of law rules, which may lead to rules of different state's (non-host state) laws as applicable substantive law.

The views expressed in the legal literature may be highly acceptable, because they regard that in the absence of parties choice of governing law the tribunal should apply host state's and accordingly, disputing state's national law, which includes rules of conflict of laws as well. In certain circumstances the latter may refer to the application of another state's substantive law [Weiler 2005: 250].

1.1.2.2 International Law Provisions

International law provisions with their legal nature hierarchically prevail over the certain country's (for example, Georgian) domestic law. Applicable law in investment disputes always need to draw the strict line between international law and the domestic law of the host state [Tsetsvadze 2013: 272].

Three schools of thought have developed in relation to the proper interpretation of the provision and more generally the appropriate role of host state law in the application of investment treaties. The first approach, advocated by prof. Reisman, posits that international law should be used in only limited circumstances to supplement and occasionally correct host state law: International law plays an important role under article 42(1), but if it is wielded incautiously, it can defeat other parts of this provisions. Where there is a genuine *lacuna* i.e., one for which host state laws does not provide a method for filling the tribunal may turn to international law. In addition international law may perform a corrective function.

However, the contingency for correction must be more than a mere difference between international and host state law [Dugan et al. 2008: 209-210]. Accordingly, application of disputing party's law should be examined with conformity of international law provisions in order to determine whether or not it leads to unjustifiable result [Gaillard 2044: 233]. This approach may be regarded as the vertical approach.

The second view of article 42(1) of the Washington Convention envisions a greater role for international investment disputes, but with host state law remaining the primary source. The interpretation was adopted in some early ICSID cases, which involved contractual disputes. The *ad hoc* committee in *Klockner v. Cameroon* was one of the first tribunals to support this view [Dugan et al. 2008: 210].

According to leading commentators the ICSID tribunals should normally apply the law of the state party [Schreuer et al. 2009: 618-619]. The result of the application of that law should then be tested against international law to ascertain whether the application of the host state law has produced an unfair result. This exercise should not involve any judgment on the validity of the host state's law but may result - in the event of a violation of international law - in the arbitral tribunal refusing to apply the host state's law [Weiler 2005: 253]. Accordingly, Article 42(1) of the Convention authorizes an ICSID tribunal to apply rules of international Law only to fill up lacunae in the applicable domestic law and to ensure precedence to international law norms where the rules of applicable domestic law are in collision with such norms [Dolzer 2012: 292].

The third approach to Washington Convention article 42(1) attributes equal importance to international law and host state law. This interpretation was articulated and adopted by the ad hoc committee in *Wena Hotels* v. *Egypt* [Dugan et al. 2008: 212]. This approach may be regarded as horizontal approach.

In case *Amco v. Indonesia* the arbitral tribunal held that regarding "the law governing the substance of the dispute, under Article 42(1) of the ICSID Convention, if the applicable law was not agreed by the parties and there was no relevant host State laws, international law was applicable; and if there were applicable host State laws they must be checked against international law, which would prevail in case of conflict" [Rayfuse 1993: 387].

In case *Enron Corporation v. Argentina*[6] the tribunal stated that, a discussion of which law governs as between international law and domestic law in Convention proceedings is "theoretical," as Article 42(1) of the ICSID Convention has "provided for a variety of sources, none of which excludes a certain role for another". In that case, the tribunal determined that it would apply domestic law and international law to the extent pertinent and relevant to the decision of the various claims before it.[7]

Therefore, the concept of international law should be deemed as *complementary* to the applicable law in case of *lacunae* and as *corrective* in case that the applicable

[6] Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic, ICSID, Case No.ARB/01/3, Decision 22 May 2007.

[7] This discussion is outlined in the decision which is rendered against Georgia; see: ICSID Case Nos. ARB/05/18 and ARB 07/15, Ioannis Kardassopoulos and Ron Fuchs v. Georgia, 3 March, 2010.

domestic law would not conform on all points to the principles of international law.[8] Simultaneously, some of the authors deem that "the application of the host country's law should merely be "tested against international law to ascertain whether the application of the host State has produced an unfair result [Bjorklund 2014: 512]. Accordingly, "international law's corrective role would apply only when the host country's law produces an unfair result" [Bjorklund 2014: 512]. There is also the view that international law has a controlling function of domestic applicable law to the extent that there is a collision between such law and fundamental norms of international law embodied in the concept of *jus cogens*.[9]

Moreover, one author espouses an even more restrictive point of view regarding Article 42(1), even if there is a gap in the law of contracting state, "Article 42(1) does not thereupon authorize a Tribunal promptly or automatically to resort to international law" [Bjorklund 2014: 512].

In the light of the above the most acceptable view is that the tribunal is obliged firstly to examine the law of host state and if this law contradicts international law then the latter should be applied. At the same time, there is no unified approach regarding the scope of application of domestic law in the context of dispute resolution.

Eight investment disputes against Georgia have been heard so far. More precisely, four out of eight cases were decided in favour of investor, two of them were discontinued and two of them were resolved through settlement.[10] In one case[11] the tribunal heard the dispute under ICSID Convention rules and discussed the issue regarding applicable substantive law. In this particular case the arbitral tribunal was obliged to interpret the applicable substantive law on the one hand according to Article 42 of the ICSID Convention and Bilateral Investment Treaties and on the other hand, under Georgian law. Moreover, the tribunal made decision under Article 26(6) of Energy Charter Treaty[12], which states that the tribunal should render decision under this Treaty and international law provisions and principles. Accordingly, the tribunal made the decision not only on the basis of the certain country's (Georgia) law but in accordance with international rules as well and the final decision was based exactly on them.

According to the view spread in the legal literature arbitrators considering factual circumstances of each case while applying international law and complex domestic laws are obliged to strike the right balance between them [Tsertsvadze 2013: 273]. While applying international law provisions arbitrators should apply firmly fixed general principles such as, for example, *pacta sunt servanda,* etc. [Weiler 2005: 252].

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[8] Wena Hotels Ltd. v. Arab Republic of Egypt, ICSID, Case ARB/98/4, Decision 8 December 2002.

[9] Wena Hotels Ltd. v. Arab Republic of Egypt, ICSID, Case ARB/98/4, Decision 8 December 2002.

[10] See the following link:
http://investmentpolicyhub.unctad.org/ISDS/CountryCases/77?partyRole=2 (accessed 23 May 2017).

[11] ICSID Case Nos. ARB/05/18 and ARB 07/15, Ioannis Kardassopoulos and Ron Fuchs v. Georgia, 3 March, 2010.

[12] A tribunal established under paragraph (4) shall decide the issues in dispute in accordance with this Treaty and applicable rules and principles of international law.

Further, the view spread in the legal literature is to be accepted regarding broad interpretation of Article 42(1) in contrast to Article 22(1) of Stockholm Chamber of Commerce Arbitration Rules, which states that "Arbitral tribunal shall apply the law or rules of law which it considers to be the most appropriate", without specifically designating the law of the host state or the rules of international law [Yannaca-Small 2010: 201].
In consideration of aforesaid it is rather complicated for arbitrators to strike respect balance regarding applicable law in practice. Also, unlike members of Stockholm Chamber of Commerce, arbitrators under the ICSID Convention are bound by two criteria: host state's domestic law and international law rules [Yannaca-Small 2010: 201].

1.2 Importance of Bilateral Investment Treaties for Determining Applicable Substantive Law

The clauses on applicable law contained in BITs are not uniform. Some of them refer to the host state's law, the BIT itself, special investment agreement and rules of international law [Begic 2005: 27].
One type of the clauses in BIT cover combined choice of law clauses. However, these clauses can be additionally differentiated on the basis of legal sources listed in the BIT provisions. The first type of these clauses refer to the host state's law (including its rules on conflict of laws) to the BIT itself, to the rules and principles of the international law and to any special investment agreement concluded between host state and the investor. An example is a clause on applicable law stipulated in the France/Argentina BIT of 1991, which provides:

Article 8

> The arbitration body shall decide on the basis of the provisions of this agreement, the law of the contracting party which is a party to the dispute – including its conflict of law rules – and the terms of possible specific agreements concluding in relation to the investment, as well as the principles of international law on the subject matter [Begic 2005: 27-28].

One example is a clause on applicable law included in the Sweden-Argentina BIT of 1991, which provides: The arbitration tribunal shall decide in accordance with the provisions of this agreement, the law of the Contracting Party involved in the dispute, including its rules of conflict laws, the terms of any specific agreement concluded in relation to such an investment and the principles of international law [Diehl 2012: 266]. The similar clause is found in Art., 8(3) of Sri Lanka/Egypt BIT of 1996. This BIT provides that:

The arbitral tribunal shall decide in accordance with:
- The provisions of this agreement;
- The national law of the contracting party in whose territory the investment was made and

- Principles of international law [Begic 2005: 28].

This provision does not contain reference to the host state's rules on conflict of law or to an investment agreement concluded between the parties. Consequently, the views expressed in the legal literature which declares that, there is a presumption that only the substantive provisions of the host state's law would apply and that would not have to look in to the host state's own rules on the conflict of laws, may be highly accepted [Begic 2005: 28].
The second type of choice of law clauses contained in BITs refers only to the application of the host state's law. An example is stated in Romania/Sri Lanka BIT of 198, which provides:

> All investments made by the investor of one contracting party in the territory of the other contracting party, shall subject to the agreement, be governed by the laws in force in the territory of the contracting party in which such investments are made [Begic 2005: 29; Diehl 2012: 166-267].

The above mentioned examples of choice of law clauses demonstrate that they are quite different. Although, most of them refer to both domestic and international law, some of these clauses contain.

2. DETERMINATION OF APPLICABLE SUBSTANTIVE LAW UNDER GEORGIAN LAW

2.1 Law Adopted by Georgian Parliamnet

In Georgian reality most of investments contracts concluded between the state and an investor imply agreement regarding applicable substantive law. As a rule, parties expressly agree on governing law which in most cases stipulates Georgian law. For example, the product sharing contracts concluded by the State Agency for Oil and Gas state, that "any arbitral tribunal constituted pursuant to this Contract shall apply the provisions of this Contract as governed and construed according to the Laws of Georgia".
Notwithstanding the fact that most of investment contracts include the express provision related to application of the certain substantive law, there might be some cases where parties missed or decided not to regulate the issue regarding governing law. In such case, as a rule, the absence of choice of law should be filled by legal acts, but Law of Georgia on Promotion and Guarantees of Investment Activity[13] does not regulate this issue. Article 16 of the mentioned law governs the procedure on dispute resolution. This article deals only with the procedure regarding the dispute arisen between the State and an investor and it does not refer to the governing law (in the absence of choice of law). As for the Article 36 of Georgian Law on Arbitration, it should be mentioned that this Article entitles arbitrators with the wide range of possibilities in terms of determining applicable substantive law in the

[13] Law of Georgian Parliament, 29-30/5, 11/12/1996.

absence of parties' choice. More precisely, arbitrators have ability to stipulate applicable law from their point of view and it means that arbitrators are not obliged to use conflict of law or any related rules. One more legal basis for determining of applicable substantive law is Georgian Law on Private International Law. Respective provisions of Article 36 states that in the absence of choice of law a contract shall be subject to the law of the country that is most closely related to it. A contract shall be considered to be most closely related to the country in which a party that had to fulfill an appropriate contractual obligation had a habitual residence or residence of administration when concluding the contract. If the subject of contract is the title to land or land use right, it is considered that the contract is most closely related to the country in which the land is located. So, factually Georgian legislation related to the specific law on investment lacks the regulation regarding determination of applicable substantive law. However, while determining applicable substantive law in the absence of parties' choice arbitrators may refer to Article 36 of Georgian Law on Private International Law.

2.2 The Role of Bilateral Investment Treaties Concluded by Georgia

The number of BITs concluded by Georgia has been increasing. The express provisions in the treaties are rather rare. Generally, the reference is made regarding procedural issues. For example, Article 10 of the Agreement on Investment Protection between Georgia and the Swiss Confederation provides dispute resolution rules applicable for the contracting party and the other contracting party's investor. This clause fully deals with procedural rules for dispute resolution and it does not include any regulation related to applicable substantive law. The same regulation is provided in Article 9 of the Agreement between the Government of Georgia and the Government of the Republic of Finland on the Promotion and Protection of Investments.[14] Both of the above mentioned BITs stipulate that the investment disputes between the host state and foreign investor should be transferred to an international arbitration tribunal such as UNCITRAL or ICSID. According to the legal literature if the investment dispute is submitted to the ICSID arbitral tribunal it will apply Article 42 of ICSID convention to determine the applicable law. However, the tribunal may not be limited to the provisions of Article 42 and may use different rules [Gallagher et al. 2009: 361].

The different regulation is provided in the Agreement between the Government of Georgia and the Government of Republic of Austria on Promotion and Protection of Investments. More precisely, under Article 16 of this agreement "A tribunal established under this Part shall decide the dispute in accordance with this Agreement and applicable rules and principles of international law. Issues in dispute under Article 9 shall be decided, absent other agreement, in accordance with the law of the Contracting Party, party to the dispute, the law governing the authorization or agreement and such rules of international law as maybe applicable". Accordingly, Bilateral Investment Treaty between Georgia and Austria stipulates governing law regarding probable dispute and states that the applicable

[14] The same regulation is given in Article 8 of the Agreement on Investment Protection between Georgia and the Republic of Lithuania.

law may be Bilateral Investment Treaty, international law or the law of the host state. This regulation is similar to the provisions stipulated by the ICSID Convention. For example, if a dispute arises between an Austrian investor and Georgia the tribunal may state Georgian law (including Bilateral Investment Treaty between Georgia and Austria) in accordance with the Bilateral Investment Treaty and the ICSID Convention. Although, as it was mentioned above, if the tribunal stipulates that the result of applying these rules is rather harmful for the investor and Georgian law expressly violates international law principles the tribunal may establish international law provisions as applicable law [Comp. with Bjorklund 2014: 512].

International law provisions as applicable substantive law are established by the Agreement between the Government of the People's Republic of China and the Government of the Republic of Georgia concerning the Encouragement and Reciprocal Protection of Investment. In particular, Article 8(5) of this agreement "the tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties".[15] Accordingly, the given regulation under this agreement establishes the possibility to govern the dispute between the investor and the state by international law principles.[16]

2.3 Endangered Existing BITs

As it is known, in June 2014 the European Union (hereinafter - the EU) and Georgia signed an Association Agreement (hereinafter – the AA) which entered into force on July 1 2016. This means that all regulations existing in EU will become mandatory for Georgia in the nearest future. In this term, the Treaty of Lisbon is of a particular importance, as under this agreement the EU has gained an explicit exclusive competence with regard to the Foreign Direct Investment (hereinafter – FDI). However, the very precise meaning of FDI and as a consequence the precise extension of such new EU competence remains unclear [Rovetta 2013: 221].

According to the figures there are nearly 170 BITs between EU Member States (hereinafter – intra-EU BITs). These BITs had been concluded at a time when one or both contracting parties were not yet members of EU [Mariani 2014: 265]. It should be mentioned that Georgia has concluded a number of intra-EU BITs with the states which had not been EU Member States at the time of conclusion of the BITs. As the AA has already entered into the legal force, it appeared that Georgia as the EU Member State is party of intra-EU BITs as well.[17]

On 1 December, 2009, the so-called Lisbon Treaty entered into force. As it was mentioned, it shifts the allocation of competence between the EU and its Member

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[15] Agreement between the Government of the People's Republic of China and the Government of the Republic of Georgia concerning the Encouragement and Reciprocal Protection of Investment 1993, Article 8(5).

[16] Compare with: Agreement Between the Government of the People's Republic of China and the Government of the Republic of Albania concerning the Encouragement and Reciprocal Protection of Investments, Article 8(7).

[17] For example, Agreement between Romania and the Government of the Republic of Georgia concerning the Encouragement and Reciprocal Protection of Investment.

States in the field of FDI towards the EU. This means that under the Lisbon Treaty the EU has an exclusive competence to negotiate and conclude investment treaties with respect to FDI. Member States will lose the competence to negotiate and conclude investment treaties covered by the EU competence. As a result of the given regulation in the Lisbon Treaty intra-EU BITs come under increased scrutiny of the Commission following the European Court of Justice's (hereinafter – ECJ) judgements [Burgstaller 2011: 57].

For a Member State to be a part of EU involves the acceptance of the sovereignty of the EU law over the policy-fields conferred to the Union by the Treaties. According to the primacy principle, EU law takes precedence over national law. In its jurisdictional dimension national courts have the duty to apply EU law and set aside any provisions of national law that may conflict with it, whether enacted before or after the EU provision [Mariani 2014: 267].

To define the exact scope of exclusive competence of EU the meaning of FDI should be stipulated. Unfortunately, neither the Lisbon Treaty nor the Treaty on the Functioning of the European Union (hereinafter – TFEU) define the FDI. Neither was the term defined in the EC Treaty [Burgstaller 2011: 62].

Under the Treaty of Lisbon the EU is competent to conclude comprehensive investment treaties. The competence covers market access, pre- and post establishment standards of treatment, performance requirements, investor-state dispute settlement provisions and the terms of the conditions under which expropriations may take place. Therefore, the EU and its Member States will have to sign and ratify agreements with coverage beyond the exclusive EU competence for FDI [Burgstaller 2011: 66].

If any existing intra-EU BIT or BIT concluded by a Member State with the third country is inconsistent with EU law, under Article 351(2) TFEU (equivalent to Article 307(2) EC) Member States will be under an obligation to terminate these BITs. It is important to note that the Treaty of Lisbon does not contain a provision that would recognize the right of Member States to keep in place their existing agreements [Burgstaller 2011: 67]. Moving to the issue of the areas of a potential conflict between the BIT regime of protection of investments and the EU regime of treatment of cross-border investment within the Union, it is necessary to point out the rights provided to investors according to the BIT regime in order to ascertain whether and to what extent they might be in conflict with the EU regime. BITs provide investors with rights to fair and equitable treatment, to full protection and security and to protection against expropriation. These rights are not *per se* in contrast with the rights protected by EU law, but the problem of incompatibility may arise when a special treatment has been accorded by the host state to an investor by means of BIT concluded before that state joined the EU [Mariani 2014: 276].

The first aim of the European integration has been to merge the markets of the Member States into one market [Mariani 2014: 266]. The elimination of the internal frontiers means that the nationality of natural and legal persons should no longer be significant because in the single market "any discrimination on grounds of nationality shall be prohibited" (Article 18 of TFEU) [Mariani 2014: 267]. Accordingly, the certain priorities given already to the Member States under the BITs should be restricted.

To conclude, under ECJ rulings on the one hand the EU Member States should fulfill their obligations under Article 307 of EC Treaty and should take appropriate step to eliminate incompatibilities of BITs concluded with non-European countries with EU law. On the other hand intra-EU BITs should be terminated on the grounds that they overlap with EU law [Burgstaller 2011].

As it appears from the issues discussed above after joining the EU, Georgia will have to deal with two issues: the first, it should terminate all intra-EU BITs and the second, it should respectively amend all BITs concluded with third stated in order to be in compliance with EU law. As a result under these changes may be discarded provisions of the respective BITs related to the determination of applicable substantive law.

CONCLUSION

In the light of aforesaid, several important issues may be outlined. The first sentence of Article 42(1) stipulates parties' right to choice of applicable substantive law. Although, choice of host state's national law includes conflict of law rules as well which in certain circumstances may refer to the application of another state's substantive law.

The second sentence of Article 42(1) consolidates relation and possibility of application of host state's law and international law provisions. With this in mind, it may be concluded that application of the state's law which is party to the dispute includes its conflict of law rules as well. Moreover, the tribunals are obliged to examine whether the disputing state's law complies with international law provisions and if the latter is violated it will prevail over domestic law.

As for Georgian legislation, it lacks the express regulation regarding determination of applicable substantive law in investment disputes. Namely, Law of Georgia on Promotion and Guarantees of Investment Activity should precisely regulate the issue regarding the governing substantive law. However, there is not any restriction referred to such choice of law. Accordingly, on this basis parties are eligible to choose any country's law as governing law. Although, if parties did not stipulate applicable law it will not able to govern the dispute under Georgian law and additional problem will arise.

As Georgia is a party to the ICSID Convention it means that the mentioned act has full legal force towards Georgia. Further, according Article 7(1) in Law of Georgia on Normative Acts "international agreements and treaties of Georgia are also normative acts of Georgia". Following to Article 7(3) international agreements and treaties of Georgia prevail over organic laws or laws of Georgia. So, when the case is to be resolved under Georgian legislation provisions of the ICSID Convention should be taken into account as well.

Further, taking into consideration the fact that Georgian investment legislation does not exactly state anything regarding applicable law sometimes the latter is determined in Bilateral Investment Treaties. Simultaneously, there are some Bilateral Investment Treaties that lack reference to applicable law but stipulate ICSID rules as applicable to the investment disputes. In such case the ICSID Convention is referred as its Article 42 states applicable substantive law. However,

as it was mentioned above, arbitrators may consider other rules while determining applicable substantive law.

In practice and doctrine two approaches regarding relationship between international law and domestic law are to be pointed out. The vertical approach implies such interpretation of Article 42 of the ICSID Convention that firstly disputing state's law should be applied and then international law. According to horizontal approach, domestic and international have separate places and accordingly, discussion regarding their ordinance is unsubstantiated [Tsertsvadze 2013: 272].

One more important issue is related to the effects of Georgia's association with the EU. As after association EU law becomes prevailing over national law, Georgia may have to terminate all intra-EU BITs and respectively amend all BITs concluded with third stated in order to be in compliance with EU law. This may cause alteration of rules related to the determination of applicable substantive law to the investment disputes stipulated in the BITs.

To conclude, while determining applicable substantive law in investment disputes various factors should be taken into consideration. The loophole in Georgian legislation in the light of growing investment development may be a reason of different practical problems. Accordingly, improving of Georgian legislation, namely Law of Georgia on Promotion and Guarantees of Investment Activity should be set on the agenda.

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THE EVOLUTION OF EU COUNTER-PIRACY POLICY[1]

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Abstract

This article presents two decades in the development of EU Counter-piracy policy. The development and its dynamics is explored through multiple streams approach as introduced by John W. Kingdon (1995) and adapted for application on the EU counter-terrorism policy by the Raphael Bossong (2013). For the purposes of analysis the article deals with the securitization of the piracy within the EU context (first stream), continues with policy development at the EU level (second stream) and adds complexity to the issue by analyzing the stream of politics (third stream). The main aim of this article is to present different dynamics in the development of EU counter-piracy policy which developed from fragmented preventive approach to very complex pro-active approach with the turning point in 2008. The article claims, that full securitization of piracy penetrated national politics within key EU member states and enabled policy changes on the EU level.

Key words: *EU, Piracy, Somalia, Counter-piracy, anti-piracy, policy, maritime security*

INTRODUCTION

The emergence and development of the EU Counter-piracy policy was a long process during which dynamics was changing under the influence of internal and external factors. The main aim of this contribution is to explore the build-up of EU Counter-piracy policy, its content and the driving forces behind at the level of EU institutions and EU member states. From a rather fragmented attitude the EU Counter-piracy policy developed into the comprehensive approach based on complex strategies and specific tools. Despite great progress in recent years there

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are many limits of cooperation which raises question how much were political "windows of opportunity" used by decision-makers to enhance policy build-up and policy development. For understanding different dynamics of EU Counter-piracy policy development we must analyze multiple streams, which will help to identify key moments in the life of policy, the position of key actors and the nature of the issue.

This article is based on the multiple streams framework developed by John W. Kingdon (1995) and later adapted by Raphael Bossong (2013). The core of the framework is three streams: problem stream, stream of the policy and stream of the politics. The problem stream in this article is centered at piracy and securitization of the issue which helped to create common discourse and later lead to consensus that enabled specific range of possible responses [Bossong 2013: 20]. Countries in the EU have different experience with piracy and counter-piracy measures. Some countries like Great Britain or France have significant colonial history other countries are land-locked and lack naval experience. As a consequence the issue of piracy is not viewed in a single way but rather in multiple approaches resulting in significant heterogeneity among member states.[2] However, as Bossong pointed out in his book, securitization of the issue may help to create "[a] window of opportunity" and temporarily harmonize approaches and crate environment favourable to legislative changes at the EU level [Bossong 2013: 56]. In other words, securitization creates consensus and temporarily enables policy changes as a consequence of increased mutual understanding of policy preferences.

The second stream deals with policy in the historical perspective. The analysis of policy development and the role of EU institutions may help to understand dynamics of the transformation process. In the case of Bossong's analysis it was the political activity and information advantage of the EU institutions which had prepared legislative proposals when the window of opportunity has opened what enabled development of new policy [Bossong 2013: 22]. However, piracy as the subject falls under the Common Foreign and Security Policy, which is of predominantly intergovernmental nature and policy changes requires initial activity of member states. For this reason there is a third stream which deals with politics. Bossong in this area examines the impact of the issue on domestic politics (e.g. elections or public opinion) and assess the influence of external factors such as the support of other actors including non-EU states or international organizations [Bossong 2013: 23]. Politics is the factor enabling change in transforming securitized issue into policy.

It is important to note, that Bossong applied the multiple streams approach on the development of EU Counter-terrorism policy. However multiple streams approach presents a rather general analytical framework for the analysis of any security

[2] This is for example evident in the criminal code. French law covers piracy, hostage taking and robbery at sea as a crime and pirates may face life imprisonment. Denmark and Germany can prosecute only pirates when they attack a national vessel or citizen, Netherlands can punish pirates with 12 year sentence and in Spain the act of piracy is even not typified by Criminal code (Burruenco 2009: 228) which is interesting due to Spain's colonial history. However the UN Convention on Law of the SEA under Article 105 authorizes any state to seize a pirate ship or aircraft and its property on board, arrest the crew, and prosecute them through its own courts (Nanda 2011: 182).

policy and with some adaptation may be used for any policy even without remarkable security dimension.[3] Moreover EU-counter terrorism policy and EU-counter piracy policy shares many similarities: both policies fall under the umbrella of security policy, both are strictly of inter-governmental nature as they are touching aspects national sovereignty, both are in some aspects controversial and both are multidimensional phenomenon requiring certain level of complexity within the solutions. Similar characteristics have for counter-piracy policy similar procedural implications at the EU level as in the case of counter-terrorism policy. This makes EU Counter-piracy policy well suitable subject for multiple streams analysis.

Due to multiple stream approach and the existence of three streams alto the article is divided into three parts. The first part discovers emerging security dimension of piracy for EU member states. The second chapter explores content developments within policy, while the third chapter is dedicated to politics assessing emerging windows of opportunity which led to emergence and strengthening of EU Counter-piracy measures.

In the last few years we can observe increasing number of studies dealing with piracy (especially in the Horn of Africa) and the response of the international community. Most of the texts are written in the area of international law or political science, few are present in the field of economics. And contributions dedicated to the EU approach towards piracy are still quite rare. EU response towards piracy off the Horn of Africa is presented for example by Christian Kaunert and Kamil Zwolski (2014) who analyzes the EU policy in the terms of military capacities, civilian crisis management and economic assistance to the region. Jens Vestergaard Madsen and Liza Kane-Hartnett (2014) present an interesting overview of international community initiatives aimed at capacity building in Somalia. Enrico Günther (2015) presents implications of the EU attitude in Somalia for the Gulf of Guinea action. A rather critical perspective has been presented also by Maria Luisa Sanches Barrueco (2009) who highlights the discrepancy between EU statements and practical observations. Efthymios Papastavrdidis (2015) analyses mission Atalanta from the legal point of view in relation to international and European Law. Atalanta had a very important international dimension which has been analysed by Paul Mirdford (2012) in relation to Japan and by Simone Dossi (2015) in relation to China. Susanne Kamerling and Frans-Paul van der Putten (2011) are further exploring Chinese interests in the Gulf of Aden and Andrew Muratore (2010) analyzed cooperation between Atalanta and NATO.

A detailed economic impact of Somali piracy is presented in an article by Alfredo Burlando, Anca D. Cristea and Logan M. Lee (2015) who adjusted economic costs caused by piracy as presented by the World Bank (2013). The welfare cost caused by route changes has been calculated by Timothy Besley, Hannes Mueller and Thiemo Fetzer (2014). Legal articles deal mainly with US experience and are written mainly by US authors. Jordan Wilson (2016) presents piracy in the general context and highlights the increasing number of ties between piracy and terrorism and later

[3] Stream dealing with problem or securitization of the issue may be transformed to "issue setting" stream by using slightly different analytical method based on epistemic community as developed by Peter M. Haas (1989 and 1992).

in his article explores Kenyan model in fight against terrorism together with US experience. To the US experience Gregory Morrision (2014) adds a legal perspective on prosecuting piracy. International legal environment regarding piracy fight is also dealt by Ved P. Nanda (2011) and in a more specific article related to UCLOS by Yurika Ishii (2014) and Graham T. Youngs (2014) who dealt with Prosecution of Pirate Negotiators and Pirate Facilitators under US and international law. This contribution is the attempt to extend existing knowledge by presenting EU Counter-piracy policy in its complex and chronologic way within the three streams approach.

1. SECURITY DIMENSION

Piracy has been for centuries considered by European states as illegal activity and today is almost universally accepted considered illegal. According to Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) piracy is determined as an act which consists of: (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b). Based on the definition above piracy may have many negative political and economic consequences. Acts against ships sailing under the state flag are violating principles of state sovereignty and thus may damage the prestige of the government in revealing the incapacity to act and protect its interests. Pirate attacks may discourage potential traders or lead to direct losses in fleet, ship cargo or crew lives. Seized ships and their crew are often used for ransom or blackmailing. In adverse situations cargo or ransom may be used for strengthening pirates as successful attacks encourage other to join their ranks. Pirate activities may block large areas and prevent traffic. For these reasons piracy is an important security challenge which develops over time.

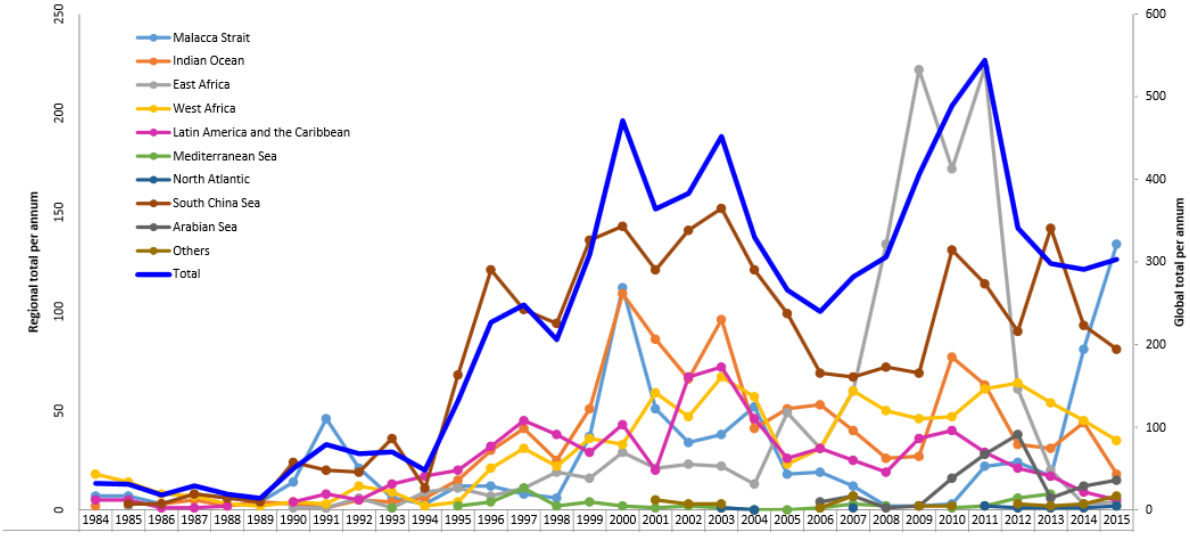
Since the 1990s a rapid increase in pirate activity can observed. According to Peter Chalk (2008) the rise in pirate activities is influenced by several factors including the massive increase in commercial traffic in combination with extending maritime infrastructure, the rise of commercial traffic that passes htrough narrow and coasted maritime chokepoints, general difficulties connected with maritime surveillance, lax coastal and port-side security, corruption and its penetration into administration or global proliferation of small arms giving pirates advantage to operate more destructive weapons [Chalk 2008: xii]. This rather particular factor may be influenced by geopolitical situation.

The changes in the early 1990s such as the end of the Cold war and the fall of the Soviet Union had a differentiated impact on the regional stability around the world. While in Europe countries have undertaken reforms vis-a-vis EU membership many African and Asian countries faced political and economic instability. At the same time the trade between integrating EU and the rest of the world increased including China, Japan or South Korea. Trade routes in the Gulf of Aden and South-East Asia

became very attractive areas for pirates and especially Gulf of Aden became geographic priority for the EU.

One of the most common instruments measuring the intensity of piracy is a specialised database operated by International Maritime Organization which since 1982 collects data about conducted or attempted acts of piracy. Chart 1 gives us the idea of the attack intensity over time. However, it is important to note that not all attacks or attempts are properly reported from various reasons including lax attitude of the crew, fear from bureaucracy or time consuming activities.

Chart 1. Number of Piracy Attacks - Globally

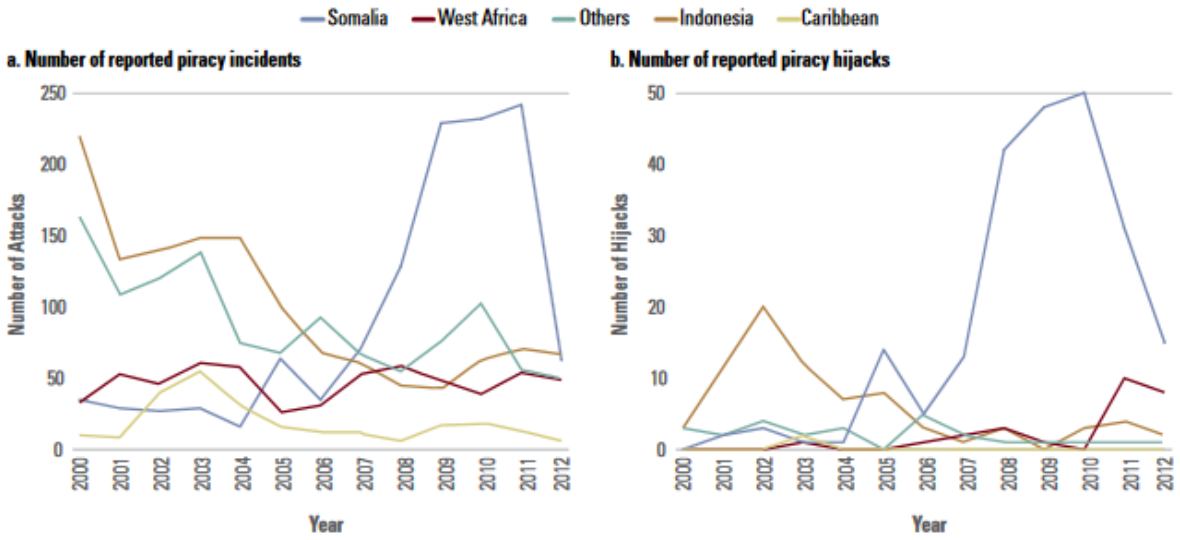


Source: International Maritime Organization (2016) Piracy Report – Annual 2015. Available at: http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Reports/Documents/232_Annual_2015.pdf (2. 1. 2017).

The situation in the Gulf of Aden significantly worsened after 2005 at least in two aspects. First, the number of attacks rose five times from around 50 attacks in 2006 to almost 250 attacks in 2008. With the rising number of piracy attacks rose also the number of reported piracy hijackings from 1 in 2004 to 50 in 2010 [World Bank 2013: 3] as presented in chart 2. Second, in the observed period the operability of Somali pirates increased significantly. Alfredo Burlando, Anca Cristea and Logan M. Lee (2015) found out, that while until 2005 they were operating at a maxim distance of 500 km from Somalia after 2005 they were able to attack ships even 1500 km from the coast. Moreover, since 2008 Somali pirates are operating mainly in the distance between 400 and 800 km from the coast, which was rare before 2005 [Burlando, Cristea Logan 2015: 531]. This trend continues even after 2009. As pointed out by the World Bank in 2010 pirates attacked 3 655 Km from Somalia [World Bank 2013: 3]. For comparison this is a similar distance like between Gibraltar and Beirut in Lebanon located on the opposite side of Mediterranean Sea. Pirates from Somalia were increasingly active, extended its

range and became more successful in hijacks which contributed to securitization of the issue.[4]

Chart 2: Number of piracy incidents (2000–2012)



Source: World Bank (2013)

The economic costs associated with piracy are high. According to World Bank Somali piracy as an increased cost represents 18 billion USD [World Bank 2013: xxiii]. However if we add to the total economic costs possible reduction in trade caused by piracy we can estimate the economic loss between 22 and 25 billion USD [Burlando, Cristea Logan 2015: 553]. Taking into count distribution of Piracy Burden Across Countries, the EU is the most affected party, losing almost 11 billion USD per year, compared to the USA with 0,8 billion USD or China with 2 billion USD [Burlando, Cristea Logan 2015: 552]. This is caused by the EU geographic location and the structure of international trade. The direct costs of piracy can be associated with 53 million USD average annual ransom payment between 2005 and 2012. In the mentioned period a total number of 149 ships have been ransomed for amount up to 385 million USD [World Bank 2013: xxiii]. This means the average ransom is about 5 million USD per seized ship. As calculated by Besley et. al, there were 18 000 vessels going through the Suez Canal in 2010 and 50 of them were seized by pirates who generated 4 million USD ransom. This means that expected loss per ship is 11 000 USD. However, the increase of shipping costs per ship is another 55 000 USD due to changes in trajectory or other protective measures [Besley, Fetzer and Mueller 2014: 232].

The asymmetry is even more visible if we take into the count, that investment by a pirate gang, composed of a few gunman equipped with AK-47s on a speed boat is about a few thousand, maybe hundreds of USD. Nevertheless, there is the trend of increasing modernization of pirate used weapons and equipments. Boots are equipped with mortars, GPS receivers, devices for eavesdropping and interfering

[4] By definition, something becomes security problem and there is increasing attempts made by elites to gain control over it (Waever 1993: 6).

with radio communicators, communication coders and decoders, diving equipment and watercrafts [Gawliczek, Nowakowska-Krystman 2016: 174]. In the economic aspect piracy is similar asymmetric threat as terrorism with the distinction of primary purpose: pirates predominantly aim at economic gain, terrorist focus on political objectives. However, in many aspects piracy and terrorism may overlap.

The relationship between piracy and terrorism is mutually supportive in the case of Somalia. As pointed out by Jordan Wilson (2016) there is a proven link between piracy and Al-Shabaab terrorists controlling several ports in Somalia. In exchange for payout Islamists are providing protection and passage to pirate gangs [Wilson 2016: 305]. Money from ransom may be used to finance Al-Shabaab activities aimed at fight against Somali government or Kenyan forces. Moreover, according to Wilson piracy in relation to terrorism may be also increasing threat for Mediterranean. After Islamic State captured several coastal cities in Libya there is potential risk that fast speed boats may be used to capture passenger line boats sailing in Mediterranean [Wilson 2016: 309].

There is long row of successful attacks. The most severe situation appeared to be in 2008/2009 where several important hijackings occurred. For example pirates succeeded to hijack the *Faina* which was transporting 33 Russian armoured battle tanks to Kenya. At the same year a very large crude carrier (VLCC) *Sirius Star* was hijacked with almost two million barrels of crude oil on the board, valued at more than 100 million USD. There were even more interesting attacks in 2009 including the French yachts *Tanit* and *Maersk Alabama*. Success of the pirates soon resulted in an aggressive approach from the international community including institutions such as UN, International Maritime Organization, NATO [Kraska 2009: 200] and the EU.

2. DIMENSION OF POLICY

In the beginning the issue of piracy was solved among EU member states mainly on a national basis. As presented in the chart 1 piracy incidents started to rise in 1994 when EU Common Security and Foreign Policy (CSFP) after the adoption of Maastricht treaty was in the beginning and EU lacked response capacities. The adoption of the Amsterdam treaty in 1997 only slightly changed the functioning mechanism without changing the situation and capacities. Despite increasing securitization of the issue it took another five years before the EU started to deal with piracy on a policy level and developed its capacities.

The first important step resulted in August 2002 with the establishment of European Maritime Safety Agency (EMSA).[5] The purpose of EMSA is ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships within the Community. Despite many aims and activities it has an environmental or technical dimension related to safety the agency has important tasks related to counter-piracy. It shall for example assist the Commission, prepare new Community legislation and assist Commission in effective implementation of the legislation. The agency also shall organize relevant training activities related to

[5] Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency.

maritime safety or operate information system necessary for attaining the objectives. In the initial stage the environmental and technical agenda was the domain of EMSA.

In 2003 when EMSA slowly started to develop its operational capacities the EU passed its first security strategy. However in the EU Security strategy from 2003 piracy is mentioned in one sentence in a section dedicated to organized crime: *"A new dimension to organised crime which will merit further attention is the growth in maritime piracy"* [European Security Strategy 2003: 5]. After the disappointing security strategy of 2003 the EU adopted in the following years two important measures with real impact. In March 2004 a Regulation 725/2004 enhancing ship and port facility security was adopted and in October 2005 a Directive 2005/65/EC on enhancing port security was passed. The main objective Regulation 725/2004 is to introduce and implement Community measures aimed at enhancing the security of ships used in international trade and domestic shipping and associated port facilities in the face of threats of intentional unlawful acts including acts of terrorism or piracy. According to Regulation Member States shall in respect of international shipping, Member States shall apply in full, by 1 July 2004, the special measures to enhance maritime security of the SOLAS Convention and Part A of the ISPS Code. Moreover, after a mandatory security risk assessment, decide the extent to which they will apply, by 1 July 2007, the provisions of this Regulation to different categories of ships. Several other measures are dealing with revision of ship security plans, port facility assessment and minimum standards ETA. For example, according to regulation ships covered by the special measures and intending to enter an EU port must provide security information to the relevant national authorities at least 24 hours in advance [see Article 3, Regulation (EC) No 725/2004]. By adopting this regulation the EU enhanced its ship security in pro preventive measures.

Other preventive measures were adopted also under Directive 2005/65/EC which complements previous regulation in addressing basic rules on port security measures, an implementation mechanism for these rules and sets appropriate monitoring mechanism. For example each EU country shall designate a port security authority which will be responsible for identifying and executing necessary port security measures in line with port security assessment and plans. EU countries must ensure the development, maintenance and update of port security plans [Directive 2005/65/EC]. By adopting these complementary measures the EU enhanced its security related to ships and ports. However, due to increase of piracy in distant areas from coats of the EU more pro-active approach was needed.

Since 2007 there were increasing interest among EU member states regarding the sea which was demonstrated in the Communication dedicated to the Integrated Maritime Policy (IMP). Unfortunately IMP presented a holistic approach to all sea-related EU policies with predominantly economic and environmental dimension. A much more important turning point in the field of counter-piracy may be considered the year 2008. First, in April European Commission regulation 324/2008 laying down revised procedures for conducting Commission inspections in the field of maritime security entered into force and second, in December 2008 the EU launched EU Navfor Atalanta mission near the coasts of Somalia. It was the first EU naval mission which raised legal questions regarding European and

international law [Papastavridis 2015]. By initiating the mission EU policy turned to be more executive, utilising EU capacities and promoting the EU image of international security actor.

Council Joint Action 2008/851/CFSP of 10 November 2008 launched counter-piracy military operation Atalanta near the Horn of Africa and in the Western Indian Ocean. The mandate of the operation (Article 2) is to provide protection to vessels, keep watt over areas of the Somali coast, including Somali territorial waters or take necessary measures (including use of force) to deter, prevent or intervene in order to bring to an end of piracy and armed robbery acts (Article 2). The initial mission was to protect vessels of the WFP delivering food aid to displaced persons in Somalia and vulnerable vessels cruising off the Somali coast, and deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Article 1).

It is important to note that the operation was from the beginning open also to non-EU countries who later participated on the mission (Article 10). This is the case of Norway, New Zealand, Montenegro, Serbia and Ukraine [EU NAVFOR 2016]. Other countries used different platforms for involvement. In 2009 there were three international initiatives dealing with the Somali piracy on the sea: NATO Operation Ocean Shield launched in August 2009, Operation Atalanta (EUNAVFOR) launched in December 2008 and Combined Task Force 151 – a US-led initiative[6] launched in January 2009 [HC 2012]. Anti-piracy operation was also the interest of China, Russia, India, Japan and Iran who operated independently. In China cooperation became an important element within Sino-EU relations [Dossi 2015: 75], an important source of international prestige and important tool to promote national interests [Kamerling and Van Der Putten 2011: 138]. At the time there was also real promise of closer cooperation in non-combat military area between EU and Japan [Midford 2012: 310]. Due to interest of many actors a deconfliction mechanism was established for better distribution of work. The umbrella platform of Shared Awareness and Deconfliction Meeting (SHADE) was open to all states and contributed to information sharing and planning of activities [Günther 2015: 14]. SHADE meetings took place in Bahrain and significantly improved coordination among all actors and led to minimal force commitments and rotating presidency of the meetings [Muratore 2010: 100].

Operation Atlanta contributed to large extent to development of real capacities of the EU counter-piracy policy and also allowed development of EMSA capacities. Despite mainly indirect assistance in the beginning, there are several examples how EMA help in combating piracy. For example system LRIT (Long-range identification and tracking) is used to provide information to EUNAVFOR for monitoring coast of Somalia. EMSA has also started to work on PIRASAT project with the European Space Agency which helps to identify non-cooperative targets on the sea. In combating piracy also Vessel Traffic System (VTS) in the West Mediterranean area was used [EMSA 2010]. Later EMSA developed MARSURV (integrated maritime monitoring service) which allows EUNAVFOR to track merchant vessels in the high

[6] Under the initiative participated Australia, Pakistan, South Korea, Turkey, UK and the USA which created the Combined Maritime Forces conducting patrols mainly in the Indian Ocean.

risk area off coast of Somalia. The system integrates and fuses multiple sources of data in a real time on the permanent basis [EMSA 2011]. Atalanta thus offered EMSA a unique opportunity to develop its capacities and test new approaches directly in the field. Moreover, as presented in chart 3 since 2011 there was a dramatic decrease in incidents solved.

Chart 3: Operation Atalanta incidents

2016	2015	2014	2013	2012	2011	2010	2009	Year
0	1	5	20	74	166	99	59	**Suspicious events**
0	0	2	7	35	176	174	163	**Total Attacks**
0	0	0	0	4	25	47	46	**Of which pirated**
0	0	1	10	16	28	65	14	**Disruptions**

Source: http://eunavfor.eu (2016)

Next to operation Atalanta, EU states have set up in 2009 Critical Maritime Routes (CMR) programme to address challenges of maritime security in regions including South East Asia, Western Indian Ocean and Gulf of Guinea in order to promote capacity building on the regional level. Those included legal assistant and training of relevant authorities including coast guards and maritime law enforcement organizations. In the period from 2009 to 2020 the EU contributed 31,9 million Euro to this programme [CMRP 2016].

While Atalanta presented a EU response on the sea, the EU council launched Military Training Mission in Somalia (EUTM Somalia) in April 2010 in order to improve situation on the ground. The main aim of EUTM Somalia was to contribute and strengthen the power of Transitional Federal Government in Somalia and its institutions. EUTM was aimed at the training of Somali soldiers who were due to security reasons trained in Uganda [Council Decision 2010/197/CFSP]. EUTM mission helped the Somali government to take control over Somali territory which was very important in promoting security in the region. In the recent years the lack of state authority contributed to anarchy in Somali waters, which were next to the pirates also used by foreign fishermen as the territory for black hauls. This contributes to poverty in the fishermen community in Somalia and created conditions favourable to piracy recruitment [Wilson 2016: 303]. Renewing state control over territory and territorial waters is necessary condition for reducing piracy.

In the same year European Commission's Joint Research Centre started to work on the project to strengthen the marine awareness capacities of authorities in the West and East Africa under the Piracy, Maritime Awareness & Risks (PMAR) platform. The project included in-depth studies and trials of technologies which were aimed at maritime awareness increase in the areas related to piracy [European Commission 2016].

Operation Atalanta and EUTMS Somalia mission was strengthened in 2012 by launching EUCAP Nestor, a civilian maritime capacity building mission operating in five states across the Horn of Africa and Indian Ocean, including next to Somalia also Djibouti, Seychelles, Kenya and Tanzania, which were also hit by piracy. The mission was mandated to support the development of maritime security law enforcement agencies in Somalia, maritime security legal framework and promote regional cooperation in maritime security [Council decision 12/389/CFSP]. EU Nestor presented a much softer approach and complementary measure to both operations and is good example of complementing hard power with the soft power and of possible multiplication effect of the mission synergy. While hard power helped to eliminate the real threat, soft power concentrated on preventive measures and capacity building in managing the threat.

The soft measures were also subject of the Programme to Promote Regional Maritime Security (MASE). The main aim of the plan is to strengthen the capacity of regional states affected by piracy to implement Regional Strategies and Action Plan against Piracy and for Maritime Security. These include the creation of national strategies against piracy, improving state infrastructure to fight piracy (arrest, transfer, prosecution and detention of pirates), and capacity to disrupt piracy financial networks or information exchange. For this purpose the EU for a 5 year period contributed by 37,5 million Euro [MASE 2016].

Decrease in attacks following 2012 did not lead to EU passivity. In 2013 EU continued to enhance preventive measures by adopting Directive 2013/30/EU on safety of offshore oil and gas operations. Despite main reasons for adopting the directive were environmental and strongly influenced by the Deep Water Horizon incident the directive also stress the importance of emergency response plans in order to prevent environmental damage caused by incidents. The EU also adopted Regulation (EU) No 2015/2013 establishing the European Border Surveillance System (EUROSUR). EUROSUR is information-exchange framework designed to improve the management of Europe's external borders which is operated by FRONTEX, EMSA and EU Satellite Centre (SatCen). Satellite-based technologies have many uses in maritime surveillance field and helps to ensure security and safety via monitoring and controlling fisheries, detecting vessels, patrolling borders, protecting the marine environment, preventing crises or responding to emergencies[7] [Bosilca 2016: 160]. These measures improved the palate of possible tools which might be used to fight piracy.

Regarding external dimension EU adopted Support to the Maritime Transport Sector project (SMTS), which is implemented under the 10th European Development Fund. SMTS is aimed at improving port efficiency, port security and reducing negative environmental effect of maritime transport or port operations in the countries of Western and Central Africa by offering technical assistance and capacity building [CMR 2016]. The programme is also aimed at promotion and implementation of SOLAS Convention and the ISPS Code which is in the EU implemented by the Regulation (EC) No 725/2004. It is important to note that the EU was not the only actor promoting the build-up of capacities. For example, the International Maritime Organization announced strategic capacity-building

[7] For example via vessel monitoring system (VMS) and the vessel detection system (VDS).

partnership among IMO, UN Food and Agriculture Organization. There were also programmes of UN Political Office for Somalia, UN Office on Drugs and Crime, World Food Programme and European External Action Service and other. As of 2013 international community invested 1,2 billion USD in Somalia [Madsen, Kane-Hartnett 2014: 70].

Complex changes in the EU approach came in June 2014 when the EU Council for General Affairs adopted European Union Maritime Security Strategy (EUMSS). The strategy highlights piracy among other cross-border and organized crime activities together with robbery at sea, trafficking or smuggling. EUMS offers general principles (cross-sectoral approach, functional integrity, respect for rules and principles and maritime multilateralism) for the enhancing maritime security and other future EU regional strategies [EUMSS 2014: 3]. More specific actions related to anti-piracy measures are laid down in the Action Plan on the Maritime Security Strategy which was adopted 6 months later.

The Action plan focused on several areas including external action (Worksrand 1), Maritime awareness, surveillance and information sparing (Workstrand 2), Capacity development (Workstrand 3), Risk Management, Protection of critical maritime infrastructure and crisis response (Workstrand 4) or Maritime security research and innovation, education and training (Workstrand 5). Moreover, EUMSS and its Action plan was accompanied by other regional strategies. Recently EU Strategy on the Gulf of Guinea and Action plan was adopted (2014) and counter-piracy measures play key objective regarding security priorities [EAS 2016]. Similar strategy is expected to be created for the Horn of Africa.

EU measures are not only aimed at securing maritime transport and capacity building in the Horn of Africa but also addresses the roots of piracy which are connected with poverty. According to the World Bank the situation in Somalia is alarming. Despite public expenditures increasing since 2012 from 35 million USD in 2012 to 135 million in 2015 Somalia is strongly dependent on foreign aid. The GDP is projected in 2016 to reach only 450 USD per capita and poverty headcount rate of 51,6 percent [WB 2016]. In a country where almost half population lives with less than one dollar per day piracy represents a clear economic incentive and important pull factor. As noted by International Expert Group on Piracy off the Somali Coast (IEGPSC), one pirate after a successful attack may earn between 6 and 10 thousand USD, of paid ransom, the equivalent of three year salary in good paid position [IEGPSC 2008: 17].

For this reason EU comprehensive approach includes cooperation between Humanitarian Aid department of the European Commission (ECHO), Somali government and other regional partners in providing humanitarian and development aid. As pointed out by Kaunert and Zwolski (2014) EU engagement in Somalia is present made by EU humanitarian aid, EU development aid, EU support for the Rule of Law programme derived from the United Nations Development Programme, EU support for ANISOM mission of the African Union and the Training missions in Uganda [Kaunert, Zwolski 2014: 604]. All those activities improve the socio-economic situation in Somalia in the long term and weaken the factors making part of the population prone to piracy.

3. DIMENSION IN POLITICS

The dimension of politics may be observed at the level of the EU institutions and the EU member state. Due strictly to its inter-governmental nature, the main decision-making body is the EU Council. Previous chapters identified great development of anti-piracy measures in 2008 and important shift in the nature of EU Counter-piracy policy towards more comprehensive approach. What preceded these policy developments in the stream of politics?

In the beginning we can observe a lack of capacities and political power of the EU institutions. This was visible in May 2001 when Alternate Head of Delegation of Sweden Marie Jacobsson delivered a speech at the UN on behalf of the EU presidency. The presidency speaking on behalf of the EU states (including candidate countries) presented contemporary attitude towards piracy as follows: First, that the only viable way to address piracy was through cooperation and capacity building, including the involvement of private sector. Second, the delegation expressed the concern related to underreporting of incidents to International Maritime Organization (IMO). Third, the speech called upon states to support IMO initiatives and expressed that WMU shall be asked to bear responsibility for the development of international education and training. Moreover in the end there was presented the willingness of the EU member states to commence discussion [Jacobsson 2001]. In the speech there was noticeable absent EU measures within counter-piracy policy and the call for multilateral response indicates the reliance on foreign powers.

On the national level within most important states the situation changed in 2008 when piracy hit domestic policy in France. In 2008 French President Nicolas Sarkozy called on the international community to find solutions for the incidents of piracy off the coasts of Somalia. The call has been made after two sailors were taken as hostages by pirates and later rescued by military operation launched to save them [France Today 2008]. It is important to note that France made an effort in recent years to combat terrorism and gradually enhanced its activities since 2007. France belonged to the first states offering voluntarily military ships to prevent acts of piracy near Somalia under Operation Alcyon which was conducted together with Denmark, Netherlands and Canada in order to prevent attacks on ships of the World Food Programme. Next to the EU, French activities in later years concentrated on the UN and other multilateral projects with predominant French participation [Leboeuf 2015: 3].

The call of Nicolas Sarkozy (likely backed by French diplomatic efforts) hit the ground in the UK and other countries. Already in 2006 the British Parliament expressed concern that *"the growth in piracy over the past decade represents an appalling amount of violence against the maritime community. It is completely unacceptable"* [House of Commons 2006]. The attitude of Germany was partly restrained, however supportive, due to the fact of possible politically sensitive issue of German military outside Germany. Defence Minister Franz Josef Jung noted that involvement in an operation against pirates presented the most robust mandate after World War II. Nevertheless Germany was from the early beginning committed to fight piracy and contributed by the naval frigate Bremen with 240 sailors. The political support was almost consensual in Germany except for the Left party and

Greens as some members considered the anti-piracy mission as a colonial gunboat policy or pretense for the militarization of German foreign policy [King 2009]. These attitudes signal though a political consensus regarding the common EU response which resulted in operation EU Atlanta in 2008.

Piracy entered again the UK politics in 2009 when operation Atlanta started to deliver its first results. Despite the effort Paul Chandler and his wife were kidnapped by pirates who demanded ransom of 4,2 million pounds. UK Prime Minister Gordon Brown urged pirates to release kidnapped couple and said, that *"Piracy and the taking hostages is unacceptable in any circumstances"* [The Telegraph 2009a]. The pirate demanding ransom during the phone call to BBC complained about the NATO damages caused to poor fisherman who are illegally transferred to prisons of other countries [The Telegraph 2009b]. In order to speed up the solution of this unpleasant situation Brown in March 2010 visited the president of Somalia to urge him with the help to secure the release the couple. This happened half year later. The above "success story" was only limited example. Despite ongoing Atlanta operation the number of attacks was still considerably high and lead to the greater involvement of non-governmental actors who promoted new impetus towards more comprehensive EU Counter-piracy policy. The European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) expressed in July 2012 concern in a Joint Declaration about continuing attacks. Both organizations helped to place eradication of piracy high on the agenda of the Sectoral Social Dialogue Committee for Maritime Transport (SSDC) and further politicization of the issue [Joint Declaration 2012]. During the 2012 Danish presidency it was agreed, that EMSA will gain new powers to step up cooperation against piracy under the informal agreement [EMSA 2012] and in 2013 the European Economic and Social Committee issued from its own initiative opinion entitled "Maritime piracy: strengthening the EU response" [Opinion 2013/C76/03]. The way was open to the European Union Maritime Security Strategy.

With the increasing intensity of piracy attacks there was increasingly a consensus and political will to address the issue. Three most important EU actors France, UK and Germany adopted in 2008 the Council Joint Action 2008/851/CFSP and launched operation Atalanta which is still ongoing. Despite all actors contributed to the mission, there is a remarkable role of France. First, prior adoption of Council Joint Action, there was negotiation at the UN Security Council over Resolution 1816 authorising nations with the agreement of the Transitional Federal Government of Somalia to enter its territorial waters in order to stop pirates. The resolution was strongly proposed by France who initially demanded a resolution covering additional pirate areas near Africa [BBC 2008]. Second, the European approach toward a solution of security problems is mainly the domain of France and Germany while Great Britain was historically been more focused on cooperation with the USA and NATO. This was a tendency visible in 2009 when UK decided to contribute ships to NATO Operation Ocean Shield which combats piracy off the Horn of Africa [HC 2012]. However, British contribution to Atalanta remains unquestionable, including at least two frigates and headquarters in Northwood where also NATO Allied Maritime Command is located [Article 4, Council Joint Action 2008/851/CFSP].

It is important to note that piracy has as an internal political issue a very limited mobilization impact compared to media and public attention to terrorism. After every major terrorist attack there is extensive media coverage and a wave of solidarity followed by statements from key politicians. This follow-up after successful pirate attack is rare and makes an important distinction between piracy and terrorism. Raphael Bossong (2013) in his book demonstrated that terrorism follow-up created temporary "window of opportunity" which was exploited by EU institutions and EU member states to set and enact new policy agenda. In the case of EU Counter-piracy policy the window of opportunity is partly visible in 2008 when EU turned to more comprehensive and pro-active approach. However, it seems that this window remains open and counter-piracy policy is one of the most consensual security areas with remarkable benefits to all EU member states.

CONCLUSION

The counter-piracy policy of the EU turned from partial and sectoral preventive measures to a very complex policy addressing the phenomena directly by using capacities of the EU member states through a comprehensive approach. In this view the year 2008 was the turning point. Securitization of the issue illustrated by many successful incidents led to penetration of piracy into national politics. The positions of France, Great Britain and Germany strongly favoured prompt counter-piracy response. The EU changed its focus from pre-emptive measures into pro-active approach in the field of counter piracy by launching operation Atalanta which contributed to development of EU capacities especially within EMSA.

Operation Atalanta contributed to a large extent in ensuring maritime traffic protection and physical elimination of piracy threats. However, in the post 1998 period the EU also started several capacity building programmes which were aimed at development of national capacity to address piracy including improvement of port facility security and infrastructure related to fight with piracy. Those included detention, prosecution and an transport infrastructure. Support to the Maritime Transport Sector project promoted implementation by international security standards associated with SOLAS Convention and the ISPS. Programme to Promote Regional Maritime Security helped to strengthen the capacity of regional states by helping implementation of regional strategies and action plans for improvement of maritime security.

Military operation Atalanta was soon supported by EUTM Somalia mission which enhanced capacities of the Somali government. Later a softer approach presented by EU NESTOR mission added the focus on education and maritime law enhancement. Next to the direct intervention and capacity building EU addressed also the roots of piracy by supporting the Somali government and close cooperation with other regional and international organizations in providing humanitarian and development aid. Thanks to the international effort, the situation in Somalia is improving and the reduction of poverty may significantly contribute in reducing push factors in piracy.

Nevertheless, some of the roots of piracy are beyond EU control as pirates may find safe harbours in failed states or under the umbrella of organized crime. Especially the link between piracy and terrorism is alarming and due to the latest development

in Libya also concerning. Countries with no partner at the government level may become home for piracy and terrorism. For this reason it is necessary to support central governments and their capacities in the fight of piracy.

Somali piracy made the EU a capable counter-piracy actor and contributed to development of its capacities. However, there is another side of its success. As pointed out by Anja Shortland (2015), piracy also spawned a huge counter-piracy industry and bureaucracy which is worthy subject of study [Shortland 2015: 429]. This is also the case of the EU policy in relation to the Horn of Africa, which is just one region connected to piracy and presents a unique counter-piracy regime. It will be interesting to explore other counter-piracy regimes, paying attention to similarities and differences.

Despite the dramatic decrease in piracy incidents it is too early to celebrate. Ongoing missions and EU presence in the waters of Horn of Africa and on the ground has also preventive influence as a deterrent. Weakening interest in the region may lead to reduction of comprehensive approach and worsening of security situation. Eliminating roots of terrorism requires a long-term approach along with investment in order to reduce poverty. As the Horn of Africa belongs to regions severely hit by poverty eliminating roots of piracy is a long term goal.

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HIZBALLAH'S INVOLVEMENT IN THE SYRIAN CONFLICT

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Abstract

The main aim of the article is to present Hizballah's involvement in the war in Syria. The author explains why Hizballah is an ardent supporter of Bashar al-Assad's regime and tries to define the motivations behind Hizballah's military engagement and current position in Syria. In this paper the author also seeks to explain the dilemmas surrounding Hizballah's involvement in Syrian war.

Key words: *Hizballah, Hassan Nasrallah, Bashar al-Asad, War in Syria.*

INTRODUCTION

Hizballah (The Party of God) was founded in 1982 in the Bekaa Valley with the involvement of the Iranian Revolutionary Corps (*pasdaran*). In the beginning, The Party of God (a name officially adopted in 1985) existed not as a coherent organization, but as a loosely-connected group of young Shia radicals, mostly associated with Islamic AMAL (a splinter group of AMAL – Afwaj Muqawama Lubnaniyya). The founding of Hizballah was directly connected with four main factors: the Shia revival in Lebanon in the 1970's, led by Imam Musa Sadr; the Islamic revolution in Iran, which transformed Iran into an Islamic Republic; the outbreak of a sectarian civil war in Lebanon, consolidating divisions in Lebanese society; and the Israeli invasion of Lebanon as part of the 'Peace for Galilee' operation.

In the 1980's, the Party of God was a small military organization dependent on Iranian support. Hizballah had carried out many suicide attacks and was deeply involved in kidnappings. In 1983, the organization was responsible for the bombings of U.S. and French military barracks, resulting in heavy losses of French and American soldiers. Under the direction of the Iranian authorities, the Party of God kidnapped U.S., British, French and West German citizens. Some of the

hostages spent many years in Hizballah captivity, such as American journalist Terry Anderson, who was released after six years of captivity. These 'activities' led Hizballah to be labeled as a terrorist organization; even though the organization has changed its profile over the decades, it has proven difficult to perceive them as non-terrorist group.

When the war in Lebanon ended, Hizballah developed itself as a political party and participated in the first post-war parliamentary elections. However, the organization still maintained its military wing – the Islamic Resistance. Since the 1990's, Hizballah has built its position in Lebanese politics and has become one of the most influential political parties in the country. After parliamentary elections in 2005, Hizballah for the first time in its history obtained ministerial portfolios in the government. Mohammed Fneish became the Minister of Energy and Trad Hamadeh received the position of the Minister of Labour. Both resigned in 2006 during the political crisis.

1. HIZBALLAH-SYRIAN RELATIONS

Although Iran participated in founding of Hizballah, which became an extensive tool in its foreign policy, Syria would not have allowed itself to lose control over Lebanese politics during the civil war. After some time, relations between Syria and the 'Party of God' seriously deteriorated due to the hostage crisis. President Hafez al-Assad appealed to Iranian ayatollahs to release kidnapped U.S. military officer William R. Higgins, and when the Iranians declined, he decided to intensify the internal conflict among the Shia and use the secular AMAL against Hizballah. The conflict got under control after Iran and Syria reached an agreement in Damascus in January 1989, by which Syria accepted the Hizballah presence in South Lebanon and restricted the Party of God from arbitrary operations against Israel [Osoegawa 2013: 47]. Ever since then, Syria has had direct influence on Hizballah activity, with Iranian approval.

A few months later in Taif, Saudi Arabia, under the aegis of the Syrian regime, Lebanese parliamentarians (those elected before the war) negotiated a treaty to establish the post-war order in Lebanon. The agreement covered many political issues, including amendments to the Lebanese Constitution, and was also the basis for the special relationship between Lebanon and Syria. Consequently, in 1991, Syria and Lebanon signed the "Treaty of Brotherhood, Cooperation and Coordination," which officially confirmed Syrian hegemony over the state of Lebanon [Azani 2009: 187]. It enabled the Hafez al-Assad regime to tighten control over political and religious groups in Lebanon, including Hizballah. However, in the 90's, the Party of God tried to act more independently, participating in regular clashes with Israel in 1993 and in 1996. The Syrian regime the forced the Party of God to keep to the imposed restrictions [Ibid.: 187].

In the year 2000, a new chapter in mutual relations came into being. In May, Israeli troops withdrew from South Lebanon, simultaneously liquidating the Buffer Zone established in 1985. Then, in June, Hafez al-Assad died and his son Bashar al-Assad began to rule Syria. To deal with the new situation, Hizballah quickly responded to the Israeli withdrawal, which it considered incomplete. According to Party of God leadership, a small piece of land known as Shebaa Farms remained

under occupation, and therefore they declared that they would maintain their military wing and vowed that the Islamic Resistance would continue the struggle against Israel [Hamzeh 2004: 96]. On many occasions, Hizballah maintained their undeniable right to fight for Sheeba Farms as a part of Lebanese territory [Alagha 2011: 121]. On the contrary, many leaders who opposed the Party of God, such as the Druze politician Walid Jumblatt, perceived Hizballah's stance on Shebaa Farms as a pretext not to disarm itself [The Struggle for Lebanese Independence 2006].

After death of his father, Bashar al-Assad maintained close relations with Hizballah. He even enhanced Hizballah's political status by cordially hosting Nasrallah in Syria and supplying the Party of God with more advanced weaponry [Rabil 2007: 43-51]. Nasrallah always respected Bashar al-Assad and was aware of his role played in preserving the status quo for Hizballah.

Both Syria and Hizballah ran into trouble after the killing of the former Lebanese Prime Minister Rafik Hariri in February 2005 and the subsequently outbreak of the Cedar Revolution. Demonstrators encroached on the Syrian military presence in Lebanon and blamed the Syrian regime and Hizballah for killing Hariri. Consequently, Syrian troops left Lebanon after 29 years there, ending the era of Syrian military domination of Lebanon. In the beginning, the realities of Lebanese politics made it difficult to commence an investigation into Hariri's assassination. Then, the UN Security Council established the International Independent Investigative Commission (IIIC) which was responsible for collecting all information and documents regarding the assassination. IIIC Chairman and prosecutor Detlev Mehlis had four suspects arrested on suspicion of involvement in Hariri's death, all of them high-ranking Lebanese intelligence officers. In December 2005, the Prime Minister Fouad Siniora sent a letter to UN Secretary General Kofi Anan in which he requested the establishment of an international tribunal to resolve the issue of Hariri's death [Ożarowski 2015: 332].

Hizballah became the primary opponent of the Special Tribunal for Lebanon (STL) – an international court established to conduct an investigation and to charge those persons responsible for the killing of Rafik Hariri and 22 others in a bombing. Hizballah considered STL as foreign imposition upon Lebanon and as foreign interference in Lebanese internal affairs. In his statements and speeches, Nasrallah repeated that STL was part of the battle between Hizballah and the resistance axis (Syria and Iran) and Israel [Slim 2010].

2. THE OUTBREAK OF REVOLUTION IN SYRIA AND THE ROLE OF HIZBALLAH

The "Arab Spring" is a phenomenon which researchers around the world have still being analyzing. It began in 2010 in Tunisia with the self-immolation of Mohamed Bouazizi. The act sparked demonstrations in Tunisia against the regime of Ben Ali. The Arab revolution in Tunisia then spread to other Arab states. Similar incidents occurred in Egypt, Yemen, Libya and Bahrain. Everywhere, except for Bahrain, the revolutionaries achieved their primary aims and forced their national leaders to step down. The events in Syria might have had the same results, but they did not. No one knew that the beginning of revolutionary activities in Syria would spark a long-lasting and exhausting war that would be one of the biggest dilemmas in the contemporary Middle East.

Protests started in March 2011 in the city of Deraa after a group of teenagers painted revolutionary slogans on a wall and were sent to jail as a result. The people of Deraa went into the streets in defense of the schoolboys and were met with a violent reaction from the security forces which in turn sparked nationwide protests against the al-Assad regime. The conflict escalated and turned into a civil war. At present, there is no simple division between the al-Assad regime forces and the rebels. The founding of the Islamic State and engagement of outside powers have made this war more complex and multi-dimensional. To date, over 220,000 people have been killed in the conflict [Syria: the story of the conflict 2015].

Unlike in other states where revolutionaries have overthrown national leaders, Hizballah has never condemned its Syrian ally Bashar al-Assad. Due to their mutual political and strategic interests, the Party of God has had no choice but to support Assad's regime. As Marisa Sullivan writes, Syria "has played a vital role in the transfer of weapons, equipment, and money from Iran to Hizballah", and the "Assad regime has provided safe haven for Hizballah training camps and weapons storage" [Sullivan 2014: 10]. Therefore, Assad's Syria has been a crucial ally for Hizballah.

Motivated by such, the Party of God participated in clashes and battles during the first phase of the war; however, Hizballah has refrained from commenting on its engagement in Syria. They have quietly held funerals for members killed in the conflict, and even after the funerals of Musa Ali Shehimi and high-ranking commander Ali Nassif, Nasrallah stated that he was killed in a Syrian border area inhabited by Lebanese people who were subjected to rebel bombardment [Khraiche 2012]. Additionally, the Hizballah leader said that those Lebanese residents killed in Syria had acted on their own behalves, with no connection to Hizballah [Ibid.].

Why did Hizballah hide its involvement in the Syrian Civil War? First, they usually deny any involvement until it becomes obvious and undeniable. It is Hizballah's fundamental strategy to mislead in order to foment information chaos. Second, in this case, Hizballah wanted to avoid a situation in which official information about its involvement in the Syrian conflict might have led to an outbreak of hostilities in Lebanon.

Therefore, in the 2011 and 2012, Hizballah military forces engagement in the Syrian war was limited. However, the al-Assad regime desperately needed Hizballah's well-trained special forces, which were experienced in urban warfare. The Syrian army was dominated by heavy artillery, and was lacking in such unites. Therefore, it pushed Hizballah into deeper involvement in the war in Syria.

3. HIZBALLAH FIGHTS IN SYRIA'S WAR

Some sources have reported that the estimated number of Hizballah fighters in Syria was around 10,000. That is unlikely, and to date the reasonable estimate is around 4,000 – 5,000 [White 2014: 15]. It is significant, however, that Hizballah regularly rotates its troops so that fighters may to recuperate and maintain a high level of combat-readiness.

As Jeffrey White mentions, there is not enough information about the organization of Hizballah forces in Syria; however, there seem to be four aspects to the Party of God's mission: training regime forces; providing combat advisors; "corseting"

operations in which Hizballah reinforces another units of lower quality; and direct military operations [Ibid.:16].

The full involvement of Hizballah emerged in the battle of al-Qusayr, which started 19 May 2013, almost three weeks after Nasrallah officially admitted to Hizballah's combat presence in Syria. The al-Assad regime and its allies decided to recapture [Blanford 2012: 18] the town of al-Qusayr, which was of strategic value to rebels due to its location along an important supply route.

First, in April 2013, Syrian regime forces and Hizballah successfully seized the small villages located around the city of al-Qusayr. After that, they conquered al-Qusayr within 17 days. Among the pro-regime forces were 1,200-1,700 Hizballah fighters, who played a special role in fighting the rebels in al-Qusayr. First, Hizballah's troops spearheaded the strike on the city, using their special forces experience to fight for every centimeter of the land and every building in the close, urban environment. The support of Syrian regime artillery helped to break down the resistance of the rebel combat groups and take control over the city [Ibid. 19-21].

Despite the victory Hizballah, suffered heavy losses. Estimated casualties range between 60-120 dead [Levitt, Zelin 2013: 17; Blanford 2012: 21][1]. After taking al-Qusayr, Nasrallah stated that Hizballah was aware of the costs of combat engagement in the Syrian war, and would continue its mission in the conflict. Furthermore, he added that Hizballah's position both before and after the battle of al-Qusayr were the same, and also announced further engagement in the Syrian war [Hezbollah leader vows to continue Syria fight 2013].

In 2014, Hizballah took a fixed position and refrained from taking part in direct combat as in al-Qusayr. It is likely that the heavy losses in the battle of al-Qusayr forced Hizballah's leadership to redefine its strategy Syria to some extent. However, Hizballah fighters, acting as reinforcements, took part in offensive in the Qalamoun Mountains, seizing the city of Yabroud and participating in combat around Damascus and the international airport [Beck 2015].

In March 2015, combat was concentrated to the south of Damascus and on the edge of the Golan Heights. The rebel Free Syrian Army, backed up by Sunni Jihadi groups (some affiliated with al-Qaeda) took up an offensive that was met with a counterattack by Syrian regime troops and Hizballah forces assisted by Iranian commanders [Syrian troops launch…2015].

The area between the south of Damascus and the Golan Heights is considered strategically valuable due to its proximity to the Israeli border, the Jordan River and the Daraa-Damascus highway, a significant logistical supply route [Luck 2015]. To date, combat remains underway in the Qalamoun area, in which Hizballah has begun preparations to fortify the villages it controls in Syrian and Lebanese territory in order to resist attack and subsequently recapture the entir Qalamoun area [Report: Hizbullah Freezing Internal Affairs until Qalamoun Battle Ends 2015].

Hizballah was also involved in a battle of Aleppo. Since 2013, Hizballah fighters have been present near Aleppo and in June 2013 participated in operation "Northern Storm". Before the operation began, Hizballah fighters played a

[1] M. Levitt and A. Y Zelin quotated G. Cohen and provide information about at least 60 Hizballah's men killed in the battle of al-Qusayr. N. Blanford, basing on Intelligence papers pointed that Hizballah lost between 70-120 men.

significant role in taking positions in the surrounding small towns, Nebul and Zahra. From a strategic point of view, these cities were very important. Firstly, their location made them important staging grounds for launching an attack on Aleppo. Secondly, the towns were strategically located near the highway between Aleppo and Minnakh Airbase, a route used to supply the forces engaged in war. Lastly, control of these cities strengthened the position at Minnakh Airbase from which air raids on rebel positions could be launched [Durfee, McCormick, Peisch 2013]. In 2014, regime forces (including Hizballah) continued the siege of Aleppo. In 2015, Hizballah participated in an offensive in which regime forces captured 408 square kilometers of territory in southern Aleppo. Hizballah played a pivotal role in this offensive. Hizballah fighters captured several villages and helped the regime Syrian Army to pave the southern approach to Aleppo [Fadel 2015]. Finally, Hizballah took part in the siege of Aleppo in 2016, as a result of which regime forces captured the city.

4. DILEMMAS AROUND HIZBALLAH'S INVOLVEMENT IN SYRIAN WAR

To date, Hizballah has unquestionably been an important player in the Syrian conflict. Despite its losses, the Party of God's involvement in Syria has brought some gains. Firstly, Hizballah fighters gained experience and had the opportunity to test various combat strategies outside of their home environment. From the outbreak of war, Hizballah provided support in the form of light infantry and snipers; later, however, its forced fulfilled combat and reinforcement roles. Hizballah leadership have acquainted themselves with the capabilities of their military units and the extent to which they can engage available forces. The combat experience gained by Hizballah forced may be invaluable in any future wars with Israel or non-state militarized groups. Since the "July War" with Israel in 2006, Hizballah has not taken part in such operations, and for this reason, military involvement in Syria was the one of the greatest challenges the organization has taken up.

Secondly, Hizballah's involvement in the Syrian war and its defense of Bashar al-Assad made up its existential aim. Nasrallah and the whole leadership of the Party of God are aware of how crucial an ally Syria is, and how important is to do as much as possible to maintain the al-Assad regime in Syria. The regime's downfall would undermine Hizballah's strong position in Lebanon – sustained Syrian 'patronage' – and cut off their primary supply of weapons. It would diminish the role of Hizballah in its resistance (*moqawama*) policy against Israel. Therefore, it is clear how important it is for Hizballah to defend the al-Assad regime in the neighboring state.

Thirdly, Hizballah, which is strongly linked with Iran, serves overall Iranian interests in Syria and forms a link in the Iran-Syria-Hizballah axis. Taking into consideration the downfall of al-Assad's regime, neither Iran nor Hizballah would allow itself to lose the Syrian link, which would collapse the axis of common interests and interdependence. For that reason, Hizballah's involvement in Syria sets up a clear division between pro-Assad forces and its allies including Iran, and anti-Assad rebels, Sunni jihadists and the Western world lead by the U.S.

Over the course of the war in Syria, Hizballah has tightened its cooperation with Russia. Having common enemies enabled the two parties to commence military coordination. Before the siege of Aleppo in 2016, there was an unofficial meeting between Russian and Hizballah officials. The aim of this meeting was to establish "continual" communication and shared channels between two sides with regards to the battleground in Aleppo. The two sides also discussed mutual future plans [Lieber 2016]. For Hizballah, this was a chance to be among the decision-makers on Syrian issues. In cooperation with Russia, Hizballah became a reliable military "partner," not just an entity of little importance used as a back-up in military campaigns. When considering further decision on the Syrian conflict, Hizballah, thanks to its connections with Iran and Russia, may have the opportunity to secure its position in Syria and thus strengthen its position in Lebanon. This was the main goal which led Hizballah to engage in the Syrian war.

After almost six years of an exhausting war in Syria there are no clear signs that the conflict may end in the near future. The complexity of the interests of the various combatants – as well as the interests of outside powers who care only for their own political goals - leads to the conclusion that Syria has become a political training ground with real combat.

Hizballah still plays a significant role in the Syrian war, as for the Party of God it is not only a war for the survival of the al-Assad regime, but for the existence of Hizballah itself. Therefore, Hizballah is forced to fight alongside Syrian forces "to the last man". This explains why Hizballah's involvement has hitherto been so intensive.

In 2016, the al-Assad forces and their allies achieved military supremacy, mainly thanks to Russian engagement. After capturing Aleppo, Hizballah, as an ally of the al-Assad regime, strengthened its position in Syria and also in Lebanon. Currently, there is no clear danger that al-Assad regime might fall, meaning that Hizballah is more comfortable in its activities. Hizballah has its secured Syrian shield, allowing the party to maintain the status quo as part ofthe Iran-Syria-Hizballah axis and maintain its military potential in relation to Israel. Last year, Hizballah also initiated closer cooperation with Russia in battlefield operations. This may be seen as a remarkable occurrence which can significantly strengthen the position of Hizballah.

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THE PROBLEM OF TERRORISM IN FRAGILE STATES OF AFRICA. CAUSES AND CONSEQUENCES OF PHENOMENON

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Abstract

The manifesting new threats for the global safety are the *signum temporis* of the beginning of the 21 century. Those threats refer to the economic, cultural and political areas. One of the largest and most relevant issues are the so called "fragile states". The lack of stability on the territories of those countries determines numerous local and global threats. One of the most relevant ones of those is the terrorism. Terrorists, aware of fragile states weakness, use the chaos and overall lack of the control of the state apparatus; they organize easily and train new members so that they can operate on the given territory and beyond.

Key words: *Sub-Saharan Africa, fragile states, international terrorism, global security*

INTRODUCTION

The much lately observed erosion of the state, that is usually the result of the ever growing globalization processes, creates a conducive atmosphere for the change of the configuration and the proportions of the power between the countries and many other subjects such as the international corporations and non-governmental organizations. Unfortunately it also changes the proportions and the power structure between the country and the subjects that bring the asymmetric threat into the picture – the terrorist organizations. The evolution mentioned works to the advantage of the latter [Kuźniar, 2000].

One of the most characteristic elements of the international global arena of the beginning of the XXI century are the internal conflicts that are ever-growing in numbers. Their nature is one of the „commune wars" as they are widely based on the ethnic, cultural or religious differences [Lizak, 2015]. Unfortunately those

conflicts last fairly long meaning that the country structures are severely encumbered that leads to the atrophy of the country that results in transforming the given country into the territory of the so called fragile states (also called "failed states") [1]. Difficulty affects the Black Land significantly, especially the Sub-Saharan Africa, and this is why this particular region will be the object of exploration in this article.

The author hypothesizes that it is the African fragile states where social, economic and political structures were demolished, that are presently one of the most important problems and pose a threat to global security. Destabilization in those states determines a number of local and international hazards of which terrorism is the toughest and the most imperative to be fought against. Poverty, hunger, the feeling of deprivation, downturn of trust to country authorities etc., weaken the civil society and lead to criminalization and delegitimization of a state. An unsatisfied society begins looking for new leaders who may guarantee the security and betterment of existence. Local insurgents appear and they rapidly gain the support of society. Public service disappears, black market forms. The authority is being taken over by the terrorist organizations – which are relatively safe, due to lack of any kind of control. They organize easily and train new members, so that they may function not only in a country, but also abroad.

To verify the hypothesis, particular components of fragile states will be analyzed in this article. The author is going to scrutinize the quality of fragile states authorities, political, economic and social situation and the level of security.

1. AFRICAN STATES FRAGILITY AND ITS SYMBIOSYS WITH NATIONAL AND INTERNATIONAL TERRORISM

As it was mentioned before, majority of fragile states are located in the area of the African continent what is evidenced by the fact that among 50 states with the highest level of fragility two thirds are the African countries. An affirmative proof of this may be the annually elaborated (since 2005) *Fragile States Index* from which it arises that in 2017 out of first 25 states on the list, 19 are the African ones. And so,

[1] The term fragile state is often used by political commentators and journalists to describe a state perceived as having failed at some of the basic conditions and responsibilities of a sovereign government. In order to make this definition more precise, the following attributes, proposed by the Fund for Peace, are often used to characterize a failed state: loss of control of its territory, or of the monopoly on the legitimate use of physical force therein, erosion of legitimate authority to make collective decisions, an inability to provide public services, and an inability to interact with other states as a full member of the international community. Often a failed nation is characterized by social, political, and/or economic failure. Common characteristics of a failing state include a central government so weak or ineffective that it has little practical control over much of its territory; non-provision of public services; widespread corruption and criminality; refugees and involuntary movement of populations; and sharp economic decline. Definition of *Crisis States Research Centre* - ***Crisis States Research Centre*** - a research unit created at *Development Studies Institute* (DESTIN) na *London School of Economics*, financed from the budget of The Department of International Development (ID). That Department was established in 1990 as the Development Studies Institute (DESTIN) to promote interdisciplinary post-graduate teaching and research on processes of social, political and economic development and change. (DFID) brytyjskiego rządu. ***Crisis States Research Centre***, *http://www.crisisstates.com/index.htm; Crisis*, Fragile and Failed States Definitions used by CSRS, www.crisisstates.com/download/drc/FailedState.pdf

to the most instable states classified are: the Republic of South Sudan (the youngest country in the world), the Federal Republic of Somalia, the Central African Republic, the Democratic Republic of Congo, the Republic o Sudan and the Republic of Chad, whereas in the second ten of the list 8 African countries can be found: the Republic of Guinea, the Federal Republic of Nigeria, the Republic of Zimbabwe, the Federal Democratic Republic of Ethiopia, the republic of Guinea-Bissau, the Republic of Burundi, the State of Eritrea and the Republic of Niger. Just after them: the Republic of Côte d'Ivoire, the Republic of Kenya, the Republic of Uganda, the Libya, the Republic of Cameroon, the Republic of Liberia, and the Islamic Republic of Mauritania. [2]

In all the above mentioned states providing and controlling the security and safety is one of the most basic problems. The sub-border territories, the slums of the great metropolises are beyond any control whatsoever. The security services, the state apparatus are almost totally and entirely corrupt. They are influenced by the criminal and separatist organizations. Due to the scale of the advance of the situation the control of the official state apparatus is completely impossible. In addition to that the difficult economic situation, the ever-present economic problems, severely advanced corruption result in the situation where all the consumer goods, financial transactions, the humanitarian aid or the arms are taken over by the privileged groups that control those states (the terrorist – the local warlords) [Milewski, 2009].

Due to the fall of the country's ability to supervise and regulate the social processes and the political life of its territory more non-state trans-national structures are developed that also result in the more advanced criminal activities (there is a higher risk of such criminal and illegal activities as the smuggling, slavery and other) [Madej, 2007]. This can be extremely important in the case of especially weak states that are in the permanent crisis or classified as the failed states [Zajadło, 2005a][3]. Those countries are classified as such where the central authorities have lost any power of providing safety and providing the basic functioning of the given state. The presented situation does not necessarily have to be the result of the globalization tendencies. In many instances though the very tendencies influenced the fall of the states and thus resulted in multiplying the scale of the menaces such as: the organized crime, corruption, the arms trade, the drug trade, the modern day slavery or the international terrorism [Kuźniar, 2000].

The former UN General Secretary – *Boutros Ghali,* claims that the Fragile States are invariably the product of a collapse of the power structures providing political support for law and order, a process generally triggered and accompanied by "anarchic" forms of internal violence. He also claims that a feature of such conflicts is the collapse of state institutions, especially the police and judiciary, with resulting paralysis of governance, a breakdown of law and order, and general

[2] *Fragile States Index 2017,* http://fundforpeace.org/fsi/(22.06.2017)

[3] The process of the degradation of the states comes in certain stages: *weak state* i.e. Bolivia, Ecuador, Ghana, Nigeria or Paraguay), to the *fragile state*, to the *crisis state*, then to the *failing state* i.e. Haiti, Columbia, Iraq, North Korea.), *failed state i.e.*. Sudan, Ruanda, Afghanistan) to finally the *collapsed state* i.e.Somalia, the South Sudan) J. Zajadło, *Dylematy humanitarnej interwencji. Historia – etyka – polityka - prawo*, Arche, Gdańsk 2005a, p. 151.

banditry and chaos. Not only are the functions of government suspended, but its assets are destroyed or looted and experienced officials are killed or flee the country. This is rarely the case in inter-state wars. It means that international intervention must extend beyond military and humanitarian tasks and must include the promotion of international reconciliation and the re-establishment of effective government [Wołejko, 2011]. [4]

According to the *Fragile States Index* – FSI elaborated by the Washington based organization *Fund for Peace, FP* and the "Foreign Policy" magazine, the classification of the given country as the failed one is based on the three basic *Indicators of instability*. They concern the social, economical and political issues. They take into the account the mounting demographic pressures. massive displacement of refugees, creating severe humanitarian emergencies; widespread vengeance-seeking group grievance; uneven economic development along group lines; criminalization and/or delegitimization of the state.; deterioration of public services; suspension or arbitrary application of law; widespread human rights abuses.; security apparatus operating as a "state within a state"; rise of factionalized elites; intervention of external political agents.

Process of the degradation to the state usually starts with corruption within the borders of the given country [Balcerzak, 2010][5], it continues with the delegitimacy of the legal powers and the failure of the economy. The governments engage in more and more drastic ways of exercising authority that lead to the erosion of the civil society [Kłosowicz, 2014]. The phenomenon of so called kleptarchy government subject to control fraud that takes advantage of governmental corruption to extend the personal wealth and political power of government officials and the ruling class (collectively, kleptocrats), via the embezzlement of state funds at the expense of the wider population, sometimes without even the pretense of honest service. The term means "rule by thieves". Not an official form of government such as a democracy, republic, monarchy, or theocracy; a kleptocracy is rather a pejorative for a government perceived to have a particularly severe and systemic problem with the selfish misappropriation of public funds by those in power [Rose-Ackermann, 2001]. According to *Corruption Perceptions Index 2016* it is the African continent that

[4] An exemplification may be the South Sudan, which corruption or embezzlement problems have started right after gaining independence that was so looked forward to (09.07.2011). Spring 2012, Reuters Agency has published a letter to over 70 South Sudan`s politicians, submitted by Salva Kiir, the President of Republic of South Sudan, laying claims to return of money defrauded by them (approximately 4 billion dollars – equivalent of 2 – year GPD). President highlighted also, that such a significant amount of money would facilitate the repair of social situation in country. It has to be remembered, that out of 8.5 million society, 90 per cent live on the verge of poverty. Salva Kiir in his appeal to demoralized authorities promised the amnesty for all those who will return the money of their own accord. Unfortunately, there is a justified fear that great majority of those financial means had been already invested and located on foreign bank accounts. *Sudan Płd.: z budżetu nowego panstwa wyparowały 4mld dolarów,* http://konflikty.wp.pl/kat,132874,title,Sudan-Pld-z-budzetu-nowego-panstwa-wyparowaly-4-miliardy-dolarow,wid,14548653,wiadomosc.html,http://info.wyborcza.pl/temat/wyborcza/agencja+reutera (17.08.2015).

[5] A large part of the African States is plagued by corruption that directly affects the economy, the financial loses. The financial aid of the external factors is usually transferred directly to private accounts of the small froups in control of the failed state.

excels on the global scale, in the presence of the corruption. Average score for whole Africa is less than 28 (on a scale of 1 to 100, where 100 is a perfect situation without the problem of corruption). The countries that indicate with the worst scores are: Somalia (10 points), South Sudan (11 points), Sudan (14 points) and Libya (14 points), Angola (18 points). The countries that stand out positively are: Botswana (which reached surprisingly high position – 60 points, what gives it 35th place of 176 countries) and Namibia (52 points, 53rd place) [*Corruption Perceptions Index 2016*].

From scientific research, that were carried out in 28 Sub-Saharan African countries, by *Transparency International* it arises, that corruption is a problem that still not only affects Africa, but also grows on, and the most susceptible group are the wealthiest citizens. Rich investors and policemen are considered to be the most corrupted. Apart from those two categories, Africans consider also civil servants, tax collectors, judges and members of parliament as corrupted groups. Almost 70 per cent of Africans are of the opinion that the phenomenon of corruption grows on every single year, and the governments are not only incapable of fighting against it, but also they hardly ever do consider it as a problem. (*Business Insider Polska 2015,* archiwum.business.insider.com.pl). According to the *Transparency International* report, the poorest Africans are the most harmed by the corruption group, who are forced to bribe in order to get access to most basic rights and goods. Merely, 1 out of 10 who bribe is brave enough to report their disservice. Rest does not reveal such processes in fear of their own security and possible repressions or because of lack of faith in justice or compensation [Stańczyk–Minkiewicz, 2014].

In fragile states it usually it comes up to the criminalization and the development of the so called „black market". Very often due to such situation the autonomic tendencies occur leading to the secession of the given territories of such countries. The fall of the country structures and apparatus directly leads to the human rights violation [Czubocha, 2012].

In order to precisely define the degree of the crisis of the country one must inspect the given state according to the range of the function this state takes upon and how does the state realizes those functions in relations to its own citizens. The weak failed countries not only take on very limited functions, but they also are not capable of supporting even those very limited ones in relations to the citizens. The most likely are deprived of the strong central power centre that would prevent the processes of the anarchisation of the public life. Those kinds of countries are also incapable of controlling major social conflicts. The central authorities lose the ability to control the whole territory of the given country. Very often it results in the situation where the central authority is severely limited to the capital only [Kłosowicz, 2009].

The listed given arguments prove that nowadays it is the fragile states that are one of the greatest challenges in terms of the international safety. It is truly a paradox that formerly the participants on the global arena were more afraid of the strong superpowers that were using aggression as the main argument in their activities.

Nowadays these are the weak, failed states that become the greatest challenge and that have the power to destabilize the international affairs[6].
The proof of it may be the fact that the territory of fragile states is usually the area where multiple terrorist and criminal organizations find advantageous conditions to thrive. In the countries where the probability of the intervention of the local authorities in terms of controlling the mentioned subjects is extremely limited, the extremist and terrorist organizations have very broad possibilities of benefiting from the ever-present chaos by profiting from the natural resources of the country; those organizations can also develop the criminal activities without any threat whatsoever. Sometimes the local authorities instead of fighting the terrorist organization it becomes the supporter of it, thus leading to its rise in power. Moreover, even if in those countries the legal authorities still can be found, though they cannot fully execute their supremacy, they still manage to maintain formal external attributes of sovereignty. And thus according to the international law they are capable of resisting the international ingeneration. It does severely affect the possibility of liquidating the terrorist fundamentalist and extremist organizations on the territory of the given country [Madej, 2007]. On the territories of the failed countries, the extremist organizations have extremely favorable conditions to develop their own structures, the recruitment centers, the training military bases and to create the safe command centers [Menkhaus, 2004].
What else is it that makes the territories of the failed states in times of crisis so attractive for the extremist organizations? It can be easily observed and concluded that all the above mentioned factors – that are the indicators of the failed state are the elements that support the terrorist activities.

2. THE PROBLEMS IN FUNCTIONING OF PUBLIC ADMINISTRATION AND SECURITY APPARATUS AND THE LEVEL OF SOCIAL DISCONTENT

The most visible and accurate symptom indicating the weakness or fragility of state is the loss of the monopoly on the legitimate use of physical force within its borders. The very often case scenario in those states is the „privatization" of the authority [Kaldor, 2000]. The fragmentation of the society follows. The citizens no longer identify with the authorities and they fail to engage in the internal matters of the country and/or nation. They then begin to identify more with the clan or the specific ethnic group [Zajadło, 2005b]. As they view the state institutions as the incapable to rule, they tend to seek the new leaders who seem to be the promise of the guarantee of safety and the basic existence. A very often scenario is the one ethnic, religious or clan group taking over the power and abusing it favoring only the members of the given group. Then the group gaining gradually power on a certain area, no longer wishes to subject itself to the central authorities. The policy of such groups leads to the bigger and bigger independence and thus leading to the separatist movements [Kłosowicz, 2009]. The lack of possibility of providing the basic social functions ort he economic and cultural ones is directly translated to the economic indicators such as GDP and GDP *per capita*, which very often leads to the

[6] Due to the increasing threat of the global safety due to the rapid emerge of failed states the world powers decided to rebuild their safety strategies. One major example is the safety strategy of US, that was a direct answer of the 9/11 attacks.

growth of the grey zone. In this situation a large part of the finance is directed and spent on financing the functioning and activity of the terrorist organizations.
Moreover, the other equally important argument that makes the territories of the fragile states fairly attractive for the activity of the extremist organizations is the obvious lack of control of the state of its territory and within its borders. In this case it is the army that influences the state's policies to a very large extend. The public functions are mostly served by the active soldiers. For instance in Central African Republic it is Francois Bozize, while in Burma it is Thana Shwe [Żukrowska, 2011]. The local leaders of the „private armies called the warlords seem to be viewed as the ones who guarantee the ostensible safety. Their main income source is the drug, diamond trade, the arms trade and the terrorist activity. They use the natural resources and the wealth of the given country for their own benefit, they take over the transports of the humanitarian aid and they often rob the citizens of the country they govern [Munkler, 2004]. According to the 2011 report of the *United Nations Office on Drugs and Crime* (UNODC) the main smuggling channel from Afghanistan and Pakistan to Europe leads through the East Africa. Formerly it leads through the Middle East. Even though the road is longer that the traditional one, the main reason to choose the different route is the fact that the African anti-narcotics police are very poorly prepared and the local authorities are incredibly easy to corrupt[7]. For example, in first quarter of 2011 two major transports of heroine of the more than 200 kg altogether were captured on the territory of Kenya and Tanzania[8].
Quite often the activities of the local warlords lead to the overall rebellion in the given state. In order to conduct such plans they use the local animosities between the clans or tribes. That usually is just the cover up of the real actions and objectives. As a result they only are used as the tool to break the state and legal authority and they usually give away the power and resources to the other corporations [Kapuściński, 1998].
The malfunctioning state security apparatus in the fragile countries allows the terrorist organization to function on a very large scale. The weak state structures and the ever-present chaos that reigns result in a unpunished activities of the extremist organizations on such territories. The activity of the Islamic extremists on the territory of the South Africa serves as a very good example. The expert on the issues of safety and terrorism agree that the relation between the terrorism and the corruption is a very strong one. According to the *Associated Press Agency,* the Islamic terrorists use the corruption in this given country especially to get the new false documents and so the new identity. [9]
On the territories of the failed states the terrorists have more possibilities of obtaining the arms. Using the conflict in Libya by Al-Qaeda to gather arms few years ago can be seen as a prime example of such situation. According to the Reuters a convoy carrying arms from western Libya through Chad and Niger to Al-Qaeda headquarters in Mali was stopped in Algeria then. In the convoy several kinds of modern weapons were found, e.g. machine guns, anti-missile rockets,

[7] http://www.unodc.org/documents/data-and-analysis/WDR2011/World_Drug_Report_2011_ebook.pdf (23.07.2015)
[8] http://afryka.org/ShowNewsPlus, Afgańska heroina płynie przez Afrykę, (3.08.2014)
[9] http://www.news24.com/SouthAfrica /News/Terrorists-exploit-SA-corruption (15.06.2014)

anti-tank missiles and many other explosives and ammunition. The Algerian based Reuters informer also stated that a lot of other weapons were captured by Al-Qaeda that used the unstable situation in Libya during the recent conflict.[10]
Since arms and weapons are not listed among the widely available, it is mainly the states responsibility to control their export and the targeted allocation. The lack of the properly functioning state organs and the weak security apparatus make it impossible to fully control the procedures and to prevent the distribution of the weapons among the terrorist and extremist organizations [Dal Ferro, 1995].

3. MIGRATIONS AS A CHALLENGE FOR AFRICAN FRAGILE STATES

The phenomenon of migration is each time related to the greater challenge regarding the integrity and safety of the country towards which the people migrate. For the extremist one of the positive aspects of acting on the territories of the failed states is the scale of the flow of the illegal goods and the level of migration of the poor citizens of those failed states [Kozłowski, 2008]. As the globalization processes rise and the modern transport infrastructures are developed the costs of the goods transportation and travelling are decreasing. As the result the trade related transportation and the passenger traffic increased widely. The minimalisation of the geographic distance influenced the incredible rise of the spread of the international organized crime and the terrorism. First of all it is because the lack of the strong territorial control does not allow the state authorities to fully control the human traffic and migration according to their origin, social affiliation and the general believes. Very often the immigrants with no properties, no family and no perspectives migrate onto the territories of the fragile states. The emergence of the immigrant societies very often supports the trans-nationalization of the structures of the terrorist groups. The immigrants that flow into the territory of the failed state have usually nothing to lose thus they easily decide to join the terrorist organizations. They view such move as a clear chance of simply surviving, gaining the income and the possibility of adapting in the new society. The very procedure of preparing and conducting the terrorist attack is much easier, too. In addition, the lack of the border controls creates a perfect environment for the development of any kind of illegal activities (the arms, drug trade and other procedures that generate the income financing the terrorist organization). It must also be noticed and mentioned that the modern days´ extremists are very often well educated and wealthy people. They themselves need not necessarily come from the territory of the failed states. They can be German, British or other European citizens.
The other problem that is related to the phenomenon of migration is the so called loss of the potential – the human resources. The territories of the fragile countries are usually inhabited after the large waves of migration by the people who are uneducated, with no perspectives of work and education, no perspective of improving their living standards that are aware of their hopeless situation. The others who are capable of changing their fate, improving their situation usually

[10] Agencja Reuters, *Transporty broni do bazy terrorystów. Powstanie w Libii wzmacnia al-Kaidę, Reuters Agency*
http://www.polskieradio.pl/5/3/Artykul/340386,Transporty-broni-do-bazy-terrorystow-Powstanie-w-Libii-wzmacnia-alKaide, (27.04.2017)

decide to migrate from the territories of the fragile states [Cross, 2006]. We should also state and remember that more than 40 % of Africans live on less than a dollar a day. Approximately 500 mln people of the continent do not earn enough to feed their families and most of those people work in conditions that do not meet any decent humanitarian standards.

The other problem and the factor that mainly encourages migration moves are the very common wars in Africa. In the course of the last decade 40% of all military conflicts took place at this continent. They were both national and internal conflicts – and they both resulted in grave violation of the human rights [Stańczyk–Minkiewicz, 2014]. From the UNHCR report from 2015, it comes out, that the decision about migration is under the influence of 3 basic elements. First ones, are long-lasting conflicts (at least few decades) that are not predicted to end in the nearest future, because of their scale (e.g. in Somalia or in Afghanistan). Second ones are relatively young and intensively growing up conflicts. Quick tempo of their evolution, scale of damages and the risk of loss of life force the citizens to fleeing for their own lives (e.g. from Syria, South Sudan, Burundi, Republic of South Africa, Yemen or Ukraine). The last reason is that possibilities of coping with those conflicts are constantly decreasing. At the level of country as well as on the international level eventuality of solving those problems seems to be more problematic every single year.[11] In addition to the above mentioned motivations we can also mention the problem of the degradation of the natural environment that makes the not so easy existence even harsher [Barrios et al., 2010]. The climatic changes (the droughts and the related lack of drinking water, the desertification of the land, the forest fires, etc.) all force the Africans to migrate to more fertile and more attractive territories {Wittleler-Stiepelmann, 2009]. That is seen as the main reason why we observe the large migration moves from the sub-Saharan Africa to the countries of Maghreb. The countries like Tunisia, Morocco or Algeria have become the destination point or the transition point for the illegal immigrants from the sub-Saharan areas. Nowadays it is actually the sub-Saharan and not the Maghreb immigrants that are a majority of the illegal immigrants stopped by the EU immigration services. In the very beginning the immigration from the sub-Saharan territories was mainly caused by the political changes and the civil wars in the area. The migration waves would come to Maghreb after the abolition of Mobutu - Sese Seko in the Democratic Republic of Congo (1997), during the Sierra Leone war (1991-2001), Liberia (1989-1996, 1999-2003) or the Ivory Coast conflicts (1999). In the last decade we could see the rise of migration waves from Nigeria, Sudan, Somalia and the countries of the West Africa. It is estimated that every third African with the high education degree works outside Africa [Mussette, 2006]. That is why the citizens that decide to stay in the failed countries decide also very often to join the local criminal groups, support the warlords, terrorist organization as they view such moves as the only possibility of the stable income and survival.

[11] http://www.unhcr.org/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html , *Global forced displacement hits record high,* (06.06.2017)

4. THE LEVEL OF CRIMINALISATION OF THE FRAGILE STATES AND THE PROBLEM OF INTERNAL CONFLICTS IN THOSE STATES

Due to the above mentioned and discussed lack of the state apparatus control, the failed states territories are very often the scene that encourages the development of all kinds of the criminal character (production and trade of drugs, weapons trade, smuggling, etc.). Each such dealing is directly linked with the financial base and that is the existence of the terrorist organizations. One of the greatest dilemmas for the terrorist organizations is always finding the sources of the financing of their activity. The operational abilities of such terrorist organizations are directly linked to their abilities of organizing a steady financing. A very good example of such activity is the Sierra Leone „diamond conflict". The problem that was initially marginalized as a result strengthened the financial situation of the organization [Mair, 2003]. Al-Qaeda actually benefited from the diamond mines based in the country and some of the precious stones were actually exchanged for the weapons abroad [Wannenburg, 2003]. According to the *UNODC* report, the degree of the criminalization of the country is notably visible in the countries that are in the state of the internal conflict. There are certain proves that both Liberia and Sierra Leone in the last periods have been ruled as the matter of fact by the criminal organizations. The United Revolutionary Front and the linked Armed Forces Revolutionary Council once were even capable of guarantee the post of the vice-president of the country for their representative.[12]

Criminal activities that are the sources of a relatively high income for the terrorists can be viewed by them as a useful tool. The degree of engagement of the extremist organization in the criminal actions can vary. Sometimes it is the part of the main activity, but much more often it is viewed as the finance providing base for the main activity which is very often a political one. Besides the earlier mentioned, the bank robberies and the extortion racketeering or enforcing the so called „revolution taxes" are the main source of financing for the organization apart from the obvious sponsorship of the countries and the legal economic activities [Serrano, 2004]. What is important is that financing the terrorism of the criminal activities means that the negative aspects of activities of such an organization is not only limited to the particular terrorist actions but also expands onto other criminal activities. Some of the terrorist organizations tend to interpret their engagement in criminal activity as an additional factor – they view it as a method of building a strong position in the region.

What also makes those organizations stronger is the degree of the conflicts on a certain territory among certain groups – both between the nations and the tribes. A very complicated ethnic structure of the sub-Saharan countries is rather a frequent situation. This part of the world is very often torn by the predominant tribal and ethnic structures (the Democratic Republic of Congo can be a very good example as it is inhabited by no less than 250 tribal groups. This problem is only aggravated by the fact that the countries still have to deal with the burdens of the colonial past [Kłosowicz, 2014, Kapuściński, 2011]. The European powers did not pay attention to the cultural and tribal differences when making the territories of their influences.

[12] http://www.talkingdrugs.org/pl/afryka-zachodnia-korupcja-i-narkotyki, Afryka Zachodnia. Korupcja i narkotyki, (01.08.2011)

After the states regained independency, the lack of the political elites and modern shaped political state institutions of the civil society, resulted in the conflicts between different ethnic groups fighting for supremacy [Davidson, 2011, Bartnicki, 2006].

A suitable example may be the mentioned before, the youngest country in the world - South Sudan. At the very beginning of its existence, it hadn`t built its stable foundations that could have been the base for the safe and well-balanced development of the country. But for the flag and its own name it hadn`t had any features of a state. Problems appeared in the most crucial and elementary spheres of state's functioning. Obviously, it has to be marked that the time needed for fortification of a state is at least one generation, but only under the condition that wise, rational and overthought decisions are taken from the beginning. Meanwhile, in the Republic of South Sudan, during last year it occurred that although creating of the fundaments of the state should be the ultimate priority and goal, it was pushed into the background because of the politics of revenge and violence. Past animosities projected their voice. The inhabitants of the south, who integrated earlier in the combat with their common enemy from the North, now in the face of "freedom", they returned to old claims and aversions what generated series of next problems and conflicts [Taft, 2014, Stańczyk –Minkiewicz, 2012].

Unfortunately, internal military conflicts in Africa, usually take a long– term, bloody form with low intensity. It is the sort of a Hobbes-like fight where everyone fights everyone for everything[13]. On the territories of the dysfunctional states the war very often has a non-state character. The main objective of such a war is not the stabilization or the return to the former status quo but the intended sustaining of the state of organized anarchy. It is also quite difficult to view such conflict as the typical ones. It is rather a long lasting process of the interpenetration of the paramilitary groups and the organized crime. In the case of the typical destabilization of the state apparatus introducing back the law and order is usually about achieving the national compromise, whilst in the territory of the failed states the war and peace is in the hands of those who possess the largest military arsenal and a given readiness to use and abuse the power and violence. The society itself cannot influence the situation by any means. The end of the Cold War officially marked the end of the era of so called sponsoring of the local conflicts. With the

[13] T. Hobbes - Thomas Hobbes (5 April 1588-4 December 1679) was a philosopher from England. His most famous book is Leviathan (1651). Hobbes mainly wrote about government and law -- he was a political philosopher. He tried to show that the best kind of government has one leader with total power. But the most interesting thing about Hobbes was the way he argued. He started by looking at human nature. He said that humans are very selfish and that we are willing to hurt each other if we think it will help us. He also said that, naturally, humans are all equal because we are all strong enough to kill each other—even a child can kill a strong man while he sleeps. Then he imagined what things would be like without a government. He said that it would be terrible—a "state of war". There would not be enough stuff for everyone, and people would disagree about who got what. Some people would fight each other, and everyone else would be very worried about their own safety. No one would be able to trust anyone else or make plans for the future. Life would be "solitary, poor, nasty, brutish, and short" (people would be alone, poor, mean, and would not live for long)., *http://www.edupedia.pl/map/dictionary/id/13_slownik_filozoficzny.html*

rationalization of the costs of such conflicts came the system that we can refer to as the privatization of the military operation. The local warlords (that are the main beneficiary of each given conflict) and their opponents (the paramilitary organizations, the local militias) „save" each other at the expense of the local citizens that, when deprived of perspectives, kill each other [Piątkowski, 2004, Munkler, 2002].

5. THE PROBLEMS OF FRAGILE STATES DEVELOPMENT AND LIMITED POSSIBILITIES OF INTERNATIONAL POLICY

The asymmetry of the world today is directly linked to the factors that shape the global order. The existing divisions and stratifications that influence the shape of the global safety influence greatly the character and scale of such asymmetry-linked threats as the international terrorism. The globalization processes are directly responsible for the increasing scale of disproportion between the given subjects. The distance between the unquestionable leaders of the unification process and the outsiders of globalization is ever-growing. The societies that are clearly not competitive enough in the technological and economic sphere are viewed now as the passive observers of the unification and globalization processes. They are almost completely deprived of the possibility of influencing the share of the benefits of the globalization processes nut they also pay all the consequences of those [Hoffman, 2002, Czaputowicz, 2001]. Depending on the economic capabilities, the countries can benefit from the technological changes on a different scale. The asymmetry between the countries in terms of the economic and social development leads to the obvious conflicts between those who posses and those who do not win in the global village. It is directly reflected in the feeling of deprivation of the citizens of the less economically developed regions – that leads directly to the aggression and can lead to the extremist activities.

All the above mentioned factors of instability that are in favor of the terrorists that benefit from the situation on the territories of the failed countries are even more grave once you take into the account the very last factor and that is the lack of the possibility of the external intervention of the international community. This situation means that the terrorist on those terrorist have the feeling of impunity. When there is any sort of the legal power and state apparatus on the territory of the fragile state, even if it cannot execute its laws and supremacy, the country is still viewed as the sovereign one. Thus according to the international law such country may oppose the external intervention of the international community. That greatly limits the possibilities of any reaction towards the active extremist and terrorist organizations that are present at the territory of such state [Madej, 2007].

CONCLUSION

Terrorism in Africa is not a new phenomenon. In the 1950s it was mainly linked to the revolutionary movements. It was well manifested as the rebellion of the liberation movements against the European colonization. With time it has transformed into the religious-fundamentalist terrorism [Dziekan, 2007]. Another stage of its evolution was the ideologisation of the terrorism that was based on the growing popularity of the radical political thought (nihilism, anarchism, Marxist

ideology) [Hoffman, 1999]. Since then terrorism was no longer viewed as the tool - the technique that leads to the given objective but as the idea that glorifies the violence as the value itself [Szymczycha, 2006].
Nowadays the whole African continent is a territory marked by the actions of the terrorist organizations and groups. Their activities can be viewed as the sort of a quiet constant war. All the extremist organizations employ similar methods and techniques. They are based on destabilization of the region, threatening the society, destruction of the local economy and destruction of the politics in the region. The differences can be noticed in the ideology used for the combat. It may take form of a religious one (Islamic fundamentalism) or it may be dominated by the nationalistic, ethnic or tribal ideas [Zwoliński, 2009]. But what is especially crucial is that every single day organizations such as ISIS, Al-Shabab, Boko – Haram or Al – Kaida prepare new massive attacks and the information about them is being given by media almost unceasingly.
Unfortunately, problem of terrorism in Africa is perceived in a very superficial way. It is defined stereotypically – usually as a fundamentalist's activity. Hardly ever it is defined as a result of poverty, chaos, large scale of criminal acts and all the other problems that were instanced in this article before, and these ones are the true cause and at the same time consequence of phenomenon of terrorism in Africa. Neglect for the fragile states problems means giving those territories to the terrorists that realize their particular interests in Africa.

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REGIONAL ARCHITECTURE IN THE PACIFIC

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Abstract

Regional integration processes comprise an important element of the current international global and regional policy. Participation in these processes becomes a part of political and economic attitudes, and/or it expresses these attitudes and positions and significantly affects the political, economic and security situation of the participating states. The paper provided comprises a first part of the sequent papers devoted to this new tendencies and developments in the region. The main goal of the paper is to analyse the recent changes after 2015 occurred within the regional architecture represented by one of the most prominent regional intergovernmental organisation, the Pacific Islands Forum with a research question whether these "new- era" regional actors and tendencies reflect the needs and challenges of the PICs better than the PIF before. The methodology of the paper is based on study of official statements and policies of the most prominent regional organisations after having defined the transregionalism here as a rising point for the analysis.

Key words: *regionalism, organisation, Pacific, Fiji, development*

INTRODUCTION

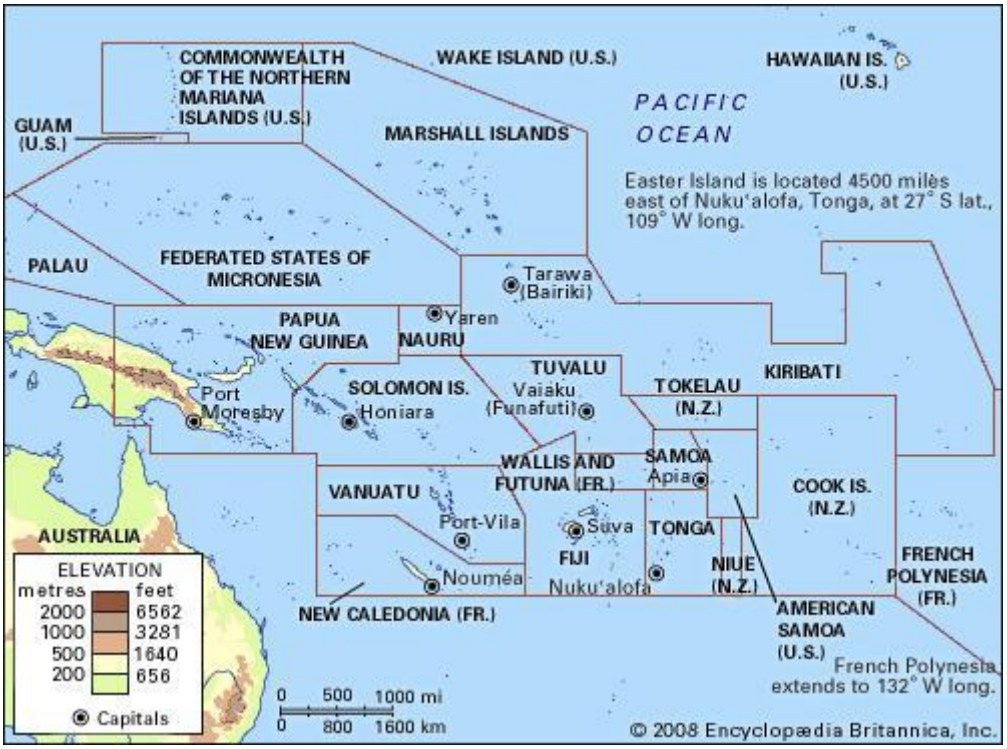
The intensive development of regionalism and regional integration processes have been observed since the late 1980s and early 1990s, particularly in connection with the fall of the Iron Curtain and the end of the Cold War, which brought about significant changes and challenges in international relations. Since the late 1980s, world has witnessed the revival of regionalism and regional integration processes. In many regions of the world, old regional organizations are revitalized and new regional groupings (as well as Pacific) are at a rapid pace.

Historically given cultural and economic ties in the Pacific are now taking on new dimensions due to the increasing migration of PICs population especially to the New

Zealand.[1] It is the granting of citizenship to the inhabitants of these islands as well as the granting of the right of residence to increased migration to New Zealand (mainly from the islands of Cook Islands, Niue and Tokelau) that has significantly contributed to the increased intra-regional migration targeted mainly to New Zealand. In addition, residents of the islands of Samoa, Fiji or Tonga, who are not New Zealand's citizens, and who are therefore more responsive to the migration, have been significantly involved in periodic cycles, depending on the actual composition of the government (or the ruling party), i.e. implementation of individual government migration policies.

The Pacific region, because of the interesting dynamics of its development in the recent decades (since the 70s of last century, i.e. the changes in the New Zealand´s national policy on minorities) became the centre of investigation by professionals from different fields who share examining the development of New Zealand's position (i.e. Miller 1995, Perry - Webster 1999, Butcher 2012) as a key player in the region as the country also declared herself in official documents (Statement of Intent 2008–2009, 12)[2] and even in the nation- branding campaign (Bell 2005, 15, 19; Butcher 2012, 249–273) having a direct impact on the whole region as migration control should be seen as one of the stabilising policies in the region interjoined to other non-military threats. (see e.g. Ďurfina, 2011)

Map 1: Map of the Pacific Islands



Source: https://www.britannica.com/place/Pacific-Islands

[1] see data based on 2006 Census in New Zealand available online at: http://m.stats.govt.nz/browse_for_stats/population/Migration/internal-migration/pacific-mobility; https://www.teara.govt.nz/en/pacific-islands-and-new-zealand/page-2

[2] see more: http://www.mfat.govt.nz/Countries/Pacific/Cook-Islands.php; Pacific Focus Global Reach | 2013 Year in Review: New Zealand Action for International Development. Available online at: http://www.aid.govt.nz/media-and-publications/publications#yir; Annual Reports. NZ Aid. available at: http://www.aid.govt.nz/media-and-publications/publications/year-review-2012

Concerning the methodology of the paper, the 'Pacific' refers here to the island countries across the Pacific Ocean, and the Pacific Island Countries (hereinafter referred to as PICs; see Map 1 below) are 14 states as Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu and the remaining dependent territories of France (New Caledonia, Wallis and Futuna, and French Polynesia), Britain (Pitcairn Island), New Zealand (Tokelau) and US (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands). Pacific states are generally grouped into three cultural sub-divisions –Polynesia, Melanesia and Micronesia, and as by Henderson (2004: 17). "Although these labels date from the colonial era, the terms have been readily adopted by Pacific island governments."

Regionalism is currently considered to be a trend of political and partly economic development that seeks to organize the world on the basis of regional association. (Hettne, 2008: 403) In order to answer the research question, it is necessary to note that on the global level, it is a matter of politics in which both state and potential non-state actors in the region try to co-operate and coordinate their activities in pursuit of their objectives in the specifically defined areas (as proved by the recent developments in the Pacific). In the current global politics, we can identify a specific subject of research represented by regional organizations as one of the types of international organizations (as by Hasenclever et. al, 1997: 10-11) observing and analysis the most common characteristics and principles they are built on (compare e.g. new open regionalism in Asia-Pacific and cultural intraregionalism in the Pacific or intra-regionalising processes in Europe from their effectiveness point of view, i.e. as the goals are truly reflected in the politics and thus, how these actors really contribute to the development of that particular region).

One of the important principles of defining an international organization is the **geographical area** defined by the respective region. On the theoretical level, one can come across a number of approaches to defining "regionalism" of the grouping or association of states. One of them is by Russet defining the phenomenon of regionalism of an international organization by the following characteristics: organisation proving socio-cultural homogeneity, similarity of attitudes and behaviour, political interdependence, economic interdependence, and naturally by a geographic proximity of the members. (Archer 2001: 11) The above provide with a range of assessments pointing to the peace and depth of the regionality of individual international associations, state communities, etc.

In my opinion, term '**Pacific trans-regionalism**' may be understood as cooperation of various stakeholders in Pacific region in global forums and multilateral regional forums in the meaning of taking a join action by all the PICs in solving the challenges of the region as environmental issues, trade and business problems and all security aspects issues performed by so- called Pacific diplomacy as characterized by Tarte & Fry in their book devoted to the New Pacific Diplomacy as "*a dramatic new developments in Pacific diplomacy at sub-regional, regional and global levels, and in the key sectors of global negotiation for Pacific states – fisheries, climate change, decolonisation, and trade*." (2015: 4) Diplomacy as a tool of international relations of any stakeholders does reflect, in my opinion, the whole process of transformation and evolution of the Pacific region and its representatives

themselves, gradually leaving the colonial representation in favour of being represented by the most significant actors, as middle-power Australia and New Zealand having the Pacific focus in its foreign-policy objectives and intents as set by a small state (mainly position and "Pacific" politics held by Australia may be given as one of the reasons for the recent Pacific developments; see more on coup in Fiji in 2006 and regional impacts e.g. McCarthy, 2007 or Markovic, 2009).
These regional powers backed-up establishment of the two prominent regional organisations, as the Pacific Islands Forum and the Secretariat of the Pacific Community (SPC; and a number of smaller organisations)[3], having a position of founding members here. Turbulent development in the region evoked by specific characteristics of the region itself, has brought a new era also in regional cooperation and communication among the PICs leaders as noted by Tarte & Fry (2015:3) that "*Since 2009 there has been a fundamental shift in the way that the Pacific Island states engage with regional and world politics. The region has experienced ……. a 'paradigm shift' in ideas about how Pacific diplomacy should be organised, and on what principles it should operate. …. This change in thinking has been expressed in the establishment of new channels and arenas for Pacific diplomacy at the regional and global levels and new ways of connecting the two levels through active use of intermediate diplomatic associations*." It would be suitable to include into term "Pacific regionalism" also understanding of region-wide accepted standards, principles, norms as well as the practices gained from the colonial past and developed in the post- colonial era to enhance and develop regional cooperation and communication of these contested territories.

1. BEGINNINGS OF THE PACIFIC REGIONALISM – STORY OF CONTESTED TERRITORIES

I do agree with Spoonley (2000, 12) that "….*transnationalism signals that significant networks exist and are maintained across borders, and, by virtue of their intensity and importance, these actually challenge the very nature of nation-states"*, as in my view it is impossible for transregionalism to be developed without any gradual establishment of communication channels, whether technical means or (in my opinion more fundamental and important) building and "nourishing" of living and effective links among the various stakeholders in the region. This is significant also in the activities of the Pacific Islands Forum organization, the main idea of which could be the **Leaders Vision in the Auckland Declaration, April 2004**, saying:

> *"Leaders believe the Pacific region can, should and will be a region of peace, harmony, security and economic prosperity, so that all of its people can lead free and worthwhile lives. We treasure the **diversity of the Pacific** and seek a future in which its cultures, traditions and religious beliefs are valued, honoured and developed. We seek a Pacific region that is respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values and for its defence and promotion of human rights.*

[3] Cooperation has been facilitated by the Council of Regional Organisations (CROP) which brings together the nine principal regional organisations.

We seek partnerships with our neighbours and beyond to develop our knowledge, to improve our communications and to ensure a sustainable economic existence for all."
(http://www.forumsec.org/pages.cfm....)

These words confirm relevance and significance of cultural aspect of the whole intra-regional processes. The ideas expressed above are politically also reflected in development assistance provided to the PICs by New Zealand and Australia, too (see: http://www.forumsec.org/pages.cfm/strategic-partnerships-coordination/framework-for-pacific-regionalism/pacific-plan-3/?printerfriendly=true) as some of the PICs are classified as developing countries (see below) facing many economic and also non-economic problems and challenges which eventually may dis-balance the whole regional surrounding if not solved by the most prominent state actors there, as Australia and New Zealand. This is also the reason of being engaged in negotiations with global institutions and thus making advocacy for the PICs globally by the above state-actors.

As above mentioned, significant support for mutual cooperation as well as for cooperation with various international stakeholders in the region is underlined by the fact that 11 out of 15 Pacific countries are small island developing countries (hereinafter referred to as LDCs; small according to their population below or around 250,000 inhabitants) (Mauritius Declaration and Mauritius Strategy for the Further Implementation..... 2005). For this reason, a network of regional organizations and institutions have been set up in the Pacific to play an important role in addressing development challenges.

The story of regionalism in the Pacific began, after launching the decolonisation process here, with the South Pacific Forum. It was established to enhance the cooperation of the PICs on a join bases as well as a representative and the "Pacific voice-promoter" worldwide. Establishment of this organisation was also joined with one significant moment from international law point of view, i.e. that some Pacific Island Countries (hereinafter referred to as PICs) were granted their full independency (for example after the Westminster Statute Acts) and thus enable to perform and develop their own foreign policy and actions but international capacity of many of the PICs stayed rather limited in various forms. The South Pacific Forum was then transformed then to the above Pacific Islands Forum (hereinafter referred to as PIF), a political grouping of 16 independent and self-governing states[4] and consequently the name was changed in 2000 to the Pacific Islands Forum **to better reflect the geographic location** of its members in the north and south Pacific (including Australia; the organisation holds a position of a UN observer).

As by Heyes, *"PIC opposition to French nuclear testing, symbolic of imperialism in the Pacific, acted as a rallying point for the new organisation. Mobilised by this issue, PIF successfully enacted a series of international treaties on resource protection and tuna access, prohibitions on fishing and the dumping of radioactive wastes in Pacific waters, as well as placing New Caledonia under the oversight of the UN Decolonisation Committee. Many consider PIFs initial success waned, with the*

[4] Its members include Australia, Cook Islands, FSM, Fiji, Kiribati, Nauru, NZ, Niue, Palau, Papua New Guinea, Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu, and number of the observers.

organisation's lack of progress on action against climate change –in many ways this century's equivalent to nuclear testing – illustrative of this." (Heyes, 2014)

The above makes a reason for New Zealand, along with Australia, to support regionalism in the Pacific by the **2005 Pacific Plan** (see below) thus providing significant support to these regional organizations in the Pacific.[185] As provided in document titled "The Framework for Pacific Regionalism" (2014:11-12), when the *"Leaders first endorsed the Pacific Plan in 2005, they decided that it should be a living document – one that would be updated and reviewed regularly. Initially, four "pillars" for the Pacific Plan's strategic objectives were identified: economic growth, sustainable development, governance, and security. In 2009, the focus of the sustainable development pillar was expanded to recognise and include two emerging issues: responding to climate change, and improving livelihoods and well-being."*

In this context, it should be stressed that the role of regional organizations is key as they usually associate individual PICs with Australia and New Zealand, opening-up them new opportunities to address their problems along with other developing countries. For this reason, these organizations are important, for example, in various multilateral negotiations, for example on the environment, sustainable development, organised crime or fishery. During the last decades, the Pacific governments contributed to establishment of a new of regional organisations and groupings (latest development see below) as The Pacific Islands Forum (PIF); The Forum Fisheries Agency (FFA); the Secretariat of the Pacific Community (SPC); the South Pacific Regional Environment Programme (SPREP); the South Pacific Applied Geoscience Commission (SOPAC); The University of the Pacific (USP); South Pacific Tourism Organization (SPTO); Pacific Island Development Programme (PIDP).

One of the most important development initiatives in this region is the **Pacific Partnerships for Development 2008** initiated by Kevin Rudd in order to increase Australia and New Zealand's share of development aid for the PNG and other PIC countries (Port Moresby Declaration 2008). In his "RUDD´S VISION FOR THE PACIFIC", Rudd called his new Pacific development policy the **'Port Moresby Declaration'** and this new policy framework comes under the Pacific Partnerships for Development.(http://www.aph.gov.au/About_....) In 20 points of the Declaration Australian government bound itself to encourage development of the region as a beginning of a new era of cooperation with the island nations of the Pacific. As given in the Declaration, e.g. in para 13: „Australia is also committed to linking the economies of the Pacific island nations to Australia and New Zealand and to the world, including through pursuing a region-wide free trade agreement and enhancing other private sector development opportunities. This will help to secure a sustainable and more prosperous future for the region. " continuing with section

[5] Such international or non-governmental organizations active in the Pacific are, for example, the Asian Development Bank, the Economic and Social Commission for Asia and the Pacific, UN Food and Agriculture Organization, United Nations Development Programme; UNESCO, United Nations Fund For Population Activities, Asia-Pacific Network for Global Change Research Foundation for the South Pacific, International Ocean Institute of the South Pacific, South Pacific Action Committee for Human Ecology and the Environment, World Wide Fund for Nature, as well as the World Bank or World Health Organisation or The United Nations Environment Programme, The Alliance of Small Island States, and various bilateral donor organisations. (see e.g. http://www.bilaterals.org/article.php3?id_article=27)

14: as ..., the Governments of Australia and New Zealand will work more closely together and with our partners to coordinate our development assistance to the Pacific. ...we can improve the impact of our development assistance and provide better results for the people of the Pacific islands", stressing then the partnership and significance of the most prominent regional organisation saying that in section 16 "Australia is committed to close and strong relationships with our Pacific neighbours and with regional organisations, particularly the **Pacific Islands Forum**..." stressing thus that a central element of the Prime Minister's *Port Moresby Declaration* is the intention to pursue **"Pacific Partnerships for Development**" with Pacific island countries. This Partnership was aimed at economic goals as improving economic infrastructure and enhancing local employment possibilities through infrastructure and broad-based economic growth as well as enhancing private sector development, but also at social and political goals focused on global and far-reaching development of PICs rooted in the UN Millennium Goals as achieving quality universal basic education; better access to basic health services; enhancing governance, including the role of civil society, and the role of non-government organizations in basic service delivery.

The above steps taken under this initiative was to help the countries to meet the United Nations Millennium Goals. This partnership was to help implementing the commitments made by Australia and New Zealand resulting from the Paris Declaration on Aid Effectiveness (Paris declaration on aid effectiveness. 2005; AAA 2008) adopted by the OECD and Accra Accra Agenda for Action (AAA), which is a supporting document for the Paris Declaration to Support the Development of Low-Income Countries.

In 2015 a **new Pacific plan** was announced (reviewed in 2013; see: http://www.pacificplanreview.org/) as a new impulse in cooperation in the Pacific itself – through conclusion of the Pacific Plan within **The Pacific Forum** to address common issues from a regional perspective focused mainly on **regional trade and economic issues** as good governance and security agenda (which are the more recent ones in understanding mainly as a non-military security) and on the goals set up within the previous Plan, as economic growth, sustainable development of the region, regional trade, environment, etc. (see more at: http://www.forumsec.org/) The Organisation launched the above Pacific Plan, as a complex of policies taken in various areas as economic growth and sustainable development of the region; regional trade and also issues of human and social security as the environment, social policy and research, and the most visible and media promoted actions taken in the aid provision.

Australia and New Zealand are not the only relevant state actors active in the region literally building the reginal architecture. In my opinion, also global actions taken by the most influential global actors (as the US and Russia) comprised in a large scale also the changed conditions here, in the Pacific reflected in recent developments analysed here; therefore a short explanatory introduction should be provided to keep in eyes Fiji´s actions and Leaders´decisions. As stated by Henderson in his paper on The Future of Pacific Regionalism: A New Zealand Perspective on an Unfinished Agenda (2004: 12), the recent US politics focused mainly on Middle East Actions, rebuilt the regional architecture in the South Asia - Pacific opening a room of some anew actors as **China** which is extending its

influence in the Pacific using wide-effective and long-term profitable diplomatic tools. As by Henderson, increased number of China´s diplomats in the South Pacific predominantly supports the country´s activities in the region developing a new form of diplomacy, a "visit" diplomacy enhancing a "summit regionalism" focused on inviting the PICs leaders to China building and developing mutual net of contacts. These new tendencies in the region are identifiable in my opinion in the last decade also due to increased interest of the ASEAN organisation for an "organisational" cooperation in a region-wide perspective. The Obama administration has tried to turn its attention to the Pacific again, highlighting the important role played by these peoples in the complex and dynamic conditions of the regional strategic environment. Similarly, Secretary of State for Foreign Affairs, H. Clinton, emphasized in her speech the historical heritage of the Pacific and its strategic role played in particular in the 21st century. As highlighted by this speech, the region is of fundamental importance for Asian-Pacific regional stability and US common interests in various areas such as climate change mitigation, energy security, sustainable fishing and biodiversity protection. (Clinton, 2010; Campbell, 2010)
In her earlier speech in Honolulu, Secretary Clinton discussed the administration's efforts to resume relations in the Asia-Pacific region. She identified five principles of America's ongoing engagement in the area, with the help of bilateral relations, to develop further partnerships and dialogues with regional players to form regional organizations in order to develop economic development and democracy, thereby ensuring that regional institutions are effective and goal-oriented. According to Clinton, increased US engagement has taken place in a complex and dynamic regional context, and so the US approach to restoring their engagement in this area must be diverse, highlighting the key role of a number of Pacific Island institutions, stressing mainly US relations to Fiji and Papua New Guinea, key actors in the recent development leading in the below paradigm shift.

2. NEW PACIFIC REGIONALISM AND A PARADIGM SHIFT

As provided in document titled "The Framework for Pacific Regionalism" (2014:11-12) and as also discussed even in 2004 by Henderson (2004: 13, 23), "*over the years there have been periodic calls for the establishment of a Single Regional organisation (SRO) with the Pacific Island Forum taking the lead role….".*
The Pacific Plan Review process was launched in 2012 as the Pacific Leaders called for a comprehensive review of the Pacific Plan having recognised that over the years elapsed since the Plan was adopted, the region had undergone considerable development, and a "*change in the approach to regionalism was needed to respond to these contextual shifts*". (The Framework for Pacific Regionalism; 2014:11) The working team was led by Rt. Hon. Sir Mekere Morauta, a former Prime Minister of Papua New Guinea, and the new draft was called **Mekere plan**. The team performed consultations in all the Forum member and associate member countries not only on governmental level, but also on non-governmental ones as the talks were held not only with the governments but also with the private sector and NGO and research partners active in development. The conclusions were necessary for supporting **deeper regionalism and better regional-level outcomes**.

When presenting The final Review report was then delivered in December 2013 at the Forum Officials Committee meeting, Mekere called for a complex review of the Plan confirming formally the seen developments in the PIF when stating "*we see a region that is at a crossroads and one that needs regionalism more than ever before" and concluding that the future of the Pacific Plan should be as "a framework for advancing the political principle of regionalism through a robust, inclusive processes of political dialogue, the expression of political values about regionalism and sovereignty, and the decisive implementation of key, game-changing, drivers of regional integration."* (The Framework for Pacific Regionalism; 2014:12) His final report led to Forum Leaders' Decisions to recast the Pacific Plan as the Framework for Pacific Regionalism in 2014 followed by the consultations undertaken by the Secretariat around the region to prepare **the Framework for Pacific Regionalism** with the three key objectives as "to broaden the conversation on regionalism beyond that of CROP agencies (i.e. Council of Regional Organisations in the Pacific), which were (often correctly) perceived to dominate priorities under the Pacific Plan; to ensure regional initiatives had a sound rationale, …; to 'bring back' the political dimension of regionalism, which many argued had been lost under the technocratic Pacific Plan. ." (The Framework for Pacific Regionalism; 2014:12; Dornan- Cain 2015:1) Currently, PIF is guided by the Pacific Framework for Regionalism.

For Dame Meg Taylor, as Secretary General, the Framework is '*about changing the paradigm of the way development is done in the region, where **the leaders of the Pacific are the ones that make the decision as to what are the regional priorities**.*', as said in her interview with the DevPolicy Blog called "Regionalism, sub-regionalism and women's empowerment: an interview with Dame Meg Taylor". (2015) It is clear that Taylor is calling for a renewed focus on regionalism in the Pacific.

Answering the research question, it is required to give that this was not the only development within the Pacific regionalism mirroring the changing surrounding of the region. Reviews of regional organisations and plans/processes in the last 10 years included 2013 Independent Review of the Pacific Plan for Regional Integration and Cooperation (the 'Pacific Plan); the 2012 reviews of the Secretariat of the Pacific Community (SPC) and the Pacific Islands Forum Secretariat; the 2007 Regional Integration Framework review - led to the merger of a number of major regional agencies; the 2005 review of the regional architecture commissioned by Pacific Islands Forum Secretariat (PIFS).

Recent developments are joined with the so- called 'new' Pacific diplomacy associated with Fiji's activist foreign policy since its suspension from the Pacific Islands Forum (PIF) in 2009. (Tarte & Fry, 2015: 6) when the Fiji government introduced i.e. the idea of including civil society, the private sector, and dependent territories, alongside independent governments, as equal partners to a new kind of '**network diplomacy'**. In my opinion, it was possible to see this process expressed in a series of major initiatives as in giving leadership to a renaissance of the Melanesian Spearhead Group (MSG); in creating the Pacific Islands Development Forum (PIDF); and by strengthening the existing Pacific Small Island Developing States at the UN as a Pacific Island-only grouping where it replaced the PIF as the main representative of the Pacific voice at the UN. And the shift recognised here is as noted by Tarte & Fry, it is important to note the "wider *support for these new*

institutions and ideas across the region as evidenced in the support for a new array of Pacific-controlled institutions" called the "**new Pacific diplomacy**", as a term denoting a new diplomatic architecture outside the PIF system since 2009 (case of Fiji).[6] (Tarte & Fry, 2015: 7)

In order to highlight the joining moment of the processes analysed hereby, a definite unifying element between the actors of the Pacific transregionalism is comprised not only by a regional proximity, similarity of economic, social and security problems, but above all by **cultural proximity** in terms of recognition of **one common homeland culture**, and Polynesian culture. (Spoonley 2000, 12; Kennedy 2000, 2)

Another important and significant developments from institutional point of view was in my opinion the rise of the three other groups, as The Pacific Small Island Developing States, Melanesian Spearhead Group, The Pacific Islands Development Forum, Parties to the Nauru Agreement reflecting the latest development in the region considering also the power rise of the external actors (as for example influence of Chine with the MSG).

The Pacific Small Island Developing States (hereinafter referred to as PSIDS) has also become the key diplomatic vehicle for Pacific participation in global southern coalitions such as the Alliance of Small Island States (AOSIS) and the Group of 77 and UN. **Melanesian Spearhead Group** (hereinafter referred to as MSG) could be seen as a major forum for sub-regional integration, and for diplomacy on decolonization with a great role of Fiji and PNG played. All the Melanesian countries embraced the new and deeper integration proposed as part of the new MSG since 2009. Most prominent has been the achievement of significant free trade in goods and services, including the movement of skilled labour as an very important moment of promoting and developing education and training institutions region-wide.

A Fiji-led initiative **The Pacific Islands Development Forum** (hereinafter referred to as PIDF) established in 2013 developed out of the 'Engaging with the Pacific' meetings, which Fiji organised from 2010 as a means of building ties with its Pacific neighbours following suspension from the PIF. There could be 2 novel elements of the PIDF identified here:

1. the new institution emphasised inclusivity, a connection between leaders and society, which had been lacking in the PIF. It brought together civil society groups, the private sector, international agencies and governments in a process that stressed partnerships and network diplomacy.
2. its focus on 'green growth', which seemed to offer hope of overcoming the stalling of regional action in key areas such as climate change and sustainable development.

Finally, in 2009 **Parties to the Nauru Agreement** (hereinafter referred to as PNA) represented the island states with the region's largest tuna stocks and served as a vehicle for gaining greater control over their shared resource and so-called tuna

[6] As given by Heyes, the Fiji Post-coup Fiji has responded to its diplomatic isolation reflected in 2009 suspensions form PIF, by seeking an alternative route to Pacific regionalism. Fiji has done this through strengthening the non-Forum regional organisations (such as MSG and PSIDS), and the controversial founding of the Pacific Islands Development Forum (PIDF). However, despite the lofty rhetoric most PICs remain aligned with the more traditional PIF. (Heyes. 2014.)

diplomacy has become a successful tools in implementing these new ideas in fisheries management with a markant results - in dramatic increases in revenue to the member countries. This development is independent of Fiji's suspension from the PIF, since Fiji is not a member of PNA, and therefore demonstrates a broader assertion of Pacific control over regionalism.

As confirmed above, Börzel´s (2016) explanation may be used for conclusion when saying that the Pacific community processes may be classified as transregional as *"there are more spontaneous and endogenous processes which involve a variety of state, market and civil society actors organized in formal and informal networks are categorized as regionalization or "cross-border micro-level regionalism".* (Börzel 2016, 4)

CONCLUSION

From the research question point of view, hereby, globalization in this process could be seen as a process providing tools for development and stabilization due to increasing availability of communications or transportation. These aspects should be, in my opinion, seen as the key to keeping the dynamic development of the analysed region and to the concept of trans -regionalism here at all. This makes it clear that the development of the region under maintaining its specificities is generally accepted as a common target crossing the boundaries of a single national state, and a new paradigm shift here is a logical consequence of understanding the spirit of community enhancing and enabling thus the mutual contributions to its development. The current development of the region in the context of building a transnational community is not just an expression of the contemporary globalization, but rather a continuation and development of a Polynesian heritage as the common Polynesian origin of the PICs makes it a region- wide accepted and respected instrument for developing and managing the region.

The multicultural characteristics of the region (however based on common Polynesian heritage) should be in my opinion seen as the most initiative impulse for building the new Pacific regionalism and as one of the reasons due to which is this form of trans-national cooperation widely considered as one of the most effective. Therefore, I see the Pacific transnationalism as gradually built and intensified networking across the national borders initiated by economical and social–cultural needs brought by globalisation challenges enhanced with the pro-regional feelings region-wide, i.e. community building based on loyalty built regionally (despite the homeland and the place of current residence also) (Spoonley 2000, 2).

As provided above, the Pacific Island states have created new truly Pacific-run institutions outside the PIF system in order to better negotiate trade and economic relationships with Australia and New Zealand, and Europe and this process could be called a paradigm shift as new set of ideas about how the Pacific should engage in global and regional diplomacy. (Tarte & Fry, 2015: 1) This term also reflects, in my opinion, also a shift from definitely and traditionally intergovernmental organisation (PIF) to mix-membership actors, as defined above.

The coherence and novelty of these ideas and their departure from prevailing ideas suggests a 'paradigm shift' reflected in various calls for the development of an effective Pacific voice; the claim that the Pacific needs to engage assertively in global diplomacy in relation to key challenges impacting the region while identifying the

key areas such as climate change, tuna diplomacy and oceans management. It is claimed that there should be effective representation of a genuine 'Pacific voice' in global forums and that Pacific Island states need to work together in joint diplomacy at the global level (tuna, climate diplomacies). The last but not least of the requirements for the future development is the growing recognition and acceptance of the role of sub-regional groupings and initiatives, in line with the view that a 'one-region' approach need not be the best approach.

The consistency and novelty of these ideas having left the previous ideas and practices (as by Australia through PIF) reflected in the various applications of an "effective Pacific voice". This process may be seen as a logical consequence of the developments reflecting the Leaders´s claims for stronger and more visible Pacific strong engagement in global diplomacy (i.e. no being still under New Zealand´s or Australian representation) hopefully being a more effective way for the PICs to react on the challenges affecting the region in the "life" areas as climate change, tuna diplomacy and ocean management bringing a more effective representation of the Pacific in global for a. The main preconditions for this is that Pacific Island countries must use the joining "advantage" - a cultural links to work together on global diplomacy (in tuna or climate diplomacy).

The last part of the paper titled New Pacific Regionalism and a Paradigm Shift was to answer the research question as identifying and analysing the key moments of this shift in regional architecture confirming the hypothesis that the Leaders underwent the changes in order to enhance the regional cooperation and communication focused on mutually driven development in a "Pacific way".

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ESSAY

THE FUNDAMENTAL NATURE OF HUMANITARIAN VALUES IN THE EDUCATIONAL PROCESS

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Abstract

Trends in the development of modem education are considered in the context of the globalization process as a return to humanitarian priorities and values. It is shown that education is people-centered, leamer-oriented. This applies to changes in the content of education. It is allocated the relationship of the educational sphere of society and values. They are considered as classic and basic.

Key words: *educational process, globalization, humanitarian values*

Radical changes in Ukrainian and world realities of both social and individual life of people stipulate the change in philosophy of personal adaptation to life, philosophy of education which is the basis of teaching and educational technologies, in wider sense - the process of individual socialization is being developed. The issue of how and what to teach, which priorities to choose in organizational, administrative, and, mainly, in educational context, which personal qualities are to be shaped firstly and generally in order for an individual to find one's place in life, to be successful, competitive, and, finally, happy, appears to be a global and central issue of educational reforms in the XXI century. Without its deep and thorough understanding on the level of academic philosophical and pedagogical sciences, without public discussions, any further reformative steps might have only partial and temporary success.

State educational policy in its basics is certain to be philosophical by its nature. Such factors as globalization and information revolution, ownership, the evolution of which is taking place in the context of global establishment of market relations,

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and the factor of cultural wealth, the need in which seems to be the only safeguard of survival and maintenance of civilization's integrity in global as well as in local dimensions, are reasonable to be determined first and foremost among the rest. Facing the challenges of these factors education has to change (improve, modernize) its own basic philosophic principles. The first two processes form mostly pragmatic individual attitude to life, the last one - spiritual, moral, sensitive. Altogether they are objective and at the same time contradictory towards one another, shaping opposing viewpoints, and consequently – philosophies of the world perception. The issue at the agenda is which of them to give advantage to and on the basis of which philosophy to build the system of education in the XXI century. Modern education and upbringing appear to solve controversies between these notions. Differences can be settled only by means of «involving into their common basis», formed by practice (people's activity) and culture created by it.

As a result of globalization in the late 20th - early 19th century the world has changed, thus, it is evident, adaptation of an individual to life is to become different as well. Globalization marks a new era of cooperation among nations, economic and political systems, and among people. It alters the notion of «national boarders», significantly broadens cultural and information contacts among peoples and states, influences management, manufacture, trade, labour market, political establishments, other social institutions and processes. The role of education and upbringing is changing accordingly. Specific demands of globalization to the system of education as the basic mechanism and means of determined personal development, adaptation to life and work require immediate reaction on the level of education of Ukraine.

Education fundamentalization is both a response to the challenges of globalization and a condition of social, national and state growth. The greatest demand of globalization to the people is professionalism [Anbrushenko, Guberskiy 2012]. It is built up by universities with academic schools in their structure, highly qualified academic teaching staff and authority in scientific tradition. Teaching and learning process should be held on the basis of the newest achievements of contemporary science, culture and social practice; should be advanced and shape independent creative thinking, personal will skills. Responding to globalization challenges we must shape a personality that would combine the qualities of a patriot and a highly intelligent person, and master the whole range of humanitarian culture.

Spiritual values are the essentials of sociality, humaneness and civilization. Mankind cannot exist without them. Living through any crisis, falls, collisions and catastrophes people always turn back to humane priorities as to the only spiritual stem, the core of their being. Education should react to this process by the first principal change of its content, be people-centred, personality-oriented. Making education more humane has a lot of dimensions. It embraces the sphere of administration (its democratization, transformation to state and public form of government); relations between lecturers and students (they should be developed on the basis of partnership); set-up of teaching and educational process (the right to choose a study course, form of study, teachers' and students' mobility), etc. The focal point of 'humanization' lies in the content of education – from physics to mathematics and other natural and technical sciences to philosophy, sociology, jurisprudence, to the whole range of the humanities.

The significance and value of the university education is primarily in providing with fundamental academic training, which is of utmost importance for shaping general outlook, awareness and ability of a specialist in any field, be it natural and technical sciences or the humanities, to think creatively. The spirit of democracy, scientific research, discussion, knowledge priority and polymathy having been a distinguished feature of classic universities is substantial as well. This is just the right atmosphere to shape a creative individual.

Modern education should be full of vitally important, contemporary concepts and issues the meaning and significance of which a pupil or a student will realize by means of discussions, comparison of concepts, thoughts, views and approaches practised in real social and cultural environment. It is important to raise immunity to realistic resistance from manipulatory technologies, imposing doctrines of doubtful scientific, social and cultural quality by propagandistic means. This can be achieved by developing independent personal views, accurate knowledge of a discipline, self-confidence in opinions and beliefs proved in discussions. «Democratic tolerance … and scientific objectivity, - as Karl Manheim wrote, - do not hinder us from advocating our point of view and entering into discussion about final goal and life values» [Mangyim 2008: 273]. To know and be convinced of one's right is the final result of education in contemporary society which is globalized. It is well-known that the reason for any evil is insufficient awareness (understanding, realizing) of the essence and specificity of social and cultural context in which we live and act. In the past we used to have a system detached from life; ideals were imposed but not raised. Nowadays there is a turn to reality. Globalization safeguard is nurture of morality of such concentration and weight that the life of an individual would turn into live experience [Anbrushenko, Guberskiy 2012]. Education must shape a holistic image of the world, not only of its separate parts.

On the other hand, education changes its emphasis. The main indicator of effectiveness is not just the amount of knowledge gained at a higher educational establishment, but the ability to acquire it and study independently, skills to use sources and media and constantly improve the level of education, the need in lifelong learning, involvement of all the knowledge and skills into solving extraordinary tasks, problems and disputes. Education should be able to shape a competitive personality not only in Ukrainian but also in the world socio-cultural and industrial environment.

A range of problems of modern education is connected with elicitation of information flows. Attention should be paid to fast spread of computers, telecommunication means, electronic mail, and other means of communication. Education is called to protect a human being from the crucial flow of information, at the same time teaching to live within, use the information in conditions of limited time and enlarged (in planetary scale) opportunities. This stipulates transition to advanced teaching and learning information technologies built up on narrowing of information and directed to shaping information and individual analytical abilities.

Cultural wealth and economic aspects of globalization constitute a certain contradiction. Therefore, the core necessity at the present stage of globalization is to provide guarantees in order that all human and social values govern the process of economic globalization. Further social progress of the world community does not seem to be possible. Thus, an essential prerequisite of economic and political

globalization effectiveness is a so-called globalization of values. However, one question arises in this context: which values shall be the focus of globalization? In the modern academic literature the process of emergence and spread of values of global culture gets the name of cultural globalization defining appearance of new forms of large cultural areas and new value guidelines. Correspondingly it is possible to speak about consolidation, confrontation, competition, cooperation of values as the main cultural archetypes within the framework of united cultural space. That is what can be observed at present.

Understanding education as a unity of knowledge and values does not assume ignoring contradictions arising in Ukrainian educational sphere in connection with this, even without any particular emphasis on globalization processes. This is a contradiction between out – of – date knowledge in different areas of social life and contemporary democratic values. If national cultural and educational systems do not agree with global ones in addition to abovementioned contradictions, the whole unity of education and values appears to be problematic.

Overall, it is a classical and a core issue of the basics of the education to underline an indissoluble connection between educational sphere and its value system. Besides, it concerns not only the content of the educational process, but characteristics and features of the participants of this process. As the unity of common eternal values within the educational system itself has always been presented in the high level of teachers' ethic, in their attitude towards academic disciplines as well as towards their students. Speaking about the content of the educational process, not about the subjects of education, it should be noted that there is a gap inside this interrelation which is primarily stipulated by the disposition of axiological and cognitive components of the educational process. This in its turn results not only in devaluation of moral norms, but leads to alienation from knowledge constituent, which is undermanned by the present labour market. On a nationwide level it is a consequence of competence and social potential pragmatism.

Education in any community or society is developed under the influence of a wide range of factors: historical, political, economic and social, features of ethnic and cultural, national and cultural traditions, social beliefs, status, role, competence and pedagogical staff professional functions, as well as fundamentalism, globalization, computerization, integration, humanization. Traditional as well as new values of the society of any country gaining European and world integration are landmarks, spiritual vectors of this evolution.

As «National doctrine of the development of education in the XXI century» states, education in our country is based on cultural and historical values of the Ukrainian people, its traditions and spirituality; it asserts national idea, promotes national self-identity, development of the people's culture, mastering of world cultural values and achievements [*Nationalna doktryna rozvitki osviti v Ukrainini v XXI stolitti:* 3]. In conditions of globalization, transition to post-industrial information society, establishment of priorities of steady development and other peculiarities of a civilized process, fundamental traditional values of education still remain true, but insufficient for personality growth and adaptation to effective integration into society. In other words, educational sphere reflects social need in optimal connection between national traditional values and innovative values of global

culture. Nowadays it is the interrelation between previous and up-to-date values that should regulate modern and future modifications in the educational sphere.

At the very beginning it was mentioned that state educational policy should be of philosophical nature. And this is true due to the fact that philosophy, since its birth, has always appealed to people's thinking as it is, to human ability to shape the vision and understanding of the world and one's place in it. Philosophy as thinking itself is not merely a certain result fixed in strict and unambiguous notions, but it is a process to be learned. The mentioned ability to think can be acquired only through a dialogue with thinkers of the past and present, between a student and a teacher during the process of getting Philosophy education.

Moreover, it should be stated that university education originally faces these very tasks. It means that not only should university provide with the whole scope of certain knowledge and shape relevant skills in different spheres of the humanities, natural and technical sciences, physics and mathematics, but it should create conditions for self – thinking of students, mastering skills to learn any material, deal with it by means of analysis and generalization, do scientific research, clearly set forth research tasks, have sufficient methodological basis to solve problems arising in this or that sphere of experience or practice. These are «universal» skills which are required by our information society, as stated above, when loads of information that present-day and future students deal with increase in geometric progression, when not just the search for certain data and research material is the main problem as it used to be several years ago, but the ability itself, the skill to reveal from a great number of various sources that very information to achieve the goal successfully and effectively and solve given tasks, make grounded forecasts and take appropriate decisions in different situations.

An inalienable part of a university education is a Philosophy education, which has always dealt with the outlook of a student, although on different levels and in various manner (for instance, depending on whether it goes about vocational training of philosophers or teaching philosophy for «non-specialists»), with the ability to think and take grounded theoretical decisions, work up information, apply scientific methods in all spheres of modern life.

Taras Shevchenko National University of Kyiv since its foundation 182 years ago has been built up and developed on a firm ground of European university traditions in close ties with other European universities. Most university professors have contacted in scientific and academic area with their colleagues from universities in Europe. German, French, Italian lecturers have taught at the university. On the other hand, a lot of university lecturers have been sent on long-term business trips to the countries of Europe. The issue of the role of universities in social development is, without any exaggeration, of lifelong and planetary importance as well as the matter of progressive advance of a human civilization. Not only have classical universities by their nature been leaders in intellectual and educational life, they have been forums for society as a whole, barometers of social mood and aspiration.

Social functions of universities, their organizational structure, substance and forms of activity were greatly changed in the early XXI century. Modern realities are serious challenges for universities. On the one hand, universities should give adequate responses to society's requests on scientific issues. On the other hand,

universities themselves require improvement, modification and modernization in accordance with new realities. Under modern conditions elevating education level, increasing effectiveness and diversification of scientific research, raising contribution to national and world culture are the main and focal tasks of universities.

At the same time education is a part of society, its section, and everything that is going on within a society is reflected and presented in education. It is necessary to clearly realize what society expects from education. Only then it is possible to make any movements in educational environment. Speaking about new goals and values of education we can and must mention the process of shaping an educated person. Today's information flow is much more intense than it was in the past; principles and ideals of encyclopaedism are losing their relevance, but civilization's anthropous determination remains unalterable even though it is getting new forms. It goes without saying that the ideal of an individual as a goal and not as a means of civilization is as relevant as it was in the previous times. Thus, the need in deep and thorough study of an individual, taking into account the mentioned changes in all spheres of social life, seems quite logical. This need is especially topical at present as global problems are rising. It is generally accepted that it is impossible for a single country or a nation to solve them by own means. Only common consolidated efforts of the world community can provide a proper result.

It should be noted at the end that a true academic education with a special place devoted to Philosophy education, can give any person the understanding of one's own meaningness in the system of common values and ideals. Only by involving thought and spiritual culture into high ideals provides a person with an opportunity to answer eternal questions about the sense of life and one's place in life. Analysing present state of education philosophy declares fundamentalism of educational traditions and points out that any experiments should be conducted very carefully. This is philosophy that lays down that the main thing is the goal of education based on outlook ideals. This is the very system of education which is of utmost necessity today. Classical universities with their fundamental academic and intellectual, moral and spiritual potential are able to build it up. At the present times of socio-political transformations in Ukraine it is classical universities that are called to favour the society in defining main strategies of development, be the focal points of civicism and Ukrainism assertion, creation of a new philosophy of education directed to the future.

Finally, the above mentioned ideas lead to making a conceptual conclusion. The importance of a new law on higher education providing significant autonomy in all spheres of activity of a higher educational establishment should be noted. Academic and financial independence is merely the most important one for any university, as due to it higher educational establishments can define the content of education strategically and implement advanced technologies into the study process more fruitfully. These are essential conditions for the innovative development of the university. It is education as a specific social institution that is called to perform the role of the innovative tool to «move» the society forward, initiating transitions to new stages of development. Besides, the main instrument which assists educational sphere to fulfil its function is the system of values, but not just the information delivered during the process of education. Therefore, education serves as a source

of innovations and social changes by means of intergeneration conveyance of values, which is being constantly renewed. This innovation should be supplemented by educational mechanisms of maintaining traditional values. Today, education should provide not only with the development of global culture, but with saving authentic values of every nation and ethnos as well. Universal human values may obviously be the criteria of harmonization of these controversial trends.

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