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## ZOBRAZENIE „ORTODOXIE“ V POST-SOVIETSKOM PRIESTORE: AKO VLADIMÍR PUTIN VYUŽÍVA CIRKEV V JEHO PROTIZÁPADNEJ KAMPANI

### THE DEPICTION OF “ORTHODOXY” IN POST-SOVIET SPACE: HOW VLADIMIR PUTIN USES THE CHURCH IN HIS ANTI- WESTERN CAMPAIGN

*Punsara Amarasinghe*<sup>1</sup>

Článok sa snaží preskúmať nedávny záujem Ruska o pozdvihnutie postavenia pravoslávnej cirkvi v štáte a vo svete. Najdôležitejšie je, že pozícia pravoslávnej cirkvi počas Putinovej vlády rýchlo vzrástla ako prostriedok na vyplnenie medzery vzniknutej po páde Sovietskeho zväzu. Doktrína zo 16. storočia, ktorú Filofei nazval „Tretím Rímom“ vykresľovala Moskvu ako poslednú svätyňu východného kresťanstva a nacionalistická mantra „pravoslávia, národnosti a autokracie“ z 19. storočia boli za Putina „omladené“ ako nová ideologická cesta k potlačaniu západného vplyvu. Je zjavným faktorom najmä to, že ideologické hnutie, ktoré dôrazne popiera hobotovanie Ruska s liberálnym Západom, sa po krymskej kríze v roku 2014 dost' zintenzívnilo. Za tejto situácie je Putinovo použitie pravoslávia a ruského duchovného odkazu priamy politický nástroj vyjadrujúci jedinečnosť Ruska v medzinárodných vzťahoch. Článok kriticky skúma historickú trajektóriu pravoslávnej cirkvi v Rusku ako indikátor jej osobitosti. Kľúčové slová: pravoslávna cirkev, Rusko, Západ, liberalizmus, Vladimir Putin, medzinárodné vzťahy

This Article seeks to examine the Russia's recent interest in uplifting the status of Orthodox church as a pivotal factor in the state and beyond that. Most importantly the position of Orthodox church has grown rapidly during Putin's administration as a solacing factor to fill the gap emerged from the fall of Soviet Union. The 16<sup>th</sup> century doctrine propounded by Filofei called “Third Rome”, which profoundly portrayed Moscow as the last sanctuary of Eastern Christianity and the 19<sup>th</sup> century nationalist mantra of “Orthodoxy, Nationality and Autocracy” have been rejuvenated under Putin as new ideological path to move away from the Western influence. Especially, it has been an evident factor that ideological movement that rigidly denies Russia's

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hobnobbing with the Liberal West has been rather intensified after Crimean crisis in 2014. Under this situation Putin's usage of Orthodoxy and Russia's spiritual legacy stand as a direct political tool expressing Russia's uniqueness of the global affairs. This article will critically examine the historical trajectory of Orthodox church in Russia as an indicator of its distinctiveness.

Keywords: orthodox church, Russia, West, liberalism, Vladimir Putin, foreign affairs

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## 1 INTRODUCTION

The ideological emptiness faced by Russia in the aftermath of the dissolution of the USSR was a heavy one that kept the country's spirit in the doll drums for a decade. The revered attitude that Russians were accustomed for Communism as an ideology was a unique one prevailed among them through state-imposed conditions and it was not an easy task for such a society to cling the winds of change. The economic stagnation followed by the Chechenia war and the internal turmoil in Russian society under Yeltsin's period devastated the Russian consciousness creating major social crisis such as the rapid increase of suicide rate in the late '90s (Shleifer and Tresnamn 2005). The vacuum emerged from the demise of the Soviet Union and its severe repercussions continued to torment Russian society till Vladimir Putin stepped into Kremlin.

The revival of state affinity with the Orthodox church became a salient factor under president Putin in Russia's quest in search of a new ideology. In examining Russia's romance with seeking an ideology, it was Orthodoxy that had dominated the Russian space in the pre-revolutionary era. The ideology pervaded in Russian empire before 1917 was confined to three essential pillars such as Orthodoxy, Autocracy, Nationalism (*Pravoslavie, Samoderzhavie, Narondaost*) was a creation of Sergei Uvarov, the Russian minister of Education in Tsarist Russia in 1833. Russia's intellectual transformation in the 19th century took a crucial direction in search of an identity as the Russian avant-garde intellectuals sought the discontent of the Western modernity imposed upon Russia by Peter the Great (Bohlen 1966). The twisted identity of Russia's historical mission remained ambiguous even at the height of its imperial expansion under Empress Catherine and they were aware of their incompatibility with Europe, at the same time they knew that it would not be Russia's destiny to tryst with the Orient. While expressing his sentimental views on Russia's destiny in the global realm, poet Fyodor Tiutchev made his famous exclamation "Rationally Russia cannot be understood, one has to believe in it" which symbolized the general attitude of the 19th-century intellectuals to distinguish Russia as a unique civilization from Latin Europe (Laqueur 2014).

This age-long dogma of considering Russia's uniqueness from both West and Orient came back to life when the country suffered devoid of inspiration. In particular, Vladimir Putin's interest in reviving the longingness for Russia's imperial legacy is

a notable factor since his second term as the president. For instance, his empathy on “spiritual development” of the Russian society was rather visible before his ascendancy to premier post under Yeltsin in the troubled period of the late '90s, especially when Putin was heading the National Security Council, he included the importance of spiritual development of the nation along with national security interests of the country (Van Herpen 2014). The new concept of imbuing spirituality with defense in post-Soviet Russia was ironic as country's Communist past had abhorred the religious identity, but Putin's proposed national security concept was approved by president Yeltsin as one of his last decrees before he abdicated his position in December in 1999.

In this article, I will examine the renewal of Orthodoxy as a part of President Putin's strategy in inculcating Russia's new ideology in post-Soviet space. This article will further identify the significance of Third Rome Doctrine as a historical narrative pervaded in Russian psyche that empowered the nation to seek their mission in global civilization and how it has been a geopolitical usage in modern Russia clamming its sanctified mission as the preserver of the true faith. While examining the specific position of Orthodox Church and its theological uniqueness in modern Russia, I will discuss the way it has been used by Vladimir Putin for a national awakening to consolidate his authority while emphasizing on the relevance of Russia's uniqueness as a civilization which is neither Western nor Oriental. The conclusion emerges from this article will unpack the nationalist rhetoric resurged by Putin as major instruments in bolstering his political project. Arguing that the affinity between the Putinism and Orthodox revival as a paramount factor in 21st century Russia which is antithetical to Western values and globalism, this article will unveil the philosophical roots that aspired modern Russian consciousness to reembrace their traditional values.

## **2 SIGNIFICANCE OF THIRD ROME DOCTRINE AS A GEOPOLITICAL IMPLICATION**

Prior to any reflection on the importance of the Third Rome doctrine, it is vitally important to understand the antecedents of Russian history before the famous Third Rome doctrine emerged in the 16th century. According to the general belief in Russian history Christianity was introduced to Russia in 988A.D and it has been largely neglected to consider that blooming ground of Christianity was not Moscow, but Kyiv a lofty fortress where grand duke Vladimir secured the throne and his acceptance of Eastern Christianity was an act propelled by Vladimir's fascination toward the gaudiness of Byzantine Christian legacy (Riasanovsky 1960). It is said that the religious restrictions of other faiths intensified Vladimir's decision to choose Eastern Christianity as the faith of his kingdom and besides, his emissaries were dazzled by Constantinople and its famous Church Hagia Sophia. They reported, “We no longer knew whether we were in heaven or on earth” (Charques 1956, p. 91).



The Kyiv legacy was faded into the oblivion when the city was sacked by the Mongols in 1223 and as the state disintegrated, Russian leadership passed by increments to Moscow. Christianity in Moscow was prevailed amid the chaos of Mongol invasion and continued to flourish while keeping Constantinople as its spiritual aggrandizement, but then by the 15th beginning of the fifteenth century, its position of dependence as a metropolitan district of the patriarch of Constantinople had become vulnerable since the Constantinople itself was at bay under Ottoman threat. On the other hand, Russians were bemused by Constantinople's decision to unite with the Roman Church in 1439 at the Council of Florence, which they found to be an anathema for their staunch loyalty to the Orthodoxy (Charques 1956, p. 112).

Prior to the fall of Constantinople in 1453, the Emperor of Byzantium was considered the "Basileus of Romans" which was akin to a fatherly figure who baptized all the Christians in Eastern Roman Empire. But the fall of Constantinople severely changed Russia's veneration of Byzantium patronage that paved the path for new changes in Muscovy Duchy. Alexander Schmemmann states:

*"Byzantium was 'the measure of Orthodoxy', Russians could securely ...develop their own state, it was effectively guaranteed by universal Byzantine Orthodoxy, its undeniable authority. But now with this measure gone, the authority collapsed."* (Toumanoff 1955)

Given the situation filled with spiritual anarchy in post 1453 context Russia stumbled upon the necessity of new self-determination in the international environment. Indeed, this is the background which paved the path for the creation of "Third Rome Doctrine" by an obscure monk named Filofei in the 16<sup>th</sup> century. Filofei's speculation of enthroning Moscow as the new custodian of the true faith was derived from the works of his predecessors such as Metropolitan Zosima who described Moscow as "New Jerusalem" and Simon Chizh (Siskin) likened Moscow to Rome. The epistles written by Filofei were sent to the Pskov representative of the Moscow grand prince Vassili III (1479–1533), to Vassili himself and to Ivan IV the Terrible (1530–1584). Monk Filofei's claim on Moscow's destiny as the "Third Rome" was essentially an analysis he aptly portrayed while tracing Russia's Orthodox tradition derived from Byzantium heritage (Klemenko and Yurtaev 2018). Therefore, it is pivotal to admit the fact that Russia embraced Orthodox Christianity and the national culture and all its riches inherited by Russia is linked its genesis to the Byzantium. The most crucial passage of Filofei's epistle states:

*"I would like to say a few words about the existing Orthodox empire of our most illustrious, exalted ruler. He is the only emperor on all the earth over the Christians, the governor of the holy, divine throne of the holy, ecumenical, apostolic*

*church which in place of the churches of Rome and Constantinople is in the city of Moscow, protected by God, in the holy and glorious Uspenskij Church of the purest Mother of God. It alone shines over all the earth more radiantly than the sun. For now, well, those who love Christ and those who love God, that all Christian empires will perish and give way to the one kingdom of our ruler, in accord with the books of the prophet, which is the Russian empire. For two Romes have fallen, but the third stands, and there will never be a fourth".* (Brecken 1999, p. 89)

Reaching beyond the task of defending Orthodox Christianity, Fillofei justified the temporal mission of Moscow grand prince and he made an enormous emphasis on evangelical virtues like holiness. (Schmemmann 1966) Even though Third Rome Doctrine made no significance as the state doctrine in Russian history, its influences echoed in the Muscovy tradition convincing Russia's obligation to protect Eastern Christians. It's aspiration to safeguard Eastern Christians from Ottomans and other forces persisted from the time Moscow embraced the Third Rome concept as a moral duty and it continued even Russia entered the epoch of modernity under the reforms of Peter the Great. As an example, Peter's effort of expanding Russian maritime activities in the Black Sea by converting it to Russian Sea was akin to his strategy of protecting Balkan Slaves from the oppression of the Ottomans. It is worth to note that after Peter's demise the same interest on the Eastern Question was prevailed in Katherine's foreign policy followed by Russia's military engagement with Ottoman Empire which resulted in a humiliating defeat to Turks in Battle of Kozludza in 1774 (Bohlen 1966). Furthermore, the Treaty of Kayanarka signed between victorious Russians and Ottomans guaranteed Russia's right to protect Orthodox Christians denoting Russia's symbolic tutelage of being the custodian to lead the universal orthodoxy and the true faith in Christianity. Klemenko and Yurtaev state:

*"The belief, being in tune with the mood of Russian society, had an impact on both the inner political structure of the state (including its Soviet period) and its foreign policy. This allows us to suggest that the Moscow as the Third Rome concept may be seen as Russia's informal geopolitical doctrine."* (Klemenko& Yurtaev 2018, p.45)

The thoughts dominated the Russian intellectual space in the 19<sup>th</sup> century was linked to the inspirational gravity of the Third Rome doctrine as it enabled Russian state apparatus and the intelligentsia to justify the uniqueness in Russia as a different geopolitical space and a civilization with intrinsic roots different from both Europe and the East. The vision propounded by the 19<sup>th</sup> century Russian diplomat F. I. Tyutchev was an offshoot of Fiofie's Third Rome doctrine and it Tyutchev presented vision on Russian as continental project where Russia would triumph over the Europe as the

preserver of the Christianity (Lane 1976). In fact, his claim was bold and utterly idealistic which was contained three pillars of fulfilling Russian hegemony. The first stage envisaged Russia's consolidation within its current borders. The second provided for the pan-Slavic project implementation (also called "Eastern Empire") with Eastern Europe and the Balkans integration (Hammond 1953, p. 611). The third stage entailed a complete European re-organization under the aegis of Russia: absorption of Austria, Germany, Italy, reunification of the Churches with Orthodoxy established in Rome and, consequently, papal subjection. Ideally Russia would embrace "with the exception of China, the entire Eurasian continent, in particular the Mediterranean with a core Europe" (Guins 1950).

Tyutchev's utopian project of forming a grand Russia and whole 19<sup>th</sup> century Russian intellectual fascination of portraying Russia as a sanctuary for Slavs and Orthodox Christianity had derived from Filofie and it pervaded the Russian consciousness throughout the 19<sup>th</sup> century as an indispensable factor in deciding their participation in geopolitical issues. In his "Writers Diary" Russian author Dostoyevsky writes:

*"Russia is a natural magnet which irresistibly attracts the Slavs, thus keeping alive their integrity and unity."* (Morson 1999, p. 481)

The geopolitical significance of "Third Rome" doctrine in the Russia's foreign policy, in particular in the "Eastern Question" was a notable factor even in a situation where Russia was coping with its internal chaos in the late 19<sup>th</sup> century. For an example, when most of European states stood along with Ottomans by considering Russia the major threat in the aftermath of Crimean war, Russia still clung to their traditional position of protecting Eastern Orthodox Christians. In 1867 Russian foreign minister A.M. Gorchakov wrote a letter to Tsar Alexander II to convince him the necessity Russia to intervene the "Eastern Question". He writes:

*"We need to continue our mission as patron of the Eastern Christian nations, ensuring them that Russia is their only sincere, constant and unmercenary friend... It is only through Russia that the liberation of the Christian East can be achieved efficiently and durably. Only... Russia can become a link between these very different nations... Without Russia they may fall into confusion and anarchy."* (Poe 2001, p. 120)

However, the socio-political upheaval faced by Russia after the October revolution in 1917 reversed Russia's geopolitical mission of protecting Slavs and preserving the Orthodoxy by replacing it with the Communism which adopted atheism as a state ideology leaving behind its history and withdrawing from the traditions embedded in Russian society. As Russia was engulfed by the new ideological and

political transformation since the formation of the USSR in 1922 the “Third Rome doctrine” became a diminished, but its influence was not completely faded away. Especially several Russian philosophers notably Vladimir Solov'ev and Nikolai Berdiaev argued that the notion of Bolshevism was rooted in Russian Messianism which had derived from the belief in “Third Rome Doctrine”. In Peter Duncan’s “Russian Messianism: Third Rome, Revolution, Communism and After” Duncan has aptly elucidated the messianism as 'the proposition or belief that a given group is in some way chosen for a purpose (Duncan 2000). Closely linked to this is the view that the great suffering endured by the group will lead somehow to the redemption of the group itself and possibly of all humanity. In particular, Filofei conception was used following the grater needs of the Soviet Union in their struggle against Nazi invasion. The unique adaptation of the life story of Ivan the Terrible to a play by Alexy Tolstoy in 1942 saw a systematic change of Soviet attitude toward Third Rome doctrine as a factor to boost the nationalist morale. In the opening scene of Ivan, the Terrible, the tsar' explains his mission to unify the Russian lands, destroy internal opposition, and defend the realm against the imperialist Germans. Ivan concludes his speech with a few boastful words from Filofei:

*“Two Romes have fallen, Moscow is the third, there will be no fourth, for I am absolute master of this third Rome, the Muscovite state.” (Maguire 2013, pp.256)*

The resurgence of Russian intellectual thoughts regarding the civilizational mission of Russia in the post-Soviet era saw a rapid increase and the ideological vacuum created by the collapse of Soviet Union bolstered the revival of Russia’s civilizational nostalgia. A concept of “state civilization” proposed by I.V Artemov in the mid 90’s had referred to the nation’s destiny as an interwoven part of its Orthodox legacy suggesting the need of restore its importance in the state affairs. Artemov states:

*“Russian civilization is, no doubt, the Orthodox civilisation. Russian ethnos as a spiritual and cultural phenomenon took shape through the consolidation of disparate Slavic tribes with the adoption of Christianity. Russians managed to rise to the level of a nation capable of architecting a great world power through implementing, in the period of Muscovy, the Third Rome concept of the state as the guardian of eternal Christian truths. After the Byzantine Empire (the Second Rome) fell in 1453 under the crushing blows of the Ottoman Turks, Russian Muscovy remained the only world centre of Orthodoxy, assuming both the spiritual power of Byzantium and the state mission of the Roman Empire (the First Rome) [...] – and emphasised –, this very notion shaped Russians into a nation fulfilling its historic mission till the end of days, protecting the Truth from the infidels and carry its Light to neighboring countries. This notion is what helped create a world Empire, since the Third Rome concept embraces*

*the idea of nations gathering as its core, spiritually consistent principle.*" (Larys 2011, p. 143)

Depiction of Moscow as the "Third Rome" has undergone some revolutionary interpretations facing many ups and downs at the turn out of the century. The two gospels that Russia reverently embraced in the 20th century were Christianity and Communism. Both had used this doctrine for geopolitical motives following their ideological significances and its current portrayal of today's Russia under Vladimir Putin seems to be an important cause of ascertaining where Russia is heading under the new guise of Orthodoxy. Also, it is important to note how Russian Federation has aligned its foreign policy in Eurasia, primarily advocating the Neo Eurasianism and upholding Moscow's supremacy in the interstate affairs.

### **3 ORTHODOXY IN THE ERA OF PUTIN**

As I stated above the longingness of Russia for its past and civilizational values were rooted in the chaotic period faced by Russia as in the post-Soviet space in the 90's and the projection of Russian orthodoxy was duly by Vladimir Putin at outset. When the setback that persisted in Soviet period for functioning Russian Orthodox church began to vanish after 1991 that resulted in the rapid increase of Orthodox followers with the rise of 73.6% in 2006 (Wave 2014). The growth of religiosity among Russians in the post-Soviet space compared to other Eastern European states was an interesting factor from two sides. From one side the renewal of the Orthodox faith brought the church influence back to the political realm of Moscow reminding of how Orthodox Church meddled in the state affairs in Russia's imperial past. Putin's predilection on Russian history was compatible with the Orthodox church revival and it is not an exaggeration to note that his references to Orthodox Christianity as the core of Russian value system regardless of 1993 Russian constitution's guarantee on the secular status of Russian Federation has been one of interesting indicators that vividly shows his alacrity on bringing the religious tradition to Russian social-political space, where religion remained a dead factor during the Soviet time. The blatant use of Orthodoxy in state apparatus enormously helped president Putin prior to 2014 when Russia's economy was much stronger with the high oil price in the world market and in his annual address to Federal Assembly in 2014 Putin declared "*Christianity was a powerful spiritual unifying force, in the creation of Russian nation and Russian state (Anderson 2007). It was thanks to this spiritual unity that our forefathers for the first time and forevermore themselves saw themselves as a united nation*".

Secondly, the newly bloomed interest on Orthodox Christianity in Russia became a paramount factor in awakening Russian ethnic nationalism in the post-Soviet space. In fact, Putin seemed to have used it aptly in his political project by convincing Russians on their uniqueness in global history. As we aware the jubilation erupted in

the West after the disintegration of the USSR focused on the triumph of liberalism and free-market order which championed the USA as the omnipotent world order who would ensure the individual liberty. A plethora of liberal slogans existed in the Western society in the 90's such as the rise of LGBT rights activism and multiculturalism appeared to be many attractive movements illustrating the liberalism of the West wherein Putin realized the necessity of revving Orthodox Christianity as a dominant value in the preserving Russian social-cultural space. In this context the nostalgia for 19th century Romanov slogans "Orthodoxy, Autocracy, Nationhood" became Kremlin's shield in its new mission to reform Russian society in the new millennium. Marcel van Herpen states in his work "The Slow Rise of the Radical Rights Regime in Russia":

*"In the present situation Church is not a valuable ally to Kremlin, but it also provides compensation for the ideological void of Putin's system by instilling ideas in the population about Russia's unique vocation, the Russian Soul and Russian Spirituality -that are contrasted with the Western superficiality, Western Materialism and Western consumerism. These ideas are completely consistent with the ultra-nationalist goals of the Kremlin."* ( Herpen 2013, p. 123)

Putin's hobnobbing with the Moscow patriarch and other Orthodox leaders in the Russian Federation was not a notable factor in his campaign to consolidate power and uplifting own personality in Russian federation. In his campaign for the second term, Putin built all his propaganda on a contrast with the troubled '90s in Russia where people were impoverished and Russian stability was in tatters as the war in Chechnya threatened to tear Russia apart. In harbouring Putin's campaign, the Patriarch Krill in Moscow Russian Orthodox church openly praised Putin's era claiming his ascendance to power as a miracle of God to save Russia from a calamitous situation. Once Patriarch Krill stated: *"What were the 2000's then? Through a miracle of God, with the active participation of country's leadership we managed to exit this horrible systematic crisis."* (Herpen 2013)

Nevertheless, there were several instances which demonstrated the resistance of liberal public order in Russia criticizing the affinity between the Orthodox church and Kremlin. In 2012 a group of women called themselves as "Pussy Riots" barged into Cathedral of the Christ the Savior in Moscow to denounce the Orthodox Church and Vladimir Putin's politics, which finally followed by the brutal arrest of the "Pussy Riots" group and the performers of the group were sentenced two years in jail for their mockery which they beseech Virgin Mary to rid of Russia from Putin. The strategic alliance between the Orthodox church and Putin cannot be entirely regarded as an act sprang out political motives of Putin to fortify his power among the people (Galeotti 2017). It has been significantly rooted in a deeper cause beyond the political power and

the doctrine of “Third Rome” which I discussed in this paper becomes more relevant in ascertaining the modern-day renewal of Orthodox influence in the state apparatus of Russia. In examining Putin’s keenness on Russian history as an imbued factor which continues to affect upon his political projection, one has to understand how methodically he has been using Russian history as a “policy tool” while having a conviction that his personal destiny is intertwined with Russia’s common fate (Hill and Gaddy 2012 ). In the state sponsored mechanism that Russia has embraced under Putin is a sheer aggrandizement of its imperial past and traditional values mainly focusing on “Russian Spirituality” and the role that Russia is destined to play in the global realm. It is indeed an interesting factor that the way Putin treats Russia’s tryst with Orthodoxy as he believes it as country’s strength in grappling with global challenges mainly stemming from the West in post-Soviet context. His claims on Russia’s moral superiority over American individualism in his public speeches have frequently referred to country’s revered legacy of Orthodox Christianity. In 2011 when Libya and Syrian were bombed by the US and its allies Putin made a statement referring to Russia’s moral duty by saying:

*“We do not aspire to be some kind of a super power understanding that as a claim to world or regional hegemony. We know there are ever more people in the world who support our position in defense of the traditional values that for centuries have formed the moral foundation of the civilization”.* ( Anishchuk & Gutterman 2013)

Putin’s infatuation with traditional values and Russia’s spiritual heritage based on Orthodox church were not only confined to rhetorical statements used in political rallies for the electoral victories. On the contrary, he has carried out his vision of boosting Russian morale from different perspectives and the inclusion of a reference to God and the nature of marriage as a heterosexual union for Russian constitutional reforms in 2020 seems to be an audacious step taken by him which would pave the path to alter the current constitutional structure adopted in 1993. Vladimir Putin emphasized the need to broaden the powers of the parliament to secure democracy in Russia in his annual state of the nation speech in January 2020 and within three months after his address to the parliament the amendments he proposed to the parliament included the reference to “God” in the constitution (Amarasinghe and Rajhans 2020). The preamble to the current constitution in Russia, which was adopted in 1993 remains completely secular preserving the multiethnic diversity in Russian Federation and it has excluded any references to spirituality by upholding the secular status of Russia under Article 14 to the constitution. But, the growing influence of Russian Orthodox church as an ally to the politics of Kremlin has continued to uproot the secularity from the constitutional structure of Russia under church’s antagonism of depicting Russia as another secular European state. The inclusion of God in the basic law by this proposed

amendment embodies Putin's eagerness of clinging to Russia's 1,032 years of Orthodox history and on the other hand it very much akin to epitomizing the moral values insisted by Filofei in Moscow's destiny as the "protector of the true faith". In the proposed amendment to the Russian constitution, the unique privilege to Orthodox Christianity would be described in Article 67.2 in Chapter 3. It will state:

*"The Russian Federation, united by a thousand-year history, preserving the memory of its ancestors, who gave us ideals and faith in God, as well as continuity in the development of the Russian state, recognizes the historical unity of the state."*

This proposed article to the constitution will echo the 19<sup>th</sup> century Tsarist fascination on religion which was properly articulated by Sergey Uvarov in 1833 as "Orthodoxy, Nationhood and Autocracy" (Engelstein 2001).

Alongside the reference to God in the basic law, Putin's proposed constitutional amendment has defined marriage as a union between man and woman. This amendment should be fathomed in contrast to his denial of western liberal values as constant threats to traditional values which are intrinsic and unique to Russian space under its Orthodox legacy. From a vantage point, these changes can be regarded as Putin's constitutional strategy to cope with the liberal challenges that have infiltrated into Russian space in post-Soviet era. For instance, Russia's entry into European Court of Human Rights in 1998 under Yeltsin's administration was heavily supported by the Western leaders as they considered it to be a step taken by Russian federation to embrace Liberal democratic values (Sundstrom 2014). Yet in reality the internal instability of Russia had reached its zenith with the decline of economy followed by a rapid increase of crimes in Russia which finally shattered Moscow's euphoria to be a part of the club of West and rapprochement with Western powers were replaced by a disillusionment. Moreover, Russia's standing with ECtHR provided LGBT activists in Russian federation to seek justice, whereas the gay or lesbian marriages were not accepted under Russian legal system. *Zhdanov and others Vs Russia* was a case heard before ECtHR in 2019 where the Strasbourg Court decided that Russia's refusal to register three LGBT rights organizations were unjustified and it had breached the Article 11 and 14 of European Convention on Human Rights (Woods 2016).

Taking into the consideration that Russia's traditional approaches on marriage and sexuality are at stake, the amendment proposed by Vladimir Putin to include the status of marriage as a union between man and woman in the Constitution appears to be a protective mechanism propelled by the influence of Orthodox church. It is rather a salient factor that the Russian Orthodox church has always been hostile towards the homosexuality and its influence played a profound role in shaping Russian legal system in 1999 to describe homosexuality as a mental illness. The head of Russian Orthodox Church Patriarch Krill has been a vehement critique of homosexuality with



his staunch conviction on protecting traditional values and in one occasion the leader of Russian Orthodox church compared the laws detached from morality legalizing gay marriages and homosexual acts as laws enacted by the Nazi regime in Germany (Soloman 2017). Putin's alacrity to safeguard the traditional values by the basic law of the country has not risen out of the blue, given the fact that trajectories around illustrating marriage as a heterosexual union in the constitution were heavily supported by the Orthodox Church in Russia.

In identifying Putin's ideology or Putinism and its discontent with the West Pat Buchanan has aptly remarked Putin's mockery of the liberal values of the West and his ardor to promote the family values in Russia in a conservative way. Buchannan states:

*"Nor is (Putin) without an argument when we reflect on America's embrace of abortion, on demand, homosexual marriage, pornography and the whole panoply of Hollywood values. Moreover, Putin asserts the new immorality has been imposed undemocratically. The "destruction of traditional values" in these countries, he said, comes "from the top" and is "inherently undemocratic because it is based on abstract ideas and runs counter to the will of the majority of the people."* (Buchanan 2013)

As Pat Buchanan pointed out that Putin's interest in Orthodoxy and preserving the traditional family values in Russia indicate how he has been persistent in maintaining Russia's isolation from the Western liberal values.

#### **4 FACES BEHIND AN IDEOLOGY**

While writing his analysis on Putin and Putinism as a serious issue to be discussed in the Western political order, Mark Galloti has denied the notion that Vladimir Putin was not influenced by a specific school of thought none other than his own political opportunisms according to the situation (Galeotti 2017). But there is ample evidence to construct a contention that Putin's high interest on reviving Orthodoxy and maintaining an affinity with the Orthodox Church was propelled by the characters he adored in modern Russian school of thoughts.

I have analyzed in the first half of this paper that how an obscure monk from the periphery presented a fervid doctrine on treating Moscow as "Third Rome" which would ultimately be the last resort for the true faith of Orthodox church. The Russian longingness for rejuvenating its place as the sanctuary for Orthodoxy was intensified by the new ideological discourses in the post-Soviet space. In particular, the ideas of Alexander Dugin cannot be ignored as his famous "Neo Eurasianism" has made a tremendous impact in Moscow's political space. Dugin dwells in the idea of promoting his main thesis "Neo Eurasianism" as a global phenomenon which he anticipates to be a counter movement against Atlantic power of the USA embodied by

the maritime power and free markets. Dugin's attitude toward Moscow as an idea was entirely attributed to the historical significance derived from the "Third Rome Doctrine" and his text "Fourth Political Theory" where he insists the geopolitical mission bestowed upon Moscow while signifying its religious purity. He states:

*"The world of Sea, beginning with Carthage and ending with the modern US, embodies the pole of the merchant regime, the "market civilization." This is the path of the West, the path of technological development, of individualism and liberalism. It is dominated by dynamism and mobility, which bodes well for modernization and progress in the material sphere. The civilization of Sea has over the past few centuries acquired the name of "Atlanticism", seeing as how bit by bit its main stronghold has moved in the direction of the Atlantic Ocean, up to and including the ascension of the US. The modern North-Atlantic Alliance is a strategic expression of this civilizational model.*

*It is opposed by the world of Land, the world of Tradition. This is the "heroic civilization", the reality of loyalty to ancient ways. Here, progress is not so much material as it is spiritual; the moral dominates the physical, honour dominates benefit. From Ancient Rome through Byzantium, the geopolitical history of Land inches towards the Eastern Bloc, which opposed the west during the "Cold War." At the center of this Eurasian space is Russia, which the greatest British theoretician of geopolitics and one of the founding fathers of the discipline, termed Heartland. And once again, the centre of Russia is Moscow, as an encapsulation of all terrestrial spaces, as a synonym of the civilization of Land.." (Dugin 2012 )*

Dugin's policy of viewing Moscow's spiritual significance as the paragon of Orthodoxy and his views which are antithetical to the values imbued in the West have become new boosting factors in post-Soviet Russia filled with nationalist rhetorics, in particular in the aftermath of the annexation of Crimea in 2014. His echoing voice played a predominant role during Russia's military involvement in Ukrainian separatist movement by proclaiming the inevitability of the war between Russia and Ukraine, which he regarded as the path for "Novorossiia" or New Russia and this word derived from Russian imperial past was used twice by Putin prior to Russia's annexation of Crimea in 2014 (Tolstoy 2015).

However, Lev Gumilev's celebrated concept of "Eurasianism" which continued to flourish Russian hardliners and intelligentsia seems to have bolstered Putin's civilizational narrative of portraying Russia's orthodox legacy at a significant level. Gumilev's empathy highlighting the *sui generis* harmony of the communities and tribes of the Steppes in Eurasia for centuries had invoked the yearning for Eurasianism by indicating how "Heartlands" in Central Asia is perpetually fated to encounter Atlantic oceanic powers, an empire that was first Venetian and Genoese,

Portuguese, British and now American empire. The gravity of this idea has become rather an appealing one in Post-Soviet Russia and Putin's frequent references to Gumilev as a nurturing figure of unique Russian ideology denotes the importance his influence in Russian state apparatus. The sudden usage of Gumilev's term "*passionarnost*" by Putin at a public gathering was akin to bring the dead poet's legacy back to the power politics in Kremlin. While giving a clue on the awaited future political uncertainties in Russia, Putin emphasized "I would like all of us to understand that coming years will be decisive. Who will take the lead and who will remain on the periphery and inevitably lose their independence will depend not only on economic potentials, but primarily on the will of each nation, on its inner energy which Lev Gumilev termed "*passionarnost*": the ability to move forward and embrace changes" (Akhmatova 2016).

The overarching influence laid down by the above mentioned two thinkers have made obvious impacts in Putin's jubilation for Orthodox values and Russia's unique identity in the global affairs. As I elaborated as a salient fact regarding Putin's abhorrence of the Western liberal order and the way he reiterates the spiritual values imbued with Slavs or Russian civilization has been mainly culled by the philosophic discourses which I discussed in this section.

## 5 CONCLUSION

In examining the course of history of Russia since its imperial past to the fall of Romanovs one can comprehend the portrayal of Orthodoxy as an impetus of most of the historical trajectories in *Ruskimir*. Starting from Filofi's letters that described Moscow as the Third Rome or the sanctuary of the true creed to the idea propounded by Count Sergy Uvaraov in 1832 during the reign of Nicolas 1 on "Orthodoxy, Autocracy and Nationalism" the affinity between the state and Orthodox church has fundamentally been a crucial one. Russian poet Tyutchev once stated:

*"Russia is above all a Christian empire. The Russian people is Christian not only because of the Orthodoxy of its beliefs, but also because of something even more intimate than belief. It is Christian, because of the capacity for renunciation and sacrifices which serves as the foundation of its moral nature."* (Riasnonovsky 1961)

The concept of locating Orthodoxy and Russian nationalism attached to each other was bolstered by the development of philology crating Russian race as the natural champion of the other Slav races. Given the impoverished conditions and other miseries of the Slavic nations Russia always felt that it was the chosen destination of the nation to lead Slavs and preserve Eastern Christianity (Guins 1950).

The rapid growth of state patronage towards the Church and the persistent endeavors of shown by Putin in recent years has galvanized the position of Orthodox

church in Russian political space and its aura has been extended to Russia's foreign affairs. However, it has been an evident factor that Russian state embodiment of protector's status of Orthodox Christianity has not always been reciprocated in Orthodox world and the split of Ukrainian church from the yoke of Moscow patriarch last year was a blow on Russia's orthodox supremacy. The formation of the new church in Ukraine in 2018 December was a decisive moment in the post-Soviet period, which significantly reduced Russian soft power influence in Ukraine (Mykhaleyko 2020). Yet, Putin's ardour on keeping a rapport with the Orthodox church and emphasizing the Orthodox values as an intrinsic feature of Russian civilization continues as a predominant part of his stances against the West and its liberal order. As a matter of fact, the concept of "Orthodoxy" under Putin provides a fascinating picture of the revival of imperial mantra existed in pre-revolutionary period and its efforts to trample Russia's connectivity with the Latin Christendom. Today Russia and its foreign policy have been heavily viewed by the West as hostile towards them, mainly Russia's relations with EU began to shrink after Crimean crisis in 2014. In that context Putin's predilection of Orthodoxy is likely to become a new trend of cultural shift which would further drift Russia away from European space.

In writing his famous thesis on "Clash of the Civilizations" in 1993, Huntington saw how Russia was vacillating between a European and Eurasian orientation and strongly insisted Russia should look for the West against blazing Islam and booming China. He further mentioned that in return to Russia's alliance with the West, the Western world should accept Russia's leadership as the leader of the Orthodox world rather than persuading to interfere with Russian influence space in Eurasia (Huntington 1993). However, the trajectories since the new millennium have shown growing skepticism between the West and Russia rapidly paving path for a new form of a clash of civilization. In such a situation, Putin seems to have been using Russia's purest and spiritual legacy, as an aggrandizement of Russia in his confrontation with the West and its values.

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**ROZVOJ INFORMAČNEJ SPOLOČNOSTI AKO FAKTOR  
EKONOMICKÉHO RASTU:  
SKÚSENOSTI KRAJÍN EURÓPSKEJ ÚNIE**

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**INFORMATION SOCIETY DEVELOPMENT AS A FACTOR  
OF ECONOMIC GROWTH: EUROPEAN UNION COUNTRIES  
EXPERIENCE**

*Marina Akhmetova<sup>1</sup>, Aleksandra Krutova<sup>2</sup>*

Článok sa zaoberá kľúčovými aspektmi rozvoja informačnej spoločnosti a jej komponentov – digitálnou ekonomikou. Korelačná a regresná analýza sa uskutočňovala na základe štatistických údajov 27 krajín Európskej únie za obdobie rokov 2016 až 2018. Autori pre výskum vybrali také skupiny ukazovateľov, ako je dostupnosť a využitie informačných a komunikačných technológií (IKT), individuálne zručnosti v oblasti IKT pre osobné a profesionálne potreby a úroveň rozvoja sektora IKT. Analýza odhalila celý rad faktorov digitálnej ekonomiky, ktoré majú výrazný vplyv na HDP na obyvateľa. Menovite umožňuje identifikovať najvýznamnejšie faktory ovplyvňujúce ekonomiku krajín EÚ. Spolu s analýzou najlepších postupov autori navrhujú prioritné oblasti pre zlepšenie a implementáciu vládnych programov s cieľom zabezpečiť vyššiu mieru ekonomického rastu.

Kľúčové slová: informačná spoločnosť, digitálna ekonomika, korelácia, regresia, HDP, ekonomický rast

The paper deals with the key aspects of information society development and its component – digital economy. Correlation and regression analysis was conducted based on statistical data for 27 countries of the European Union for the period from 2016 to 2018. The authors selected for research purposes such groups of indicators as the availability and use of information and communication technologies (ICT), individual's skills in the field of ICT for personal and professional needs, and the level of ICT sector development.

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The analysis revealed a range of digital economy factors that have significant impact on the GDP per capita. Namely it allows to identify the most significant factors affecting the economy of the EU countries. Along with that using best practice analysis the authors suggest priority areas for improving and implementing government programs in order to provide higher rates of economic growth.

Key words: information society, digital economy, correlation, regression, GDP, economic growth

JEL: O52, O33, C10

## 1 INTRODUCTION

Over the past decades, global leaders have made the transition from an industrial society to a post-industrial one, namely, an information society (hereinafter IS). There was a shift in global interstate relations, production methods and people's attitudes.

The concepts of information, information technologies, informatization, information systems have become part of everyday life, and terabytes of information revolve around humanity (Vartanova 2015). Modern concepts of the information society are reflected in scientific manuscripts. For instance, the information society (IS) is considered as a society where the production and consumption of information is the most important activity. Information is recognized as the most important resource. New information and telecommunication technologies and methods are becoming basic, and the information environment, along with social and ecological, is becoming a new human habitat (Kalinkina 2010). A society, where a significant part of the working-age population constantly interacts with information, i.e. produces, processes, stores and sells knowledge and other information products, is an information society (Lavrent'yeva 2015).

Most researchers identify the main characteristics of the information society, such as:

- increasing the importance of information, knowledge, and technology in society;
- constantly increasing the share of population engaged in information and communications technologies progress and produced information products and services;
- high level of satisfying the needs for information products and services;
- expansion of telephone communication, radio and television broadcasting, Internet and mass media;
- creating a wide information space that provides the citizens with access to information resources;
- ensuring access to quality education, etc.



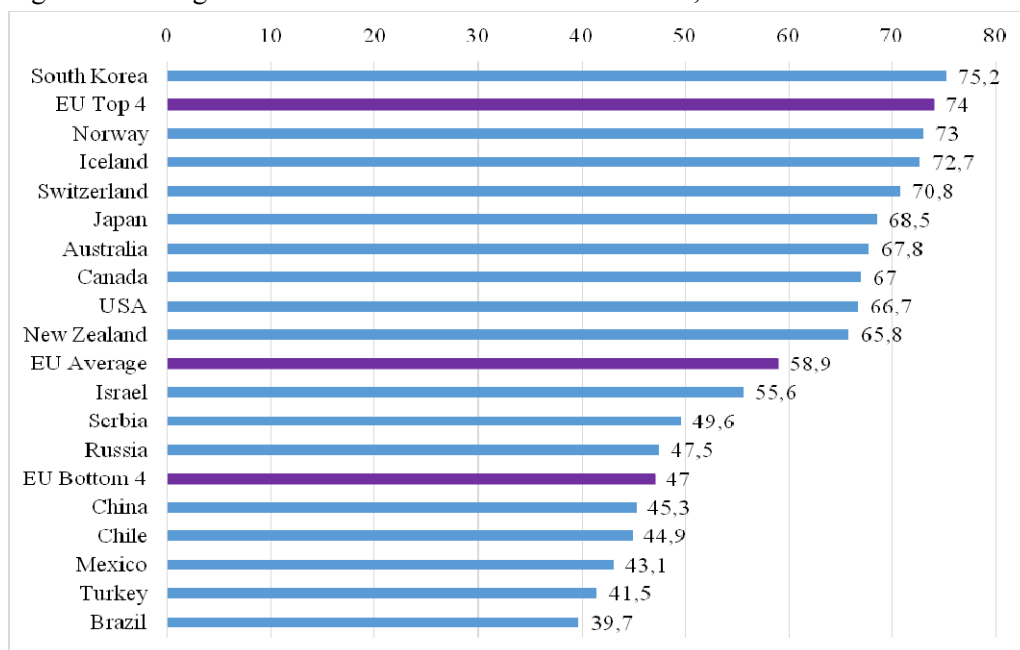
The Formation of an information society, based on the use of ICTs, is closely linked with development of a digital economy. Digitalization offers lots of new opportunities for comprehensive and sustainable development of territories. But at the same time there are lots of problems faced by governments: starting with the need to even the gap in the level of individual's digital skills, and ending with the digital economy development at the macro level.

Today, the digital economy is no longer just about the technology sector and digital firms, but it is also increasingly digitizing supply chains in all sectors of the global economy (Babkin 2017). The main reason for the digital segment expansion is growth in the transaction sector, which accounts for more than 70% of GDP in developed countries. This sector includes public administration, consulting and information services, finance, wholesale and retail trade, as well as the providing of various public, personal and social services (Kuprevich 2018). Digitalization is becoming an increasingly important part of the information society and one of the key factors affecting economic growth. It should directly affect the country's GDP, labor productivity, and the well-being of households and businesses in all sectors of the economy. To achieve these positive effects through the formation and development of the digital space, the government requires organized joint activities and coordinated policies in this area (Gokhberg 2019).

The movement towards an information society is considered a fairly objective process. Firstly, it provides the formation and development of the world information space. Secondly, it makes the functioning of the world's commodity, labor, knowledge, information and capital markets closely linked. Nowadays it is generally recognized that informatization is considered as one of the main factors of economic growth. So, the level of IS development reflects the socio-economic development of the country.

The EU countries have a fairly high potential for the development of IS, as well as being leaders of informatization. It is not yet fully true of the Russian Federation due to special conjuncture of this state. The position of countries can be tracked by the values of the Digital Economy and Society Index (I-DESI), proposed in 2013. I-DESI measures performance in five dimensions or policy areas: connectivity, human capital (digital skills), use of Internet by citizens, integration of technology and digital public services. I-DESI compares the digital society and economy performance of EU member states with 17 non-EU countries (I-DESI, 2018). According to the I-DESI, the average level of digital economy and society development in the EU member states is comparable to the level of developed countries such as New Zealand, USA, Canada, Australia and Japan. At the same time, 4 leading EU countries are in the TOP 10 of rating (Fig. 1).

Figure 1: Average scores across all dimensions for I-DESI, 2013-2016



Source: European Commission, 2018.

The average index for EU countries shows stable growth from 2013 to 2016. However, as the I-DESI authors note, the average value of index does not reflect significant differences between the most and least developed countries of the EU. The authors of the current study will consider the differences between EU member states in the level of digital economy and society development. And it will help researchers to find out whether the level of digital economy and society affects the level of economic development using correlation analysis.

A literature review shows that the positive impact of informatization on the economy is indisputable. However, the question remains unexplored as to which factors are most decisive in providing economic growth.

In this regard, the purpose of the current study is to assess the correlation between informatization of society and economic growth. The object of the study is the EU member states, and the subject is the level of IS development and related factors affecting economic growth. The information base of the study is data from the European Union statistical service.

## 2 METHODOLOGY

The main research methods are correlation and regression analysis, which consists of the calculation, subsequent study and interpretation of correlation coefficients. Graphical methods were also used to visualize

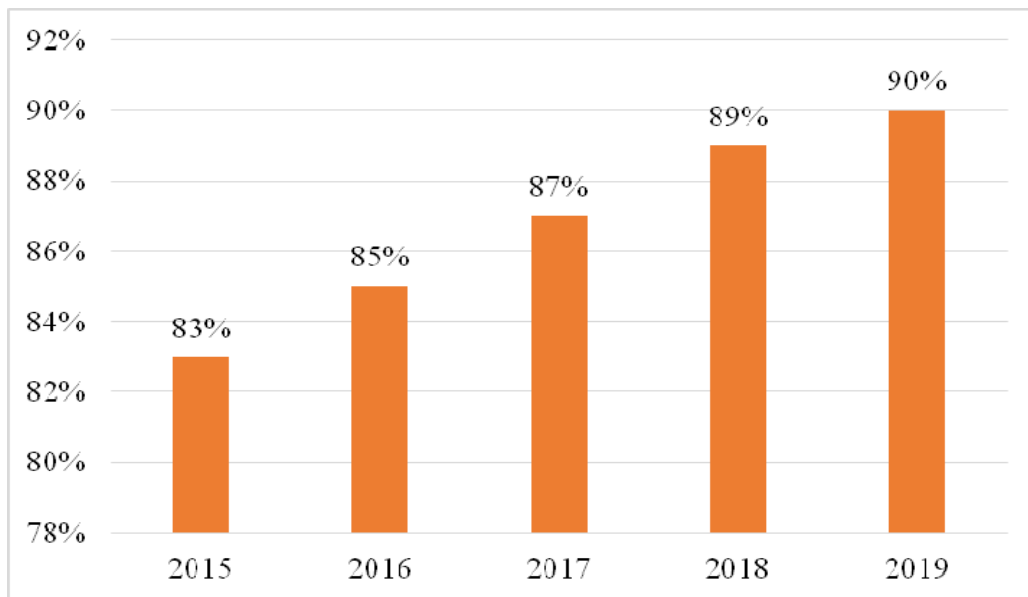
statistical data and analysis results. The paper also uses an analysis of the best practices of EU countries in the field of digitalization of the economy. The study suggests using GDP per capita in euros as a dependent variable ( $y$ ) that characterizes the intensity of economic development. As independent variables, the authors used 11 indicators grouped into 3 categories:

1. *Connection to the internet and computer use ( $x_1-x_4$ );*

The impact of the Internet on the country's economy is already undeniably strong, and it is expected that in the future, this influence will only grow. Several generations of people have appeared by now, who can no longer perform their daily activities without access to the internet: storing and transmitting text and graphic information; communicating with society; searching, comparing, choosing, buying, selling things; transferring payments; receiving public services, etc. Over time, with the advent of new technical means and technologies, their cheapening makes it possible to turn a household into a home-office, where an individual can perform their professional functions along with personal ones (Podol'naya 2015).

It should be noted that in the European Union countries, the appropriate infrastructure is expanding every year and by 2019 90% of all households are provided with internet access (Fig. 2), and, for example, in Sweden – 96%, in Denmark – 95%, in Finland – 94%.

Figure 2: Total households - level of internet access from 2015 to 2019, % of households

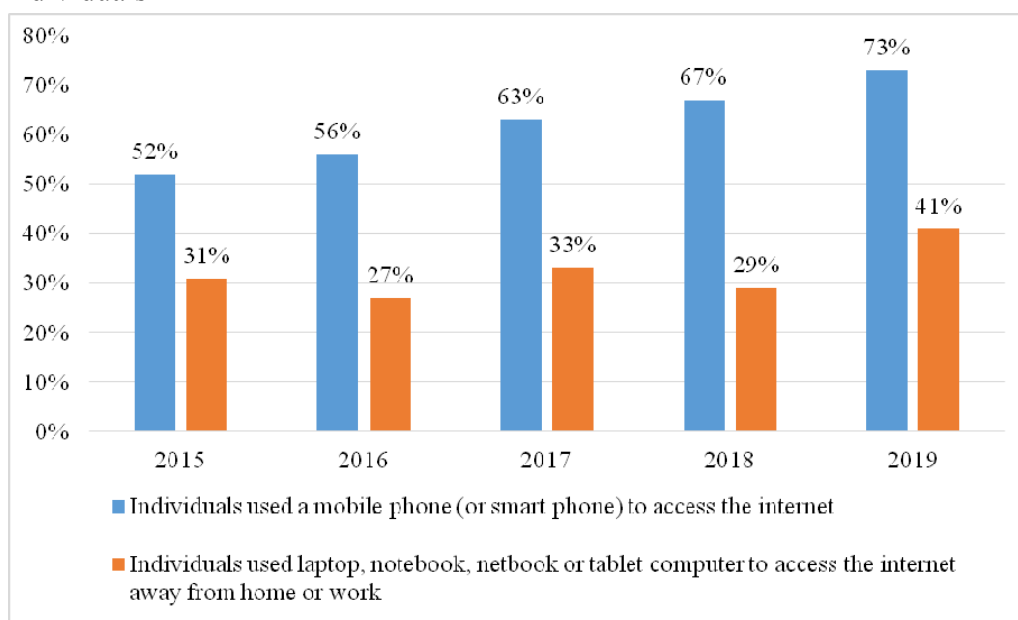


Source: processed by authors on the basis of Eurostat data.

This dynamic spread of the Internet certainly contributes to the increase of individual and business activity of the citizens, having a direct impact on the intensity of economic development.

At the same time, it is important to understand how well households and individuals are provided with the technical means to work on the internet. These technical means include mobile devices (smartphones and tablets), personal computers, and laptops. Based on Eurostat data, by the beginning of 2015, 78% of households were provided with devices (personal desktop and laptop computers) for internet access. We can confidently say that by now more than 90% of EU households are provided with technical means. The population is also actively using mobile devices to access the internet, and Figure 3 shows a rapid increase in the share of the population using smartphones, compared with a smooth increase in the use of laptops and tablets by individuals to access the internet outside of their home or workplace.

Figure 3: Individuals - mobile internet access from 2015 to 2019, % of all individuals



Source: processed by authors on the basis of Eurostat data.

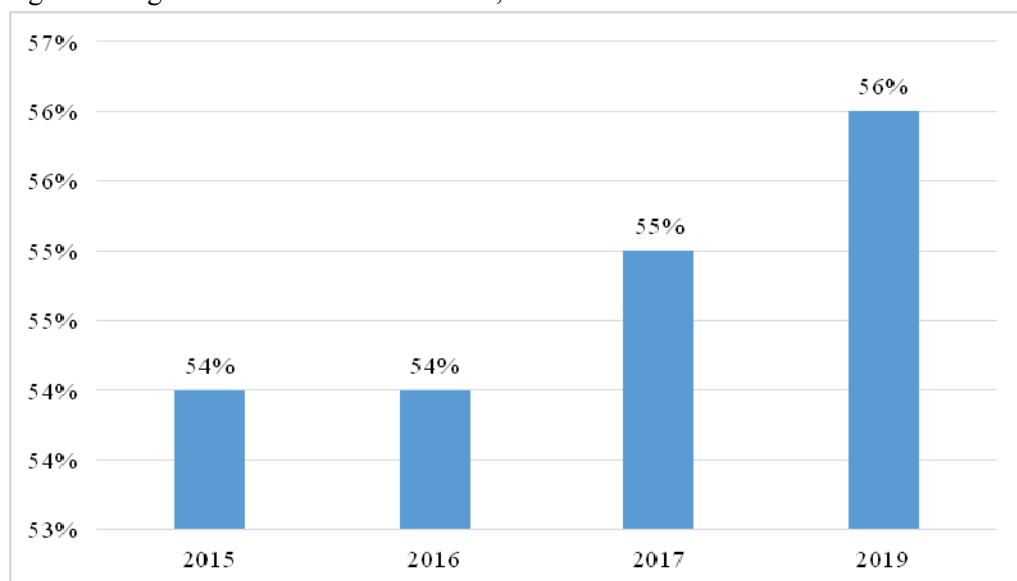
The authors believe that the availability of the internet and technical means does not sufficiently characterize the intensity of the introduction of digital technologies in the socio-economic activities of the people. For the purposes of the research, it is also necessary to study how actively these tools and technologies are used in economic life.

2. *Digital skills of individuals (use of ICT by citizens, both for personal and professional needs) ( $x_5$ );*

Obviously it's not enough to provide households and individuals with only technical means and access to the internet. It is important that individuals have a sufficient level of digital skills to use the widest opportunities of internet, computers and other devices. Basic digital skills include the ability of individuals to use personal computers (copying/moving a file or folder, copying/uploading/pasting information from the screen, using basic arithmetic calculations, compressing/archiving a file, attaching and installing new devices or programs) and internet skills (using search engines, sending mail with attachments, posting messages in chats/news groups/online discussion forums, making phone calls over the Internet, performing peer-to-peer file sharing, creating web pages).

It should be noted that the share of citizens using information technologies and information and telecommunication networks increases annually (Figure 4). Thus, the share of the population aged 16 to 74 years with digital skills in the EU averaged 56% according to data for 2019.

Figure 4: Digital skills from 2015 to 2019, % of all individuals



Source: processed by authors on the basis of Eurostat data.

This indicator forms a comprehensive view of the general digital competency level of a certain territory population. It should be noted that a naturally higher percentage of digital competency is observed among the urban population, as well as a slight advantage is observed in men compared to women. Interestingly, among young people aged 15-24, this figure is close to 100% (Eurostat 2019).

Certainly, the digital economy development has a strong impact on the labor market and the requirements for potential candidates. An increasing percentage of engineering, transportation, economic, medical and other professions require individuals to possess digital skills at various levels from basic to professional, especially for professions in the fields of computer science and communications, science and education.

A specialist with ICT competencies should be able to perform certain tasks in their workplace. And most professional digital skills become useless without being linked to the workplace. The features of a modern workplace are also related to the fact that its environment is constantly updated and requires the employee to be able to continuously learn and adapt to new working conditions. For example, for professions in the field of commerce, an integral part of everyday work is the use of social networks and special applications for communication with customers, suppliers, colleagues, operations on e-commerce platforms to promote products and brands, big data analysis, and other functions (Kupriyanovskiy et al. 2017).

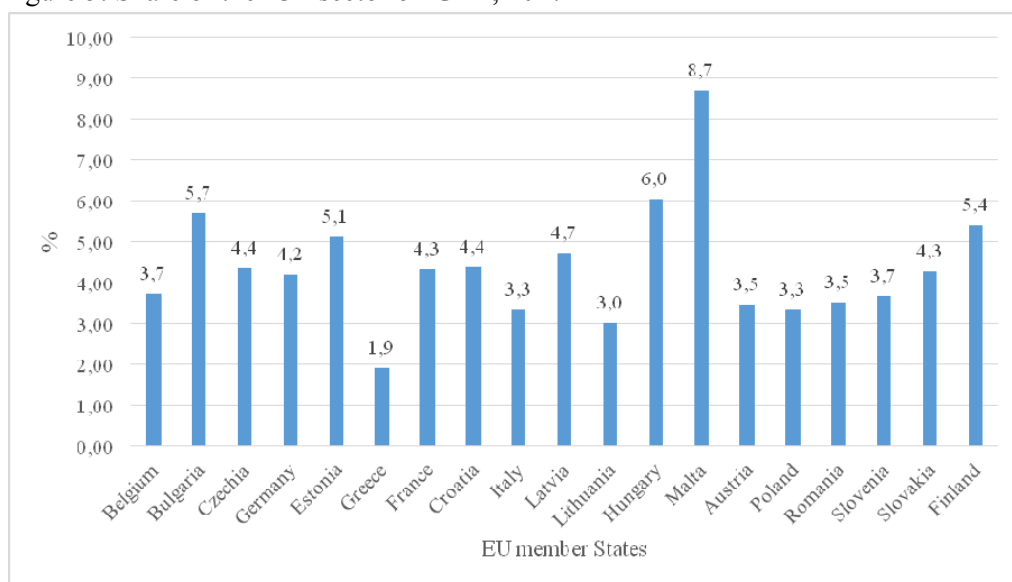
Of course, the considered transformation processes in society are due to the high economic effect resulting from the ICT, including saving almost all types of resources, ensuring transparency of operations, availability and speed of information processing, increasing labor productivity. In this regard, the level of digital skills should play a crucial role in forming GDP, which remains to be tested.

### *3. Development of the ICT sector, including share of ICT sector of GDP and persons employed in the ICT sector ( $x_6-x_{11}$ ).*

The ICT sector is the infrastructure of the digital economy, which includes organizations in the telecommunications sub-sector, the information technology sub-sector, the production of related equipment, wholesale trade in ICT-related goods and other relevant services.

There are many studies that appeal to the need to expand the ICT sector and increase its share of GDP, which should inevitably lead to economic growth (Stolyin Institute for Growth Economics, 2018). At the same time, in the EU over 90% of the ICT sector is represented by services. Over the past few years (from 2008 to 2017), the ICT sector in the EU has taken a stable position, no clear dynamics of a decrease or increase in its share in GDP could be noted. However, it could be seen that the share of the ICT sector is rather not directly related to the level of economic development of a particular country (Figure 5). For example, in Hungary, the ICT sector accounts for 6% of GDP, while in Belgium - 3.7%. But Belgium's GDP is 3 times that of Hungary.

Figure 5: Share of the ICT sector on GDP, 2017



Source: processed by authors on the basis of Eurostat data.

No doubt that the products and services of the ICT sector are the basis for the transformation of traditional sectors of the economy, increasing productivity, optimizing costs and reducing barriers to entry into markets of different levels. To continue researching the impact of digitalization factors on economic growth, it is necessary to focus on the characteristics of the ICT sector. Namely, to determine the relationship between the share of the ICT sector in GDP and GDP per capita. It will help to understand how important it is to increase the volume of the ICT sector to ensure economic growth.

Then we present a list of independent variables ( $x_1 - x_{11}$ ) selected by the authors:

- $x_1$  – Individuals – mobile internet access, percentage of all individuals, who used a laptop, notebook, netbook or tablet computer to access the internet away from home or work [online data code: isoc\_ci\_im\_i];
- $x_2$  - Individuals – last computer use: within last 12 months, percentage of all individuals [online data code: isoc\_ci\_cfp\_cu];
- $x_3$  – Individuals – frequency of computer use: daily, percentage of all individuals [online data code: isoc\_ci\_cfp\_fu];
- $x_4$  – Individuals – last internet use: in the last 12 months, percentage of all individuals [online data code: isoc\_ci\_ifp\_iu];

- $x_5$  – Individuals' level of digital skills, percentage of all individuals, who have above basic overall digital skills [online data code: isoc\_sk\_dskl\_i];
- $x_6$  – Employed ICT specialists – total<sup>3</sup>, percentage of total employment [online data code: isoc\_sks\_itspt];
- $x_7$  – Employed persons with ICT education by age from 15 to 34 years, percentage [online data code: soc\_sks\_itspa];
- $x_8$  – Employed persons with ICT education by age from 35 to 74 years, percentage [online data code: soc\_sks\_itspa];
- $x_9$  – Persons with ICT education by labour status: employed persons<sup>4</sup>, thousands of people [online data code: isoc\_ski\_itemp];
- $x_{10}$  – Percentage of the ICT sector on GDP [online data code: isoc\_bde15ag];
- $x_{11}$  – Percentage of the ICT personnel on total employment [online data code: isoc\_bde15ap].

According to the official definition of the OECD, “*The production (goods and services) of a candidate ICT sector industry must primarily be intended to fulfill or enable the function of information processing and communication by electronic means, including transmission and display*” (OECD, 2011). The relevant economic activities fulfilling the official definition of the ICT sector are detailed below:

- 1) *ICT Manufacturing:*
  - a. Manufacture of electronic components and boards;
  - b. Manufacture of computers and peripheral equipment;
  - c. Manufacture of communication equipment;
  - d. Manufacture of consumer electronics;
  - e. Manufacture of magnetic and optical media.
- 2) *ICT Services:*
  - a. Wholesale of information and communication equipment;
  - b. Software publishing;
  - c. Telecommunications;
  - d. Computer programming, consultancy and related activities;
  - e. Data processing, hosting and related activities; web portals;

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<sup>3</sup> Data on ICT specialists in employment include all sectors of economic activities, however, no sector breakdown is provided (Reference Metadata in Euro SDMX Metadata Structure (ESMS)).

<sup>4</sup> The data describes persons with ICT education in the labour force by their employment status. Data on persons with ICT education do not use the concept of sectors of economic activities. Persons with ICT education can be employed in any sector or be unemployed (Reference Metadata in Euro SDMX Metadata Structure (ESMS)).



#### f. Repair of computers and communication equipment.

The selection and inclusion of variables in the model is due to their presence as targets in the framework of the state program “Digital economy of the Russian Federation” until 2024, which includes such targets as the share of the ICT sector in the economy of the country and certain regions, and the number of employees in the ICT sector.

However, according to the authors, data on the availability of ICT for citizens, as well as on the level of digital skills of individuals are equally important indicators. At the moment, Russia has not yet accumulated a database of statistical data on these indicators, so the study used statistics from the Eurostat website from the section "Digital economy and society" for the period from 2016 to 2018 for 27 countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, France, Finland, Germany, Greece, Hungary, Italy, Ireland, Latvia, Luxembourg, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden.

When selecting indicators for correlation analysis, the criteria were also completeness and availability of information. If there are no values for one of the indicators for a certain period, the missing data was recovered by replacing with the value of the previous period (no more than 10% of such replacements).

### 3 RESULTS

#### 3.1 Results of correlation analysis

According to the results of the correlation analysis, variables were identified that have a high degree of mutual influence. Namely, the multicollinearity of such variables as  $x_4$  and  $x_1$ ,  $x_2$ ,  $x_3$ ,  $x_5$  was revealed; also mutual influence was found between  $x_2$  and  $x_5$ ,  $x_3$  and  $x_2$ ,  $x_7$  and  $x_8$ ,  $x_{10}$  and  $x_{11}$  (Table 1).

Variables with a correlation coefficient of more than 0.7 were excluded from further research, since their values are quite closely related. Thus, only 7 variables took part in the regression analysis:

- $x_1$  – Individuals – mobile internet access;
- $x_3$  – Individuals – frequency of computer use;
- $x_5$  – Individuals' level of digital skills;
- $x_6$  – Employed ICT specialists;
- $x_8$  – Employed persons with ICT education by age from 35 to 74 years;
- $x_9$  – Employed persons with ICT education by labour status;
- $x_{11}$  – Percentage of the ICT personnel on total employment.

Table 1: Correlation matrix

	<i>y</i>	<i>x</i> <sub>1</sub>	<i>x</i> <sub>2</sub>	<i>x</i> <sub>3</sub>	<i>x</i> <sub>4</sub>	<i>x</i> <sub>5</sub>	<i>x</i> <sub>6</sub>	<i>x</i> <sub>7</sub>	<i>x</i> <sub>8</sub>	<i>x</i> <sub>9</sub>	<i>x</i> <sub>10</sub>	<i>x</i> <sub>11</sub>
<i>y</i>	1,00											
<i>x</i> <sub>1</sub>	0,63	1,00										
<i>x</i> <sub>2</sub>	0,53	0,56	1,00									
<i>x</i> <sub>3</sub>	0,61	0,50	0,71	1,00								
<i>x</i> <sub>4</sub>	0,75	0,74	0,81	0,80	1,00							
<i>x</i> <sub>5</sub>	0,74	0,68	0,65	0,68	0,82	1,00						
<i>x</i> <sub>6</sub>	0,37	0,48	0,54	0,50	0,56	0,47	1,00					
<i>x</i> <sub>7</sub>	-0,59	-0,32	-0,38	-0,37	-0,44	-0,49	-0,27	1,00				
<i>x</i> <sub>8</sub>	0,53	0,23	0,37	0,38	0,43	0,44	0,29	-0,81	1,00			
<i>x</i> <sub>9</sub>	-0,05	-0,02	0,03	-0,13	0,04	0,02	-0,09	-0,16	0,15	1,00		
<i>x</i> <sub>10</sub>	0,11	0,51	0,19	0,22	0,28	0,34	0,42	0,02	0,02	-0,10	1,00	
<i>x</i> <sub>11</sub>	0,22	0,58	0,42	0,46	0,52	0,55	0,52	-0,05	0,10	-0,13	0,88	1,00

Source: processed by authors on the basis of Eurostat.

### 3.2 Results of regression analysis

At the next stage of the study, a regression analysis was performed, where GDP per capita (in thousands of euros) was selected as a dependent variable, as an indicator reflecting the level of economic development (Table 3).

Table 3: Regression analysis results

	<i>Coefficients</i>	<i>Std Error</i>	<i>t stat</i>	<i>P-values</i>
<i>Y</i>	-37 317,4175	7 856,8940	-4,7496	0,0000086
<i>x</i> <sub>1</sub>	629,9582	136,2129	4,6248	0,0000138
<i>x</i> <sub>3</sub>	263,0951	128,9106	2,0409	0,0444763
<i>x</i> <sub>5</sub>	619,6072	130,0113	4,7658	0,0000080
<i>x</i> <sub>6</sub>	-65,7552	1 124,6821	-0,0585	0,9535200
<i>x</i> <sub>8</sub>	406,7716	123,0053	3,3069	0,0014015
<i>x</i> <sub>9</sub>	-18,3978	10,0151	-1,8370	0,0698300
<i>x</i> <sub>11</sub>	-9 448,1579	1 984,7289	-4,7604	0,0000082

Source: processed by authors on the basis of Eurostat.

Estimating the P-value for the coefficients, we note that *x*<sub>1</sub>, *x*<sub>3</sub>, *x*<sub>5</sub>, *x*<sub>8</sub> and *x*<sub>11</sub> are statistically significant and affect the level of economic development.

Table 4 presents a test of the significance of the multiple regression equation using the Fisher's F-test, which showed that the coefficient of determination equal to 0.7 is statistically significant and the regression equation is statistically reliable.

Table 4: ANOVA results

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	7	28490194519	4070027788	27,31141276	5,63896E <sup>-19</sup>
Residue	82	12219883370	149022967,9		
Total	89	40710077889			

Source: processed by authors.

Based on the results of the regression analysis, the following should be noted. The hypothesis put forward on the basis of the first group of indicators stated that in the age of digital technologies, the efficiency of activities, and hence the level of economic development of the country, depends on the possibilities that the population has in using computer technology ( $x_3$ ) and access to the Internet ( $x_1$ ). There is a direct linear relationship between the group of these indicators and GDP per capita.

According to the second hypothesis put forward by the authors, the level of digital skills of the population should play a decisive role in the formation of social welfare, since the use of ICT entails a number of undeniable economic effects in the form of saving resources, increasing labor productivity, and ensuring transparency of operations. The statistical significance of the obtained coefficient confirms the presence of a direct relationship between the share of the population competent in the use of personal computers, the internet and other types of ICT in the total population ( $x_5$ ) and the level of GDP per capita.

According to the third hypothesis, the higher level of the ICT sector is the reason for the higher level of the country's economic development. Note that the variables  $x_6$  (Employed ICT specialists) and  $x_9$  (Employed persons with ICT education by labour status) do not have a significant effect on the economic development level of the EU countries, since the resulting p-value  $> 0.05$ . At the same time, the number of personnel who have targeted education and work in the field of ICT in the total population in natural units of measurement has a significant positive impact on the level of economic development.

In our opinion, this proves the conclusions made in the works of Babkin (2017) and Kuprevich (2018) that the digital economy has gone beyond the technological sector. IT personnel are increasingly involved in the transactional sector, which includes government, consulting and information services, finance, wholesale and retail trade, as well as the provision of various utilities, personal and social services.

At the same time, the share of ICT personnel in the total employment has a significant inverse relationship with the level of GDP per capita. In our opinion, this is due to the quality of the personnel in the ICT sector. A smaller proportion of more competent ICT sector personnel can provide greater efficiency and, as a result, higher GDP per capita.

## **4 EUROPEAN UNION COUNTRIES EXPERIENCE**

Below are the key actions of the leading EU countries in terms of the digital economy and society according to the I-DECI index: Denmark, Sweden and Finland. Their initiatives have had a significant impact on the countries' positions in the I-DECI rating, and the experience can be useful for improving the level for both the less developed EU countries in the field of ICT, and for the developing countries of the world. Also, this experience was used to develop conclusions and recommendations in this study.

### **4.1 Possibilities of using a computer and access to the internet**

Possibilities of using a computer and access to the internet. Denmark is one of the leaders in the EU in terms of the opportunities of the population regarding internet access and computer use. Thus, 95% of Danes are regular internet users. The entire territory of Denmark is connected to 4G and NGA communications and 95% of the country's territory is covered by a fixed broadband network. In order to connect rural areas to the NGA communications, the government has undertaken to provide full high-speed coverage of rural areas by 2020 (Abdikeev 2019).

Finland, in order to open up the opportunities provided by digitalization to the entire population of the country, has legislatively provided access to digital services, regardless of where the population lives and its income level. In addition, the country occupies a leading position among EU countries in readiness for 5G networks and technologies (Anttila 2019).

The Swedish government launched a new digital strategy, which aims to lead Sweden in the world in harnessing digital opportunities. The Broadband Strategy envisions opening up access to high-speed broadband throughout Sweden by 2025 (OECD 2018).

Summarizing the experience of these countries in the field of providing access to the internet and digital services, we note that the implemented digital development strategies necessarily provide for investments in the development of high-speed internet access for the entire population of the country, regardless of their place of residence and income level.

### **4.2 Digital skills**

Improving the digital skills of the population is a priority for Denmark, Finland and Sweden. For example, Denmark has focused on achieving alignment between employers' requirements and the population's digital competencies. To this end, the Ministry of Industry, Business and Financial Affairs has launched a number of initiatives outlined in the Strategy for Denmark's Digital Growth (The Danish Ministry of Industry, Business and Financial Affairs 2018).

One of these initiatives is the launch of Technology Pact – skills for a technological and digital future. Within the framework of this Pact, the Danish government, together with trade and industry, educational institutions and the public sector, promotes the exchange of best practices between stakeholders (European Commission 2018). This Pact provides for the involvement of students and the public in STEM (science, technology, engineering and mathematics) education to meet the business needs in creating digital innovations. Businesses and educational institutions are encouraged by the government to participate in initiatives to improve skills for technology and digital jobs. The government has announced the following initiatives: support student access to virtual labs, strengthen the development of talent in science disciplines, stimulate digital enthusiasm through projects in primary education. Thus, from 2019 to 2022, DKK 20 million is allocated annually to implement the Technology Pact and support its initiatives.

In addition, the transformation of primary and lower secondary education is taking place, where specialized subjects play a key role in generating interest in digital technologies. Within the framework of this initiative, it is planned to equip schools to improve performance by developing teacher skills, as well as to test and introduce programs for the formation of computational skills and technological understanding into the educational process.

The demand for ICT graduates in Finland is high and vocational education and training reform is underway to meet this demand. To bridge the gap between demand and supply for STEM specialists, the Finnish Ministry of Education is implementing the LUMA-SUOMI program. For the implementation of this initiative for 2013-2019 the government has allocated 5 million euros (European Commission 2019). The essence of the program is to promote the study of STEM disciplines, improve the qualifications of teachers in these areas, and stimulate cooperation between schools, universities and business. The goal is to motivate children to learn STEM by promoting the latest teaching methods (European Commission, 2019). Technology literacy plays an important role in Finnish schooling. Thus, programming in schools begins with the first grade, and the holding of programming contests and exhibitions of technical devices collected by students is encouraged (Sergomanov 2019).

The Swedish government is implementing a number of projects to develop digital skills among the population, including promoting the use of ICTs by low-income and educational citizens, and engaging people in remote areas online (OECD 2018). In addition, it is planned to improve the system of school and higher education. It supports the use of digital technologies as one of the key teaching tools, stimulates an increase in the number of courses related to ICT and data analysis in higher education, eliminates gender division in programming professions, etc.

Thus, digital skills development initiatives encompass the school system, tertiary education and adult education, as well as the involvement of

people from remote areas and low-income populations. Particular attention is paid to the development of digital skills of teachers, technological equipment of educational institutions and the development of links between universities, schools, business and the state.

#### **4.3 ICT sector development**

Finland has the highest percentage of ICT specialists (6.8%) in the total workforce in the EU, but the demand for these specialists is not fully satisfied. The development of the ICT sector in Finland is evidenced by a number of projects for the introduction of artificial intelligence in the real sector of the economy, for example, at airports, logistics processes of transport companies, medicine (Kord 2019).

In Sweden, the share of value added from the information and communications technology sector is one of the highest among OECD countries, moreover, the country is one of the ten largest exporters of ICT services in the world (OECD 2018).

The Swedish government promotes the diffusion of advanced digital technologies in small and medium-sized enterprises through the implementation of the Digital Lift program, which focuses on big data and the implementation of digital business processes.

The results of the review of the successful experience of developed countries in the field of digitalization of the economy, together with the results of statistical analysis, allow the authors to draw a number of conclusions and offer general recommendations for improving government programs for developing countries.

### **5 CONCLUSIONS AND RECOMMENDATIONS**

In order to stimulate economic growth, attention should be paid to a number of aspects related to the development of information society.

First, in order to provide the population with the opportunity to use ICT tools, governments should, on the one hand, support programs and projects aimed at expanding infrastructure, and on the other hand, to improve the quality of infrastructure, including the quality of communication.

Secondly, the labor market requirements for specialists competencies have changed significantly. This means that there is a need for continuous improvement of the educational process, which, in our opinion, should balance between the formation of professional, “soft” and digital skills. Obtaining digital skills becomes impossible without the use of new technologies in education, such as gamification, the use of artificial intelligence and intelligent assistants, virtual and augmented reality. The world's leading companies, realizing the importance of digital skills, have already introduced new training models into their practice, allowing them to maximize the specialists potential.

Thirdly, the role of the teacher in the process of digital skills teaching has changed. Teachers also need new competencies that allow effectively combining various formats and learning technologies. In this area, we believe that building cooperation between educational institutions and leading companies using digital technologies, attracting practicing teachers who use digital technologies in professional activities is of particular importance in the educational process. In addition, an increase in the hours of practical training will make it possible to more effectively master new technologies.

Taking into account the obtained result of the study, it is also worth noting that the efforts of states should be aimed at improving the means of the educational process, updating the educational environment, as well as improving the qualifications of teachers.

The most important direction of the authors' scientific work in the future may be the study of the development of e-commerce and e-government, the use of ICT in industry and entrepreneurship. These critical spheres of the economic life of society are also decisive in ensuring economic growth and require special attention from scientists.

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## VYBRATÉ DEBATY SANKČNÉHO PRÁVA SELECTED DEBATES ON THE LAW OF SANCTIONS

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Ekonomické sankcie ako nástroj donútenia sú zakotvené v Charte OSN v čl. 39 a čl. 42. Tým, že uvedené články sú formulované všeobecne je potrebné, aby Bezpečnostná rada dôkladne posudzovala a aplikovala tieto články na jednotlivé naliehavé situácie. Zároveň, v priebehu histórie a pri aplikovaní sankcií na jednotlivé situácie vystali rôzne otázky a problémy, ktoré bolo potrebné riešiť a odstrániť. Práve tieto otázky boli riešené počas niekoľkých debát, ktoré sa konkrétne venovali riešeniu vybratých otázok. Cieľom tohto článku bude syntetizovať argumenty, porovnať jednotlivé sankčné režimy a analyzovať rozhodujúce otázky efektivity sankcií. Výsledkom tohto článku by malo byť vytvorenie priestoru pre ďalšie debaty ohľadom zlepšenia efektivity sankčných režimov.

**Kľúčové slová:** humanitárne dopady, ekonomické sankcie, inteligentné sankcie

Economic sanctions as a tool of coercion are enshrined in the Charter of the UN in paragraph 39 and 42. The fact that these articles are formulated so generally, it is necessary that the Security Council carefully assessed and applied these sanctions on each of the necessary situations. At the same time in course of history and in application of sanctions to individual situations, various questions and problems have arisen that needed to be addressed and resolved. It was these questions that were addressed in several debates, which were specifically dealing in resolving these selected questions. The aim of this article is to synthesize arguments, compare individual sanction regimes and analyze crucial question of effectivity of sanctions. The result of this article should be a creation of base ground for further debate about the improvements to the sanction regimes.

**Key words:** humanitarian impact, economic sanctions, smart sanctions

**JEL:** N40, F51, F53

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## 1 ÚVOD

Ekonomické sankcie sú neoddeliteľnou súčasťou donucovacích mechanizmov Organizácie spojených národov (ďalej ako „OSN“). Konkrétne sa ekonomické sankcie radia medzi sankcie bez použitia vojenskej sily, pričom OSN je splnomocnené článkom 39 a článkom 42 Charty OSN (1945) na ich použitie proti akémukoľvek narušiteľovi mieru a bezpečnosti. Z dôvodu vágnosti pojmu mier a bezpečnosť môžu nastať interpretačné nezhody, a práve preto je potrebné, aby Bezpečnostná rada OSN dôkladne posudzovala jednotlivé situácie a uznala či uloží alebo neuloží ekonomické sankcie. Zároveň počas používania sankcií sa vyskytli rôzne aplikačné problémy spojené s režimom ekonomických sankcií.

Prvotným problémom bola otázka právomoci OSN. Konkrétne, či je oprávnená uložiť sankcie v takom rozsahu a spôsobe v akom uložila voči Južnej Rodézii (OSN 1965). Bolo to vôbec prvýkrát, čo Bezpečnostná rada použila ekonomické sankcie voči narušiteľovi mieru a bezpečnosti. Táto otázka bola obzvlášť dôležitá, pretože každé snahy OSN boli buď vetované, alebo inak spochybňované supervelmocami, ktoré takto sledovali vlastné politické ciele. Debata vo svojej podstate pretrvala až do začiatku 90. rokov 20. storočia, kedy sa OSN stáva aktívnejšou a pri aplikácii mnohých sankčných režimov sa objavujú nové dôležitejšie otázky, ktorým bolo potrebné venovať pozornosť. Práve z uvedeného dôvodu debata ultra vires stratila na dôležitosti a fórum sa začalo venovať otázkam efektivity a neskôr aj humanitárnym dopadom ekonomických sankcií.

Debatu ultra vires nahradila debata efektivity. Širokospektrálne ekonomické sankcie spôsobili na prípade Haiti a Iraku kolaps ekonomiky a hospodárstvo ako také prestalo fungovať. Negatívne dopady, ktoré sprevádzali takýto model sankcií vyvolal vlnu otázok, ktoré sa týkali efektivity týchto sankcií. Debata sa zameriavala najmä na spôsoby čo najšetrnejšie obmedziť ekonomiku narušiteľa bez toho, aby došlo k jej úplnému zrušeniu. Sankciami zničené ekonomiky prispeli aj k vytvoreniu novej debaty, ktorá sa zamerala na humanitárne dopady ekonomických sankcií.

Debata humanitárnych dopadov nabrala na dôležitosti taktiež po vzniknutých humanitárnych krízach na Haiti a v Iraku. Pre OSN bolo neprijateľné, aby organizácia poverená udržiavaním medzinárodného mieru a práv ľudí vo svete bola rovnako jednou z príčin humanitárnych kríz. Zameraním tejto debaty bolo hlavne nájsť také riešenie, ktoré by v čo najväčšej miere prispelo k eliminovaniu tohto humanitárneho dopadu.

V neposlednom rade sme toho názoru, že debata humanitárnych dopadov sa prirodzene vyvinula v debatu inteligentných sankcií. Inteligentné sankcie znamenajú výrazný posun v čiastočnej eliminácii niektorých z vyššie uvedených negatívnych javov spojených s ekonomickými sankciami.

Cieľom tohto príspevku je analyzovať vývoj argumentov, ktoré vystali počas používania a uplatňovania rôznych sankčných režimov. Porovnaním týchto

argumentov sledujeme pozitíva a negatíva sankčných režimov. Tieto pozitíva a negatíva sme definovali najmä pomocou metód komparácie, analýzy, deskripcie a syntézy. Hlavným podkladom pre vypracovanie tejto analýzy bol príspevok od O'Connelovej (2002). Uvedený príspevok poslúžil ako osnova na spracovanie našej analýzy, ktorú sme doplnili o debatu inteligentných sankcií. Ďalšími významnými zdrojmi pre náš výskum boli Charta OSN a rôzne Rezolúcie Bezpečnostnej rady, štúdia Marksa (1999) o porušovaní ľudských práv prostredníctvom ekonomických sankcií, štúdia od McDougala a Reimana (1968) o oprávnenosti medzinárodného spoločenstva zasiahnuť do špecifických krízových situácií, štúdia od Reimana (1996), ktorý sa zaoberá niektorými otázkami zákonnosti nevojenských akcií medzinárodného spoločenstva, štúdia od Muellera a Muellera (1999) o devastačných dopadoch ekonomických sankcií a štúdia od Gordona (2011), v ktorej sa zaoberá analýzou inteligentných sankcií. Záverom tejto analýzy má byť prehľad argumentačných línií v historickom priereze uplatňovania sankčných režimov doplnených o súčasnú debatu inteligentných sankcií. Takýto prehľad má slúžiť ako základ na budúce úvahy, prípadne debaty, ktoré by mali prispieť k zefektívneniu sankčných režimov.

## 2 DEBATA ULTRA VIRES

Od vzniku OSN sú sankcie považované za jeden z najefektívnejších nástrojov donútenia v medzinárodnej komunite štátov. Cieľom OSN, ktorý je vyjadrený v preambule Charty OSN je: „ubrániť budúce pokolenia pred metlou vojny“ (Charta OSN 1945). Aby OSN naplnilo tento cieľ, Charta OSN splnomocňuje OSN, najmä Bezpečnostnú radu konať a uložiť sankcie. Uvedené splnomocnenie obsahuje čl. 39, ktorý uvádza: „*Bezpečnostná rada určí, či ide o ohrozenie mieru, porušenie mieru alebo o útočný čin a odporučí, alebo rozhodne, aké opatrenia sa majú robiť podľa článkov 41 a 42, aby bol zachovaný medzinárodný mier a bezpečnosť.*“ (Charta OSN 1945). Až po následnom posúdení akcie môže Bezpečnostná rada OSN pristúpiť k uplatneniu konkrétnej sankcie bez použitia sily – čl. 41 alebo sankcie s použitím sily – čl. 42.

Počas obdobia studenej vojny, konkrétne od roku 1945 až po rok 1990, bol sankčný aparát OSN blokovaný záujmami svetových mocností, ktoré disponujú právom veta. Prvý krát boli sankcie uplatnené až v roku 1965 voči Južnej Rodézii, dnešné Zimbabwe (OSN 1965). Účelom rozsiahlych ekonomických sankcií bolo mierovou cestou prinútiť odovzdanie moci väčšinovej vláde a zavíšiť tak proces osamostatnenia sa Južnej Rodézie.

Tieto sankcie spočiatku nemali záväzný charakter, boli len dobrovoľné. Dobrovoľné sankcie vyzývali všetky členské štáty OSN, aby prerušili svoje ekonomické styky s Južnou Rodéziou a zaviedli embargo na dovoz zbraní, vojenského materiálu a pohonných látok do krajiny. Tieto sa ukázali ako neúčinné. Keďže neboli záväzné, veľa členských štátov ich neaplikovalo. Práve vplyv Veľkej Británie blokoval

Bezpečnostnú radu v hlbšom zhodnotení situácie ako priameho ohrozenia mieru a bezpečnosti (Minter a Schmidt 1988, s. 212). Až v roku 1966 rezolúciou S/RES/232 (1966) Bezpečnostná rada zhodnotila, že situácia v Južnej Rodézii predstavuje ohrozenie mieru a bezpečnosti a prijala nasledovné sankcie:

„Všetky členské štáty OSN zabránia:

- *Dovozu azbestu, železnej rudy, surového železa, cukru, tabaku, medi, mäsa, mäsových výrobkov a koží, pôvodom z Južnej Rodézie a taktiež exportovaných z tohto územia, dňom nasledujúcim po dni uvedenom v tejto rezolúcii;*
- *Akýmkoľvek aktivitám ich občanov alebo aktivitám na ich území, ktoré by podporovali alebo by umožňovali export týchto komodít z Južnej Rodézie a akékoľvek obchody vykonané občanmi alebo na ich území v spojení s týmito komoditami pôvodom z Južnej Rodézie alebo exportovaných z tohto územia, dňom nasledujúcim po dni uvedenom v tejto rezolúcii, zároveň vrátane akýchkoľvek prevodov finančných prostriedkov do Južnej Rodézie za účelom uskutočnenia týchto aktivít alebo obchodov;*
- *Lodným alebo leteckým zásielkam, obsahujúcim komodity pochádzajúce z Južnej Rodézie a sú odtiaľ exportované, dňom nasledujúcim po dni uvedenom v tejto rezolúcii;*
- *Akýmkoľvek aktivitám ich občanov alebo na ich území, ktoré podporujú alebo umožňujú predaj alebo dovoz, do Južnej Rodézie, zbraní, munície všetkého druhu, vojenských lietadiel, vojenských vozidiel, materiálu a techniky na výrobu a údržbu zbraní a munície v Južnej Rodézii;*
- *Akýmkoľvek aktivitám ich občanov alebo na ich území, ktoré podporujú alebo umožňujú dodávanie, do Južnej Rodézie, všetkých ostatných lietadiel, motorových vozidiel a vybavenia a materiálov pre zostrojenie alebo výrobu lietadiel alebo motorových vozidiel v Južnej Rodézii; lodným alebo leteckým zásielkam obsahujúcim akékoľvek tovary určené pre Južnú Rodéziu; akýmkoľvek aktivitám ich občanov a na ich území, ktoré podporujú alebo umožňujú výrobu alebo zostrojenie lietadiel alebo motorových vozidiel v Južnej Rodézii;*
- *Dodávkam ropy a ropných produktov do Južnej Rodézie z ich území alebo území pod ich správou prostredníctvom pozemných alebo vzdušných prostriedkov alebo za účasti ich občanov alebo plavidiel pod ich správou.“*  
(Bezpečnostná rada OSN 1966)

Následne boli sankcie opätovne predĺžené v roku 1968 a zrušené až v roku 1972, kedy došlo k prechodu moci na väčšinovú vládu. Druhé povinné sankcie uplatnené Bezpečnostnou radou OSN boli zavedené v roku 1977 voči Južnej Afrike

(Bezpečnostná rada OSN 1966). Ako môžeme vidieť sankčný list voči Južnej Rodézii, ktorý uvalila Bezpečnostná rada je rozsiahli a do tej doby bezprecedentný. Je preto samozrejmé, že takýto krok OSN vyvolal v otázky legality v medzinárodnej jurisprudencii.

V oboch prípadoch Bezpečnostná rada hodnotila, že došlo k ohrozeniu mieru a bezpečnosti. Zároveň, keď sa hlbšie pozrieme na situáciu v oboch krajinách a text rezolúcie S/RES/418 (1977), „*Dôrazne odsudzujeme represívne kroky vlády Južnej Afriky, jej vzdorné uplatňovanie systému apartheid a jej útokov voči ostatným nezávislým susedným štátom.*“, môžeme vidieť, že okrem mieru a bezpečnosti bola cieľom aj ochrana ľudských práv v uvedených štátoch. Tieto sankcie boli uplatnené pod čl. 39 v spojení s článkom 41 Charty OSN. Tvorcovia Charty OSN pri jej písaní mali na mysli úplne iný účel uplatnenia týchto článkov. Ak by sme sa striktne držali ich pôvodného historického výkladu, mohli by sa tieto články uplatňovať iba v prípade vzniku ozbrojeného konfliktu medzi jednotlivými štátmi medzinárodného spoločenstva. Uvedený výklad spustil debatu oprávnenosti vyššie uvedených sankcií. Prvá skupina odborníkov zastávala názor, že uvedené situácie nezastávajú ohrozenie medzinárodného mieru a bezpečnosti, pretože diskriminácia a apartheid spadajú pod vnútorné záležitosti štátu a ako také sú tieto záležitosti mimo vplyvu OSN (Charta OSN 1945, čl. 2 ods. 7). Druhá skupina odborníkov zaujala stanovisko, že niektoré ustanovenia Charty sú formulované obsérne a môžu podliehať rôznemu spôsobu výkladu. Zároveň zastávajú názor, že novým hrozbám mieru a bezpečnosti treba prispôbiť aj nové opatrenia. McDougal a Reisman uvádzajú, že článok 39 Charty sa má vzťahovať nielen na porušenia mieru a akty agresie, ale aj na prevenciu a odstránenie akýchkoľvek foriem ohrozenia mieru (McDougal, Reisman 1968, s. 8). Na uvedené nadväzujú, že aj napriek tomu, že niektoré veci spadajú výslovne pod čl. 2 ods. 7 Charty ako domácu jurisdikciu štátu, tak tieto situácie môžu prerásť v medzinárodnú problematiku alebo mať medzinárodné dopady (McDougal a Reisman 1968, s. 15). Medzi príklady medzinárodného záujmu môžeme zaradiť hrubé porušovanie ľudských práv, upieranie práva na sebaurčenie a iné. Práve hrubé porušovanie ľudských práv a rasizmus môžu byť príčinami zvýšenej intenzity násillia, ktorá neskôr môže prerásť do ohrozenia medzinárodného mieru a bezpečnosti (McDougal a Reisman 1968, s. 15). Rozsah situácií, kedy môže Bezpečnostná rada prehlásiť, že sa jedná o porušenie mieru a bezpečnosti je v podstate neobmedzený a je len na Bezpečnostnej rade, či tak v konkrétnej situácii učiní alebo nie. V žiadnom prípade nemôžeme tvrdiť, že ak Bezpečnostná rada uváži ohrozenie mieru alebo bezpečnosti, ktoré nie je výslovne uvedené v Charte, že koná *contra legem*. Práve naopak, Bezpečnostná rada musí reagovať na nové hrozby a s tým prijímať efektívne opatrenia na ochranu mieru, ktoré v žiadnom prípade nemôžu byť považované za akt *ultra vires*. Uvedené potvrdil aj Medzinárodný súdny dvor vo svojom poradnom stanovisku v prípade Niektorých výdavkov OSN: „*Prirodzene je hlavné miesto*

prisudzované medzinárodnému mieru a bezpečnosti, pretože splnenie ostatných cieľov bude závisieť od dosiahnutia tejto základnej podmienky. Tieto účely sú formulované obšírne, ale ani oni, ani právomoci, ktoré im boli zverené, aby vykonávali nie sú neobmedzené. Členovia, s výnimkou prípadu, keď poverili organizáciu dosiahnutím týchto spoločných cieľov si členské štáty ponechávajú slobodu konať. Ak však organizácia podnikne kroky, ktoré odôvodňujú tvrdenie, že sú vhodné na splnenie jedného z uvedených cieľov OSN, môže sa predpokladať, že táto akcia nie je konaním organizácie *ultra vires*.“ (ICJ 1962, s. 168) Väčšina medzinárodných akademikov sa priklonila k záverom McDougala a Reimana, zdôvodňujúc, že Bezpečnostná rada nielen, že môže, ale by mala uskutočniť akciu, napríklad aj v prípade porušenia ľudských práv, obzvlášť v prípade ak je situácia zhodnotená ako ohrozenie alebo porušenie mieru a bezpečnosti (O’Connel 2002, s. 66). Táto debata sa ďalej pozastavila, pretože počas trvania Studenej vojny OSN už neuložilo ďalšie sankcie.

### 3 DEBATA EFEKTIVITY

Po skončení Studenej vojny a zmene geopolitických podmienok sa Bezpečnostná rada OSN stáva aktívnejšou a v zvýšenej miere začína prijímať sankcie. Môžeme pozorovať, že v rozmedzí niekoľkých rokov prijala Bezpečnostná rada viac ako 9 nových sankcií, čo je mnohonásobne viac ako za obdobie 1945 až 1990 (O’Connel 2002, s. 67). S uvedenou zvýšenou aktivitou vystali aj otázky efektivity týchto sankcií. So zmenou podmienok sa čiastočne modifikovali aj ciele medzinárodného výskumu. Ten sa obrátil najmä k otázkam ako sankcie môžu pomôcť v dosiahnutí cieľov ako podpora ľudských práv, podpora demokratických procesov a práva na sebaurčenie národov (O’Connel 2002, s. 67). Vznikla nová debata, ktorá sa zamerala na čo najefektívnejšie dosiahnutie uvedených cieľov s čo najmenšími negatívnymi dopadmi na civilné obyvateľstvo (O’Connel 2002, s. 67).

Tieto demokratizačné snahy boli napadnuté Irakom a jeho inváziou do Kuvajtu v roku 1990. Krátko na to prijíma Bezpečnostná rada rezolúciu S/RES/660 (1990), v ktorej prijíma opatrenia pod kapitolou VII Charty OSN a uplatňuje čl. 40<sup>2</sup> a vyzýva Irak na stiahnutie svojich vojsk z územia Kuvajtu a začatie okamžitých rokovaní medzi oboma krajinami (S/RES/660 1990). Ďalšou rezolúciou S/RES/661 (1990) prijíma Bezpečnostná rada rozsiahle ekonomické sankcie, medzi ktoré patrí zákaz vývozu akýchkoľvek produktov alebo komodít pochádzajúcich z Kuvajtu alebo Iraku, rozsiahle zbraňové embargo, zákaz dovozu vojenskej techniky a v neposlednej rade, rozsiahle finančné sankcie a s nimi spojený zákaz vykonávať akékoľvek finančné

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<sup>2</sup> Charta OSN, čl. 40: „Aby sa predišlo zhoršeniu situácie, Bezpečnostná rada skôr ako odporučí, alebo rozhodne o opatreniach stanovených článkom 39, môže vyzvať zainteresované strany, aby sa **podrobili dočasným opatreniam, ktoré považuje za potrebné a žiadúce**. Takéto dočasné opatrenia nebudú na ujmu právam, nárokom alebo postaveniu zainteresovaných strán. Ak takéto dočasné opatrenia neboli vykonané, Bezpečnostná rada k tomuto náležite prihliadne.“

operácie s týmito dvomi krajinami, rovnako ako aj zmrazenie všetkých finančných prostriedkov Iraku (S/RES/661 1990). Následne boli tieto sankcie predĺžené rezolúciou S/RES/666 (1990), ktorá obsahovala kľúčové výnimky zo sankcií (S/RES/666 1990). Dlhodobé ekonomické sankcie mali devastujúce účinky na ekonomiku Iraku a s touto skutočnosťou vystali aj humanitárne problémy civilného obyvateľstva. OSN si túto skutočnosť uvedomovalo a v rezolúcii 661 uviedlo výnimky zo sankcií, a to pre dodávky liekov, zásob jedla a financií pre humanitárne dôvody (S/RES/661 1990). Po úspešnom porazení irackých vojsk a oslobodení Kuvajtu spojeneckými silami, zaviedlo OSN ďalšie sankcie rezolúciou S/RES/667 (1991) s podstatne širšími humanitárnymi výnimkami (S/RES/667 1991). V konečnom dôsledku režim Sadáma Husajna padol a v krajine sa opätovne začali demokratizačné procesy. Uvedená kombinácia sankcií vyvolala v medzinárodnom spoločenstve vyšší záujem po udeľovaní sankcií voči diktátorským režimom a porušovateľom ľudských práv po celom svete.

Ekonomické sankcie sa v prípade Iraku ukázali ako nie celkom efektívny nástroj. Samozrejme ochromili ekonomiku Iraku, ale zároveň mali negatívne dopady na civilné obyvateľstvo. OSN na jednej strane uvalilo široký zoznam sankcií na dovoz a vývoz rôznych komodít z a do krajiny, ale na druhej strane bolo povinné stanoviť aj určité výnimky, aby v čo najvyššej miere zmiernila negatívne dopady na civilné obyvateľstvo. V prípade, že ekonomické sankcie nie sú dostatočné, ako sa ukázalo v prípade Iraku, Bezpečnostná rada uplatnila článok 42 a vojenskou silou prinútila narušiteľa k poslušnosti. Aj takáto vojenská intervencia mala opätovne negatívne dopady na civilné obyvateľstvo a už len ďalej prehĺbovala vznikajúcu humanitárnu krízu v krajine. Debata efektivity sankcií preto nabrala nový smer a zaznamenala posuv k otázke humanitárneho dopadu sankcií na obyvateľstvo štátu.

#### **4 DEBATA HUMANITÁRNYCH DOPADOV**

Zavedenie sankcií voči Iraku a neskôr voči Haiti mali rozsiahle negatívne dopady na civilné obyvateľstvo a ekonomiky daných štátov. Konečný cieľ, pre ktorý boli určené nedosiahli. Správy o utrpení civilného obyvateľstva, v oboch prípadoch, vyzdvihli vlnu otázok ohľadom určitých právnych štandardov sankcií a možností ako čo najefektívnejšie zamedziť ďalším civilným stratám.

Reisman (1996, s. 117) a Mueller a Mueller (1999, s. 49) zastávajú názor, že určujúcim kritériom pri aplikácii sankcií by mali byť ľudské práva. Ich stanovisko vychádza zo základných princípov stanovených v Charte OSN a zároveň aj v samotnej preambule Charty OSN je uvedené: „*vyhlásiť znovu svoju vieru v základné práva, v dôstojnosť a hodnotu ľudskej osobnosti, v rovnaké práva mužov a žien*“, čo môžeme považovať za určitý minimálny štandard garancie práv. Zároveň zastávali stanovisko, že OSN uplatnením uvedených sankcií spôsobilo hrubé porušenie práv obyvateľov Iraku a Haiti a malo by sa zodpovedať za tieto porušenia.



Schindler (1984, s. 526) a Gardmam (1996, s. 318) zase zastávali názor, že pri uplatňovaní sankcií by mala Bezpečnostná rada prihliadať na medzinárodné humanitárne právo ozbrojených konfliktov. S týmto argumentom sa do popredia dostáva aj otázka proporcionality ako jedného zo základných princípov humanitárneho práva.

Nakoniec tretiu skupinu uzatvára Marks (1999), ktorý uvádza, že výkladom ustanovení medzinárodných zmlúv dochádza k záveru, že OSN nemôže zodpovedať za humanitárne straty, pretože plnilo len základný cieľ Charty, ktorým je udržanie mieru a bezpečnosti. Sme toho názoru, že v prípade ak by OSN bolo nečinné a nastali by straty na životoch v dôsledku neplnenia si svojich povinností, práve vtedy by sme mohli uvažovať o určitej zodpovednosti OSN.

Ekonomické sankcie sa ukázali byť neefektívne v krátkodobom horizonte a na druhú stranu v dlhodobom horizonte mali až zničujúce dopady na civilné obyvateľstvo a ekonomiku štátu. Zároveň tí, voči ktorým sankcie smerovali neboli nimi takmer nijako dotknutí a práve naopak profitovali z tejto zhoršenej situácie v danej oblasti. Reisman uvádza: *„Bohaté elitné skupiny obyvateľstva a vojenské velenie sa obohacovali na pašovaní tovarov počas obdobia uvalených sankcií. Zvyšok obyvateľstva, ktoré bolo pozbavené o svojich zvolených reprezentantov, ktorí mali tomuto obyvateľstvu pomáhať, bolo bez preháňania vystavené hladomoru.“* (Reisman 1995, s. 350)

Ako sme už vyššie uviedli, Bezpečnostná rada má pomerne široké možnosti, v ktorých môže uplatniť sankcie. Je však pravdou, že Bezpečnostná rada je pri plnení svojich povinností limitovaná Chartou, a to najmä článkom 24 (2): *„Pri plnení týchto povinností Bezpečnostná rada koná v súlade s cieľmi a zásadami Organizácie Spojených národov. Osobitnú právomoc zverenú Bezpečnostnej rade na umožnenie splnenia týchto povinností určujú kapitoly VI, VII, VIII a XII.“*(Charta OSN 1945) Ciele a situácie, na ktoré musí Bezpečnostná rada a OSN ako organizácia reagovať sa počas rokov menia. Základným cieľom OSN je však stále stabilita a mier vo svete. Sme toho názoru, že ľudské práva sú neoddeliteľnou súčasťou mierového systému štátu. Súčasne, ak niektorý štát zasahuje do teritoriálnej integrity alebo iným spôsobom ohrozuje stabilitu a mier alebo bezpečnosť, je povinnosťou OSN ochrániť a poskytnúť pomoc takémuto štátu aj za cenu toho, že čiastočne zasiahne práva obyvateľov narušujúceho štátu. Cieľom OSN teda určite nie je porušovať práva, ako niektorí teoretici uvádzajú, ale donútiť narušiteľa k poslušnosti. Aby sme mohli OSN obviňovať zo závažného porušovania ľudských práv, napríklad v Iraku a Haiti, potrebovali by sme preukázať, že OSN tak konala úmyselne. Dohovor o prevencii a potrestaní zločinu genocídy, čl. 2 jasne stanovuje: *„V tomto Dohovore, genocída znamená ktorýkoľvek z nasledujúcich činov spáchaných s úmyslom zničiť, celkom alebo čiastočne, národnú, etnickú, rasovú alebo náboženskú skupinu...“* (Convention on prevention and punishment of the crime of genocide 1948) Zároveň OSN spolu so sankciami prijíma

aj rôzne humanitárne výnimky alebo programy, ktoré majú za úlohu zmierniť negatívne dopady sankcií. Neúmyselné dopady nemôžu byť považované za porušovanie ľudských práv (O'Connel 2002, s. 73). K uvedenému názoru sa prikláňa aj Marks, ktorý uvádza: „*Tí, čo uplatňujú sankcie nemôžu byť zodpovední, pokiaľ úmyselne nechcú porušiť ľudské práva alebo uplatniť opatrenia, ktoré sú v priamom rozpore s týmito právami a ktoré nespĺňajú minimálny štandard dodržiavania týchto práv.*“ (Marks 1999, s. 1511) V súvislosti s uvedeným, argumenty prvej skupiny teoretikov neobstáli a debata sa posunula skôr k humanitárnemu právu.

Debata sa ďalej zamerala skôr na humanitárne právo ako právo, ktoré by udávalo hranice pri uplatňovaní sankcií. Práve toto odvetvie práva udáva limity, ktoré sú dané a neprekročiteľné. Problémovou otázkou zostalo, že uvedené právo sa aplikovalo len v prípade ozbrojených konfliktov, pričom jedna aj druhá strana sú ozbrojené a hrozí otvorený konflikt. Keďže OSN sa priamo nezapája do konfliktu, nemá vlastnú armádu a ani nedisponuje ozbrojenou silou, niektorí teoretici označili ekonomické sankcie ako určitú formu zbrane. Takýto záver je celkom rozumný, pretože sankcie sú jedným z najpoužívanejších nástrojov na vynútenie poslušnosti. To však ale nevyhnutne neznamená, že ich za zbrane aj de facto môžeme považovať. OSN nedisponuje žiadnou vlastnou ozbrojenou silou a spolieha sa na členské štáty, že v prípade potreby jej bude takáto sila poskytnutá.<sup>3</sup> Z uvedeného usudzujeme, že OSN nemôže uplatniť komplexne humanitárne právo pri používaní sankcií. Samotná Bezpečnostná rada prijala stanovisko, v ktorom uvádza: „*Ak by sa sankcie mali považovať za alternatívu k vojenským akciám, pri ich vykonávaní by sa malo zohľadniť a rešpektovať základné zásady medzinárodného humanitárneho práva.*“ (SC/6845, 2000) Medzi tieto základné zásady radíme proporcionalitu a potrebu zásahu. Proporcionalita znamená, že sa vždy budú posudzovať ciele, ktoré sa majú dosiahnuť a dopady spôsobu dosiahnutia týchto cieľov (O'Connel 2002, s. 75). Zjednodušene povedané hľadať riešenia, ktoré budú silou primerané porušeniu Charty OSN a medzinárodného práva. Súčasne, ak by aj došlo k neprimeranému zásahu a hrozilo by zvýšené nebezpečie, každý členský štát má možnosť aplikovať čl. 50 Charty: „*Každý štát, ktorému vzniknú osobitné hospodárske problémy v dôsledku uskutočňovania preventívnych alebo donucovacích opatrení Bezpečnostnej rady proti ktorémukoľvek inému štátu, má právo, či je alebo nie je členom Organizácie Spojených národov, poradiť sa s Bezpečnostnou radou o riešení týchto problémov.*“ (Charta OSN 1945), požiadať o pomoc a odvrátiť alebo zmenšiť negatívne dopady.

Okrem výhod má humanitárne právo aj niektoré negatíva a nedostatky, ktoré sa snažilo medzinárodné spoločenstvo odstrániť. Napríklad, čo v prípade, ak bude

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<sup>3</sup> CHARTA OSN, čl. 41 (1) „*Všetci členovia Organizácie Spojených národov, aby prispeli k zachovaniu medzinárodného mieru a bezpečnosti, zaväzujú sa že poskytnú Bezpečnostnej rade na jej výzvu i podľa osobitnej alebo osobitných dohôd ozbrojené sily, pomoc a všetky možné prostriedky potrebné pre zachovanie mieru a bezpečnosti, vrátane aj práva prechodu.*“

potrebné sprísniť opatrenia, ktoré sú už teraz príliš negatívne na obyvateľstvo, aby sa dosiahol cieľ sankcií? S týmito otázkami sa debata obrátila na pravidlá protiopatrení. Definícia protiopatrení sa nachádza v prípade arbitráže Air Services. Rozhodcovia definovali protiopatrenia ako opatrenia, ktoré sú v rozpore s medzinárodným právom, ale ich použitie je oprávnené porušením medzinárodného práva iným štátom, voči ktorému sú namierené (Air Services Agreement 1978, para. 84). Pravidlá protiopatrení sú postavené na dvoch základných princípoch. Prvým princípom je použiteľnosť len vo vhodných okolnostiach, čo znamená, že najskôr musí dôjsť k porušeniu medzinárodného práva zo strany iného štátu voči štátu, ktorý uplatňuje protiopatrenia. Druhým princípom je princíp proporcionality, ktorý zaručuje, že protiopatrenia nebudú vyššej intenzity než bola spôsobená škoda. Súčasne protiopatrenia nemôžu eskalovať alebo naberať na intenzite, môžu trvať aj niekoľko rokov, avšak medzinárodné právo zakazuje, aby sa stupňovali alebo naberali na intenzite. Príkladom dlhodobo trvajúcich protiopatrení je prípad kedy Spojené kráľovstvo zadržalo albánske národné zlaté ako protiopatrenie voči Albánsku, ktoré odmietalo zaplatiť čiastku priznanú Spojenému kráľovstvu Medzinárodným súdnym dvorom v prípade Korfský kanál (O'Connell 2002, s. 77).

Bezpečnostná rada OSN si argumenty uvedené v tejto debata osvojila a k tomu prispôsobila sankčné prostriedky. Medzi sankcie bez použitia sily zaradili obchodné embargá, zbraňové embargá, prerušenie komunikácie a medzinárodné trestné stíhanie (Marks 1999, s. 1). Uvádzajú, že každé z uvedeného má svoje výhody aj nevýhody a za najzávažnejšie označili práve obchodné embargá. Tieto majú najväčšie dopady na ekonomiky štátov a taktiež aj na civilné obyvateľstvo týchto štátov. Aby sa predišlo ďalším situáciám ako v prípade Iraku a Haiti je potrebné, aby sa uplatňovali také sankcie, ktoré majú čo najmenší humanitárny dopad. Za týmto účelom sa akademici zhodli, že sa sankcie musia riadiť určitými hranicami pri ich uplatňovaní. Týmto hranicami, zjednodušene povedané, sú základné princípy medzinárodného humanitárneho práva a práva protiopatrení, ktoré jasne stanovujú, že sankcie musia byť proporcionálne k porušeniu medzinárodného práva, musia byť odpoveďou na určité porušenie medzinárodného práva a musia mať, čo najmenšie negatívne dopady na civilné obyvateľstvo. Reisman zastáva stanovisko, že nie je možné úplne eliminovať negatívny dopad sankcií, pretože vedľajšie straty budú vždy prítomné a ich výška taktiež záleží od toho, aký režim sa snažia zmeniť. Uvádza, že pri demokratických režimoch je možné očakávať, že vedľajšie straty budú nižšie ako pri zmene autoritatívnych režimov (Reisman 1995, s. 356). V konečnom dôsledku debata nepriniesla žiadne pevne stanovené pravidlá ako uplatňovať sankcie. Súhlasne akademici, tak ako aj OSN dospeli k záverom, že sankcie je potrebné zmodernizovať, spraviť ich viac „*smart*“, aby sa predišlo podobným udalostiam ako na Haiti a v Iraku.

## 5 DEBATA INTELIGENTNÝCH SANKCIÍ

Širokospektrálne sankcie, najmä tie ekonomické, preukázali, že v krátkodobom horizonte nie sú dostatočne efektívne a majú vážne humanitárne dopady na civilné obyvateľstvo. Debata Inteligentných sankcií začala v období debaty humanitárnych dopadov. Obe debaty sa zaoberajú spoločným cieľom, a to čo najefektívnejšie eliminovať negatívne humanitárne dopady sankcií. Debata Humanitárnych dopadov sa snažila zreformovať už stanovený sankčný systém bez snahy jeho hlbšej zmeny, pričom debata Inteligentných sankcií sa viac zamerala na komplexnú zmenu sankčného aparátu. Hlavným cieľom tejto zmeny bolo nájsť sankcie, ktoré nebudú mať negatívne humanitárne dopady širokospektrálnych sankcií, ale zároveň budú efektívnejšie vo vynútení poslušnosti voči jednotlivým narušiteľom práva (Gordon 2011, s. 315). Ideálny model inteligentných sankcií mal pozostávať zo série opatrení namierených voči špecifickým cieľom, jednotlivcom alebo skupine osôb, ktorí sú zodpovední za porušenie medzinárodného práva, a zároveň eliminovať humanitárne dopady. Medzi tieto opatrenia patrí napríklad cestovné embargo, ktoré môže spočívať v zákaze cestovať z alebo do krajiny alebo obmedzenie leteckej dopravy, zbraňové embargo, obchodné embargo, spočívajúce v zákaze exportu niektorých komodít z daného štátu alebo aj napríklad finančné sankcie, ktoré sa zvyčajne prejavujú v zmrazení finančných prostriedkov sankcionovanej osoby. Pri zavádzaní uvedeného modelu sankcií sa objavili viaceré implementačné problémy, ktoré spočívali v probléme efektívneho vynútenia sankcií. Tie spočívali napríklad v rozšírenom nelegálnom obchodovaní so zbraňami v štátoch, na ktoré je uvalené zbraňové embargo, falšovanie pasov, letových plánov počas cestovného embarga alebo otázky ako efektívne uskutočniť finančné embargá nariadené pod kapitolou VII Charty OSN a zabezpečiť ich výkon členskými štátmi, ktoré ich majú vykonať. Aplikácie problémy spočívali najmä v diverzite administratívnych postupov a právnych poriadkov jednotlivých členských štátov medzinárodného spoločenstva. Uvedené otázky spustili sériu debát o budúcnosti inteligentných sankcií. Do pozornosti dávame nami vybrané debaty ako debaty ohľadom vplyvu na finančný a bankový sektor, známe aj ako Interlakenský proces, ktorý mal za úlohu zjednotiť administratívne postupy pri implementácii inteligentných finančných sankcií (Gordon 2011, s. 319), ďalej uvádzame Bonnsko-Berlinskú debatu, ktorá sa zaoberala najmä zbrojnými embargami a zvýšením efektivity tohto typu sankcií (Gordon 2011, s. 320), Štokholmská debata, ktorá bola zameraná na zvýšenie humánosti, efektívnosti a cielenosti sankcií (Gordon 2011, s. 320) a mnohé iné.

Na príklade rezolúcie Bezpečnostnej rady OSN S/RES/1343 (2001) môžeme pozorovať vyššie uvedené zmeny. Rezolúcia 1343 je zameraná na konkrétne skutočnosti alebo príčiny, ktoré eskalujú a predlžujú konflikt v Libérii. Medzi konkrétne inteligentné sankcie, vrátane zbraňového embarga, patria aj nami vybrané ďalšie opatrenia ako:

- „zákaz priameho alebo nepriameho importu surových diamantov zo Sierra Leone, ktoré neprišli príslušným režimom certifikácie pôvodu;
- zmrazenie finančných prostriedkov a zdrojov sprístupnených občanmi alebo na ich území na priamu alebo nepriamu podporu RUF (Revolutionary United Front) alebo entítam, ktoré sú alebo sa nachádzajú pod priamou kontrolou RUF;
- zákaz vzletu akýmkoľvek lietadlám registrovaných alebo letiacich pod Libérijskou jurisdikciou, pokiaľ nie je aktualizovaný pôvod registrácie lietadla v zmysle Prílohy VII Chicago dohovoru o Medzinárodnom civilnom letectve a poskytne Bezpečnostnej rade aktualizované informácie ohľadom vlastníctva a registrácie všetkých lietadiel registrovaných v Libérii;
- všetky štáty podniknú potrebné opatrenia, aby sa zabránilo priamemu alebo nepriamemu importu všetkých surových diamantov z Libérie, bez ohľadu na to, či v Libérii majú alebo nemajú pôvod.“ (S/RES/1343 2001)

V porovnaní s rezolúciou Bezpečnostnej rady OSN S/RES/217/1968 môžeme pozorovať výrazný posun v eliminácii širokospektrálnych ekonomických sankcií, ktoré mali za následok zrušenie ekonomiky sankciovaného štátu. Na uvedenom príklade pozorujeme, že namiesto zavedenia celoplošných opatrení, akými boli embargá na export a import, sa v súčasnosti Bezpečnostná rada zameriava na špecifickú komoditu, ktorá je hlavným zdrojom príjmu teroristických skupín. Sťaženie obchodovania s touto komoditou spôsobuje, že príjem teroristických skupín je obmedzený, v niektorých prípadoch úplne pozastavený, čo spôsobuje ochromenie a oslabenie fungovania týchto skupín. Taktiež prísnu kontrolou vzdušného priestoru nad vymedzením územím sa sťažuje prístup k rýchlemu pašovaniu tovaru z a do krajiny, čo taktiež v istej miere spôsobuje ekonomické problémy nelegálnym skupinám. Opatrenia uvedené v rezolúcii S/RES/1343 (2001) napomohli k rýchlejšiemu ukončeniu konfliktu v krajine. No aj napriek tomuto úspechu nepriniesli inteligentné sankcie koniec humanitárnym dopadom alebo etickým problémom, ktoré sú späté s tradičnými ekonomickými sankciami, respektíve nepriniesli koniec v takom rozsahu v akom sa očakávalo, že prinesú (Gordon 2011, s. 332). Aj počas konfliktu v Libérii došlo k porušovaniu ľudských práv, otrockej práci, detským vojakom a iným negatívam. No aj napriek uvedeným argumentom debaty ohľadom inteligentných sankcií stále pokračujú a cieľené sankcie podliehajú neustálym modifikáciám za účelom nájdania, čo najlepšieho variantu sankcií. Snaha medzinárodného spoločenstva smeruje k vytvoreniu takého variantu, ktorý by bol ešte efektívnejší a humánnejší než sú súčasné inteligentné sankcie.

Otázkou však zostáva, ako by mal takýto variant vyzerat'? V zmysle uvedenej komparácie sledujeme, že hlavným cieľom, ktorý sa OSN snaží dosiahnuť od použitia sankcií proti Iraku, je úplná eliminácia humanitárneho dopadu sankcií na civilné obyvateľstvo. Ako sme uviedli, výrazný posun priniesli inteligentné sankcie, ktoré sa zameriavajú na zodpovedných jedincov. Títo jedinci, aj napriek všetkým zavedeným obmedzeniam, dokážu nájsť spôsoby ako fungovať alebo obchádzať zavedené obmedzenia. Nielen pre OSN, ale pre celé medzinárodné spoločenstvo bude nesmierne dôležité prísť s efektívnym riešením, ktoré by eliminovalo tieto nedostatky. Zníženie administratívneho zaťaženia a zrýchlenie procesu pri zmrazovaní finančných prostriedkov ľuďom, ktorí sú podozriví z terorizmu, zavádzanie biometrických pasov v každej krajine sveta, aby sa znížili možnosti falšovania pasov, poskytovanie záruk, že aj napriek zavedeným sankciám nebude negatívne postihnuté civilné obyvateľstvo a mnohé iné. Niektoré z týchto opatrení môžu spôsobiť výraznejšie obmedzenie ľudských práv jednotlivcov, čo môže vyvolať vlnu nesúhlasu. Uplatnením testu proporcionality Európskeho súdu pre ľudské práva (Scaccia 2019) nemôžeme dostať iný výsledok než, že v záujme zachovania mieru a bezpečnosti je v niektorých situáciách potrebné obmedziť právo jednotlivca. Práve takéto úvahy o potencióálnom smerovaní vývoja sankcií by mali byť predmetom širšej debaty akademikov. Následne závery a výstupy z takejto debaty by mohli slúžiť ako podklad pre otvorenie širšieho politického fóra a prípadným zlepšeniam v oblasti ekonomických sankcií.

## 6 ZÁVER

Už od vzniku OSN ako organizácie na zachovanie mieru a bezpečnosti vo svete sa medzinárodné spoločenstvo snažilo udržať alebo aspoň priblížiť k dosiahnutiu svojho cieľa. V prípade, že došlo k porušeniu medzinárodného práva boli Chartou OSN zavedené mechanizmy, ktoré mali prinútiť narušiteľa k poslušnosti a obnoviť tak predchádzajúci status quo. Najčastejším prostriedkom medzinárodného donútenia sú práve ekonomické sankcie, ktorých úlohou je výrazne ochromiť jeho ekonomické schopnosti, a tým tak prinútiť narušiteľa k poslušnosti. Práve ekonomické sankcie sa zdali byť ideálnym riešením namiesto použitia vojenskej sily a predídenu ďalšieho potencióálneho globálneho vojenského konfliktu. Spočiatku bolo uvalenie ekonomických sankcií nemysliteľné, pretože politické otázky na pôde Bezpečnostnej rade boli blokované záujmami svetových mocností, ktoré disponovali právom veta. Po ich použití v roku 1966 proti Južnej Rodézii sa iniciovala debata o tom, či je OSN vôbec oprávnené uložiť sankcie v takom rozsahu a v takej situácii v akej boli uložené. Táto debata pretrvala do začiatkov 90. rokov dvadsiateho storočia, kedy sa debata presunula z otázok ohľadom konania ultra vires na otázky ohľadom efektivity ekonomických sankcií. Táto debata vznikla v dôsledku deštruktívnych dopadov ekonomických sankcií, ktoré boli pozorované na prípade sankcií voči Iraku. Ekonomické sankcie úplne zničili hospodárstvo Iraku, jeho infraštruktúru a osoby

zodpovedné za porušenie medzinárodného práva sa týmto sankciám úplne vyhli, respektíve ich vôbec nepocítili. Zároveň, tieto sankcie boli jedným z dôvodom humanitárnej krízy, v ktorej OSN muselo intervenovať. S ohľadom na tento stav, na jednej strane OSN uvaľovalo embargá na dovoz tovarov, ale na strane druhej dovážalo humanitárnu pomoc do krajiny. Takýto stav bol neprijateľný, pretože sankcie, ktoré spôsobujú viac negatívnych dopadov ako tých pozitívnych nemožno považovať za efektívne. Ako sme už vyššie načrtli okrem ekonomických dopadov mali sankcie aj negatívne humanitárne dopady, ktoré začali novú debatu ohľadom humanitárnych dopadov sankcií. Ľudské utrpenie, ktoré so sebou priniesli širokospektrálne ekonomické sankcie doslova šokovali medzinárodné spoločenstvo. Zavedením sankcií sa medzinárodné spoločenstvo snažilo zabrániť jednej kríze, ale na druhej strane vytvorilo inú. Akákoľvek humanitárna kríza je neprijateľná pre OSN, obzvlášť v prípade, ak jedným z dôvodov krízy sú práve sankcie. Uvedený stav bol neprijateľný. Dokonca niektorí teoretici obvinili OSN z genocídy, avšak tieto argumenty boli rýchlo vyvrátené a debata sa uprela na nájdenie alternatívy k ekonomickým sankciám, ktoré by nemali také negatívne humanitárne dopady. Riešením na vzniknuté humanitárne problémy mali byť inteligentné sankcie. V teórii mali tieto sankcie byť zamerané na konkrétne ciele, čím by sa spočiatku minimalizovali a neskôr úplne odstránili humanitárne dopady. Skutočnosť ukázala, že nedostatok praxe a aplikačné problémy spôsobili, že inteligentné sankcie nenaplnili očakávané ciele v eliminácii humanitárnych dopadov. Napriek prvotným neúspechom sa vďaka rôznym vyššie uvedeným debatám darí postupne zlepšovať systém inteligentných sankcií. V rámci nášho výskumu sme sa snažili predstaviť rôzne otázky, ktoré formovali vývoj ekonomických sankcií. Tieto otázky predstavujú jadro každej debaty a zároveň poukazujeme na argumenty, ktoré vystali pri riešení týchto otázok. Komparáciou sankčných režimov z roku 1966 a z roku 2001 sme predstavili obraz o tom, aký významný posun nastal v efektívite ekonomických sankcií. Z debaty o Inteligentných sankciách však vyplýva, že stále nie sú úplne eliminované humanitárne dopady ekonomických sankcií. Z tohto dôvodu sa otvára priestor pre budúce debaty zaoberajúce sa zefektívnením sankčných režimov. Nami uvedená komparácia by mala slúžiť ako základ týmto ďalším úvahám *de lege ferenda* o sankciách a ich možnom zefektívnení. Sme toho názoru, že len poučením sa z minulosti, pozorovaním a konaním v prítomnosti môžeme docíliť efektívnejšie výsledky v budúcnosti.

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## **NAFTA 2.0 – DOHODA USMCA JAKO POKROČILÁ FORMA EKONOMICKÉ INTEGRACE V SEVEROAMERICKÉM REGIONU?**

### **NAFTA 2.0 – USMCA AS A WAY TOWARDS MORE ADVANCED REGIONAL ECONOMIC INTEGRATION IN NORTH AMERICA?**

*Lucie Bartošková*<sup>1</sup>

Na konci roku 2018 podepsaly Spojené státy, Kanada a Mexiko novou obchodní dohodu (označovanou zkratkou USMCA), která nahrazuje Severoamerickou dohodu o volném obchodu z roku 1994 (NAFTA) a má vytvořit modernizovaný a pokročilý systém volného obchodu mezi těmito třemi ekonomikami. Cílem tohoto článku je na základě dostupných strategických dokumentů a souvisejících studií popsat klíčová ustanovení, která novou dohodu odlišují od NAFTA, a jejich předpokládané dopady na členské státy. Pro kontext je nejprve stručně rozebrán vývoj integračních procesů v rámci severoamerického regionu a příčiny, které vedly k revizi původního paktu. Článek se také věnuje předpokládaným důsledkům pro evropské společnosti, jež obchodují s USA, Kanadou či Mexikem nebo jsou v těchto zemích přítomny – zejména výrobci automobilů a mlékárenských produktů či vývozcí potravin.<sup>2</sup>

**Klíčová slova:** hospodářská integrace, obchodní politika, regionální obchod, NAFTA, USMCA

At the end of 2018, the United States, Canada and Mexico signed a new trade agreement (abbreviated as USMCA) to replace the 1994 North American Free Trade Agreement (NAFTA) and create a modernized and advanced free trade system between the three economies. Based on available strategic documents and related studies, this article aims to describe the key provisions

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Ing. Lucie Bartošková je absolventskou magisterského oboru Evropská integrace na FMV VŠE v Praze. Dlouhodobě se zajímá o mezinárodní ekonomické vztahy a obchodní politiku Evropské unie. V současné době pracuje na Ministerstvu financí ČR, kde se podílí na zajišťování agendy spojené s mezinárodními finančními institucemi a na vykonávání koncepční činnosti v oblasti zahraniční rozvojové spolupráce.

<sup>2</sup> Tento příspěvek vznikl v rámci řešení projektu IGA FMV VŠE "Proměny v transatlantickém partnerství mezi EU a USA - nadále platforma překonávání bezpečnostních a ekonomických výzev pro Evropu?", č. F2/63/2018."

that distinguish the new agreement between the USA, Mexico and Canada from NAFTA, along with their potential effects and consequences for the member states. To provide context, the developments of integration processes within the North American region and the reasons that led to renegotiating the previous deal are first briefly discussed. The article also focuses on potential impacts on European companies that trade with or are present in the US, Canada or Mexico - especially car and dairy products manufacturers or food exporters.

Key words: economic integration, trade policy, regional trade, NAFTA, USMCA

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## 1 Úvod

K uzavření Dohody USA-Mexiko-Kanada, která nahrazuje 25 let trvající Severoamerickou dohodu o volném obchodu (NAFTA), dochází ve velmi proměnlivé a dynamické době, a to z hlediska obchodních politik dotčených zemí i vývoje světového hospodářství. V květnu 2018 uvalily Spojené státy americké clo ve výši 25 % na dovoz oceli a 10 % na dovoz hliníku – dle oficiálních vyjádření z důvodu obav o národní bezpečnost. V reakci na tato opatření zavedli hlavní obchodní partneři USA (včetně Mexika a Kanady) odvetné tarify na dovoz vybraných amerických výrobků. USA také od roku 2018 vedly obchodní válku s Čínou, v jejímž rámci na sebe obě země vzájemně uvalovaly cla. Obchodní spor mezi dvěma největšími ekonomikami světa ovlivnil vývoj na finančních trzích a zpomalil globální ekonomický růst. V současné době, v první polovině roku 2020, sledujeme bezprecedentní ochromení národních ekonomik i globální ekonomiky jako celku v důsledku pandemie onemocnění COVID-19. Mezinárodní měnový fond (MMF) ve svém jarním výhledu předpověděl, že globální ekonomika v roce 2020 klesne o tři procenta. Světové hospodářství podle MMF směřuje k nejhlubší recesi od Velké hospodářské krize ve 30. letech minulého století.

Obchodní politika Spojených států amerických se s příchodem administrativy prezidenta Donalda Trumpa začala soustředit na vyrovnanost a výhodnost vnějších obchodních vztahů pro domácí ekonomiku. Tento posun v obchodní politice se mimo výše uvedená ochranná opatření projevil také v ukončení vyjednávání o účasti USA v Transpacifickém partnerství (TPP) či právě v přepsání největší regionální obchodní dohody NAFTA z roku 1994. Reforma NAFTA se stala jedním z klíčových témat již v předvolební kampani prezidenta Trumpa v roce 2016. Negociační proces o nové obchodní dohodě mezi USA, Kanadou a Mexikem začal v srpnu 2017. Finální verze dohody byla podepsána po více než dvou letech v prosinci 2019 a v platnost byla uvedena 1. července 2020. Dle vyjádření Úřadu amerického obchodního zmocněnce (USTR, 2017) by nová dohoda měla vést ke svobodnějším trhům, férovějšímu obchodu, novým pracovním místům a robustnějšímu hospodářskému růstu. Zároveň by mělo být dosaženo modernizace v digitální oblasti, včetně posílení ochrany duševního vlastnictví.

Cílem tohoto článku je popsat klíčové změny, které přináší nová obchodní dohoda mezi USA, Kanadou a Mexikem, a jejich předpokládaný dopad na vzájemný obchod mezi státy. V první části se článek stručně zabývá integračními procesy na severoamerickém kontinentu, které vedly k uzavření NAFTA v roce 1994 a vytvoření zóny volného obchodu mezi USA, Kanadou a Mexikem. Zároveň jsou zde popsány okolnosti, které o čtvrt století později přivedly státy k zahájení negociací o nové dohodě. Další části článku se již věnují hlavním ustanovením, která USMCA odlišují od původní obchodní dohody, a jejich ekonomickému potenciálu. Závěrem jsou uvedeny některé očekávané dopady pozměněného paktu mezi USA, Kanadou a Mexikem na transatlantické obchodní vazby - konkrétně na evropské automobilové a potravinářské společnosti.

## 2 VÝVOJ INTEGRAČNÍCH PROCESŮ V RÁMCI SEVEROAMERICKÉHO REGIONU

Liberalizační a integrační tendence se v mezinárodním obchodě intenzivněji projevují od poloviny 80. let 20. století. Z počátku byly charakteristické zejména pro evropský kontinent a Evropská společenství, která si přijetím Jednotného evropského aktu (1986) stanovila za cíl vytvoření společného trhu. V té době již započala také intenzivní mnohostranná jednání v rámci Uruguayského kola (1984 – 1994) Všeobecné dohody o clech a obchodu, GATT. V severoamerickém regionu se snaha o liberalizaci obchodu a ekonomickou integraci uvnitř jednotlivých států i mezi nimi začala plně projevovat ke konci 80. a na počátku 90. let.<sup>3</sup> V průběhu roku 1987 byla zahájena dvoustranná politická jednání mezi USA a Kanadou, hlavními obchodními partnery v rámci amerického makroregionu, týkající se vytvoření užší formy integračního uskupení – zóny volného obchodu.<sup>4</sup> K tomu došlo 1. ledna 1989, kdy vstoupila v platnost Dohoda o volném obchodu mezi Kanadou a Spojenými státy americkými (CUSFTA).<sup>5</sup> Jak však upozorňuje Cihelková (2010, s. 240), „panuje široká shoda na

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<sup>3</sup> Některé zdroje uvádí, že USA původně prosazovaly spíše multilaterální přístup k liberalizaci obchodu a k formování regionálních bloků přistoupily vlivem několika globálních impulsů. Kunešová (2006, s. 142) uvádí jako zásadní: dynamické integrační procesy v rámci Evropských společenství, resp. Evropské unie; zpomalení multilaterálních vyjednávání v rámci GATT; hospodářský růst některých asijských ekonomik a zvyšování jejich vlivu ve světové ekonomice.

<sup>4</sup> Vzájemný obchod mezi oběma zeměmi dosahoval v tomto období přibližně 130 mld. USD, jednalo se o jednu z největších dvoustranných obchodních výměn na světě. Do USA přitom směřovalo cca 75 % kanadských vývozu, Kanada se podílela na vývozech USA z více než 21 % (Kunešová a kol. 2006, s. 142).

<sup>5</sup> CUSFTA měla zajistit 100% zrušení cel pro všechny průmyslové výrobky do 10 let a zrušení kvantitativních opatření. Týkala se však také např. usnadnění přímých zahraničních investic, liberalizace v oblasti energetiky a veřejných zakázek, aj.

tom, že její efekty na obchod mezi USA a Kanadou byly jen nepatrné, protože vzájemný obchod byl již před uzavřením výrazně liberalizován a propojen.“<sup>6</sup>

Pozitivní efekty vzájemné integrace nicméně vedly USA a Kanadu k úvahám o rozšíření regionální obchodní spolupráce o další země, což v roce 1992 vyústilo v rozšíření CUSFTA o Mexiko – byla uzavřena Severoamerická dohoda o volném obchodu (The North-American Free Trade Agreement, NAFTA) mezi USA, Kanadou a Mexikem. NAFTA vstoupila v platnost v lednu 1994 a vytvořila největší volný trh se zbožím a službami na světě. V té době se jednalo (v rámci amerického makroregionu) o bezprecedentní komplexní obchodní dohodu – nad rámec liberalizace obchodu s průmyslovými výrobky zahrnovala také relativně inovativní ustanovení týkající se volného pohybu služeb a investic, ochrany práv duševního vlastnictví, pravidel o původu zboží, řešení obchodních sporů či ochrany životního prostředí (Lysoněk, 1994).

NAFTA zásadně proměnila ekonomické vztahy mezi Kanadou, USA a Mexikem. Vznik FTA vedl k dramatickému nárůstu intra-obchodu a přeshraničních investic na severoamerickém kontinentu. Jak uvádí Burfisher a spol. (2019), od vstupu dohody v platnost se vzájemný obchod mezi třemi stranami NAFTA zvýšil z 290 miliard USD v roce 1993 na více než 1,1 bilionu USD v roce 2017. Cihelková (2010, s. 218) popisuje NAFTA jako efektivní propojení konkurenčních ekonomik (USA, Kanada) s ekonomikou komplementární (Mexiko), kdy jejich diferenciované úrovně „nabízejí specifické formy kooperace a dělby práce (kapitálová a technologická dispozice USA ve spojení s levnou mexickou pracovní silou).“ NAFTA se bezesporu stala určitým modelovým příkladem úspěšné integrace mezi vyspělými a rozvojovými zeměmi a ovlivnila pozdější vyjednávání obchodních dohod na bilaterální i multilaterální úrovni.

Severoamerická zóna volného obchodu byly v posledních třech dekádách analyzována z různých hledisek, velké množství studií se pokusilo o analýzu přínosu NAFTA pro členské státy či role tohoto uskupení ve světové ekonomice jako celku. Většina ekonomů se přitom shoduje, že dohoda pozitivně ovlivnila ekonomiky států severoamerického kontinentu. Obecně se má za to, že rozšíření a prohloubení vzájemných obchodních a ekonomických vazeb mezi státy NAFTA přispělo k vytvoření efektivnějších výrobních procesů, vzrostla dostupnost levnějšího spotřebního zboží a celková životní úroveň (Chatzky a spol. 2020). Na celé řadě empirických výzkumů se však ukázalo, že tyto dopady v podstatě nelze přímo kvantifikovat – tj. nelze je oddělit od vlivu dalších zásadních faktorů, které současně ovlivnily / nadále ovlivňují hospodářský růst v jednotlivých zemích a obchodní toky

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<sup>6</sup> Země uzavřely řadu dvoustranných sektorových dohod již v období 1935-1980. Průměrná úroveň celního zatížení průmyslových výrobků činila méně než 1 % již před uzavřením CUSFTA.

mezi nimi.<sup>7</sup> Otázky vyvolává např. efekt NAFTA na úroveň mezd a zaměstnanost – v některých průmyslových odvětvích došlo růstem konkurence k výraznému narušení, zatímco jiná odvětví naopak získala díky novým tržním příležitostem (Burfisher a spol. 2019, s. 4).

Americký prezident Donald Trump, který již v rámci své předvolební kampaně propagoval určitá protekcionistická opatření v obchodní politice USA a v červnu 2016 veřejně prohlásil, že NAFTA musí být změněna nebo z ní USA vystoupí, zahájil krátce po své inauguraci v roce 2017 vyjednávání o nové obchodní dohodě s Kanadou a Mexikem. Trump dlouhodobě prohlašoval, že NAFTA poškozují americký trh – upozorňoval zejména na snižování počtu pracovních míst v sekundárním sektoru v USA v důsledku přesunu výroby řady amerických firem do Mexika.<sup>8</sup> Vyjednávání vedlo k uzavření nové trilaterální Dohody USA-Mexiko-Kanada (United States–Mexico–Canada Agreement, USMCA), která má nahradit NAFTA. Původně odsouhlasený text USMCA byl nejprve podepsán představiteli smluvních stran 30. listopadu 2018 u příležitosti summitu zemí G20 v Buenos Aires. Na žádost opozičních demokratů v americkém Kongresu musela být některé ustanovení dohody pozměněna. Revidovaná verze byla poté podepsána 10. prosince 2019, následně státy přistoupily k ratifikaci dohody – jako poslední smlouvu ratifikovala Kanada dne 13. března 2020. V platnost USMCA vstoupila dne 1. července 2020.

### 3 USMCA – SPECIFIKA A KLÍČOVÁ USTANOVENÍ

Spojené státy americké, Mexiko a Kanada jsou hluboce integrované ekonomiky, vzájemný obchod se však vyznačuje jistou nevyvážeností. Mexiko zdaleka nejvíce exportuje do USA – Kanada je sice na druhém místě, ale z hlediska objemu tam směřují nesrovnatelně menší objemy mexických vývozů v porovnání s USA. Kanadské vývozy rovněž směřují převážně do USA, Mexiko je až na pátém místě za Čínou, UK, Japonskem. Kanada a Mexiko jsou z hlediska vývozu hlavními obchodními partnery pro USA. Jak je však zřejmé i z tabulky níže (tab. 1), ekonomická závislost Kanady i Mexika na vývozu do USA je mnohem významnější, než je tomu

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<sup>7</sup> Romalis (2007) upozorňuje na dvě události na straně Mexika ještě z přelomu 80. a 90. let – tou první byla jednostranná liberalizace dovozů, která začala v roce 1986. Liberalizace dovozu obecně podporuje také vývoz. Mexické dovozy a vývozy tak rostly již před uzavřením NAFTA. Druhou událostí byla devalvace mexického pesa, ke které došlo v letech 1994-1995, a která v té době rovněž zapříčinila rychlý růst vývozů z Mexika. Burfisher a spol. (2019) přidávají jako další zásadní faktory např. ekonomické důsledky rychlého technologického rozvoje na přelomu tisíciletí, zintenzivnění obchodu s dalšími zeměmi (např. Čínou) a nesouvisající strukturální reformy v jednotlivých ekonomikách.

<sup>8</sup> Jak v této souvislosti uvádí např. Meltzer a Bahar (2017), pokles pracovních míst v americkém výrobním sektoru je dlouhodobě ovlivňován zejména procesem automatizace a robotizace některých výrobních postupů, což umožňuje zachování produktivity práce při nižší spotřebě lidských zdrojů.

opačně. Export USA je z hlediska cílových destinací více diverzifikovaný. Je tedy snadné si představit dominantní pozici USA, kterou disponovaly při vyjednávání o „přepracování“ NAFTA.

Tab. 1: Hlavní vývozní partneři zemí USMCA a jejich podíly za rok 2018, v mil. USD

<i>USA</i>		<i>Kanada</i>		<i>Mexiko</i>	
Kanada	299 744	USA	337 814	USA	344 602
Mexiko	265 435	Čína	21 344	Kanada	14 065
Čína	120 148	UK	12 606	Čína	7 194
Japonsko	75 226	Japonsko	10 001	Německo	7 070
UK	66 294	Mexiko	6 347	Brazílie	4 408

Zdroj: UNCTAD

USMCA nepředstavuje zcela zásadní revizi předchozí NAFTA – lze říci, že se jedná spíše o její novelu. Velká část nové obchodní dohody mezi USA, Mexikem a Kanadou je v podstatě aktualizovanou verzí 25 let starého paktu. Ustanovení týkající se eliminace tarifních a netarifních překážek v obchodu zbožím a obchodu službami a přeshraničních investic jsou pozměněny pouze minimálně tak, aby odpovídaly současným právním předpisům a obvyklým přístupům v moderních obchodních dohodách (FTAs). Nový pakt přesto přináší několik důležitých změn v klíčových oblastech - např. přísnější pravidla původu a požadavky na úroveň pracovních podmínek v automobilovém sektoru, zpřístupnění kanadského trhu s mlékárenskými produkty, aktualizovaná ustanovení v oblasti finančních služeb, ochrany duševního vlastnictví, digitálního obchodu či investic. Tyto změny mohou relativně značně ovlivnit obchodní plánování napříč sektory. Zároveň lze předpokládat, že oblasti, kterých se změny v USMCA týkají, budou pro americkou administrativu prioritní i v budoucnu při vyjednávání o obchodních dohodách s jinými státy.

### 3.1 Automobilový průmysl

Jednou z poměrně zásadních změn oproti NAFTA je navýšení povinného podílu severoamerického původu zboží (tzv. pravidla původu) v automobilovém průmyslu. Aby mohly být vozidla či jejich díly obchodovány mezi zeměmi bez celního zatížení, musí být z 66 – 75 % (dle specifikace výrobku) vyrobeny v Severní Americe (dodatek ke kapitole 4, článek 3), což je oproti 62,5 % dle NAFTA relativně významný nárůst. Automobilového průmyslu se týká také nové ustanovení ohledně mzdových podmínek pracovníků. Do roku 2023 mají členské státy zajistit, aby alespoň 40 % dovážených automobilových vozidel, resp. 45 % u nákladních vozidel, bylo vyrobeno pracovníky, jejichž hodinová mzda dosahuje minimálně 16 USD (dodatek ke kap. 4, článek 7). Zpřísnění pravidel původu má za cíl ochránit severoamerický

automobilový trh – snížit podíl importovaných součástek a podpořit tak lokální producenty v automobilovém průmyslu, včetně tvorby nových pracovních míst.

Tyto změny budou mít v rámci severoamerického regionu dopad především na mexickou automobilovou výrobu a její dodavatelské řetězce.<sup>9</sup> Burfisher a spol. (2019) uvádí, že zatímco automobilví producenti v Kanadě a v USA přísnější požadavek na lokální původ výrobků splňuje již nyní, přibližně 32 % mexické výroby aut nové požadavky v současnosti nesplňuje a přechodné období do roku 2023 je pro řadu výrobců příliš krátké. Většina (přibližně 70 %) mexických producentů automobilových dílů je závislá na dodávkách ze třetích zemí. Obdobně přísnější požadavek na úroveň mzdové sazby nemá pro americké, resp. kanadské pracovníky prakticky žádný význam, jejich průměrné mzdy jsou srovnatelné nebo vyšší. V Mexiku se však průměrná hodinová sazba v automobilové výrobě pohybuje mezi 4-8 USD (Statista, 2019).

Dziczek a kol. (2018) ve své analýze dopadů přísnějších požadavků v automobilovém průmyslu dochází k závěru, že změny povedou k plošnému snížení konkurenceschopnosti severoamerických automobilových producentů. Část mexických výrobců na splnění přísnějších pravidel rezignuje. Vyhodnotí, že pro ně bude méně nákladné, když budou nadále využívat zdrojů ze třetích zemí a platit svým zaměstnancům nízké mzdy, i když jejich výrobky vyvážené do USA (resp. do Kanady) budou podléhat celním sazbám dle Doložky nejvyšších výhod, místo aby využívali možnosti bezcelního vývozu na severoamerický trh.<sup>10</sup> Investice spojené s adaptací na nové podmínky se pravděpodobně projeví i zvýšením cen automobilů, a tedy nižší globální konkurenceschopnosti regionální produkce.<sup>11</sup> Z průzkumů však vyplývá, že mexičtí producenti vnímají změny, které vyžaduje USMCA, převážně pozitivně. V dlouhodobém horizontu očekávají zvýšení zahraničních investic v důsledku přesunu

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<sup>9</sup> Automobilový průmysl je klíčové odvětví mexické ekonomiky. Dle údajů MZV ČR se na tvorbě ročního HDP podílí z přibližně 3 % a představuje 20 % jeho veškeré výroby. Do automobilového průmyslu také dlouhodobě směřuje nejvíce zahraničních investic. V roce 2018 Mexiko vyprodukovalo 3,9 milionů vozů a v celosvětovém žebříčku automobilové výroby obsadilo 7. místo. V celosvětovém srovnání vývozu automobilových součástek se nachází na 4. místě. Přibližně 80 % celkové produkce se vyváží (z toho více než 90 % směřuje do USA). Celkem automobilový průmysl zaměstnává přes 800 tis. lidí přímo a až 1,9 mil. lidí nepřímo (cca 1,5 % mexické populace).

<sup>10</sup> Sazba na dovoz automobilových výrobků do USA dle doložky nejvyšších výhod činí 2,5 %.

<sup>11</sup> Anne O. Krueger v této problematice napsala v roce 2018 článek pro Project Syndicate, ve kterém mimo jiné tvrdí následující: „Jedním z hlavních přínosů NAFTA byl, že vytvářela prostor pro integrované dodavatelské řetězce napříč Severní Amerikou. Americké automobilky získaly přístup k dílům náročnějším na pracovní síly za nižší cenu z Mexika; mexičtí výrobci zase získali přístup k lacinějším, kapitálově náročnějším dílům z USA. Ve výsledku severoamerický automobilový průmysl mezinárodně zlepšil své konkurenční postavení. USMCA efektivní dodavatelské řetězce vzniklé za NAFTA sice nezničí, ale zvýší jim náklady, a tedy podetne tuto výhodu.“



výroby autodílů a součástek z Evropy a Asie do Severní Ameriky a zlepšení pracovních podmínek v automobilovém průmyslu (Forbes 2019).

### 3.2 Zemědělský a potravinářský sektor

Mexiko a Kanada jsou dva hlavní trhy pro vývoz mlékárenských výrobků z USA. Dle údajů Americké federace vědců směřuje do Mexika a do Kanady dlouhodobě více než třetina celkových exportů mlékárenských produktů z USA. V roce 2018 byla hodnota vývozu těchto výrobků z USA do Mexika přibližně 1,4 mld. USD, do Kanady bylo vyvezeno zboží v hodnotě 731 mil. USD. Celková hodnota exportovaného zboží přitom činila 5,9 mld. USD (UNCTAD, 2019).

USMCA zachovává 100% bezcelní přístup pro dovoz amerických mléčných výrobků do Mexika, což bylo zřízeno již v rámci NAFTA. K poměrně významným změnám dochází v obchodu se zemědělskými produkty mezi Kanadou a Spojenými státy (kapitola 3, příloha 3-A). V rámci USMCA totiž Kanada částečně uvolní přístup do svého strategického a vysoce regulovaného zemědělského sektoru.<sup>12</sup> Skrze navýšení dovozních kvót bude USA umožněn bezcelně dovážet do Kanady větší množství mléka a mléčných produktů v objemu, který odpovídá zhruba 3,6 % kanadského

trhu s mlékárenskými produkty. Zároveň bude USA umožněn vyšší bezcelní dovoz vajec a drůbeže. Jedná se přitom o jeden z hlavních sporných bodů, na který Kanada ve počátcích vyjednávání nechtěla přistoupit, a to zejména kvůli tlakům ze strany kanadských asociací mlékárenských farmářů. Kanada nicméně obdobou výjimku, konkrétně dodatečný přístup k 3,25 % trhu, již dříve udělila i dalším zemím v rámci Trans-pacifického partnerství.

Spojené státy recipročně přislíbily Kanadě rozšířený bezcelní přístup v případě dovozu mléčných výrobků či cukru, a to formou snížení platných celních sazeb o 50 %. Rovněž se zavázaly, že do 5 let budou odstraněny americké celní sazby na dovoz bavlny a arašídů. Kanada si vyšší liberalizaci svého zemědělského sektoru podmínila také tím, aby byl v rámci USMCA zachován systém řešení sporů. V případech nedodržování závazků, např. uvalení tarifů, jednou ze členských zemí bude nově ostatním členům umožněno napadnout takový postup před panelem odborníků, sestávajících z členů obou zemí zapojených do sporu (článek 31.8). Původně to bylo možné pouze před soudem státu, který závazky nedodržel.

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<sup>12</sup> Tzv. Supply Management System je kanadský národní systém řízených dodávek v zemědělském průmyslu, který reguluje nabídku mléka a mlékárenských produktů, drůbeže a vajec, a výrazně limituje zahraniční dovozce těchto komodit. Využívá k tomu kombinaci celních kvót a sazeb (ve výši až 300 %), provádí se striktní kontroly dovozu a u lokální výroby platí cenový mechanismus. Cílem je zajistit ziskovost lokálních firem a dostupnost kvalitního a dlouhodobě cenově stabilního zboží domácím spotřebitelům.

### 3.3 Digitální obchod

USMCA zahrnuje také ustanovení o digitální ekonomice, která v NAFTA nebyla vůbec adresována. Týká se obecných zásad pro digitální přeshraniční obchod a spolupráci zemí v oblasti kybernetické bezpečnosti a ochrany osobních údajů. Nová dohoda tak například zakazuje uvalovat cla či jiné poplatky pro přeshraniční obchod s hudbou, videohrami či elektronickými knihami. Členské státy však mohou nadále uplatňovat na takové produkty daně (např. daň z obratu) nebo jiná omezení dle svých vlastních právních předpisů. Výslovně se zakazuje omezení přeshraničního pohybu dat a informací (včetně osobních údajů). Signatáři také například nesmí vyžadovat umístění výpočetní techniky na svém území jako podmínku pro povolení podnikání (článek 19.12). USMCA se mimo to věnuje posílení předpisů na ochranu duševního vlastnictví, včetně ochranných známek a patentů. Stanovuje minimální trvání autorských práv na celý život plus 70 let od úmrtí (článek 20.62).<sup>13</sup>

### 3.4 Doba trvání

USMCA obsahuje také doložku o skončení platnosti, tzv. “sunset clause“ – ustanovení, které bylo během vyjednávání zdrojem řady kontroverzí a neshod, ale nakonec se americké administrativě podařilo ji prosadit. Na základě této doložky je USMCA uzavřena s platností 16 let od data implementace (článek 34.7). Smluvní strany mohou toto období prodloužit, pokud se tak jednomyslně shodnou v rámci pravidelného přezkumu, který má probíhat každých 6 let. Během těchto pravidelných revizí budou státy hodnotit, jak efektivně jsou jednotlivá ustanovení dohody prosazována v praxi a jaký mají dopad. Pokud některá ze smluvních stran vyhodnotí, že je pro ni smlouva nevýhodná, a nebude proto v rámci šestiletého přezkumu souhlasit s prodloužením, musí být smlouva následně přezkoumávána každoročně. Pokud se ani v rámci těchto každoročních přezkumů strany neshodnou na prodloužení, dojde na konci 16letého období k rozvázání veškerých sjednaných závazků. Je pravděpodobné, že v praxi bude tento mechanismus využíván zejména ke kontrole implementace požadavků na pracovní podmínky v automobilovém průmyslu ze strany Mexika.

## 4 PŘEDPOKLÁDANÉ DOPADY NA EVROPSKÉ SPOLEČNOSTI

Změny, které přináší USMCA, budou mít dopad nejen na podnikatelské subjekty v USA, Kanadě a Mexiku, ale je pravděpodobné, že do jisté míry ovlivní i transatlantické obchodní vazby. Přísnější pravidla původu či Ustanovení nové dohody ohledně požadavků na pracovní podmínky či ochranu životního prostředí představují jistý posun k normám a standardům EU v těchto oblastech. Vedle toho lze USMCA vnímat jako možný precedens pro budoucí směřování obchodní politiky USA,

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<sup>13</sup> V Kanadě přitom doposud platila ochrana autorských práv po dobu maximálně 50 let od úmrtí autora.

respektive jako možný vzor pro potenciální budoucí bilaterální obchodní dohody s dalšími významnými trhy - Japonskem, Velkou Británií či EU (Titievskaja, 2018).

EU a USA jsou klíčovými hráči na poli mezinárodního obchodu a jsou si navzájem největšími obchodními partnery a investory. Jejich vzájemná obchodní výměna dlouhodobě tvoří téměř třetinu celkového světového obchodu a do značné míry ovlivňuje celé světové hospodářství - EU a USA jsou hlavními obchodními partnery naprosté většiny států světa. Za dobu působení prezidenta Trumpa však došlo mezi USA a EU ke značnému ochlazení vztahů. Obchodní výměnu mezi USA a EU mělo ještě zvýšit vytvoření zóny volného obchodu pod názvem Transatlantické obchodní a investiční partnerství (Transatlantic Trade and Investment Partnership, TTIP)<sup>14</sup>, o kterém se vedla vyjednávání od roku 2013, ale později byla přerušena právě ze strany současného amerického prezidenta.

Kanada a Mexiko se nachází na 11. a 12. místě mezi hlavními obchodními partnery EU (Eurostat, 2019). Ekonomické vztahy mezi EU a Mexikem se řídí Dohodou o volném obchodu, která upravuje vzájemný pohyb zboží a služeb mezi oběma partnery již od roku 1997. V současné době státy finalizují upravenou verzi této dohody, která by měla lépe odpovídat současnému komplexnímu ekonomické prostředí, a má zahrnovat i oblast veřejných zakázek, investiční ochrany či udržitelného rozvoje. S Kanadou EU uzavřela Komplexní hospodářskou a obchodní dohodu (CETA) v roce 2016, která cílí zejména na odstranění netarifních překážek vzájemného obchodu a týká se mj. i finančních služeb, veřejných zakázek, ochrany investic, ochrany duševního vlastnictví nebo udržitelného rozvoje.

Vzájemné obchodní a investiční vztahy mezi EU a jednotlivými zeměmi USMCA jsou tedy odlišné a řídí se jinými smluvními základy a strategickými dokumenty. EU neprosazuje jednotnou obchodní politiku vůči státům Severní Ameriky a USMCA (a dříve NAFTA) upravuje vztahy pouze mezi signatářskými státy. Logicky však lze očekávat, že změny, které přináší USMCA, budou mít dopad na evropské společnosti, jež obchodují s USA, Kanadou či Mexikem nebo v těchto zemích investují a jsou v nich přímo přítomny – bude se jednat zejména o výrobce automobilů a automobilových součástek, vývozce potravin, nápojů a mlékařských produktů (Titievskaja, 2018). Nelze vyloučit, že evropské firmy na severoamerickém trhu nebudou schopny splnit přísnější požadavky na původ zboží. Dohoda USMCA bude mít dopad na evropské automobilové společnosti operující v Mexiku (např. Volvo, BMW, či Volkswagen), které jsou závislé na dovozech součástek z EU či jiných regionů. Dle MZV ČR (2019) USMCA s velkou pravděpodobností povede k poklesu hodnoty evropského exportu v tomto sektoru do Mexika.

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<sup>14</sup> Zóna volného obchodu mezi EU a USA měla odstranit především ochranná opatření a netarifní a regulatorní překážky zavedením vzájemného uznávání certifikace a zjednodušením licenčních procedur.

Naopak příznivě EU vnímá umožnění vyššího bezcelního dovozu pro americké mlékařské producenty v rámci USMCA. EU, jako největší světový vývozce mléka a mlékařských výrobků, dlouhodobě kritizuje vysokou úroveň regulace v kanadském zemědělském sektoru, kterou vnímá jako překážku spravedlivé hospodářské soutěže na světovém trhu (Titievskaja 2018). Zpřístupnění trhu americkým subjektům zvýší konkurenci evropským společnostem, které širší přístup na kanadský mlékařský trh získaly díky uzavření dohody CETA.<sup>15</sup> V rámci USMCA je od Kanady také požadováno, aby uplatňovala poplatky za vývozy sušeného mléka, kojenecké výživy a koncentrátů mléčných bílkovin přesahující určité prahové hodnoty. USMCA je tak další dohodou, která částečně odstraňuje nerovné podmínky na světovém trhu s mlékem a mléčnými výrobky.

## 5 ZÁVĚR

Reforma Severoamerické dohody o volném obchodu, NAFTA, byla jedním z klíčových témat předvolební kampaně amerického prezidenta Donalda Trumpa v roce 2016. Ten dohodu označoval za velmi nevýhodnou pro americké průmyslové podniky a vinil ji z rozsáhlého odlivu pracovních míst z USA do Mexika. O 4 roky později vstupuje v platnost nová dohoda o volném obchodu mezi Spojenými státy, Mexikem a Kanadou, označovaná zkratkou USMCA, která nahrazuje více než 25 let starý pakt. USMCA prezident Trump nazývá historickým úspěchem, dle mnoha odborníků jde spíše o „kosmetickou“ úpravu předchozí NAFTA. I tak ji však lze označit za výhru ze strany USA, jež během vyjednávání disponovaly dominantním postavením a Kanada a Mexiko v řadě oblastí v podstatě musely přistoupit na požadavky americké administrativy.

Dle odhadů nová dohoda ponechá hodnotu ročního obchodu mezi USA, Mexikem a Kanadou na současných zhruba 1,2 bilionu USD. Burfisher a spol. (2019) ve své studii očekávaných dopadů uvádí, že změny ve výši reálného HDP budou spíše zanedbatelné. Přínosem by měla být především opatření k usnadnění obchodu, která mají modernizovat a integrovat celní postupy tak, aby byly více efektivní a v konečném důsledku méně nákladné. USMCA také obsahuje aktualizovaná ustanovení v oblasti finančních služeb, ochrany duševního vlastnictví či investic. Nově se věnuje digitální ekonomice včetně ochrany osobních údajů.

Zásadnější změny se týkají automobilového a potravinářského průmyslu. Přísnější pravidla původu a požadavky na minimální výši mzdy v automobilovém průmyslu budou mít zásadní dopady zejména pro mexickou automobilovou výrobu a její dodavatelské řetězce. Investice spojené s adaptací na nové podmínky se pravděpodobně projeví zvýšením cen automobilů, a tedy nižší globální

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<sup>15</sup> CETA je zatím v režimu prozatímního provádění, nicméně již platí navýšená kvóta na dovoz sýrů z EU v objemu až 18 500 tun ročně. Před uzavřením CETA tvořil podíl sýrů dovážených z EU přibližně 2 % kanadského trhu, nyní by se mohl zvýšit až na 4.6 %.

konkurenceschopností regionální produkce. Rovněž lze očekávat, že dojde k poklesu hodnoty evropského vývozu v tomto sektoru do Mexika. Navýšení bezcelního dovozu amerických mlékárenských produktů na kanadský trh budou podle Burfishera a spol. (2019) z makroekonomického hlediska rovněž spíše méně významné. Pro evropské společnosti, které širší přístup získaly již díky uzavření dohody CETA, to sice znamená vyšší konkurenci, ale na druhou stranu také rovnější hospodářské podmínky na světovém trhu.

Podle oficiálních prohlášení již Mexiko i Kanada přijaly veškerá opatření nutná ke splnění závazků vyplývajících z dohody. Některá odvětví, včetně automobilových producentů, požadovala zpoždění zavedení dohody kvůli obtížím, kterým čelí v souvislosti s pandemií nemoci způsobené novým typem koronaviru. Ke vstupu nové dohody v platnost nakonec došlo 1. července 2020 – pouze o měsíc později, než se původně předpokládalo.

Dle Generálního ředitelství pro obchod Evropské komise se pro rok 2020 očekává pokles globálního obchodu mezi 10 – 16 %. Skutečný ekonomický dopad pandemie onemocnění COVID-19 bude záviset na mnoha neznámých, mj. době trvání obnovy ze současné krize. Již nyní se však očekává, že zpracovatelský průmysl bude jednou z nejpostiženějších oblastí. Americký obchodní zmocněnec Robert Lighthizer v této souvislosti uvedl: „Krise způsobená pandemií COVID-19 demonstruje, že nyní, více než kdy jindy, by se měly Spojené státy snažit zvýšit výrobní kapacitu a investice v Severní Americe. Vstup USMCA v platnost je v tomto úsilí mezníkem.” Pro rychlejší ekonomické oživení by však bylo nejvíce přínosné, kdyby se Kanadě a Mexiku s uzavřením USMCA podařilo získat výjimku na americká cla na ocel a hliník. Ta byla uvalena v létě 2018 a zůstávají nadále v platnosti, stejně jako reciproční opatření vůči USA.

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## ANALÝZA MANAŽOVANIA MIGRÁCIE MEDZI EÚ A AFRIKOU

### MIGRATION MANAGEMENT IN EU – AFRICA RELATIONS: AN ANALYSIS

*Nguh Augustin*<sup>1</sup>

Už v roku 2000 bolo riadenie migrácie dôležitou oblasťou spolupráce medzi Európskou úniou (EÚ) a Afrikou. Tieto dva regióny a ich zastupujúce kolektívne orgány spoločne prijali a implementovali niekoľko politických nástrojov zameraných na potlačanie nelegálnej migrácie z Afriky do EÚ. Článok sa snaží kvalitatívne analyzovať spoluprácu medzi EÚ a Afrikou v oblasti migrácie. Odráža účinnosť prijatých politických nástrojov, pričom venuje pozornosť aj ich rétorike a prebiehajúcej migračnej kríze. Konštatuje neúčinnosť politických nástrojov a úvadža, že spolupráca medzi EÚ a Afrikou v oblasti migrácie zlyhala. Uvádzajú sa dôvody tohto neúspechu a vypracúvajú sa v oblasti migrácie odporúčania pre lepšiu a efektívnejšiu spoluprácu EÚ a Afriky.

**Kľúčové slová:** Európska únia, Afrika, riadenie migrácie, nelegálna migrácia

As far back as the year 2000, migration management has been an important area of collaboration between the European Union (EU) and Africa. The two regions and their representative collective organs have jointly adopted and implemented several policy instruments aimed at curbing irregular migration from Africa to the EU. Using a qualitative approach, this paper seeks to analyze the EU – Africa cooperation on migration. The paper reflects on the effectiveness of the policy instruments adopted, paying attention to their rhetoric and the ongoing migration crisis. The paper finds the policy instruments to have been ineffective and concludes that EU-Africa cooperation on migration has failed. The reasons for this failure are presented

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and recommendations for a better and effective EU – Africa cooperation in the field of migration are made.

Keywords: European Union, Africa, migration management, irregular migration

JEL: F22, F50, K38

## 1 INTRODUCTION

The EU cooperates with Africa on many issues, one of which is migration management. Migration management has received considerable political and academic interest over the last decade. However, the term “migration management” remains theoretically contested (Ansem de Vries & Guild, 2019). This, however, has not prevented its usage by international or inter-governmental organisations in global migration governance (see Geiger & Pecoud (eds.), 2014). Some scholars have attempted a definition of migration management. For example, Ann Beduschi, holds migration management to be “different strategies, policies, processes and procedures, negotiated and adopted by relevant actors at the international level to provide a framework to manage migratory flows in an orderly and predictable manner” (Beduschi 2020, p. 3). While this definition is a good one, it should be noted migration cannot be easily managed. Stephan Castles had made this observation as far back as 2004 when he pointed out that “the political will and assumed capacity to manage migratory flows is often contradicted by reality, as migration is a complex phenomenon that cannot be easily ‘managed’.” (Castles 2004b, p. 214) Yet, states, international organisations and even intergovernmental/supranational organisations such as the European Union (EU) and the African Union (AU) have remained adamant on their wish to manage ‘large movements of people’ through the ‘implementation of planned and well – managed migration policies’ (see e.g., Valletta Action Plan 2015).

As far as Africa – Europe migration management is concern, the two regions and their representative collective organs have since 2000 jointly adopted and implemented several policy frameworks categorized as soft laws. This paper seeks to assess the effectiveness of these policy frameworks in curbing irregular migration from Africa to the EU. This paper poses and answers the question “has the EU – Africa cooperation on migration succeeded in curbing irregular migration from Africa? To answer the question, this paper relies on an analysis of the various policy instruments adopted by the two regions since 2000. The year 2000 is selected as the starting point because it was in that year that the first Africa – EU summit took place, under the auspices of the EU and the Organisation of African Unity (OAU), now African Union (AU). The paper is structured as follows:

- section two explores the EU – Africa regional migration policy instruments, paying close attention to the rhetoric used and goal of the various instruments. This section asserts that the policy instruments are ineffective.

- Section three explores how and why these instruments have failed to achieve their intended goals.
- Section four offers a conclusion and recommendations which if taken into consideration will ensure a migration management which will be beneficial for both the EU, Africa and the migrants themselves.

Before diving into the exploring the issues to be discussed in each section, a brief note on the EU global migration management strategy is important. In 2005, 13 migrants were killed, and hundreds were wounded as they attempted to climb over the fenced border into the Spanish enclaves of Ceuta and Melilla located on the northern shores of Morocco's Mediterranean coast. These two enclaves are the European Union's (EU) only land borders with Africa. These tragic events not gravely tarnished the image of the EU earlier described by Ian Manners as a 'force for good' and 'normative power' (Manners 2002, p. 235-258), but equally highlighted the need for a global strategic approach to managing migration. Consequently, the EU adopted the Global Approach to Migration (GAM) that same year. This was later clarified in 2011 to include "Mobility". It became the Global Approach to Migration and Mobility (GAMM). This is essentially an EU policy document; yet it is of importance to this paper because it offers a new and an overarching framework for the EU's external migration and asylum policy. The GAMM pursues four goals of equal importance:

- managing legal migration.
- preventing and combating irregular migration.
- maximizing the development impact of migration.
- promoting international protection.

It should be highlighted that apart from pursuing four goals, the GAMM also describes the EU's transnational migration policy by first of all recognizing that migration cannot be managed by the EU alone and that dialogue and partnership with non – EU countries is fundamental to is fundamental addressing the challenges and reaping the benefits of migration. Since 2005, the GAM(M), has been the EU's framework for dialogue and cooperation with non-EU migrant – source, transit, and destination countries. It allows migration and asylum issues to be managed in a comprehensive way (European Commission Department of Migration and Home Affairs, 2013). The GAMM lays the groundwork for a new framework for EU migration and asylum policy. This shift in policy was reflected in the EU's call for maintaining a balance between the various aspects of migration and was formally introduced in a communication titled "Strengthening the Global Approach to Migration: Increasing Coordination, Coherence and Synergies". According to this communication "the Global Approach reflects a major change in the external

dimension of the European migration policy over recent years, namely the shift from a primarily security-centred approach focusing on reducing migratory pressures, to a more transparent and balanced approach guided by a better understanding of all aspects relevant to migration, improving the accompanying measures to manage migratory flows, making migration and mobility positive forces for development, and giving greater consideration to decent work aspects in policies to better manage economic migration” (European Commission 2008, p. 3).

The result of the EU’s GAMM was the introduction of mobility partnerships. These were seen as invaluable instruments to put into action the rhetorical objective of the new ‘Global approach’ under which the European Union set out developing an innovative way to addressing migration issues in all their complexity’ (Manners, 2002). The first of these partnerships (the EU-Africa Partnership for Migration, Mobility, and Employment) was launched in Lisbon (2007), together with an action plan and framework for dialogue and cooperation with the African Union as its privileged contact point. Amongst the priority actions announced by the European Council was the adoption of a Strategy for Africa, which indicated the aim to bolster migration cooperation with African countries.

## **2 EU – AFRICA MIGRATION POLICY INSTRUMENTS**

It is asserted that migration research within and with Africa, is limited, geographically and thematically, focusing only on one region or type of migration category (e. g., forced versus ‘voluntary’ migration) (Brachet 2010, Rwamatwara 2005). Migration scholars assert that whilst the literature on migration patterns in Africa repeatedly highlights the fact that most African migration is intra – African (Flahaux & De Haas, 2016), and that those moving out of Africa do not only move to Europe but also to the Gulf countries and the Americas (Bakewell & De Haas, 2007), this is not reflected in the literature on the topic, which largely focuses on South-North migration (Shoumaker et al., 2015). While this is true, it must be noted that some policy frameworks exist and acknowledge the need for Africa – EU migration to be transnationally governed. These policy frameworks shall be examined under this part of the research in the subsequent paragraphs.

The sudden increase in migration movement between Africa and Europe since the year 2000 encouraged a renewed political engagement from the EU towards the continent. This engagement, as mentioned earlier, has mostly taken the form of dialogue between the two continents and their representative collective organs or between the EU and certain migrant – source countries in Africa. Migration dialogue with African migrant source countries has been a crucial part of the external dimension of the EU’s migration policy (van Criekinge 2010, p. 4). A number of instruments have since 2000 been adopted to provide solutions to one of the challenges facing both Africa and Europe: Migration. The Cairo Action Plan (2000) which is the first

instrument to be jointly adopted by both regions, enumerated few priority action areas, mainly consisting of supporting African countries in ensuring free intra-African mobility of labour and migration and collaborating in addressing the root causes of migration and asylum-seeking in source, transit, and recipient countries. Further, the action plan discusses the reciprocal integration of migrants, migrant rights, and readmission agreements between European and African countries (UNCTAD, 2018).

Still in the year 2000, the EU – the African, Caribbean, and Pacific Group of States (ACP) agreement was signed in Cotonou. This agreement, known as the Cotonou Agreement, governs cooperation in the fields of development, political dialogue, and trade, and is set to expire at the end of 2020 (European Commission, 2020). A peculiar aspect of the Cotonou Agreement is that it contains a migration clause – Article 13 – which defined the parameters of the EU – ACP dialogue on migration. This article was the most contentious and was the result of a difficult compromise between the parties' contrasting interests and stance on migration. This divergent interest and position is highlighted by Vanheukelom et al., (2006, p. 53) viz: “on the EU side, member states were preoccupied by domestic concerns to reduce the migratory pressures from the sending ACP-partners and pushed for a readmission clause (Article 13.4). The ACP on the other hand were seeking to ensure the protection of their nationals inside the EU (Article 13.3).” Negotiations for the EU – Africa relations post-Cotonou are still on-going with migration still being a highly contentious issue among EU member states. For example, the Visegrad Group (Hungary, Czechia, Poland and Slovakia) remain opposed to migration to Europe and would prefer Africans stay in Africa.

From 2005 onwards, a number of EU – African declarations, partnership and other cooperative framework have been created to establish mutually beneficial ‘management’ of African migration. These instruments emphasize ‘migration management’ and ‘partnership’, given that they have been adopted for the distinct goal of clarifying that the EU’s intention no longer rested only on one-sided control and prevention (Hansen & Jonsson, 2011). In this case, migration management to boost Africa’s development is of prime importance and is said to be realized through such measures as codes of conduct to prevent brain drain, facilitate remittances, assist the return of highly skilled migrants, encourage the role of diasporas and migrant communities in the development of Africa, and to promote democratic governance and human rights (The Africa – EU Strategic Partnership, 2007).

This and other objectives materialized during the Euro-Africa Ministerial Conference on Migration and Development, held in Rabat in 2006 (the Rabat Process). One of the reasons for convening the conference consisted of the significantly increased entry of African migrants to the EU in 2005 and 2006. Here, both the Spanish government and the EU Commission agreed that long term solution could not be based on security measures alone, but that it also required measures reducing

inequalities between the North and the South (Mead, 2005). In line with this, the conference in Rabat adopted both the security and development dimensions of migration on its agenda, as is evident in the Declaration adopted: *“the purpose of the process was to “offer a.... response to the fundamental issue of controlling flows... the management of migration between Africa and Europe must be carried out within the context of a partnership to combat poverty and promote sustainable development and co-development”* (The Rabat Process, 2006). A brief addendum was mentioned in the Declaration to the effect that the partnership would address the migratory phenomenon from all points of view deemed relevant by the partner countries. This include making better use of the potential legal migration and its beneficial effects on the development of countries of origin and host countries (The Rabat Process, 2006). It should be noted that the Rabat Process is reviewed at regular Euro-African Ministerial Conferences on Migration and Development, with a new pillar introduced during each review process. For example, in Paris (2008) – where it was agreed that dialogue should be centred around organizing legal migration; fighting against illegal migration and focusing on the synergies between migration and development (European Commission, 2008), Dakar (2011) – where the parties reaffirmed their commitment to boost legal migration opportunities, and presented legal migration as an opportunity for the economic and social development of countries of origin and destination, and an opportunity for migrants in terms of human development, and the acquisition of resources and skills (ICMPD, 2011), Rome (2014) – where the element of international protection was added and link between migration, development and the prevention of, and fight against irregular migration and related crimes was emphasized (ICMPD, 2014), and Marrakesh (2018), They are currently five priorities of the Rabat Process, which, in the words of Dimitris Avramopolous (the then EU Commissioner for Migration (2014 – 2019) – are:

- Address the root causes of irregular migration,
  - better organization of the legal channels of migration and mobility,
  - giving protection to those who need it,
  - fight in a more effective way against the network of traffickers,
- improvement of cooperation in the field of the repatriation of illegal migrants (European Commission, 2018).

The overall aim of this non-binding and voluntary process is broadly aligned to the GAMM objectives.

Looking at the Rabat Process, one immediately notices the presence of the security and development dimensions of migration. Yet, practice on the ground points

to the security approach being given an upper hand (see Noll, 2006). For example, the very first concrete measure that emanated from the 2006 Rabat conference was the setting up of a common EU coast guard tasked with patrolling the waters between the African mainland and the Canary Islands. As noted by the then Maltese foreign minister, referring to the agreement reached in Rabat ‘fighting international criminal organization, repatriation of illegal immigrants and stopping the flow of illegal migration are indeed very important factors in addressing illegal immigration holistically’ (quoted in Balzan, 2006).

Since Rabat, there has been a number of high-level EU – Africa meetings and agreements focusing on migration, chanting the same ‘partnership of equals’, ‘win-win dynamics’, and ‘security and African development’ mantra. For example, the 2006 Tripoli Process or the Joint Africa – EU declaration on migration and development was presented as a “partnership” aimed at addressing “migration and its root causes through broader development and poverty reduction strategies”. Similarly, the EU – Horn of Africa Initiative (better known as the Khartoum Process) launched in November 2014 carry the same message and goal: “partnership to... promote sustainable development to address the root causes of irregular migration; establish a regional framework for return, including voluntary, and reintegration; and assist countries in establishing and managing established centres and providing access to asylum processes” (The Khartoum Process, 2014). Both policy instruments contain clauses emphasizing how African countries stand to reap the benefits of development if they cooperate closely with EU on migration issues. For example, the Tripoli Process lists several development strategies, policies and efforts, such as the role of foreign direct investment (FDI), support to the Millennium Development Goals (MDGs) and the New Partnership for Africa’s Development (NEPAD); the need to enhance policies in the areas of trade, agriculture and fisheries; the positive role of diasporas and remittances; and the importance of improving African access to European and regional markets.

In 2015, over 60 Heads of States and government from both the EU and Africa met in Valletta for the first time for a migration Summit. This Summit was convened due to the sharp increase in the flow of asylum seekers and irregular migrants into the EU. The outcome of this Summit was the Valletta Action Plan. Apart from introducing a trust fund – the European Union Emergency Trust Fund for Africa (EUTFa) – the Valletta Action Plan remained fundamentally similar to previous instruments adopted. With an initial budget of EUR 1.8 billion, the EUTFa is key to the issue of the relationship between migration and development. These relationships are complex, yet the EU’s policies have in the past tend to present them as superficial, entirely grounded on countering the root causes of irregular migration. This same approach is repeated in the Valletta Action Plan wherein both parties (the EU and Africa) reiterated their commitment to “address the root causes of migration; to advance legal migration and

mobility possibilities; to strengthen the fight against irregular migration; to prevent and fight migrant smuggling, eradicating trafficking in human beings; and to strengthen international protection and step-up assistance” (European Commission 2015, p. 1-17).

As Pastore (2016) contends, one objective of this document is to strengthen the external projection of European control and protection policies in order to keep many migrants and asylum seekers as possible in Africa. This is the interpretative key to the measures set out in the last three sections of the Action Plan, which range from support for reintegrating deported illegal migrants to the struggle against trafficking and the associated corruption, to strengthening the protection capacities of African countries. Another set of objectives involves the promotion of legal migration (mainly for studies) and mobility for brief periods, both within African continent and to Europe. This line of action is based on the conviction that properly managed migration can be beneficial for both countries of origin and countries of destination.

If one takes a closer look at the EU-Africa policy instruments adopted, it is evident that these instruments focus more on irregular migration towards Europe. This indicates that the EU’s area of interest is irregular migration, given the prevalence of the term ‘illegal’ and ‘irregular’ migrants and the insertion of a South – North dimension in the said instruments. In other words, the documents show the EU’s tendency to perceive migration from Africa to be a security issue. This perception of migration has prompted the EU to adopt several border management practices, notably in terms of capacity building of border control on the African continent – a practice also known as ‘externalization of migration controls (see Bourbeau 2015, Volker 2014). With this practice migration management practices are directed at “where the migrant is” (Cobarrubias et al. 2014, p. 19). The controversial agreement signed in 2017 between Italy (an EU member) and Libya’s coast guard echoes this practice of externalization of migration management or border control: By this agreement, Italy (with the blessings of the EU), has, since the collapse of the Ghaddafi regime, been supplying technical support to the Libyan coastguard as well as information on migrant vessels. Therefore, goal of this practice of externalization is to intercept migrants before they approach Europe. This has been criticized by some scholars and politicians in both regions. For example, back in 2015, the former AU Chairperson – Nkosazana Dlamini Zuma – during the Valletta Summit stated that “the problem that we are facing today is in part because some countries in Europe have taken a fortress approach... the African Union expresses concern about the militarization of its shores and airspace” (African Union, 2015). The security terms found in the various policy documents are used in relation to human trafficking and smuggling which is seen to be in violation of national sovereignty. As noted by Maria DeVargas and Stefania Donzelli (2014, p. 241), “in the EU there is a tendency to conflate crime and terrorism with migratory movement”. Inserting the words ‘fighting’, ‘combatting’, ‘illegal’, with respect to

migration in the various policy documents, constitutes a ‘linguistic action’ or a ‘speech act’ and convey a sense of ‘urgency’ and ‘priority’(see Waever & Buzan 1993, p. 3).

Another observation one could make from the various instruments is that development issues have always occupied an important position in EU – Africa cooperation. While development issues had from the beginning been imposed on the agenda by African partner states, the EU and its member states had clung to security issues. However, looking at the various policy instruments, a change in perspective over the years can be observed: the ‘root causes approach’ initially provided the main frame for understanding the migration – development nexus. Irregular migration was perceived as a negative phenomenon to be stopped via development cooperation. However, over the last decade, the analysis has come to be much more differentiated and the potential impact of migration on development has taken a front seat, due to the increasing realization by a number of EU member state of the importance of this aspect. The change in perspective ushered in a more holistic view of migration and equally offered a common frame to discuss legal migration, irregular migration and labour migration from an overarching perspective. For example, discussions during the Rabat Process started with debate on irregular migration particularly between Spain and Morocco, but it soon became clear that a security – driven approach could neither help both parties understand the dynamics of irregular migration nor contribute to sustainable solutions. It was realized that if linked to sustainable development, it would become clear that well – managed migration could make a positive contribution to the economies of both origin and destination countries of migrants. As pointed out by a participant at the Rabat Process in a report by Perchinig and Noack (2016, p. 30), *“one important thing about the Euromed Migration framework is the development of partnership as far as possible with countries of origin and transit as well. And also, to develop new concepts of migration. That could be circular migration, it could be other types of migration, but we have to develop efforts to study new ways that migration could be a way to support development in both countries. (...) Because we have to show migration in a positive way.... Migration will never stop, that is for sure. And we have to make the most out of it for all of us and also show it to the public opinion. Because nowadays migration is only misery and poverty and it is not all of that. ...”*

Legal migration was presented as alternative to irregular migration and as something beneficial for Africa. One can assume the decision to migrate irregularly/illegally is often tied to the existence of very restrictive legal channels for migration, or the lack of information about legal migration channels. Therefore, opening legal channels for migration, providing better information on legal migration possibilities and on the risks of irregular migration would be pivotal to managing migration flows. However, legal migration was and is still a contentious issue between the EU and Africa. The different perspectives between the EU and AU or African states on this issue remains visible: while the EU advocates restricting mobility to the



African continent and returning irregular migrants back to Africa, African states are more interested in opening channels for legal migration to Europe. Interestingly, the rhetoric of legal migration in the policy instruments tends to be vague, referring frequently to educational programs. This vagueness and limited avenue for legal migration presented in the documents demonstrates the disagreement between the parties as to where legal migration channels should let to. In a way, it also highlights the asymmetric power dynamics between the two parties, with the EU being the stronger power, dictating the terms to the weaker African side.

The various policy documents adopted indicates that migration has become increasingly accepted as a tool for development (Zanker, 2019) and that development may be considered as a territorialized process leading to the adoption of migration policies that favour development at home in order to ‘prevent’ migration (Nijenhuis & Leung, 2017). In other words, the EU – Africa policy instruments analysed adopt an approach aimed at limiting migration from Africa by first of all engaging in or supporting development activities and poverty reduction strategies in Africa so that African youths can stay in Africa and not seek for employment opportunities in Europe. Evidence of this position could be found in 2018 at the High-Level Forum Africa – Europe held in Vienna and jointly hosted by the Austrian Presidency of the EU, notably Austrian Chancellor Sebastian Kurz, and Paul Kagame, President of Rwanda and Chairman of the African Union for 2018. During this Forum, the then President of the EU Commission – Jean – Claude Juncker reiterated Europe’s ambition for a true and fair partnership among equals between Africa and Europe. He stated “Europe and Africa share a long history and a bright future” and proposed a new “Africa-Europe Alliance for Sustainable Investment and Jobs, to help attract both European and African investment and create 10 million jobs in Africa over the next five years...” (European Commission, 2018). This pronouncement re-echoed another made in his 2018 State of the Union Address (European Commission, 2018). Another evidence of the EU’s interest to keep Africans in Africa could be source from the statement “the future of African is in Africa”, recently made by the Hungarian Prime Minister – Viktor Orban as he commented on the recent terrorist attack in Nice, France (Hungary Today, 2020). If Africans could not be made to stay in Africa and seek employment there, then as a last resort, encourage legal migration (to Europe) through various schemes such as the liberalization of visa regimes for certain categories of people (students, businessmen and businesswomen, etc). This approach complements the securitized approach (fortification of EU borders, externalization of migration control, etc).

From the above analysis, one notices that the policy instruments are all premised on a trade-off between greater cooperation in controlling illegal flows and the protection of forced flows and greater opportunity for legal circulation (Pastore, 2016). This off – set is never materialized (as will be discussed later) because the EU treaty

grant member states “full powers to determine volumes of admission of third country nationals coming from third countries in search of work, whether employed or unemployed” (Art.79 (1 & 5), EU Treaty). Additionally, member states, in times of crisis, have never wanted to include in their negotiations with African partners any significant quotas for legal entries or more flexible visa regulations.

Steps have been taken to implement the above analyzed policy instruments. However, looking at current issues in the field of migration, international politics and international law, it can be asserted that these instruments have failed to achieve their desired goals. In other words, there is an implementation gap. How and why these instruments have failed are explored in the third section of this paper.

### **3 FAILURE OF THE POLICY INSTRUMENTS: HOW AND WHY THEY HAVE FAILED?**

According to Welz (cited in Francesca et al. (ed), 2015), notwithstanding multiple summits and meetings, the achievements of the EU-Africa instruments on migration have been few and far between, depending on the political commitment of individual states. This claim has received support from other scholars. For instance, Reitano (2016) contended that the Rabat Process has had few tangible results despite running for more than a decade.

The implementation of the EU – Africa migration instruments has been varied (Zanker, 2017). For instance, the Khartoum Process is reputed to be even more difficult to implement considering the lack of mobility available there and also compounded by the fact that the Sudanese and Eritrean citizens are not allowed to leave their country without permission (Article 28.3, Passport and Migration Act, 2015 of the Republic of Sudan); and the lack of trust between the countries participating (Reitano, 2016). While supporting Zanker’s assertion on the varied nature of implementing the instruments, this paper argues that these policy instruments have failed both to stop the inflow of irregular migrants into the EU, and have equally failed to offer international protection to migrant as will be discussed in the following paragraphs.

As to how these instruments have failed to stop the inflow of irregular migrants to the EU, one has to look for evidence no further than the continuous arrival on the EU’s shore by boats filled with sub-Saharan African migrants. The borders of Europe are increasingly presented in the media and political debates as the setting for a perpetual emergency: boats packed to the brim, crowds gathering at fences, chaotic scenes outside reception centres, etc (Andersson, 2016). Efforts to contain, control and combat irregular/illegal migration from Africa to Europe have only made the situation more acute. The number of boat arrivals at the shores of the European Union is indicative of this acuteness. From 1 January – 6 November 2019, 89,997 migrants/refugees entered Europe through the sea (IOM, 2019). This represents a about 11 % decline from 101,185 that arrived during the same period of the previous year.

The death record for that year stood at 1090 individuals, representing about 52 per cent decline from the previous year's figures for the same period (2,098 individuals) (IOM, 2019). Though this indicates a decline, it can not be considered or registered as a success because the boats keep coming on daily basis. For example, from January to April 2020, the International Organisation or Migration (IOM) reported that 16,724 migrants and refugees have entered Europe by sea. This represents a 16 per cent increase from 14,381 arriving during the same period in 2019 (IOM, 2020). This number dwindled during the general lockdown imposed by states across the world as a result of COVID19. However, it has been observed that migrants have recently been arriving on the EU's shores and land border, sometimes with the help of states like Turkey who have since 2016 been using migrants as a weapon to extract concessions from the EU, with the most recent threat to allowing Middle Eastern migrants in Turkey to enter the EU via Greece in March 2020. It suffices to say that the above mentioned figures have been repeated in the media and conferences, but it makes no difference as a deterrent to migration. Neither does it, to the EU's response.

On the issue of failure to protect the rights of irregular migrants, one cannot deny the fact that the human rights of those trying to enter the EU illegally are crushed by the zeal to preserve EU security. As some migration scholars argue, the EU's border control efforts have tightened the noose around the North and Horn of Africa, making dangerous journeys even more perilous (see Zanker 2017, Reitano 2016).

A substantial sum of money from the EU have been poured into refurbishing detention facilities and training of guards in Libya. The horrible conditions of these centres no longer remain a secret ever since CNN aired a video of migrants being auctioned at Libya's network of detention centres. It is alleged that the EU leaders were aware of these horrible conditions but did nothing. However, faced with public outcry, they shifted their position to become saviors (Reidy, 2017). As contained in an open letter from the President of Medecin Sans Frontiere International to European government leaders, the EU's initial response to the horrid slave trade video from Libya was the allocation of EUR 100 million to the International Organisation for Migration (IOM) to return people to their homes through country partnership. The United Nations High Commission for Refugees (UNHCR) also received some funds to evacuate some people to Niger for asylum screening and resettlement (Medecin Sans Frontier, 2017). While evacuating people from horrific detention centres is a humanitarian imperative, Chandler (2018) argues that this move by the European leaders does not address the fundamental issue that the EU's continued support for the Libyan coast guard has forced vulnerable people directly back into the same detention centres where they are bought and sold.

The EU border control projects have also received much critique. For example, the former UN High Commissioner for Human Rights – Zeid Ra'ad Al Hussein, in a November 2017 statement, held that the European Union's policy of assisting the

Libyan coast guard to intercept and return migrants in the Mediterranean is inhuman (UN office of the High Commissioner, 2017). Migration scholars like Castillejo (2016), Prediger and Zanker (2016) have equally submitted that EU border control projects not only contradicts European foreign policy and diplomatic actions, but also basic European human rights standards.

Moreover, the use of the words “to prevent and fight migrant smuggling”, “eradicating trafficking in human beings;” and “to strengthen international protection and step up assistance” in the policy instruments seemed to ignore the fact that smuggling and trafficking flourish with the complicity of the certain North African and Horn of Africa governments officials, police and border guards (Davy 2017, Frouws & Horwoods, 2017). There is documentary evidence in support of this assertion. An investigation by Refugees Deeply (an independent digital media project dedicated to covering refugee issues around the world) documented the involvement of Sudan’s high-level government officials in trafficking (Suleiman & van Dijken, 2018). This validates the claim made by the US Department of State that Sudan does not meet the minimum criteria for the elimination of trafficking (US Department of State, 2018).

From information provided by the above paragraphs, one cannot help but pose the question: why have these policy instruments failed to achieve their desired goal? It is not enough to simply assert that implementing the EU-Africa migration instruments have registered limited success neither is it enough to provide evidence of such failure. It is essential to understand the reasons why and propose recommendations. Looking at the content of the policy instruments and the various summits during which they were adopted, it can be said these instruments were designed to fail. This is due to the following non-exhaustive reasons:

- **Divergent approaches towards migration management.** While the EU adopts a much more restrictive/securitized approach towards migration, African states advocate for easing mobility restriction for development (Van Criekinge, 2010). Even though the EU – Africa instruments show strong rhetoric in favour of developing legal migration, for EU institutions, this migration is restricted to the African continent. This difference in approach is further compounded by the use of vague terms regarding legal migration. Zanker (2019) notes that legal migration has been packaged and sold by the EU as “alternative to irregular migration” without detailing what these alternatives might be. When they are more specific, education (Erasmus +) is presented as the primary form of legal migration, followed by labour migration. The preference of education signals the preponderance of temporal understanding of legal migration. Through its policies, the EU highlights illegal migration and prioritizes returns, yet their practice on legal migration

stands in contrast to their strong rhetorical stance on this matter (Castles, 2004).

- **Migration management is not an institutional matter. It is a national one.** According to Castles (2004), migration governance approaches still follow national logics despite the transnational nature of migration. This claim has been re-echoed by other migration scholars such as Czaika & De Haas (2013), and Zanker (2019). With governance approaches still in line with national logic, policies developed become subverted. It would seem logical for national interests on immigration to dictate policy direction and practice (Hampshire, 2016). In addition, there has been an increasing focus on bilateral agreements between the EU, member states and individual African countries. This breaks down any further chances of institutionalization and a strengthened regional migration agenda (Bisong, 2018). The result, as stated in a report authored by Friedrich-Ebert Stiftung (FES) and Center for Citizens Participation on the African Union (CCPAU) is inconsistency (FES & CCPAU, 2016). As stated in the report, “the EU oscillates between bilateral and multilateral, lacks consistency and gives AU member states ‘too many masters’” (FES & CCPAU 2016, Zanker 2017, p. 35). Conflicting and sometimes competing interests within the EU or between its member states further bolsters this inconsistency (Hampshire, 2016).
- **Too many players with different goals.** Migration and asylum is a field of shared competence. The lack of alignment with the EU and its member states’ policy objectives can result in the so-called vertical policy incoherence (Frasca, 2019). In the external dimension, vertical policy incoherence is quite common: member states, depending on previous bilateral relationship or interest have a preference for bilateral cooperation and often question the value added of collective action. Regarding migration cooperation with Africa, several member states (guided by historical ties with Africa and power structure) are active: Portugal, Spain, France, Italy, and Germany. On the other hand, some member states are less interested in the external dimension to which they contribute to a limited extent to third countries cooperation activities or emergency funds. The Visegrad Group (Hungary, Slovakia, Czech Republic and Poland) within the EU used to be examples of such member states. There is therefore a lack of solidarity/political will to address common issues among EU member states. This lack of political will sends the message that migration is not a strong priority, despite the rhetorical commitment to addressing the issue. It can be asserted that the rapid growth and expansion of human trafficking and smuggling is a consequence of this lack of political will,

manifested through a denial of responsibility and blame for the failures of the instruments. Europe's leaders continue to place the blame elsewhere. For example, the French President – Macron, while responding to a question asked by a student during his visit to the University of Ouagadougou in November 2017, blamed Africans for being responsible for human trafficking between Nigeria and Libya. He stated: *“It is not the French who are the traffickers, it’s the Africans... Show me a French, German or Belgian person who carried out trafficking between Nigeria and Libya. This person doesn’t exist”* (“Who are the Traffickers?“, 2017).

- **Civil society organization/local actors have been excluded from decision-making.** One of the shortcomings of the EU-Africa instruments is the absence of civil society organizations or local actors at the decision-making table. For example, during the Valletta Summit, although civil society organizations were invited, they were not included from the very beginning. They were excluded until the eleventh hour when two representatives were allowed to participate as ‘observers’. Consequently, Valletta did not take actions on civil society’s demands such as the lifting of carrier sanctions as a means to ensure safe migration and counter people smugglers or to facilitate the important role of migrants and the diaspora in development (Van Dillen, 2015). Since Valletta, civil society organizations have been noted to be excluded from high-level AU-EU summits despite recognition of their importance in the Joint Africa-EU Strategy (JAES), launched in 2007 with a mandate to encourage mutual cooperation and move beyond the donor-recipient relationship. Not only were civil society organizations and local actors excluded from the decision-making table at the time of adoption of the various policy instruments, but they have also equally been excluded from decision-making processes relating to the various EUTFA projects. An initial inquiry by CONCORD (a European network of aid NGOs) of Trust Fund projects in three countries- Ethiopia, Libya, and Niger- revealed that “local actors are barely consulted and only once decisions have been taken” (CONCORD, 2017). Therefore, “projects could be disconnected from needs in partner countries and lack a holistic view.”

The above reasons explain the implementation gap between rhetoric and practice in the EU – Africa migration policy. The EU’s migration policy emphasizes addressing the root causes of irregular migration through projects targeting the creation of jobs and building resilience in communities across 3 priority regions in Africa (the North of Africa, the Sahel and Lake Chad regions, and the Horn of Africa). However, as Frasca (2016, p. 8) submits, “EU migration policies are too often victims of

eurocentrism, posing unrealistic goals and expectations towards cooperation with Africa”. It is a well-known fact that African migration is largely intra-African, with only a tiny percentage of Africans migrate to Europe. Moreover, the EU is not the only player in Africa: China, Russia and the US as well have their interests on the continent. For this reason, the EU should consider reassigning due weight to cooperation with Africa. Cooperation with Africa is bigger than migration cooperation and as seen, attempts to ‘stop’ migration from Africa has proven to be futile.

#### 4 CONCLUSION AND RECOMMENDATIONS

Over the years, migration has moved up the EU – Africa cooperation agenda. As this paper has demonstrated, the migration management policy instruments jointly adopted since 2000 are all premised on a trade-off between greater cooperation in controlling illegal flows and the protection of forced flows and greater opportunity for legal circulation due to the fact that the EU and its member states and Africa have fundamentally different positions on migration management. The EU’s approach which emphasizes addressing the root causes of irregular migration through projects targeting the creation of jobs, does not acknowledge the differing interests of Africa. As Frasca (2019, p. 8) succinctly puts it, “EU migration policies are too often victims of eurocentrism, posing unrealistic goals and expectations towards cooperation with Africa”. It therefore goes without saying that the EU, imposing its own agendas in the policy instruments threatens to undermine Africa’s ambitions. The result has been a failure for both parties in achieving their desire goal. In other words, there is an implementation gap (Czaika and de Haas, 2013).

It is a well-known fact that African migration is largely intra-African, with only about 8 % of Africans that migrate to Europe. Moreover, the EU is not the only player in Africa. There are new players such as China, Russia and the US each having their own interest on the continent. For this reason, the EU should consider reformulate its cooperation with Africa specifically in the field of migration. As demonstrated, attempts to ‘stop’ migration from Africa has proven to be ineffective. For EU – Africa cooperation on migration to be effective, it is imperative for the EU to:

- **strive for a sustainable equal partnership Africa.** For there to be a change in the EU’s current approach, the EU, should first of all, recognize the fact that Europe will need African migration in the future. In other words, the EU must accept that demographic and socioeconomic realities mean that Africans with the aspiration and/or resources will always migrate towards other developed regions, particularly towards Europe, and Europe will need African labour. The EU must work with Africa as equal partners to explore how best to promote movements that support Africa’s economic growth and allows both continents to reap the benefits of a safe and orderly migration from Africa to

Europe. Only a partnership-led approach based on compromise has any prospect of success. Financial initiatives alone cannot create functioning migration partnerships.

- **tackle the lack of solidarity with its members on migration and asylum issues.** This requires honesty in relation to conflicting interests between member states and working towards effective common systems that can effectively manage fluctuating migratory flow and integrate incoming migrants (both irregular and regular). It will also require that EU leaders shift their current political discourse to build acceptance of migrants and migration. A change in mindset is crucial if the EU is to build a constructive and realistic engagement with Africa on migration in the future. To tackle this lack of solidarity, the following recommendations made Pierre Vimont (2016) should be considered:
  - A solid and realistic migration policy based on a common understanding of the type of migration the union needs. This will provide evidence that Europe can effectively address issues of importance to the average citizen.
  - EU members will have to address some of the bones of contention they have ignored for long. Such issues will include whether burden sharing should be mandatory or voluntary, whether migration should be permanent or temporary, etc.
  - The EU must adopt a different narrative with third countries. The EU's current approach that focuses too much on return and readmission has been unable to convince Europe's partners (specifically African partners) to initiate true collaboration for lack of trust.
- **change from addressing the 'root causes' of migration with short term emergency funds.** It is difficult tackling the 'root causes' of involuntary movements through development cooperation and other measures. As Angenendt, Martin-Shields and Schraven note, given the international community's limited success in addressing fragile statehood and growing number of violent conflicts, more honesty is needed in the effectiveness discussions (Angenendt, Shields & Schraven, 2017).
- **recognize and enhance the role of society organizations.** Civil society organizations are often step up to assist or complement the role of governments on issues related to protection, integration, research, and advocacy for migrants' rights. As Le Coz and Pietropolli (2020) note, cooperation between civil society organizations and governments often result



in progress in terms of delivering services to vulnerable migrants and better information on what works on the ground. It is necessary to have civil society organizations at the decision-making table and throughout the implementation phase of projects designed to reduce irregular migration from Africa to Europe.

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