ISSN 2308-6971 (Print)
ISSN 2518-1599 (Online)

Customs Scientific Journal

№ 2/2020

HELVETICA
PUBLISHING HOUSE

Рекомендовано до друку та до поширення
через мережу Інтернет вченою радою Університету митної справи та фінансів
(протокол № 3 від 28 вересня 2020 р.)

Видається два рази на рік
Засновано 2011 року

У журналі здійснюється публікація наукових і оглядових праць з основних проблем зовнішньоекономічної діяльності, партнерства митних адміністрацій та бізнес-структур, професійної освіти в галузі митної справи, впровадження та реалізації стандартів Всесвітньої митної організації, оглядові статті про досвід реалізації стратегій інституційного розвитку митних адміністрацій країн-членів Всесвітньої митної організації, публікації молодих науковців у галузі митної справи та зовнішньоекономічної діяльності, реферативні матеріали та анонси.

Науковий журнал «Customs Scientific Journal» об'єднує відомих вчених та практиків у сфері митної справи та зовнішньоекономічної діяльності.

Журнал включено до Переліку наукових фахових видань України (категорія «Б»)
з державного управління, юридичних, економічних наук відповідно до Наказу МОН України
від 17.03.2020 № 409 (додаток 1) зі спеціальностей 051 – Економіка, 071 – Облік і оподаткування,
072 – Фінанси, банківська справа та страхування, 073 – Менеджмент, 075 – Маркетинг,
076 – Підприємництво, торгівля та біржова діяльність, 081 – Право, 262 – Правоохоронна діяльність,
281 – Публічне управління та адміністрування, 292 – Міжнародні економічні відносини,
293 – Міжнародне право

Журнал включено до міжнародної наукометричної бази
Index Copernicus International (Республіка Польща)

Засновник – Університет митної справи та фінансів
Адреса редакційної колегії: вул. Володимира Вернадського, 2/4, Дніпро, 49000, тел.: 099 729 63 79
Сайт видання: csj.umsf.in.ua

Зареєстровано:
Міністерством юстиції України. Свідоцтво про державну реєстрацію –
КВ № 23738-13578ПР від 21.11.2018 р.

It is recommended for printing and distribution over the Internet
by the Academic Council of University of Customs and Finance
(Minutes No 3 dated 28.09.2020)

Frequency: bi-annual
Established in 2011

The journal publishes scientific papers and reviews concerning the fundamental problems of international economic activity, a partnership of customs administrations and business structures, professional education in customs area, introduction and implementation of the standards of World Customs Organization, review articles on the experience of implementation of strategies of institutional development of customs administrations of member states of the World Customs Organization, publications of young scholars on customs and international economic activity, abstract materials and announcements.

Scientific journal "Customs Scientific Journal" unites prominent scientists and practitioners in customs and international economic activity.

The journal is included in the List of scientific professional editions of Ukraine
(category "B") on public administration, law and economics according to the Order of the MES of Ukraine
dated 17.03.2020 № 409 (annex1) in the specialties 051 – Economics, 071 – Accounting and taxation, 072 – Finance, banking and insurance, 073 – Management, 075 – Marketing, 076 – Entrepreneurship, trade and exchange activities, 081 – Law, 262 – Law enforcement activities, 281 – Public management and administration, 292 – International economic relations, 293 – International law

The journal is included in the international scientometric database
Index Copernicus International (the Republic of Poland)

Founder – University of Customs and Finance
Address of the editorial board office: 2/4 Volodymyra Vernadskoho str., Dnipro, 49000, phone: 099 729 63 79
Web-site: csj.umsf.in.ua

It is registered by:
the Ministry of Justice of Ukraine. Certificate of state registration of the print media –
КВ № 23738-13578ПР dated 21.11.2018

ЗМІСТ

CONTENTS

UDC 33
DOI https://doi.org/10.32836/2308-6971/2020.2.1

POLITICAL AND THEORETICAL APPROACHES TO THE ESSENCE AND TYPES OF ENTREPRENEURSHIP

The purpose of the study *is to consider the process of development of society in the context of the dominant production relations, in the state of the economy and in its political orientation. It is noted that the political structure of society has always been subject to changes, not only in terms of changing ideas, but also in the policy regarding entrepreneurship and its position in the development of the national economy.*
Research methods. *In the process of studying the topic, such methods were used as the analysis of the theoretical foundations of the development of entrepreneurship as a socio-economic institution, the analysis of a special set of norms and rules that ensure the coordinated behavior of business entities.*
The novelty of the study *is that for the first time in a national economic study, a variety of concepts and approaches on the problems of the development of the institution of entrepreneurship were clearly classified. However, the growth of political entrepreneurship and international cooperation between entrepreneurs has caused a dramatic change in its essence, so a political analysis of the problem is key to understanding the role of the main subsystem of the modern free market economy.*
Conclusions. *Summing up, the author comes to the conclusion that, from the point of view, the thesis about two models of entrepreneurial behavior can help resolve the contradiction in the nature of innovation in entrepreneurship (classical and innovative). It is noted that the distinctive feature of the first model (otherwise it can also be called resource-oriented) is that the entrepreneur links tasks with available resources and prefers means of achieving goals that ensure the most efficient use of resources. The second model is focused on opportunities rather than resources, which means that the entrepreneur prefers innovative production methods using his own resources and external resources. In a word, modern entrepreneurship is a multidimensional and holistic socio-economic phenomenon of a market economy, in which multilevel (reflecting many theoretical concepts) and generalizing (reflecting many features) approaches are extremely important. It is advisable to define its economic essence.*

Key words: entrepreneurship, market economy, political entrepreneur, economic structure, political theory.
JEL Classification: L26, D40, H10.

Sakina BABAYEVA,
Ph.D. Student
Western Caspian University
orcid.org/0000-0001-5211-8359

1. Introduction (relevance)

The modern stage of economic development has made it necessary to systematize the political and economic knowledge of entrepreneurship, and entrepreneurial activity in itself creates a basis for qualitative changes in the economic relations of the modern system of ownership.

The very importance of the theoretical systematization of any socio-economic and political-economic event is to understand its essence. In this regard, it is important to note that numerous approaches to the definition of entrepreneurship and the application of this concept in many contexts, including economic development, competition, valuation, profit, firm, production factors, and so on, do not allow to form of a unified and unambiguous definition of the term. One argues that "economic theory can hardly figure out a clear and general interpretation of this phenomenon" (Moskovtsev, Yurova, 2008: 91). There is a need for such an interpretation of entrepreneurship both in economic and political science, and in our point of view, the issue can be defined if it is grounded on the definition of entrepreneurship with emphasizing its specific features using four basic approaches:

1) a broad and narrow approach;
2) macro and microeconomic approach;

3) an approach based on the characteristics of research programs;
4) political and theoretical approaches

In brief, entrepreneurship is characterized as a private type of economic activity. The main feature here is that the activity is based on an independent initiative, responsibility, idea of innovation and aims to make a profit.

2. Goal research

The purpose of the study in this article is to consider the process of development of society in the context of the dominant production relations, in the state of the economy and in its political orientation. It is noted that the political structure of society has always been subject to changes, not only in terms of changing ideas, but also in the policy regarding entrepreneurship and its position in the development of the national economy.

3. Research methods

In the process of studying the topic, such methods were used as the analysis of the theoretical foundations of the development of entrepreneurship as a socio-economic institution, the analysis of a special set of norms and rules that ensure the coordinated behavior of business entities.

4. Research novelty

The novelty of the study is that for the first time in a national economic study, a variety of concepts and approaches on the problems of the development of the institution of entrepreneurship were clearly classified.

5. Review of recent publications

In his research, the author analyzed the works of 16 researchers who, to one degree or another, put forward their ideas and approaches to the development of an entrepreneurial institution. Works of such authors as A.F. Moskovtsev, O.V. Yurova "The heuristic meaning of the concept of entrepreneurship and its boundaries" (Moskovtsev, Yurova, 2008); N. Cohen "Policy Entrepreneurs and the design of the public policy: Conceptual Framework and the case of the National Health Insurance Law in Israel" (Cohen, 2011); M. Mintrom and P. Norman "Policy Entrepreneurship and Policy Change" (Mintrom, Norman, 2009); J. Huerta de Soto "Socialism, economic calculation and the entrepreneurial function" (Huerta de Soto, 2008); M. Emirbayer and A. Mische "What is agency?" (Emirbayer, Mische, 1998); K. Buhr "The inclusion of aviation in the EU Emissions Trading Scheme: Temporal Conditions for the Institutional Entrepreneurship, Department for Transport" (Buhr, 2012); N.P. Kononkova "The public sector of the Russian economy: entrepreneurship opportunities" (Kononkova, 2010); N.I. Kraskova "Small business as a subject of analysis of economic science" (Kraskova, 2011); L.V. Grishaeva and G.T. Kuzhbanova "To questions about the essence of entrepreneurship" (Grishaeva, Kuzhbanova, 2012).

6. Main material views

According to the macroeconomic approach, entrepreneurship is defined as a subsystem within the complete structure of the economy. Economic activity can also be regarded as a system of activity which requires to achieve the goals for the recovery of an economic entity and to get profits under resource constraints. So, entrepreneurship contributes to the activity of a complete economy and in this regard acts as an economic status in public policy. This type of subsystem can manifest itself in the activities of both local and other economic entities, regional or territorial economic unit, national economic entity, and even has the right to exist in the business entity at the national level.

Entrepreneurship policy is institutionalized as a subsystem in the general structure of the economy of each state with its own developmental tendency to fulfil socially important economic functions.

From the standpoint of the microeconomic approach, the essence of entrepreneurship policy is defined as a specific type of business behaviour of a person, an individual, a private enterprise or a company. The main point of the entrepreneurial activity is manifested in specific goals, characteristics, and motivations (for instance, individual or self-realization).

Some representatives of the neoclassical school of political and economic thought have interpreted entrepreneurship as a unique and uncommon production factor. In this regard, the following definition is used in this course: entrepreneurial activity is a process of earning commercial income by realization of an individual's abilities expressed in an efficient combination of production factors based on risk-taking. According to V.M. Niftullayev's research, "Entrepreneurship is the type of activity carried out by individuals, enterprises and organizations in the production, service, sale and exchange of other products.

1. Subjects of entrepreneurship may be individual persons, enterprises and their associations.

2. Creating certain economic, social and legal conditions for the establishment of entrepreneurial activity is necessary.

3. Different by types and forms of entrepreneurship, such as production, trade, mediation, consultancy, finance and others. The abovementioned types of entrepreneurship can operate in groups, individually, and also a whole unit. For example, business activities, production and trade, and so on. Depending on the form of property, the property may be private, state, municipal, and public property.

4. The following organizational and legal forms of entrepreneurial activity have been developed in modern times: economic partnerships and societies; production cooperatives; state and municipal unitary enterprises. Economic partnerships can be created in the form of limited liability, extra liability companies, as well as joint-stock companies and associated companies" (Niftullayev, 2002: 32).

The political innovation concept of entrepreneurship defines it as a specific type of activity which is distinct from traditional labour activity in terms of innovation method, scope and criteria.

The institutional concept of entrepreneurship describes it as a socio-economic institution, that is, a specific set of norms and rules that ensure the coordinated behaviour of economic entities. The norms that form the institution of entrepreneurship are based on traditions, diligence, thriftiness, business ethics, as well as labour rights, agreements, legislation and other norms form the institution of entrepreneurship creates formal regulators in the form of organizational standards.

We particularly emphasize the interpretation of entrepreneurship proposed by the former Soviet School of Economics, as it does not conform to any of these concepts, and its representatives use a level approach: the level of essence and form. In the political definition of entrepreneurship, it is interpreted as an economic category of a market economy. The shortest and most comprehensive definition of the market economy is simple as following: "the economy of free enterprises". In this regard, entrepreneurship policy is a complete set of economic relations related to the implementation of entrepreneurial activity and profit. These relations comprise connections with other economic entities (State and households), as well as mutual relations between entrepreneurs. In the political form, entrepreneurship is also considered as an economic method and process.

Entrepreneurial policy is also characterized by the following features:

- freedom and independence of economic entities;
- economic risk and responsibility;
- economic interests of economic units;
- innovation.

Entrepreneurship policy as a process is a sequence of determined actions of entrepreneurs from the first time of creation of the idea of entrepreneurship until its inclusion in a specific entrepreneurship project.

Interestingly enough, the former Soviet economic school emphasizes that the economic category of entrepreneurial policy has a historical character, which means the concept is not something definitively formed. The evolution of entrepreneurial terminology, content, and actions reflects the history of the exchange, production and distribution of goods and services, and at the same time the level of development of scientific and technical progress in this context. Therefore, at different stages of the development of societies ideas about entrepreneurship and its position in the development of the national economy are influenced and changed according to the dominant industrial relationships, the condition of the economy, the political structure.

Besides, because of the variety of tasks that may be required from entrepreneurs, as well as the diversity of objective external conditions, formal definition of entrepreneurship will always be varying correspondingly to the existing conditions.

In entrepreneurship policy, to resolve some issues formal and serious decisions need to be made, for the solution of the other problems, a more generally agreed approach is required to understand the essence behind one or another approach.

Modern entrepreneurship policy is characterized by several manifestations, such as business conditions and economic activity parameters. Particularly, in economic aspect, entrepreneurship can be observed as a production factor, economic relations, economic method, and even an economic institution. Each of these components has respectable quality features. This means that none of these definitions can be considered complete independently. However, at the same time, these components are characterized by general, specific features that help determine their essence.

But what is the explanation of the term "political entrepreneur"? It is well known that a political entrepreneur is an individual who uses the state's political decisions and opportunities regarding entrepreneurship to achieve personal goals that an individual cannot achieve by moving outside the political context. According to American political scientist J.W. Kingdon, "The term of political entrepreneur does not depend on a specific occupation of a particular individual: a political entrepreneur may or may not be an official in the government, can be a CEC employee, or even maybe in a leading position in a group or be a member of a research organization, whether he or she is designated or elected" (Kingdon, 1984). In this sense, the key feature of a political entrepreneur is that they want to invest in resources, time, energy, authority or money, in order to make any political change to achieve profit in the future. From this point of view, a political entrepreneur is very similar to a classic businessman, and the core difference is only in their field of activity.

Quite a few researchers, including D.D. Li, F. Junxin and J. Hongping note that there is a fundamental difference between an ordinary entrepreneur and "political" entrepreneur: "This is because the changes that political entrepreneurs make are not only attributable to them but also contribute to other agents operating within the framework of the changed structures of political entrepreneurs" (Li et al., 2006). Thus, it is important to differentiate between the concepts of "political entrepreneur" and "lobbying".

According to S. Ainsworth and I. Sened, "Lobbyists are, first of all, a kind of link between the interest groups (which is leader is a political entrepreneur) and the authorities. Some scholars consider lobbyists to be a subset of political entrepreneurs" (Ainsworth, Sened, 1993).

N. Cohen writes: "The term of "political entrepreneurship" and concepts relating to political entrepreneurship emerged in the early 1980s as a part of scientific researches on political science and management" (Cohen, 2011) In addition to "political entrepreneurship", other types of this concept including "institutional entrepreneurship", "executive entrepreneurship", "evolutionary political activity" and others also formed. The main reason for the research is the need for a new approach to the phenomenon of political change. According to M. Mintrom and P. Norman, "Theories of political change was the first emerged hypotheses (in the late '60s)" (Mintrom, Norman, 2009). That means the concepts of "political entrepreneurship" and "political entrepreneurs" were developed later.

The window of opportunity – is the concept used to describe the moment which is the most optimal time for the political entrepreneur to make the necessary changes. In the context of political entrepreneurship, the concept was first used by J.W. Kingdon in his book "Agendas, Alternatives and Public" (Kingdon, 1984).

J.W. Kingdon's theory of illustration implies that three so-called "streams" must be brought together to successfully address the activities of political entrepreneurs. The meaning of the first "flow" is that the need for any change (such as reform) should be understood by society (primarily the political elite) as a problem (Problem Stream). The second "flow" is the desire and will to develop a policy mechanism (Policy Stream) that has been developed to address the problem, and the third is the desire and will to make the necessary changes (Politics Stream) within authorized political institutions. As J.W. Kingdon notes: "When all "three streams" converge, political entrepreneurs should only expect for a favourable political situation – "a window of opportunity"" (Kingdon, 1984).

We broadly interpret the definition of entrepreneurship as a process of human activity: "Broad or general entrepreneurship is the same as human activities. In this regard, that can be said, almost anyone willing to change their present-day and also achieve their future goals will be engaged in entrepreneurship activity" (Huerta de Soto, 2008: 47).

Criticism of political entrepreneurship is primarily based on the notion of "integrated agent". According to this concept, R. Garud, C. Hardy and S. Maguire note: "An individual within certain political organizations and institutions cannot anticipate or make any changes in the activities of these institutions or other institutions. The motive of the issue is the phenomenon of "integrated agent", so: the institutions structures individual's consciousness, recognizes interests and identities, makes it impossible for an individual to go beyond the institutional framework and hence carry out any reforms" (Garud et al., 2007). The response to this criticism shows that the environment in which many researchers, agents (including political entrepreneurs) operate is created by agents themselves and that the process is temporary. From this aspect, according to M. Emmirbayer and A. Mischey: "Agents at any time can rebuild it or, in principle, create something new, because the sole purpose of their environment, which created by themselves, is to institutionally respond to the constantly changing conditions of the world in any historical development stages" (Emirbayer, Mische, 1998). So, institutional entrepreneurship is necessary at any moment.

One of the most noticeable examples of the activities of political entrepreneurs was the including of the aviation sector into the European Union system for greenhouse gas emissions trading. As K. Buhr points out: "This system was put into operation in 2005 and its main goal was to reduce greenhouse gas emissions from the EU countries to meet the environmental standards that were set out in the Kyoto Protocol, which came into force in 2005. The emission trading system is divided into three provisional phases, and the first phase, which began in 2005, included only the areas of the highest energy consumption and the emissions generated by generators themselves" (Buhr, 2012).

Many have been left astounded by the fact that the aviation sector has already passed the first phase. Accordingly, long before the first phase came into effect in 2005, a circle of political entrepreneurs was established. This circle included several European Commissioners, direct representatives of the aviation sector, as well as several NGOs such as the European Federation for Transport and Environment. Soon later, several scientific centres and research organizations joined to the establishment (Kononkova, 2010: 14).

As a result of the collective efforts, the impact of aviation emissions on the environment were known and thoroughly investigated. The necessity to limit aviation emissions has become clear to the general public (Problem Stream). Political entrepreneurs have conducted comparative analysis of various mechanisms for reducing emissions (for example, comparing the efficiency of emissions trading with direct taxation of emissions) and concluding that emissions trading mechanisms are the most cost-effective and agile (especially for the aviation industry). Thus, the appropriate policy (Policy Stream) developed. The political "flow" has been around since the beginning, as some of the political businessmen were members of the European Commission.

As the United Kingdom started to expand its fleet from 2003 there was an urgent need to adopt some mechanism to regulate aviation emissions and in 2005 when the UK chaired the EU Council "The Opportunity Window" opened.

Principally, specific features of entrepreneurship include initiation, independence, responsibility, economic uncertainty and a high level of economic risk and profitability (Timofeev, 2010: 45). In this sense, V.F. Bogachev, V.S. Kabakov and A.M. Khodachek believe that Entrepreneurship diverges substantially from commercial activities in budgetary organizations with strict tasks, regulations, reporting and under the control of the owner (Bogachev et al., 1995: 72).

It is worth to mention that there is still no consensus on the distinctive marks of entrepreneurial activity such as innovation, nor about the right to ownership of production factors. In this regard, four main approaches can be identified.

N.I. Kraskova writes: "According to the first approach (J. B. Sey, Austrian School, the Soviet School of Economics), the innovative nature of entrepreneurial property rights and means of production is a characteristic of entrepreneurial activity. Representatives of the Soviet School of Economics are exploring the formation and development of the concept of "entrepreneurship", which is closely linked to the concept of property, and in this regard, entrepreneurship and property are viewed as two sides of the same process that evolves over time and space" (Kraskova, 2011: 44).

The second approach to entrepreneurial activity is that ownership of production means is more necessary rather than the innovative nature of the activity. A number of scholars and economists, for example, A. Smith, J. Bodo, I. V. Lipsitz, A. Busygin assert such ideas.

Proponents of the third approach (like R. Catilon) accept as true that an entrepreneur can own a business, can only be a manager, and the innovative nature of the activity is not imperative. This is the largest approach in the matter of the scope of economic units.

Adherents of the fourth approach (Y. Schumpeter, P. Druker, V. Kushlin) think that innovation is the core principle of entrepreneurship, and possession of an enterprise is not an essential attribute of entrepreneurship, as entrepreneurship is possible even when there is no personal equity (eg, obtaining a business loan, using funds or through government grants).

In practice, the second approach has been supported, and also evidenced by the definition of entrepreneurship in the civil code of the Russian Federation defined as mentioned above.

7. Conclusions

In our point of view, the thesis about two models of entrepreneurial behaviour can be helpful to resolve the contradiction about the nature of innovation in entrepreneurship: the classical and the innovative. The distinctive feature of the first model (otherwise it can also be called a resource-oriented model) is that the entrepreneur aligns the tasks with the available resources and prefers the means to achieve the goals that ensure the most efficient use of resources. The second model is focused on opportunities, not resources,

which means that the entrepreneur prefers innovative methods of production using his resources and external resources.

L.V. Grishaeva avd G.T. Kuzhbanova shows that entrepreneurship can be defined according to the following basic theoretical approaches:

1) as an economic category of a market economy;

2) as an economic method and process;

3) as a special production factor;

4) as an institution (Grishaeva, Kuzhbanova, 2012: 48).

So, modern entrepreneurship is a multi-dimensional and integral socio-economic phenomenon of a market economy, in which, from our point of view, a multilevel (reflecting a variety of theoretical concepts) and generalizing (reflecting many specific features) approaches is exceedingly appropriate to determine its economic essence.

References:

1. Moskovtsev, A.F., Yurova, O.V. (2008). Evristicheskoye znacheniye ponyatiya predprinimatel'stva i yego granitsy [Heuristic meaning of the concept of entrepreneurship and its boundaries]. *Ekonomicheskie nauki – Economic Science*, no. 7, pp. 91–94 [in Russian].

2. Niftullayev, V.M. (2002). Sahibkarlığın əsasları [Basics of entrepreneurship]. Baku: Zaman nəşriyyatı [in Azeri].

3. Kingdon, J.W. (1984). Agendas, Alternatives, and Public Policies. 2nd ed. Boston: Little, Brown and Company [in English].

4. Li, D.D., Junxin, F., Hongping, J. (2006). Institutional Entrepreneurs. *American Economic Review*, vol. 96, no. 2, pp. 358–362 [in English].

5. Ainsworth, S., Sened, I. (1993). The Role of Lobbyists: Entrepreneurs with Two Audiences. *American Journal of Political Science*, vol. 37, no. 3, pp. 834–866 [in English].

6. Cohen, N. (2011). Policy Entrepreneurs and the design of the public policy: Conceptual Framework and the case of the National Health Insurance Law in Israel. Retrieved from: https://www.openu.ac.il/lists/mediaserver_documents/policy/maamar-7.pdf [in English].

7. Mintrom, M., Norman, P. (2009). Policy Entrepreneurship and Policy Change. *Policies Studies Journal*, vol. 37, no. 4, pp. 649–667 [in English].

8. Huerta de Soto, J. (2008). Sotsializm, ekonomicheskiy raschet i predprinimatel'skaya funktsiya [Socialism, economic calculation and entrepreneurial function] / transl. from English V. Koshkin; ed. by A. Kuryaev. Moscow; Chelyabinsk: IRISEN [in Russian].

9. Garud, R., Hardy C., Maguire, S. (2007). Institutional Entrepreneurship as embedded agency: an introduction to the special issue. *Organization Studies*, vol. 28, iss. 7, pp. 957–969 [in English].

10. Emirbayer, M., Mische, A. (1998). What is agency? *American Journal of Sociology*, vol. 103, no. 4, pp. 962–1023 [in English].

11. Buhr, K. (2012). The inclusion of aviation in the EU Emissions Trading Scheme: Temporal Conditions for the Institutional Entrepreneurship. *Organization Studies*, vol. 33, iss. 11, pp. 1565–1587 [in English].

12. Kononkova, N.P. (2010). Gosudarstvennyy sektor rossiyskoy ekonomiki: vozmozhnosti predprinimatel'stva [State sector of the Russian economy: opportunities for entrepreneurship]. *Ekonomicheskie nauki – Economic Science*, no. 6, pp. 13–16 [in Russian].

13. Timofeev, A.V. (2010). Predprinimatel'stvo – dvizhushchaya sila kachestvennykh sdvigov v epokhi peremen [Entrepreneurship is the driving force of qualitative changes in the era of change]. *Ekonomicheskie nauki – Economic Science*, no. 10, pp. 43–46 [in Russian].

14. Bogachev, V.F., Kabakov, V.S., Khodachek, A.M. (1995). Strategiya malogo predprinimatel'stva [Strategy of small business]. Saint Petersburg [in Russian].

15. Kraskova, N.I. (2011). Maloe predprinimatel'stvo kak predmet analiza ekonomicheskoy nauki [Small business as a subject of analysis of economic science]. *Ekonomicheskie nauki – Economic Science*, no. 1, pp. 43–46 [in Russian].

16. Grishaeva, L.V., Kuzhbanova, G.T. (2012). K voprosu o sushchnosti predprinimatel'stva [To questions about the essence of entrepreneurship]. *Voprosy ekonomiki i prava – Questions of Economics and Law*, no. 3, pp. 45–48 [in Russian].

ПОЛІТИЧНИЙ І ТЕОРЕТИЧНИЙ ПІДХОДИ ДО СУТНОСТІ ТА ВИДІВ ПІДПРИЄМНИЦТВА

Сакіна БАБАЄВА,
докторант
Західно-Каспійського університету
orcid.org/0000-0001-5211-8359

Мета дослідження – *розглянути процес розвитку суспільства в контексті домінуючих виробничих відносин, у стані економіки та в її політичній спрямованості. Зазначається, що політична структура суспільства завжди зазнавала змін не лише у плані ідей, а й у політиці щодо підприємництва та його позиції в розвитку національної економіки.*

Методи дослідження. *У процесі вивчення теми були використані такі методи: аналіз теоретичних основ розвитку підприємництва як соціально-економічного інституту, аналіз особливого набору норм і правил, що забезпечують узгоджену поведінку господарюючих суб'єктів.*

Новизною дослідження *є те, що в національній економічній науці вперше було чітко класифіковано безліч концепцій і підходів до проблем розвитку інституту підприємництва.*

Однак зростання політичного підприємництва та міжнародного співробітництва між підприємцями зумовлює різку зміну його суті, тому політичний аналіз проблеми є ключовим для розуміння ролі основної підсистеми сучасної економіки вільного ринку.

Висновки. *Підводячи підсумки, автор доходить висновку, що теза про дві моделі підприємницької поведінки може допомогти вирішити протиріччя у природі інновацій у підприємництві (класичної та інноваційної). Зазначається, що відмінна риса першої моделі (її ще можна назвати ресурсно-орієнтованою) полягає в тому, що підприємець пов'язує завдання з наявними ресурсами та обирає засоби досягнення цілей, які забезпечують найбільш ефективне використання ресурсів. Друга модель орієнтована на можливості, а не на ресурси, що означає, що підприємець обирає інноваційні методи виробництва з використанням своїх ресурсів і зовнішніх ресурсів. Словом, сучасне підприємництво – це багатовимірне й цілісне соціально-економічне явище ринкової економіки, у якому надзвичайно важливі багаторівневий (що відображає безліч теоретичних концепцій) та узагальнюючий (що відображає багато особливостей) підходи. Доцільно визначити його економічну сутність.*

Ключові слова: підприємництво, ринкова економіка, політичний підприємець, структура економіки, політична теорія.

UDC 341.1/8:339.522
DOI https://doi.org/10.32836/2308-6971/2020.2.2

INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS OF SPECIAL COMPETENCE AND THEIR INFLUENCE ON THE FORMATION OF THE LEGAL SPHERE OF FOREIGN ECONOMIC ACTIVITY IN UKRAINE

The purpose of the study *is to consider the process of development of society in the context of the dominant production relations, in the state of the economy and in its political orientation. It is noted that the political structure of society has always been subject to changes, not only in terms of changing ideas, but also in the policy regarding entrepreneurship and its position in the development of the national economy.*
Research methods. *In the process of studying the topic, such methods were used as the analysis of the theoretical foundations of the development of entrepreneurship as a socio-economic institution, the analysis of a special set of norms and rules that ensure the coordinated behavior of business entities.*
The novelty of the study *is that for the first time in a national economic study, a variety of concepts and approaches on the problems of the development of the institution of entrepreneurship were clearly classified. However, the growth of political entrepreneurship and international cooperation between entrepreneurs has caused a dramatic change in its essence, so a political analysis of the problem is key to understanding the role of the main subsystem of the modern free market economy.*
Conclusions. *Summing up, the author comes to the conclusion that, from the point of view, the thesis about two models of entrepreneurial behavior can help resolve the contradiction in the nature of innovation in entrepreneurship (classical and innovative). It is noted that the distinctive feature of the first model (otherwise it can also be called resource-oriented) is that the entrepreneur links tasks with available resources and prefers means of achieving goals that ensure the most efficient use of resources. The second model is focused on opportunities rather than resources, which means that the entrepreneur prefers innovative production methods using his own resources and external resources. In a word, modern entrepreneurship is a multidimensional and holistic socio-economic phenomenon of a market economy, in which multilevel (reflecting many theoretical concepts) and generalizing (reflecting many features) approaches are extremely important. It is advisable to define its economic essence.*

Key words: foreign economic activity, subjects of foreign economic activity, environment of foreign economic activity, international intergovernmental organizations of special competence, international legislation, national legislation.

JEL Classification: K23, K29, K33.

Andrii MINCHENKO,
Head of the Department of Civil, Commercial and Environmental Law University of Customs and Finance, Candidate of Legal Sciences, Associate Professor
minchenko.andriy@gmail.com
orcid.org/0000-0002-8547-9676

Anatolii MAZUR,
Associate Professor at the Department of Administrative and Customs Law University of Customs and Finance, Candidate of Legal Sciences, Associate Professor
anvas.mazur@gmail.com
orcid.org/0000-0003-1073-4799

1. Introduction

The acquisition by a state of membership in international organizations is always a challenge to the readiness of society, the business environment, the legal framework for the inevitable changes and the influence they experience directly or indirectly in this regard. At the same time, these processes have a reverse effect on the formation of the image of the state in the international arena, strengthening its perception as a reliable partner in trade or other spheres.

Membership in international intergovernmental organizations of special competence is an important asset of a well-thought-out foreign policy of the state, which aims to create a favorable environment for the development of trade and other foreign economic relations. Ukraine is a permanent member of many international intergovernmental organizations of this type, which, of course, strengthens its foreign economic position. At the same time, the issue of the importance of state membership in such organizations for the formation of the

environment for foreign economic activity of the relevant entities deserves special attention, because it is important today to determine the usefulness of such participation for the development of spheres of influence of each foreign economic sphere agreements. In the conditions of aggravation of economic competition the question of efficiency of participation in the specialized international intergovernmental organizations for development of these or those spheres of economy is actualized as foreign economic activity is, on the one hand, an integral part of economic activity of the enterprise, and on the other – a factor of economic growth of national economy (Gordopolov, 2016).

2. Literature review

Well-known Ukrainian lawyers and economists have studied the problems of international intergovernmental organizations at various times. Among the studies devoted to these components, it is worth noting such authors as M. Buhrii, O. Vasylenko, O. Golovko-Gavrisheva, P. Grinko, A. Ignatiuk, S. Kasyanova, V. Kozub, L. Mykolska, L. Nosach, L. Pismachenko, E. Ryasnykh, I. Us, T. Tsygankova and other scientists. At the same time, in this article we would like to pay more attention to the study of the influence of international intergovernmental organizations of special competence on the formation of the legal environment for foreign economic activity in Ukraine.

3. The purpose of the article

Based on the analysis of Ukraine's membership in international intergovernmental organizations of special competence, to establish the prospects of its development for the subjects of foreign economic activity.

4. Presenting main material

The environment of foreign trade is formed under the influence of a number of factors. If we consider the FEA of Ukraine as a state, the effectiveness of such activities should be assessed by indicators of foreign economic relations (exports and imports, re-exports and re-imports, foreign trade debt, foreign investment, etc.), intensity (foreign trade per capita, the country's integration into the world economic systems) and the dynamics of foreign economic relations (growth and growth rates), the structure of foreign economic relations (commodity, geographical, institutional), the effectiveness of foreign economic activity (balance of payments and trade, balance of services and nonprofit payments, capital movements, official foreign exchange reserves, foreign debt) (Grebelnik, 2019: 35).

Let us consider the main aspects of Ukraine's membership in international intergovernmental organizations of special competence and the impact it has on the legal environment of national subjects of foreign economic activity.

The World Trade Organization (WTO) is an international organization whose goal is to develop a system of legal norms for international trade and control their observance. The WTO succeeded the General Agreement on Tariffs and Trade (GATT) concluded after the Second World War. Their activities contributed to the creation of a stable trading system and the establishment of global trade rules.

The WTO trading system is based on several basic principles. The key one is the principle of non-discrimination. WTO members are obliged to give each other equally favorable conditions: no country should make exceptions for another or apply a discriminatory approach to it.

Among others, the principle of transparency – clear information about policies, procedures and rules, predictability – commitments to reduce trade barriers and expand access to their own markets are binding (Mykolska, 2018).

The Law of Ukraine "On Foreign Economic Activity" (Verkhovna Rada of Ukraine, 1991) found its place in the provisions that were developed in connection with Ukraine's membership in this organization. So, art. 7 provides for the introduction of appropriate legal regimes for goods imported from WTO member states:

– national regime, which means that in respect of imported goods originating in WTO member countries, the regime is no less favorable than for similar goods of Ukrainian origin in terms of taxes, fees established by laws and other regulations, rules and requirements for domestic sales, proposals to sale, purchase, transportation, distribution or use of goods, as well as internal quantitative regulation rules that set requirements for the mixing, processing or use of goods in certain quantities or proportions;

– the most-favored-nation treatment, which concerns customs duties, rules of collection, rules and formalities in connection with imports and means that any advantage, facilitation, privilege or immunity granted in respect of any goods of any State must be to be immediately and unconditionally provided with similar goods originating in the territory of WTO member states or states with which bilateral or regional most-favored-nation agreements have been concluded.

These preparatory steps laid the foundation for the future successful conclusion of the Association Agreement between Ukraine and the EU, one of the main directions of which is the desire of the parties to achieve economic integration, inter alia, by creating a deep and comprehensive free trade area.

Experts focus on several key tools that Ukraine uses today in the WTO to promote and defend the interests of Ukrainian business: a) participation in multilateral trade negotiations – allows Ukraine to defend trade and economic interests and influence the formation of new rules in world trade; b) active use of WTO platforms to defend the interests of Ukrainian business – advocates, for example, a clear position of Ukraine on the consequences for international trade due to the annexation of Crimea and the Russian Federation's failure to comply with its international obligations, the need for immediate compliance as a member of the WTO and the elimination of unjustified restrictions, prohibitions and discriminatory measures on Ukrainian goods.

Ukraine has repeatedly used the mechanism of submitting specific trade concerns to the meetings of these bodies, which made it possible to draw the attention of WTO members to possible violations of obligations under the relevant agreements and demand the abolition of measures that do not comply with WTO agreements.

Ukraine actively participates in the work of WTO committees on safeguards, subsidies and countervailing measures, as well as anti-dumping practices (Mykolska, 2018).

Ukraine's participation in negotiations on the accession of new members to the WTO helps the state to defend the interests of Ukrainian producers through proposals of relevant associations of producers to remove barriers to market access and increase export potential.

In May 2016, Ukraine acceded to the Government Procurement Agreement (GPA), which enabled Ukrainian companies to participate in the public procurement of 46 countries participating in this agreement. Ukrainian entrepreneurs were given the opportunity to have access to government tenders abroad (Mykolska, 2018).

Ukraine has been given the opportunity to use a dispute settlement mechanism to help defend the interests of Ukrainian producers. During the 10 years of WTO membership, Ukraine defended its rights in seven cases – as a plaintiff, in four – as a defendant and was a third party in 19 cases (Mykolska, 2018). Compared to other countries, Ukraine actively uses the opportunity to protect its interests at the Geneva site, and legal practice under WTO law has grounds for further development (Omelchenko, 2017) despite the influence of political factors.

The WTO dispute settlement system is a central element in ensuring the security and predictability of the multilateral trading system. It serves to protect the rights and obligations of WTO members under the agreements covered, as well as to clarify the existing provisions of these agreements in accordance with the usual rules of interpretation of public international law. According to M. Buhrii and I. Us, one of the advantages of the system is to provide an opportunity for any WTO member to use an independent dispute settlement procedure to exercise their rights under the relevant WTO trade agreements (Buhrii, Us, 2011).

The procedure for protecting the rights and interests of Ukraine in the trade and economic sphere within the WTO is also separately defined at the national level in the approved Procedure for protecting the rights and interests of Ukraine in the trade and economic sphere within the World Trade Organization (Cabinet of Ministers of Ukraine, 2016), which regulates the relations arising during consultations and disputes between WTO members.

It should be noted that Ukraine's participation in the WTO is important not only from an economic point of view, but also politically, as it served as a key precondition for signing the Association Agreement with the EU, the European Atomic Energy Community and their Member States and, consequently, with 1 January 2016, the provisions on the establishment of a deep and comprehensive free trade area (FTA) enter into force for our country. They provide for significant liberalization of trade (elimination of tariffs or quotas) between the parties, harmonization of legislation and regulatory framework.

Therefore, it can be argued that Ukraine's accession to the WTO has contributed to the intensification of trade relations with member countries, strengthened the position of national companies to foreign partners, contributes to the adaptation and harmonization of legislation with European.

International credit and financial organizations: the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), the International Development Association (IDA) and the Multilateral Investment Guarantee Agency (MIGA). Ukraine is a member of all the above structures of the World Bank, which it joined in

1992 (Verkhovna Rada of Ukraine, 1992). Currently, 16 projects totaling $ 2,895 million and € 15 million are being implemented in Ukraine at the expense of the World Bank (World Bank, 2020).

Additional legal opportunities for foreign investors were opened by arbitration with a contractual form of protection of rights (Makarenko, 2019), the International Center for Settlement of Investment Disputes (ICVIS), which, like the above organizations, belongs to the World Bank group an autonomous international institution established in accordance with the Convention on the Procedure for Resolving Investment Disputes between States and Foreign Persons signed in 1965 (United Nations, 1965). Currently, two investment disputes are being considered, in which Ukraine, in particular, is represented by the Ministry of Justice: with the participation of Emergofin B.V. and Velbay Holdings Ltd. (ARB / 16/35) and Gilward Investments B.V. (ARB / 15/33), thirteen disputes were decided (International Center for Settlement of Investment Disputes (World Bank Group)). As of now, more than eight hundred cases have been registered at the center. ICSID (International Center for Settlement of Investment Disputes) is an important means of resolving investment disputes, but it is not effective enough. After all, it should be combined with other protection mechanisms, including investment risk insurance and work to prevent such disputes (Kostyliev, 2013: 215). Disputes over jurisdiction, equality of the parties to an international investment dispute (Lazarenko, 2016: 111), rather lengthy consideration of ICSID disputes, non-compliance with its decisions, etc. does not fully meet the needs of FEA subjects. In part, the initiative to introduce "investment nannies" could be seen as a response to such a challenge.

The European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the European Development Fund (EDF), the European Monetary Fund (EMF), the European Central Bank (ECB), and the European Monetary Fund play a regulatory role in the system of monetary integration in Western Europe. (EWF). Thus, the main policy of the EBRD is aimed at the rise and restructuring of Central and Eastern Europe. The EBRD's activities in this area include the provision of loans for the development of production; capital investment; guaranteed placement of securities; granting loans for reconstruction and infrastructure development. Priority areas for lending are the financial sector, energy, telecommunications, transport and agribusiness. The EBRD implements major environmental protection programs in the Baltic Sea region, the Danube Delta, and the Black Sea aquatic environment (Zin, Duka, 2009).

The state's use of financial mechanisms offered by international credit and financial organizations is extremely important not only for the state itself, maintaining its balance of payments, but also for foreign economic entities, as their activities are supported by these mechanisms. As noted by E. Ryasnykh, an effective financial mechanism of foreign economic activity allows companies to more rationally use their economic potential, gain access to new technologies, to conquer new markets for their products (Ryasnykh, 2013). Therefore, the relationship "international credit and financial organizations – the state – the subjects of foreign economic activity" is an important and necessary chain in the success of enterprises in foreign markets, which due to the implemented methods of financing foreign economic activity (lending, leasing, franchising, factoring, forfeiting) support.

During its cooperation with international credit and financial organizations, Ukraine received significant financial support from them, in return for which it had to comply with the relevant requirements, including those related to changes in national legislation. Thus, in particular, the IMF, cooperating with Ukraine on various programs, put forward demands: limit the practice of simplified taxation, lift the moratorium on the sale of agricultural land, raise utility tariffs, raise gas and heating tariffs to market levels, divide tariffs into gas and its delivery, raise the retirement age, implement pension reform, legalize amber mining and gambling, the division of the SFS into two legal entities: tax and customs services, change the rules of the NBU, which will reduce regulatory capital on loans, etc. (Slovo i dilo, 2020). Structural reforms, such as the reorganization of the tax and customs services, also shape the legal environment for conducting foreign economic activity, as do the financial and economic factors outlined here. The current Memorandum with the IMF (President of Ukraine, Prime Minister of Ukraine et al., 2020) clause 8b provides for the transformation of the State Tax Service and the State Customs Service into two single legal entities and their full pilot operation as such from January 1, 2021.

The World Bank wants to guarantee its investments by influencing the formation of domestic law and government. In turn, the subjects of foreign economic activity receive a more comfortable legal environment for carrying out their activities due to the introduced changes.

The United Nations Conference on Trade and Development (UNCTAD) is part of the United Nations Secretariat for Trade, Investment and Development. The organization's goals are: "to maximize the opportunities of developing countries in the field of trade, investment and development and to assist them in their efforts to integrate into the world economy on a fair basis" (About UNCTAD).

Ukraine cooperates with UNCTAD units to implement joint projects in the field of small and medium business development, implementation of international financial reporting standards, creating favorable conditions for attracting foreign investment, implementation of competition policy, etc. (UN Conference on Trade and Development).

The United Nations Commission on International Trade Law (UNCITRAL) is the main legal body of the United Nations in the field of international trade rights. The main purpose of UNCITRAL is to unify and harmonize certain aspects of private international law through appropriate legal instruments, which are used as conventions, model laws, model provisions, legal principles, recommendations. The use of these tools is designed to remove barriers and improve international trade.

In 2018, Ukraine was elected a member of this commission for 6 years. During the membership period in 2010–2014, our country made a significant contribution to the development of the UNCITRAL Model Law on Public Procurement and relevant guidelines. Membership is important in terms of the ongoing process of adapting Ukrainian legislation in the field of international trade to world best practices, as well as promoting Ukraine's interests in the context of entering global markets (Ukrinform, 2018).

World Customs Organization (WCO). The main tasks of the organization are: development of international instruments for regulating customs, development and adoption of conventions on classification of goods, customs value, rules of origin, customs duties, security of supply chain, simplification of international trade, combating customs offenses and illegal movement counterfeit products (protection of intellectual property rights), as well as the fight against corruption, support for reforms and modernization of customs services.

To achieve its goals, WMO also develops appropriate customs instruments, such as the Kyoto Convention (International Convention on the Simplification and Harmonization of Customs Procedures), the Istanbul Convention (Temporary Admission Convention), the System of Framework Standards for Security and Promotion of Global Trade (SAFE), Convention on a Harmonized Commodity Description and Coding System. Ukraine is a full member of this organization (1992) and a party to most conventions. The Kyoto Convention not only influenced the formation of a new domestic customs ideology, it became a source of specific legal requirements for the current Customs Code of Ukraine.

WMO shall establish, maintain and implement international instruments for the harmonization and uniform application of simplified and efficient customs systems and procedures governing the movement of goods, persons and vehicles across customs borders. This function is extremely important for the development of foreign economic activity.

World Intellectual Property Organization (WIPO). The purpose of this international organization is to promote the protection of intellectual property worldwide by ensuring cooperation between states and compliance with the provisions of multilateral treaties governing the legal and administrative aspects of intellectual property.

Ukraine is a party to many international treaties in the field of intellectual property, the administrative functions of which are performed by WIPO. Ukraine's participation in some WIPO treaties and agreements (for example, the Patent Cooperation Treaty, the Madrid Agreement and its Protocol) makes it possible to ensure legal protection of relevant intellectual property results in foreign countries by submitting one application instead of this procedure for each country separately. In order to introduce in Ukraine the institution of arbitration and mediation in resolving disputes in the field of intellectual property with the involvement of WIPO in 2018, a bilateral Memorandum of Understanding and Alternative Dispute Resolution in the field of intellectual property was signed (Permanent Mission of Ukraine to the UN Office and other International Organizations in Geneva, 2012b).

5. Conclusions and prospects

Ukraine belongs to the so-called developing countries, so it is extremely important to use permanent membership in international intergovernmental organizations in order to increase the effectiveness of foreign economic policy as part of the economic policy of the state. The success of foreign economic activity of business entities has a strong dependence on the legal environment created as a result of such membership, as well as on the foreign policy of the state, which are interconnected. The study provided an opportunity to focus on some key aspects that influence the formation of a favourable, in particular the legal environment

for foreign economic activity and demonstrate the exceptional effectiveness of foreign economic instruments in defending trade and economic interests of Ukrainian producers of goods and services.

References:

1. Gordopolov V. (2016). Suchasnyi stan zovnishnoekonomichnoi diialnosti rezydentiv Ukrainy [The current state of foreign economic activity of residents of Ukraine]. *Efektyvna ekonomika*, no. 11. Retrieved from: http://www.economy.nayka.com.ua/?op=1&z=5264 (date of application: 29.07.2020) [in Ukrainian].

2. Hrebelnyk O. (2019). Osnovy zovnishnoekonomichnoi diialnosti: pidruchnyk [Basics of foreign economic activity: textbook]. Irpin: University of the State Fiscal Service of Ukraine, 410 p. Retrieved from: http://ir.nusta.edu.ua/jspui/bitstream/doc/4007/1/2830_IR.pdf (date of application: 21.07.2020) [in Ukrainian].

3. Mykolska N. (2018) Pershi 10 rokiv u SOT: yak Ukraina vykorystovuie instrumenty orhanizatsii [The first 10 years in the WTO: how Ukraine uses the tools of the organization]. Retrieved from: https://www.eurointegration.com.ua/articles/2018/05/16/7081783/ (date of application: 21.07.2020) [in Ukrainian].

4. Verkhovna Rada of Ukraine (1991). Pro zovnishnoekonomichnu diialnist: Zakon Ukrainy vid 16 kvitnia 1991 r. № 959-XII [On foreign economic activity: Law of Ukraine of April 16, 1991 № 959-XII]. Vidomosti Verkhovnoi Rady URSR, No. 29, art. 377 [in Ukrainian].

5. Omelchenko, A. (2017). Spornyy interes [Controversial interest]. Yuridicheskaya praktika, no. 11(1003). Retrieved from: https://pravo.ua/articles/spornyj-interes/ (date of application: 24.07.2020) [in Russian].

6. Buhrii M., Us I. (2011). Uchast Ukrainy v SOT: heoekonomichnyi pohliad na zdobutky ta perspektyvy [Ukraine's participation in the WTO: a geoeconomic view of achievements and prospects]. Stratehichni priorytety, No 2. Pp. 91–97 [in Ukrainian].

7. Cabinet of Ministers of Ukraine (2016). Pro zatverdzhennia Poriadku zabezpechennia zakhystu prav ta interesiv Ukrainy v torhovelno-ekonomichnii sferi v ramkakh Svitovoi orhanizatsii torhivli: Postanova Kabinetu Ministriv Ukrainy vid 1 chervnia 2016 r. № 346 [On approval of the Procedure for ensuring the protection of the rights and interests of Ukraine in the trade and economic sphere within the framework of the World Trade Organization: Resolution of the Cabinet of Ministers of Ukraine of June 1, 2016 № 346]. Retrieved from: https://zakon.rada.gov.ua/laws/show/346-2016-п#Text (date of application: 21.07.2020) [in Ukrainian].

8. Verkhovna Rada of Ukraine (1992). Pro vstup Ukrainy do Mizhnarodnoho valiutnoho fondu, Mizhnarodnoho banku rekonstruktsii ta rozvytku, Mizhnarodnoi finansovoi korporatsii, Mizhnarodnoi asotsiatsii rozvytku ta Bahatostoronnoho ahentstva po harantiiakh investytsii: Zakon Ukrainy vid 3 chervnia 1992 r. № 2402-XII [On Ukraine's Accession to the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association and the Multilateral Investment Guarantee Agency: Law of Ukraine of June 3, 1992 № 2402-XII]. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 33, art. 474 [in Ukrainian].

9. Svitovyi bank [The World Bank]. Retrieved from: https://bit.ly/2Hj2mt0 (date of application: 23.07.2020) [in Ukrainian].

10. Makarenko, Ye. (2019). Mizhnarodnyi investytsiinyi arbitrazh: yak tse pratsiuie? [International investment arbitration: how it works?]. *Yurydychna hazeta online*, no 38–39(692-693). Retrieved from: https://yur-gazeta.com/publications/practice/mizhnarodniy-arbitrazh-ta-adr/mizhnarodniy-investiciyniy-arbitrazh-yak-ce-pracyue.html (date of application: 24.07.2020) [in Ukrainian].

11. Hrabynska, I., Hrabynskyi, M. (2012). Ekonomichni ta pravovi pytannia uchasti Ukrainy u mizhnarodnykh ekonomichnykh orhanizatsiiakh (na prykladi hrupy Svitovoho banku) [Economic and legal issues of Ukraine's participation in international economic organizations (on the example of the World Bank group)]. *Visnyk Lvivskoho universytetu. Seriia ekonomichna*, iss. 47, Pp. 449–455. Retrieved from: https://intrel.lnu.edu.ua/wp-content/uploads/2017/09/6864-13196-1-PB.pdf (date of application: 30.07.2020) [in Ukrainian].

12. United Nations (1965). Konventsiia pro poriadok vyrishennia investytsiinykh sporiv mizh derzhavamy ta inozemnymy osobamy: mizhnarodnyi dokument vid 18 travnia 1965 r. (ratyfikovanyi zakonom Ukrainy vid 16 bereznia 2000 r. № 1547-III [Convention on the Settlement of Investment Disputes between States and Foreign Persons: International Document of May 18, 1965 (ratified by the Law of Ukraine of March 16, 2000 № 1547-III]. Retrieved from: https://zakon.rada.gov.ua/laws/show/995_060#Text (date of application: 30.07.2020) [in Ukrainian].

13. International Centre for Settlement of Investment Disputes (World Bank Group). Cases Database. Retrieved from: https://icsid.worldbank.org/cases/case-database (date of application: 30.07.2020) [in English].

14. Kostyliev, O. (2013). Bahatostoronnia systema vyrishennia investytsiinykh sporiv yak instytutsiino-pravovyi mekhanizm zakhystu inozemnykh investytsii [Multilateral system for resolving investment disputes as an institutional and legal mechanism for protecting foreign investment]. *Visnyk Mariupolskoho derzhavnoho universytetu. Seriia "Pravo"*, iss. 5, pp. 211–215. Retrieved from: http://nbuv.gov.ua/UJRN/Vmdu_pr_2013_5_40 (date of application: 29.07.2020) [in Ukrainian].

15. Lazarenko, M. (2016) Problemni pytannia vyznannia ta vykonannia rishen Mizhnarodnoho tsentru z vrehuliuvannia investytsiinykh sporiv [Problematic issues of recognition and enforcement of decisions of the International Center for Settlement of Investment Disputes]. *Naukovyi visnyk Mizhnarodnoho humanitarnoho universytetu. Seriia "Yurysprudentsiia"*, No. 21, Pp. 110–111. Retrieved from: http://www.vestnik-pravo.mgu.od.ua/archive/juspradenc21/31.pdf (date of application: 29.07.2020) [in Ukrainian].

16. Zin, E., Duka, N. (2009). Osnovy zovnishnoekonomichnoi diialnosti: pidruchnyk [Basics of foreign economic activity: textbook]. Kyiv: Kondor, 432 p. [in Ukrainian].

17. Riasnykh, Ye. (2013). Finansovyi mekhanizm zovnishnoekonomichnoi diialnosti pidpryiemstv [The financial mechanism of the economic activity of the enterprises]. Retrieved from: https://bit.ly/3o4qMrk (date of application: 23.07.2020) [in Ukrainian].

18. Slovo i dilo (2020). Yaki vymohy vysuvav MVF do Ukrainy za ostanni 26 rokiv [What are the requirements of the IMF for Ukraine over the past 26 years]. Retrieved from: https://www.slovoidilo.ua/2020/04/23/infografika/finansy/yaki-vymohy-vysuvav-mvf-ukrayiny-ostanni-26-rokiv (date of application: 23.07.2020) [in Ukrainian].

19. President of Ukraine, Prime Minister of Ukraine et al. (2020). Ukraina do MVF: Lyst pro namiry vid 2 chervnia 2020 r. [Ukraine to the IMF: Letter of Intent from June 2, 2020]. Retrieved from: https://bit.ly/348Et0k (date of application: 21.07.2020) [in Ukrainian].

20. United Nations Conference on Trade and Development. About UNCTAD. Retrieved from: https://unctad.org/en/Pages/aboutus.aspx (date of application: 24.07.2020) [in English].

21. Permanent Mission of Ukraine to the UN Office and other International Organizations in Geneva (2012a). Konferentsiia OON z torhivli ta rozvytku (YuNKTAD) [United Nations Conference on Trade and Development (UNCTAD)]. Retrieved from: https://geneva.mfa.gov.ua/posolstvo/2608-unctd (date of application: 24.07.2020) [in Ukrainian].

22. Ukrinform (2018). Ukraina uviishla do skladu komisii OON z mizhnarodnoi torhivli [Ukraine is a member of the UN Commission on International Trade]. Retrieved from: https://www.ukrinform.ua/rubric-economy/2603728-ukraina-uvijsla-do-skladu-komisii-oon-z-miznarodnoi-torgivli.html (date of application: 24.07.2020) [in Ukrainian].

23. Permanent Mission of Ukraine to the UN Office and other International Organizations in Geneva (2012b). Vsesvitnia orhanizatsiia intelektualnoi vlasnosti (VOIV) [World Intellectual Property Organization (WIPO)]. Retrieved from: https://geneva.mfa.gov.ua/posolstvo/2610-wipo (date of application: 24.07.2020) [in Ukrainian].

МІЖНАРОДНІ МІЖУРЯДОВІ ОРГАНІЗАЦІЇ СПЕЦІАЛЬНОЇ КОМПЕТЕНЦІЇ ТА ЇХ ВПЛИВ НА ФОРМУВАННЯ ПРАВОВОГО СЕРЕДОВИЩА ПРОВАДЖЕННЯ ЗОВНІШНЬОЕКОНОМІЧНОЇ ДІЯЛЬНОСТІ В УКРАЇНІ

Андрій МІНЧЕНКО,
завідувач кафедри цивільного, господарського та екологічного права
Університету митної справи та фінансів,
кандидат юридичних наук, доцент
minchenko.andriy@gmail.com
orcid.org/0000-0002-8547-9676

Анатолій МАЗУР,
доцент кафедри адміністративного та митного права
Університету митної справи та фінансів,
кандидат юридичних наук, доцент
anvas.mazur@gmail.com
orcid.org/0000-0003-1073-4799

Статтю присвячено *дослідженню проблем діяльності міжнародних міжурядових організацій спеціальної компетенції та впливу, який вони справляють на формування правового середовища провадження зовнішньоекономічної діяльності в Україні.*

Метою статті *є встановлення перспектив розвитку членства України в міжнародних міжурядових організаціях спеціальної компетенції для національних суб'єктів зовнішньоекономічної діяльності.*

Методологічну основу дослідження *становлять сучасні загальні та спеціальні методи наукового пізнання. Застосування цих методів зумовлюється системним підходом. Зокрема, використані діалектичний*

метод – для встановлення основних закономірностей, що властиві відносинам зовнішньоекономічної діяльності; логіко-семантичний метод – для з'ясування основних термінів і понять, що використовуються в дослідженні, а також ознак, притаманних відповідним міжнародним організаціям (Світовій організації торгівлі, міжнародним кредитно-фінансовим організаціям, Конференції ООН з торгівлі й розвитку, Комісії ООН з права міжнародної торгівлі, Всесвітній організації інтелектуальної власності, Всесвітній митній організації); метод системного аналізу – для дослідження сучасного стану розгляду цього питання в Україні, а також задля співвіднесення ролі окремих міжурядових організацій спеціальної компетенції у правовому середовищі України; формально-логічний метод – для з'ясування змісту категоріального апарату дослідження; порівняльно-правовий метод – для порівняння міжнародного законодавства з національним законодавством України; метод аналізу та синтезу – у визначенні змісту ознак, притаманних міжнародним міжурядовим організаціям спеціальної компетенції.

Дослідженням встановлено*, що використання державою фінансових механізмів, які пропонуються міжнародними організаціями, має надзвичайну вагомість не лише для самої держави, а й для суб'єктів зовнішньоекономічної діяльності, адже їх діяльність підтримується за допомогою цих механізмів.*

Проведене дослідження дало змогу резюмувати: з огляду на те, що Україна належить до країн, що розвиваються, украй важливим є постійне членство в міжнародних міжурядових організаціях із метою підвищення ефективності зовнішньоекономічної політики як складника економічної політики держави. Крім того, можна підкреслити, що успішність ведення суб'єктами господарювання зовнішньоекономічної діяльності має стійку залежність від створюваного внаслідок такого членства правового середовища та від зовнішньополітичного курсу держави, які перебувають у взаємозв'язку.

Проведене дослідження *дало можливість акцентувати увагу на окремих ключових аспектах, що справляють вплив на формування сприятливого середовища, зокрема правового, для провадження зовнішньоекономічної діяльності, а також продемонструвати виключну ефективність використання зовнішньоекономічних інструментів впливу в разі відстоювання торговельно-економічних інтересів українських виробників товарів і послуг.*

Ключові слова: зовнішньоекономічна діяльність, суб'єкти зовнішньоекономічної діяльності, середовище провадження зовнішньоекономічної діяльності, міжнародні міжурядові організації спеціальної компетенції, міжнародне законодавство, національне законодавство.

UDC 346.1
DOI https://doi.org/10.32836/2308-6971/2020.2.3

LEGAL VIEW OF WAYS TO USE CRYPTOCURRENCIES THROUGH THE PRISM OF MONETARY THEORY

The purpose *of the article is to analyze the ways of using cryptocurrencies and their legal support.*
Methods. *The methodological basis of the study consists of the comparative law, which includes the study of the most effective foreign approaches in the field of legal regulation of cryptocurrency. In addition, in the course of the study historical and legal, system-structural, structural-functional methods, the method of ascending from abstract to specific were applied.*
The results *of the scientific development of the topic selected allows us to state that cryptocurrencies do not perform all the functions of money in Ukraine. At the level of administrative and legal regulation of cryptocurrencies, state measures in the field of cryptocurrencies are not defined systematically, there is no clear list of them and administrative cooperation of cryptocurrency entities is not regulated properly. The multifaceted uncertainty of the possibilities of cryptocurrencies, as well as their legal definition, leads to the existence of significant risks when used in daily money circulation. Regulation of the legal status of cryptocurrencies should become one of the directions of the economic policy of the state at the present stage.*
The conclusions *of the study of the topic selected allow to point out that the current legal bases of implementation of state policy in adoption of the Draft Law of Ukraine "On virtual assets" № 3637 will be a successful step, as it will consolidate the legal status of cryptocurrencies as objects of law, and the state will receive additional proceeds from such transactions from cryptocurrencies. However, it needs to be refined in the following areas: define the concept of cryptocurrency at the legislative level, taking into account the economic essence of this phenomenon; and establishing clear conditions and requirements for the transparency of cryptocurrency issuance.*
Cryptocurrencies are currently not a reliable store of value and a measure of value due to the high volatility of the main cryptocurrencies.

Key words: national currency, cryptocurrency, central bank, functions, legislative regulation.
JEL Classification: K20, K22, K23, K24.

Natalia POLISHCHUK,
Postgraduate Student
V. K. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine
Natalia.Polishchuk23@gmail.com
orcid.org/0000-0003-3909-6460

1. Introduction

Mankind has constantly tried to rethink the role of money. Types and forms of money have always followed the changes in the economic system, performing the functions of a measure of value, means of circulation, payment, accumulation. In the economy of economic entities, the role of money could previously be performed by various goods: fur, salt, etc., in the post-industrial period – there are cash (paper) forms, later non-cash forms using plastic cards and smartphones. Today, in the age of digital economy, the functions of money remain the same as before, but the requirements for them have increased significantly. The modern user needs to be able to make payments independently, regardless of the time and location of the sender; make payments quickly, conveniently and with a high degree of reliability of payments; spend minimal commissions for settlements (CryptoCompare, 2015).

The use of cryptocurrencies requires a minimum of certain technical skills, so their users are not just developers and miners. Gradually, cryptocurrencies are used by other entities. For a state in which the process of investing in cryptocurrencies is particularly active, the creation of legal conditions for the circulation of cryptocurrencies is very important, because any asset requires its legal security.

The purpose of the article is to analyze the ways of using cryptocurrencies and their legal support.

2. Research methodology

The methodological basis of the development was the dialectical approach, which involves consideration of the prerequisites for the formation of state regulation of ensuring cryptocurrencies as an objective reality, which is constantly evolving affected by technical, political, legal, security and other factors. In addition, in the course of the study historical and legal, system-structural, structural-functional methods, the method of ascending from abstract to specific were applied.

3. Presenting the main material

Under conditions of economic uncertainty, money ceases to perform its functions effectively: it is unable to maintain value (for example, Zimbabwe) or the upper threshold of money supply ceases to be limited (for example, the United States). In this situation, the main economic actors are actively looking for new ways to preserve and transfer value. The use of cryptocurrencies in monetary relations can increase the security and control over the issuance of private money.

Cryptocurrency in the vast majority of cases is not secured by any goods and is not guaranteed by the state. Thus, its value is determined both on the basis of individual perception and how it is assessed by other members of society, i. e. the level of trust in it. Existing only in the form of software code and having limited opportunities for direct exchange for goods (a function of a means of payment), cryptocurrency is used as money. Its uniqueness in relation to fiat money also lies in the fact that its limited turnover and the possibility of regulation is actually provided without the participation of the state. A computer program with a mathematical algorithm basically allows you to organize a self-regulating monetary system. The National Bank of Ukraine clarified the legality of using "virtual currency/cryptocurrency" bitcoin in Ukraine, emphasizing that according to the law only payment systems or payment system operators registered by the National Bank are allowed (National Bank of Ukraine, 2014).

It is worth considering how to use cryptocurrencies as a means of payment, a measure of value, a means of exchange, accumulation. Each function specifies specific operations and transactions backed by money. For example, a measure of value allows you to compare and compare the prices of different goods. As a medium of exchange, money makes it possible to exchange one commodity for another.

As a means of payment – to pay for services, etc. As a means of accumulation – to create stocks, acting in the form of effective demand and purchasing power deferred for the future.

The analysis results show that cryptocurrency performs the function of a means of payment due to such its properties:

– the ability to use it when making transactions by an unlimited number of subjects;
– the ability to transfer and create a register of information blocks using advanced technologies;
– high liquidity, allowing the use of cryptocurrency as a means of accumulation, circulation and as a means of payment (Ministry of Finance of the Republic of India, 2019).

Cryptocurrency can be one of the most promising means of payment. The purpose of creating a cryptocurrency was to develop a decentralized payment system that would be based not on trust in financial institutions, but on cryptography that can overcome the problem of double the cost, which leads to multiple use of the same tools. The disadvantage of existing payment systems, where financial institutions act as a trusted intermediary, is the high cost of transactions, necessary to prevent fraud. Cryptocurrencies based on blockchain technology, in turn, allow you to make payments without the involvement of intermediaries, which significantly reduces costs. Transactions with cryptocurrency are carried out in the shortest possible time, it is easy to exchange for any other currency, and storage can be done using a flash drive or on a cloud server. In Europe, large online stores accept it as a method of payment, for example, in Switzerland you can pay for tuition at some universities, in the US you can buy his car (Tesla), in France the government recently recognized bitcoin as an alternative payment in banks. For example, the MasterCard payment system received a patent for the technology of accelerating transactions using cryptocurrencies. The Privat24 service balances bitcoins, providing their equivalent in hryvnia. The rate of sale and purchase of bitcoin is always available and constantly updated, and with the help of an online calculator you can always calculate the current amount and its equivalent in bitcoin or hryvnia, depending on the direction of exchange. Many large companies and online stores, such as Amazon, Microsoft, KFC Canada, Subway and many others, accept cryptocurrencies for payment along with other generally accepted means of payment (Chohan, 2018).

It should be noted that the legislation of Ukraine does not clearly define the concept of "means of payment", despite the fact that it is used in art. 35 of the Law of Ukraine "On the National Bank of

Ukraine" and art. 3 of the Law of Ukraine "On Payment Systems and Funds Transfer in Ukraine" and is related to the definition of the hryvnia – the currency of Ukraine as the only legal tender. In accordance with part 1 of art. 99 of the Constitution of Ukraine, the currency of Ukraine is the hryvnia. According to item 3.3 of art. 3 of the Law of Ukraine "On payment systems and funds transfer in Ukraine" dated April 5, 2001 № 2346-III, part 1 of art. 3 of the Decree of the Cabinet of Ministers of Ukraine "On the system of currency regulation and currency control" dated February 19, 1993, the hryvnia as the currency of Ukraine (national currency) – is the only legal tender in Ukraine, accepted by all individuals and legal entities without any restrictions on the entire territory of Ukraine for transfers. Therefore, it is impossible to use cryptocurrency as a means of payment under Ukrainian law. If the national currency is a mandatory means of payment, the cryptocurrency is used in circulation between certain participants in the relationship, who voluntarily agree to it. The use of cryptocurrency as a means of payment can take place without the use of banking channels, which does not allow the monetary authorities to fully control cash flows in the country.

Consider whether cryptocurrency can be used as a medium of exchange. Users accumulate them in order to exchange for other goods in the future. Paper money, at one time, came to replace barter, as it proved to be a more effective means of exchange, in addition, solved the problem of trust between the parties in the agreements. If cryptocurrencies, in turn, are going to replace paper money, they will have to become an even more efficient means of exchange while still effectively addressing the issue of trust between the parties. On April 26, 2018, the European Parliament approved the AML5 Directive. This legal document establishes for the first time a legally binding definition of cryptocurrencies in the EU. Virtual currency means a digital representation of value that can be transmitted, stored or sold digitally and functions as a medium of exchange (European Parliament and Council of the European Union, 2018).

As a technology, a cryptocurrency that is no different in its purpose from other forms of money or payment systems, because it also provides commodity exchange transactions. Lubomyr Shavalyuk in his work believes that by accepting cryptocurrency as payment for goods, the store assumes currency risk due to the instability of the cryptocurrency rate. This is a disadvantage of using cryptocurrency as a medium of exchange.

On September 9, 2019, the German parliament responded to a request from the parliamentary faction of the Free Democratic Party that cryptocurrencies do not perform the basic functions of money: they can not serve as a means of exchange and payment, accumulation of value and be a unit of account. compared to transactions in fiat currencies. Also, due to high volatility, cryptocurrencies cannot be a means of accumulation (German Bundestag, 2019).

Thus, cryptocurrency serves as a medium of exchange, but this may carry certain risks and requires a thorough assessment of the country's economic potential before cryptocurrency can be used.

It is worth considering whether you can use cryptocurrency as a means of accumulation. From the earliest days of cryptocurrencies, their proponents argued that cryptocurrency was more like "digital gold" than just digital currency. However, cryptocurrency is characterized by significant volatility. To date, it is not noted that a large percentage of users use cryptocurrency for accumulation, because an asset that can lose 20% of its value per day carries great financial risks. But even with the numerous falls and changes in the exchange rate, cryptocurrency remains an investment-attractive asset. Users buy cryptocurrency on fiat funds and keep it until the appropriate time of sale at a higher rate. You can get income that is either retained or used as an investment in the real sector of the economy. These two trends – to savings and to use – were typical for 2017–2018. Cryptocurrency performs the function of accumulation best. Fixed value can be a positive moment, turning a cryptocurrency into an investment-attractive asset that is similar to stocks.

Can a cryptocurrency be a measure of value. A measure of value occurs when different kinds of goods are equated and exchanged with each other on the basis of price, i. e. the coefficient of exchange, the value of these goods is expressed in the amount of money. Due to the high volatility of cryptocurrencies, it is difficult to say whether they can be used as a measure of value. Cryptocurrencies currently cannot set prices for goods and services directly. In other words, cryptocurrencies may be accepted for certain transactions, but they are not directly related to the pricing of goods or services in the economy. In addition to stablecoins – which are the digital equivalent of the national currency of a country. For example, Tether (USDT) is the equivalent of the US dollar 1 to 1. That is, when a certain cryptocurrency has a more stable exchange rate, their measure of value will have a positive effect, and then there will be financial players who are interested in additional income. But it can also have another effect: if powerful financial institutions are interested in investing in cryptocurrency, it can raise their price, which cannot always be interpreted as a positive factor (Likhuta et al., 2017).

On June 11, 2020, the Verkhovna Rada of Ukraine registered the Draft Law on Virtual Assets № 3637, the bill proposes to define the concept of "virtual asset" as a special type of property that is a value in digital form. It is proposed to establish a scope, noting that virtual assets "can be transferred and exchanged and used for payment or investment purposes" (Verkhovna Rada of Ukraine, 2020).

Examining the functioning of cryptocurrencies, we can conclude that cryptocurrencies can not be a means of payment, but can serve as a means of exchange and accumulation. Cryptocurrencies are technologically different: first, they are decentralized (there is no central issuer); secondly, they are not tied to specific subjects – registrars. It complicates cryptocurrency regulation and appropriate control. The foregoing allows us to draw certain conclusions regarding cryptocurrencies as a potential element of currency values.

Thus, the criterion of value alternative means of payment, despite high volatility, to a greater or lesser extent (depending on the species) the degrees are quite consistent.

4. Conclusions

1. Cryptocurrency does not perform all the functions of money. The multifaceted uncertainty of the possibilities of cryptocurrencies, as well as their legal definition, leads to the existence of significant risks when used in daily money circulation.
2. Cryptocurrencies are currently not a reliable store of value and a measure of value due to the high volatility of the main cryptocurrencies.
3. Regulation of the legal status of cryptocurrencies should become one of the directions of the economic policy of the state at the present stage.
4. Adoption of the Draft Law on Virtual Assets № 3637 will be a successful step, as it will consolidate the legal status of cryptocurrencies as objects of law, and the state will receive additional proceeds from such transactions from cryptocurrencies. However, it needs to be refined in the following areas:

a) define the concept of cryptocurrency at the legislative level, taking into account the economic essence of this phenomenon;

b) establishing clear conditions and requirements for the transparency of cryptocurrency issuance.

References:

1. National Bank of Ukraine (2014). Shchodo vidnesennia operatsii z "virtualnoiu valiutoiu/kryptovaliutoiu "Bitcoin" do operatsii z torhivli inozemnoiu valiutoiu, a takozh naiavnosti pidstav dlia zarakhuvannia na potochnyi rakhunok v inozemnii valiuti fizychnoi osoby inozemnoi valiuty, otrymanoi vid prodazhu Bitcoin: lyst Natsionalnoho banku Ukrainy vid 8 hrudnia 2014 r. № 29-208/72889 [Regarding the assignment of transactions with "virtual currency/cryptocurrency "Bitcoin" to foreign exchange transactions, as well as the existence of grounds for crediting to the current account in foreign currency of a natural person foreign currency received from the sale of Bitcoin: letter of the National Bank of Ukraine dated December 8, 2014 № 29-208/72889]. *Baza danykh "Zakonodavstvo Ukrainy": ofitsiinyi vebportal Verkhovnoi Rady Ukrainy – Database "Legislation of Ukraine": official web portal of the Verkhovna Rada of Ukraine*. Retrieved from: https://zakon.rada.gov.ua/laws/show/v2889500-14#Text [in Ukrainian].

2. CryptoCompare (2015). How legal is Bitcoin and Crypto Currencies? Retrieved from: https://www.cryptocompare.com/coins/guides/how-legal-is-bitcoin-and-crypto-currencies/ [in English].

3. Ministry of Finance of the Republic of India (2019). Banning of Cryptocurrency & Regulation of Official Digital Currency Bill, 2019. Retrieved from: https://www.prsindia.org/sites/default/files/bill_files/Draft%20Banning%20of%20Cryptocurrency%20%26%20Regulation%20of%20Official%20Digital%20Currency%20Bill%2C%202019.pdf [in English].

4. German Bundestag (2019). Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Bettina Stark-Watzinger, Christian Dürr, Grigorios Aggelidis, weiterer Abgeordneter und der Fraktion der FDP – Drucksache 19/12136 [Answer of the Federal Government to the minor question from MPs Bettina Stark-Watzinger, Christian Dürr, Grigorios Aggelidis, other MPs and the FDP parliamentary group – printed matter 19/12136]. Retrieved from: https://dip21.bundestag.de/dip21/btd/19/130/1913053.pdf [in German].

5. Chohan, U.W. (2018). Cryptocurrencies as Asset-Backed Instruments: The Venezuelan Petro. *Political Economy – Development: Fiscal & Monetary Policy eJournal*, February 7. Retrieved from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3119606 [in English].

6. Likhuta, V. et al. (2017). Pravovoe regulirovanie kriptovalyutnogo biznesa [Legal regulation of cryptocurrency business]. Retrieved from: https://axon.partners/wp-content/uploads/2017/02/Global-Issues-of-Bitcoin-Businesses-Regulation.pdf [in Russian].

7. European Parliament and Council of the European Union (2018). Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use

of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance). *Official Journal of the European Union*, L 156/43, pp. 43–74. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843 [in English].

8. Verkhovna Rada of Ukraine (2020). Proekt Zakonu pro virtualni aktyvy vid 11 chervnia 2020 r. № 3637 [Draft Law on Virtual Assets of June 11, 2020 № 3637]. *Baza danykh "Zakonodavstvo Ukrainy": ofitsiinyi vebportal Verkhovnoi Rady Ukrainy – Database "Legislation of Ukraine": official web portal of the Verkhovna Rada of Ukraine*. Retrieved from: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69110 [in Ukrainian].

СПОСОБИ ВИКОРИСТАННЯ КРИПТОВАЛЮТ КРІЗЬ ПРИЗМУ ГРОШОВОЇ ТЕОРІЇ: ЮРИДИЧНИЙ ПОГЛЯД

Наталія ПОЛІЩУК,
аспірант
Інституту економіко-правових досліджень
імені В. К. Мамутова Національної академії наук України
Natalia.Polishchuk23@gmail.com
orcid.org/0000-0003-3909-6460

Мета статті *– проаналізувати способи використання криптовалют та їх юридичне забезпечення. У статті визначено, чи можуть криптовалюти виконувати функції грошей, а саме використовуватися як платіжний засіб, міра вартості, засіб обміну, засіб накопичення.*

Методи. *Методологічну основу дослідження становить порівняльний метод, який дає змогу розглянути найбільш ефективні міжнародні підходи в галузі правового регулювання криптовалют. У ході дослідження також застосовувалися історико-правовий, системно-структурний, структурно-функціональний методи, метод сходження від абстрактного до конкретного.*

Результати *наукового розроблення обраної теми дають змогу стверджувати, що в сучасному світі розвиток інформаційних технологій прискорюється, а законодавство не завжди встигає за розвитком технологій. Новітні фінансові технології мають свої переваги, однак за відсутності правового режиму вони формують певні ризики. Криптовалюти – це альтернатива сучасним грошам, вони можуть відіграти важливу роль у майбутньому розвитку економіки держави, однак для цього необхідно встановити правове регулювання криптовалют. Для впровадження правового режиму криптовалют важливий аналіз їхніх функцій. Під час розроблення норм, що стосуються правового регулювання криптовалют, вітчизняному законодавцю варто враховувати зарубіжний досвід, тому у статті зроблено огляд використання криптовалют в окремих країнах.*

Висновки. *Зроблено висновок про важливість прийняття проєкту Закону України «Про віртуальні активи» № 3637, запропоновано розглянути рекомендації щодо внесення до нього змін та уточнень. Визначено основні моменти, які мають бути доопрацьовані під час затвердження цього законопроєкту, яким встановлюється праве регулювання криптовалют в Україні. На сьогодні криптовалюти не виконують в Україні повноцінно функцію грошей, проте мають перспективи в цьому напрямі. Криптовалюти не можуть бути платіжним засобом, адже не випускаються та не підтримуються державою. Однак криптовалюти частково виконують функцію засобу платежу, оскільки певні групи суб'єктів господарювання готові приймати їх як оплату товарів і послуг. Криптовалюти частково виконують функцію засобу обміну. Також зроблено висновок, що криптовалюти можуть мати істотні перспективи розвитку для проведення платежів, зберігання й передачі інформації насамперед завдяки інноваційній технології, на якій ґрунтується їх функціонування. Зазначено, що регулювання правового статусу криптовалют має стати одним із напрямів економічної політики держави на сучасному етапі.*

Ключові слова: національна валюта, криптовалюта, функції, центральний банк, правове регулювання.

UDC 33
DOI https://doi.org/10.32836/2308-6971/2020.2.4

OVERVIEW OF THE FORMATION AND DEVELOPMENT OF A HUMAN POTENTIAL MANAGEMENT SYSTEM

The purpose *of the article is to substantiate the basic principles and mechanisms for improving the effectiveness of the personnel management system (in the construction industry).*
Methodology and methods. *The theoretical and methodological basis of the study is the theoretical and practical studies of domestic and foreign economists and specialists, scientific papers, as well as materials from national, regional and international scientific conferences. The study used a comparative analysis of various scientific theories and concepts proposed to improve the management system.*
Results. *The article discusses the theoretical and methodological foundations of managing the construction industry on the basis of non-traditional, effective and modern technological foundations, determines the ways of their application and improvement in the construction sector management system, which is one of the key sectors of the economy of the Republic of Azerbaijan, and gives practical suggestions for solving the data problems.*
It is noted that the effective use of human resources at an enterprise is a multifaceted socio-economic problem that affects all aspects of the enterprise's life. In other words, acquiring resources, an organization seeks to effectively use them to achieve its goals. Here efficiency for the organization must be ensured in terms of the volume of these resources, methods of their use, space, time and duration of interaction, the optimal ratio of resources used.
Conclusions. *Author summarizes the questions raised in the study and shows that increasing the efficiency of enterprise management is possible thanks to a systematic analysis and application of various points of view presented in local, foreign, specialized and scientific literature. It is noted that for this, the managers of the enterprise should pay attention to pressing issues of the effective use of human resources in the future.*

Key words: human resources, management, efficiency, construction industry, socio-economic problems. economic system, labor force, labor market, organization, corporate spirit, organizational culture.

JEL Classification: O15, L74, P00, J21, J40, M14.

Rashad RAFIGLI,
PhD Student at the Department of Socio-Economic Problems of Living Standards
Institute of Economics of the National Academy of Sciences of Azerbaijan
matlabm@yandex.ru
orcid.org/0000-0001-5211-8359

1. Introduction

In connection with non-traditional, effective and modern management technologies in the construction industry, studying its theoretical and methodological foundations and determining the ways of its application, improving the construction sector, one of the main sectors of the economy in the Republic of Azerbaijan, and thereby eliminating many socio-economic problems are an important step.

Clarification of the basic concepts of the development of the human resource management system is possible on the basis of a systematic generalization of local, foreign, special and scientific literature. In the short term, problems in the field of human resource management, organization of issues related to increasing the efficiency of their use in the labor process on the basis of modern principles and mechanisms should be in the center of attention of enterprise managers.

The effective use of human resources at an enterprise is a multifaceted socio-economic problem that affects all aspects of the enterprise's life. By acquiring resources, an organization seeks to effectively use them to achieve its goals. Here efficiency for the organization must be ensured in terms of the volume of these resources, methods of their use, space, time and duration of

interaction, the optimal ratio of resources used. Human resource management is a fundamental component of the management of any organization.

In the science of managing the economic activity of personnel, questions arise that increase labor productivity as a factor of production. These characteristics are mainly the result of the close relationship between the job and the person doing it. Doing work means attracting, for example, with the personalities of specific people in the enterprise.

As a rule, in order to obtain the final product, a large number of people work at the enterprise in the condition of the division of labor. As a result, there is a certain imbalance, on the one hand, between social problems, as well as between qualifications and productivity, and on the other, between the motivational boundaries of labor force rotation. The investments expected from people working at the enterprise depend on their attitude to the enterprise, on the goals and objectives (identification), on the assessment of the compliance of the desired and actual investments in production with the incentive. This increases the importance of the problem of incentives and motivation.

Therefore, the interests of the organization (companies, corporations) as an economic system are realized not only by the acquisition of labor in the labor market, but also by their use within the organization. These interests include bringing the acquired employees to the required quality and structural parameters within the company, instilling in them a corporate spirit and organizational culture. This shows a new trend in production management.

Purpose of the article is substantiation of the basic principles and mechanisms for increasing the efficiency of the human resource management system (in construction).

2. Methodology and methods

The theoretical and methodological basis of the research is theoretical and practical training of domestic and foreign economists and specialists, scientific works, as well as materials of national, regional and international scientific conferences. The study used a comparative analysis of various scientific theories and concepts proposed to improve the management system.

As a novelty, the article examines the theoretical and methodological foundations of management of the construction industry on the basis of non-traditional, effective and modern technological foundations, determines the ways of their application and improvement in the management system of the construction sector, which is one of the key sectors of the economy of the Republic of Azerbaijan, and gives practical proposals for solving data problems.

3. Review of the latest publications on this topic

Production efficiency is expressed as the ratio of the result (influence) of production to labor costs. Therefore, as a factor of production efficiency, on the one hand, there are production costs, and on the other, the place of labor in the volume of the gross product, that is, the result of production in the form of income (Playtner, 2002: 76).

Each type of expenses corresponds to a certain indicator that measures the level and dynamics of the efficiency of reserve consumption (labor productivity, capital intensity, material consumption). The effective use of human resources reflects part of the overall efficiency due to the economy and productivity (effect) of living labor (Odegov, Zhuravlev, 1997: 87).

Human resource management is a classic activity that involves recruiting appropriate personnel and rewarding their training, skills and abilities. Nevertheless, this also implies bringing the position to the staff by the management, justifying the work done, meeting the labor needs of workers, providing assistance in solving their problems (Travin et al., 2015: 23).

Thus, the effectiveness of the use of human resources is determined by the degree of people's participation in achieving their goals, eliminating various negative consequences and reducing certain expenses of the organization. The effectiveness of management is measured by the balance of specific features, such as the achievement of certain goals, the effective use of skills and abilities of personnel, the protection of highly qualified and profitable employees (Podvoyskiy, 1992: 31).

The main motive of today's management system is that rational use of labor potential is at the heart of improving management methods and systems. In modern conditions, along with financial and production capital, knowledge, skills, labor competencies, efficiency, initiative, value-motivational spheres (i. e., the main accumulated potential of an employee) of employees of any enterprise become the most important strategic resources (Playtner, 2002).

Enterprise management is divided into 4 areas that define its various structural aspects: product management, market management, financial management and personnel management. For a long time, the concept of "human resource management" did not exist in management practice. However, the management system of each organization has always had a functional subsystem of team management and social development, but the main work on personnel management was carried out by managers. In modern market conditions, there is a transition from hierarchical management, a rigid system of administrative influence, unlimited power to relations based on socio-economic methods (Grekhem, Bennett, 2003: 101).

Russian researcher I.I. Moiseeva in her article "Evaluation of the effectiveness of good structural divisions of commercial organizations" studied the problems of assessing the effectiveness of the structural divisions of the organization. Today the widespread traditional systematic approach to assessing the effectiveness of a commercial organization, based on a resource approach and profitability indicators, is criticized. It is said that this makes it possible to adequately assess performance in only a short period of time. The use of a financial model in assessing the effectiveness of activities is based on the market type of economic thinking, therefore, all parameters that affect the efficiency of an enterprise are among the factors that determine its internal environment. The traditional system of financial indicators does not provide real information about the current situation. Improving the activities of organizational units at different levels, attempts to minimize costs, increasing the level of professionalism are the most important tools for increasing the overall efficiency of entrepreneurial activity (Moiseeva, 2013).

Other Russian researchers A.E. Petrovykh and E.G. Aksenova in the article "Economic efficiency of urban areas development" talk about the ratio of costs for all factors involved in the production process. It is noted that the country's economy should always support the formation and strengthening of market mechanisms in many industries and spheres of activity (Aksenova, Petrovykh, 2015).

Other researchers O.I. Tolmacheva and M.V. Beznoshenko in a joint article "Features of the organization and creation of cost accounting systems at enterprises producing construction products" consider the issues of reliable cost accounting in the construction industry and the creation of an analytical support system for this, describe production characteristics enterprises for the production of building materials (Tolmacheva, Beznoshchenko, 2018).

Ufa researchers A.R. Mirzoeva and M.Kh. Shogenova in a joint article "Assessment of the economic efficiency of the integrated use of raw materials", examining the features of the formation and evaluation of the effectiveness of the integrated use of raw materials, note that they have developed a methodology for assessing the economic efficiency of using mining waste as construction materials (Mirzoeva, Shogenova, 2013).

Other researchers conducting research in this area, N.S. Samofeev and V.F. Kovalev, in their articles "Increasing the competitiveness and economic efficiency of construction projects of low-rise residential complexes in Ufa", noting that the construction industry plays a leading role in the economic growth of the national industry and the economy of the country as a whole, they write that the use of innovative, new technical and technological means at different stages of the production of construction products, necessary to create favorable conditions for the development of the construction industry, has great potential (Samofeev, Kovalev, 2017).

4. Presentation of the main material

There are a number of scientific approaches to working with people. Given the variety of existing approaches to this problem, the main general trends can be identified: the formation of methods and procedures for the selection of personnel, the development of scientific criteria, their assessment, a scientific approach to the analysis of the needs of management personnel, the justification of personnel decisions, the expansion of their potential, the compliance of management decisions with the main elements. personnel policy. Changes in the economy have led to changes in organizational structures and human resource management practices. There was a transition from the formation of a personnel policy to the development of a personnel management system. A relatively new function called "human resource management" was created, which replaced the practice and concept of the "personnel department" (Schein, 1985: 50). The evolution of concepts in the human resource management system is shown in table 1.

According to Edgar Schein, the essence of human resource management is to evaluate people as an asset of the company in the competitive struggle to develop and motivate people along with other resources to achieve the strategic goals of the organization.

Today, of course, the goal of human resource management is to create the impression of efficiently shaping and using human resources within an organization.

Table 1

Evolution of human resource management concepts and the role of a person in an organization

Human Model	Human Role
"Economic man"	Tool, factor of production
"Psychological person"	Production factor, resources of the organization
"Human – administrator"	Organization resource
"Social person"	Main resource
"Free man"	Main subject

At the same time, there are parties that support a broader understanding of personnel issues. For example, V. French in his book "The process of personnel management: human resource management" noted that "personnel management is considered as a dynamic aspect of the overall management process, which is part of the entire structure of the enterprise" (French, 1982: 46).

It should be noted that the concept of "personnel management" as the main means for achieving organizational goals has long been developed. In the work of O. Tead and H.C. Metcalf "Human resource management: its basic principles and practice" published in 1920 and known as a classic textbook on human resources, it is noted that "personnel management is planning, control, management and coordination of any organization, which assumes at least human efforts and difficulties (unanimity of cooperation and real concern for the real well-being of all members of the organization) for specific purposes" (Tead, Metcalf, 1926: 2).

The roots of human resource management go deep into the history of human society. Analyzing the development process of the human resource management function, one can trace the most significant stages in the evolution of theoretical approaches to personnel management at the enterprise.

At the beginning of the industrial era, the organization of personnel was practically created as a military-command system: a rigid hierarchy of a pyramidal type, a strict division of functions between commanders and executive soldiers, and disciplinarity with intermediaries to carry out orders from above.

The roots of human resource management go deep into the history of human society. Analyzing the development process of the human resource management function, one can trace the most significant stages in the evolution of theoretical approaches to personnel management at the enterprise.

At the beginning of the industrial era, the organization of personnel was practically created as a military-command system: a rigid hierarchy of a pyramidal type, a strict division of functions between commanders and executive soldiers, and disciplinarity with intermediaries to carry out orders from above.

This can be explained as a model, a model of military command, in front of the heads of large enterprises with a large workforce. As a result of the industrial revolution that took place after 1916, certain changes took place in the nature of labor – the specialized labor of professionals was replaced by the mechanical and meaningless labor of the proletariat.

In the 20–30s of the XX century, significant changes began to occur in the management of human resources in the industry of developed countries. These changes were due to three main factors: the emergence and spread of methods of "scientific organization of labor (NOT)", more precisely "scientific management"; development of the trade union movement; was characterized by constant state interference in relations between workers and employers. The foundations of the theory of "scientific management" were first presented in the book "Management – Science and Art", co-authored by Frederic Taylor (USA) and Henri Fayol (France) (Teylor, 2010). However, these ideas were later noted in the works of other scientists. This theory created a "quiet revolution" in the formation of the leadership of the organization, and in particular in the management of human resources. With the spread of the idea of the scientific organization of labor at many enterprises, a new profession began to arise – engineers engaged in the study and optimization of methods of working with people (Mayo, 1933: 58).

In developed countries, in response to the growing gap between social strata of society and the trend of intensive growth of productive forces, the authorities of these countries began to actively intervene in the regulation of relations between workers and employers. Government intervention has led to the creation of social insurance systems, unemployment benefits, minimum wages and the normalization or reduction of working hours. In some countries, special government agencies have been established to monitor working conditions and protect the interests of workers. As a result of changes in the legislative system, companies began to need specialists capable of working professionally to provide supervision in the field of labor

legislation. State bodies and enterprises responsible for labor relations began to create special bodies dealing with the regulation of labor relations, labor protection standards and other legislative issues. These bodies were called personnel departments. In the 1920s and 1930s, human resources departments established in enterprises played the role of a subdivision, mainly carrying out regular "office work", and their functions began to serve as technical assistance for management.

During World War II, the personnel departments of military and non-military industrial enterprises (USA, Great Britain) played a major role in solving some issues. This included hiring and training hundreds of thousands of new workers in all trades to replace conscripts.

Since then, the selection and training of the necessary personnel in various professions and specialties has become the most important area of activity of human resources management departments.

In the late 1920s, American scientists E. Mayo and F. Roeslisberger first proposed the concept of "human relations". It was based on the idea, independent of the methods of organizing labor productivity, more dependent on managers who show an adequate attitude towards performers, that is, on the human factor (Roethlisberger, 1941; McGregor, 1960).

Although World War II distracted the attention of entrepreneurs from the idea of "human relations" for a while, interest in the human factor rekindled in the 1950s. In 1960, David McGregor published The Human Face of the Enterprise, in which he criticized the theory of the scientific organization of labor. The teachings of McGregor and other theorists who developed Mayon's views changed the way leaders view management and learning. In the 1960s and 1970s, American business schools incorporated human resources guidelines into their curricula. New leaders have entered the economy. They, along with finance and procurement in management practice, began to use the function of human resource management (Starobinskiy, 2000).

In the 1970s in the United States and in the 1980s in Western Europe, HR departments began to be replaced by HR departments. As a result, the concept of a humane approach to people management was developed, and these departments were expanded in areas such as planning and career development of employees, normalization of work, involvement of employees in general management.

In the 1980s and 1990s, the accelerated widespread use of information and robotics technologies in manufacturing was accompanied by globalization of markets and a significant increase in competition. Enterprises began to make every effort to ensure the impeccable quality of their products and services. This, in turn, required increased attention to all elements of the production process. A more flexible application of work organization, which provides strong motivation for work, has expanded the wide range of individual employee initiative that adds value to rational performance. In other words, there is an urgent need for a flexible management system to increase the flexibility of the work process, flexible wage policies and to solve various problems of the work process.

In the recent past, competition has focused on areas such as technological progress, technology cycles, organizational structures, marketing and post-sale situations.

Over the past 20–30 years, foreign business has radically changed its approach to "human resources" and commercial success. The motto "People are our main resource" is found in almost every effective company. This is not just a slogan, but the result of a huge technique, means and methods that have been tested over the years in the approach to personnel.

Here, to determine the role of people and the content of their participation in the management of the enterprise, the following can be noted. In the theory of management, a number of terms are used that reflect the participation of people in social production: labor resources, human resources, the human factor, labor force, human resource management, labor potential, etc. resources and ways to solve it (Guseynova, 2013: 13).

The concept of human resource management is a product of a theory that confirms the scientific basis of bureaucratic organizations in the concept of management developed since the 1930s. Here, a person was considered as a means playing a formal role or function in the production process, and management was carried out through administrative mechanisms (principles, methods, functions).

The concept of human resource management began to consider a person not as a duty, but as an irreplaceable resource, that is, in the unity of the 3 main components of an element of social organization (labor function, social relations, employee position). This concept has been used in a fragmentary form in Azerbaijan for more than 30 years and was disseminated as "activation of the human factor" in the years of "reconstruction", reflected in the works of such researchers as T. Guliyev et al. (Guseynova, 2013).

5. Conclusions

The concept of "human factor" reflects the status of the individual in modern society, which to a certain extent is proportional to the technical and economic factors of production. In this case, labor is presented as the main factor of production, which is replaced by capital, that is, labor productivity can change both with and without conditions. Here, labor costs largely depend on the transactions being made.

The concept of "human factor" began to be replaced by the scientific term "labor potential" as a movement from complexity to simplicity, from abstraction to concreteness, clarity, and difference. Today economists and sociologists use this term to define the term "human factor" both at the level of society and within individual production groups. The general consensus is that "labor potential" should be presented in the form of a multilateral process that expresses continuous latent opportunities in the dynamics of human factors assessment.

The term "potential" was introduced 20–25 years ago. From an etymological point of view, it means "hidden possibilities, strength, power". A broad interpretation of the concept of "potential" is to consider it as "a source of opportunities, a means to start, a solution to a problem or reserve means to achieve a certain goal; the possibility of an individual, society, state in a certain area". Thus, the terms "potential" and "potential" mean that opportunities and abilities in any relevant area of life have not yet been determined (any person, the original work collective, society as a whole).

Defining this category, the concepts of "potential" and "resources" cannot be opposed. Potential (economic, production, labor) is a general aggregate characteristic of resources associated with space and time.

References:

1. Playtner, Kh.Y. (2002). Znachenie "chelovecheskogo faktora" dlya malykh i srednikh predpriyatiy [The importance of the "human factor" for small and medium-sized enterprises]. *Problemy teorii i praktiki upravleniya – Problems of theory and practice of management*, no. 2, pp. 71–76 [in Russian].

2. Odegov, Yu.G., Zhuravlev, P.V. (1997). Upravlenie personalom: uchebnik [Personnel management: textbook]. Moscow: Finstatinform, 877 p. [in Russian].

3. Travin, V.V., Maguram, M.I., Kurbatova, M.B. (2015). Upravlenie chelovecheskimi resursami: modul' IV [Human Resource Management: Module IV]. Moscow: Delo, 158 p. [in Russian].

4. Podvoyskiy, G.L. (ed.) (1992). Upravlenie – eto nauka i iskusstvo: sbornik [Management is science and art: collection]. Moscow: Respublika, 349 p. [in Russian].

5. Grekhem, G.T., Bennett, R. (2003). Upravlenie chelovecheskimi resursami: uchebnoe posobie [Human resource management: study guide] / transl. from English T.Yu. Bazarova, B.L. Eremina. Moscow: YuNITI-DANA, 598 p. [in Russian].

6. Moiseeva, I.I. (2013). Otsenka effektivnosti deyatel'nosti otdel'nykh strukturnykh podrazdeleniy kommercheskoy organizatsii [Evaluation of the performance of individual structural divisions of a commercial organization]. *Sotsial'no-ekonomicheskie yavleniya i protsessy – Socio-economic phenomena and processes*, no. 12(58), pp. 90–96 [in Russian].

7. Aksenova, E.G., Petrovykh, A.E. (2015). Ekonomicheskaya effektivnost' ot razvitiya gorodskikh territoriy [Economic efficiency from the development of urban areas]. *Ekonomika i ekologiya territorial'nykh obrazovaniy – Economy and ecology of territorial entities*, no. 1, pp. 3 [in Russian].

8. Tolmacheva, O.I., Beznoshchenko, M.V. (2018). Osobennosti organizatsii i postroeniya sistemy ucheta zatrat na predpriyatiyakh, proizvodyashchikh stroitel'nye materialy [Features of the organization and construction of a cost accounting system at enterprises producing building materials]. *Ekonomika i biznes: teoriya i praktika – Economics and business: theory and practice*, no. 12, issue 2, pp. 141–144 [in Russian].

9. Mirzoeva, A.R., Shogenova, M.Kh. (2013). Otsenka ekonomicheskoy effektivnosti kompleksnogo ispol'zovaniya syr'ya [Assessment of the economic efficiency of the complex use of raw materials]. *Ekonomicheskiy analiz: teoriya i praktika – Economic analysis: theory and practice*, no. 33(336), pp. 51–60 [in Russian].

10. Samofeev, N.S., Kovalev, V.F. (2017). Povyshenie konkurentosposobnosti i ekonomicheskoy effektivnosti proektov stroitel'stva maloetazhnykh zhilykh kompleksov v g. Ufa [Increasing the competitiveness and economic efficiency of projects for the construction of low-rise residential complexes in Ufa]. *Internet-zhurnal "Naukovedenie" – Internet Journal "Science of Science"*, vol. 9, no. 1. Retrieved from: https://naukovedenie.ru/PDF/97EVN117.pdf [in Russian].

11. Schein, E.H. (1985). Organizational Culture and Leadership. San Francisco: Jossey Bass Publishers, 358 p. [in English].

12. French, W.L. (1982). Personnel Management Process: Human Resources Administration and Development. Boston: Houghton Mifflin Co, 684 p. [in English].
13. Tead, O., Metcalf, H.C. (1926). Personnel administration: its principles and practice. New York: McGraw-Hill Book Co., 543 p. [in English].
14. Teylor, F. (2010). Printsipy nauchnogo menedzhmenta. Chast' I. Predposylki nauchnogo upravleniya [Principles of Scientific Management. Part I. Prerequisites for scientific management]. *Tsentr gumanitarnykh tekhnologiy – Center for Humanitarian Technologies*. Retrieved from: https://gtmarket.ru/laboratory/basis/3631/3633 [in Russian].
15. Mayo, E. (1933). Human problems of an industrial civilization. New York: Macmillan Co., 194 p. [in English].
16. Roethlisberger, F.J. (1941). Management and Morale. Cambridge, Mass.: Harvard University Press, 194 p. [in English].
17. McGregor, D. (1960). The Human Side of Enterprise. New York: McGraw-Hill, 246 p. [in English].
18. Starobinskiy, E.E. (2000). Nekotorye shtrikhi k kadrovoy politike za rubezhom [Some finishing touches to personnel policy abroad]. *Upravlenie personalom – Personnel management*, no. 7, pp. 48–51 [in Russian].
19. Guseynova, K.E. (ed.) (2013). Upravlenie chelovecheskimi resursami: uchebnik [Human resource management: textbook]. Baku, 216 p. [in Russian].

ОГЛЯД ФОРМУВАННЯ Й РОЗВИТКУ СИСТЕМИ УПРАВЛІННЯ ЛЮДСЬКИМ ПОТЕНЦІАЛОМ

Рашад РАФІГЛІ,
докторант відділу соціально-економічних проблем рівня життя
Інституту економіки Національної академії наук Азербайджану
matlabm@yandex.ru
orcid.org/0000-0001-5211-8359

Метою статті *є обґрунтування основних принципів і механізмів підвищення ефективності системи управління персоналом (зокрема, у будівельній галузі).*
Методологія та методи. *Теоретичною й методологічною основою дослідження є теоретичні та практичні пошуки вітчизняних і зарубіжних економістів і фахівців у галузі управління, наукові праці, а також матеріали національних, регіональних та міжнародних наукових конференцій. У дослідженні використовувався порівняльний аналіз різних наукових теорій і концепцій, запропонованих для вдосконалення системи управління.*
Результати. *У статті розглядаються теоретико-методологічні основи управління будівельною галуззю на основі нетрадиційних, ефективних і сучасних технологічних принципів, визначаються шляхи їх застосування та вдосконалення в системі управління будівельним сектором, що є одним із ключових секторів економіки Азербайджанської Республіки, а також надаються практичні пропозиції щодо вирішення проблем у цій галузі. У статті зазначається, що ефективне використання кадрових ресурсів на підприємстві є різноплановою соціально-економічною проблемою, яка зачіпає всі сторони життя підприємства. Це пояснюється прагненням керівництва ефективно використовувати залучені кадри для досягнення своїх цілей. У такому разі ефективність має визначатися оптимальним співвідношенням обсягу кадрових ресурсів, методів їх використання, простору, часу та тривалості взаємодії.*
Висновки*. Автор узагальнює питання, підняті в дослідженні, і показує, що підвищення ефективності управління підприємством можливе завдяки систематичному аналізу та застосуванню різних думок, представлених у вітчизняній і зарубіжній спеціалізованій літературі. Зазначається, що для цього керівникам підприємства варто звернути увагу на актуальні питання ефективного використання кадрового потенціалу в майбутньому.*

Ключові слова: людські ресурси, управління, ефективність, будівельна галузь, соціально-економічні проблеми.

UDC 343.359
DOI https://doi.org/10.32836/2308-6971/2020.2.5

COCAINE SMUGGLING BY HELP OF NACRO-SUBMARINES FROM SOUTH AMERICA TO AFRICA AND EUROPE: A CALL FOR A HIGHER AWARENESS OF AN EXISTING SMUGGLING PATHWAY[1]

The drug cartels of South America and organized crime have long been known to use semi-sub speedboats, Narco-Torpedoes and Narco-Submarines for smuggling cocaine from South America to Mexico and eventually to the United States of America. The drug trade is increasing strongly and organized crime is always looking for better and smarter ways to smuggle drugs into target countries. Counter-measures in the Americas in the war on drugs are the use of Anti-Submarine Technology such as Submarine-hunter Aircrafts, Submarines and Coast Guard Ships. Since the War on Drugs by the USA and other countries in the Caribbean and South and Middle America puts a high pressure on the drug cartels they are searching new pathways for delivering Cocaine to the target markets. In November 2019 fort for the first time a Narco-Submarine has been seized transporting 3 800 Kilogram Cocaine from South America to Spain. This capacity building and background paper investigates newspaper and official reports as well as scholarly papers on the evidence available for a newly emerging trans-Atlantic smuggling pathway from South America to the coasts of Africa and Europe. In particular it investigates and discusses in detail the evidence available for trans-Atlantic trips Narco-Submarine from South America to Europe or Africa and the new developments in Summer 2020. It uses artwork created by irregular naval warfare expert H.I. Sutton (Covert Shores). In conclusion this paper calls for a higher awareness and better vigilance and better coordination of law enforcement administrations (coast guards, customs services, police, naval forces) for this existing way of irregular naval warfare and drug smuggling from South America to Africa and Europe by help of Anti-Submarine technology such as anti-submarine aircrafts, anti-submarine naval ships, drones, satellites and the use of naval forces such as the coast guards in coordinated operations in Europe and Africa in order to combat global drug smuggling.

Key words: coast guard, counterterrorism, customs technology, drug trafficking, illicit drugs, irregular naval warfare, law enforcement, narcotics trafficking, smuggling, anti-submarine technology, submarine detection, organized crime, war on drugs.

JEL Classification: E26, F14, K33, K34, Q37.

Carsten WEERTH,
Senior Lecturer
FOM Hochschule für Oekonomie und Management,
Senior Customs Officer
Main Customs Office Bremen
carsten.weerth@gmx.de
orcid.org/0000-0003-3702-8456

1. Introduction

Naval drug-smuggling techniques are applied in the Americas since the 1990ies: Mostly speedboats, self-propelled semisubmersibles (SPSS) or Narco-torpedos, and so called Narco-Submarines which are adequately described as Low Profile Vessels (LPV).

This paper investigates the use of Narco-Submarines and speedboats off Africa and Europe and it raises awareness for a known but newly re-emerging smuggling pathways from Middle and South America by help of trans-Atlantic Narco-Submarine trips to Africa and Europe.

2. Trans-Atlantic Smuggling of Cocaine from South America to Africa/Europe

This paper starts as follow up research on a proven case of a trans-Atlantic journey by a Narco-sub from South America to Spain which was located off the Coast of Galicia in November 2019 (Guardian, 2019a, 2019b, Sutton, 2019a, 2019b, Weerth, 2020).

The coca harvest has been very successful in the past years (more fields are in use and the agricultural technology adapts) and in

[1] The author is thankful to ***H.I. Sutton*** for his naval expertize, analysis and graphic visualizations of Narco-Submarines that he shares as Covert Shores under the URL: hisutton,com. In particular his contributions to Forbes Magazine, Small Wars Journal and his book on Narco-Submarines are very helpful and his © pictures are presented in this paper. For up-to-date actual and first hand info on Narco-Submarines follow him on twitter.com (twitter.com/CovertShores).

2017 it reached new record yields – in 2017 it increased about 25 per cent and reached an all-time high of 1,976 ons (UNODC, 2019, UNODC, 2020 and McCarthy, 2019a, 2019b) (see figure 1).

The smuggling of cocaine from South America to other countries is on the rise since 1980 and hit an all-time high in terms of law enforcement seizures in 2018 (figure 2).

West Africa has long been known to be an entry point for Africa and the European drug markets as emerging and lowly controlled smuggling route (figure 3) – cocaine seizures are well documented at least since 2005 (UNODC, 2013) (figure 4). But what is new is the size and amount of smuggling, the high quantities seized (Ralson/Dechery, Worldbank, 2014). It is a market and distribution route that can be distinguished in a Northern Hub, a Southern Hub and an Eastern Hub (Duncan, 2018) – the Northern Hub consists of Cape Verde, Senegal, Guinea-Bissau, The Gambia, Guinea and Sierra Leone, the Southern Hub of Ivory Coast, Ghana, Togo and Benin, the Eastern Hub consists of Mali and Mauritania (UNODC, 2013) (figure 4). The UNODC estimates transit amounts between 17–48 tons of Cocaine entering through West African states in 2005–2010 (UNODC, 2013 and Csete/Sanchez, 2013). West Africa is a hub of overlaying smuggling activities and illicit financial flows (OECD, 2018).

Very much cocaine was produced in the Americas and is available since 2015–2018 for distribution from South America into the world (figure 1).

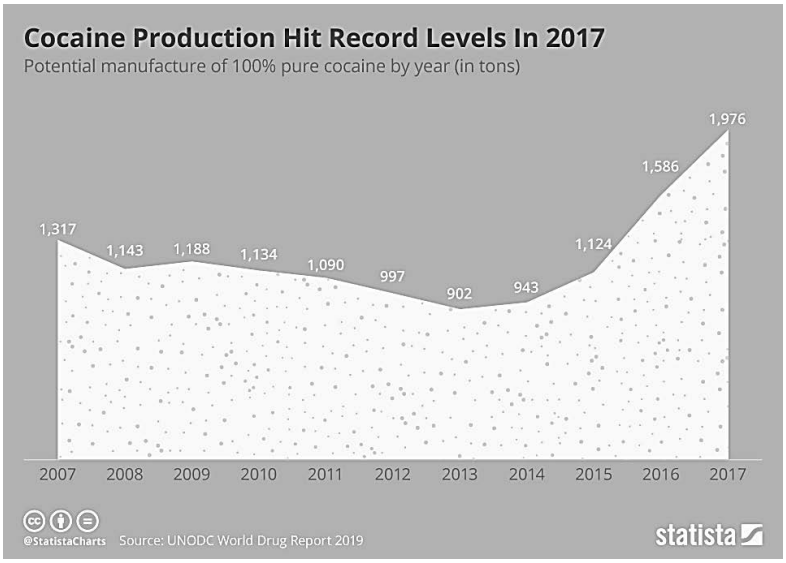

Figure 1. Cocaine Production hit record levels in 2017

Source: https://www.statista.com/chart/18525/potential-manufacture-of-pure-cocaine-by-year/, cited as McCarthy, 2019a, 2019b

The amount of cocaine produced, smuggled and seized globally is rising strongly (figure 2).

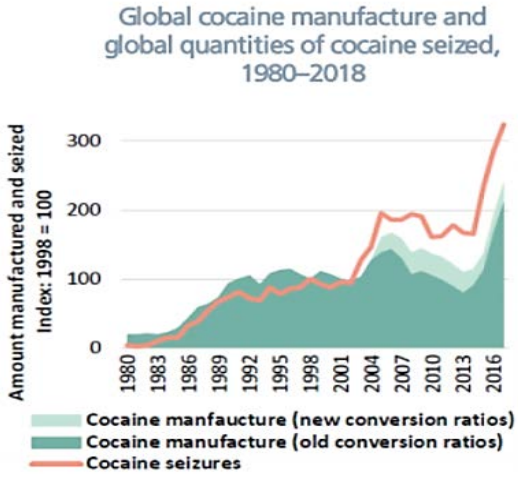

Figure 2. Global Cocaine Manufacture and Global Quantities of Cocaine Seized 1980-2018

Source: UNODC, World Drug Report 2019

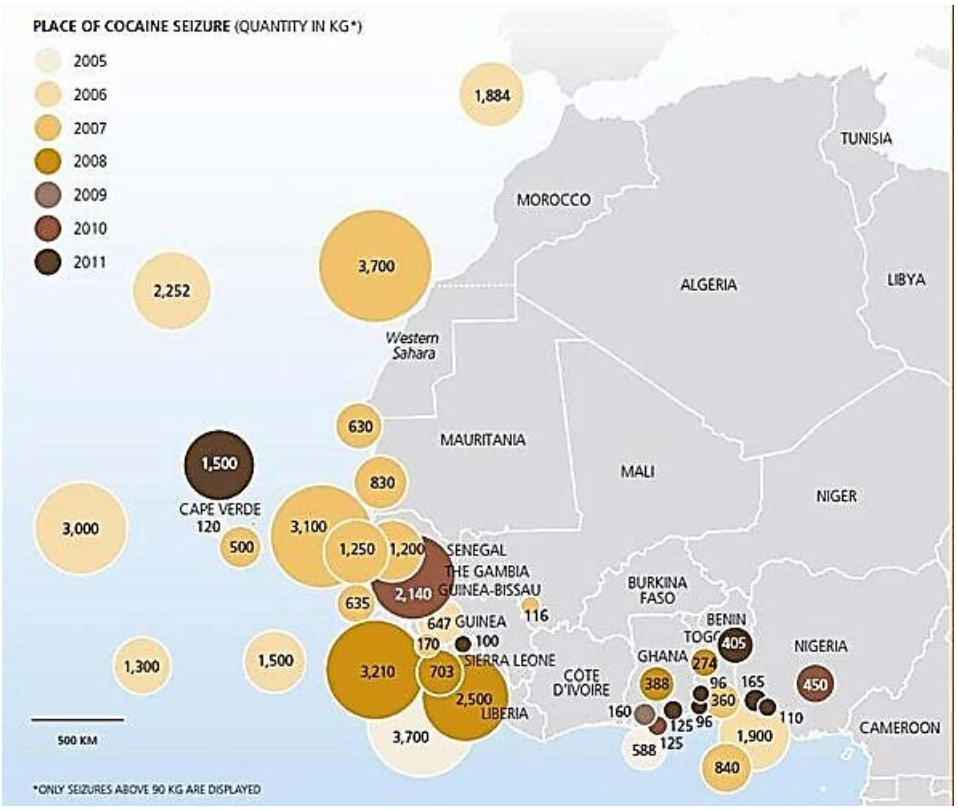

Figure 3. Major Seizures of Cocaine off West Africa and ashore from 2005-2011 [in KG]

Source: UNODC, Transnational Organized Crime in West Africa, Report, 2012, 9

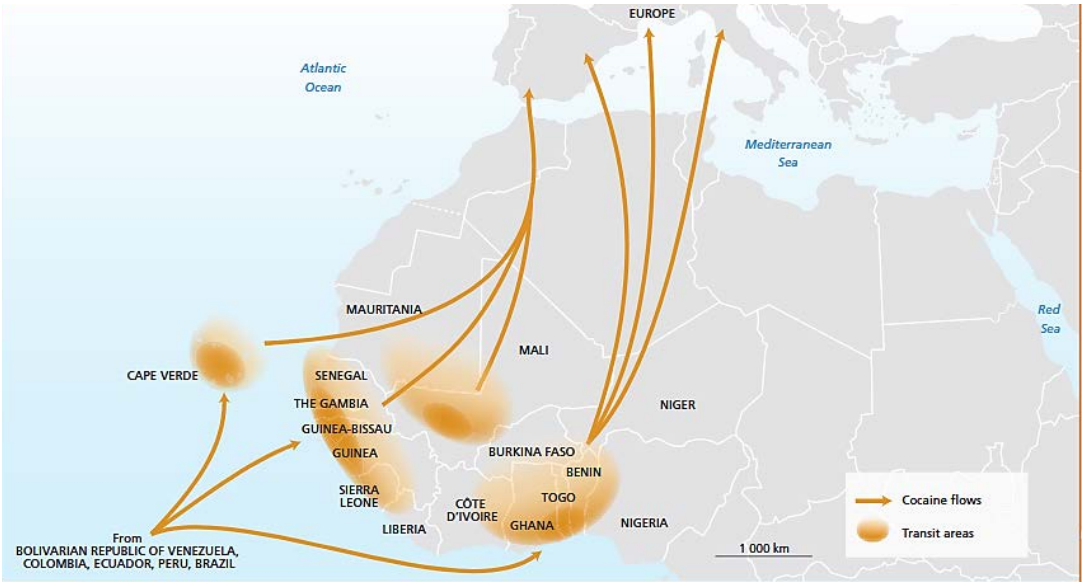

Figure 4. Cocaine Trafficking Flows in West Africa

Source: UNODC, Transnational Organized Crime in West Africa, Report, 2012, 10

3. Narco-Submarine evolution and current prevailing types in 2018–2020

Hundreds of photos of Narco-Submarines and their evolution and varying design are well documented in the internet (Sutton/Covert Shores, National Geographic Society, Time Magazine, Forbes, all online) and the scholarly literature on this matter (Stone, 2011; Bunker/Ramierez, 2015; Sutton, 2020a; Sutton, 2020b).

Modern Narco-Submarines are custom made for single journeys out of glass fibres and wood and can be categorized in four main types (Sutton, 2020a, 2020b and 2020d) (figure 5).

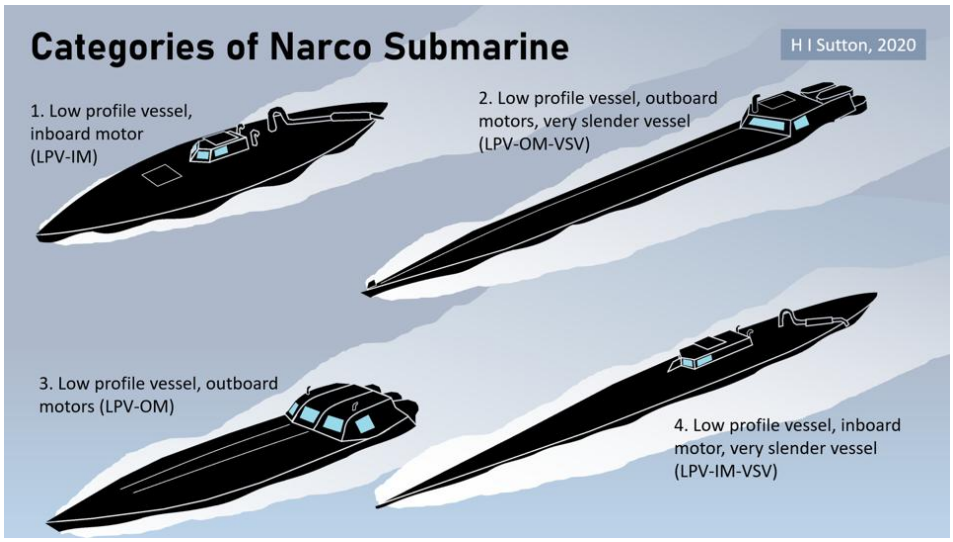

Figure 5. Categories of Narco Submarines
Source: Sutton, 2020d, © H.I. Sutton, 2020

The War on Drugs (GCWD, 2011) is fought by help of regular naval ships in the Caribbean and the Pacific by the USA (US Navy and US Coast Guard), the Colombian Navy and other states and the interception numbers of Narco-Submarines is rising.

3. Maritime Cocaine Smuggling in the Americas and interceptions

Current data speak of a Narco-Submarine Epidemic with 35 seizures in 2018 and 36 seizures in 2019 (Sutton, 2020c). The Cocoa harvest has been very high in 2017–2018 – about three times higher than in 2008 (Sutton, 2020c) and a lot of Cocaine is in Columbia that must be shipped away to its Markets in North America and Europe. Alone in May 2020 three Narco-Submarines were stopped and seized in the Caribbean in four days (Sutton, 2020e) (figure 6).

4. Current trends of Narco-Submarines in the Americas

Current trends of Narco-Submarines in the Americas are the emergence of very fast running very slender fast go boats – so called Very Slender Vessles (VSV) that are equipped with three or even four out board motors, mostly the widely available Yamaha Enduro (Sutton, 2020d; Sutton, 2020e) (figure 6).

Figure 6. Very Slender Vessel (VSV) Narco-Submarine that is a low lying speed boat type that runs fast from South America to Middle America
Source: Sutton, 2018, © H.I. Sutton

The aim of VSV is to run very fast and be difficult to detect as Low Profile Vessel (LPV).

They mostly are travelling in coastal waters in the Middle Americas. The VSV are produced in high numbers in the South American jungle and since the US is leading a War on Drugs they are often intercepted in 2018–2020 (Sutton, 2020c, 2020d and 2020e) (figure 7).

This suggests that the normal routes to Middle and North America are still supplied with very fast running Narco-Submarines (VSV) (figure 6 shows the VSV as type drawing, figure 7 examines one of the two found VSV and one LPV-OM as of May 2020 (Sutton, 2020e)).

Figure 7. US SOUTCOM interdicts 3 Narco-Subarines in 4 days in May 2020

Source: Sutton, 2020e, © H.I. Sutton, 2020

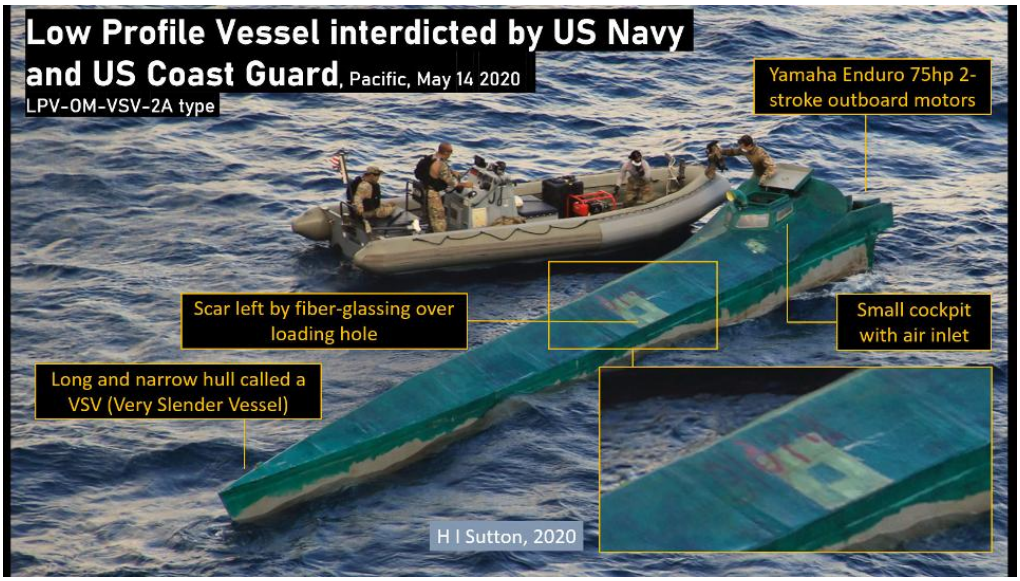

Figure 8. Very Slender Vessel interdicted by the US Navy and US Coast Guard in the Pacific on May 14 2020

Source: Sutton, 2020e, © H.I. Sutton

5. Trans-Atlantic transport – novel developments in August 2020

Since more and more Narco-Submarines are located and intercepted by US Coast Guard and US Navy and other countries military and special forces in the Caribbean and the Pacific on journeys from South

America it is suggested that the cartels are seeking and using new and additional smuggling pathways from South America to Africa/Europe also by help of large Narco-Submarines that can deliver up to 3,8 tonnes Cocaine (Sutton, 2020c).

The Cartels are actively switching their smuggling pathways out into the Atlantic up to successful transits by help of Narco-Submarines to Europe (Sutton, 2019a, 2019b; Weerth, 2020). This Narco-Submarine is of the LPV-IM type and runs barely detectable with a large load of cocaine and a lot of fuel at a slow speed.

The design of the proven trans-Atlantic Narco-Submarine (Sutton, 2019a, 2019b; Weerth, 2020) has also been explained by help of drawings (Sutton, 2020i) (figure 9).

Figure 9. Transatlantic Narco Submarine, A Proven Case, November 2019

Source: Sutton, 2020i, © H.I. Sutton

New developments during summer 2020 suggest that the Cartels and Organized Crime are actively running their cocaine by help of Narco-Submarines out into the Atlantic Ocean where the ships have different option of how to distribute their narcotic cargo:

- Variant A: Going directly to Africa/Europe as has been proven;
- Variant B-E: loading cocaine on Yachts or Merchant vessels or Working boats such as Tugboats that are going in both ways (to the east to Africa/Europe or to the West to the USA/Canada (Sutton, 2020g) (figure 10).

All variants must be seen as new challenge to law enforcement agencies such as Coast Guard, Customs, Border Forces, the Navy and Military Forces but also for secret services.

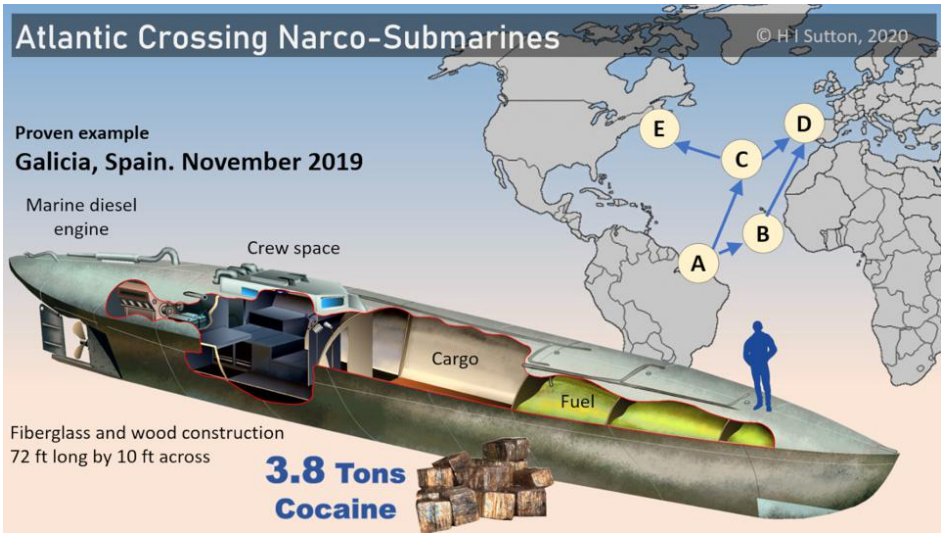

Figure 10. Proposed trans-Atlantic routes for Narco-Submarines from South America, August 2020

Source: Sutton, 2020g, © H.I. Sutton

An unusually large (long) Low Profile Vessel (LPV) has been found and intercepted on August 6, 2020 by law enforcement in Colombia that is thought to be a larger version of the successful Galicia example which is thought to be again an attempt to cross the Atlantic (Sutton, 2020g) (figure 11).

Figure 11. Extra-Large Narco-Submarine, August 2020 Submarine, for trans-Atlantic use?
Source: Sutton, 2020g, © H.I. Sutton

The newly intercepted very large Narco-Submarine was built to carry between 6-8 tons of cocaine to Africa/Europe (Sutton, 2020g, 2020i).

6. Known distribution pathways off Africa and Spain – a higher awareness is necessary

In November 2019 a Narco-Submarine was brought up off the coast of Spain transporting more than 3 800 Kilograms of cocaine (Guardian, 2019a, 2019b; Sutton, 2019a, 2019b; Weerth, 2020). This must be seen as a final wake-up call for law enforcement agencies in particular in Africa/Europe but possibly all around the world (Weerth, 2020).

Also in August 2020 (after intercepting the very large LPV that was possibly intended for Trans-Atlantic travel) a novel type of Narco-Submarine (go-fast boat) that is suitable for fast distribution of narcotics was found and intercepted off Spain – a so called *Ghost Glider* (Sutton, 2020h, 2020j) (figure 12). That custom drug-running vessel is again custom build by help of a tubular rigid inflatable boat (RIB) and a speedboat hull (Sutton, 2020h). It is different from the normal (open) go-fast boats (Sutton, 2020t).

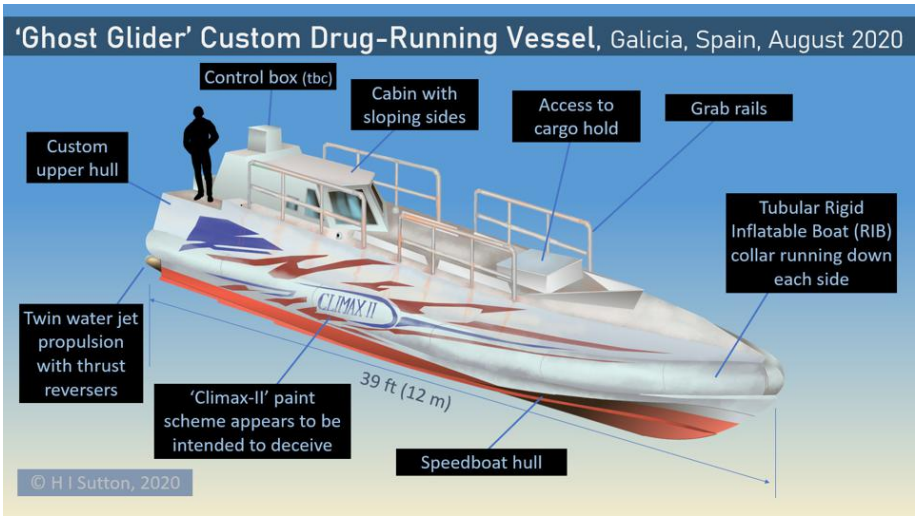

Figure 12. 'Ghost Glider' Custom Drug-Running Vessel, Galicia, Spain, August 2020
Source: Sutton, 2020h © H.I. Sutton

7. Weak states and vulnerable states in West Africa as distribution pathways

Smuggling pathways into Africa and Europa are known since the beginning at least of 2005 (figure 4) and the reports suggest that between 2005 and 2011 many seizures have been made (figure 3). The UNODC estimates the amounts of trafficked cocaine in West Africa between 17–48 tons in 2005–2017 (UNODC, 2013).

The amount fell later to numbers of about 30 tons per year but they are rising strongly again.

But novel proven ways of delivery of large amounts of Cocaine across the Atlantic Ocean are making the issue of interception and law enforcement off Africa and Portugal/Spain very acute and pressing.

What are the consequences and implications? Are Europe's and Africa's Coast Guards, naval forces (Marines) and customs forces equipped and prepared for such an unexpected naval warfare at their coasts?

Previously it has been established that the Cartels and Organized Crime are seeking in particular weak entry points for their drug pathway into Africa and Europe (figures 3, 4).

Established entry points have been Guinea-Bissau which had risen until 2012 as main-entry gate into Africa as a fully-fledged "narco-state" (Ibewke, Baumans, 2020). And the northern hub in West Africa consisting out of Guinea-Bissau, Guinea, Cape Verde, the Gambia, Sierra Leone and Senegal (UNODC, 2013). One of the factors that are enabling the cocaine-flow into West Africa are direct Ro-Ro ferry lines from Brazil to Gunea-Bissau (Ibewke, Baumans, 2020) and Sengal (Roger, 2019; Soto, 2020; Voytenko, 2018; Voytenko, 2019; Voytenko, 2020). And even if a better law enforcement pushes back the trafficking efforts they are coming back and re-emerge (Roger, 2019; Soto, 2019; Voytenko, 2018; Voytenko, 2019; Voytenko, 2020).

First Islands to land and distribute the cocaine are the Azores and Cape Verde, where the cargo is transferred onto other ships. Off both islands high quantities of cocaine have been seized since the beginning of the 2000s – but also more recently in 2017 (BBC, 2017 and Frey, 2019). Another drug distribution hub are the Canary Islands/Spain, off Africa.

The West of Africa has been established to be an adequate entry point over weak law enforcement structures, comparably cheap prices for bribes and established smuggling routes (either by air travel, air cargo or through the deserts, possibly also along with weapons and migrants/refugees) north towards the Mediterranean and over it to Spain, France, Italy and elsewhere (figure 4). One major observation that must be underlined is that the major entry countries are either Portuguese or Spanish speaking (Csete, Sanchez, 2013).

8. Contributions of terroristic groups

One major contribution to the smuggling pathways into and through Africa apart from bribing, failed states and weak law enforcement is the contribution of terroristic groups in Africa, namely Al Qaida (de Andrés, 2008; Gaynor, Diallo, 2010; African Center for Strategic Studies, 2017), local jihadist groups (Gaye, 2018), the Hisbollah (Reuter, 2020) and local rebels in Senegal and Mali (de Andrés, 2008; Crisis Group, 2018). The terroristic groups are employing local tribes and gangs in their trafficking, also the Tuareg (Gaye, 2018).

Some countries, officials and governments are openly cooperating with terroristic groups (de Andrés, 2008; Csete, Sanches, 2013; Gaye, 2018; Crisis Group, 2018) – it is not only a matter of a wake or failed state but also a strategy in some cases (Csete, Sanches, 2013).

9. Entry points into Europe and the European Union

For Europe and the EU the South of Spain has been long established to be a major entry point for drugs trafficking, mostly due to the near proximity of Africa and the narrow street of Gibraltar. In Spain the custom made Narco-Submarines have long not been of importance because normal boats, fishing boats or ships are available and there is no need to run long distances with a large narcotic cargo.

One mode of action of the cartels and Organized Crime is simply to use go-fast boats (Kodiac's or solid hulled) that run over the Street of Gibraltar (sometimes even at daylight).

Examples can be found easily:

- Off the Costa del Sol (The Sun, 2018);
- Running ashore at daylight on June 3, 2020 near Gibraltar (no drugs were recovered, Sutton, 2020 m).

The Spanish Guardia Civil, Coast Guard and Customs Service are patrolling the Street of Gibraltar with normal helicopters and speed boats. They are prepared to tackle the normal thread of go-fast boats (Sutton, 2020 t).

Other episodes that are documented are evidence of the Azores/Madeira/Canary route:

- in 2001 a sailor brought about half a ton of cocaine from Venezuela to the Azores (Bremner, 2019), and more recently;
- 3,7 tons of cocaine seized on a tugboat (BBC, 2017);
- 500 kilograms of cocaine seized on a sailing yacht in the Azores (Frey, 2019);
- 1,5 tons of cocaine was seized on a sailing yacht heading for the Canary Islands (Maritime Analysis and Operations Center, 2020a);
- 4,5 tons of cocaine was seized in the Atlantic on its way to Vigo/Spain (Maritime Analysis and Operations Center, 2020a; Puga, 2020);
- 2,5 tons of cocaine was seized in Galicia/Spain (Maritime Analysis and Operations Center, 2020a);
- 1,2 tons of cocaine was seized on a sailing yacht from the Canary Islands to Galicia (Maritime Analysis and Operations Center, 2020b);
- 1 820 kilogram of Cocaine seized on a sailing yacht in the middle of the Atlantic (The Portugal News, 2020).

The cocaine trafficking to Cape Verde and West Africa (The Gambia, Guinea-Bissau, Senegal), and large seizures there are good documented between 2005 and 2011 (UNODC, 2013). In 2019 9,5 tons of cocaine were seized off Cape Verde and 1,9 tons of cocaine in Guinea-Bissau (Reuters, 2020). In 2020 the French Navy helped the Coast Guard of the Ivory Coast to seize 411 Kilograms of cocaine (Reuters, 2020; Maritime Analysis and Operations Center, 2020a).

Geographical facts must be considered when looking at the smuggling routes:

- the narrow street of Gibraltar (smallest distance between Africa and Europe, 14 kilometers);
- the difficulty to watch and control the rugged coast of Galicia in the North of Spain;
- the relatively short distance between Brazil and West Africa (1 600 miles or 2 600 kilometers) and regularly running ferries there;
- the danger and prospect of crossing the Sahara on camel back (the shortest distance is said to be 1 500 kilometers), or by help of either bought illicit airplanes or by regular air traffic into Europe;
- the cooperation of cartels and organized crime with Al Qaida and Bedouins and the idea of trafficking cocaine into Arabia/Asia.

10. Maritime Analysis and Operations Center (MAOC), Lisbon

The European Union has also started like the USA to better combat narco trafficking in a War on Drugs. In 2007 the Maritime Analysis and Operations Center – Narcotics (MAOC (N)) that is located in Lisbon/Portugal has started its operation. It is run by Portugal and co-financed by the European Union (Maritime Analysis and Operations Center, 2020c). The MAOC is an initiative by seven member states of the European Union: France, Ireland, Italy, Spain, Netherlands, Portugal and the UK and is co-funded by the Internal Security Fund of the European Union. The MAOC provides a forum for multi-lateral cooperation to suppress illicit drug trafficking by sea and air (Maritime Analysis and Operations Center, 2020c).

The headquarters is staffed by Country Liaison Officers (CLOs) representing the police, customs, military and maritime authorities of the participating European nations, as well as by a permanent observer from the United States through the Drug Enforcement Administration, Lisbon Country Office, and the Joint Interagency Task Force South. The European Commission, EUROPOL, the United Nations Office on Drugs and Crime (UNODC), the European Centre for Drugs and Drug Addiction (EMCDDA), the European External Action Service (EEAS), the European Defence Agency (EDA), EUROJUST and FRONTEX are all observers of MAOC (N).

In addition to the intelligence provided, MAOC (N)'s success can be attributed to other factors, such as the working model (Liaison Officers working together with full transparency and equality), as well as the civil-military connection and cooperation with West African countries. The MAOC (N) model, working practises and operations are conducted in a format which aims to minimise bureaucracy, whilst maximising operational activity. From 2007 to July 2016, MAOC (N) supported the coordination and seizure of over 116 tons of cocaine and over 300 tons of cannabis (Maritime Analysis and Operations Center, 2020c).

It is not understandable why nations that are highly affected by cocaine smuggling are not contributing to the MAOC, such as Belgium and Germany. That should be changed soon.

11. Discussion

Narco-Submarines are one major distribution way from South America to Middle and North America. In trans-Atlantic drug trade the preferred naval smuggling method is often by help of merchant vessels and yachts, but also by help of working ships such as tug boats.

The rise of Narco-Submarines as mode of smuggling rose in the Americas from 2007 on where the newest and best-use designs have been developed (Ramierez, Bunker, 2015; Ramierez, 2015a). But they keep evolving (Sutton, 2020a, 2020b). Up to 10,000 Kilograms Cocaine can be shipped in one shipment in costal near waters (Goudar, 2019).

This has been one of the success-model of the cartels in the Americas in order to smuggle drugs from South Americas to Mexico and from there to the United States of America.

A proven case of a trans-Atlantic smuggling journey from South America to Europe in November 2019 shows the ability and practice of cocaine shipments by help of Narco-Submarines in great quantities (here 3,8 tons) is a game changer: It must be a wake-up call for the law-enforcement authorities (Military forces and the Navy, Coast Guards, Border Polices and Customs Services) in Africa and Europe and around the World (Weerth, 2020).

The customs authorities, coast guards and regular naval forces must be aware of slowly travelling mostly submersed Narco-Submarines that are trying to land the remote coasts of Western Africa or Portugal/Spain/France/Ireland/UK. And they pose only one thread on top of weapons trafficking, refugee trafficking and narco smuggling by other modes such as aircrafts (Sutton, 2020n), and conventional ways of maritime smuggling.

Possibly the Narco-Submarines are not landing their load but re-distributing it on to Yachts or Fishing-Boats and Merchant Vessels off the coast. But a vigilant European Coast Guard System must be aware of such a new threat and be able to detect such Narco-Submarines. This is of even higher importance in the light of the cartels and organized crime regularly aiming at weak and failed states in Africa in order to facilitate the entry into Africa and from there to Europe and (possibly) further to Arabia and Asia.

Submarine Hunters must be employed from the naval marines of the countries in question.

That also applies for flying Submarine Hunter aircrafts, drones and the use of satellite technique (figure 13). The experience of the USA goes back to the 1990ies and the European and African countries must learn from the USA, its failures and successes.

The USA is successfully employing its Lockheed P-3 Orion Anti-Submarine (Hunting) Aircraft in the Americas (Sutton, 2020c) and also Boeing P-8A Posidon Maritime Patrol Aircraft, Airforce Boeing E-3 AWACS Sentry and Northop Grumman E-8 JSTAR Surveillance Aircraft (Mizukami, 2020). Furthermore it is using Coast Guard Cutters, US Marine Submarines and Special Forces, drones and of course other nations are also combating the Narco-Submarines (Sutton, 2020o) (figure 13).

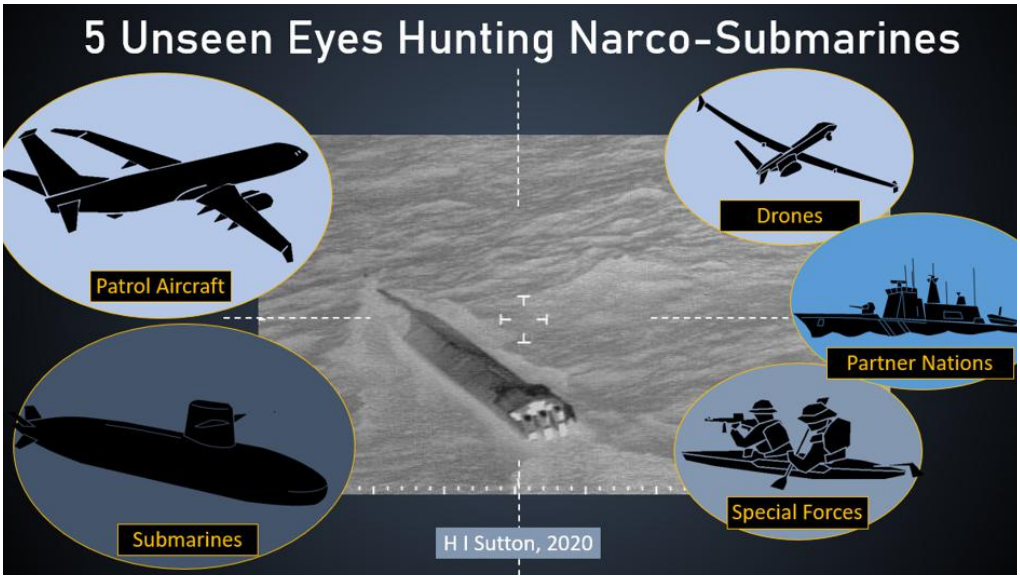

Figure 13. Five unseen eyes hunting Narco-Submarines in the Americas

Source: Sutton, 2020o, © H.I. Sutton

The World Customs Organization (WCO) reveals the interaction of forces which succeeded in tracking down the first trans-Atlantic passage from Brazil to Spain in November 2019: it was not found by chance but a highly interwoven cooperation of police, coast guard and customs authorities from the USA, UK, Brazil, Portugal and Spain which made a three day joint initiative to search, locate and intercept the Narco-Submarine and was coordinated by the MAOC (Maritime Analysis and Operations Center, 2020a; WCO, 2019; UNODC, 2020). What can be learned here is that cooperation of different states and competent authorities is the key to successfully combating the global trafficking of narcotics. Furthermore it is of the utmost importance to cooperate: the USA, the EU and other countries in the Americas and Africa must work together. And continuous funding, technical equipment, training and manpower must be supplied to handle this ongoing task. The MAOC is funded by the EU and a cooperation of seven EU member states. It is unknown why Belgium and Germany are not contributing and participating. This must be changed rather sooner than later in order to have a powerful answer to pressing attacks by the cartels and organized crime organizations.

It is estimated that overall 5–15% of Narco-Submarines are found and intercepted currently, making 85–95% of Narco-Submarines to go through to the target with their narcotic drugs cargo of mostly cocaine (Mizukami, 2020). Other estimates are that up to 20% of Narco-Submarines are intercepted which make up to 80% going through the net and are reaching their target (Sutton, 2020s).

12. Conclusions

The direct smuggling from the Americas to Europe and Africa is not new. Major entry points have long been the north-western EU harbors in Belgium, the Netherlands, Germany and the UK, the Azores, Madeira, the Canary Islands, mainland Spain and Gibraltar, and the West of Africa. Direct smuggling of cocaine by help of large airplanes and by help of direct Ro-Ro ferry lines from Brazil to the West African states have been documented as well as naval smuggling by help of yachts and working (tug) boats.

The War on Drugs can only be won when all modes, techniques and ways of smuggling drugs into a country are known and understood. One way that is common in the Americas is the use of Narco-Submarines. A new Narco-Submarine epidemic is under way since 2018 when 35 Narco-Submarines were seized and in 2019, when 36 Narco-Submarines were seized (Sutton, 2020c). Until the end of August 2020 19 Narco-Submarines have been intervened in the Americas (Sutton, 2020q; Sutton, 2020s).

For the first time in November 2019 the trans-Atlantic smuggling of more than 3 800 kilograms of cocaine to from the Americas to Spain has been publicly well documented and widely discussed in the media and in law-enforcement circles (Guardian, 2019a and 2019b; Sutton, 2019a and 2019b; Weerth, 2020).

The WCO and UNODC later revealed the international cooperation to uncover that trans-Atlantic smuggling attempt (WCO, 2019; UNODC, 2020).

The new generation of Narco-Submarines is good enough to cross an entire ocean – either on its own power or being towed – the large fuel supplies and inboard motors suggest that they run slowly on their own). A very large LPV was intercepted in August 2020 that was thought by analysts to be again Narco-Submarine for a trans-Atlantic use (Sutton, 2020d).

This is and must be a wake-up call to all law enforcement and customs authorities in Europe, Africa and beyond. Apparently the drug cartels have found a suitable vehicle for smuggling large quantities of drugs into another continent. The routes are not new but the quantities shipped are rising strongly.

That raises the question of how well the law-enforcement side is prepared.

The Global War on Drugs has failed (GCDP, 2011). Some claim that this war cannot be won and is lost already and that narrative is poorly proven (Csete, Sanches, 2013) – in 2020 we must conclude to the contrary: it is proven and must be fought.

In the US the coast guard and Navy is openly combating the drug-speedboats and Narco-Submarines in the Caribbean and Pacific more or less successfully. So are other military forces in Colombia, Costa Rica, Ecuador, Panama and elsewhere – the list of Narco-Submarine interceptions is a list of joint effort (Sutton, 2020q; Sutton, 2020s).

In the Americas the experience with Narco-Submarines goes back to the 1990ies and currently the War on Drugs is fought by help of the US Coast Guard, US Navy, US Airforce and many countries also supplying national naval and police forces – the USA is openly contributing high tech with drones, US Airforce Aircrafts, US Navy Submarines (Sutton, 2020o). All experiences of the USA must be known, understood and shared.

But this new irregular way of naval warfare is only one way of trafficking narcotics across borders and into target markets – another fast, expensive and successful way is the use of Narco-Airplanes – which are not custom made self-made boats and submarines but either small airplanes or business airplanes such as a Beechcraft, Cessna, Hawker/Bae-125 or Gulfstream (Sutton, 2020n). The use of Lear Jets and Boing 727 (in Africa) or Boing 737 is not uncommon and are well known and documented (Bullock, 2018; Gaye, 2018). In particular by help of terrorist organizations such as Al Qaida, jihadists and the Hisbollah the cartels and organized crime organizations are transporting large cocaine quantities across the Atlantic or over the Sahara (UNODC, 2013; Alio, 2017; Gaye, 2018; Reuter, 2020).

The problem of Narco-Submarines has not been openly on the agenda in Europe and Africa since its appearance in the Amercias (in the 1990ies), but it is since the end of 2019.

60% of the narcotic substances are entering the EU through the ports on conventional merchant vessel ways – but a growing amount is being smuggled through the West Africa/Spain route (EMCDDA, EUROPOL, 2020).

This is a call for a higher awareness of the West Africa/Spain route and the smuggling of cocaine and failed states and a joined military and law enforcement effort to combat the organized crime and terrorism in West Africa and off Spain/Portugal in order to minimize the cocaine trafficking into Africa and Europe (and possibly Arabia and other parts of Asia).

A view into the history of the development of Narco-Submarines is of importance here.

By chance the Narco-Submarine expert found new pictures of an early precursor of the Americas glass-fiber and wood built model on the island of Sri Lanka where it was built during the civil war and used as smuggling LPV (Sutton, 2020l; Sutton, 2020r).

The Tamil Tigers experimented with many attack boat and submarine designs (Sutton, 2016a) and these could potentially be used globally also for arms smuggling, e. g. in the Middle-east (Sutton, 2016b) or in Asia. So it finally is a question of egg and hen – what was there first and who invented it (South America or Sri Lanka)? But is this really of importance? They are where the money is.

Or in other words: regardless who invented it the Narco-Submarine technology will be employed by drug cartels, organized crime and terroristic groups wherever possible.

LPV and VSV are easily built and difficult to detect. They are one-way boats that can be lost and smuggle large quantities of narcotic drugs over even long distances. They are difficult to detect and can be combated with a large effort – and even then it is expected that about 80% will reach its target beach/harbor or transfer ship (estimates by Mizukami, 2020; Sutton, 2020s). In order to tackle this law-enforcement problem together all circles must be alert globally and help each other. And learn from the long experience and example in the Americas. And work together as the MOAC is doing with the authorities from the Americas and Africa. This must be seen as a call for awareness on this growing threat of smuggling to border forces, coast guards, customs services, police forces and regular naval forces as well as the secret services around the world.

References:

1. Africa Center for Strategic Studies (2017). The Illicit Superhighway: Transnational Organized Crime in Africa. Retrieved from: https://africacenter.org/spotlight/the-illicit-superhighway-transnational-organized-crime-in-africa/ [in English].
2. Alemika, E.O. (ed.) (2013). The Impact of Organized Crime on Governance in West Africa. Retrieved from: http://library.fes.de/pdf-files/bueros/nigeria/10199.pdf [in English].
3. Alio, M. (2017). Security Challenges and Issues in the Sahelo-Saharan Region. The Niger Perspective. Retrieved from: http://library.fes.de/pdf-files/bueros/fes-pscc/14024.pdf [in English].
4. BBC (2017). Huge cocaine haul seized in tugboat in Atlantic. Retrieved from: https://www.bbc.com/news/world-europe-41542224 [in English].
5. Bremner, M. (2019). Blow up: half a tonne of cocaine transformed the life of an island. *The Guardian*, May 10. Retrieved from: https://www.theguardian.com/society/2019/may/10/blow-up-how-half-a-tonne-of-cocaine-transformed-the-life-of-an-island [in English].
6. Bullock, P. (2018). *New Times* Investigation: Drug Traffickers Are Buying Up Planes in South Florida. *Miami New Times*, April 10. Retrieved from: https://www.miaminewtimes.com/news/drug-traffickers-buying-up-planes-in-south-florida-new-times-investigation-finds-10249767 [in English].
7. Bunker, R.J., Ramierez, B. (2015). Introdruction: Narco Submarines. *Narco-Submarines: Specially Fabricated Vessels Used for Drug Smuggling Purposes* / B. Ramirez, R.J. Bunker (eds.); U.S. Army Foreign

Military Studies Office. Claremont, pp. 9–14. Retrieved from: http://fmso.leavenworth.army.mil/Collaboration/Interagency/Narco-Submarines.pdf [in English].

8. Castro, J.G. (2015). Trajectories, Continuities and Displacements in the Biography of "Narco-Subs": From the Caribbean to the Pacific 1993–2013. *Narco-Submarines: Specially Fabricated Vessels Used for Drug Smuggling Purposes* / B. Ramirez, R.J. Bunker (eds.); U.S. Army Foreign Military Studies Office. Claremont, pp. 38–45. Retrieved from: http://fmso.leavenworth.army.mil/Collaboration/Interagency/Narco-Submarines.pdf [in English].

9. Csete, J., Sánchez, C. (2013). Telling the story of drugs in West Africa: The newest front in a losing war? *Global Drug Policy Oberservatory*, Policy Brief 1. Retrieved from: https://www.swansea.ac.uk/media/West-Africa-A-New-Front-in-a-Losing-War.pdf [in English].

10. Crisis Group (2018). Drug Trafficking, Violence and Politics in Northern Mali. Retrieved from: https://www.crisisgroup.org/africa/sahel/mali/267-narcotrafic-violence-et-politique-au-nord-du-mali [in English].

11. Andrés de, A.F. (2008). West Africa under attack: Drugs, Organized Crime and Terrorism as the new threats to Global Security. *UNISCI Discussion Papers*, no. 16, pp. 203–227. Retrieved from: https://www.ucm.es/data/cont/media/www/pag-72513/UNISCI%20DP%2016%20-%20Andres.pdf [in English].

12. Duncan, S. (2018). Narcotics Trafficking Through West African Waters. *Stable Seas*. Retrieved from: https://stableseas.org/illicit-trades/narcotics-trafficking-west-africa [in English].

13. Dunigan, M., Hoffmann, D., Chalk, P., Nichiporuk, B., DeLuca, P. (2012). Irregular Maritime Warfare. Retrieved from: https://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND_MG1127.pdf [in English].

14. Elkus, A. (2015). The Rise of the Narco Navy. *Narco-Submarines: Specially Fabricated Vessels Used for Drug Smuggling Purposes* / B. Ramirez, R.J. Bunker (eds.); U.S. Army Foreign Military Studies Office. Claremont, pp. 27–28. Retrieved from: http://fmso.leavenworth.army.mil/Collaboration/Interagency/Narco-Submarines.pdf [in English].

15. EMCDDA, EUROPOL (2019). EU Drug Markets Report 2019. Retrieved from: https://www.emcdda.europa.eu/system/files/publications/12078/20192630_TD0319332ENN_PDF.pdf [in English].

16. EUROPOL (2020). Speedboat Cannabis traffickers kept at bay in Spain. Retrieved from: https://www.europol.europa.eu/newsroom/news/speedboat-cannabis-traffickers-kept-bay-in-spain [in English].

17. Fraser, D.M. (2012). Posture Statement of General Douglas M. Frazer, United States Air Force Commander, United States Southern Command before the 112th Congress House Armed Services Committee, March 6, 2012. Retrieved from: https://apps.dtic.mil/dtic/tr/fulltext/u2/a565018.pdf [in English].

18. Frey, A. (2019). Portugal: Half a tonne of cocaine seized on sailboat in Azores. *Club of Mozambique*. Retrieved from: https://clubofmozambique.com/news/portugal-half-a-tonne-of-cocaine-seized-on-sailboat-in-azores-136727/ [in English].

19. Gallop, J.D. (2019). Hurricane Dorian: 15 kilos of cocaine wash ashore; Cocoa Beach police tell beachcombers to be alert. *Florida today*. Retrieved from: https://eu.floridatoday.com/story/news/crime/2019/09/04/cocoa-beach-police-warn-residents-not-touch-suspicious-packages-beach-after-cocaine-find/2209334001/ [in English].

20. Gaye, S.B. (2018). Connections between Jihadist groups and smuggling and illegal trafficking rings in the Sahel. Retrieved from: https://library.fes.de/pdf-files/bueros/fes-pscc/14176.pdf [in English].

21. Gaynor, T., Diallo, T. (2010). Al Qaeda linked to rogue aviation network. *Reuters*. Retrieved from: https://www.reuters.com/article/us-drugs-security-aviation/al-qaeda-linked-to-rogue-aviation-network-idUSTRE60C3E820100113?pageNumber=3 [in English].

22. Global Commission on Drug Policy (2011). War on Drugs: Report of the Global Commission on Drug Policy, June 2011. Retrieved from: http://www.globalcommissionondrugs.org/wp-content/uploads/2017/10/GCDP_WaronDrugs_EN.pdf [in English].

23. Goudar, J. (2019). "Narco-Subs" Pose Underwater Threat for US, Colombia Authorities. *InSightCrime*. Retrieved from: https://www.insightcrime.org/news/brief/narco-subs-underwater-threat-us-colombia/ [in English].

24. Guardian (2009). Captured: drug-smuggling submarine built in garden shed. Retrieved from: https://www.theguardian.com/world/2009/dec/16/drugs-cocaine-smuggling-submarine-spain [in English].

25. Guardian (2010). South American gangs flying vast quantities of cocaine to Europe. Retrieved from: https://www.theguardian.com/world/2010/nov/15/south-american-gangs-flying-cocaine-to-europe [in English].

26. Guardian (2013). Cocaine flows through Sahara as al-Qaida cashes in on lawlessness. Retrieved from: https://www.theguardian.com/world/2013/may/02/cocaine-flows-through-sahara-al-qaida [in English].

27. Guardian (2019a). Cocaine seized from "narco-submarine" in Spain was likely headed for UK. Retrieved from: https://www.theguardian.com/world/2019/nov/27/police-in-spain-find-three-tonnes-of-cocaine-in-narco-submarine [in English].

28. Guardian (2019b). Spanish police arrest suspected pilot of “narco-submarine”. Retrieved from: https://www.theguardian.com/world/2019/dec/01/spanish-police-arrest-suspected-pilot-narco-submarine [in English].

29. Ibewke, N., Bauwens, D. (2020). West Africa: Drug Frontier – How Cocaine Trafficking Is Impacting West Africa. Retrieved from: https://allafrica.com/stories/202001020041.html [in English].

30. Jacome Jaramillo, M. (2016). The Revolutionary Armed Forces of Colombia (FARC) and the Development of Narco-Submarines. *Journal of Strategic Security*, vol. 9, no. 1, pp. 49–69. Retrieved from: https://scholarcommons.usf.edu/jss/vol9/iss1/6/ [in English].

31. Maritime Analysis and Operations Center (2020a). News. Retrieved from: https://maoc.eu/news-maoc/ [in English].

32. Maritime Analysis and Operations Center (2020b). Spanish authorities seized 1 200 Kg of cocaine in a sailing vessel heading to Galicia. Retrieved from: https://maoc.eu/spanish-authorities-seized-1200kg-of-cocaine-in-a-sailing-vessel-heading-to-galicia/ [in English].

33. Maritime Analysis and Operations Center (2020c). Who we are. Retrieved from: https://maoc.eu/who-we-are/ [in English].

34. McCarthy, N. (2019a). Cocaine Production hit Record Levels in 2017. *Statista.com*. Retrieved from: https://www.statista.com/chart/18525/potential-manufacture-of-pure-cocaine-by-year/ [in English].

35. McCarthy, N. (2019b). Cocaine Production Hit Record Levels in 2017. *Forbes*. Retrieved from: https://www.forbes.com/sites/niallmccarthy/2019/06/27/cocaine-production-hit-record-levels-in-2017-infographic/#75614a5627ca [in English].

36. McLoud, S. (2020). Ship with Cocaine Loaded in Venezuela, Seized off the Coast of Spain. *Diálogo – Digital Military Magazine*. Retrieved from: https://dialogo-americas.com/articles/ship-with-cocaine-loaded-in-venezuela-seized-off-the-coast-of-spain/ [in English].

37. Mizukami, K. (2020). The Ships, Planes, and Submarines Busting the Cartel’s Narco Subs. Retrieved from: https://www.popularmechanics.com/military/navy-ships/a32769682/narcosub-busting/ [in English].

38. Mutume, G. (2007). Organized Crime targets weak African States. *African Renewal*. Retrieved from: https://www.un.org/africarenewal/magazine/july-2007/organized-crime-targets-weak-african-states [in English].

39. National Geographic Society (2010). Photo-Gallery of Narco-submarines. Retrieved from: https://www.nationalgeographic.com/news/2010/7/100713-cocaine-submarines-subs-smuggling-drugs-world-crime-pictures/ [in English].

40. OECD (2018). Criminal economies and illicit financial flows in West Africa. *Illicit Financial Flows: The Economy of Illicit Trade in West Africa* / OECD. Retrieved from: https://www.oecd-ilibrary.org/docserver/9789264268418-7-en.f?expires=1604935741&id=id&accname=guest&checksum=798B74A4C39A5E0974E933C0A5597178 [in English].

41. Puga, N. (2020). Duro golpe al narcotráfico en pleno estado de alarma: cae la red de narcotransportistas más importante de Galicia [Heavy blow to drug trafficking in a state of alarm: the most important drug transport network in Galicia falls]. *El Mundo*. Retrieved from: https://www.elmundo.es/espana/2020/04/28/5ea80719fc6c837f2e8b45de.html [in Spanish].

42. Ralson, L. Dechery, C. (2014). Guns, Drugs and Development. *World Bank*. Retrieved from: https://web.worldbank.org/archive/website01605/WEB/GUNS_DRU.HTM [in English].

43. Ramirez, B. (2015a). The Evolution of Narco-Submarines Engineering. *Narco-Submarines: Specially Fabricated Vessels Used for Drug Smuggling Purposes* / B. Ramirez, R.J. Bunker (eds.); U.S. Army Foreign Military Studies Office. Claremont, pp. 29–32. Retrieved from: http://fmso.leavenworth.army.mil/Collaboration/Interagency/Narco-Submarines.pdf [in English].

44. Ramirez, B. (2015b). Narco-Submarines: Applying Advanced Technologies to Drug Smuggling. *Narco-Submarines: Specially Fabricated Vessels Used for Drug Smuggling Purposes* / B. Ramirez, R.J. Bunker (eds.); U.S. Army Foreign Military Studies Office. Claremont, pp. 33–37. Retrieved from: http://fmso.leavenworth.army.mil/Collaboration/Interagency/Narco-Submarines.pdf [in English].

45. Ramirez, B., Bunker, R.J. (2015a). Editors Note. *Narco-Submarines: Specially Fabricated Vessels Used for Drug Smuggling Purposes* / B. Ramirez, R.J. Bunker (eds.); U.S. Army Foreign Military Studies Office. Claremont, pp. 6–8. Retrieved from: http://fmso.leavenworth.army.mil/Collaboration/Interagency/Narco-Submarines.pdf [in English].

46. Ramirez, B., Bunker, R.J. (eds.) (2015b). Narco-Submarines: Specially Fabricated Vessels Used for Drug Smuggling Purposes; U.S. Army Foreign Military Studies Office. Claremont, 164 p. Retrieved from: http://fmso.leavenworth.army.mil/Collaboration/Interagency/Narco-Submarines.pdf [in English].

47. Reuter, C. (2020). Hisbollah im Libanon: Weltkonzert der Geldwäsche [Hezbollah in Lebanon: World Money Laundering Concert]. *Der Spiegel Online*. Retrieved from: https://www.spiegel.de/politik/ausland/

libanon-warum-die-hisbollah-von-hassan-nasrallah-eine-wirtschaftsmacht-ist-a-ed8d714f-da46-45c6-bd78-ad623eab7503 [in German].

48. Reuters, S. (2020). Ivory Coast navy seizes record cocaine haul off coast. Retrieved from: https://www.reuters.com/article/us-ivorycoast-drugs/ivory-coast-navy-seizes-record-cocaine-haul-off-coast-idUSKBN1ZZ2KA [in English].

49. Roger, B. (2019). Dakar cocaine seizure shows West African ports are easy transit hubs. *The Africa Report*. Retrieved from: https://www.theafricareport.com/18839/-dakar-cocaine-seizure-shows-west-african-ports-are-easy-transit-hubs/ [in English].

50. Soto, (2019). Record Cocaine Busts Signal West Africa is Transit Hub again. Retrieved from: https://www.bloomberg.com/news/articles/2019-03-13/record-cocaine-busts-mark-west-africa-s-comeback-as-transit-hub [in English].

51. Stone, H. (2011). RawFeed: The Evolution of the Drug Submarine. *InSightCrime*. Retrieved from: https://www.insightcrime.org/news/analysis/the-evolution-of-the-drug-submarine/ [in English].

52. Stone, H. (2015). Rawfeed: The Evolution of the Drug Submarine. *Narco-Submarines: Specially Fabricated Vessels Used for Drug Smuggling Purposes* / B. Ramirez, R.J. Bunker (eds.); U.S. Army Foreign Military Studies Office. Claremont, pp. 25–26. Retrieved from: http://fmso.leavenworth.army.mil/Collaboration/Interagency/Narco-Submarines.pdf [in English].

53. Sutton, H.I. (2016a). LTTE Sea Tigers sneak attack craft and midget subs. Retrieved from: https://www.hisutton.com/LTTE%20Sea%20Tigers%20sneak%20attack%20craft%20and%20midget%20subs.html [in English].

54. Sutton, H.I. (2016b). Analysis – threat of narco-subs in Middle-East. Retrieved from: http://www.hisutton.com/Analysis%20-threat%20of%20narco-subs%20in%20Middle%20East.html [in English].

55. Sutton, H.I. (2019a). Not Unexpected: First Trans-Atlantic Drug Submarine. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2019/11/26/big-deal-for-drug-smuggling-first-atlantic-narco-submarine/#2fb11e763a13 [in English].

56. Sutton, H.I. (2019b). Open Source Intelligence: Atlantic Drug Submarine May Be Related to Pacific Example. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2019/11/27/new-drug-submarine-captured-in-spain-may-be-connected-to-pacific-example/#579bed1f2453 [in English].

57. Sutton, H.I. (2020a). Narco Submarines: Covert Shore Recognition Guide. 2nd ed. San Bernardino, CA: Independent Publisher, 111 p. [in English].

58. Sutton, H.I. (2020b). Narco Subs 101. Retrieved from: http://www.hisutton.com/Narco%20Subs%20101.html [in English].

59. Sutton, H.I. (2020c). U.S. Coast Guard Could Face a Narco Submarine Epidemic in 2020. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2020/01/07/why-america-could-continue-to-face-a-narco-submarine-epidemic-in-2020/#78ebe6d37369 [in English].

60. Sutton, H.I. (2020d). The 4 types of Narco Submarines the Military faces. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2020/04/12/the-4-types-of-narco-submarine-trying-to-escape-detection/ [in English].

61. Sutton, H.I. (2020e). 3 Narco Submarines in 4 Days: Navy and Coast Guard Make Impact. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2020/05/28/navy-and-coast-guard-stop-3-narco-submarines-in-4-days/ [in English].

62. Sutton, H.I. (2020f). Unusually Large Narco Submarine May Be New Challenge for Coast Guard. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2020/08/10/unusually-large-narco-submarine-might-smuggle-8-tons-of-illegal-drugs/#1cfebe155afd [in English].

63. Sutton, H.I. (2020g). New Narco Submarine Challenge in Atlantic Ocean. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2020/08/17/atlantic-ocean-is-no-barrier-for-homemade-narco-submarines/ [in English].

64. Sutton, H.I. (2020h). Completely new type of Narco Submarine discovered in the Atlantic. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2020/08/31/completely-new-type-of-narco-submarine-discovered-in-the-atlantic/#764516f1633b [in English].

65. Sutton, H.I. (2020i). Transatlantic Narcosub cutaway. Retrieved from: http://www.hisutton.com/Transatlantic-Narco-submarine-Galicia.html [in English].

66. Sutton, H.I. (2020j). Gliders: Spanish Narco Submarines. Retrieved from: https://smallwarsjournal.com/jrnl/art/ghost-gliders-spanish-narco-submarines [in English].

67. Sutton, H.I. (2020k). U.S. Coast Guard Could Face a Narco Submarine Epidemic in 2020. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2020/01/07/why-america-could-continue-to-face-a-narco-submarine-epidemic-in-2020/#78ebe6d37369 [in English].

68. Sutton, H.I. (2020l). The LTTE Submarine. *Narco Submarine Newsletter*, vol. 1, no. 2, pp. 13 [in English].
69. Sutton, H.I. (2020m). GFB (RHIB) interdicted by Spanish Police. *Narco Submarine Newsletter*, vol. 1, no. 2, pp. 22 [in English].
70. Sutton, H.I. (2020n). These 4 Aircraft Types Are the Most Common with Narco Smugglers. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2020/07/05/these-4-aircraft-types-are-the-most-common-with-narco-smugglers/#1ffb5c426fc5 [in English].
71. Sutton, H.I. (2020o). 5 Ways the Military Hunts Narco Submarines You Don't Hear About. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2020/06/04/5-unseen-eyes-helping-the-navy-hunt-narco-submarines/#5d841fe95e27 [in English].
72. Sutton, H.I. (2020p). twitter.com/CovertShores, ongoing info-channel. Retrieved from: https://twitter.com/covertshores [in English].
73. Sutton, H.I. (2020q). List of Incidents. *Narco Submarine Newsletter*, vol. 1, no. 1, pp. 2 [in English].
74. Sutton, H.I. (2020r). LTTE-Tamil-Tigers-large-semi-submarine: the LTTE "narco submarine". Retrieved from: http://www.hisutton.com/LTTE-Tamil-Tigers-large-semi-submarine.html [in English].
75. Sutton, H.I. (2020s). Narco Submarine: Coast Guard Stop Smugglers in Pacific. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2020/09/10/san-diego-based-coast-guard-stop-narco-submarine-in-pacific/#119c080d5a38 [in English].
76. Sutton, H.I. (2020t). 3 Types of Go-Fast Narco Boats the Coast Guard Faces. *Forbes*. Retrieved from: https://www.forbes.com/sites/hisutton/2020/08/21/3-types-of-high-speed-smuggling-boats-facing-the-coast-guard/ [in English].
77. The Local (2019). Spain breaks up drugs ring run by "Messi of hashish". Retrieved from: https://www.thelocal.es/20190916/spain-breaks-up-drugs-ring-run-by-messi-of-hashisch [in English].
78. The Portugal News (2020). Police intercept sailboat with 1 820 kilos of cocaine. Retrieved from: https://www.theportugalnews.com/news/police-intercept-sailboat-with-1820-kilos-of-cocaine/52842 [in English].
79. Sobot R. (2018). Dramatic moment narco police ram smuggler's boat in high-speed chase before landing. *The Sun*. Retrieved from: https://www.thesun.co.uk/news/8063388/police-narco-boat-chase-chopper-costa-del-sol-beach [in English].
80. Time Magazine. Photo Gallery of Narco-Submarines. Retrieved from: http://content.time.com/time/photogallery/0,29307,2061931_2260133,00.html [in English].
81. UNODC (2007a). West Africa under attack. Retrieved from: https://www.unodc.org/unodc/en/frontpage/west-africa-under-attack.html [in English].
82. UNODC (2007b). Cocaine Trafficking in Western Africa: Situation Report. Retrieved from: https://www.unodc.org/documents/data-and-analysis/Cocaine-trafficking-Africa-en.pdf [in English].
83. UNODC (2012a). Cocaine from South America to the United States. *Transnational Organized Crime in Central America and the Caribbean: a threat assessment* / UNODC, pp. 31–44. Retrieved from: https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf [in English].
84. UNODC (2013). Transnational Organized Crime in West Africa: Report. Retrieved from: https://www.unodc.org/documents/data-and-analysis/tocta/West_Africa_TOCTA_2013_EN.pdf [in English].
85. UNODC (2016). West Africa: Cocaine trafficking and migrant smuggling discussed at prosecutors meeting. Retrieved from: https://www.unodc.org/unodc/en/frontpage/2016/November/west-africa_cocaine-trafficking-and-migrant-smuggling-discussed-at-prosecutors-meeting.html [in English].
86. UNODC (2012b). Transnational Organized Crime in Central America and the Caribbean: a threat assessment. Retrieved from: https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf [in English].
87. UNODC (2019a). World Drug Report 2019. Retrieved from: https://wdr.unodc.org/wdr2019.html [in English].
88. UNODC (2019b). UNODC Annual Report 2018. Retrieved from: https://www.unodc.org/documents/AnnualReport/Annual-Report_2018.pdf [in English].
89. UNODC (2020a). World Drug Report 2020. Retrieved from: https://wdr.unodc.org/wdr2020.html [in English].
90. UNODC (2020b). West and Central Africa, Guinea-Bissau. Retrieved from: https://www.unodc.org/westandcentralafrica/en/guinea-bissau.html [in English].
91. Bureau for International Narcotics and Law Enforcement Affairs of United States Department of State (2018). International Narcotics Control Strategy Report. Volume I: Drug and Chemical Control, March 2018. Retrieved from: https://www.state.gov/wp-content/uploads/2019/04/2018-INCSR-Vol.-I.pdf [in English].

92. Voice of America (2018). UN Reports “Alarming” Trends in Drug Trafficking in Africa. Retrieved from: https://www.voanews.com/africa/un-reports-alarming-trends-drug-trafficking-africa [in English].
93. Voytenko, M. (2018). 1.2 ton of cocaine smuggled on board of GRIMALDI ro-ro ship at Santos. Retrieved from: https://www.fleetmon.com/maritime-news/2018/23297/12-ton-cocaine-smuggled-board-grimaldi-ro-ro-ship-/ [in English].
94. Voytenko, M. (2019). Grimaldi’s ro-ro in record cocaine bust. What’s going on? Retrieved from: https://www.fleetmon.com/maritime-news/2019/26397/grimaldis-ro-ro-record-cocaine-bust-whats-going/ [in English].
95. Voytenko, M. (2020). Cocaine, GRIMALDI’s ro-ro, Dakar – routine scheme. Retrieved from: https://www.fleetmon.com/maritime-news/2020/28593/cocaine-grimaldis-ro-ro-dakar-routine-scheme/ [in English].
96. WCO (2019). Illicit Trade Report 2018. Retrieved from: http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr_2018_en.pdf?db=web [in English].
97. Weerth, C. (2020). Cocaine smuggling by help of narco-submarines from South America to Europe and Africa: a proven case – a last wake-up call for customs services around the world. *Customs Scientific Journal*, no. 1, pp. 37–42 [in English].
98. Wikipedia (2020). Narco-Submarine. Retrieved from: https://en.wikipedia.org/wiki/Narco-submarine [in English].

КОНТРАБАНДА КОКАЇНУ З ПІВДЕННОЇ АМЕРИКИ ДО АФРИКИ ТА ЄВРОПИ: ЗАКЛИК ДО БІЛЬШОГО РОЗУМІННЯ НАЯВНОГО ШЛЯХУ РОЗПОВСЮДЖЕННЯ КОНТРАБАНДИ

Карстен ВЕЕРТ,
головний офіцер митної служби
Головного митного управління міста Бремен,
доцент
Університету прикладних наук у галузі економіки та управління
carsten.weerth@gmx.de
orcid.org/0000-0003-3702-8456

Уже давно відомо, що наркокартелі Південної Америки та злочинні організації використовують напівпідводні швидкохідні катери, наркоторпеди та наркосубмарини для контрабанди кокаїну з Південної Америки до Мексики й далі до Сполучених Штатів Америки. Обсяги торгівлі наркотиками значно зростають, організована злочинність завжди шукає кращі та більш ефективні способи контрабанди в цільові країни. До американських контрзаходів у війні з наркотиками належить використання таких протичовнових технологій, як протичовнова авіація, підводні човни, кораблі берегової охорони. Оскільки війна з наркотиками в США та інших країнах Карибського басейну, Південної і Середньої Америки чинить значний тиск на наркокартелі, вони шукають нові шляхи доставки кокаїну на цільові ринки. У листопаді 2019 року вперше вилучено наркосубмарину, що транспортувала 3 800 кілограмів кокаїну з Південної Америки до Іспанії. Представлена стаття про розбудову потенціалу та довідкові матеріали досліджують газетні й офіційні звіти, а також наукові праці щодо наявних доказів нового трансатлантичного шляху поширення контрабанди з Південної Америки до узбережжя Африки та Європи. Зокрема, досліджено й ретельно обговорено наявні докази трансатлантичних подорожей наркосубмарин із Південної Америки до Європи й Африки та нові розробки влітку 2020 року. У роботі використаний ілюстративний матеріал, створений експертом із нерегулярної морської війни Г. Саттон (H.I. Sutton (Covert Shores)). У висновку в роботі наводиться заклик до підвищення обізнаності, пильності та кращої координації правоохоронних органів (берегової охорони, митних служб, поліції, військово-морських сил) щодо сучасного способу нерегулярної морської війни та контрабанди наркотиків із Південної Америки до Африки та Європи шляхом використання таких протичовнових технологій, як протичовнова авіація, військові кораблі, безпілотники, супутники, а також із залученням військово-морських сил, наприклад берегової охорони, у скоординованих операціях у Європі та Африці з метою боротьби з глобальною контрабандою наркотиків.

Ключові слова: берегова охорона, контртероризм, митна технологія, наркотрафік, заборонені наркотики, нерегулярна морська війна, правоохоронна діяльність, незаконний обіг наркотиків, контрабанда, протичовнові технології, виявлення підводних човнів, організована злочинність, війна з наркотиками.

UDC 351:327.5
DOI https://doi.org/10.32836/2308-6971/2020.2.6

PUBLIC GOVERNANCE OF NATIONAL SECURITY IN THE GEOPOLITICAL DIMENSION

The article deals with the problem of national security in the contemporary world which is greatly influenced by the process of globalization and digitalization. The paper highlights the role of national security in modern state building. The following issue has been of great interest to many outstanding scientists worldwide especially since the beginning of the XXI century. However, the subject matter of national security in the system of public administration has not been clearly defined yet. Therefore, the paper analyzes the approaches to define national security and points out its distinctive features. Moreover, it emphasizes the fact that at the level of national, regional and global relations the concept of national security is often associated with security strategies. Thus, the article puts emphasis on the predominant characteristics that help to distinguish between these two concepts. In addition, the research clarifies the characteristic features of national security as well as state security. Security, like many other categories of social sciences, does not have a conclusive definition. What is more, the category of security has an interdisciplinary significance. Therefore, scientists define it in accordance with the subject matter and the specifics of cognition and research. Nevertheless, many outstanding scholars view security as an anthropocentric category related to man's socialessence and value. Accordingly, security presupposes having freedom from the risk, danger and the threat of change to the worse. Most scientists agree that security is a constituent of every aspect of human life. Consequently, security issues consideration is of great significance. All in all, nowadays it is greatly important to achieve a state of security as our globalized society frequently leads to different challenges and dangers. The results of the research contribute to better understanding of the issue and make it possible to introduce effective mechanisms of public administration in the field of national security.

Key words: security, geopolitics, state security, public administration, national security, national interests, transformational changes.

JEL Classification: H 55, H 56, H 11.

Viktoriia ZAGURSKA-ANTONIUK,
PhD in Political Sciences,
Associate Professor,
Associate Professor at the Department of Economic Security, Public Administration and Management
Zhytomyr Polytechnic State University

1. Introduction

Global change in the process of transformation of pre-industrial societies into industrial ones, and then into high-tech and informatized ones, was accompanied by changes that both directly and indirectly threatened peoples, states and civilization security. Therefore, a characteristic feature of the contemporary world development has been the intensification of transnational processes, in which global problems have become increasingly important. They affect humanity in general and each state (society) in particular, thus conglomerate the contradictions of social development. Dramatic geopolitical changes at the beginning of the 21st century indicate that the world has entered a phase of another global transformation, which may lead to crises and dangers to the world order.

Since early 1990s, the contemporary world has been undergoing the transition to polycentrism, the formation of which is accompanied by an escalation of economic, geopolitical, ethno-confessional, demographic and other contradictions between the power centers of and the world civilization. The 20th century was one of the most tragic and dangerous epochs, as it was marked by the growing confrontation between two antagonistic socio-political systems. However, self-liquidation of one of the components of the bipolar world order did not lead to general peace. On the contrary, having lost the balance due to bipolarity disintegration, civilization has

faced a growing conflict caused by contradictions in the world's leading states national interests as well as emergence of a new threats system to their security. Currently a fundamentally new scientific approach is needed to understand the situations in-depth. It is especially significant for transitional societies that are reviving their statehood, which is greatly associated with the need to ensure reliable national security (Korniievskyi, 2012: 489).

Nowadays there are no conclusive scientific approaches to define the concept "national security". Consequently, a thorough interpretation of the concept in the system of public administration is vitally important for almost all modern societies. It is especially important at the time of geopolitical and global transformations. The adequacy of this interpretation has a great influence on the duration and efficiency of transformation processes, as well as progressive historical development of the societies providing national identity preservation (Kuras, 2014: 233).

The beginning of the XXI century is marked with considerable scientific interest in the problem of national security in the contemporary world and its role in the modern states building. Nonetheless, the subject matter of national security in the system of public administration has not been clearly defined yet. In addition, at the level of national, regional and global relations the concept of national security is often associated with security strategies.

2. Literature review

The problem of national security, systemic principles of its regulation and public administration in particular, has been investigated by many outstanding Ukrainian and foreign scientists V. Gorbulin, O. Vlasyuk, V. Gorovenko, O. Dzioban, B. Parakhonsky, H. Sytnyk, M. Trebin. Many scientists of the National Academy for Public Administration under the President of Ukraine (V. Abramov, S. Borysovych, A. Datsyuk, V. Mandragelya, R. Marutyan, Y. Melnyk and others) have already greatly contributed to the investigation of national security problem.

3. The doctrine of international customs law

In the paper we would like to examine the approaches to define the concept "national security" in the system of public administration. Moreover, it is necessary to determine socio-political subordination of these systems and clarify national security subjectivation and its regulation in the system of public administration.

The concept of "national security" has not been comprehensively defined yet. The category of security has an interdisciplinary importance. Hence, scientists define it in accordance with the subject matter and the specifics of cognition and research. Nonetheless, security is regarded as an anthropocentric category which is related to man's social essence and value. Most scientists agree that security is a constituent of every aspect of human life. Thus, security issues consideration is of great relevance (Sytnyk, 2012; Sytnyk, 2016).

Undoubtedly, there is a linkage between the social functions of development and security. It may be explained by the unity and interdependence of all spheres and types of human activity. Even the ancient Roman philosopher Cicero viewed these functions as fundamental ones in the state and society development: "First of all, nature has granted all the species with the desire to defend themselves <…> avoid everything that seems dangerous and get everything necessary for their life" (Kuras, 2014: 234).

It is important to explain the lexical and etymological meaning of the word "security" which comes from the Latin word "securitas" that means "without any care, guardianship, or sufficient protection". Literally, security means a lack of threats (in English, danger) and a sense of confidence (in English, safety).

Most vocabulary definitions indicate that security refers to a state of confidence, calmness, lack of threat, and protection from danger. In academic dictionary of Ukrainian language issued in 11 volumes the word "security" is interpreted as a state when someone or something is not threatened" (Bilodid, 1970: 137; Shemshuchenko, Babakin, 2004).

It should be noted that in psychology, "threat" means a specific psyche or consciousness state caused by an unfavorable or dangerous phenomenon for a particular person, society, state, etc. The concept of security objectively correlates with the real threat, danger and their destructive consequences.

Security, in its literal sense, is interpreted as a need which may be primary, basic and the main. In the hierarchy of needs, known as Maslow's Pyramid, security takes one of the main positions, along with the fundamental physiological (existential) needs. Thus, security is understood, above all, as freedom from fear. According to Józef Kukulka, an outstanding Polish researcher, a lack of security needs satisfaction

causes harm to individuals, social groups, as it destabilizes their existence and functioning (Kukułka, 1982). Consequently, the tendencies to change dangerous environment and to resist unfavorable changes gain prominence. It becomes inevitably important to use protective resources to restore the sense of security. Thus, it confirms that security is not only a certain state, but also a continuous social process in which the actors try to improve the mechanisms that provide them with a sense of security.

It is now generally accepted that the need for security is a motivation for action and development, owing to the fact that it is impossible to achieve social goals if the need for security is not realized. In general social meaning, the need for security refers to the desire for existence, survival, confidence, stability, independence, and protection of life standard and quality.

On the other hand, security is interpreted as a value, welfare, an exceptionally important belief in achieving goals. For instance, B. Brodier and M. Levy state that security is the main value that conglomerates other values. Many scientists view security as a state (something realistic) or process (a changing phenomenon). Thus, Janusz Stefanowicz emphasizes security dual nature. He states that security is both a state and a process. However, it is not marked by consistency over long periods of time. On the contrary, it depends on forces dynamic distribution (Kukułka, 1982: 29). Although, the prevailing opinion is that security is first and foremost a process. In particular, J. Kukułka confirms that security is not so much a definite state as a continuous social process in which actors try to improve the mechanisms ensuring a sense of security. Therefore, security is not marked by constancy and depends on changing dynamics at different levels of social life (Kukułka, 1982).

It should be mentioned that there are other scientific approaches to define security as a goal, consequence or resource. Though, to some extent it often narrows the phenomenon of security considering it to be a phenomenon peculiar to the period of wars or other social upheavals. As a result, such a limited approach, based solely on military aspects, does not contribute to an accurate and critical analysis of security subjective side.

The expansion of spatial dimension complements the subjective definition of security. According to this criterion, it is possible to distinguish local, subregional, national and global levels of security, which correlate with state and national security level. Thus, despite continuous social and political changes, the state and the nation remain the key categories security system is directly related with.

Recently, there has been wide interest in the approach that linked security with the state and its development. Hence, at the beginning of the XXI century the subjective side of security began to be correlated with the nation.

From social sciences perspective, state security and national security are either identical or interchangeable concepts. However, a few researchers emphasize a significant distinction between these two concepts pointing to differences in the definition of nation and state, despite the theories that define the state as a system in which the nation acquires a substantive status. Although in the culturalist theories of the nation, the state is interpreted as a secondary element in relation to the nation.

Many foreign scholars, Buzan, Viviera, and Vildea in particular, clearly distinguish between the concepts of state and national security. Correspondingly, they consider it unacceptable to identify or replace these categories. Moreover, they prove that the concept of nation is much narrower, although the concept of state stems from it.

After all, national interests development and protection of interpersonal, group, intergroup, interclass levels is the basis and condition for state organization formation and functioning. Therefore, national security is a part of state security as the supreme institution in the society organization.

However, according to some theories, the citizenry is primarily a community united by culture (tradition, language or religion), which can function without a state. Therefore, in English, both terms “national security” and “state security” mean the security of the state as a whole. Although, this concept has a deeper meaning, as it equally implies the territory and the people who live on it. In social sciences, state security is understood primarily as a system of values, which include survival (of the people and the state), political (system, sovereignty) independence, quality of life (at the social, economic and cultural levels).

However, security presupposes much more values such as the state prestige or citizens affairs outside the country. Thus, national security as a category is narrower in its meaning in comparison to state security. It is related to values protection that guarantees people survival especially in the period of statehood loss or outside the country territory. Therefore, national security is believed to protect the internal values of the state, for instance, those that are existential in nature. Consequently, national security is viewed as a

kind of state security. Moreover, due to globalization national security is gaining new features, as it goes beyond the interests of the state, though it does not become a part of international security.

4. Empirical results

The category "national security" originated as a foreign policy and is an entirely American invention. At the country level it was first used in 1904. Theodore Roosevelt, a former US President, used this term in his message to the US Congress to justify the accession of the Panama Canal in the interests of national security (Trebin, 2015: 217). Since then, national security has been the subject of research in the field of political science. Then the term was used in normative legal acts and became the subject matter of legal and social sciences. Additionally, strategic research may be considered as an area of national security issues development. It presupposes a thorough analysis of foreign and domestic policy situation, taking into account a wide range of objective and subjective factors carried out by special institutions commissioned by central government. The results of it are of great importance formaking political decisions (Trebin, 2015: 221).

American tradition to define the concept of national security is based on the theory of national interests. It presents the model of the relationship in which national security is seen as a part of national interests. This model is widely recognized now. It was first introduced by an American W. Lippman. This issue was also of great interest for many other outstanding scientists such as B. Brody. M. Halperin, G. Kahn. G. Kissinger, G. Laswell, G. Morgenthau (Trebin, 2015: 253).

The introduction of the categories "national security" and "national interests" into political and legal circulation resulted in their negative use. Firstly, these concepts referred to illegal and anti-democratic actions. That is, we mean certain inconsistencies in the law-making and law-enforcement aspects of these categories. They have become a convenient tool for international and domestic policy. Their use in the international sphere has its peculiarities. At the beginning of the XX century international law developed into a system that significantly limited the actions of the state. Therefore, it was necessary to find a justification for the restrictions violation. The justification of international law norms negligence by the need to protect national security proved to be quite effective. Unfortunately, the same happened to the category of national security in domestic sphere. In the USA it was also used as an excuse to restrict civil liberties, for instance, the Communist Control Act of 1950, according to which any organization recognized as communist was immediately declared illegal and lost all the rights.

In the USSR such terminology was not used. It appeared only in 1990 with the creation of the National and International Security Fund. This can be probably explained by the fact that the USSR had its own way to justify their illegal actions (Vlasiuk, 2016: 138).

The process of the state interests and security defence is directly related to the state policy implementation, within which specific measures are taken to implement them. Moreover, there is an opinion that national security is the state policy aimed at creating appropriate domestic and international conditions to preserve or strengthen national values. It protects the interests of the people, the state, the society and its members (Vonsovych, 2017: 22).

However, in any interpretation, the terms "security" and "danger" are related to the conditions of a particular object functioning, which is characterized, respectively, by a real or potential threat absence or presence. The state policy is a certain system of appropriate measures, a special management system. It acts as a tool that changes or tries to change the conditions of object functioning, reducing or increasing the threat.

In general, the national security policy in the system of public administration is aimed at reducing and avoiding existing and possible threats to normal state development in accordance with its goals. In addition, it is a part of the national interests of the country.

Considering security and defence transformation threats, which are real challenges in the development of modern Ukraine, it is extremely important to specifically define Ukrainian national security and its direction.

There are several definitions of national security. However, none of them is comprehensive enough. In the encyclopedic edition, national security is understood as the country's ability to preserve sovereignty, political, economic, social and other foundations of public life and to act as an independent subject of international relations (Korniievskyi, 2012: 489). National security refers to the defence of the interests of an individual, state, society, state borders, territorial integrity, socio-political system, cultural values etc.

It implies the defence of everything that corresponds to material and spiritual life of the country against internal and external threats (Shemshuchenko, Babakin, 2004: 386).

From the legislative perspective, the definition of national security is too overloaded with details. Nonetheless, it emphasizes the ability of state-building forces to outline national security issues. Therefore, national security is viewed as the defence of vital interests of a man and a citizen, the society and the state. It ensures sustainable development, well-timed detection, prevention and neutralization of real and potential threats to national interests in such areas as law enforcement, anti-corruption, border activities and defence, migration policy, health care, child protection, education and science, scientific and technical policy, innovation policy, cultural development of the society. It contributes to freedom of speech and information security, social policy and pensions, housing and communal services, financial services market, property rights protection, and securities markets. It facilitates fiscal and customs policy, trade and business, banking services, investment policy, auditing, monetary and exchange rate policy, information protection, licensing, industry and agriculture, transport and communications, information technologies, energy and energy conservation. It administers the functioning of natural monopolies, the use of subsoil, land and water resources, minerals, protection of ecology and the environment and other areas of public administration. Thus, it protects from potential or real threats to national interests (Surmin, 2011).

The Law of Ukraine on National Security of 2018 states that national security of Ukraine implies the defence of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine against real and potential threats (Verkhovna Rada of Ukraine, 2018; Surmin, 2011). Therefore, the key function in national security regulation is entrusted to the system of public administration, which is a particularly important area of activity and law and order establishment.

Public administration is a type of a state activity, the implementation of managerial organizational influence. It is done by means of executive power of the organization of law enforcement, management functions for state integrated socio-economic and cultural development, its individual territories, implementation of state policy in the areas of public life, creating conditions for citizens to exercise their rights and freedoms (Vysotskyi et al., 2008).

5. Conclusions

In conclusion, national security management is a system of extensive causal links between a nation and the need to achieve a state of security in today's globalized world, which constantly generates various types of challenges, threats and dangers. This system, based on national interests and values, is a more complex entity than the system of national security. Thus, the formation of a state management by national security on the basis of treaty and legal regulation is a priority for the development of their own statehood and security for all civilized nations of the world. Therefore, the introduction of effective mechanisms of public administration in the field of national security is a strategic priority for the implementation of domestic and foreign policies of the leading states of the contemporary world in the process of globalization.

References:

1. Vysotskyi, O.Yu., Vysotska, O.Ye., Sharov, Yu.P. (2008). Osnovy derzhavnoho upravlinnia: konspekt lektsii [Fundamentals of public administration: lecture notes], in 2 vol. Dnipropetrovsk: NMetAU, vol. 1, 52 p. [in Ukrainian].

2. Vlasiuk, O.S. (2016). Natsionalna bezpeka Ukrainy: evoliutsiia problem vnutrishnoi polityky: vybrani naukovi pratsi [National security of Ukraine: evolution of domestic policy problems: selected scientific papers]. Kyiv: National Institute for Strategic Studies, 528 p. Retrieved from: http://old2.niss.gov.ua/content/articles/files/Vlasuk-fin-99d56.pdf [in Ukrainian].

3. Vonsovych, O.S. (2017). Natsionalna bezpeka Ukrainy v umovakh suchasnykh heopolitychnykh zmin [National security of Ukraine in the conditions of modern geopolitical changes]. *Naukovyi visnyk Dyplomatychnoi akademii Ukrainy – Scientific Bulletin of the Diplomatic Academy of Ukraine*, issue 24(2), pp. 18–24. Retrieved from: http://nbuv.gov.ua/UJRN/Nvdau_2017_24(2)__5 [in Ukrainian].

4. Sytnyk, H.P. (ed.) (2016). Hlobalna ta natsionalna bezpeka: pidruchnyk [Global and national security: textbook]. Kyiv: National Academy of Public Administration under the President of Ukraine, 784 p. Retrieved from: https://www.minregion.gov.ua/wp-content/uploads/2017/11/Navchalniy-posibnik-GPNB.pdf [in Ukrainian].

5. Kuras, A.I. (2014). Natsionalna bezpeka Ukrainy: viiskovo-politychni paradyhmy [National security of Ukraine: military-political paradigms]. *Naukovi zapysky Instytutu politychnykh i etnonatsionalnykh doslidzhen imeni I.F. Kurasa – Scientific notes of I.F. Kuras Institute of Political and Ethnic Studies*, issue 2(70), pp. 230–240. Retrieved from: https://ipiend.gov.ua/wp-content/uploads/2018/07/kuras_natsionalna.pdf [in Ukrainian].

6. Surmin, Yu.P. (2011). Systema [System]. *Entsyklopediia derzhavnoho upravlinnia [Encyclopedia of Public Administration]*, in 8 vol. / Yu.V. Kovbasiuk (ed.). Kyiv: National Academy of Public Administration under the President of Ukraine, vol. 2: Metodolohiia derzhavnoho upravlinnia [Methodology of public administration] / Yu.P. Surmin, P.I. Nadolishnii (eds.), pp. 561–565 [in Ukrainian].

7. Sytnyk, H.P. (ed.) (2012). Gosudarstvennoe upravlenie v sfere natsional'noy bezopasnosti: slovar'-spravochnik [Public administration in the field of national security: dictionary-reference book]. Kyiv: National Academy of Public Administration under the President of Ukraine, 496 p. [in Russian].

8. Trebin, M.P. (ed.) (2015). Politolohichnyi entsyklopedychnyi slovnyk [Political science encyclopedic dictionary]. Kharkiv: Pravo, 814 p. [in Ukrainian].

9. Korniievskyi, O.A. (2012). Natsionalna bezpeka [National security]. *Politychna entsyklopediia [Political encyclopedia]* / Yu.A. Levenets, Yu.I. Shapoval (eds.). Kyiv: Parlamentske vydavnytstvo, pp. 489–490 [in Ukrainian].

10. Shemshuchenko, Yu.S., Babakin, V.D. (eds.) (2004). Politolohichnyi entsyklopedychnyi slovnyk [Political science encyclopedic dictionary]. Kyiv: Heneza, 736 p. [in Ukrainian].

11. Verkhovna Rada of Ukraine (2018). Proekt Zakonu pro natsionalnu bezpeku Ukrainy vid 28 liutoho 2018 roku № 8068 [Draft Law on National Security of Ukraine of February 28, 2018 № 8068]. *Baza danykh "Zakonodavstvo Ukrainy": ofitsiinyi vebportal Verkhovnoi Rady Ukrainy – Database "Legislation of Ukraine": official web portal of the Verkhovna Rada of Ukraine*. Retrieved from: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63531 [in Ukrainian].

12. Bilodid, I.K. (ed.) (1970). Slovnyk ukrainskoi movy [Dictionary of the Ukrainian language], in 11 vol. Kyiv: Naukova dumka, vol. 1. Retrieved from: http://sum.in.ua/s/bezpeka [in Ukrainian].

13. Kukułka, J. (1982). Bezpieczeństwo a współpraca europejska: współzależności i sprzeczności interesów [Security and European cooperation: interdependencies and conflicts of interest]. *Sprawy międzynarodowe – International affairs*, no. 7, pp. 29–35 [in Polish].

ПУБЛІЧНЕ УПРАВЛІННЯ НАЦІОНАЛЬНОЮ БЕЗПЕКОЮ В ГЕОПОЛІТИЧНОМУ ВИМІРІ

Вікторія ЗАГУРСЬКА-АНТОНЮК,
кандидат політичних наук, доцент,
доцент кафедри економічної безпеки, публічного управління та адміністрування
Державного університету «Житомирська політехніка»
kgn.zvf@gmail.com
orcid.org/0000-0003-3334-4494

Проблемою національної безпеки в сучасному світі та її роллю у формуванні сучасних держав цікавилося багато вчених у різних наукових галузях, особливо з початку XXI століття. Проте в дослідженнях немає однозначно й конкретно визначеного предмета національної безпеки в системі державного управління. У наукових пошуках, присвячених цій проблематиці, часто ототожнюються поняття національної безпеки та стратегії безпеки на рівні національних, регіональних і глобальних відносин.

Безпека, як і багато інших теоретичних категорій у суспільних науках, не має єдиного й чіткого визначення, адже ця категорія має міждисциплінарне значення. Тому представники різних наукових галузей трактують її відповідно до предмета вивчення свого напряму та специфіки пізнання й дослідження. Однак, незважаючи на це, більшість дослідників згодні з тим, що безпека є категорією антропоцентричною – пов'язаною із суспільною сутністю та цінністю людини. Адже в кожній сфері та кожному аспекті людського життя можна розглядати проблему безпеки.

Сьогодні немає стійких наукових стереотипів щодо визначення феномену національної безпеки, тому життєво необхідним практично для всього сучасного суспільства є фундаментальне обґрунтування цього феномену в системі державного управління. Особливого значення це набуває в умовах геополітичних і глобальних трансформацій. Від ступеня адекватності такого обґрунтування залежать тривалість та ефективність трансформаційних процесів, поступальний історичний розвиток суспільства за умов збереження національної самобутності.

Основною метою статті є здійснення аналізу визначень поняття «національна безпека» в системі державного управління. Також варто визначити суспільно-політичне підпорядкування цих систем, суб'єктивацію національної безпеки та її регулювання в системі державного управління.

Ключові слова: безпека, геополітика, державна безпека, публічне управління, національна безпека, трансформаційні зміни.

UDC 339.543
DOI https://doi.org/10.32836/2308-6971/2020.2.7

ANALYSIS OF CURRENT PROBLEMS ON CUSTOMS VALUATION IN UKRAINE AND POSSIBLE MEASURES COMBAT FRAUD BY CUSTOMS VALUATION IN THE CONTEXT OF GATT AND WTO AGREEMENT ON CUSTOMS VALUATION

*The **objectives** of this research is to analyze the main problematic issues arising in the field of customs valuation and assumed negative effects of their insufficiently proper solution as well as modern effective methods of combating fraudulent declaration of customs value of imported goods.*
*Economic and revenue collecting problems caused by the under – invoicing of the value of goods have been identified by the applied general scientific theoretical **methods** of research, such as analysis, generalization and classification. Conditions for the implementing of new methods of customs value control of imported goods, elaborated on the basis of the latest WCO strategy on customs development, are considered. Successful cases and practices of other countries on overcoming and stopping such fraudulent actions of importers and the possibility of introducing their individual elements into the practical activities of the customs authorities of Ukraine have been studied. Factors that complicate the process of implementing the recommendations of international organizations as well as practice of other countries have been identified.*
***Results.** The most effective ways of problem solving have been defined, among them implementing of international provisions concerning customs valuation into the national law of Ukraine. The needs of elaboration of a national customs valuation database as an effective tool of the risk management system have been evidenced.*
***Conclusions.** It is proposed to implement effective elements of more workable and efficient methods of targeted customs value control in the context of GATT and Customs Valuation WTO Agreements which should be used in Ukraine to simplify customs formalities for legal trade, as well as to prevent significant under-invoicing of imported goods and prevent misdeclaration. Priorities have been defined to enhance the efficiency of customs value control measures.*

Key words: under-invoicing, financial fraud combatting, national customs valuation database, implementing provisions of WTO Customs Valuation Agreement.

JEL Classification: F10, K34, K49, F19.

Anton ZHUCHKOV,
Head of the Division for Normative and Methodological Support for Customs Payments Customs Payments Administering Department of the State Customs Service of Ukraine
Zhuchkov@ukr.net
orcid.org/0000-0002-7803-162X

1. Introduction

Combating customs and financial fraud, money laundering, tax evasion when importing or exporting goods is an actual problem world-wide. Both developed and developing countries face numerous cases of fraud that destabilize the economic situation, national and global markets and reduce tax revenues, lead to significant budget losses, and significantly impede legitimate trade.

It's not disputable that Customs plays the essential role both in combating fraud and cross-border illicit trade and in the protection of national economies. Customs monitors all international cross-border movements and continues to ensure that all duties are paid. In the recent years it's getting more difficult for customs services to strike a balance between assisting the legal trade, trade procedures facilitating and carrying out customs controls.

Among the main critical areas of Customs enforcement are revenue risks, and commercial fraud activities such as under-valuation, misuse of origin and preferential duties, misclassification and drawback fraud (WCO, 2017).

2. Review of current situation and difficulties for customs and business

Importance of custom duties as a source of the budget financing could be hardly overestimated. In Ukraine, as well as in many other

countries, customs duties draw up not less than 35% of the state budget (Sytnyk, Burzak, 2017). Evasion of customs duties increases the customs gap, poses a significant trouble for national financial interests and complicate legitimate business while favoring unequal competition.

As a result of misdeclaration to evade taxes or reduce tax liabilities when importing goods, a significant "shadow" segment has formed in the Ukrainian trade system, which poses a serious threat to Ukraine's economy, causes losses for legal traders and domestic producers.

However, today the so-called "fight" against these economic crimes, unfortunately, is actually taking place in the environment of legal small and medium-sized businesses through the usual administrative pressure by government agencies, including burdensome customs controls, which imperil the international trade operations. Cross-border traders are confronted with increased delays, uncertainty and higher trade costs. Facing with burdensome Customs processes, companies often avoid making new investments or expanding their presence in the respective country. Harmonized and predictable Customs valuation rules are essential to smooth trade flows and apparent deviations from international agreed upon rules and regulations would stifle international trade and economic growth (ICC, 2015).

Trade facilitation policy is recognized in today's world as a necessary factor in the concept of sustainable development, as it provides the best opportunity, both for the country as a whole and for economic operators directly, to realize the potential benefits of expanded market access, reduced tariffs, reduced transport costs and improving communications. Customs administrations are an important component of this process, so they are considered "catalysts" of economic development. Well-designed programs aimed at improving the efficiency of customs administrations can bring significant benefits by facilitating the integration of developing countries into the world trade system.

To implement its main functions in the direction of facilitating legal trade operations, ensuring the trade process at the global level, the implementation of effective targeted control customs must respond to modern conditions and new requirements of the business community

The orders of the Cabinet of Ministers of Ukraine dated December 27, 2018 № 1101 "On approval of conceptual areas of reforming the system of bodies implementing state tax and customs policy" and May, 13 2020 № 569-r "Some issues concerning conceptual directions of reforming the system of bodies implementing state customs policy" stipulate that promoting the effective collection of customs payments involves, among other areas, modernization of customs valuation control system.

Enhancing customs valuation control is the relevant and consequent decision, as this allows to prevent both violations when providing of inaccurate information to customs as well as illegal cross-border money movement due to the during customs clearance of goods.

The most relevant measure is to restore the general principles of customs valuation, provided for in the General Agreement on Tariffs and Trade (hereafter – GATT) and, in the Agreement on the Application of Article VII of the GATT (hereafter – Customs Valuation Agreement), and implement them completely into national law. Customs valuation should be based on simple, fair and transparent criteria of commercial practice to enable the business to determine customs value on its own.

Restrictions set in the Agreements are aimed to build a uniform and clear mechanism which is focused on meeting the needs of international trade and enabling the customs to perform its relevant functions to prevent fraud.

Non-compliance with certain principles and concepts of GATT and Customs Valuation Agreement in the customs legislation of Ukraine as well as absence of some of them has led, as one of the main factors, to number of problems in trade activities and made so called additional trade barriers which is negatively affecting the current economic situation, investing and both economic and social development.

According to Article VII of the GATT (paragraph 1), the contracting parties ***are obliged not only to*** recognize the validity of the general principles of valuation ***but also implement them*** (as they undertake to give effect to such principles), in respect of all products subject to duties or other charges or restrictions on importation and exportation based upon or regulated in any manner by value. Moreover, they shall, upon a request by another contracting party review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles.

One of the fundamental principles of GATT's approach is that customs value cannot be calculated using the selling price in the country of importation of goods produced in such country, the price of goods on the domestic market of the country of exportation as well as arbitrary or fictitious values. Otherwise it can cause use of "minimum", "indicative" prices or "special value tables", as the case was in Ukraine in

recent years, despite the application of reference pricing is prohibited by the Agreement provisions, as it can lead to the misuse of valuation system provided by WTO.

This approach was definitely condemned by the International Chamber of Commerce (hereafter – ICC) at the World Trade Organization's (hereafter – WTO) informal workshop on valuation databases and reference pricing in Geneva in October, 2014 where ICC was the representative of the trade community. ICC's Representative Mark Neville, a member of the ICC Commission on Customs and Trade Facilitation, raised concerns on the proliferating misuse of valuation databases. While acknowledging that national valuation databases can provide a useful tool for risk assessment, Mr. Neville recounted traders' experience and provided a number of country examples in which WTO members were using valuation databases to set reference and minimum prices – a practice prohibited by Article 7 of the WTO Customs Valuation Agreement. "These practices are in violation of the positive basis of the price actually paid or payable which is the core principle of transaction value under the WTO Customs Valuation Agreement", – was stated (ICC, 2015).

3. Outline of the most common difficulties causing impediments for the importers

Most of the complications arisen in the trade practice in Ukraine are connected with the insufficiency of the implementation of GATT's approach in the national legislation which, unfortunately, has significantly contributed to considerable difficulties in the control functions performing by Customs authorities and undesirable procedure delays. This situation has been constantly dispraised by the business community.

Among the most significant inconsistencies with the internationally established provisions of WTO Agreements the following should be mentioned.

– According to item 2 of Article VII GATT the value of imported merchandise for customs purposes should be based on actual value, namely the price at which, at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions.

An extremely negative factor influencing business is the fact that national legislation lacks certain provisions of this principle, which are set out in the Annex 1 "Notes and Supplementary Provisions" ad Article VII of the GATT.

First, when determining the actual value on the basis of an invoice price, with non-included charges for legitimate costs which are proper elements of "actual value", an exclusive discount or other reduction of the normal competitive price must be taken into account.

Secondly, it is very important that the term "normal course of trade in fully competitive conditions" means a trade relationship exclusively between independent buyers and sellers. That is, for control purposes the customs value of goods in question must be compared not only with similar conditions of sale and import of goods. The main thing is that only the customs value should be taken into account for comparison which was determined under the provisions of article 1 of Customs Valuation Agreement, and no other.

Third, to ensure compliance with the standard of fully competitive conditions special discounts, for example for exclusive agents, should not be taken into account.

– The next provision is that customs value should not include the amounts of domestic taxes in the country of origin or export that are refunded upon import, for example VAT.

In order to comply with this principle, it is not possible to compare, as various supervising state authorities and sometimes customs houses do, the customs value declared by the declarant with the prices of such goods offered for free sale on the domestic market in the country of export or origin.

– The next principle states that customs valuation cannot be used to combat dumping.

Unfortunately, absence of this norm in the Ukrainian legislation allows consciously speculating on the concept of domestic producers' protection or balance of payments deficit. In this case, the customs value of imported goods is considered to be one of the regulators and means of tariff regulation. This approach harms primarily domestic producers, who instead of creating high-quality goods, follow the path of unfair competition with imported goods. In addition, it pushes out cheaper imported goods, which are in great demand due to the low purchasing power of most Ukrainians as well as contributes to the increase of "shadow" segment in the domestic consumer market.

In the current situation, when, unfortunately, the basic principles of customs valuation and customs control are turned upside down, economic operators can never know in advance what awaits them during the declaration and customs clearance of goods, to reduce the risks and negative impact on business and reputation, which often causes direct losses. The non-transparency of legislation, as well as, unfortunately, misunderstanding, and often ignoring, of the basic principles of customs valuation has the effect of hindering

(instead of facilitating) of the world trade, leading to a decrease in imports of goods into the country. And in our case – to the collapse of small and medium-sized enterprises, due to the incorrect application and use of concepts and principles of international trade in domestic tax law and by tax authorities, in particular.

In 2014, a special Sea Port Study was undertaken by European Union Border Assistance Mission to Moldova and Ukraine (EUBAM, 2015). The detailed review of control procedures undertaken during the Port Study has produced a number of recommendations based upon the gaps identified, one of which was customs valuation control procedure. Each recommendation has been assigned an identifying letter to denote a level of priority: High (H), Medium (M) and Low (L). All the reports indicate that Customs in particular encounter and continue to face problems with obtaining and determining accurate values and definitive tariff classifications, despite the application of WTO valuation rules.

So the Recommendation on problem at issue stated that valuation procedures need to be developed further, kept under constant management review and administered in accordance with national provisions based primarily on transaction value and the WTO agreement. (H) In addition, procedures established by the State Fiscal Service must ensure that customs valuation is transparent, objective and verifiable. The importance of implementing the recommendations has been emphasized by the signing of the EU – Ukraine Association Agreement, and with establishment of a Deep and Comprehensive Free Trade Area (hereafter – DCFTA) which came into force in January 2016. German Advisory Group (Institute for Economic Research and Policy Consulting) also has studied progress achieved by DCFTA implementation in Ukraine (Policy Paper Series, Berlin, Kyiv, November 2016).

4. Priority actions to be taken towards intensifying the performance of customs valuation control and assisting business

The most needed changes and additions to the customs legislation of Ukraine should be proceeded in the context of providing clear definition of concepts related to customs value and customs valuation of traded merchandise.

Among them the following should be mentioned:

1. Unnecessary or inappropriate rules should be removed, such as the customs value of goods for customs regimes other than those involving the collection of customs duties.

It is fundamentally important to point out the certain difference exists between the uses of terms “import” and “export” which in the international agreement mean only the direction of movement of merchandise into the country or abroad, and in Ukraine denote the customs regime. It is also important to understand that customs valuation must be calculated only for taxable goods. Therefore, there is no reason to determine and, respectively, to control the customs value of goods in transit, including domestic (because in this case, the control of the correctness of determining the customs value of goods should be carried out by the customs office of destination). It is also incorrect to determine customs valuation in cases of export of goods for which no export duties or relevant restrictions are set. In most countries, as a rule, when commodities are declared for export in other countries the column “customs value” is not filled in customs declarations, so it is impractical to require submitting export declaration of the country of departure (origin) as a proof of customs value of goods imported into Ukraine.

2. Unambiguous, simple and transparent mechanisms (including schemes, procedures, instructions) are to be elaborated as well as uniform approach to determine customs value, valuation procedure and control of it (uniform approach for business and customs). Best way to introduce it is by involving businesses to discussion, public consultation, etc. to ensure the transparency and specify the well-defined criteria.

3. Specific rights and powers of business and customs must be define and managed appropriately. In particular, for business: determination, declaration, confirmation of customs value, etc., and for customs authority: control of value reliability, decision on acceptance or necessity of correction, powers to verify information and documents, right to doubt and obligation to justify and prove the objectivity of such doubts, as well as the need for correction or verification in certain cases when the customs value is determined by customs.

4. Measures to implement the indisputable right (which is now defined as limited) to release goods for free circulation in case of proved doubts of customs or necessity to determine the customs value, in particular to specify guarantors of customs payments, which can be approved not only by customs authorities but also by other state bodies, for instance, National Bank of Ukraine. There can be insurance companies or independent financial agents accredited in accordance with legislation in force. The next step is to specify mechanism to provide the free choice of form of guarantee.

5. Customs authority should specify the minimum required package of supporting documents (the same for all economic operators, without granting preferences) and define an exhaustive list of grounds and cases of possible doubts of customs authorities about the reliability of the declared customs value (or its components) or acceptability of a transaction value as well as the need to check the correctness of customs valuation.

6. Special access should be provided for economic operators for information available or obtained by customs concerning product markets, price trends, impersonal price information in the customs base for specific goods, including decisions on customs valuation, sources of price information.

7. The certain clear criteria (at least general) must be outlined which can be used to compare customs procedures and goods, the value of which is in doubt or adjusted.

8. The particular mechanism should be specified by the customs authority to allow the economic operators to adjust customs value because of their own decision made by the businesses in specific cases (possible errors or changes in the terms of the agreement on the goods, etc.).

9. An obligatory rule must be implemented in the appropriate section of the Customs Code on the priority application of direct rules of international law (GATT, Customs Valuation Agreement), in case of disputed or uncertain cases or situations.

The study of current situation in other countries has highlighted the fact that detecting customs value fraud, under- and over-invoicing is still of vital importance not only in developing countries, where customs revenue collection is a main source of national income.

Highlights of research conducted by Global Financial Integrity for the year 2015 using the Direction of Trade Statistics dataset from the International Monetary Fund (hereafter – IMF) show that, for example, the top quintile (30) of countries, ranked by dollar value of illicit outflows, includes not only resource rich countries such as South Africa ($10,2 billion) and Nigeria ($8,3), but also European countries including Turkey ($8,4 billion), Hungary ($6,5 billion) and Poland ($3,1 billion) as well as Latin American nations Mexico ($42,9 billion), Brazil ($12,2 billion), Colombia ($7,4 billion) and Chile ($4,1 billion). Asian states in the top 30 countries of this category include Malaysia ($33,7 billion), India ($9,8 billion), Bangladesh ($5,9 billion) and the Philippines ($5,1 billion).

Trade misinvoicing is one of 4 known methods of moving money illicitly across borders, which involves the deliberate falsification of the value, volume or quality of an international commercial transaction of goods or services by at least one party to the transaction (such as commercial tax evaders, for example). According to IMF Trade Misinvoicing methodology, trade misinvoicing is a form of fraudulent manipulation made possible by the fact that trading partners write their own trade documents, or arrange to have the documents prepared in a third country (typically a tax haven) (Global Financial Integrity, 2019).

Evidently, under-invoicing occurs when invoice price of goods which should be accepted as transaction value by customs authorities is less than the price actually paid. It is aimed to evade customs duties (if ad valorem), reduce tax base for VAT, to avoid limitations or other regulatory requirements for imported merchandise depending on their value. It can also be connected with dumping to drive out producers in domestic market or smuggling goods into a country to avoid paying taxes and fees at all.

It can't be left out of focus, that overpriced and undervalued invoices pose difficulties for customs services, distort market and statistical data, violate normal trade and break rules of equal competition. Consequently, the correct determination of duties and taxes depends to a large extent on the fact that many customs administrations do not have access to relevant data and reliable resources to establish a fair price for many types of goods.

At the same time, most countries, including Ukraine, face certain obstacles, such as limited administrative, informational and technical resources. The availability of reliable sources of price information, the legal status of which is not in doubt, is an important element of the strategy of reforming the customs valuation control system.

The development and use of the valuation database should be in accordance with the risk assessment and management procedures set out in the WCO Risk Management System Guidelines. The risk assessment mechanism should ensure selectivity and targeting, i.e. the customs authority should selectively compare the declared value (prices of goods) either with individual prices for similar goods available in the database or with the average price calculated from a certain number of customs clearance of such goods (WCO, 2004).

International organizations, such as Global Financial Integrity, also recommend a number of steps that governments and other international regulators can take in a first line to develop greater financial transparency and curtail illicit outflows, including:

1. Deliberate trade misinvoicing for the purpose of evading or avoiding VAT taxes, customs duties, income taxes, excise taxes, or any other form of government revenues should be made illegal.

2. Customs agencies should treat trade transactions involving a tax haven with the highest level of scrutiny.

3. Governments should significantly boost their customs enforcement by equipping and training officers to better detect intentional misinvoicing of trade transactions, particularly through access to real-time world market pricing information at a detailed commodity level. (Global Financial Integrity, 2019).

So, it is one of real challenges for Ukrainian customs reforming, to establish a new system of customs valuation control as well as new fair prices database formed on national customs declarations database.

5. Conclusions

Therefore, summarizing the above, and based on successfully implemented cases it can be noted, that it is actually possible to achieve proper and complete taxation of imported goods by consequent solving the following interrelated tasks:

Task 1 – To determine groups of goods that provide the largest revenues to state budget, taking into account changes in the global and regional economies, market tendencies and elaborate national database on commodity prices and commodity markets reference. Its use should be enabled for customs purposes and in restricted area – for economic operators. Such database could be integrated into national customs risks management system as a tool for automated control, on the one hand, and, on the other hand, for customs formalities facilitation (WCO, 2004). It should contain automatically formed numerical values which are reliable estimates calculated of fairly and appropriately declared prices of the traded products. The said estimates are outlier – free statistically detected values from custom declarations and are to be used as indicators of risk management system for customs valuation control at the moment of the customs formalities or for post-audit procedures and as reliable evidence in case if declared price is in doubt.

Task 2 – To maintain new effective methods of customs control ensuring the proper VAT and customs duties collection provided that radical changes will be made in approaches to customs risks profiling, analysis and management in order to make them more functional and efficient. Customs post-audit control must be completely implemented into national customs legislation based on international norms and rules, including through the exchange of best practices on the development of WTO standards.

Task 3 – The basis and methods of determining the customs value must be stable and sufficiently publicized to enable businesses to determine customs value with sufficient confidence. In should be emphasized that priority application of direct rules of international law (GATT, Customs Valuation Agreement), in case of disputed or uncertain cases or situations, are beyond dispute.

Customs valuation should be based on simple and fair criteria of commercial practice, so that business has more stability and predictability in the customs procedures, and is sure that its operations are not dependent on changes in the customs regulation.

References:

1. WCO (2020). The WCO issues its 2019 Illicit Trade Report. Retrieved from: http://www.wcoomd.org/en/media/newsroom/2020/july/the-wco-issues-its-2019-illicit-trade-report.aspx [in English].

2. ICC (2015). ICC Policy Statement on the Misuse of Customs Valuation Databases. Retrieved from: https://iccwbo.org/publication/icc-policy-statement-on-the-misuse-of-customs-valuation-databases/ [in English].

3. EUBAM (2015). Odessa & Illichivs'k Sea Port Study: European Union border assistance mission to Moldova and Ukraine. Retrieved from: http://eubam.org/wp-content/uploads/2015/11/20150225153516328471Port_Study_in_English.pdf [in English].

4. Global Financial Integrity (2019). Illicit Financial Flows to and from 148 Developing Countries: 2006–2015. Retrieved from: https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wp-content/uploads/2019/01/IFF-Report-2019_11.18.19.pdf?time=1599909165 [in English].

5. WCO (2017). Valuation database as a risk assessment tool: Ecuador, India and Kenya Customs share their experience. Retrieved from: https://mag.wcoomd.org/magazine/wco-news-79/valuation-database-as-a-risk-assessment-tool-ecuador-india-and-kenya-customs-share-their-experience/ [in English].

6. WTO (1994a). Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994. Retrieved from: https://www.wto.org/english/docs_e/legal_e/20-val_01_e.htm [in English].

7. WCO (2004). Guidelines on the development and use of a national valuation database as a risk assessment tool. Retrieved from: http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/guides/guidelines_national_db.pdf?db=web [in English].

8. Sytnyk, N.S., Burzak, O.P. (2017). Analiz efektyvnosti protsedur mytnoho kontroliu [Analysis of the effectiveness of customs control procedures]. *Naukovyi visnyk Khersonskoho derzhavnoho universytetu. Seriia "Ekonomichni nauky" – Scientific Bulletin of Kherson State University. Economic Sciences Series*, issue 23(3), pp. 115–118 [in Ukrainian].

9. FATF/OECD (2008). Best Practices on Trade Based Money Laundering. Retrieved from: https://www.amlc.nl/wp-content/uploads/2018/07/BPP-Trade-Based-Money-Laundering-2012-COVER.pdf [in English].

10. Verkhovna Rada of Ukraine (2012). Mytnyi kodeks Ukrainy: Zakon Ukrainy vid 13 bereznia 2012 roku № 4495-VI [Customs Code of Ukraine: Law of Ukraine of March 13, 2012 № 4495-VI]. *Baza danykh "Zakonodavstvo Ukrainy": ofitsiinyi vebportal Verkhovnoi Rady Ukrainy – Database "Legislation of Ukraine": official web portal of the Verkhovna Rada of Ukraine*. Retrieved from: https://zakon.rada.gov.ua/laws/show/4495-17#Text [in Ukrainian].

11. WTO (1994b). General Agreement on Tariffs and Trade 1994. Retrieved from: https://www.wto.org/english/docs_e/legal_e/06-gatt_e.htm [in English].

12. WCO (1996). Brief guide to the customs valuation agreement, third edition. Brussels: World Customs Organization. Retrieved from: https://www.jacustoms.gov.jm/sites/default/files/docs/BriefGuidetotheCustomsValuationCode.pdf [in English].

13. Keen, M. (2003). Changing Customs: Challenges and Strategies for the Reform of Customs Administration. Washington, D.C.: International Monetary Fund, 201 p. [in English].

14. Molenaar, J.W. et al. (2016). Fairness in trade matters for sustainability: an impact evaluation of Fairtrade's supply chain interventions. Retrieved from: https://www.fairtrade.org.uk/wp-content/uploads/legacy/doc/Fairness-in-trade-matters-for-sustainability.pdf [in English].

АНАЛІЗ АКТУАЛЬНИХ ПРОБЛЕМ ІЗ МИТНОЇ ОЦІНКИ В УКРАЇНІ ТА ПЕРСПЕКТИВНІ ЗАХОДИ БОРОТЬБИ З НЕДОСТОВІРНИМ ДЕКЛАРУВАННЯМ МИТНОЇ ВАРТОСТІ ПІД ЧАС МИТНОГО ОФОРМЛЕННЯ ТОВАРІВ У КОНТЕКСТІ НОРМ І ПРИНЦИПІВ МІЖНАРОДНОГО МИТНОГО ЗАКОНОДАВСТВА

Антон ЖУЧКОВ,
начальник відділу нормативно-методологічного забезпечення з питань митних платежів Департаменту адміністрування митних платежів Державної митної служби України
Zhuchkov@ukr.net
orcid.org/0000-0002-7803-162X

Метою статті *є аналіз основних проблемних питань, що виникають у сфері митної оцінки, та можливих негативних наслідків не досить ефективного їх вирішення, а також визначення сучасних ефективних методів боротьби з недостовірним декларуванням митної вартості під час митного оформлення товарів. Завдяки застосованим загальнонауковим теоретичним* ***методам*** *дослідження (наприклад, аналізу, узагальненню та класифікації) визначено основні елементи економічної небезпеки внаслідок недостовірного декларування вартості товарів. Розглянуто передумови запровадження нових методів контролю за визначенням митної вартості товарів в разі імпорту, розроблених на основі сучасної стратегії розвитку митної справи Всесвітньої митної організації. Досліджено успішні кейси та практики зарубіжних країн щодо подолання і припинення неправомірних дій імпортерів та можливості впровадження окремих їх елементів у практичну діяльність митних органів України. Виявлено чинники, які ускладнюють процес упровадження рекомендацій міжнародних організацій з огляду на практику окремих країн світу.*

Результати. *Визначено найбільш ефективні напрями врегулювання виявлених проблем, зокрема шляхом доповнення законодавства України відповідними нормами та його апроксимації у відповідній частині до міжнародних норм і правил у сфері митної оцінки. Аргументовано доцільність запровадження національної бази даних щодо митної вартості товарів як ефективного інструменту системи управління ризиками.*

Висновки. *Запропоновано впровадити сучасні елементи автоматизованого митного контролю з метою спрощення митних формальностей для легальної торгівлі, запобігання суттєвому заниженню вартості товарів та унеможливленню недостовірного декларування в разі їх імпорту, а також визначено першочергові завдання щодо підвищення ефективності здійснення контролю митної вартості.*

Ключові слова: імпорт, боротьба з економічними злочинами, митна оцінка, національна база даних, автоматизований митний контроль.

Customs Scientific Journal

№ 2 / 2020

Формат 60x84/8. Ум.-друк. арк. 7,44. Наклад 300 прим. Замов. № 1120/320.
Гарнітура Times. Папір офсет. Цифровий друк.
Підписано до друку 30.09.2020.

Друкарня – Видавничий дім «Гельветика»
65101, Україна, м. Одеса, вул. Інглезі, 6/1
Телефон +38 (048) 709 38 69,
+38 (095) 934 48 28, +38 (097) 723 06 08
E-mail: mailbox@helvetica.com.ua
Свідоцтво суб'єкта видавничої справи
ДК № 6424 від 04.10.2018 р.

Customs Scientific Journal

№ 2 / 2020

Format 60x84/8. Printer's sheet 7,44. Circulation 300 copies. Order No 1120/320.
Typeface Times. Offset paper. Digital printing.
Authorized for printing as of 30.09.2020.

Publishing House "Helvetica"
6/1 Inhlezi St., Odessa, 65101, Ukraine.
Telephone: +38 (048) 709 38 69,
+38 (095) 934 48 28, +38 (097) 723 06 08
E-mail: mailbox@helvetica.com.ua
Certificate of a publishing entity ДК No 6424 dated 04.10.2018