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Maciej Gliński

Faculty of Political Sciences, University of Wrocław

China and the Ukrainian Crisis

Abstract

The recent developments in Ukraine commonly known as the Ukrainian Crisis have shaken the public opinion and the media worldwide by putting into question the very foundations of post-Cold War period of relative peace in Europe. The crisis revealed the (in)ability of the major political powers to adequately react for such unexpected scenarios. This article assesses Chinese reaction to Crimea's independence and its later incorporation into Russia by examining China's political and economic interests. Thanks to comparisons drawn to Beijing standpoint on two recent cases of proclamations of independence the key factors of China's policy are revealed, the most important being the principle of non-interference. The Author believes that due to globalization and increasing influence on the international level the foundations of foreign policy of China will soon be challenged.

Keywords: Chinese foreign policy, Ukrainian crisis, International Law, Crimea

1. Introduction

In winter 2013 Ukraine became a scene of political unrest widely covered by Polish and world media. With the Yanukovich escape to Russia the initial protests and turmoil turned into a matter of international politics. Several main players were active on this political chessboard: The European Union (epitomized by Germany while France and the United Kingdom remained neutral to most extent), the United States of America and Russia: the main troublemaker as seen in the West.

However, most of initial studies tend to underestimate the role of yet another emerging superpower – China. Chinese involvement, though much more discreet and cautious, attracted attention in both Moscow and Washington. Notably, both sides of the conflict (Russia vs. the West plus Ukraine) announced that China took their side in the struggle over Crimea. The mere (premature) triumphant rhetoric that both parties appealed to shows the importance of Chinese support.

The issue brought up with this paper is very recent therefore there is virtually no scientific literature to cover it. The author refers to online newspapers, interviews and press releases as the main sources of information. As the title itself implies, the main focus of this article will be China's reaction to recent developments in Crimea. The overall view over the Ukrainian protests and recent shift of power are outside the scope of this paper, however to a limited extent they will be referred to as long as they provide a valuable background.

2. Key terms and definitions

In order to maintain scientific character of this article and avoid controversy over definitions it is essential to clearly define terms used hereafter. The crucial concepts of this paper are diplomatic recognition, secession and incorporation.

As a matter of fact, diplomatic recognition refers to wider spectrum of events than to recognition of independence alone¹. Nevertheless for the purpose of this article a narrow definition will be

¹ Talmon, Stephan, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile*, Oxford, Clarendon Press, 1998, p. 4.

used. When a state is diplomatically recognized by another subject of international law the said subject acknowledges a set of facts which triggers certain legal effects off. To put it in plain English: diplomatic recognition acknowledges the fact of country's existence giving it rights and obligations. The international law identifies two types of recognition: *de facto* and *de jure* - the former posing conditions and being in practice rather rare, the latter being irreversible and unconditional. The diplomatic recognition is a sovereign right of every state and cannot be enforced. The international law forbids premature recognition i.e. recognition of a country which stability is questionable². The question of the minimum number of states that need recognize a newly formed state to be fully legitimated is still disputed.

Secession for the purpose of this article shall be understood as an act of withdrawing from a political entity. Secession is not a destructive process *per se* and might be an outcome of an agreement between all parties (in that case it is often called cessation)³. The unified view on secession has not developed under the framework of international law. Secession seems to be justified as an expression of the right to self-determination and the moral necessity of decolonization. On the other hand, it directly violates the right to territorial integrity. On the ground of international law secession is permissible in cases of repetitive instances of human rights violations or regular discrimination. That being said, all secessionist movements should be analyzed in case-by-case basis in the light of local constitutional regulations⁴.

A given territory is deemed to be incorporated when it becomes an integral part of another sovereign political entity. Should the incorporating territory be an independent state it ceases to be a subject of international law at the moment of incorporation. The act of incorporation leaves one surviving entity i.e. the incorporating state which is the main difference between incorporation and unification.

² Bierzanek, Remigiusz, Symonides, Janusz, *Prawo międzynarodowe publiczne*, Warszawa, LexisNexis, 2008, p. 142.

³ „Separatyzm, secesja, cesja”, *Stosunki Międzynarodowe*, <http://stosunki-miedzynarodowe.pl/slownik/65-s/729-separatyzm-secesja-cesja> (accessed July 5, 2014).

⁴ Radziejowska, Marta, „Prawo i bezprawie – secesja i przyłączenie Krymu do Rosji”, *Biuletyn PISM*, vol. 38, March 26, 2014, http://www.pism.pl/files/?id_plik=16918, (Accessed July 4, 2014).

In the light of these definitions, let us briefly analyze what actually happened in Ukraine in 2014. On March 11, 2014 the local parliament, the Supreme Council of Crimea, expressed the will of Crimean people for independence and called for a referendum. Six days later, the same body unilaterally proclaimed the independence of the Republic of Crimea thereby declaring secession from Ukraine. The Supreme Council referred to the precedence of Kosovo as well as the results of the referendum where allegedly 96.77% of respondents voted for integration with Russia⁵. On the same day Russia recognized Crimea's independence. As a matter of fact, this was only a step towards factual incorporation of the short-lived Republic of Crimea into Russian Federation. On March 21 the Republic of Crimea and the federal city of Sevastopol became the part of the Russian Federation under the name Crimean Federal District. The Russian Constitutional Court ruled that the incorporation of Crimea was in line with Russian Constitution⁶.

To sum up, from the Moscow's point of view, the independent Republic of Crimea was incorporated into Russian Federation with the latter as the surviving entity. Technically, as an independent state, Republic of Crimea had the full right to express its sovereignty by deciding to cease to exist. For the rest of the world, Russian Federation incorporated a revolted territory of the Republic of Ukraine. Most of UN members perceive this move as unlawful⁷, however it is not the point of this article to refute or confirm this assumption.

⁵ 2014. "Crimea declares independence, seeks UN recognition", <http://rt.com/news/crimea-referendum-results-official-250/>, (Accessed July 5, 2014). It is worth to notice that Crimea adduced to Kosovo's precedence even though Russia never recognized its independence.

⁶ 2014. "Treaty on Crimea's accession to Russia corresponds to Russian constitution". Itar-tass News Agency, <http://en.itar-tass.com/russia/724320>, (Accessed July 5, 2014).

⁷ United Nations General Assembly Resolution 68/882 passed on March 27, 2014 calls for retaining Crimea within Ukraine's borders. It was adopted with 100 members in favor, 58 abstaining (notably China) and 11 against (including Russia). See Mu Xuequan. 2014. "UN General Assembly adopts resolution affirming Ukraine's territorial integrity", http://news.xinhuanet.com/english/world/2014-03/28/c_126325576.htm (Accessed July 6, 2014).

3. Historical precedencies: China's stance on independence of Kosovo and South Sudan

For the sake of better understanding of the rationale behind Chinese policy it is crucial to review Beijing's standpoint on cases of independence proclamations in recent years. The cases of Kosovo and South Sudan will serve as model examples.

The Republic of Kosovo unilaterally seceded from Serbia in February 2008. The act itself was quite sudden and was in fact a result of failed negotiations for the Athisaari stability plan in 2007. The reaction of the public opinion was mixed with the US and most of European Union members (with notable exceptions acknowledging the independence almost immediately while Russia and India strongly opposing it. China's standpoint was unambiguous and firm. Instantly after Kosovo's unilateral proclamation of independence, Chinese minister of foreign affairs Liu Jianchao expressed *grave concern* in regards to recent developments in the Balkans. He claimed that Kosovo's *decision can produce a series of results that will lead to seriously negative influence on peace and stability in the Balkan region and on the realization of building a multi-ethnic society in Kosovo, which China is deeply concerned about*⁸. Furthermore, he diplomatically advised Serbia and Kosovo to resolve the tensions by talks and negotiations.

Three months later, during a summit in Ekaterinburg, foreign ministers of China, Russia and India released a joint statement in which they appealed for Belgrade and Pristina to re-assume talks and resolve any issues within the framework of international law⁹. China also had a significant input for *Kosovo Advisory Opinion* of International Court of Justice stipulating the supremacy of State sovereignty and territorial integrity over *the so-called right to remedial self-determination*¹⁰.

⁸ 2008. "China <deeply concerned> over Kosovo independence", *Xinhuan News Agency*, <http://www.china.org.cn/english/international/243012.htm> (Accessed July 6, 2014).

⁹ 2008. "Russia, China & India insist Kosovo and Serbia resume talks", <http://rt.com/news/russia-china-and-india-insist-kosovo-and-serbia-resume-talks/> (Accessed July 6, 2014).

¹⁰ Yee, Sienho, "Notes on the International Court of Justice (Part 4): The Kosovo Advisory Opinion", *Chinese Journal of International Law*, 2010, <http://chinesejil.oxfordjournals.org/content/9/4/763.full> (Accessed July 6, 2014).

The judgment itself did not refer to Kosovo's case directly and in details, nonetheless it ruled that international law does not forbid unilateral proclamation of independence *per se*.

While Russian engagement seems to be logical – Russia is Serbian long-stand ally due to geographical proximity as well as historical and religious ties – China's firm position on developments in such remote and marginal (from Beijing's perspective) part of world might be puzzling, especially that People Republic of China praises the principle of non-interference as the key-notion of international politics¹¹. In order to explain Chinese involvement let me analyze the standpoint of Taiwan that China perceives as its revolted province.

The reaction of Taiwan was contrary to mainland China's. The government in Taipan welcomed Kosovo's independence and was one of the first states in the world to recognize it. As the Taiwanese foreign minister James Huang put it: *The Kosovo people, after overcoming various difficulties, have achieved independence. This is worth our admiration*¹². Such haste was certainly not a sign of good heart but rather a result of cold political calculation¹³. In his speech, Huang on few occasions referred to 'self-determination' being a 'holy right' enshrined in the UN Charter. Taiwan's international recognition is fragile and, since 1971 when it lost its permanent seat in the United Nation's Security Council, it is constantly deteriorating. Nowadays, Taiwan is recognized as an independent state only by the Holy Seat and several small countries in Sub-Saharan Africa, Central America and Eastern Pacific. The actual guarantee of Taiwan's existence is the unofficial support of status quo by the US which 7th Fleet stations in Taiwan Strait. The Taiwanese president Chen Shuibian used Kosovo's independence as an excuse to appeal for further American engagement in the region arguing that if the US backed Kosovo why they should not

¹¹ Chinese dedication to non-interference dates back to Zhou Enlai's speech in Bandung Conference in 1950s. Ideologically, it is rooted in 19th century when Chinese were humiliated by foreign (Western) interventions. See: Brown, Kerry. 2013. "Is China non-interference policy sustainable?", *BBC News*, <http://www.bbc.com/news/world-asia-china-24100629> (Accessed July 6, 2014).

¹² Chan, John. 2008. "Kosovo <independence> brings new uncertainties in Asia", *World Socialist Web Site*, <http://www.wsws.org/en/articles/2008/02/asko-f22.html>, (Accessed July 6, 2014).

¹³ It is hard to believe that the overall knowledge of Kosovo's history or politics among Taiwanese is high enough to result in admiration.

back Taiwan. Minister Liu quickly rebuked Taiwan's standpoint by stating that as it is merely a part of China it has no right to maintain separate foreign policy. He also reminded that Beijing would not allow dividing China by any means.

Chinese assertiveness towards Kosovo's independence stem from analogies that can be drawn for Taiwan. Both political entities related in aforementioned official statements to fundamental, yet contradictory, rights of international law – territorial integrity and self-determination. Despite assurances of the US State Department¹⁴ and the Secretary-General of the United Nations¹⁵ that Kosovo's case is highly distinctive and unique, China remained cautious fearing that it might cause a dangerous precedence that Taiwan could refer to in the future¹⁶.

A more recent example of declaration of independence was the secession of South Sudan in July 2011. In this case Chinese reaction was completely different – Beijing recognized South Sudan's independence shortly after its proclamation. The First Party Secretary Hu Jintao sent a cordial letter to the government in Juba proclaiming that *China respects the political system and development path the South Sudanese have chosen. China also stands ready to establish and develop friendly and cooperative relations with the new nation based on the five principles of peaceful coexistence*¹⁷. Hu added that *the founding of South Sudan is the common aspiration of the South Sudanese people and their own decision*¹⁸. Why the independence of

¹⁴ 2008. "Kosovo autonomy is not precedent for other territorial conflicts – US", *Interfax*, <http://web.archive.org/web/20080226080432/>; http://www.interfax.ru/e/B/politics/28.html?id_issue=11972248 (Accessed July 6, 2014).

¹⁵ "UN Secretary-General Ban Ki-moon: I wish to note that Kosovo is highly distinctive situation", *Interfax*, <http://web.archive.org/web/20080314204124/>; <http://www.interfax.com/17/373003/Interview.aspx> (Accessed July 6, 2014).

¹⁶ After 2008 there were several instance where separationists referred to Kosovo's precedence, see: Trifkovic, Srdjia. "The Kosovo Precedent", *The Brussels Journal*, February 28, 2008, <http://www.brusselsjournal.com/node/3039> (Accessed July 6, 2014).

¹⁷ Tiezzi, Shannon. "China South Sudan Dilemma", *The Diplomat*, December 25, 2013, <http://thediplomat.com/2013/12/chinas-south-sudan-dilemma/> (Accessed July 6, 2014). One of these principles is the non-interference policy.

¹⁸ 2011. "China Recognized Independence of South Sudan", *Xinhua News Agency*, http://www.chinadaily.com.cn/china/2011-07/09/content_12869896.htm (Accessed July 6, 2014).

South Sudan is local people *own decision* and the funding of Kosovo aren't? Is it possible that a country famous from its stable politics could change its mind so drastically within only 3 years? *Prima facie*, Chinese volt might look confusing but after careful analyze it is back on a perfectly logical track.

Similarly as in the case of Kosovo, South Sudan gained independence after a long and disastrous civil war with crimes bearing the hallmarks of ethnic cleansing. However, unlike as in the Balkans the declaration of independence was supported by a referendum. According to the official results, 98.83% voters supported the separation¹⁹. More importantly, the government in Khartoum accepted the outcome of the referendum *as it represents the will of the Southern people*²⁰. The entire process took six years and resembled an evolution rather than revolution. All this gives the division of Sudan the tinge of legitimacy that the secession of Kosovo lacked.

The Chinese engagement in the region dates back to mid-90's when bilateral relations between Khartoum and Beijing were upgraded from 'traditional' to 'strategic'. By that time China was launching its triumphal march to African markets while Sudan was isolated on the international scene and desperately needed an ally that can put a blind eye on Khartoum's repetitious human rights violations. Both parties benefited from the alliance: Chinese National Petroleum Corporation accessed local oil fields crucial for always resource-hungry Chinese economy while Sudan gained a powerful and wealthy partner. By 2010 China accounted for 72.6% of Sudan's export and 20.7% of imports. 82% of oil produced in Sudan was shipped to China. It is important to note that most of Sudanese oil fields were situated in the south. Soon, Sudan became Chinese gate to Sub-Saharan Africa being the outpost for further market expansion²¹.

However, there is a fly in the ointment. A new stage of civil war in Sudan broke up in 2003. The unprecedented cruelty of pro-government Janjaweed mobs shocked the international community. Thanks to

¹⁹ 2011. "South Sudan backs independence – results", *BBC News*, <http://www.bbc.co.uk/news/world-africa-12379431> (Accessed July 6, 2014).

²⁰ *Ibidem*.

²¹ Further reading on Chinese economic and political involvement in Africa: Alden, Christopher, *China in Africa: Partner, Competitor or Hegemon. African Arguments*, Palgrave Macmillan, New York, 2007.

engagement of so-called celebrities the conflict in Darfur gained the attention of the Western public opinion and made a stay in TV and Internet news²². The slaughter in Darfur started to spread across the South and Sudan's neighbor Chad. Open support for Sudanese leader Omar Bashar became reputationally costly for China, especially in the very year when Olympics Games were to be hold in Beijing. More importantly, the protracted instability impeded oil production or even on few occasions threatened Chinese workers in Sudan directly. South Sudan independence stabilized the region and caused oil to flow again. With regards to recent turmoil in South Sudan, China continues its efforts to stabilize the internal situation and improve South-North relations²³.

To sum up, China is generally unwilling to recognize the unilateral independence proclamations. This reluctance stems from trepidation that such precedence might in the future be used against China by Taiwanese government. However, if the process of secession is gradual and accepted by all parties China's standpoint is much more flexible, especially when vital economic interests are in stake.

4. China's standpoint on Crimea independence

As discussed in the first chapter Crimean independence was ephemeral and lasted for one day only. In fact, China needed to take an attitude towards Crimea's incorporation to Russia not the independence itself. This is a substantial difference compered to South Sudan or Kosovo, the difference that most of commentators tend to forget about. However, these phenomena are still comparable. All three proclamations stem from political and ethnical differences and resulted in violation of the principle of territorial integrity that China is driven by.

Prima facie, 'the Crimean scenario' looks tempting for China. Let us imagine a separatist government rising to power in Taipei, calling for a referendum which results in peaceful incorporation to mainland China, all

²² To find out more about celebrities' engagement in Darfur see: Danley, Patricia, *Rescuing African Bodies: Western Celebrities, Human Rights and Protest in Africa*, University of London, July 2012.

²³ Even though most oil fields are situated in the South, South Sudan is a landlocked country that needs Northern pipelines and harbors to export oil efficiently.

before world's very eyes. Even U.S. officials hurried to warn China not to try it²⁴. Paradoxically, the Chinese reaction was guarded and conservative.

As mentioned before, one of Chinese tenets in international policy is non-interference in the domestic affairs of other states. In the case of Crimea, the very country that infringed this principle has been Chinese economic partner and a perfect counterbalance against America's domination for last two decades. Beijing soon realized that its attitude would need to balance between the attachment to non-interference principle and necessity to maintain good relations with Russia.

Initially, China took Russia's side in the Ukrainian conflict. The very idea of grass-root, democratic forces gathering on the capital's main square to overthrow the *ancient regime* is simply unacceptable for decision-makers who still remember the protest on the Tiananmen Square²⁵. It is not a coincidence that when the protests arose in December 2013, president Victor Yanukovich rushed with an official visit to China in seek of loans, investments and political support.

The initial support changed into much more reserved standpoint after the Crimea's secession from Ukraine. Edward Halizak suggests that due to geographical distance China at first did not recognize the situation properly and was misled by Russian rhetoric. It is hard to decide if that was indeed the case or Beijing was simply took by surprise by Putin's moves. Either way, Chinese leaders did not welcome the results of Crimean referendum. Foreign Ministry Spokesperson Hong Lei asked for his opinion on the results answered with reserve: *China always respects all countries' sovereignty, independence and territorial integrity. The Crimean issue should be resolved politically under a framework of law and order. All parties should exercise restraint and refrain from raising the tension*²⁶. As

²⁴ Brunnstrom, David. 2014., "U.S. warns China not to try Crimea-style action in Asia", *Reuters*, <http://www.reuters.com/article/2014/04/04/us-usa-china-crimea-asia-idUSBREA322DA20140404> (Accessed July 7, 2014).

²⁵ Former Polish president Aleksander Kwaśniewski called the Euromaidan protests 'Ukrainian Tiananmen'. See: Castle, Stephen, Gordon, Michael. "U.S. Imposes Vica Ban on 20 Ukrainian Officials as Further Sanctions Are Threatened", *New York Time*, February 19, 2014, http://www.nytimes.com/2014/02/20/world/europe/ukraine-reaction.html?_ga=1.267159502.1346666516.1404892182 (Accessed July 7, 2014).

²⁶ Tiezzi, Shannon. "China Reacts to the Crimea Referendum", *The Diplomat*, March 18, 2014, <http://thediplomat.com/2014/03/china-reacts-to-the-crimea-referendum/> (Accessed July 7, 2014).

mentioned before, China abstained from voting on UN General Assembly Resolution 68/882. Therefore, depending on the point of view, China either refused to back Russia or ignored Western pledges for support.

How to explain this lack of enthusiasm towards ally's actions in such a remote part of the world? In order to elucidate this phenomenon we need to go beyond pure political explanation and refer to socio-ethnic situation and history of China. Besides merely violating the principle of non-interference, Moscow played with an ethnic card by openly appealing to Russian diaspora in the peninsula. People's Republic of China composes of 55 legally recognized ethnic minorities (and Han majority). In 2010 the ethnic minorities accounted for 8.59% of population²⁷. *Primo facie*, this number might look insignificant but in reference to absolute numbers it makes over 110 million people. More importantly, some of these groups differ distinctly in terms of religion, culture and language from the Han majority and exhibit strong separatist tendencies. National independence movements of Tibetans who are proud of long traditions of statehood or Muslim Uighurs in Xinjiang province are widely recognized in the West. Christian Lisu people at the border with Burma or Chinese Koreans in north-west are fairly less known yet significant. Ethnical integrity is the apple of the eye for regime in Beijing and it will not be threaten only to endear Russia.

Furthermore, Chinese relations with Russia have never been bed of roses. The history of border friction dates back to 16th century. More recently, military clash over border island Damanskii (Zhenbao in Chinese) resulted in Sino-Soviet split and Chinese-American rapprochement of 1971. Today, the border conflicts between Russia and China are resolved, however Chinese still tend to perceive Russia as a potential rival and resentments are still strong²⁸.

The cautious approach towards Russia does not equal support for the West. The articles in press and public statements of political sciences suggested that the Western Europe and the U.S. are in fact the ones who should be blamed for chaos in Ukraine. Allegedly, by supporting the Euromaidan protests, Western democracies ruined the status-quo in Ukraine

²⁷ 2011. Han Chinese proportion in China's population drops: census data, *English news*, http://news.xinhuanet.com/english2010/china/2011-04/28/c_13849933.htm (Accessed July 7, 2014).

²⁸ The author himself on few occasions had the opportunity to hear Chinese wishing "the ancient Chinese city of Vladivostok" to come back to the motherland.

and opened the way for separatisms²⁹. In May 2014, China Russia launched joint naval exercise sending a clear signal to the West that Moscow-Beijing relations are still close. Moreover, First Secretary Xi Jinping appealed for creation of a new security complex in Asia that includes Russia and Iran but omits America's involvement³⁰. Despite initial stumbles, a 30-year deal for Russian gas delivery to China worth immense 400 billion dollar was signed the same month³¹. Thereby, Beijing allowed Russia to send Europe a clear message – 'we do not need your outlet for our resources to thrive'.

To conclude, Crimean secession posed a huge challenge for Chinese politicians. Crimea's case to some degree resembled Kosovo's scenario: all happened by a sudden, unilateral decision and China had no direct economic interest to put a blind eye on the non-interference principle's infringement. On the other hand, an open protest would upset Russia and put China on the same footing as the West. Instead, Beijing chose a third option: calling for observance of international law and further negotiations while distancing from the USA and Western Europe. Abstaining from voting on Resolution 68/882 was in fact a sign of adherence to this policy of balance.

However, as the Chinese policy gets more and more global the non-interference principle may become obsolete. As a want-to-be superpower, People's Republic of China will be forced to behave towards unexpected international crises and the non-interference policy will be challenged more often. Chinese decision makers will be forced to work the possible answer to these developments out. Their opportunities and the consequences they might trigger off should be a subject of further research.

²⁹ Bin, Yu. 2014. "West's concern for Ukraine reflects long standing fears", *The Global Times*, <http://www.globaltimes.cn/content/849055.shtml#Uyc9soUXfag> (Accessed July 8, 2014).

³⁰ Gertz, Bill. 2014. "Russia Shifts to China After Ukraine Crisis", *The Washington Free Beacon*, <http://freebeacon.com/national-security/russia-shifts-to-china-after-ukraine-crisis/>, (Accessed July 8, 2014).

³¹ Luhn, Alec, Macalister, Terry, "Russian signs 30-year deal worth \$400bn to deliver gas to China", *The Guardian*, May 21, 2014, <http://www.theguardian.com/world/2014/may/21/russia-30-year-400bn-gas-deal-china> (Accessed: July 8, 2014).

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Piotr Serafin

Faculty of Journalism and Political Science, University of Warsaw

The Role Of Higher Education Development In Jordanian Social Policy

Abstract

The following article presents the role of higher education and its development in the social policy of the Hashemite Kingdom of Jordan since the beginning of its independence. Development of Jordanian higher education sector became an example of a useful instrument in achieving important goals from the state security point of view. Due to historical reasons, Jordanian government decided to recruit state elites from the Transjordanian part of society, which however was traditionally poorer educated than Palestinians. In order to change this situation, various methods, such as affirmative actions including quota systems aimed at promotion of underprivileged candidates, started to be used. These tools did obviously not serve equally to both Palestinians, to whom only private sector remains open, and Transjordanians.¹ However, preferential treatment reserved for the latter ones may bring a serious threat to internal stability of the Kingdom populated by Palestinian majority.

Key words: higher education, Jordan, Transjordanian, Palestinian, university

¹ For the purposes of further analysis in subsequent parts of this article a division between Transjordanians (Bedouins or East Bankers) and Palestinians (originating west from Jordan river) will be remained. These terms have been already used in the literature concerning this part of the Middle East region..

Currently, more than a half of Jordanian population is of Palestinian origin, which makes the titular population a minority.² Due to the unstable internal situation in the country during the 2nd half of the 20th century caused by the activity of Palestinian militant groups in the beginning of the 1970s, Jordanian authorities decided to take steps in order to promote socially ethnic Transjordanians, who in the subsequent decades were bound to form a base for military and government structures. To achieve this aim, several key decisions were undertaken, *inter alia* in the higher education system, which was rapidly developing and enjoying relatively good reputation in the Middle East region.

Jordan and Palestine in the 20th and the beginning of the 21st century

Jordan as a state dates back only to 1946.³ In the same year its official name was changed from the “Emirate of Transjordan” to the “Hashemite Kingdom of Jordan”.⁴ Its modern history is inextricably interwoven with Palestine. Until September 1918 it formed part of the Ottoman Empire. Later on, it became known as the emirate of Transjordan founded in March 1921 as a protectorate of Great Britain. Both Palestine and Transjordan were British mandate territories. Jordan in its present shape is a relatively young state, whose borders were eventually formed only after the lose of control over the West Bank of Jordan river, which was a result of the Six-Day War with Israel in June 1967. The young kingdom formally renounced its rights to this area only in July 1988.

² The exact percentage of Palestinians is difficult to estimate due to the lack of official data on ethnic composition of Jordanian society. However, different sources tend to show this population as exceeding the half of the entire society. Mudar Zahran, *Jordan Is Palestinian*, [in:] “The Middle East Quarterly”, Winter 2012, p. 3, <http://www.meforum.org/3121/jordan-is-palestinian> (Accessed 11.05.2014).

³ There are two dates recognized as the beginning of Jordanian independence: 22nd March 1946, when Great Britain and Transjordan finally signed the alliance treaty (in which independence of the latter one as a monarchy was proclaimed) and 25th May 1946 – declaration of full independence by king Abd Allah I ibn Husain. Bartosz Wróblewski, *Jordania*, Warszawa 2011, s. 87.

⁴ Jordan. History. The Making of Transjordan. http://www.kinghussein.gov.jo/his_transjordan.html (Accessed 18.08.2014).

The loss of the West Bank (currently Palestinian Autonomy) with its fertile soil in 1967 caused the exodus of Palestinians to the territories of historic Transjordan. Until today this group has benefited from schools established as a form of assistance from the United Nations Relief and Work Agency for Palestine Refugees in the Near East.⁵

The course of events in the neighbouring countries during the last few years contributed to even more complicated ethnic situation in the kingdom. The US-led invasion on Iraq started on 20th March 2003, and the following persecutions on its territory, forced around 400, 000 Iraqi citizens, including many Christians, to abandon their homeland.⁶ Many of these people found its refuge in Jordan.⁷ Similar case applies to Syrians incoming since 2011 to Jordan's northern areas.

Table 1. UNHCR 2014 planning figures for Jordan

UNHCR 2014 planning figures for Jordan							
TYPE OF POPULATION	ORIGIN	Dec 2013		Dec 2014		Dec 2015	
		Total in country	of whom assisted	Total in country	of whom assisted	Total in country	of whom assisted
			by UNHCR		by UNHCR		by UNHCR
Total		1,283,510	1,283,510	1,438,440	1,438,440	1,349,330	1,349,330
Refugees	Iraq	24,73	24,73	23,29	23,29	20,79	20,79
	Syrian Arab Rep.	1,254,950	1,254,950	1,410,520	1,410,520	1,324,210	1,324,210
	Various	1,35	1,35	1,8	1,8	2,26	2,26
Asylum-seekers	Iraq	1,2	1,2	1,6	1,6	900	900
	Syrian Arab Rep.	490	490	490	490	490	490
	Various	790	790	740	740	680	680

Source: 2014 – UNHCR country operations profile – Jordan. <http://www.unhcr.org/>

⁵ According to the UNRWA in 2013 there were 173 schools teaching 116,953 pupils. UNRWA. Where we work? Jordan. <http://www.unrwa.org/where-we-work/jordan> (Accessed 18.08.2014).

⁶ As a result of war in Iraq since 2003, at least 400 staff members of its higher education institutions (HEIs) were killed. Munir Bashrur, *Higher Education In the Arab States*, Beirut 2004.

⁷ There were nearly 30,000 Iraqi refugees residing in Jordan in March 2013. 2014 – UNHCR country operations profile – Jordan. <http://www.unhcr.org/pages/49e486566.html> (Accessed 16.08.2014).

Estimated data suggest the number of 6 to 7 million people living at present in the kingdom⁸, part of which does not possess its citizenship. What is more, according to the Human Rights Watch report published in February 2010, government in Amman withdrew citizenship already assigned to ca. 2, 700 Palestinians.⁹

Development of Jordanian higher education over the decades

The lands of today's Jordan and Palestine were different from each other in terms of educational system development in the 1st half of the 20th century. Under the British protectorate on the territory of the emirate of Transjordan local education system appeared, which included a few secondary schools. However, in its prevailing majority it was composed of schools on elementary level. Until the end of the 1st half of the 20th century the situation in Transjordan remained very different from the one in the West Bank. This contrast became especially visible after 1950, when Palestine was annexed by Jordan.¹⁰

Higher education in Jordan may be dated back to 1952, when the first two teachers colleges were established – one in the capital city of Amman and the other located in Ramallah in the West Bank.¹¹ In 1958 Teacher's House was established, in which training for performing profession took two years. The next units of this kind, transformed in subsequent years into Teachers Institutes, and in the 1970s again in colleges, form until today part of Jordanian education system.¹² Since

⁸ According to Jordanian Statistical Office, at the end of 2012 there were 6, 388 thousand people living in the kingdom. Among its 12 regions (muhafazats), the ones with the highest number of inhabitants are located in the north-western part of the country. These are Amman (over 2, 473 thousand) and Irbid (over 1, 137 thousand). http://www.dos.gov.jo/dos_home_e/main/Demography/2012/2-6.pdf (Accessed 14.04.2014).

⁹ Jordan. Stateless Again. Palestinian-origin Jordanians Deprived of their Nationality. Human Rights Watch Report. February 2010, p. 26-27 <http://www.hrw.org/sites/default/files/reports/jordan0210webwcover.pdf> (Accessed 17.07.2014).

¹⁰ <http://www.britannica.com/EBchecked/topic/306128/Jordan/23330/Transjordan-the-Hashimite-Kingdom-and-the-Palestine-war> (Accessed 09.08.2014)

¹¹ Munir Bashrur, *Higher Education In the Arab States*, Beirut 2004

¹² <http://www.mohe.gov.jo/brief/briefMohe1/tabid/558/language/en-US/Default.aspx> (Accessed 06.04.2014).

1980 they are under supervision of a special department in the Ministry of Higher Education and Scientific Research, which is devoted to control their teaching programmes. It also checks up their widely understood activity in both public and private sector. In the last decade of the 20th century colleges reported decline in number of their students for the sake of private universities. Between academic years 1990/91 and 1996/97 the percentage of teachers college attendees diminished from 51% to 22%. This situation can be explained by the fact that a degree obtained from a private university may be of higher esteem than the one from a teachers college. At the same time the number of students at public universities remained with no major changes.¹³

In 1962 the University of Jordan was founded in the capital city of Amman, which became the first Higher Education Institution (HEI) in the kingdom. Its mission was teaching future elites of the society, among whom new resources for state positions would be recruited without expensive sending Jordanian citizens abroad as it used to take place before. The second HEI, which was opened in 1976, is Yarmouk University in Irbid. Both of the aforementioned institutions are located in cities with a high percentage of Palestinians (around 80% in Amman and more than 50% in Irbid)¹⁴. In 1970s the two universities gave actually the only possibility to obtain higher education by Jordanians, who could not afford themselves at that time to study abroad due to the economic crisis. Increased social demand for higher education posed in the following years a strong incentive for the authorities to open new universities.

Since 1980s a remarkable shift in the government policy has been observed in opening new educational institutions. From now on, they were about to be created in less urbanized parts of the country populated mainly by Transjordanians. The first HEI of this kind became in 1981 Mu'tah University (formerly known as a military academy) located in al-Karak in the south of Jordan. It was followed five years later by Jordan University of Science and Technology near the city of Irbid in north-western part of the country. In 1993 University Al-Bayt was opened in Mafraq (north-east of Jordan) and in 1991 the Hashemite University was founded in Az-Zarqa, which started teaching four years later. According to the royal decree from 19th June 1991 this institution's

¹³ Munir Bashrur, *Higher Education In the Arab States*, Beirut 2004

¹⁴ Yitzhak Reiter, Higher Education and Sociopolitical Transformation in Jordan, *British Journal of Middle Eastern Studies*, 2002, 29 (2), p. 142

name was about to be “the University of Az-Zarqa”, which was replaced to the current one only by the next royal decree. The founding place of this HEI was meant to make it a science and technology centre for developing food and chemical industry.¹⁵ Until the end of the 20th century yet two other universities were founded: Balqa’ with its seat in Al-Salt and 11 branches (1998) and King Hussein in Ma’an founded a year later.¹⁶ By this step, the whole territory of Jordan became covered by a net of public higher education.

The last two decades of the 20th century is a period, about which one can speak in terms of educational revolution in Jordan. Currently there are 10 public universities, 17 private and 51 colleges. These institutions teach ca. 236, 000 students, among whom ca. 28,000 are foreigners.¹⁷ Creation of new HEIs was a government response to a growing social demand for higher education. Since this demand was especially visible in the poorer segments of the society living far away from big cities, one of the newest technical universities was founded in the year 2000 in a desert town of Tafila with substantial population of the Bedouin origin. The 1980s and 1990s resulted in social change in ethnic composition of students, namely significant balance between Transjordanian and Palestinian students was ever closer to be achieved. However, this balance does not reflect existing disproportion in ethnic content of the whole society.

Despite its short history higher education in Jordan reached significant position in the region due to both internal and external factors. The first ones include relatively high quality of teaching based on the aforementioned Anglo-Saxon model as well as competitive costs of acquiring higher education. Among external factors there is unstable situation in the region forcing many young people from the neighbouring states to pursue studies outside their countries of origin. This applies especially to Palestinian Autonomy, Iraq and Syria. Nevertheless, the number of Iraqi and Syrian students granted with different types of scholarships to continue their education at Jordanian

¹⁵ http://eacea.ec.europa.eu/tempus/participating_countries/higher/jordan.pdf (Accessed 06.04.2013).

¹⁶ <http://www.mohe.gov.jo/UniversitiesE/tabid/611/language/en-US/Default.aspx?x=1> (Accessed 13.08.2014).

¹⁷ <http://www.mohe.gov.jo/brief/briefMohe1/tabid/558/language/en-US/Default.aspx> (dostep 06.04.2014) Overview Report: Assessment of Selected Number of Academic Programmes In Higher Education Institutions In Jordan, Al. Hussein Fund for Excellence, Amman 2012, p. 15.

universities will probably not alter the general ratio between Tranjordanians and Palestinians.¹⁸

Between 1980 and 1995 among countries from the Middle East and North Africa Jordan was ranked as the second one, after the Lebanon, regarding total number of persons with a bachelor title per 100, 000 inhabitants. In the 1st half of the 1990s Jordan was also one of the best educated nations in the region taking into account the number of university graduates per 100, 000 inhabitants. Such a situation was possible among others thanks to political stability in the Kingdom at that time.

Table 2. The number of university graduates per 100, 000 inhabitants between 1991 and 1996 in the Middle East.

Country	Jordan	Kuwait	Lebanon	Palestinian Autonomy	Iraq
Number	657	571	486	345	274

Source: Higher Education Systems In the Arab States: development of Science and Technology Indicators 1998, Cairo 1998

In 1996 the state was located on the third place as far as PhD title holders among academic staff members were concerned (81%).

Table 3. Percentage of academic staff members with a doctoral title in 1996 in selected Arab countries.

Country	Kuwait	Syria	Jordan	Saudi Arabia
Percentage	100	85	81	74

Source: Higher Education Systems In the Arab States: development of Science and Technology Indicators 1998, Cairo 1998

Jordan was also one of the countries in the region, in which expenditures for higher education doubled between 1992 and 1996.¹⁹ At the turn of the centuries students of private universities outnumbered their peers from public HEIs, which resulted in high private investment

¹⁸ Only 100 refugees from Syria will commence 4-year studies at Jordanian and Lebanese universities this autumn within the UNHCR's DAFI programme. *Grant clears path to university in Jordan and Lebanon for Syrian refugees*. <http://www.unhcr.org/53c915756.html> (Accessed 16.08.2014).

¹⁹ Higher Education Systems in the Arab States: Development of Science and Technology Indicators 1998, ESCWA, UNESCO, Cairo 1998, p. 6.

in higher education sector.²⁰ Such a situation might have been effect of quota systems aimed at Transjordanians, which made university admission for Palestinians more difficult.

Jordanian higher education system is based on Anglo-Saxon model and receives substantial financial assistance from the US AID (United States Agency for International Development) as well as from the United Nations Development Programme, World Bank and the European Union. A good example of support of the latter one are Tempus²¹ (several editions from the 1990s and early 2000s) and Erasmus Mundus²² programmes, which enable exchange of students and university staff between selected Jordanian and European HEIs. The main aims of these programmes are among others modernization of university equipment and enrichment of local curricula. Within the framework of “Erasmus +” programme initiated in the new budget perspective for the years 2014-20 Jordan, as a country belonging to Southern Mediterranean countries²³ (close neighbourhood of the EU), will remain among the priority states supported by the European Commission in terms of modernization of its higher education.

At the beginning of the 21st century only two oldest public universities offered education on a master and doctoral level. At the same time, these HEIs provided the most comprehensive offer as far as academic fields were concerned. More than a half of students were female, whereas private universities were dominated by males (around ¾ of their students).²⁴

²⁰ Jordan Fiscal Reform Project II. Education, Public Expenditures. Working Paper. August 2011, p. 35. <http://www.frp2.org/english/Portals/0/PDFs/Education%20PEP%20Working%20Paper.pdf> (Accessed 10.08.2014).

²¹ In 2013 13 projects within the framework of Tempus IV programme were finished in Jordan. http://www.tempus.org.jo/TempusProjects_2013.html (Accessed 06.04.2014).

²² In 2010-2013 Jordanian universities were partners in 11 projects financed from the European Commission within the framework of Erasmus Mundus Action 2 programme. In 2007-2009 they participated in 3 other projects within the framework of Erasmus Mundus External Cooperation Window. http://eacea.ec.europa.eu/erasmus_mundus/results_compendia/selected_projects_action_2_en.php (Accessed 12.04.2014).

²³ <https://www.erasmusplus.org.uk/about/participating-countries> (Accessed 30.07.2014).

²⁴ Munir Bashshur, *Higher Education In the Arab States*, Beirut 2004, p. 50-51.

Social policy in the context of higher education

Due to the fact of young Jordanian statehood, local population has not yet developed its strong identification connected with a new country. Perhaps this is the reason, for which national flags or portraits of the royal family members are present in many public and private offices. These elements may be treated as a base for founding new Jordanian (and at the same time Hashemite) identity. Despite ethnic descent of Queen Rania, Palestinians are usually treated with reserve when it comes to terms of the current Hashemite character of Jordan, because King Abdullah I was assassinated by one of them in 1951.²⁵ What is more, they come from the lands, which are not included in the kingdom's territory since 1967.

The martial law existing in Jordan from June 1967 until the end of 1989 limited freedom of HEIs introduced by many internal university laws. Governmental interventionism manifested itself in the beginning of every academic year by bypassing internal university procedures in accepting at least part of new students. Every tenth candidate was exempted from fulfilling university admission requirements. Even nowadays only 20% of places at public universities are reserved for candidates accepted in competition. The remaining ones are reserved for the army and security forces, government ministries and so called "less fortunate areas".²⁶ Behind this enigmatic expression stand usually poor Bedouin regions, where insufficient teaching on secondary level could in other circumstances pose an obstacle in terms of university admission. These questionable policies are known as *makarim* - a term applied to situations, when candidates with much lower academic

²⁵ Shaul M. Gabbay, The Status of Palestinians in Jordan and the Anomaly of Holding a Jordanian Passport, Political Sciences and Public Affairs, p. 3, <http://esciencecentral.org/journals/the-status-of-palestinians-in-jordan-and-the-anomaly-of-holding-a-jordanian-passport-2332-0761.1000113.pdf> (Accessed 09.08.2014).

²⁶ Lamis El Muhtaseb, Jordan East Banker-Palestinian schism. Export analysis, April 2013, Norwegian Peacebuilding Resource Centre, p. 2, http://www.peacebuilding.no/var/ezflow_site/storage/original/application/746892acedd3e8fcb1ff7370a77fb67.pdf (Accessed 19.07.2014).

records are admitted to public HEIs.²⁷ Apart from that, the government interfered in administrative, financial and academic affairs.

The animosity between Palestinians and the Hashemites was the reason, for which young state decided in recent decades to upgrade the status of general educational level of Transjordanian population, from which future elites are going to be recruited. This task is even easier due to the substantial limitation of illiteracy rates, especially among Bedouin population. In the beginning of the 21st century this phenomenon was characteristic only for 4% of men and 15% of women, mainly among older generations.²⁸ In order to increase the number of persons with higher education among Transjordanians, various methods are used such as quota systems addressed to the villagers. At least 37% of students are accepted by universities in such form of affirmative action. Preferential treatment is also applied to relatives of persons, who are already appointed in the army²⁹, national universities or in high positions at the Ministry of Education.³⁰ This practice however often takes place at the expense of transparency of the university recruitment processes. Its most often form is nepotism known here as *wasta*. The expected outcome of such practices is at least equalization of chances of Transjordanians with traditionally better educated inhabitants of big Jordanian cities like Amman, whose population is predominantly Palestinian.

Every year certain number of students are sent abroad at the state's expense to study at foreign universities. In return they are obliged to work in the civil service for a definite period of time after

²⁷ Violence at Jordanian universities, Roundtable discussion, Irbid, October 10th, 2013, Konrad-Adenauer-Stiftung, p. 4 http://www.kas.de/wf/doc/kas_36227-1522-2-30.pdf?131201143907 (Accessed 20.07.2014).

²⁸ Bartosz Wróblewski, *Jordania*, Warszawa 2011, p. 273. According to the World Bank, an average literacy rate in Jordan in 1995 was about 85%. Education in the Middle East and North Africa: A Strategy Towards Learning for Development. <http://www.worldbank.org/education/strategy/MENA-E.pdf> (Accessed 10.08.2014). For more information on literacy rates in Jordan see <http://www.uis.unesco.org/DataCentre/Pages/country-profile.aspx?code=JOR®ioncode=40525> (Accessed 10.08.2014)/

²⁹ Even among places reserved for families of the army employees, the priority is given to candidates of strictly Transjordanian origin. Yitzhak Reiter, *Higher Education and Sociopolitical...*, op. cit. , p. 151-152.

³⁰ Higher Education in Jordan, op. cit., p. 5-6.

they graduate. According to estimated data up to 95% of students, to whom this offer was addressed, are of Transjordanian origin.³¹

After Black September and domestic war of 1970-71 (including pacification of Palestinian military groups) mass demonstrations on university campuses, dominated by that time by Palestinians associated to political organizations, are perceived as a threat for the state's stability, and especially its Hashemite character. Although political organizations on campuses are prohibited, they sometimes act as religious ones. In the years following the Black September riots, which took place in Amman and especially bloody incidents in Irbid, where police used force against students at Yarmouk University³², the government made a decision concerning new campuses location. From now on, they were going to be placed outside the centres of big cities, like e.g. the Hashemite University in the outskirts of Az-Zarqa. Apart from easier access to land for new universities' foundation, such step was, in minds of political decision-makers, designed to prevent from potential spreading of riots from university centres to densely populated urban areas. The ban on public demonstrations in support of 2000 Intifada (Palestinian uprising on the West Bank) was additional circumstance in favour of new campuses location. As a result of the abovementioned domestic war, academic staff members are now verified by Jordanian security forces, what is reflected in preferential employment of Transjordanians.

Due to limitations imposed on Palestinians in being appointed at high governmental positions or in public higher education, many of them decided to engage in a private sector. This applies also to founding private universities, which aspire to compete with their public counterparts. Specific provisions dealing with private institutions of this kind were regulated by law in 1989, when government allowed of founding private HEIs. The first of them was opened only a year after and through the next two decades 21 other such institutions appeared.³³ Among the most renowned one can mention Philadelphia University

³¹ Yitzhak Reiter, *Higher Education and Sociopolitical...*, op. cit., p. 149.

³² Twenty academic staff members were removed from Yarmouk University for alleged incitement of students to strike in May 1986. These employees were reinstated to their functions only after democratic changes in 1990. *Academic Freedom In Arab Universities*, ATF Seminar, Amman, 27-28.09.1994, ed. Ali Oumlil, 1995, p. 30.

³³ *Academic Freedom In Arab Universities...* op. cit., p. 15.

located in Amman, Academy of Jordan or Jordan Academy of Music.³⁴ The increase in number of these HEIs, most of which are located in surroundings of Amman, is among others an effect of more than 300,000 Jordanians (mostly of Palestinian origin) returning after the 1990/91 Gulf War.³⁵ Public higher education sector was not able to absorb such number of people. Apart from Palestinians from the Persian Gulf, Jordan becomes more and more often educational destination for their countrymen living in the neighbouring Israel. In 2009 their number was estimated to around 5 400, among whom 70% were men.³⁶ Such popularity can be explained by difficulties encountered by many candidates in being accepted by Israeli HEIs as well as by geographical and cultural proximity offering convenient conditions of studying for many Muslims. Although most of Palestinians living in Israel and studying in Jordan are men, their ratio to women is more balanced than the equivalent one existing at Israeli universities. The reason of such a situation is that Palestinian families tend to send their daughters more willingly to Arab universities perceived as preserving Muslim heritage and traditions approved by Islam.

Control bodies in Jordanian higher education

Only in 1980 *Law on Higher Education* was adopted and two years later the Higher Education Council (HEC) was founded. The latter one being perceived as a government tool, became seen as incapable to develop and improve educational standards in the eyes of many scientific staff members. Therefore, idea about recreating Boards of Trustees appeared.³⁷ This type of universities' governing bodies

³⁴ Bartosz Wróblewski, *Jordania*, Warszawa 2011, p. 273.

³⁵ This return was caused by the rage of Kuwaitis against Palestinians, who favoured Saddam Hussein supporting the Palestinian case. Yann Le Troquer, Rozenn Hommery Al-Oudat, From Kuwait to Jordan: The Palestinians' Third Exodus. *Journal of Palestine Studies*, Vol. 28, No. 3 (Spring 1999), p. 37. See also Peter W. Galbraith, Refugees from War in Iraq. What Happened in 1991 and What May Happen in 2003. MPI Policy Brief, February 2003, No. 2, p. 3, www.migrationpolicy.org/pubs/MPIPPolicyBriefIraq.pdf (Accessed 13.08.2014).

³⁶ Every fifth international student in Jordan came from Israel. Khalid Arar, Kussai Haj-Yehia, *Emigration for Higher Education: The Case of Palestinians Living In Israel Studying in Jordan*, Higher Education Policy, 2010, vol. 23, p. 5-7.

³⁷ Ali Mahafza, Academic Freedom In Jordanian Universities,

returned in the “Higher Education and Scientific Research Law” issued in September 2009.³⁸

In 1985 *Law no. 28 on Higher Education* set specific aims of this sector and created the Ministry of Higher Education and Scientific Research, which functions until today with a two-year break between 1998 and 2000, when its duties were performed by the HEC.³⁹ Relations between the HEC and universities in Jordan were also regulated in the mid-1980s.

In 1998 the Accreditation Council was founded, which aim was to guarantee minimum standards at private universities. The fact that public universities were excluded from such regulations made a significant difference between the two types of HEIs. Private universities, usually run by Palestinians, became automatically subject to more precise scrutiny and control whereas at public universities yet for a long time the government could continue its policy of granting student status to ethnic Transjordanians through unclear admission rules. However, a real milestone in development of Jordanian educational policy is establishment of the Higher Education Accreditation Commission (HEAC) in 2007 as an independent financially and administratively body.⁴⁰ Two years later the HEAC took the responsibility for developing criteria for accreditation and quality of teaching assurance including specific programmes offered at universities. Another tool used in strengthening the quality of education by implementing instruments of teaching evaluation is *Enhancement of Quality Assurance and Institutional Planning In Arab Universities* – a project under the auspices of the UNDP functioning since 2001. Apart

³⁸ Higher Education in Jordan, p. 3
http://eacea.ec.europa.eu/tempus/participating_countries/overview/jordan_tempus_country_fiche_final.pdf (Accessed 26.07.2014).

³⁹ It was made through the Law no. 6 of 1998. The same legal act affiliated all Jordanian community colleges, as complementary element to universities, to Al-Balqa University of Applied Sciences. The aim of the prior ones was to decrease the pressure in university admissions and offering education for middle level employees, which would be more suitable for the market needs. Overview Report: Assessment of Selected Number of Academic Programmes In Higher Education Institutions In Jordan, Al. Hussein Fund for Excellence, Amman 2012, p. 15.

⁴⁰ International Handbook of Leadership for Learning, ed. Tony Townsend, John MacBeath, p. 1120, books.google.pl/books?isbn=9400713509 (Accessed 13.08.2014).

from implementation of the aforementioned tools, this programme offers its assistance in intensive trainings for academic staff members, experts advice and supports creation of professional databases for the needs of HEIs. This project since 2002 involves 36 leading Arab universities, including four Jordanian (University of Jordan, Yarmouk University, Jordan University of Science and Technology and private University of Az-Zarqa).⁴¹

In 1999 King Hussein bin Talal died. In the same year the Fund for Excellence of his name was founded. Since its beginning, it has functioned under the patronage of his son, King Abdullah II bin Al Hussein as a non-profit organization. So far, it has managed to evaluate 83 curricula at 17 universities.⁴² Although the Fund is often presented as the first Jordanian NGO, the fact that its honorary presidency is assumed by the King, poses doubts about its declared status. Similarly ambivalent character can be assigned to the universities as such. The first HEIs in this country were created as allegedly autonomous units. In reality however, the King and his government played major role in determining university policy.⁴³ To confirm this situation one can point at the lack or a very limited role played by university senates or any other internal legal bodies. Large influence of the executive power on local HEIs, including unclear criteria in university admission, was possible especially until the mid-1980s, when the Ministry of Higher Education and Scientific Research was founded. However, it does not mean that afterwards this phenomenon became eradicated.

Conclusion

The experiences of Jordan and other countries from the Middle East and North Africa in higher education suggest limited optimism in interpreting it as a tool of social policy. Although Jordanian authorities managed to achieve their aim, namely educating government elites from the Transjordanian part of the society, the policy of hidden discrimination of the Palestinian majority in the public sector may in the

⁴¹ Arab Network for Quality Assurance for Higher Education http://www.anqahe.org/attachments/070_1207600654_HE_Brief.pdf (Accessed 11.05.2014).

⁴² http://www.husseinfund.jo/index.php?option=com_content&task=view&id=3&Itemid=15 (Accessed 14.03.2014).

⁴³ Yitzhak Reiter, Higher Education and Sociopolitical Transformation, op. cit., p. 139.

long run endanger fragile political stability in the kingdom. The nearby Egyptian example shows that creating new HELs and increasing enrolment does not have to lead to greater social inclusiveness into political, social or economic mainstream.⁴⁴ Egyptian experience proved that despite huge efforts, big part of the society still experiences exclusion. The reason for such a situation may lay in discrepancy between the number of new universities and the quality of education offered there. What is more, Middle Eastern job market, including Jordanian, have problems with absorbing the surplus of persons with higher education. Such a situation may lead to frustration of a part of society.

As it was stated in 2012 letter to King Abdullah II written by Jordanian politicians and academics, "[t]he presence of Jordanians of Palestinian origin in some institutions and all universities has become a rare phenomenon."⁴⁵ Further favouritism of Transjordanians may bring too high costs in terms of state's security. The government in Amman will have to decide in the future about its further policy as far as its higher education sector and its long-term functioning are concerned. It will be one of the factors influencing possible status of Jordan as a relatively stable country in the region. This topic is becoming of ever greater importance taking into account the current complex situation in the Middle East region.

⁴⁴ Emily Cupito, Ray Langsten, *Inclusiveness in higher education in Egypt*, *High Educ* (2011) 62, Published on-line: 4 December 2010, p. 183.

⁴⁵ Khaled Abu Toameh, "Anti-Palestinian Discrimination in Jordan. Now It's Official.", *Gatestone Institute. International Policy Council*. <http://www.gatestoneinstitute.org/3249/anti-palestinian-discrimination-jordan> (Accessed 09.08.2014).

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Hubert Bińkiewicz

Faculty of Journalism and Political Science, University of Warsaw

The 'Constitutional Revolution' and The Role of The Judiciary in Israel

Abstract

The article analyzes the recent developments in Israeli constitutional law. It describes a process described as the 'constitutional revolution' - the assertion of the power of judicial review by the Israeli judges in the Bank HaMizrahi judgment. The 'revolution' cannot be understood without the knowledge of Israeli constitutional arrangements. The first part of the paper describes the Israeli constitutional system, its evolution and the position of the judiciary. After that, I describe the Bank HaMizrahi judgment itself. The second part of the change in the role of the judiciary is the more wide use of international law in cases involving the Occupied Territories. One of the main drives of the 'constitutional revolution' was the 'militant judiciary' - personal judicial philosophy of Justice Aharon Barak. In the last part the identifies and describes political and legal factor that ushered in the 'judicial revolution': separation of powers, politics of rights, interest groups and opposition use of the courts, partisan, paralyzed majoritarian institutions, positive perception of the courts and willful delegation of problematic issue to the courts by political institutions.

Key Words: Judicial revolution, Israel, Aharon Barak, judicial activism, *Bank HaMizrahi v. Migdal Cooperative Village*.

When the Court does not become involved, the principle of rule of law becomes flawed. A government that knows in advance that it is not subjected to judicial review, is a government likely not to give dominion to the law, and likely to bring about its breach.

Israeli Supreme Court
decision in *Segal v. Ministry of Interior*, 1980¹

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.

Robert H. Jackson, US Supreme Court Justice

The State of Israel is a very interesting case to study for scholars in the field of law and political science. From the point of view of a legal scholar, Israel is considered to be one of three countries without a written constitution. Israeli legal system is a immensely complicated mixture of secular and sectarian, common and civil law traditions and British, Ottoman and Jewish elements. For a political scientist Israelis² constitute a very divided and extremely differentiated society, literally a melting pot of people from all over the world. Yet, they manage to sustained a level of democracy and economic welfare far surpassing that of their neighbors and all this in a state of almost permanent conflict and threats to the mere existence of their state. The circumstances in which the State of Israel came into being are an interesting case study of the nexus of political ideology, national identity and its influence for state building and international relationships in one of the world's most crucial regions. One particular question in Israeli state life can offer interesting insights, that is Israeli constitutionalism

¹ Edelman 1995, 411.

² In the English language the term „Israelis” was coined in order to denote citizens of post 1948 State of Israel to distinguish them from ancient Israelites. The term “Israelis” is also religiously and nationally neutral, it can refer to Israeli citizens of not only Jewish but also Islamic, Christian and Palestinian background.

and the change in the position of the third branch of government – the judiciary. Israeli constitutionalism is in a constant state of flux, but a careful observation of the developments and changes in it, especially into what had been named ‘the constitutional revolution’, can yield interesting observations of the most significant changes in the legal systems of many states. Those changes are: the proliferation of judicial review³ and a change of the role of the judiciary, from merely reactive “mouth of the statutes” to active agents of public policies, mainly the defenders of human rights and sentinels of democracy and the rule of law. Those changes can be considered parts of a worldwide phenomena of the global growth of judicial power⁴.

In this paper I shall argue that recent developments in Israeli constitutional history show in the most clear way how and why judges and legal issues tend to have more and more influence on the political process.

In Israel this process is twofold. First and foremost it is what had been labeled as the “constitutional revolution”, the seizure by the Supreme Court of Israel the power of constitutional review in the 1995 *Bank HaMizrahi v. Migdal Cooperative Village* ruling. For a lawyer from another jurisdiction the audacity of this move is truly amazing. There were no statutory empowerment for an introduction of such an important institution that in effect can reshape the whole legal system. In fact Israel does not have a written constitution, and the basic laws that have been declared as having a super-statutory (constitutional) normative value are just normal acts opened for amendment by the Knesset in a normal legislative procedure. The *Bank Mizrahi* judgment has often been compared to the famous 1803 decision of the US Supreme Court in *Marbury v. Madison* case that was one of the most influential court decisions in worlds legal history. As I shall argue, American inspirations were very important in reaching this landmark decision. The second jurisprudential instrument is wide and consistent

³ For the purpose of this paper judicial review shall be understood as a competence of a court to assess the compatibility of a statute (an act of a legislative body) with the constitution or a higher norm of constitutional rank. The effect of such assessment can be declaring a statute void or ‘striking down’ legislation – either by a refusal of a court to apply the contested regulation (‘the American, decentralized model’ now adopted in Israel) , or by erasing the provision from the statute book (‘the Kelsenian, concentrated model’). Koopmans 2003.

⁴ Vallinder 1995.

application of international law in the process of reviewing administrative action by the courts. This tool is by far less important in the day-today legal life of the State of Israel than the “constitutional revolution”, but it has a great international impact. It is mostly used in assessing the actions of military administration on the West Bank and other Occupied Territories and its political significance is paramount, it touches the most controversial political issues facing Israeli political community – security and the relationship with the Palestinians.

The reasons for this ‘change of paradigm’ of the position of the judiciary in Israel are complex. As I will try to show, this shift has two main causes. First, a dysfunctional, partisan party politics, resulting in a permanent deadlock in representative institutions and the inability to resolve the most crucial political questions in contemporary Israeli politics, mainly the status of Occupied Territories, the settlement policy and the relations with the Palestinians. Second *spiritus movens* of the ‘judicial revolution’ is the personal influence of Aharon Barak, notable Jewish lawyer and the Israeli Supreme Court president from 1995 to 2006 (in this time arguably the most influential figure in Israeli politics⁵). Other influential factors that contributed to the ‘judicial revolution’ are the self-definition of Israeli legal system as a common law system (and a set of assumptions about the role of a judge resulting from this) and influence of comparative law.

The assessment of these processes is a tricky issue. Almost 20 years had come to pass after the *Bank HaMizrahi* decision, yet, in my opinion, it is still too early to observe and understand all of the consequences of that verdict. However, it seems clear that the Israeli Supreme Court and the judiciary has shown restraint in exercising its newly acquired power. It also seems clear that the ‘judicial revolution’ had not brought the resolution of the most profound political controversies, the Palestinian question and the problems arising from the Occupied Territories. However, activist judges can reshape a little bit the settlement policy and give redress and relief to the Palestinians that were victims of most evident human rights violations and abuses of military power. The most immediate consequence of ‘the judicial revolution’ is the acceleration of constitutional developments in Israel. Almost all constitutionally relevant actors perceive the present situation as temporary and calling for a more permanent regulation. That regulation almost certainly cannot be selective, it can resolute in

⁵ Neuer 1998.

ushering a permanent written constitution to the State of Israel. Already exotic coalitions in a highly divided society had been formed to curtail 'the excessive power' of the judges. The most difficult to grasp is the more general influence of the endorsement of 'militant democracy', judiciary with a self-imposed mandate to defend human rights, on Israeli public life. Many observers point out that Israel is a country permanently threatened with a menace of fascistization of politics. Almost permanent existential threat, demoralizing occupation, extensive role of the army, political, social and religious differentiation and highly partisan political parties do not create an environment in which democracy and human rights thrive. The permanent state of constitutional flux does not help either.

Although, Israel is very peculiar, it is still a postcolonial, young state emerged in the common law legal tradition. Ancient Jewish state traditions had been severed long ago and the bulk of the population comes from countries with no democratic traditions⁶. Considering the extent of former British colonial empire and the fact that more and more states try to follow the path of democracy and the rule of law, the analysis of Israeli developments can offer surprisingly universal conclusions.

Before elaborating on those issues I will briefly outline Israeli constitutional system, with emphasis on the position of the judiciary.

The Israeli constitutional arrangements

As I mentioned before, Israel is considered to be one of the few states without a codified constitution⁷, Israeli constitutionalism is in a pre-codification state of permanent flux. Declaration of the Establishment of the State of Israel (Declaration of Independence) announced on 14 May 1948 declared that the constitution shall be drafted by a Constituent Assembly elected before 1 October 1948⁸. The war of 1948 delayed the

⁶ Barak 2006.

⁷ The other two are Great Britain and New Zealand.

⁸ 'WE DECLARE that, with effect from the moment of the termination of the Mandate being tonight, the eve of Sabbath, the 6th Iyar, 5708 (15th May, 1948), until the establishment of the elected, regular authorities of the State in accordance with the Constitution which shall be adopted by the Elected Constituent Assembly not later than the 1st October 1948, the People's Council shall act as a Provisional Council of State, and its executive organ, the People's Administration, shall be the Provisional Government of the Jewish State, to be called "The State of Israel".'

elections. Later disagreements, most notably among religious and sectarian political groups concerning the role of religion and secular character of the state had paralyze the work of the Constituent Assembly⁹. The disagreements paralyzed the constitutional work of the First Knesset. To resolve the deadlock the so called *Harrari Decision* was adopted in 1950. Rather than passing the full text of the constitution at once, a piecemeal 'constitutionalisation' will take place. The Knesset will draft and adopt basic laws, one basic law will be one chapter of the future constitution and when all chapters will be adopted, they will be compiled into one document.¹⁰ It is important to note, that the basic laws were adopted in a normal legislative procedure, they are not rigid laws (they can be amended or even abolished in a normal legislative procedure). Also, by the time of their adoption they had not been considered binding in a way characteristic for constitutional acts in modern constitutional, ex. other acts where not to be interpreted in a consistent manner whit them, their where not considered 'higher law'¹¹. The temporary arrangements of the *Harrari Decision* has proven to be surpassingly resilient. 11 basic laws were adopted¹², they regulate the most important aspects of the life of the state: position of parliament, president, economy, some human rights, the army etc. They had not been compiled into a single document, and probably they won't be any time soon. Peculiar for Israel are two basic laws – Basic Law: Lands of Israel and Basic Law: Jerusalem. The first declares that lands belonging to the State and to the Jewish National Found are *rei extra commercium*, they cannot be sold and will remain the property of the State. The later proclaims Jerusalem as the indivisible capital of Israel and ensures the safety and access to Holy Sites of all religions. In effect it was an annexation of mostly Palestinian East Jerusalem and is not internationally recognized. It's worth to notice that Basic Law: Human Dignity and Liberty, central for the 'constitutional revolution' was adopted in 1992 by a vote of 32 against 21 of 120 member Knesset and had not attracted much attention of the public opinion¹³.

Whit the lack of a written, formal constitution *The Declaration of Independence* plays a special legal role. It constitutes the State of

⁹ Božek 2002.

¹⁰ Božek 2002.

¹¹ Koopmans 2003.

¹² List of basic laws Božek 2002 p.26.

¹³ Aronson 2011, n. 53.

Israel and proclaims the equity of Israeli citizens, regardless of their religion or race.¹⁴

The special position of religious courts is a specifically Israeli feature, a residue of Ottoman times. The multiple religious tribunals (most notable are Jewish, Muslim, Christian and Druze) have jurisdiction mainly in the field of family law and marital matters, although in some matters they share jurisdiction with secular civil courts. It's important to note that religious courts are part of the state judicial system and thanks to 'the constitutional revolution' they too obtained the power of judicial review¹⁵.

For this paper it is important to briefly characterize three basic laws: Basic Law: The Judiciary (adopted in 1984), Basic Law: Human Dignity and Liberty (1992) and Basic Law: Freedom of Occupation (1994).

Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation are considered to be a codification of human rights. They guarantee the right to life, liberty, property, privacy, freedom of speech and "freedom to engage in any occupation, profession or trade". The rights guaranteed by those Basic Laws are to be observed by all officials by all functionaries of the State of Israel and 'cannot be varied, suspended or made subject to conditions by emergency regulations'¹⁶. Those Basic Laws are not rigid legal acts, they can be amended in a regular procedure but there are some special requirements for an act that will infringe the laws guaranteed by the human rights Basic Laws (those acts must be proportional, purposeful and in accordance with Israeli values¹⁷). Besides those provisions, the Basic Laws do not state that they are a piece of legislation of a 'supra statutory', higher legal rank

¹⁴ Božek 2002.

¹⁵ Aronson 2011.

¹⁶ Basic Law: Human Dignity and Liberty § 12 'This Basic Law cannot be varied, suspended or made subject to conditions by emergency regulations; notwithstanding, when a state of emergency exists, by virtue of a declaration under section 9 of the Law and Administration Ordinance, 5708-1948, emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than is required'.

¹⁷ Basic Law: Human Dignity and Liberty § 8 'There shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required'.

then ordinary acts of parliament¹⁸. The right to property guaranteed by § 3 of Law: Human Dignity and Liberty¹⁹ has become to legal basis for the 'constitutional revolution'.

The 1984 Basic Law: The Judiciary is the main legal act regulating the matters connected with the exercise of judicial power. The act regulates the structure of courts, the procedure of appointing judges, states that judges are independent in exercising their power and gives procedural and institutional guarantees of their independence. According to this act civil courts (magistrate and district) have the jurisdiction in civil, criminal and administrative cases. For this paper most relevant are the provisions establishing and regulating the functioning of the Supreme Court of Israel. There are fifteen justices sitting on the bench of the Supreme Court, adjudicating cases in random panel of three. Those panels can be enlarged by the President of the Court to nine or even eleven justices if the case is complicated or important. Lately enlarged panels had become more and more common.²⁰ The procedure for nominating the justices is a purely judicial one, nominated by the President after the election by the Judges Election Committee²¹. The process of nominating justices of the Supreme Court does not interlope with the political process²².

The Supreme Court has two jurisdictional capacities, it can sit as The High Court of Appeals or as The High Court of Justice (HCJ). In the appellate jurisdiction the Court is the court of last resort and hears appeals from judgments of lower civil courts. The Court decision has the value of the precedent and binds lower courts.

The HCJ jurisdiction is a particularly Israeli equitable, original and non-discretionary kind of jurisdiction²³. § 15 (C) of The Basic Law: The

¹⁸ Wojtyczke 2001.

¹⁹ 'There shall be no violation of the property of a person.'

²⁰ Aronson 2011.

²¹ Basic Law: The Judiciary §4(B) 'The Committee shall consist of nine members, namely, the President of the Supreme Court, two other judges of the Supreme Court elected by the body of judges thereof, the Minister of Justice and another Minister designated by the Government, two members of the Knesset elected by the Knesset and two representatives of the Chamber of Advocates elected by the National Council of the Chamber. The Minister of Justice shall be the chairman of the Committee'.

²² For example in USA the justices of the Supreme Court are nominated by the president after a vote in the Senate.

²³ Aronson 2011.

Judiciary states ‘The Supreme Court shall sit also as a High Court of Justice. When so sitting, it shall hear matters in which it deems it necessary to grant relief for the sake of justice and which are not within the jurisdiction of another court.’ § 15 (D) enumerates the specific remedies that can be granted by the HCJ²⁴. The HCJ jurisdiction is a powerful judicial tool. When The Supreme Court sits as The High Court of Justice it is the court of first and last resort, its judgments are final. Basic Law: The Judiciary gives the HCJ powerful tools to monitor the actions of the government and other public bodies, it also equips the Court with a wide range of specific remedies. Since the 1980’s the Court in its jurisprudence has removed most of the standing and justiciability barriers that had limited the inflow of cases. The HCJ currently considers around 2 000 petitions a year filed by various legal actors challenging the full variety of governmental action²⁵. In essence The High Court of Justice is an administrative court that assesses, annuls and grants specific relief against actions of the authorities. The HCJ jurisdiction is also important for ‘the constitutional revolution’. With the exception of the *Bank HaMizrahi* case, six of seven instances in which the court had ‘struck down’ a statute on rights based grounds were cases heard under the HCJ jurisdiction²⁶.

The anatomy of ‘the constitutional revolution’

The crux of the ‘constitutional revolution’ is the Supreme Court taking by his own judicial *fiat*, without any statutory empowerment, the power of judicial review. The crucial moment was the 1995 judgment in the *Bank Mizrahi* case²⁷. The facts of case are trivial and obscure. With the intention of reviving the agricultural sector Knesset passed and

²⁴ ‘This includes, inter alia, the power to review actions and decisions of Israel’s several systems of specialized adjudication, most notably labor courts (that govern labor, employment, and welfare disputes), religious courts (in charge primarily of marriage and divorce), and military courts (which try service members and residents of the Palestinian Territories). In the absence of a possibility of appeal to the Supreme Court from these tribunals (each of which includes an appellate instance of its own), the Court uses its HCJ jurisdiction to conform their actions to a common constitutional framework. See Basic Law: The Judiciary, § 15(D)(3),(4).’ Aronson 2011, p. 7 n. 18.

²⁵ Aronson 2011.

²⁶ *Op. cit.*

²⁷ C.A. 6821/93 Bank HaMizrahi v. Migdal Cooperative Village, P.D. 49(4) 221, 418 (1995).

amended a law 'that established a body called the —rehabilitator, which was granted broad authority to settle, restructure and cancel debts that had been created up to the end of 1987'²⁸. Between the passing and amending this law, Basic Law: Human Dignity and Freedom was adopted. Three petitions were filed in civil courts, three creditors were seeking relief against the actions of the rehabilitator that acted on the basis of the amended law. The petitioners attacked the amendment claiming that it breaches their right to property and infringes § 8 of Basic Law: Human Dignity and Freedom. The case was heard by a panel of nine justices in the appellate jurisdiction. Every justice wrote his own opinion (the verdict is immensity long, 437 pages, and cites cases from eight jurisdictions and the Bible).

The main legal controversy was the constitutional powers of the Knesset. Minority of justices wanted to give relief to the petitioners under § 8 of Basic Law: Human Dignity and Liberty claiming that the actions of the rehabilitator breached the right of property. But justice Aharon Barak that wrote the opinion of the Court used another doctrine. According to it, Knesset passing the basic law acts in his constituent authority given to the First Knesset in the Declaration of Independence. The minority disagreed with such a claim, they held that the constituent authority of the First Knesset was not transferable to subsistent Knesset's. The result of the judgment written by justice Barak was that the amendment to agricultural law had been considered 'unconstitutional' and the Court refused to apply it under the doctrine of judicial review²⁹. As a result of that decision, all courts in Israel, under the doctrine of precedent, had obtained the power to assess the constitutionality of acts of parliament. The provisions of certain basic laws were given a constitutional status. Justice Barak also rests the supra-statutory binding force of the guarantees of the right of property on the fact it will be for certain a part of the bill of rights of the future Israeli constitution.

The boldness of the Courts decision is breathtaking. In effect, the Supreme Court gave Israel a constitution. Before the verdict of justice Barak the basic laws had been considered an ordinary piece of legislation. Now certain parts, the judges will decide which parts, will be

²⁸ Bank HaMizrahi, p. 2.

²⁹ The minority wanted to give relief to the petitioners under § 8 of Basic Law: Human Dignity and Freedom, this scenario would have left the agricultural law standing as a valid and applicable piece of legislation.

considered to have a constitutional value and other acts must be in compliance with them. This introduction of a new, powerful institution seems to be rooted more in the constitutional and jurisprudential legacy of other countries than Israeli legal tradition. Justice Barak, in a manner of a comparative constitutional law professor, elaborates on the nature of judicial review using examples from many jurisdictions and quotations from philosophers of law for almost 20 pages³⁰. As a result, every judge, even a rabbi in a religious tribunal, obtained the ability to struck down an act of parliament. As I mentioned, the judiciary shows restraint in using this newly acquired competence. Only seven times has the Supreme Court 'struck down' a law under the judicial review doctrine. Most notably, it recognized the provisions of Basic Law: Freedom of Occupation to have a constitutional character and 'struck down' military regulations preventing women from being military pilots. Once, a district court had found a statute to be unconstitutional but the Supreme Court reversed the judgment and criticized the district court judge for not working hard enough to find an interpretation of the statute consistent with the basic laws.

The consequence of the Courts decision was a rapid 'juridicisation' of politics. Nearly every political question ends up in the Supreme Court. Sometimes the Court gives surprising decisions, ex. when the Court assessed the internal regulations of the Knesset³¹. Yet, again the Court has set a limit for its jurisdiction in 'supervising' the Knesset. When an MP dissatisfied with the Oslo II accords tried to attack the parliamentary resolution accepting it and force the Speaker to hold a debate in the plenum, Justice Barak concluded 'that unless the democratic fabric was being injured, the court would not intervene in internal Knesset affairs'.³² Even the most activist judges are not willing to rule on such importuned political matters as the peace process with the Palestinians.

There seems to be a consensus among Israeli right and left political activists that the position of the judiciary is too strong and something must be done about it. Justice Barak claims that the actions of his Supreme Court are not anti-democratic because the elected parliament

³⁰ Bank HaMizrahi, p. 208-232.

³¹ In case Sarid v. Knesset Speaker . Such intrusion upon the legislative branch by the judiciary is unthinkable in any other country. Neuer 1998, n. 32.

³² Neuer 1998, n. 28.

can overwrite them with a single statute³³. The *Bank HaMizrahi* decision recognized the constitutional powers of the Knesset to do so. Yet, almost 20 years after the 'constitutional revolution' there seems to be no political will to take the power of judicial review from the judges. One reason for that maybe that in the end, the judges had showed restraint in the most important political issues connected with national security.

The consequence of the 'constitutional revolution' for the political process and Israeli political culture are not yet fully visible. Neuer is critical about the influence of judges in the democratic process:

'Similarly, the court's tendency to intervene in matters of policy discourages ideological rivals from making an effort to persuade one another, or to rally the support of uncommitted segments of the population. Such advocacy work has the effect over time of building consensus, encouraging compromise among diverse elements of society, and raising the level of debate. The high probability of judicial intervention, however, has left many activists feeling that their resources are better invested in a decisive legal victory than in a persuasive public campaign, or in negotiating a mutually acceptable outcome. Those groups who find their efforts constantly thwarted by the High Court come to despair of the benefits of cultivating public support, and those who frequently merit High Court approval need not trouble themselves with public opinion or accommodation. In this atmosphere, disputes are neither settled nor resolved; they are merely decided, usually keeping one party's rancor, and the other's callous disregard, well preserved.'³⁴

Neuer tends to agree with Barak that Israel has a low political culture, but for him a 'militant judiciary' is not the answer. There are some benefits of judicial activism in Israeli public life (ex. corruption bashing) but the actions of judiciary cannot usher in a new constitution. The proponents of judicial activism counter that the judiciary is best equipped to protect human rights and that its actions force the government to 'take rights seriously'³⁵. In my opinion, in the case of Israel, we don't know enough to settle this debate. Israeli political life remains as divided as ever. Also, without a major crisis threatening human rights the judiciary's power to defend them remains unchecked.

³³ Barak 2006.

³⁴ Neuer 1998.

³⁵ Barak 2006.

The role of international law

The way for the 'constitutional revolution' has been paved prior to the passing of human rights basic laws. The Supreme Court in a series of decisions had relaxed the two main doctrinal barriers to judicial activist, the restrictions on standing³⁶ and justiciability³⁷. The Supreme Court had reached many precedential judgments, starting from the 1980's, that in effect permitted almost anybody to petition the Court in almost every matter. The exemptions from conscription for ultraorthodox students, procedures of debate in the Knesset and proceedings against corrupted officials were considered to be in the jurisdiction of the High Court of Justice.

This had a profound effect on the situation of the Palestinians living under Israeli military occupation. In the Israeli legal system, like in most common law systems, international law ratified by the state is binding and directly applicable³⁸. The actions of the State of Israel on the Occupied Palestinian Territories is very controversial. Especially the settlement policy is widely considered illegal and contrary to international law. The detailed analyses of the legal aspects of Israeli settlements lies beyond the scope of this paper. The settlements are considered contrary to the Fourth Geneva Convention³⁹.

³⁶ 'The doctrine of locus standi, or "standing," has traditionally dictated that only a party who has some substantive relation to the case—that is, someone who has suffered injury to a right or personal interest—can be heard. This restriction has long been regarded as an important means for courts to protect themselves from being overwhelmed by what the legal literature calls "unnecessary" litigation—cases that really do not require a judicial remedy, whose adjudication only distracts the court from its proper business.' Neuer 1998.

³⁷ 'Whereas standing determines which party the court will hear, justiciability determines which issue the court will hear. The justiciability standard is classically used to exclude from judicial consideration a range of policy questions, such as the conduct of foreign affairs, best left in the hands of the executive or legislature. By keeping such issues out of the judiciary's reach, the justiciability doctrine immunizes entire areas of governmental action from the law's watchful eye—a state of affairs deemed intolerable by Barak and his like-minded colleagues.' *Op. cit.*

³⁸ Barak 2006.

³⁹ Art. 49 (6) "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." Bisharat 1989.

For the purpose of this paper it is important to show, that Israeli courts tend to be more and more bold in judging the conduct of the military authorities on the Occupied Territories. Israeli civil courts do not have jurisdiction over the Occupied Territories. The Israeli Supreme Court sitting in the HCJ ruled that it posses jurisdiction over military personnel acting in their official capacity and reviews appeals filed by the residents of the Occupied Territories. This tenuous legal construction was never challenged by the Israeli attorney general, because of an political agreement⁴⁰.

Aside from that, for years the Supreme Court jurisprudence has been opaque. For example, the Court held that only certain parts of international humanitarian law is directly applicable. The Hague Convention of 1907 was directly applicable and the Court gave relief to Palestinians on its basis. But other mayor act of international law, especially the Fourth Geneva Convention, that regulated the conduct of the occupying power on an occupied territory was not used to restrict the conduct of the Israeli military. Thus the for long the Court accepted a contradictory claim by the government that it observes the provisions of the Fourth Geneva Convention 'as a matter of principle'⁴¹.

Recently this approached has changed. In 2004 in *Beit Sourik Village Council v. The Government of Israel* the Supreme Court sitting as the High Court of Justice nullified six military orders pertaining to the seizure of land in the West Bank on the grounds that they breached the Fourth Geneva Convention. Thus reversing the longstanding line of precedent and giving the Palestinians a potential avenue to combat some military abuses, like the selective enforcement of the Ottoman land laws in order to expropriate them. In 2005 the Court ruled that using local residents by IDF soldiers in arresting a wanted terrorist is unlawful under international law. In 2005 the Supreme Court, contrary to the general tendency in its jurisprudence, denied standing to settlers that were forcefully evacuated from Gaza in the processes of implementation of the Gaza Disengagement Plan. The Court stated that they cannot rely on the Fourth Geneva Convention⁴².

The tendency seems to be clear: the Supreme Court is more activist in controlling the actions of soldiers on the Occupied Territories. Although it seems doubtful that the judiciary will one day render the

⁴⁰ Bisharat 1989.

⁴¹ *Op. cit.*

⁴² Nollkaemper 2011.

settlement policy illegal or bring about peace, it definitely gave some relief to the Palestinians and gave them at least some procedural guaranties.

Again the boldness of the actions of the Supreme Court astonishes. The basis for the Courts jurisdiction are doubtful and the scope of its action seems immense, especially if we consider the political inertia in the Middle Eastern peace process. Moreover, the Court acts in the most controversial field of national politics, in other countries judges would probably leave those issues to the political process. For example, for someone who knows how American courts adjudicate national security cases, the actions of the Israeli Supreme Court seem almost heroically insolent.

The causes of the ‘paradigm shift’

In my opinion the most immediate cause of the ‘constitutional revolution’ is the personal legal philosophy of justice Aharon Barak. Justice Barak champions the idea of ‘militant democracy’, and a judiciary that is strongly engage in defending human rights. It is possible that childhood experience of living in a ghetto under Nazi occupation are source of this⁴³. Justice Barak writes:

‘I do realize that my judicial philosophy has its critics. It clearly has its disadvantages. It may not fit some democracies. It may not fit us in years to come. I do, however, believe that it is the proper judicial philosophy for Israeli democracy in our times. One should not forget that a large part of Israel’s population immigrated to Israel from the Near East and from Eastern Europe – places where there are no democratic traditions. Democracy is thus young in Israel. We don’t have two hundred years of democracy. Furthermore, because of English influences, many viewed for many years democracy in formal terms. Parliament, for them, was omnipotence. It could do everything. It can affect every right. Furthermore, for a variety of reasons, the concept of “it is not done” is not a central part of governing in Israel. Israel lacks a rigid constitutional framework. Basic structures and concepts can be changed by bare majorities. The protection of those structures and concepts requires judges who see their role as protectors of our constitution and democracy.’⁴⁴

⁴³ Aharon Barak was born in 1936 in Kovno and spend three years in the Kovno ghetto. Neuer 1998.

⁴⁴ Barak 2006.

Another reason is the disappointment with the constitutional capacities of the political process. The wording of the *Bank Mizrahi* judgment, both in majority and minority opinions, shows disappointment about the fact that Israel lacks modern constitutional arrangements.

Similar causes lie behind the expansion of application of the use of international law in the Occupied Territories jurisprudence. The protection of human rights is considered to be an importuned part of the profession of the modern judiciary and it adds a new dimension to judicial work⁴⁵. Israeli judges are aware of that, they also realize that act in a political environment that shows disdain for those values.

But even the strongest personal motivations cannot bring about a systemic change without the help of deeper, systemic factors. One such factor is surely the political polarization. It prevented the Knesset from passing a law that would take away the power of judicial review from courts. Rampant partisanship has also undermined the trust for other governmental institutions. In the ranks of public trust the courts come second only to Israeli Defense Force (the army), way before the Knesset and local and central government⁴⁶. This 'paradigm shift' could not be possible without the common law legacy of Israel and the high esteem that judges have, as well as the binding force of precedent that are its essential parts. The institutional form of the Israeli judiciary was also an important factor, especially the strong position of the Supreme Court and its capacity to sit as the High Court of Justice⁴⁷.

Is the 'constitutional revolution' and the 'paradigm shift' a good thing or not? It is hard to give a clear-cut answer to that question. As a political scientist I look at the 'paradigm shift' in Israel with anxiety. I fear that it may further weaken the majoritarian democratic institutions, and doesn't have the ability to usher in a positive change in the most controversial matters, mainly the Palestinian question. But as a lawyer I am more optimistic. I feel amazed by the audacity of the judges. I admire the artistry of their legal conceptions and I see that they gave justice, at least to a few individuals.

Lessons from Israel

Legal scholars and political scientist had identified factors that tend to facilitate the growth of the role of the judges: separation of

⁴⁵ Koopmans 2003.

⁴⁶ Edelman 1995.

⁴⁷ Edelman 1995.

powers, politics of rights, interest groups and opposition use of the courts, partisan, paralyzed majoritarian institutions, positive perception of the courts and willful delegation of problematic issue to the courts by political institutions.⁴⁸ Israel fits this description. The example of Israel also show that the growth of the judicial power can be radicalized by a charismatic, committed judge.

Although Israel has been more successful in institution building than other postcolonial states, it is still in essence a young nation. If in such dramatic circumstances judges could procure such considerable power, it can happen elsewhere. The judiciary, especially the judges from the highest courts of the lands are a globalized, well educated folk. They interchange ideas and emulate the solution of other, particularly if they enlarge their powers. When other postcolonial nations will achieve certain level of democratization and institutional stability they can also see the 'judges marching in'. Especially the former British colonies, that share the common law traditions and its assumptions about the role of a judge. If policy makers fail to bring sufficient solutions, especially in the field of human rights protection, it is probable that they face not only dissatisfied voters but will also have to share their powers with a militant judiciary.

⁴⁸ Tate, Vallinder 1995.

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Full text of the *Bank HaMizrahi* is available in English on the official site of the Israeli Judicial Authority: http://elyon1.court.gov.il/files_eng/93/210/068/z01/93068210.z01.pdf

En-Lai Tang

Faculty of Journalism and Political Science, University of Warsaw

Why the United States Doesn't Consider Closer Bilateral Chinese-Russian Relations as A Security Threat?

Abstract

Chinese-Russian relations play an important role in the multipolar world order, both countries signed treaties and established the strategic partnership. When Xi Jinping became president in 2013, Russia was his first foreign destination after becoming president. And Russian president Vladimir Putin also claimed that the relationship is "in its best period in history" and that the bilateral cooperation has already reached a higher level of comprehensive strategic partnership. Now the two great powers are getting closer and may cooperate to counterbalance the superpower, United States. These two countries could be a threat to the United States. What is the United States' concern about the Chinese-Russian relations? Will America be worried about its affection when the China-Russia relationship gets better? This article is trying to answer why the United States doesn't consider the closer bilateral Chinese-Russian relations as a security threat? By defining what is a threat and presenting Chinese-Russian Contemporary relationships, then triangle relationships to analyze and finally to give three reasons. First, the US-Chinese relations is the most important and the best in the triangle relations and the priority of the US policy for China and Russia is trade and economy, and both countries need to have economic cooperation with United States. The second one is the mistrust and suspicion remain between China and Russia. And the third factor is that Chinese-Russian strategic partnership can be doubtful.

Key words: Chinese-Russian relations, a security threat.

Introduction

The rise of China is not only reshaping the existing international order, reshuffling the great power ranking, but also narrowing the political and economic influences on Russia in the region and at a global level. China and Russia both claim to strive for a multi-polar international order.¹ In their statements, Beijing and Moscow are vocal in criticizing the United States hegemonic policies and position in the world. But at the same time, Moscow and Beijing are carrying out diverse bilateral policies with Washington. From Beijing's side, NATO twists and turns in the missile-defenses issue and the opening of the air-bridge to Afghanistan through Russian airspace for the United States are certainly disturbing signals and introduce an unpredictable element into Chinese-Russian relationship. From the Moscow's side, the close interdependency between China and the United States is annoying because the only relationship that is of a truly strategic nature for China is the one it has with the United States²

The United States was left standing high as the only global super-power in the 20th and the 21st century, however, as Dr. Stephen Blank says, Chinese-Russian relations are very important because these two countries could be a threat to the United States and their relations in Asia have an influence on the ties of all interested parties to Russia, China and Northeast Asia.³ The United States' security and prosperity in the 21st century still depend on the presence and engagement of the United States in Asia. What is the United States' concern about the Chinese-Russian relations? Will America be worried about its affection when the China-Russia relationship get better?

Mearsheimer in his book *The Tragedy of Great Power Politics* argues that China has the potential power to become a regional hegemony in Northeast Asia and it could be a threat to the United States. Now China and Russia, the two powerful countries, are getting closer and may cooperate to counterbalance the United States. But why United States doesn't consider the closer bilateral Chinese-Russian relations as a security threat?

¹ A. Moshes, M. Nojonen (eds.), *Russia-China relations Current state, alternative futures and implications for the West*, The Finnish Institute of International Affairs, Tampere 2011, p. 10

² Ibid, p. 15-16

³ S. Blank, "Russo-Chinese relations at a crossroads: An American View." [in:] A. Moshes, M. Nojonen (eds.), *Russia-China relations Current state, alternative futures and implications for the West*, The Finnish Institute of International Affairs, Tampere 2011, p. 74

There are three reasons. First, the US-Chinese relations is the most important and preferably in the triangle relations and the priorities of the US policy for China and Russia are trade and economy, and both countries need to have economic cooperation with United States. The second one is the mistrust between China and Russia. And the third factor is that Chinese-Russian strategic partnership could be doubtful. Is it the real strategic partnership or just a rhetorical one?

The definition of threat

Threat is a menace, one that is regarded as a possible danger or a warning that something unpleasant is going to happen, and the threat makes fear or is kind of fear itself. Threat is obvious for a variety of reasons concerning political dimensions, economic, military, and security. Here emphasize on a security threat. What is security? The traditionalists, backed by political realism, define security in terms of power. In reality, the meaning is closely linked to the military capability of a state.⁴

China has the world's largest population - close to one-and-a-half billion people, and has experienced 30 years of dramatic modernization and economic growth. It now has the world's second largest economy, a nuclear power, and continues to expand its regional and global status quo economically, militarily, and culturally. Russia occupies the world's largest territory and also has nuclear weapons and they support the Syrian regime.

According to the Mearsheimer's book "The Tragedy of Great Power Politics," the author mentioned that the relations between great powers are a central aspect of life in the international system. "How much states that fear each other matters greatly, because the amount of fear between them largely determines the severity of their security competition, as well as the probability that they will fight a war."⁵ He pointed out the reason of fear as follows: 1. Great powers invariably have some offensive military capability that they can use against each other. 2. One can never be certain that other states do not intend to use that power against oneself. 3. States operate in an anarchic system and there is not a "night watchman" to approach for help when one state

⁴ C. Elman, *Realism* [in:] P. D. Williams (ed.), *Security Studies: An Introduction*, London and New York: Routledge Press 2008, p. 16.

⁵ J. J. Mearsheimer, *The Tragedy of Great Power Politics*, NY London: W.W. Norton and Company, 2001, p. 42.

attacks another.

The best measure of power is the size of the state's military - the land power. The power is embedded mainly in its army and the air and naval forces because they are principal instrument for conquering and controlling territory. Power will affect the intensity of fear among the states.

As early as the 1990's, prominent analysts of the world politics like Richard Betts and Robert Jervis, as well as subsequent CIA studies postulated that the greatest security threat to United States interests would be a Russian-Chinese alliance.⁶ The rise of China revolves around the phenomenal development of the Chinese economy. China wants the United States economy to prosper because that means China will be able to continue exporting. As it is, exports from China to the European Union are all down but to the United States are up. China is not in a position to threaten the United States with financial growth. If China makes a decision to sell off massive positions of United States debt would turn the American economy into a downward spiral, it will harm not only China's investments, but also China's export-driven economy.⁷

In fact, some analysts of the East Asian trends regard the confluence of the energy and other current international crises as contributing to an already-formed Chinese-Russian alliance against American power and ideas in Northeast and Central Asia.⁸

Contemporary Chinese-Russian relationship

Today many aspects of the Chinese-Russian relationship are

⁶ R. Jervis, *United States Grand Strategy: Mission Impossible*, "Naval War College Review," summer 1998, p. 22-36; R. K. Betts, *Power, Prospects, and Priorities: Choices for Strategic Change*, "Naval War College Review," winter 1997, p. 9-22; J. C. Gannon, *Intelligence Challenges Through 2015*,

http://odci.gov/cia/publicaffairs/speeches/gannon_speech_05022000.html.

⁷ K. Rapoza, *Is China's Ownership of United States Debt A National Security Threat?* January 1, 2013, <http://www.forbes.com/sites/kenrapoza/2013/01/23/is-chinas-ownership-of-u-s-debt-a-national-security-threat/>.

⁸ D. Kerr, *The Sino-Russian Partnership and US Policy toward North Korea, From Hegemony to Concert in Northeast Asia*, "International Studies Quarterly," XXXIX, No.3, September, 2005, p. 411-437; C. C. Menges, *China: The Gathering Threat*, Nashville, Tennessee: Nelson Current Publishers, 2005; S. Blank, *Towards Alliance?: The Strategic Implications of Russo-Chinese Relations*, "National Security Studies Quarterly," VII, NO. 3, summer 2001, p. 1-30.

positive. Shortly after Putin assumed the presidency, Russia and China signed a *Treaty for Good Neighborliness, Friendship and Cooperation* in 2001, pledging a ten year commitment and elevating Russian-Chinese strategic cooperation. While making quite clear that this agreement was not directed against the US or the West, the treaty expressed the commitment of the Russian and Chinese leadership to the “multi-polar” world order. Konstantin Vnukov of the Asian Department of the Ministry of Foreign Affairs noted that while the two countries possessed “such different civilizations,” the “main trend” in the “almost four-century old” history has been characterized by “peace and good neighborliness” with “periods of confrontation” being “short-lived.” Vnukov described Russian-Chinese relations during the Putin’s era as reaching the “highest point in history...dynamic, encompassing all, even the most sensitive spheres.”⁹

Currently both sides say that these relationships are at their high point, argue that they represent a model for other countries relations, and contend that they can only get better as recent interchanges between them indicate.¹⁰ This would concur with Russell Ong’s argument that, “the basis for China’s strategic partnership with Russia lies in countering the global export of America’s liberal values.”¹¹ Moreover he notes that Russia’s political values, namely sovereign democracy, accord with so-called “Asian values” much more than with the European ones.

According to the New York Times article¹², in 2013, the Chinese leader, Xi Jinping, had chosen Moscow as his first foreign capital city to visit as president. His predecessor, Hu Jintao, also selected Moscow as his first overseas stop after assuming the office, but Mr. Xi’s journey to Russia has a special significance. It seems that China tries to answer the Obama administration’s “shift toward Asia”, a policy regarded with suspicion as an attempt to restrain China.

⁹ K. Vnukov, *Russians, Chinese-Brothers Forever*, “International Affairs 52,” no. 2, 2006, p. 129-134.

¹⁰ Moscow, Interfax, in English, June 15, 2009, Open Source Center, Foreign Broadcast Information Service Central Eurasia (Henceforth FBIS SOV), June 15, 2009; Beijing, Xinhua, in English, June 17, 2009, FBIS SOV, June 17, 2009.

¹¹ Russell Ong, *China’s Strategic convergence With Russia*, “Korean Journal of Defense analysis,” XXI, NO. 3, 2009, p. 320.

¹² J. Perlez, *New Leader Of China Plans a Visit To Moscow*, The New York Times, 21 February 2013, http://www.nytimes.com/2013/02/22/world/asia/new-chinese-leader-xi-jinping-to-visit-moscow.html?_r=0.

China and Russia have been closer lately on mainly international issues, showing common interests on issues that are important to the U.S, like the conflict in Syria and the nuclear ambitions of Iran and North Korea. These events are likely to be discussed for Mr. Xi's visit to Moscow, together with increased cooperation on energy policy.

In 2013, after Chinese president Xi Jinping's first visit to Moscow, he indicated that China would promote deeper cooperation with Russia, while the United States has been establishing ties with its own allies across the Asia-Pacific region. Even though there was a difficult history between the two neighbors, China and Russia recently have increased their friendship, forming a bulwark against the West. Mr. Xi's visit to Moscow just after he assumed the office, showed that China could fall back on its own sources of support to counterbalance the United States when necessary.

Mr. Xi said in a written statement issued upon his arrival in Moscow "China will make developing relations with Russia a priority in its foreign policy orientation,"¹³ the Chinese state-owned news agency Xinhua reported. Mr. Xi told Mr. Putin that the two governments should "resolutely support each other in efforts to protect national sovereignty, security and development interests,"¹⁴ adding that "The two sides have had closer strategic coordination on the world stage." And Mr. Putin also said that "Russia-China relations were the best in their centuries-long history." Because after returning to the presidency in May, Mr. Putin has distanced Russia from the West while focusing on Asia, particularly relations with China. Mr. Xi concludes a leadership transition begun when he became Communist Party chief, trying to distinguish himself from the immediate leader, Hu Jintao. But on the domestic issues, he has continued Mr. Hu's seeking of Russia for energy supplies and diplomatic support. Russia was also Mr. Hu's first foreign visit after he was appointed president in 2003. Mr. Xi told "the fact that I will visit Russia, our friendly neighbor, shortly after assuming presidency is a testimony to the great importance China places on its relations with Russia....The two sides have had closer strategic coordination on the

¹³ D. M. Herszenhorn/C.Buckley, *China's New Leader, Visiting Russia, Promotes Nations' Economic and Military Ties*, The New York Times, 22 March 2013, <http://www.nytimes.com/2013/03/23/world/asia/xi-jinping-visits-russia-on-first-trip-abroad.html?pagewanted=all#>.

¹⁴ Ibid.

world stage.”¹⁵

At the meeting, the two presidents signed agreements, including promises of cooperation on numerous fronts. The greatest focus was on energy development, not only the oil deal with Rosneft, but also an agreement to move forward with a deal on natural gas, which the two countries have been struggling to negotiate for years. Despite the increasing ties on energy and other issues, experts say the relationship is still burdened by Russian wariness and Chinese frustrations. Some Russians are anxious that China's economic growth and military strength could take the place of their country's influence, especially the Russian Far East. China has sought to draw Russia's Gazprom into agreeing to supply natural gas along a proposed pipeline from east Siberia for a long time. "Pipeline oil and gas cooperation is a good thing that benefits both sides," the Chinese vice foreign minister, Cheng Guoping, said "It suits both sides' energy security needs and national interests." For the Chinese leader, the first visit showed that the bilateral ties were very close together.¹⁶

However, Bobo Lo, a former Australian diplomat in Moscow and the director of the China and Russia programs at the Center for European Reform, has written an analysis of this bilateral relationships. He points out that Chinese-Russian relations are opportunistic, and China is in a better position because it extracts considerable practical benefits in oil, weapons, natural resources from Russia, and Russia also supplies China with its military hardware, including Kilo-class submarines and Sovremenny-class destroyers. But what Russia gets in return is just a rhetoric flattery of strategic partnership with China and illusion of a multipolar world. For example, the two countries' roles in the Shanghai Cooperation Organization (SCO)¹⁷, as well as their energy and weapons trades, can show a deep asymmetry in Chinese-Russian relations. Thus far, China has consistently resisted Russia's lobbying for building the SCO into a quasi-military alliance that could counter NATO, besides, the SCO declined to publicly endorse Russia's account of its August 2008 war with Georgia. It seems that China is unwilling to impart any strategic significance to disputes in the Caucasus. Through the SCO

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ a Eurasian political, economic and military organization founded in 2001 in Shanghai by the leaders of China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan.

and some investments, China has been entering Central Asia with economy. In recent years the Chinese enterprises have invested deeply throughout Central Asia in mineral, energy and other industries. In addition, China successfully have cracked the tough nut of Turkmenistan-- a gas pipeline under construction is slated to run from Turkmenistan to Xinjiang (Western of China).

According to Lo, the terms of Chinese-Russian trade relations have become increasingly unbalanced every year. Lo even said that "Russia looks like a Chinese subsidiary. China treats Russia with supreme tact, denying its own superiority."¹⁸

Nevertheless, nowadays Russia and China are getting closer to each other and some people believe that a new China-Russia alliance is now emerging and will lead to a multi-polar world order. In the near future a formal alliance between China and Russia will not occur because of many reasons, some experts pointed out there could be potentially high costs of such an alliance due to some problems. China may be dragged into unnecessary wars by Russia, and Russia is not interested in the alliance idea as it is unwilling to become China's junior partner in the relations. Furthermore, Russia wants to keep good relations with all Asian states, therefore, a strategic partnership is much better for China and Russia.¹⁹

How the United States sees the Chinese-Russian relations

US-China relationship is more important than Russia-China relationship, US-China relation is an interlocking relationship, so the United States doesn't consider Russia-China relation to be a real strategic partnership, because there are still mistrusts and historical factors between the two countries. The power and the status of Russia are declining in the multi-polar world. Instead of Russia, today's China has emerged the force to be reckoned with on Asia and Europe. China

¹⁸ Bobo Lo, *Axis of Convenience: Moscow, Beijing, and the New Geopolitics*, "Brookings Institution Press," 2008; Stephen Kotkin, *The Unbalanced Triangle What Chinese-Russian Relations Mean for the United States*, "Foreign Affairs" 88 no.5 130-8 S/O 2009. Article is available from <http://www.foreignaffairs.com/articles/65230/stephen-kotkin/the-unbalanced-triangle>; James F. Jr (ed.), *China on the World Stage*, "Foreign affairs," 2010, p. 128.

¹⁹ Dingding Chen, *Are China and Russia Moving toward a Formal Alliance*, "the Diplomat," 30 May 2014. <http://thediplomat.com/2014/05/are-china-and-russia-moving-toward-a-formal-alliance/>.

has shifted its strategic alliance from the Soviet Union to the United States. The current United States' "pivot to Asia" is that it has often treated Russia as an afterthought, but with initial US-Russia post 2009 "reset" having largely run its course. As Arkady Moshes said, "A serious US-Russia dialogue on security threats in East Asia could save the dynamics of the "reset" process, and gradually raise the interest of the United States and its regional allies to invest in the Russian Far East."²⁰ And he thinks that the Asian security order would be a big challenging for the United States even if Russia became China's junior partner in the longer run, and not an independent political player in Asia, the American discussion demonstrates little wariness and concern about this, thus revealing a certain neglect of Russia, but this probably will change. In order to benefit from a possible American repositioning in East Asia, Russia should change internally to open itself to and guarantee the security of foreign investment and to get rid of the anti-Westernism of its foreign policy elite. If Russia fail to do so, it would extend far beyond a decrease in its influence vis-à-vis China or its geopolitical positions in Asia²¹

Currently Moscow and Washington need to take into consideration how they will refashion their relationship in the next few years. The United States and Russian concern about China's growing potential nuclear power that is impeding further progress in their shared strategic arms control agenda. Analysts point out that intensifying its regional diplomacy with Russia and America "rebalancing" to the Pacific, both nations have much to obtain if they cooperate well.

In a word, the foreign policy in Russia and China are dominated by trade, making China and Russia inseparable from the United States huge market. In the foreseeable future, the United States economic diplomacy to Russia will be greatly enhanced and then can grasp the opportunities in three diplomatic interactions.

Why should the United States concerns Chinese-Russian relations?

The United States clearly has an interest in the character of the

²⁰ A. Moshes, M. Nojonen (eds.), *Russia-China relations Current state, alternative futures and implications for the West*, The Finnish Institute of International Affairs, Tampere 2011, p. 101.

²¹ *Ibid*, p. 102.

Chines-Russian relationship. Bolt and Cross in their research wrote: "The status of the Sino-Russian relationship has important implications for the United States. Cordial relations between Russian and China can benefit the United States interests, however an alliance between the two countries aimed against the United States in particular or the West in general would constitute a significant threat. It is in the interest of the United States to foster regional stability throughout the globe and given the shared transnational security challenges of the emerging twenty-first century, Russian, China and the United States would benefit by seeking means for strengthening security cooperation among all three major powers."²²As earlier mentioned by Dr. Stephen Blank China and Russia could be a threat to the United States and their geostrategic and geopolitical relations will affect all of Asia or the world politics.²³

Never before had a senior Russian leader been so explicit about the idea of counterbalancing the global domination of the West, led by the United States, by means of a Eurasian alliance. A few months later, during the Kosovo crisis,²⁴ Russia and China moved even much closer together in their opposition to United States "hegemony".²⁵ We can say that some international crises may contribute to Chinese-Russian alliance against American power and ideas.

Although China now has the world's second largest economy, maintain a nuclear power, and continually expand its regional and global status, Russia still views itself as playing a major role in Asian and global affairs, China and Russia continue to publicly acknowledge the importance of their "strategic partnership" in regional and global affairs. Chinese-Russian relationship will have a substantial effect on the

²² Paul J. Bolt and Sharyl N. Cross, *Contemporary Sino-Russian security partnership: challenges and opportunities for the United States*, "United States Air Force Academy Institute for National Security Studies, USAFA," CO, 80840, NO. 0704-0188, 2009, p. 1.

²³ A. Moshes/M. Nojonen (eds.), *Russia-China relations Current state, alternative futures and implications for the West*, Tampereen Yliopistopaino Oy-Juvenes Print, Tampere 2011, p. 76.

²⁴ <http://www.globalissues.org/article/126/the-kosovo-crisis> .

²⁵ Dmitri Trenin, *Russian-Chinese Relations: A Study in Contemporary Geopolitics*, in: E. Reiter (ed.) *Jahrbuch für Internationale Sicherheitspolitik*, Hamburg: E. S. Mittler 2000, p. 913-930; available from http://www.bmlv.gv.at/pdf_pool/publikationen/03_jb00_46.pdf, p. 6.

future geopolitical, economic and security landscape in East Asia.²⁶ Ashley Smith said that the U.S. stands out as the world's only super-power, however, it now faces a major imperial rival in China and a host of regional ones including Russia, India, and Brazil. And now a shift of the United States security policy towards the Asia-Pacific, president Obama issued a new Defense Strategic Guidance: Priorities for the 21st Century Defense that "announced his CPivot to Asia". Obama continues to promise engagement with China to lure it into an international order under American hegemony, but his actual policies demonstrate an unmistakable shift towards containment of China as its principal imperial rival."²⁷ Therefore, in the same time when America concerned the Asia issue, the Chinese-Russian relations should be considered as well.

The weak Russia's position in the triangular relationship.

The triangular relationships have a fundamental change in meaning. In the past few decades, China's shift in geopolitical strategic direction from the Soviet Union to the United States is very important and it not only improves Chinese relations with the U.S., but better relations with Moscow than the US-Russia relationship. "Most important, both countries, whatever their current differences with the United States and their opposition to the "unipolar world", need good relations with America for a host of economic, financial and other reasons. For Moscow, the most vital foreign policy issue is debt restructuring and relations with the international financial institutions, where Washington plays a paramount role. Russia's economic development is doomed without access to Western technology and capital investment. For Beijing, suffice it to mention that China's trade with America is worth ten times its trade with Russia."²⁸

Zbigniew Brzezinski, CSIS (Center for Strategic and International Studies) Counselor and Trustee, said that China-US-Russia triangular relations now basically will not be changed, the basic reality is that US-

²⁶ D. W. Harkins, *Sino-Russian relations in the twenty first century: prospects and issues*, Lieutenant, United States Navy B.S., West Chester University, 2000, p. 4-5.

²⁷ A. Smith, *US Imperialism's pivot to Asia*, "International Viewpoint," April 15 2013, <http://internationalviewpoint.org/spip.php?article2944>.

²⁸ D. Trenin, *Russian-Chinese Relations: A Study in Contemporary Geopolitics*, Moscow, p. 6.

http://www.bmlv.gv.at/pdf_pool/publikationen/03_jb00_46.pdf.

China relations is interlocking relationship, and Russia's position in the triangular relationship is the weakest.²⁹ He explained that except the nuclear arsenals in which Russia had a huge advantage of China but is not politically useful, unless launching a disastrous war. From the Chinese point of view, Chinese well-being depends on good relations with the United States that jointly contributes to global stability, and to the economic and financial stability. In terms of demographic dynamics Russia feels weak about their position in the Far East. Thus there is no worry that China may ally with Russia to balance the United States, since the basic reality is that US-China relation now is an interlocking relationship.

US-Chinese relations

As for the relationship between China and the United States, Kotkin, Princeton University professor of History and International Affairs, supposes that the global strategy "peaceful rise", introduced after Tiananmen Square massacre, compromises with the United States to establish new partnerships and gain great benefits. One vital element of this strategy is for China to take advantage of its de facto strategic partnership with the United States while sometimes swallowing hard in the face of the United States dominance.³⁰

Chinese leaders go out of their way to emphasize that China is still a developing country and that the United States will remain the sole global superpower for a long time to come. Therefore, it is a concession that China can pursue its own interests, and not like Russia paying the enormous costs of opposing the United States. The second element in China's "peaceful rise" strategy is making use of Russia for all it is worth, ex: weapons, oil or acquiescence in China's expanding influence in Central Asia.

US-Russian relations

The fact is that the US-Russian relationship lacks the kind of deep commercial basis that undergirds US-Chinese ties. And the ultimate

²⁹ Center for Strategic and International Studies (CSIS), *Interpreting Xi Jinping's First Trip Abroad: Glimpses of an Emerging Diplomatic Strategy*, <http://csis.org/multimedia/audio-interpreting-xi-jinpings-first-trip-abroad-glimpses-emerging-diplomatic-strategy>.

³⁰ S. Kotkin, *The Unbalanced Triangle What Chinese-Russian Relations Mean for the United States*, "Foreign Affairs" 88 no.5 130-8 S/O 2009. Article is available from <http://www.foreignaffairs.com/articles/65230/stephen-kotkin/the-unbalanced-triangle>.

stumbling block between Russia and the United States is the clash over the influence in the former Soviet republics. Two factors have caused this clash. The first one is that Russia will not relinquish its assertion of privileged interests in the former Soviet territories. The second factor is that the United States will not cease to view these lands terms of promoting or defending democracy in the former Soviet republic. It is impossible for the United States to abandon the nominal democracies in the former Soviet republic for the sake of more constructive relations with Russia. In this case, the prospects for US-Russian relations are bumpy.

The United States might think that Russia is not much more important, but it can't be ignored since the Russian remains a domination forces and due to its strategic weight in Europe. It is a reason that Russia remains a regional force alone for the United States to pursue better bilateral relations. And this is sufficient to constitute a change in American foreign policy to seriously consider the establishment of relations with Russia. Expanded NATO, at the same time, is not providing the enduring security it once promised. Thus, enduring security in Europe can't be had without Russia's cooperation or in opposition to Russia. In addition, China will become more assertive in East Asia and Central Asia. It is even under a "peaceful rise" strategy, China will increasingly oblige the United States to accommodate Chinese power. Therefore, in order to balance with China, the United States should set aside political considerations and reset relations with Russia.

Mistrust between China and Russia

There is still historical tragedy and mistrust between China and Russia. The pessimists point out that the relationship still lacks a strong commercial base, and relies exclusively on the dovetailing interests of national elites on both sides. There is a plethora of friction, mutual suspicions and resentment, particularly deeply rooted on the Russian side.³¹ For Russia, China is at once the focus of a genuine convergence of interests and the greatest long-term threat to its national security. For China, Russia is a main supplier of energy and weapons, but is always dismissed as a self-important power whose rhetoric go beyond real

³¹ L. Dittmer, *The Sino-Russian strategic partnership and its implications for the Taiwan strait embroilment*, "Journal of Russian Studies," No. 2, 01. 2002, p. 15-48.

influence.

From the historical point of view, since Russia has built a relationship with China, it has signed unequal Treaties with Russia. Later China's new regime Republic of China was forced to sign further unequal treaties with Russia. When Soviet Union was established, it provided aid and support to the Kuomintang but at the same time indeed helped the Communist Party of China (CPC) grow and finally overtook the mainland China. It is said that CPC and Kuomintang cooperated to fight with Japan but after the Second World War, with the support of Russia, CPC leader Mao Zedong attacked the Kuomintang and won the Chinese Civil war, later built the People's Republic of China which made an alliance with the USSR. Both as communist states, PRC regard USSR as an "older brother". Yet after the Stalin's death emerged ideological tension between the two countries, Mao and Gang of Four accused the Soviet leadership of revisionism, and later the alliance ended. After Deng Xiaoping became the new leader of China and took economic reforms, he agreed to restore the diplomatic relations. After the collapse of USSR, relations between China and Russia are currently close. They remain a strong geopolitical and regional alliance and significant levels of trade. But it is just an "axis of convenience" which Bobo Lo introduced driven by perceptions of the national interests.

The interest of state is very important for a state to gain more power and to strengthen the capabilities. But Russians only think about their own interests and in order to get the maximum benefits, they can even sacrifice the position of China, the historical facts can give evidence that Russia all the time took advantage of China and treated China unequally. In my personal view both countries can't be trusted, Russia still maintained the former Communist thought, and China as communist country. As before USSR made treaty and gave support to the Kuomintang but actually it intended behind for the growth of the Communist Party of China. And in alliance with Communist Party of China, the Kuomintang fought against Japan, it was just a good chance for Communist Party of China to strengthen their power and later with the Russian assistance the Communist Party of China occupied the Chinese continent. And the brotherhood relationship with Russia broke not long after Stalin's death. The historical mistrusts and other facts such as cultural prejudices, geopolitical rivalries, and competing priorities can't really make the two big states be so-called strategic partners.

Chinese-Russian strategic partnership could be doubtful.

Bobo Lo in his book "Axis of Convenience: Moscow, Beijing, and the New Geopolitics"³² pointed out that the strategic partnership between China and Russia has been misunderstood. He calls the Chinese-Russian "mutually beneficial partnership" is just an "axis of convenience"- that is, "an inherently limited partnership conditioned on its ability to advance both parties' interests."

Now Russia and China can get better relations because of trade and investment and lack of military tension. Now China is getting much stronger than Russia and may take the place of the Russia statues in the global world. Because of the same interests, attitudes and strategies in the international issues, Russia has nothing to do but to cooperate with China. However, once China threatens Russia or both countries have conflicts of interests, the good relations will end in any time. Like a formal Chinese-Russian alliance, a stark Chinese-Russian conflict in the near future is possible. Optimists think that even if China's relations with the United States and the other countries to the east and southeast improve dramatically currently, China will continue to have compelling reasons for maintaining stable relations with Russia and the countries of Central Asia, since Russia has the potential to become an important source of energy resources for China. More generally, China will continue to have a strong interest in maintaining a stable region in order to focus on economic development. Even now it seems that the relationship is stronger than it has been at any time since the 1950s.

According to the circle historical theory, the "forever friendship" will not be everlasting. There must be severe doubts as to the strategic potential of their relationship, since a lot of problems and complicated issues exist, for example, the two countries have the longest border in the world and Russia somehow feel insecure and suspicious of China and the anxiety can be found in the Russian Far East. Numerous Chinese have crossed into Russia to look for jobs, engaging in agricultural business and trade. Because of the growth of Chinese immigration, Russia faces the fears of demographic crisis and imbalance between their long borders. We can see the report in the New York Times,³³ it said that the influx of Chinese farm labor in Russia reflects

³² B. Lo, *Axis of Convenience: Moscow, Beijing, and the New Geopolitics*, "Brookings Institution Press," 2008.

³³ A. E. Kramer, *One Russian farmland, an Influx of Chinese*, "The New York Times," 25 September 2012, <http://city.udn.com/50132/4875170>.

the growing trade and economic ties between the two countries, Russian is rich in land and resources, and China is in people. Some Russians harbor fears that broadening economic cooperation will lead to a wave of Chinese immigrants taking over sparsely populated territories. Another arising tension is that for protecting the oil and natural gas interests, Russia is now driving very hard bargains over its oil and gas with both Europe and its former Central territories. The Russian suspicions of Chinese intentions extend to the Central Asian nations. It is considerable for Russia that China quite interests in Central Asia.³⁴ Although the fears of Russia about the rise of China now will not change anything in Chinese-Russian current partnership, there is still a potential effect on the best and the long-term relationship.

Conclusion

China has a potential to become a regional hegemony and the rise of China could be a threat to the United States. Currently China built a closer strategic coordination with Russia and both sides said that their relationships are at their high point. In 2013 the Chinese leader, Xi Jinping, had chosen Moscow as his first foreign capital city to visit as president. It showed that China will make developing relations with Russia a priority in its foreign policy orientation. Analyst pointed out an alliance between the two countries aimed against the United States in particular or the West in general would constitute a significant threat. It seems that China ally Russia to counterbalance America. Some international crises may contribute to Chinese-Russian alliance against American power and ideas.

However, the United States doesn't look Chinese-Russian as a real strategic partnership, there are still deep historical tragedies and negative images rooted deeply in the Chinese-Russian relations. The mistrust and border conflicts still exist between China and Russia and it will affect the real partnership as it is said as friendly and forever peaceful relationships. Thus Chinese-Russian strategic partnership could be doubtful. The historical suspicions and cultural prejudices, geopolitical rivalries and competing priorities can't make the Russian and China be real so-called strategic partners. And this doubtful relationship will not threaten the security of the United States. The US-Chinese relations is the most important and best in the triangle relations, now it is an interlocking relationship, and for the

³⁴ R. J. Art, *The United States and the Rise of China: Implications for the Long Haul*, "Political Science Quarterly," Volume 125, Number 3, fall 2010, p. 335-338.

global stability, especially the economic and financial stability, China should build good relations with the United States. And the United States believes that the current interdependence between the United States and China is much more than the China-Russia relations, so China simply can't exist without the United States, for China, the Chinese-Russian relations seem strong, but it is just axis of convenience and nothing more than the continuation of history between Beijing and Moscow. The United States has repeated that the United States attaches great importance to relations with China, and they do not see China as a rival. The only relationship that is of a truly strategic nature for China is the one it has with the United States.

The United States wants Russia to become a more active Asian power to help manage the Rise of China, such as reinforcing calls to maintain freedom of the seas. And Russia hopes to use China to balance against the United States, but China doesn't view Russia as a strategic counterweight to the United States. Therefore, mostly the United States has not responded seriously to the China-Russia relations and its policy makers show little concern about the Chinese-Russian "strategic partnership". The United States doesn't worry much about Russia but indeed concerns about the future of China.

In a word, the United States foreign policy in Russia and China are dominated by trade and economy, making China and Russia inseparable from the United States huge market. In the foreseeable future, the United States economic diplomacy to Russia will be greatly enhanced, and then can grasp the opportunities in three diplomatic interactions. The United States maintain the only super-power in the world and the economic cooperation and the global stability are the priorities. One of the pillars of the United States strategy is to establish a stable, productive and constructive relationship with China. At the same time the United States is strengthening the trade economic relationship with Russia, as before to increase trade with China. Both Russia and China need the West to fuel further economic growth and development. Russian, China and the United States would benefit by seeking means for strengthening security cooperation among all three major powers. Therefore, the United States does not worry that Russia will against it just because of the benefit of China and for sure the United States doesn't consider closer bilateral Chinese-Russian relations as a security threat.

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Monika Bahyrycz

Faculty of Journalism and Political Sciences, University of Warsaw

How to Read Texts? On Leo Strauss's Hermeneutics and Methods of Interpretation

Abstract

Methodology in the history of political thought has been lately a subject of a deepened research in political science. Beside new theories, there are some well-known perspectives that might be still applied in the field. In the article, I would like to present one of them, but in a new, critical approach: it will concern the methods of text interpretation found in the works of Leo Strauss. I will be particularly interested in Strauss's idea of a return to the "great books", which is a metaphor for studies on the most acknowledged philosophers of the past centuries, and which requires to understand these thinkers as they "understood themselves", as Strauss often repeats. In order to comprehend great minds, Strauss taught "how to read" texts and created his own school of hermeneutics. As an opponent of historicism and relativism, Strauss believed that by turning to the past, we gain a clear insight into contemporary situation, free of frameworks and intellectual limitations of our modern era. The aim of the article is therefore to reexamine the techniques of reading for which Strauss has been most famous, with careful attention to his theory of exotericism, the way philosophers would present their teachings.

Keywords: Leo Strauss, methodology, text interpretation, hermeneutics, exotericism, history of political thought

Introduction

Leo Strauss's idea of a return to the "great books", which is a metaphor for studies on the most acknowledged philosophers of the past centuries, stems from his strong belief that what is true lasts forever. And however exalted it may sound, Strauss makes of that belief a premise for philosophical text interpretations. As such, it is also a basis of what Strauss calls liberal education:

For all practical purposes, pupils, of whatever degree of proficiency, have access to (...) the greatest minds, only through the great books. Liberal education will then consist in studying with the proper care the great books which the greatest minds have left behind – a study in which the more experienced pupils assist the less experienced pupils, including the beginners¹.

The core idea of liberal education – and Strauss means above all education at the university – is studying texts of the past. Strauss consequently turns his eyes to what seems to be gone and forgotten: medieval thought, pre-modern philosophy, biblical exegesis. It looks as if he did not trust contemporary thinkers. He doubts that modern men – scholars, thinkers, authors – are capable of unbiased, fair interpretation of old texts. To understand what is the source of this distrust, we should recall one of Strauss's famous allegories – the so-called second cave. Talking about Plato's Republic, Strauss suggests that there is another, deeper cave in which we have fallen. This situation is "artificial" and is a serious obstacle to what should be a starting point for philosophy:

The artificial obstacles may be so strong at a given time that a most elaborate "artificial" introduction has to be completed before the "natural" introduction can begin. It is conceivable that a particular pseudo-philosophy may emerge whose power cannot be broken but by the most intensive reading of old books. As long as that pseudo-philosophy rules, elaborate

¹ Leo Strauss, "What is Liberal Education?", in Leo Strauss, *Liberalism Ancient and Modern* (New York: Basic Books, 1968), p. 3.

historical studies may be needed which would have been superfluous and therefore harmful in more fortunate times².

Fortunately, this pseudo-philosophy (modern one?) that Strauss fiercely attacks can be “defeated” by historical approach in studying texts, that is by rejecting current experience and achievements of science and trying to understand the text of the “old authors” in accordance with their own intent. Strauss puts special emphasis on the necessity of historical interpretation, distinguishing it clearly from the historicist one, dominant – in his opinion – in the modern approach and characterized by an attempt to understand the “old authors” better than they understood themselves.

Contemporary hermeneutics wrongly assumes that every interpretation of the text is correct. The fact that there are infinitely many possibilities to read the text does not mean, according to Strauss, that the author understood his text in one specific way. And it happens far too often that the commentator looks down on the author, making it very difficult, if not impossible, to see in the author an equal intellectual partner who could give an insight into the truth. Strauss fears that today's approach to the old texts is almost exclusively “antiquarian”: modern scholars want only to “collect” and categorize these interesting, although already outdated ideas. In his discussion of the obstacles that stand in the way in the study of classical philosophy, Strauss suggests how to avoid the pitfall (or the cave) of historicism:

It would be a mistake to believe that the principles to be confronted with each other, especially those of classical philosophy, are readily accessible in the works of the historians of philosophy. The modern students of classical philosophy are modern men, and hence they almost inevitably approach classical philosophy from a modern point of view. Only if the study of classical philosophy were accompanied by constant and relentless reflection on the modern principles, and hence by liberation from the naïve acceptance of those principles,

² Leo Strauss, *How to Study Spinoza's Theologico-Political Treatise*, “Proceedings of the American Academy for Jewish Research”, Vol. 17 (1947 - 1948), p. 82.

could there be any prospect of an adequate understanding of classical philosophy by modern men³.

Thus, only awareness of his own cognitive limitations can prevent the commentator of the text from excessive "boldness" of interpretation. But the liberation from naivety is just a first step in the commentator's mission. To find the true meaning is its goal.

- **Strauss's Hermeneutics – Preliminary Reflections**

Hermeneutics, which principles Strauss often formulates using only hints and allusions, seems to be inextricably linked to his project of renewal of the classical political philosophy. In the only work devoted entirely to this important issue of the "proper" interpretation of historical texts – the collection of essays *Persecution and the Art of Writing* – Strauss decides to present the bond that exists, in his opinion, between author's way of writing and author's views, or more broadly – author's philosophy, understood specifically as science of knowledge. This way of writing – "the art of writing", as Strauss calls it – is one of the most controversial issues in Strauss's teachings, but also its most recognizable element. Strauss expresses the relationship of exoteric writing with philosophy as follows:

The exoteric teaching was needed for protecting philosophy. It was the armor in which philosophy had to appear. It was needed for political reasons. It was the form in which philosophy became visible to the political community. It was the political aspect of philosophy. It was "political" philosophy⁴.

Exoteric writing, conceived as a "shield" that provides protection for the views of pre-modern thinkers, is of course a crucial aspect of Strauss's hermeneutics. But it is maybe more important to pay attention to the relation that Strauss indicates between philosophy and society, the relation which practical expression is "political philosophy", or even "politicized" philosophy, i.e. used for political purpose.

³ Leo Strauss, *On the Interpretation of Plato's Political Philosophy*, "Social Research", Vol. 13, No. 3 (September 1946), p. 328.

⁴ Leo Strauss, „Introduction" in Leo Strauss, *Persecution and the Art of Writing* (Glencoe, IL: The Free Press, 1952), p. 18.

Transmission of philosophy to the public, if at all possible, takes place only through the exoteric structure of philosophical communication. And Strauss proposes deciphering the "code" by which the message is encrypted. According to his conception, in the political tradition of the West there is no idea or text that does not need to be read in an "appropriate" way.

The specific approach to the problem of proper reading is clearly inspired in Strauss's works by teachings of his great master, Maimonides, who "invented" all sorts of methods of text exegesis. In the *Guide for the Perplexed*, for example, in descriptions of the visions of the prophets, Maimonides uses a special form of commentary, so called "parables". Sarah Klein-Braslavy claims that Maimonides applies this method to the passages of the Bible which have two meanings, internal and external.

By "parables" Maimonides means verses and passages that have two meanings: an external meaning and an internal or hidden meaning. The external meaning is apprehended by a reading of the text in a conventional way, the internal meaning by a reading of it in a philosophical way. The internal meaning contains "wisdom that is useful for beliefs concerned with the truth as it is" (GP Introduction, p. 12), that is, with philosophical truths. Nevertheless, the external meaning of the well-constructed parable contains wisdom that is useful for practical life, especially for "the welfare of human societies"⁵.

The theory of two complementary layers of an analyzed text - perhaps the most characteristic exegetical method of Maimonides - assumes that the biblical text has two types of recipients who read it on two different levels of understanding. Josef Stern calls these two levels an "inner speech" and an "external speech", and remarks that the latter is a kind of externalization of the first, made in order to communicate the truth to those who are not able to capture it in a direct way. Maimonides therefore takes the Platonic tradition to see in the allegory - medium of the philosophical truths - a way of teaching them to readers

⁵ Sarah Klein-Braslavy, „Bible Commentary" in Kenneth Seeskin, ed., *The Cambridge Companion to Maimonides* (New York: Cambridge University Press, 2005), p. 254.

of limited ability of cognition. So does, as we will see, Strauss in his theory of reading texts.

The expression "theory of reading texts" may, however, suggest that Strauss aims to create some kind of universal way of reading. This is not true. Strauss's hermeneutics – understood as a philosophy of language – does not constitute any complete system of rules and concepts. Strauss never meant to write a "textbook" for those learning how to read. He would probably say that this kind of explicit instructions are completely unnecessary for an intelligent reader, able to look carefully at the text and to use the inner hints included in it in order to reveal its true meaning. These hints or guidelines can be found on many pages of his essays and lectures. However, in a few rare cases, Strauss allows himself to formulate more openly some general principles according to which he reads philosophical texts, and according to which, we should assume, he would like his texts to be read as well. One of such examples of Strauss's papers on exegetical methods is his polemical essay *How to Study Spinoza's Theologico-Political Treatise*, which was a critical introduction to the English translation of the works of the seventeenth-century philosopher. Strauss uses this introduction as an opportunity to share his own views on the interpretation of the Bible in particular, and the texts of ancient authors in general. Here is how Strauss formulates his basic premise of what we might call an interpretative analysis:

To understand the words of another man, living or dead, may mean two different things which for the moment we shall call interpretation and explanation. By interpretation we mean the attempt to ascertain what the speaker said and how he actually understood what he said, regardless of whether he expressed that understanding explicitly or not. By explanation we mean the attempt to ascertain those implications of his statements of which he was unaware. (...) It is equally obvious that, within the interpretation, the understanding of the explicit meaning of a statement has to precede the understanding of what the author knew but did not say explicitly: one cannot realize, or at any rate one cannot prove, that a statement is a lie before one has understood the statement in itself⁶.

⁶ Leo Strauss, *How to Study Spinoza's Theologico-Political Treatise*, p. 70.

The ambiguity of “understanding” is, in Strauss's opinion, one of the major difficulties that we encounter when reading a text. To facilitate a conscientious reader's task, Strauss distinguishes two stages of reading: interpretation and explanation. In the broadest sense, the first one means an analysis, and the second one – a reader's judgment. The meaning Strauss gives to the terms is somehow surprising – usually, in “natural language”, we tend to assign to them exactly the opposite meanings: we consider explanation as an attempt of unbiased inquiry, and interpretation as a sort of surplus, a commentator's opinion on a text. Thus, distinction proposed by Strauss might seem illogical. Nevertheless, when we take a look at it in terms of subjectivity and objectivity (which admittedly are rather unknown categories to Strauss's rhetoric), we will be able to justify the “optics”, point o view, adopted here by our thinker.

1. The First Level of Reading: Interpretation

As suggested above, Strauss treats interpretation as a kind of "subjectivation", a research perspective in which the commentator's attention is focused on the author of the text. Interpretation is an attempt to indicate the author's very own, subjective views. In the essay *How to Begin to Study Medieval Philosophy* Strauss says: "Historical understanding means to understand an earlier author exactly as he understood himself"⁷. The goal that Strauss sets in front of the reader, though seemingly simple, turns out to be very difficult to achieve. To understand the author is not only to determine what exactly he said, but also what he meant by using these (and not other) words. It is necessary to realize – often emphasizes Strauss – that the author expresses his views not only literally, but also in a veiled form. Even the most meticulous analysis of the author's statements is only the first step in the interpretation of the text. It is also necessary, for example, to specify whether the statement is ironical, or simply a lie⁸. Thus, not only reflection on the techniques used by the author, but also knowledge of

⁷ Leo Strauss, “How to Begin to Study Medieval History”, in Leo Strauss, Thomas L. Pangle ed., *The Rebirth of Classical Political Rationalism. An Introduction to the Thought of Leo Strauss* (Chicago: University of Chicago Press, 1989), p. 208.

⁸ Leo Strauss, *How to Study Spinoza's Theologico-Political Treatise*, p. 70.

the author's writing strategy, his literary inclinations and habits, as well as his way of thinking, is what characterizes a mature interpretation.

Among numerous methods of exoteric writing that Strauss “discovers” in other authors' works, there are few that may present difficulties for someone unfamiliar with “the art of writing”, or in this case – the art of reading. In his “peregrinations” through historical texts, Strauss encounters intentional concealment, ambiguity of a text's plan, contradictions that exist both within a text and between different works by the same author, complex but unclear rhetorical apparatus, and finally deliberate errors in argumentation. However, before we start to reveal these specific methods, we should concentrate on more basic tools of text interpretation:

It is (...) obvious that, within the interpretation, the understanding of the explicit meaning of a statement has to precede the understanding of what the author knew but did not say explicitly: one cannot realize, or at any rate one cannot prove, that a statement is a lie before one has understood the statement in itself⁹.

To search for the “explicit meaning” is nothing other than linguistic analysis. Strauss reaches such a level of scrupulousness in reading texts that he even analyzes single words, looking for their origins and unexpected meanings. A good example of Strauss's commitment to this method is his explanation given in the essay *Progress or Return?* of the Hebrew word *teshuvah*: its ordinary meaning is “repentance”, as Strauss notices, but its “emphatic” meaning is “return”. And “return” can also mean returning “from the wrong way to the right one”, in other words – “homecoming”¹⁰. That is how Strauss handles words, giving them not so obvious meanings.

Importance that Strauss attaches to literality of interpretation cannot, however, hide the fact that this is only the beginning of a true text analysis. Similarly to the basic division into two levels of reading – interpretation and explanation – Strauss made the same distinction within interpretation itself, identifying two stages of exegesis. Strauss's

⁹ *Ibid.*

¹⁰ Leo Strauss, „Progress or Return?“, in Leo Strauss, Thomas L. Pangle ed., *The Rebirth of Classical Political Rationalism, ibid.*, p. 227.

Introduction to the *Persecution and The Art of Writing* can shed some light on the issue:

The context in which a statement occurs, and the literary character of the whole work as well as its plan, must be perfectly understood before an interpretation of the statement can reasonably claim to be adequate or even correct. One is not entitled to delete a passage, nor to emend its text, before one has fully considered all reasonable possibilities of understanding the passage as it stands – one of these possibilities being that the passage may be ironic¹¹.

Exploring the rationality of the text is one of the basic premises of the interpretation. Therefore, at the first stage, a literal reading stage, the “exegete” must treat the text as an internally consistent, logical and rational, and must do it *a priori*, without premature questioning. Only after careful analysis of the language, the commentator can look not “only” for words, but also for presuppositions that stand behind them. The literal reading is a prerequisite for the correct interpretation, but it is not sufficient. To learn the true opinion of the author, especially when it is not expressed by him openly, is to find in the text hidden signs.

The second stage of the interpretation is therefore a search for what is invisible, hidden from “untrained” eye. This approach stems from the Strauss's concept of “signposts”¹². He believes that each epoch has its own methodological tools of text interpretation – the signposts – and it is important not to confuse them. In his objection to all sorts of historicisms, Strauss recommends to historians to reject their contemporary attitudes and habits of interpretation and to make an attempt to find “the signposts which guided the thinkers of old”, and which are now “concealed by heaps of dust and rubble”, as he metaphorically puts it. To “dig up” for guidelines that were left by the old authors means, above all, to cast aside “the most obnoxious part of the rubble”, that is “the superficial interpretations by modern writers, the chip clichés which are offered in the textbooks and which seem to unlock by one formula the mystery of the past”¹³. Only cautious

¹¹ Leo Strauss, „Introduction” in Leo Strauss, *Persecution and the Art of Writing*, p. 30.

¹² Leo Strauss, “How to Begin to Study Medieval History”, p. 211-212.

¹³ *Ibid.*

separation of the historian's own exegetical techniques from the guidelines with which the old author directs his reader, gives the opportunity to read the text in a proper way.

When a historian frees himself from his own stereotypes, he is ready to search for the true meaning – the one that is often hidden. The decision whether to interpret a text fragment more literally, or already to search for the "second bottom", depends to a large extent on how well he knows "an author's manner of writing". And Strauss gives here another clue: "It is a general observation that people write as they read. As a rule, careful writers are careful readers and *vice versa*"¹⁴. There is no doubt that in this way – by giving an account from his thorough readings – Strauss also presents his own technique of writing. It consists of not only adequate, but never accidental choice of words, including ambiguous expressions, as well as specific sentence structure (especially if it is clearly flawed). The context of statements, overall book or text plan, with particular attention to all its ambiguities – strange configuration of quotations and choice of arguments, omissions of certain important steps in argumentation, are of similar significance. In *Thoughts on Machiavelli* Strauss notices:

If a wise man is silent about a fact that is commonly held to be important for the subject he discusses, he gives us to understand that the fact is unimportant. The silence of a wise man is always meaningful. It cannot be explained by forgetfulness¹⁵.

By obvious mistakes and meaningful silence "wise men", the old authors, send to today's readers their message. Sometimes the only way to receive it is "reading between the lines"¹⁶, as Strauss often reminds. Searching for contradictions and ambiguities of the analyzed text and drawing on their basis conclusions about true intentions of the author, is the point where two levels of interpretation – literal and not literal – come to meet. It is a synthesis of what Strauss calls "reading as

¹⁴ Leo Strauss, *How to Study Spinoza's Theologico-Political Treatise*, p. 71.

¹⁵ Leo Strauss, *Thoughts on Machiavelli*, (Glencoe, IL: Free Press, 1958), p. 30.

¹⁶ Leo Strauss, „Introduction” in Leo Strauss, *Persecution and the Art of Writing*, p. 30.

intelligently as possible". It is also what let us avoid "overlooking the wood for the trees"¹⁷.

2. The Second Level of Reading: Explanation

The second level of reading – an explanation – consists in "objectification" of the text. It should be understood as an extraction of its actual content or sense, regardless the intent and efforts of the author. The objective content of the text exists somehow out of consciousness of its creator. We can imagine that what Strauss has in mind is to identify such implications of the author's statements that he is unaware of. Strauss clearly defines that it is about searching in the text for "unconscious expression of a wish, an interest, a bias, or a historical situation"¹⁸. It is necessary to understand the intellectual climate of the times in which the author created, as well as the socio-historical environment from which he originated. In other words – Strauss would like to explain the text by looking in it for some deep structures, expressions of the times the author lived, and his rooted beliefs.

Interpretation and explanation, in principle mutually complementary, may however differ in their basic assumptions (insight "from the inside" versus overview from the "outside"); sometimes they can appear almost as contradictory. Strauss notices this controversy:

The fact that interpretation and criticism are in one sense inseparable does not mean that they are identical. The meaning of the question 'What did Plato think?' is different from the meaning of the question 'Whether that thought is true'. The former question must ultimately be answered by a reference to texts. The latter question cannot possibly be settled by reference to texts. (...) But interpretation and criticism are not only distinguishable from each other. To a certain extent they are even separable from each other¹⁹.

In basic terms, Strauss means that the views of the author must be strictly separated from the criticism carried out from an external

¹⁷ Leo Strauss, "How to Begin to Study Medieval History", p. 207.

¹⁸ Leo Strauss, *How to Study Spinoza's Theologico-Political Treatise*, p. 70.

¹⁹ Leo Strauss, *On Collingwood's Philosophy of History*, „Review of Metaphysics”, Vol. 5, Nr 4 (Jun., 1952), p. 583.

point of view. Strauss clarifies this problem in his response to the principles of the biblical hermeneutics formulated by Spinoza: “His demand that the interpretation of the Biblical teaching and the judgment on the truth or value of that teaching be kept strictly separate, partly agrees with what we meant by distinguishing between interpretation and explanation”²⁰.

With this short sentence Strauss explains two important issues. Firstly, he compares the division “interpretation – explanation” to the distinction between interpretation and judgment, which clearly indicates their separate functions. Secondly, he gives to the judgment a role of objective evaluation, because its criterion is absolute – it is the truth. We see that for Strauss the judgment on the truth of the text is exactly what we do on the level of explanation. It must be said Strauss was convinced that for a serious study on ancient texts, it is necessary to transform ourselves from historians to philosophers and to believe that the text is, in its essence, true. Strauss explains: “We can understand medieval philosophy only if we are prepared to learn something, not merely *about* the medieval philosophers, but *from* them”²¹.

Strauss often accentuates the significance of interpretation in reading texts. However, he also entrusts to the reader (and he probably means himself too) an important, if not the most crucial role which exceeds the powers of an “ordinary” commentator.

Conclusion

Strauss's “art of reading”, which rejects the suggestion that it is impossible to understand an author as he understood himself, is a clear contradiction of the principles of historicism, relativism and contextualism. Strauss always tried to distance himself from this kind of fashionable “isms” that became the sign of our times. His devotion to the search for the philosophical truth might look a bit “old-fashioned” as well. However, Strauss gives us, the modern men, some very interesting tools of independent thinking. Learning by reading – these three words could sum up Leo Strauss's concept of both good education and good life.

²⁰ Leo Strauss, *How to Study Spinoza's Theologico-Political Treatise*, p. 74.

²¹ Leo Strauss, “How to Begin to Study Medieval History”, p. 211.

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REVIEWS

Maciej Michałek

Faculty of Journalism and Political Science, University of Warsaw

‘Ancient Chinese Thought, Modern Chinese Power’, Yan Xuetong,
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Yan Xuetong, one of the most prominent Chinese scholars from Tsinghua University in Beijing, has made an attempt to introduce the ancient political thought of China to the Western readers. In his book, he focuses on the pre-Qin philosophers (the Qin dynasty was established in 221 B.C.) and their perspectives on the benevolent governance, legitimacy of power, and international order. Their essays, written in the period of chaos and wars between Chinese kingdoms, became eventually a theoretical foundation of the unified Chinese Empire, and, as such, they mark the peak achievement of ancient China’s philosophical thought.

The book consists of three essays on interstate political philosophy of pre-Qin masters wrote by Yan, followed by another three essays by other Chinese scholars in form of commentaries. Finally, there is Yan’s response to them. Such structure is undoubtedly in favor of proper understanding of the book, since it reflects the debates that take place among Chinese scholars today.

At the beginning, Yan presents a comparison of political thoughts of seven Chinese philosophers, not equally recognizable among the Western audience: Guanzi, Laozi, Confucius, Mencius, Mozi, Xunzi, and Hanfeizi. In effect, he manifests the diversity of Chinese political visions, which exceeds far beyond the frames of currently the most “fashionable”: Confucianism. Just to mention that the scope is indeed wide—from Laozi, considered the founder of Taoism, to Hanfeizi, the co-developer of Legalism. Yan tries to present and label the seven masters’ ways of thinking, and to achieve this, he makes use of contemporary international relations theories. As mentioned by Daniel S. Bell, “Yan aims to grasp the true picture of pre-Qin thought so as to make new discoveries in theory”.

In the 2nd chapter Yan focuses specifically on Xunzi's interstate political philosophy. The reason seems to be that Xunzi writes about hierarchical international order as the most desirable, which clearly contrasts with a modern idea of equality between sovereign states. In the anarchic world he distinguishes three models of behavior of great powers—the humane authority, hegemony, and tyranny, with clear indication of the first as the most benevolent for the people as well as for international stability. Moreover, Yan puts special emphasis on the fact that in the Xunzi's vision great powers have extra rights only insofar as extra responsibilities to secure international order. Such emphasis, supplemented by the concept of the morality of the states, differs from the ideas dominant in the West, although it is not necessarily incompatible with the Western world.

The 3rd chapter is devoted to an analysis of *The Stratagems of the Warring States*, a historical work on political views and strategies, compiled in the Warring States period (5th to 3rd century B.C.). According to the authors (the co-author of this chapter is Huang Yuxing) this book lets us observe that apprehension of hegemonic issues has not changed since the ancient times, and can still be used to explain the phenomenon of today's great powers' struggles. The three topics analyzed in this context are the foundations of hegemony, the role of norms for hegemonies, and strategies used to gain hegemony. At the end, the authors, by basing on the text of "Stratagems...", propose several comments and advice for today's decision-makers.

Three further essays constitute comments and remarks on the Yan's introduction into pre-Qin political thought from the previous chapters. In his essay Yang Qianru suggests that Yan's proposition abstracts from proper historical context, especially when the aim is to draw conclusions of universal significance. The wide scope of thoughts considered as Confucianism is presented by Xu Jin, summoned by the Mencius's words "the benevolent has no enemies". Last but not least, Wang Rihua tries to develop the political hegemonic theory of ancient China propounded by Yan.

In general, Yan argues that it is a political leadership what defines national power most, and he considers it more influential than economy or military matters. Moreover, he indicates that morality as a core part of political sphere, and sees it as a source of stability. It is an inspiring vision, though it might be treated as idealistic, rather than based on political realism. This is perhaps the major drawback of Yan's book.

The problem with such attitude is twofold—firstly, what does morality in politics exactly mean, and is there only one morality, despite different beliefs and worldviews? And secondly, are we convinced that morality is such a core part in politics nowadays? Though this idea is alluring, it is rather hard to confirm it when analyzing either history, or the current world.

Another problematic issue is that Yan's vision is not finished yet—he rather offers a starting point for presenting Chinese perspective for further comparisons and studies. Yan himself explains his motivations by saying that he began to read pre-Qin masters due to the lack of systematic international relations theory created by the Chinese scholars. But, according to his words, his aim was not to create a Chinese school of international relations theory at all. His attempt was devoted clearly to “enrich current international relations theory, to deepen understanding of international political realities, and to draw lessons for policy today”. So these aims are undoubtedly achieved, and as such are the major contribution of Yan's book. Eventually, the incompleteness of this vision is intentional, and understandable when we take into account the number of the theoretical obstacles in making such an innovative propounding.

On the other hand, considering the wide scope of ancient Chinese political thoughts presented by Yan, it might be treated as a stance in current debate on developing the Chinese school or Chinese theory of international relations. Is such attempt to build such single school/theory justified, given the variety and full richness of the heritage of ancient Chinese masters? Yan addresses this doubt openly, and indicates several weaknesses of theoretical struggle to coin the Chinese school of IR, with the name wrongly labeled by the state in the first place. Yan's voice in this debate, vigorously conducted in today's China, should not be omitted.

The study of Yan Xuetong is without doubt much welcome, as it is one of the first attempts to present and revive Chinese rich heritage in the political sphere. For many Western readers it would be a unique chance to know the works of the greatest Chinese masters of political and international issues. Moreover, the book should be considered in the wider context of China striving for its own path to achieve a status of a great power. Such struggle includes debates on the political system most expected in China, its tendency to use force, and future relations of China with the other states overall. An insight into Chinese academic debate on how to take advantage of own philosophical heritage in these

matters is obviously of exceptional value. In this context, in the book we found different propounding which originates from Legalism as well as from Laozi. And even when thinking of Yan's vision of China as a world power struggling to achieve humane authority as an idealistic or naive, with no doubts it is fresh, thought-provoking and worth looking at.

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