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THE CONCEPT OF "DEVELOPMENT" AS A NEW FORM OF COLONIALISM: THE THIRD WORLD VIEWPOINT

It is not a secret that throughout its history international law was characterized by the justification of the suppression of the peoples of the Third World. Although the process of decolonization somewhere changed the situation, international law is still criticized for being an instrument for legitimization of intervention in the Third World and its exploitation.

The present article examines the imperial and emancipator trends of international law at the historical perspective and the transforming relations between the West and the Third World, in particular the development discourse as a guiding idea for political, economic and social change in Third World countries in the post-World War II period. It is based on the view, widely supported by Third World scholars, that international law is still having imperial features which are preserved in certain versions of contemporary initiatives, hidden by the slogans of "development", "democratization", "human rights" and "good governance". This initiatives posit that a Third World is still backward and in need of international intervention for its salvation.

As the Northern modern international law scholarship often ignores the central role of colonialism in the making of international law [1, p. 84], the

critical legal discourse on history, structure and process of international law and its institutions from the standpoint of the peoples of the Third World, in particular its poor and marginal sections, is taking place under the name "Third World approaches to international law" (TWAAIL). Indian scholars, such as R. P. Anand, Nagendra Singh, R.C. Hingorani, Guha Roy, S.P. Sinha, Yash Ghai, Bhupinder Chimni, Upendra Baxi, Balakrishna Rajagopal, are the main representatives of TWAAIL. They not only critique the genealogy of modern international law, its Eurocentric nature, but also "oppose the unjust global order" [1, p. 85]. As they declare, the Third World approach gives meaning to international law "in the context of the lived experiences of the ordinary peoples of the Third World" [2, p. 500].

"Colonialism" has been the first gift of science to the non-European world ... The marriage of "mercantilism" and "civilisationalism" on the Asian and African soil fertilised by advances in science gave birth to colonialism. This "couple" conceived many a time and brought forth "cultural" and "military" subjugation, servility, racism and interference into the sovereignty and society ... This family soon spread in the world what we now know as "the Empire". The Empire accidentally found a very faithful servant: international law" [3, p. 56].

Indeed, starting the XVI century the commercial interests of European states became a precondition for colonization of the territories of Asia, Africa and Latin America. It was sad, but the objective historical process. Capture and exploitation of new areas, lands and markets were the main motivation and driving force for the time of Discovery, when Spain and Portugal, the Netherlands, Britain and France gained their first overseas possessions.

As the European presence in non-European areas intensified (XV – XVI centuries) legal doctrines were developed to determine the forms of interaction between European and non-European states.

After the Treaty of Westphalia (1648) classical concept of sovereignty came into existence. According to it all monarchies were equal and the sovereign states had absolute power over their own territories. Non-European states did not possess sovereignty. Non-Christian and non-European peoples were considered as uncivilized objects to perform a civilizing mission of the West.

Thus international law has been used to justify colonialism and the exploitation of the resources of the territories subjected to colonialism. International practice characterized by the appearance of unequal treaties served to relations of domination and subordination of economically stronger nations under underdeveloped countries.

In the last decades of the XIX century colonial expansion intensified, mainly under the influence of economic incentives. There were times when the principles of legal positivism have been defined in international law. Representatives of the positivist trends worked out a series of doctrines that used explicitly racial and cultural criteria for the determination of some states as civilized and, therefore, sovereign, and other states as uncivilized and non-sovereign.

Thus, the non-European societies were excluded from the scope of international law. Lacking legal personality these societies were not able to somehow confront their dispossession and became the objects of conquest and exploitation. International law legitimized the conquests and decreed that the lands inhabited by inferior and backward people must be treated as terra nullius. Western standards were declared as universal and the inability of non-Western

states to adhere to these standards indicated the lack of civilization that justified intervention and conquest. Non-European societies that have failed to establish the conditions under which the Europeans could live and trade, could be replaced by European governance, which declared itself as bringing with it civilization and stability and true protection of the natives themselves [4, p. 745].

Things began to change after the World War I when scholars and statesmen acknowledged the imperial nature of the international law, which was condemned for legitimized colonial exploitation.

An attempt to formulate a new approach towards colonies was taken by the League of Nations. Now they were designated as "backward territories". While in the XIX century the division between Europe and uncivilized non-Europe was determined mainly through the elaboration and use of racial and cultural categories, the League of Nations held the distinction between civilized and uncivilized from the economic point of view, dividing the world into "advanced" and "backward".

Territories of the defeated countries (Germany and the Ottoman Empire) were placed under the authority of the Mandate System of the League of Nations. The purpose of this system was to provide under international supervision "well being and development" of the mandate territories. The Mandate System did not apply to the victorious colonial states, such as Britain and France.

Thus, it was an attempt to develop a set of techniques for the transformation of non-European societies in the modern society within the framework of the League of Nations. However, while this project represents the first attempt to achieve something like decolonization and making of international standards, which will promote rather than suppress the peoples of

the Third World, it was not easy for non-European peoples to achieve the sovereignty. The sovereignty of Third World countries was shaped by international institutions and in a way that continue to serve Western interests. In other words, political sovereignty was granted in parallel with the economic subordination.

The general shapes of decolonization and current international order began to emerge with the end of World War II. Decolonization became a central concern of post-World War II international law. A number of institutional mechanisms were created by the UN to promote decolonization, primarily due to expansion and adaptation of the doctrine of self-determination to colonial territories. An idea of cooperation among states in order to achieve a higher standards of living, full employment, conditions of economic and social progress and development, as well as to promote universal respect for human rights and fundamental freedoms for all without any discrimination, was also indicated in UN Charter (art. 55) [5].

Thus, the postwar "settlement" of the colonial question was not limited by the granting of the political sovereignty to Third World. The new international legal order established after the World War II was mediated by the discourse of development. Development became an important element in achieving higher standards of living and elimination of poverty in Third World countries. If decolonization has a political aspect of Third World countries liberation from foreign pressure, the development consists of the socio-economic aspect that has to make emancipation from Western countries real.

A series of resolutions adopted at the UN General Assembly from the Declaration of Independence to the UN Decade of Development firmly linked decolonization to economic development.

In general, the idea of development assumed that all states are divided on "developed" and "developing" (in contrast to the previous hierarchy, that divided the states on civilized and savage, colonizer or colonized). This idea was primarily generated by economic institutions, created the possibility for ongoing surveillance and interventions to transform "developing" states [6, p. 43]. In the context of the Cold War, this new initiative has led to a rapid expansion of development institutions in the UN system. At the same time the real power in development activities was in the hands of the Bretton Woods institutions.

It could be supposed that mainstream of the international community marks this period as the demise of imperialism and purely European international law and a moment of "real" or "true" universalization of the international community. The international law became an instrument for rights-protection, interstate harmony, and socio-economic development [7, p. 253]. New relationships between First World and Third World are now aiming to raise the backward peoples and faith in the ability of Western science and technology to accomplish this task.

However, Third World scholars challenge this assertion and affirm that the shift in the development of international law had changed little. These arguments are based on the fact that the cessation of formal colonialism, although a significant historical moment, but does not lead to the end of the colonial relationships.

From the perspective of the Third World scholars, colonialism was replaced by neo-colonialism. The Third World continues play a subordinate role in the international system because of economical dependence on the West and the norms of international economic law continued to mediate or hide the situation [8, p. 45]. Now the relationships between the West and the Third World are not determined by colonialism, but by a new discipline called

development, which replaced the colonizer-colonized relationship with the developed-underdeveloped one [8, p. 25].

The "physical" violence of the West has been replaced by economic violence mediated by the International Financial Institutions (IMF and World Bank). What was changed – it is the way of exploitation. But the idea of superiority of one race over another lives on, embodied in the idea of development [8, p. 34].

To summarize the above-stated arguments about the correlation between colonialism (neo-colonialism) and development discourse it should be noted that the impact of both processes on the socio-economic development of Third World is controversial.

Of course, the misdeeds and oppressions that accompanied the colonial conquests and the subsequent management of the colonialists are forever imprinted in the memories of the Third World people. But the gap between the former colonies and metropolitan countries – the developing and developed countries – is a result of a complex set of reasons, which are not primarily related to the fact that the development of Third World has been constrained and deformed by external forces (International Financial Institutions, foreign governments, MNCs), but rather to the fact that the West have historically such economic and social development mechanisms, which Third World countries failed to develop.

Therefore in my opinion it is incorrectly to turn all post-World War II relations between developed and developing countries only into continuation of colonialism in modern forms. There is no doubt that the problem of underdevelopment in Third World has a tragic character and that the correction of the current situation requires the efforts of whole world community. However the approach, which explains the backwardness of the Third World only by its

exploitation, needs the revision. There are a lot of influential social groups in the West that are interested in raising of the level of Third World economic development and in solving of its most urgent social problems. Allegations of neo-colonialism are too often obscure the contradictions in internal Third World development and its real tragedy – the failure of traditional, very slowly modernizing social, cultural and political structures to cope with the realities of modern age.

It also relieves local governments much more than the "external forces" guilty for blocking the Third World development.

European legal background does not fits cultural ambitions and characteristics of developing countries. To create equal norms and rules instead of archaic mechanisms of oppression and exploitation new ideas and philosophy is needed. May be it would be the idea of development or the idea of human rights, but only on the basis of equal justice for all neither developed or developing.

Bibliography

1. Singh P. Indian international law: from a colonized apologist to a subaltern protagonist / P. Singh // *Leiden Journal of International Law*. – 2010. – № 23(1). – pp. 79-103.

2. Chimni B. S. The Past, Present and Future of International Law: A Critical Third World Approach / B. S. Chimni // *Melbourne Journal of International Law*. – 2007. – № 8. – pp. 499-515.

3. Singh P. From Narcissistic Positive International Law to Universal Natural International Law: The Dialectics of Absentee Colonialism / P. Singh // *African Journal of International and Comparative Law*. – 2008. – № 15. – pp. 6-82.

4. Anghie A. The Evolution of International Law: colonial and postcolonial realities / A. Anghie // Third World Quarterly. – 2006. – № 27 (5). – pp. 739-753.
5. The Charter of the United Nations [Electronic source] – Available at: <http://www.un.org/en/documents/charter/>
6. Pahuja S. Decolonizing International Law: Development, Economic Growth and the Politics of Universality, PhD Thesis / S. Pahuja. – University of London, 2008.
7. Scheffer D. J. Toward a Modern Doctrine of Humanitarian Intervention D. J. Scheffer // University of Toledo Law Review. – 1992. – № 23. – pp. 252-293.
8. Rajagopal B. International Law from Below: Development, Social Movements and Third World Resistance / B. Rajagopal. – Cambridge University Press, 2003. – 346 p.

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Концепція "розвитку" як нова форма колоніалізму: погляд Третього світу

У статті розглядається історія міжнародного права в аспекті трансформації відносин між Заходом і країнами Третього світу. За основу береться активно підтримувана вченими країн Третього світу ідея, згідно з якою міжнародному праву і тепер властиві колоніальні риси, проявом яких, серед іншого, є концепція "розвитку"

Ключові слова: міжнародне право, історія, колоніалізм, розвиток, країни Третього світу

Якубовская Н. А.

Концепция "развития" как новая форма колониализма: точка зрения Третьего мира

В статье рассматривается история международного права в аспекте трансформации отношений между Западом и странами Третьего мира. За основу взята активно поддерживаемая учеными стран Третьего мира идея, согласно которой международному праву по-прежнему свойственны колониальные черты, проявлением которых, среди прочего, является концепция "развития"

Ключевые слова: международное право, история, колониализм, развитие, страны Третьего мира

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The concept of "development" as a new form of colonialism: the third world viewpoint

The article examines the history of international law in the aspect of the transformation of relations between the West and the Third World countries. It is based on idea, actively supported by Third World countries scholars, that the international law is still has colonial features which are displayed, among other, in the concept of "development"

Key words: international law, history, colonialism, development, Third World countries