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The Dangers of Global Law

Sri Lankas Expanding Economic Ties

Highlights

The Shadow of the Virus Concerns

Enforcing Foreign Judgments in Nigeria

Discovering Thoughts, Inventing Future

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The Dangers of Global Law and the Duties of the State

By Clovis Demarchi & Douglas Cristian Fontana
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Abstract- The article deals with global law and the duties of the State. Transnational legal production is a current and challenging phenomenon. If it brings benefits, it can bring dangers, especially to States, requiring behavior consistent with the current situation. The article questions what are the dangers of global law and what duties do States have in this context. The general objective is to identify the dangers arising from global law and to verify what are the duties of States within a scenario of transnational legal production. Among the specific objectives, the first one, addressed in the first topic, is to study what global law is. Then, in the second topic, the problems arising from the idea of global law is identified. Finally, in the final part, it is verified what are the duties of the States in this context. It was possible to conclude that it is the duty of the States to have an active posture in this process of transnational legal production, acting in the regulation and control of this legal production so that the dangers arising from it do not materialize in the reality of society. The study was developed from a bibliographic research, under the hypothetical-deductive method.

Keywords: *global law. democracy. duties. state.*

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The Dangers of Global Law and the Duties of the State

Os Perigos do Direito Global e os Deveres do Estado

Clovis Demarchi [α] & Douglas Cristian Fontana [σ]

Resumo- O artigo trata sobre o direito global e os deveres do Estado. A produção jurídica transnacional é um fenômeno atual e desafiador. Se traz benefícios, pode trazer perigos, especialmente aos Estados, exigindo um comportamento condizendo com a atualidade da questão. O artigo questiona quais são os perigos do direito global e quais os deveres que os Estados têm nesse contexto. O objetivo geral é o de identificar os perigos advindos do direito global e verificar, quais os deveres dos Estados dentro de um cenário de produção jurídica transnacional. Dentre os objetivos específicos, o primeiro deles, abordado no primeiro tópico, é estudar o que é o direito global. A seguir, no segundo tópico, são identificados quais os problemas advindos da ideia de direito global. Por fim, na parte final, verifica-se quais são os deveres dos Estados nesse contexto. Foi possível concluir que é dever dos Estados ter postura ativa nesse processo de produção jurídica transnacional, atuando na regulação e controle dessa produção jurídica a fim de que os perigos dela decorrentes não se consubstanciem na realidade da sociedade. O estudo foi desenvolvido a partir de uma pesquisa bibliográfica, sob o método hipotético-dedutivo.

Palavras Chaves: direito global. democracia. deveres. estado.

Abstract- The article deals with global law and the duties of the State. Transnational legal production is a current and challenging phenomenon. If it brings benefits, it can bring dangers, especially to States, requiring behavior consistent with the current situation. The article questions what are the dangers of global law and what duties do States have in this context. The general objective is to identify the dangers arising from global law and to verify what are the duties of States within a scenario of transnational legal production. Among the specific objectives, the first one, addressed in the first topic, is to study what global law is. Then, in the second topic, the problems arising from the idea of global law is identified. Finally, in the final part, it is verified what are the duties of the States in this context. It was possible to conclude that it is the duty of the States to have an active posture in this process of transnational legal production, acting in the regulation and control of this legal production so that the dangers arising from it do not materialize in the reality of society. The study was developed from a bibliographic research, under the hypothetical-deductive method.

Keywords: global law. democracy. duties. state.

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Introdução

O direito global é um fenômeno atual e polêmico. O intercâmbio global, seja comercial, populacional, ou mesmo de ideias, vem gerando o fenômeno da produção jurídica para além das fronteiras estatais. Alguns extraem disso uma ideia de enfraquecimento dos Estados e de sua própria soberania. Há quem decrete, em futuro próximo, o próprio fim da noção de Estado para que se concretize uma possível governança global.

A despeito de quaisquer exageros, não se pode negar que há um fenômeno transnacional global, movido por inúmeros atores, sejam pessoas, grupos, organismos internacionais ou mesmo conglomerados econômicos que tem poder de, literalmente, construir regras jurídicas que os favoreçam.

O fenômeno do intercâmbio global, mais conhecido por globalização, talvez um nome moderno para algo que sempre existiu – o intercâmbio entre nações, troca de bens, serviços etc. – a despeito de seus benefícios, também pode trazer riscos. Notadamente a falta de controle democrático sobre a produção jurídica, a redução de direitos já conquistados por algumas populações e até o enfraquecimento de alguns direitos humanos. Isso porque, a imposição de um direito global, a longo prazo, pode significar também um controle global da sociedade, advindo daí os riscos inerentes a qualquer ideia totalitária de poder.

Nesse contexto, o presente artigo questiona quais são os perigos do direito global e quais os deveres que os Estados têm nesse contexto? Para responder a esse questionamento, foi traçado o objetivo geral de identificar os perigos advindos do direito global e verificar quais são os deveres dos Estados dentro de um cenário de produção jurídica transnacional. Dentre os objetivos específicos, o primeiro deles, abordado no primeiro tópico, é verificar o que é o direito global. A seguir, no segundo tópico, são identificados quais os problemas advindos da ideia

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de direito global. Por fim, na parte final, verifica-se quais são os deveres dos Estados nesse contexto.

O estudo foi desenvolvido a partir de uma pesquisa bibliográfica e documental, sob o método hipotético-dedutivo.

I. Direito Global

A ideia de direito global – embora essa nomenclatura seja relativamente moderna – é bastante antiga e já podia ser encontrada no império romano, com a divisão entre *ius civile* e *ius gentium*.

O desenvolvimento do jus gentium ocorreu a partir da supremacia do princípio da personalidade em relação ao princípio da territorialidade da lei. Isso porque, na época havia uma legislação aplicável apenas aos cidadãos romanos (*ius civile*), porém desconhecida dos povos conquistados, razão pela qual foi necessário admitir, para esses povos, a lei dos estrangeiros (*ius gentium*). Possivelmente essa lei dos "povos" tenha sido primeira aplicação transnacional de uma legislação de que se tem notícias na história[1].

Com efeito, o direito dos estrangeiros surgiu da necessidade de se aplicar uma legislação aos povos conquistados que não fosse aquela reservada aos cidadãos romanos, até porque tais povos sequer tinham condições de conhecer a lei romana. Por tal razão, Roma passou a considerar a aplicação do direito estrangeiro na solução dos conflitos envolvendo os povos e tribos conquistados, criando-se, assim, um "direito das nações". Mais tarde esse direito passou a ser aplicado em transações comerciais e contratuais com estrangeiros[2].

Essa noção de *ius gentium* se desenvolveu posteriormente no período medieval, sendo reconhecida por juristas como Bártolo de Saxoferrato[3] como algo a ser observado por todos, mesmo que cada povo tivesse o direito de estabelecer sua própria legislação, evidenciando-se, com isso, uma noção de separação entre direito interno e transnacional.

Além disso, no período medieval, esse direito transnacional, especialmente na Europa, foi o próprio direito canônico[4] em razão da influência da Igreja Católica Romana sobre a sociedade daquele período. Esse direito, talvez o primeiro ordenamento jurídico moderno do Ocidente, deixou um profundo legado na construção do direito atual, notadamente nas ideias de boa-fé, costumes, equidade, entre outros[5].

Nesse contexto, importante mencionar Santo Tomás de Aquino, que defendia a ideia de divisão entre direito civil e direito das gentes, identificando este último com o direito natural. O legado dessas concepções da idade média foi a elaboração de um direito comum (*ius commune*), ou seja, um direito que não conhece nações ou fronteiras, de validade geral e aplicável em harmonia com os direitos locais[6].

Modernamente, o direito global é entendido como um direito que regula ações ou eventos que transcendem as fronteiras nacionais. Nele estão contidos o direito internacional público e privado, assim como outras regras que não se enquadram nestas duas categorias[7]. Staffen[8]afirma que o direito global é: "Direito que não depende exclusivamente do Estado ou de ente político-jurídico equivalente; global, face sua condição de produzir efeitos nos mais diversos territórios, instituições e relações, mas sem pretensões universalistas".

O fenômeno do direito global atual está diretamente ligado à globalização, nas suas mais diversas facetas (jurídica, econômica, informacional, cultural, social), nas formas pelas quais atualmente o mundo se relacionada e nos arranjos institucionais e comerciais dela decorrentes visto que, conforme afirma Demarchi[9] "é um fenômeno que envolve o ser humano em todos os contextos de sua vida, intensificando as relações e encurtando as distâncias, criando uma nova dinâmica econômica e política entre os Estados e diminuindo as distâncias entre as pessoas."

Independentemente da posição que se adote acerca da globalização[10], é certo que o mundo atual

[1] GIARO, Tomasz. *Transnational law and historical precedents*. Studia Iuridica, Varsóvia, v. 38, 2016, p. 75.
[2] GIARO, Tomasz. *Transnational law and historical precedents*. Studia Iuridica, Varsóvia, v. 38, 2016, p. 76.
[3] OSLÉ, Rafael Domingo. *Que és el derecho global*? 6 ed. Pamplona: Aranzadi, 2009, p. 25.
[4] GIARO, Tomasz. *Transnational law and historical precedents*. Studia Iuridica, Varsóvia, v. 38, 2016, p. 77.
[5] OSLÉ, Rafael Domingo. *Que és el derecho global*? 6 ed. Pamplona: Aranzadi, 2009, p. 29-30.

[6] "[...] E, a essa luz, o direito positivo se divide em direito das gentes e direito civil. [...] Pois, ao direito das gentes pertence o que deriva da lei natural como as conclusões derivam dos princípios; [...] O que, porém, deriva da lei da natureza, por determinação particular, pertence ao direito civil, pelo que cada Estado determina o que lhe é acomodado" (AQUINO, Santo Tomás de. *Suma teológica*. Campinas: Ecclesiae. 2016. v. 2. Questão 95, art. 4º, p. 575).
[7] GIARO, Tomasz. Transnational law and historical precedents. *Studia Iuridica*, Varsóvia, v. 38, 2016, p. 81.
[8] STAFFEN, Marcio Ricardo. *Interfaces do Direito Global*. 2 ed. Rio de Janeiro: Lumen Juris, 2018, p. 1.
[9] DEMARCHI, Clovis. Crise do estado e da democracia no contexto da globalização. *Revista Jurídicas*, Manizales, Universidade de Caldas, Colômbia, v. 16, n 2, 2019. p. 33, disponível em: http://juridicas.ucaldas.edu.co/downloads/Juridicas16(2)_3.pdf.
[10] Cervantes identifica três correntes de pensamento sobre a globalização. A primeira, chamada hiperglobalista, vê um novo momento na história humana, com um processo de desnacionalização das economias, enfraquecimento do Estado e uma Nova Ordem Global. A segunda corrente é a cética, que nega a globalização como um fenômeno extraordinário, nega que o poder dos Estados tenha diminuído, mas sim reforçado ou aumentado, reafirmando seu papel regulador com agente ativo no cenário global. Por fim, existe a corrente transformacionista que sintetiza as ideias das outras duas correntes, reconhecendo na globalização um reordenamento das relações interregionais e, por outro lado, anotando uma reconstrução ou reestruturação do poder dos governos, ou seja, transformando o poder estatal e a política mundial. (CERVANTES, Aleida Hernández. *La producción jurídica de la*

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está cada vez mais conectado e, com isso, novas realidades jurídicas se apresentam. Há muitos atores operando internacionalmente, dentre eles agentes econômicos, organizações não-governamentais, grupos de mídia, organismos internacionais, Estados e mesmo cidadãos.

Segundo Staffen[11], é desses processos transnacionais e de globalização (inclusive do jurídico) que surge um substrato para o direito global, haja vista o exaurimento das estruturas tradicionais de produção, interpretação e aplicação das normas. O autor sustenta que o objeto do direito global é compreender e regular as relações relativas aos fluxos da globalização; bem como que o objetivo é uma quebra da cisão entre nacional e internacional no campo jurídico, incluindo como destinatários de suas prescrições, não apenas Estados e instituições, mas também particulares.

Se, por um lado, não se pode negar a história e perceber que o intercâmbio global, especialmente no campo comercial, sempre existiu e se intensificou na medida em que foram se desenvolvendo novas tecnologias que permitiram o "encurtamento" das distâncias, por outro é notável que o mundo contemporâneo apresenta uma realidade interconexa tão intensa que isso não pode passar despercebido, especialmente do campo do direito.

Como ferramenta de pacificação ou regulação social, especialmente na resolução dos conflitos ou na tentativa de evitá-los, o direito deve prestar atenção não apenas aos benefícios da globalização, mas também aos problemas que ela pode acarretar.

Os entusiastas dos benefícios da globalização, alguns que até preconizam a morte do Estado e a inevitável assunção de um governo e direito globais[12], vislumbrando nisso a solução final de todos os problemas da humanidade, por vezes esquecem dos problemas que a globalização também traz em seus meandros, além do perigo de totalitarismo que a "planificação" (escondida por detrás da preconizada "pacificação") global da humanidade pode trazer.

A ideia de que é preciso globalizar o direito para resolver de modo uniforme os problemas globais, apesar de bonita e até utópica, esconde uma falsa verdade que é o fato de que alguns desses problemas globais são resultado da própria globalização. Isso induz, portanto, uma espécie de círculo vicioso, algo como: é preciso globalizar para resolver problemas gerados pela globalização. Além disso, é preciso notar que o mundo possui um número expressivo de culturas, religiões, crenças, costumes e, a sua vez, sistemas jurídicos os mais diversos. Um modelo global de direito que se ajuste a tal diversidade é quase uma quimera.

É claro, e isso não se pode negar, que há sim questões jurídicas pontuais que podem e devem ser harmonizadas internacionalmente, especialmente regras de comércio, sistema financeiro, fluxo de informações entre outras. Mas, mesmo essas questões, a par dos esforços atuais, por vezes sofrem alguns revezes, como se observou recentemente na guerra comercial entre Estados Unidos e China, cujos melindres estremeceram os mercados globais no ano de 2019, até culminarem em um acordo bilateral parcial de comércio.

Nos dias atuais novamente se presencia um problema em escala global relativo à pandemia do Coronavírus (covid-19), oriunda da China e que rapidamente se espalhou pelo mundo, afetando populações e economias globalmente. Trata-se de mais um revés para os entusiastas de soluções globais para problemas globais, ante a observação e as recentes críticas que países como Estados Unidos, por exemplo, vem apresentando em relação à atuação da Organização Mundial de Saúde (OMS) na condução do problema, críticas que também são apresentadas por alguns membros da comunidade científica[13].

Nesse contexto, a despeito da reconhecida importância de pensar globalmente alguns aspectos do direito, faz-se necessária uma investigação mais apurada sobre a "face oculta" desse direito, ou seja, os perigos que o direito global pode conter nas suas "entrelinhas" progressistas.

II. Os Perigos do Direito Global

Conforme já observado no tópico anterior, um mundo cada vez mais interativo e globalizado permite uma nova abordagem do direito, especialmente a concepção de um direito que se proponha a ir além dos conceitos clássicos de direito internacional público e privado, que também possa atender a alguns vazios

globalización económica. Ciudad de México: CIICH/UNAM, 2014. p. 74-80).

[11] STAFFEN, Marcio Ricardo. *Interfaces do Direito Global*. 2 ed. Rio de Janeiro: Lumen Juris, 2018, p. 16-17.

[12] O autor preconiza o fim dos Estados para o estabelecimento de uma comunidade global, que ele denomina de Antroparquia. E não é só isso, dentre suas ideias, ele também sustenta a necessidade de criação de um exército global. (OSLÉ, Rafael Domingo. *Que és el derecho global*? 6 ed. Pamplona: Aranzadi, 2009Capítulos V e VI).

[13] Recentemente o governo dos Estados Unidos apresentou críticas à atuação na OMS na contenção da pandemia do coronavírus, indicando que tal organização internacional atuou de forma tendenciosa ao governo Chinês, deixando de tomar as medidas sanitárias adequadas quando a pandemia poderia ser contida no seu início. O presidente americano inclusive determinou o corte nas verbas da organização. Ultimamente o presidente norte americano encaminhou pedido para desligamento dos EUA da OMS. (RE, Gregg. Trump announces US will halt funding to World Health Organization over coronavirus response. *Fox New Channel*, 2020. Disponível em: <https://www.foxnews.com/politics/trump-announces-funding-to-world-health-organization-who-halted>. Acesso em: 21 abr. 2020. As críticas vão além, tendo eco também perante a comunidade científica que questiona a postura da OMS na atual crise. (MCKAY, Hollie. World Health Organization under the microscope: what went wrong with coronavirus? *Fox New Channel*, 2020. Disponível em: <https://www.foxnews.com/world/world-health-organization-coronavirus-what-went-wrong>. Acesso em: 21 abr. 2020)

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jurídicos internacionais, tais como fluxos migratórios, acordos comerciais, proteção dos direitos humanos, dentre outros.

Por outro lado, na mesma medida que essa nova realidade possa exigir novas soluções, ela também pode apresentar seus problemas pois "as relações econômicas globais são concretizadas por diversos meios, destaca-se entre outros, o comércio mundial, a divisão do trabalho, as empresas multinacionais e a cultura organizacional"[14].

Neste contexto, é preciso conceber que o atual cenário global possui inúmeros atores. São organizações internacionais ligadas a Organização das Nações Unidas, organizações não-governamentais, conglomerados econômicos e empresas transnacionais, organizações de comércio, blocos econômicos, Estados e indivíduos. Cada ator nesse cenário global atua segundo seus interesses e aspirações.

Eis aí a primeira dificuldade de um direito global, que é acomodar os mais diversos interesses, culturas e sistemas jurídicos. É evidente que o direito global não tem, ao menos nas idealizações mais racionais[15], a pretensão de suplantar o direito nacional, mas sim de dialogar com ele[16]. Mesmo assim, esse diálogo cobra seu preço, qual seja, a imensa dificuldade de harmonização ante a diversidade global. Essa dificuldade pode ser demonstrada, por exemplo, pela discussão global sobre direitos humanos.

Embora haja uma pretensão universalista, ao menos Ocidental, de proteção global dos direitos humanos, o fato é que há uma dificuldade enorme de harmonizar a proteção, e até mesmo a definição do que são os direitos humanos face às mais diferentes culturas, regimes jurídicos e sistemas políticos do mundo. Ou seja, a pretensão globalizante da Declaração Universal dos Direitos do Homem proposta pela Organização das Nações Unidas (ONU) sofreu e ainda sofre resistência de inúmeros países e regiões do mundo. Tal é o desacordo que foram criadas declarações regionais de direitos humanos, vide a Declaração dos Direitos Humanos no Islã e a Carta Africana de Direitos Humanos e dos Povos, entre outras, algumas mais, outras bem menos assemelhadas à declaração da ONU.

A dificuldade é tamanha que a própria definição do que são os direitos humanos teve de se amoldar, observando-se a relação entre dignidade humana e fatores culturais, segundo a proposta de Baez e Mezzaroba[17]. Tal proposta permite flexibilizar alguns direitos humanos a questões culturais locais, quando não haja comprometimento do núcleo central da dignidade humana.

Isso é um exemplo da grande dificuldade de harmonização entre o direito global e os mais diversos ordenamentos jurídicos nacionais, estes construídos com base em percepções, culturas e necessidades próprias de cada povo. Se por um lado o diálogo entre o nacional e o global é possível, há um enorme problema, talvez um obstáculo, relativo ao imbricamento de inúmeros diferentes sistemas.

Considerada essa dificuldade de amoldar tantas culturas e sistemas, uma proposta global harmonizadora corre o risco de afrontar significativamente determinadas culturas, algumas até milenares. Com efeito, há um perigo de, na tentativa de garantir mesmo um "mínimo" substrato global, uma diretriz geral, ainda assim estar em confronto direto com culturas e nações milenares que se autodeterminam de forma completamente opostas a essa eventual orientação legal transnacional. Há efetiva dificuldade em balancear, no mundo jurídico, culturas e valores de povos que se expressam sob óticas, por vezes, completamente opostas. Nesse caso, o perigo da proposta globalista está em tolher liberdades e a própria cultura de inúmeros povos que não se amoldam, por exemplo, ao modelo ocidental de vida, e vice-versa.

Outros problemas do direito transnacional estão relacionados a produção do direito. Atualmente existem no cenário global inúmeras organizações internacionais, inclusive privadas, que se propõe a produzir um direito que seja, no mínimo, "influência" para os Estados e pessoas ao redor do mundo. Ocorre que, como bem identificou Cervantes, um dos impactos trazidos pela produção jurídica transnacional está na redução do legislador nacional, antes protagonista

[14] DEMARCHI, Clovis. Crise do estado e da democracia no contexto da globalização. *Revista Jurídicas*, Manizales, Universidade de Caldas, Colômbia, v. 16, n 2, 2019. p. 34, disponível em: http://juridicas.ucaldas.edu.co/downloads/Juridicas16(2)_3.pdf.

[15] Há autores que defendem posições extremas, preconizando um fim dos Estados e propondo uma pátria global, como é o caso da proposta de Rafael Domingo Oslé, na obra "*Que és el derecho global*?". (OSLÉ, Rafael Domingo. *Que és el derecho global*? 6 ed. Pamplona: Aranzadi, 2009, capítulo V, título 8).

[16] Staffen adverte que "o Direito Global não desconstitui o Direito Nacional, não desconsidera o Direito Internacional, não nega o Direito Supranacional (comunitário), pelo contrário, dialoga com cada um deles conforme os fenômenos a serem regulados" (STAFFEN, Marcio Ricardo. *Interfaces do Direito Global*. 2 ed. Rio de Janeiro: Lumen Juris, 2018, p. 59).

[17] Os autores propõem um conceito relacional entre a dignidade da pessoa humana e direitos humanos, afirmando que estes são um conjunto de valores, positivados ou não, que visam realizar as dimensões da dignidade humana, quais sejam, a dimensão básica (protegendo indivíduos contra qualquer coisificação ou redução de seu status de sujeito de direitos); e a dimensão cultural (protegendo a diversidade moral, consideradas as diferentes formas que as sociedades abordam a dignidade humana) (BAEZ, Narciso Leandro Xavier; MEZZAROBA, Orides. Direitos Humanos Fundamentais e Multiculturalismo: a coexistência do universalismo com o relativismo. *Pensar*, Unifor, v. 16, 2011, p. 246-272).

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exclusivo da produção legislativa, a uma instância "a mais" de produção jurídica[18].

Por outro lado, Staffen[19], tratando das fontes normativas do direito global, aponta que esse direito se fundamenta em áreas absolutamente difusas e com amplo espraiamento material, desde fontes nacionais até regulações privadas, passando por Constituições, contratos, tratados, atos privativos de poderes executivos, precedentes seculares e padrões de governança. O autor segue, mais adiante na obra, ressaltando a *sotf law* e a autorregulação como "fontes poderosas para constituição, mutação, flexibilização, complementação e articulação de normas jurídicas antes dependentes do Estado" .

Embora haja quem possa entender isso como natural ou até benéfico, essa redução do poder do legislador nacional tem um impacto expressivo e muitas vezes oculto na defesa do direito global, que é o déficit democrático de uma produção jurídica que não seja realizada por aqueles mandatários eleitos democraticamente para tal finalidade.

Essa intensa variedade, difusão e diversificação de fontes normativas no direito global impõe importantes questionamentos sobre a legitimidade democrática de quem produz essas normas, sobre competência para sua produção, sobre o grau de obediência que elas impõem e até mesmo sobre a juridicidade do seu conteúdo. Aparentemente, essa alta profusão de produtores de norma jurídica se assemelha mais com autotutela do que com produção jurídica numa ordem democrática.

A luta por uma sociedade democrática durou séculos, custou muitas vidas e até hoje não atingiu seu auge, pois nem todos os países do planeta adotam o governo democrático. Não se nega que a democracia tem seus problemas e está longe de ser perfeita, havendo atualmente intensa preocupação com a representatividade real do anseio popular em relação aos mandatários. No entanto, aparentemente para quem defende uma produção jurídica transnacional, o elemento democrático é de menor importância ou pode ser substituído por recursos como transparência e publicidade[20]. Ocorre que transparência, acesso a informação e mesmo a publicidade são elementos inerentes à modelos democráticos, mas jamais substitutivos ou mitigadores da democracia. Imaginar que se pode substituir a democracia por uma simples transparência ou por um *e-democracy* decorrente de interações digitais é ignorar o valor da sociedade moderna, o direito das pessoas em participar do processo político que, ao fim e ao cabo, faz nascer a norma jurídica como resultado de um processo democrático.

Não se trata de negar que a publicidade reforça os instrumentos de controle e que a transparência e informação são sim instrumentos para combater a ação de atores transnacionais que ajam com interesses escusos, conforme bem esclareceu Staffen[21].

No entanto, essas ferramentas não são suficientes, pois o direito global é tão difuso e de múltiplos níveis, que fica muito difícil, senão impossível, conseguir uma tal transparência, informação e publicidade que contornem o problema. Se em âmbito nacional não se consegue pôr em prática de forma ampla esses instrumentos de controle, torna-se claro o quão mais difícil seria aplicá-los em nível global.

A *soft law* e a autorregulação, a seu turno, embora ferramentas passíveis de aceitação em algumas situações pontuais, não podem ser admitidas com a amplitude que se propõe, sob pena de se transformarem em uma versão moderna da autotutela na medida em que cada jogador ou alguns jogadores (os mais poderosos) reunidos farão as próprias "regras do jogo".

Não é nada agradável a ideia de um grupo de "iluminados" definindo desde Bruxelas, Washington, Pequim ou qualquer outro lugar, um direito a que toda a humanidade, ou boa parte dela, possa estar submetida, que submeta em certos casos Estados e pessoas indistintamente, sem que se conheça quem são exatamente os autores dessa produção normativa ou mesmo quais suas intenções. E mesmo que se conheça tais elementos, haveria algum grau de influência da sociedade sobre esses "produtores" do direito?

Para quem tem real apreço pela democracia e se previne do autoritarismo, a opção de votar e saber quem são os seus legisladores, para poder inclusive exigir deles o comportamento e a produção legislativa intencionada pela população ainda é um modelo bem mais aprazível, embora, como já dito, tenha suas inúmeras falhas.

[18] CERVANTES, Aleida Hernández. *La producción jurídica de la globalización económica*. Ciudad de México: CIICH/UNAM, 2014, p. 193-194.

[19] STAFFEN, Marcio Ricardo. *Interfaces do Direito Global*. 2 ed. Rio de Janeiro: Lumen Juris, 2018, p. 92.

[20] Staffen identifica o problema afirmando: "O sucesso do paradigma global de Direito carece de superar a problemática inerente à legitimação das instituições globais. A afirmação da democracia em sede de transnacionalismo ganha novas cores na medida em que o primado da transparência passa a ocupar predominância em múltiplas práticas administrativas e judiciais, de modo a propiciar o imediato acompanhamento dos atos em constituição. Critérios de publicidade não se apresentam como suficientes na atual perspectiva. O primado pelo acesso à informação e medidas de transparência buscam transcender ao dever de publicidade, de modo que permitam a adequação do ordenamento jurídico nacional com a globalização jurídica. [...](STAFFEN, Marcio Ricardo. *Interfaces do Direito Global*. 2 ed. Rio de Janeiro: Lumen Juris, 2018, p. 36-37).

[21] STAFFEN, Marcio Ricardo. *Interfaces do Direito Global*. 2 ed. Rio de Janeiro: Lumen Juris, 2018, p. 104 e 118.

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Outro impacto identificado por Cervantes[22] na produção jurídica transnacional é a afetação dos princípios da abstração e da generalidade das normas. Quando se trata de produzir legislação, um dos princípios mais caros ao legislador é produzir leis que sejam abstratas e gerais, ou seja, que não sejam criadas (exceto excepcionalmente) por casuísmo e sejam aplicáveis (na medida do possível) a todos os que se enquadrem na mesma situação jurídica. Trata-se, pois, de produzir leis sem privilégios jurídicos e que atendam aos elementos culturais daquela nação. Ocorre que, como assevera Cervantes, esse policentrismo jurídico põe em xeque esse marco de produção jurídica geral e abstrata, na medida em que se propõe, muitas vezes, a resolver problemas notadamente concretos e casuais.

Sabe-se que, por um lado, é possível argumentar que esse tipo de produção normativa casuística pode ser útil à solução rápida de problemas e, nas questões de cunho comercial, até gerar um ganho de competitividade; por outro, ela abre brechas severas no princípio da igualdade, permitindo uma produção jurídica que, para além de antidemocrática, tenha por fim criar privilégios ou favorecer, por exemplo, grupos econômicos com forte poder de influência sobre a produção jurídica.

Essa produção normativa transnacional, algumas vezes casuística, pode gerar também o perigo da incoerência do sistema. A coerência de um sistema jurídico é um fator fundamental para sua racionalidade e para que todos possam compreender a legislação e se guiar a partir dessa compreensão. Quando se começa a sobrepor diversas legislações locais, regionais, nacionais e transnacionais, produzidas por inúmeros atores diferentes, com as mais diversas finalidades e influenciadas por um sem-número de ideologias, o sistema jurídico pode entrar em colapso. É necessário um mínimo de coerência, sob pena, além de confundir o destinatário da norma, gerar conflitos normativos de difícil solução.

Levando em consideração esses problemas, Cervantes[23] define o pluralismo jurídico transnacional como um "pluralismo despótico", uma vez que: 1) tem instancias legislativas e processos de produção jurídica pouco transparentes; 2) tem pouca ou nenhuma representatividade dos destinatários das normas; 3) seus operadores abusam do poder. A autora alerta para opacidade da produção normativa, ou seja, a baixa ou inexistente transparência na produção jurídica; bem como identifica a inexistência de legitimidade democrática e de controle político na produção jurídica.

Com efeito, há um gritante déficit democrático e quase completa ausência de participação dos cidadãos na produção do direito transnacional. Instituições ou grupos produtores dessa legislação ora são desconhecidos, ora, quando conhecidos, são praticamente inacessíveis aos destinatários das normas. Além disso, o poder de grandes grupos econômicos transnacionais, muitas vezes com poder econômico maior que inúmeros países, pode gerar efetivos questionamentos sobre a legitimidade de determinada produção normativa, especialmente no campo da impessoalidade. Se esse risco de abuso de poder econômico também existe na produção jurídica local, cabe notar que quanto mais distante a fonte produtiva, mais difícil a busca pela transparência. Mesmo sendo uma obviedade, é preciso dizer: o próximo é sempre mais tangível do que o longínquo.

Um próximo problema que deve ser apontado nesse estudo é o desenraizamento. Os excessos do globalismo trazem um efeito drástico para as sociedades, efeitos estes que já foram percebidos por Weil[24] nas décadas de 30 e 40 do século passado. A autora afirma que o enraizamento é uma necessidade da alma humana; que o ser humano tem raízes na sua participação real, ativa e natural na existência de uma comunidade que mantém vivos tesouros do passado e as aspirações do futuro. Se a troca de influências com ambientes externos é importante, as raízes ao ambiental natural de cada um também o são. O desenraizamento de um povo pode ocorrer por conquista militar, mas também sem ela, por influência do poder econômico que, através de uma influência estrangeira, pode causar a doença do desenraizamento de um povo. Esse desenraizamento é a doença mais perigosa nas sociedades humanas, pois seres desenraizados, ou caem numa inércia de alma, tal qual escravos, ou se lançam a tentar desenraizar, geralmente por métodos violentos, os que ainda não são. A autora cita o súbito colapso da França na Segunda Guerra Mundial como mostra do quão desenraizado estava o país; um desenraizamento de alma inerte. Já na Alemanha, o desenraizamento tomou a forma de violência. Por fim, Weil cita a Inglaterra, país que, desde a primeira onda de terror alemão, foi capaz de se proteger e conter o ataque, pois era lá onde a tradição estava mais viva e melhor preservada. A doença do desenraizamento ainda não havia contaminado a Inglaterra.

O problema evidenciado por Weil é um problema grave que precisa ser observado na atualidade. Há movimentos fortes em defesa de ideias globalistas, propondo desvinculação de pessoas das suas raízes (desenraizamento de sociedades) em prol de um cosmopolitismo que pretende anunciar pessoas,

[22] CERVANTES, Aleida Hernández. *La producción jurídica de la globalización económica*. Ciudad de México: CIICH/UNAM, 2014, p. 194-195

[23] CERVANTES, Aleida Hernández. *La producción jurídica de la globalización económica*. Ciudad de México: CIICH/UNAM, 2014, p. 203-208.

[24] WEIL, Simone. *L'enracinement. Prélude à une déclaration des devoirs envers l'être humain*. Paris: Les Éditions Gallimard, 1949, p. 36-40.

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não mais como oriundas de um local, mas como cidadãs do mundo. Por assim dizer, um direto global para os cidadãos do mundo.

Não há problema algum em ter concepções globais sobre determinados assuntos, mas um desenraizamento de uma pessoa, ao mesmo tempo que alude uma perspectiva de ser cidadã de todo lugar, também indica que não é cidadã de lugar algum. Essa desvinculação da noção de pertencimento a algo ou alguma coisa de cunho local, para além das aflições da alma apontados por Weil, desconecta as pessoas da noção de cidadania, dos deveres inerentes a cada um perante a sociedade em que vive. Trata-se de um exagero do individualismo que desvincula as pessoas de suas responsabilidades sociais e as torna, ao invés de cooperadores do bem comum, verdadeiros escravos de si mesmos. Nas palavras de Platão[25] "A mais severa e cruel escravidão proveniente da máxima liberdade". E nem se diga da proposta internacionalista de diluição da soberania estatal para as pessoas.

Segundo Scruton[26], isso seria um dos maiores perigos do internacionalismo, pois absorveria as pessoas numa teia transnacional, fazendo-as acreditar que isso engrandece seu poder e escolha, apenas para depois perceberem que ambos foram confiscados, ficando sujeitas a um poder que não tem nenhuma lealdade instintiva. Isso sem falar no próprio questionamento sobre quais interesses realmente estão por trás dos projetos e ideias internacionalistas do mundo pós-moderno.

Imaginar que a perspectiva globalista de sociedade pode resolver os problemas não é uma solução daqueles, mas talvez elevar tais problemas a um grau tão mais alto que seja mesmo impossível resolvê-los.

Nota-se, com isso, uma série de questões que se impõe e colocam em xeque o direito global, gerando inúmeros problemas de difícil solução. Se há quem defenda que essa produção se impõe de modo insuperável ao Estado, mitigando sua soberania – algo que não parece tão certo quanto sustentam os defensores do direito global – mas sendo clarividente a atualidade desse modelo de produção normativa, torna-se necessário analisar quais deveres exsurgem ao Estado nesse cenário. Será ele um mero coadjuvante ou pode (ou deve) tomar parte nesse processo? O questionamento é válido e impõe analisar quais os deveres dos Estados nesse cenário de produção jurídica transnacional, assunto do próximo tópico.

[25] PLATÃO. *A república*. Tradução, textos complementares e notas de Edson Bini. 2º ed. São Paulo: Edipro, 2014, p. 356.

[26] SCRUTON, Roger. *Filosofia verde*: como pensar seriamente o planeta. Tradução Mauricio G. Righi. São Paulo: É Realizações, 2016, p. 285.

III. Deveres Dos Estados no Contexto do Direito Global

Alguns autores que tratam do direito global e da produção jurídica transnacional apontam que esse fenômeno encerra uma mitigação da soberania estatal[27]. Argumentam que o fenômeno da globalização traz questões jurídicas para além das fronteiras estatais, questões essas que precisam de soluções globais.

Por outro lado, como bem apontou Cervantes[28], há quem veja o fenômeno da globalização e da diminuição da soberania estatal com ceticismo. Para essa corrente, o Estado não apenas não perdeu poder, mas é agente fundamental na regulação desse processo de internacionalização. Haveria, no máximo, uma reconfiguração do modelo estatal, talvez mais fraco do que nos seus primeiros tempos, mas não suprimido como se anuncia.

Com as devidas ressalvas relativas a algumas propostas dessa corrente de pensamento[29], não há motivo para desconsiderar o Estado como um agente importante, quiçá fundamental, no processo de produção jurídica transnacional. E não será mesmo um dever do Estado assim agir nesse cenário de globalização? Nesse contexto, o presente tópico visa analisar quais são os deveres do Estado diante do cenário de globalização e do direito global.

Em primeiro lugar, é preciso ter em mente que deveres não devem ser confundidos com obrigações jurídicas. A obrigação jurídica existe de forma correlativa

[27] Oslé classifica como agonizante o Estado moderno, argumentando sobre a mitigação da soberania estatal (OSLÉ, Rafael Domingo. *Que és el derecho global*? 6 ed. Pamplona: Aranzadi, 2009, capítulo IV, título 3). Cervantes, por sua vez, embora defenda a posição de que o Estado está participando ativamente do processo de globalização, sendo um de seus principais artífices, reconhece que ele está cedendo poder e centralidade, ora voluntária, ora involuntariamente (CERVANTES, Aleida Hernández. *La producción jurídica de la globalización económica*. Ciudad de México: CIICH/UNAM, 2014, p. 171). Zubizarreta afirma que a transnacionalização incidiu sobre a soberania dos Estados em três dimensões: a nova ordem internacional e a crise da soberania no marco das intervenções humanitárias; o direito internacional e as relações com empresas transnacionais (ZUBIZARRETA, Juan Hernández. *Las empresas transnacionales frente a los derechos humanos*: historia de uma asimetría normativa. De la responsabilidad social corporativa a las redes contrahegemónicas transnacionales. Bilbao: Hegoa, 2009, p. 78). Sassen descreve uma desarticulação entre entre a soberania e a territorialidade diante do novo contexto transnacional (SASSEN, Saskia. *Territorio, autoridad y derechos*. De los ensamblajes medievales a los ensamblajes globales. Buenos Aires: Katz, 2015. p. 520).

[28] CERVANTES, Aleida Hernández. *La producción jurídica de la globalización económica*. Ciudad de México: CIICH/UNAM, 2014, p. 76.

[29] Cervantes afirma que a corrente dos céticos é enfática em sustentar que o discurso da globalização contribui para justificar y legitimar um projeto global neoliberal, o qual significa a criação de um mercado livre global e a consolidação do capitalismo anglo-americano nas principais regiões econômicas do mundo (CERVANTES, Aleida Hernández. *La producción jurídica de la globalización económica*. Ciudad de México: CIICH/UNAM, 2014, p. 76).

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a um direito subjetivo de outrem, que nasce de uma relação entre particulares, notadamente de um negócio jurídico. A seu turno, o dever é algo que se impõe a um sujeito em consideração a interesses que não são seus, podendo ser de uma coletividade ou de outro sujeito; trata-se de uma proteção a direitos objetivos, de modo que frente ao dever de alguém, existe um poder de outro para exigir seu cumprimento. Observa-se, com isso, que os aspectos marcantes da distinção entre as duas figuras são a natureza (pública dos deveres e privada das obrigações) do titular do poder jurídico de impor ou exigir seu cumprimento; a singularidade (das obrigações) e a generalidade (dos deveres); e os interesses que justificam a imposição (gerais e objetivos nos deveres; particulares e subjetivos nas obrigações)[30].

Para Simone Weil [31], traçando um paralelo entre direitos e obrigações (que no texto da autora é utilizado como sinônimo de dever), um direito não é eficaz por si só, mas apenas pela obrigação a que corresponde. Ela sustenta que o cumprimento efetivo de um direito não vem da pessoa que o possui, mas de outros homens que reconhecem que são obrigados a algo em relação a quem tem o direito. A obrigação, a seu turno, é efetiva assim que é reconhecida. Uma obrigação que não seja reconhecida por ninguém, não perde nada de sua plenitude. Já um direito que não seja reconhecido por ninguém, não é muito. Para ela, não faz sentido dizer que os homens têm direitos, por um lado, e deveres, por outro. Essas palavras expressam apenas diferenças de ponto de vista. O relacionamento deles é o do objeto e do sujeito. Um homem, considerado em si mesmo, tem apenas deveres, entre os quais certos deveres para consigo mesmo. Os outros, considerados do seu ponto de vista, têm apenas direitos. Ele tem direitos, por sua vez, quando é considerado do ponto de vista de outras pessoas que reconhecem obrigações para com ele. Um homem que está sozinho no universo não teria direitos, mas teria obrigações.

A despeito das diferenças entre deveres e obrigações, é preciso considerar a origem dos deveres. Desde a filosofia grega, os deveres são relacionados com as virtudes. Platão[32] identificou o dever de justiça e o compromisso cidadão para com a Cidade e as Leis no Diálogo Críton. Aristóteles[33], por sua vez, imprime sua noção de dever dentro da conduta virtuosa do indivíduo dentro da sociedade, como animal político, que tem o dever de se conduzir de forma virtuosa, obedecendo as leis, dando prioridade ao interesse coletivo em detrimento do individual, se conduzindo sempre por um meio-termo, cuja forma mais excelente é a justiça, assim entendida na versão da proporcionalidade.

A identificação dos deveres com as virtudes também apareceu de forma latente na obra de Cícero, "Dos deveres", um verdadeiro manual dos deveres e virtudes sociais[34]. Outrossim, passou pelo cristianismo bíblico, mais especificamente no Sermão das Bem-Aventuranças, no qual Jesus apresenta o manual de conduta virtuosa do cristão. Na idade média, o dever, ainda relacionado com a virtude Cristã esteve presente na Suma Teológica de Santo Tomás de Aquino[35].

Já no período moderno, autores como Samuel Pufendorf e Barão de Holbach também trataram da temática dos deveres, nunca deixando de conectar os deveres com as virtudes morais dos homens. No entanto, esses dois autores também trazem uma perspectiva interessante aos deveres, pois enumeram deveres do Estado (aqui numa concepção ampla, ou seja, entendido também como povo, nação ou governo). Pufendorf[36] identifica que a regra geral a ser observada pelos governantes é o bem público. Para o autor[37], uma das principais necessidades do bem público é a preservação da segurança da comunidade, já que a pretensão de segurança é o que leva os homens a deixarem o estado liberdade natural e se reunirem em comunidade. Há, portanto, um dever do Estado de preservar o bem da comunidade e sua segurança. Essa noção de união dos homens em razão da segurança e de outros benefícios sociais também

[30] DÍAS REVORIO, Francisco Javier. Derechos humanos e deberes fundamentales. Sobre el concepto de dever constitucional y los deberes em la Constitución Española de 1978. *Revista del Instituto de Ciencias Jurídicas de Puebla*. México, a. V, n. 28, p. 278-310., Julio-Diciembre de 2011.

[31] WEIL, Simone. *L'enracinement. Prélude à une déclaration des devoirs envers l'être humain*. Paris: Les Éditions Gallimard, 1949, p. 6.

[32] PLATÃO. *Diálogos III*: Apologia de Sócrates, Críton, Fédon. São Paulo: Edipro, 2015. p. 35.

[33] ARISTÓTELES. *Ética a Nicômaco*. Tradução e notas: Luciano Ferreira de Souza. São Paulo: Martin Claret, 2015, p. 37.

[34] DEMARCHI, Clovis; FONTANA, Douglas Cristian. Deveres Fundamentais e Dignidade Humana: uma perspectiva diferente. *Revista Eletrônica Direito e Política*, Programa de Pós-Graduação *Stricto Sensu* em Ciência Jurídica da UNIVALI, Itajaí, v. 14, n.3, p. 564, 3º quadrimestre de 2019. Disponível em: https://siaiap32.univali.br/seer/index.php/rdp/article/view/15828.

[35] Ver Volume 2, Tratado das Virtudes em Geral, solução ao art. 4º. (AQUINO, Santo Tomás de. *Suma teológica*. Campinas: Ecclesiae. 2016. v. 2. p. 326-327). Ver também: AQUINO, Santo Tomás de. *As virtudes morais*. Campinas: Ecclesiae, 2012.

[36] PUFENDORF, Samuel. *Os deveres do homem e do cidadão de acordo com as leis do direito natural*. Tradução Eduardo Francisco Alves. Rio de Janeiro: Topbooks, 2007, p. 320.

[37] PUFENDORF, Samuel. *Os deveres do homem e do cidadão de acordo com as leis do direito natural*. Tradução Eduardo Francisco Alves. Rio de Janeiro: Topbooks, 2007, p. 284.

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não escapa ao Barão de Holbach[38], assim como não passou despercebida por Spinoza[39].

O Barão de Holbach[40], em obra consistente sobre os deveres do homem, também conecta os deveres com as virtudes. No entanto ele vai além disso e replica essa noção de virtudes morais do homem para as nações (Estado). Afirma que, assim como cada homem está ligado aos concidadãos por laços da virtude moral, as nações devem observar umas para com as outras os mesmos deveres e regras que a vida social prescreve a cada indivíduo no âmbito de uma sociedade. Logo, uma nação é obrigada a praticar as mesmas virtudes que os homens devem mostrar aos semelhantes. Um povo deve justiça a outro, pois a justiça é fonte de todas as demais virtudes sociais; assim sendo, os povos devem prestar auxílios humanitários os outros, devem mostrar benevolência, compaixão, proteção, reconhecimento por seus serviços, sinceridade e fidelidade nas convenções recíprocas. Além disso, para garantir a paz das nações, estas devem generosidade entre si, afastando-se do orgulho e superioridade, assim como prestar os bons ofícios, a amizade e o auxílio mútuo. O autor sustenta que tais deveres são verdadeiramente os princípios dos *direitos das gentes*, que nada mais seriam do que a moral dos povos[41].

Essas virtudes entre Estados também aparecem, em certa medida, na obra de Kant[42] "À Paz Perpétua", na qual o autor propõe regras para a manutenção de uma paz entre os Estados. Não se pode negar que algumas dessas regras não deixam se ser noções de virtude consubstanciadas na justiça, respeito e solidariedade entre os povos.

Partindo-se dessas concepções, já é possível identificar inúmeros deveres dos Estados. Deveres estes se consubstanciam em virtudes morais que orientam a postura que um Estado deve ter perante a sociedade global. Por outro lado, também não se pode esquecer que as pessoas se reúnem (ou reuniram) em Estados por inúmeras conveniências e vantagens mútuas, notadamente a segurança[43].

Além disso, percebeu-se no tópico anterior desse estudo que há inúmeros perigos advindos da ideia de direito global, tais como déficit democrático e excessiva difusão e despersonalização da produção jurídica, o que coloca o direito sob risco de controle ideológico ou econômico em detrimento do interesse da sociedade, e o próprio desenraizamento da sociedade, desvinculando as pessoas das tradições e da noção de pertencimento ao local. Alguns dos seus defensores mais radicais, inclusive, defendem a supressão completa do Estado, para a construção de um Estado Unitário global.

Esses perigos e problemas identificados, ao contrário da ideia de revelarem fraqueza do Estado, devem sim instigá-lo a agir segundo suas virtudes e finalidades. O papel do Estado nesse processo não é de se encolher e aceitar passivamente um direito global produzido sob fontes difusas, mas sim de se colocar à frente do processo, chamando para si a responsabilidade controle, fazendo valer sua soberania e filtrando nesse direito global o que há de interesse e benefício para a sua sociedade, e afastando toda e qualquer produção jurídica transnacional que vise suprimir o Estado, relativizar o ordenamento jurídico interno e impor à sociedade local um direito ao qual ela não participou democraticamente (mesmo representativamente) da construção. Enfim, o Estado precisa cuidar das necessidades da alma de seus cidadãos, mantendo suas tradições e valores, mantendo as pessoas enraizadas, valorizando e fortalecendo sua cultura.

A defesa de soluções transnacionais costuma ser justificada como consequência da globalização, interconexão de decisões mundiais, movimentos migratórios e crescimento de estruturas de poder fora dos Estados. No entanto, conforme argumenta Scruton[44], quando se olha para os fatos, a ideia de transnacionalidade perde credibilidade, pois essas instituições transnacionais, da forma como emergiram da globalização, ou são dependentes dos Estados em sua legitimidade ou motivação, ou então serão vistas

[38] "Os homens vivem em sociedade visando o bem-estar. Cada um deles encontra na vida social uma segurança, algumas vantagens, auxílios e prazeres dos quais estaria privado se vivesse separado. Consequentemente, cada membro de uma família, de uma corporação ou de uma associação qualquer é forçado a depender da sociedade em geral." (HOLBACH, Barão de. *A moral universal*: ou os deveres do homem fundamentados na sua natureza. Tradução Regina Schöpke, Mauro Baladi. São Paulo: Martins Fontes, 2014, p. 88).

[39] "O Estado deve agir segundo as regras da razão, pois quem age contra a razão, falta a si mesmo. Desse modo, ao se afirmar que os homens pertencem ao Estado, não significa que o Estado possa tudo deles fazer. Desse modo, há um conjunto de circunstâncias, dentre elas o temor e o respeito, que vinculam homens ao Estado e promovem a conservação deste" [...] "A condição de um Estado determina-se, facilmente, por sua relação com o fim geral do Estado, que é a paz e a segurança da vida. Por conseguinte, o melhor Estado é aquele em que os homens passam sua vida na concórdia e onde os seus direitos não recebem nenhum atentado. [...]" (SPINOZA, Baruch. *Tratado político*. Tradução e prefácio de José Pérez. Rio de Janeiro: Nova Fronteira, 2017, p. 55-58).

[40] Ver Seção Segunda, capítulos I a XVI: HOLBACH, Barão de. *A moral universal*: ou os deveres do homem fundamentados na sua natureza. Tradução Regina Schöpke, Mauro Baladi. São Paulo: Martins Fontes, 2014, p. 73-147.

[41] HOLBACH, Barão de. *A moral universal*: ou os deveres do homem fundamentados na sua natureza. Tradução Regina Schöpke, Mauro Baladi. São Paulo: Martins Fontes, 2014, p. 319-322.

[42] Ver: KANT, Immanuel. *À paz perpétua*. Tradução Marco Zingano. Porto Alegre: L&PM, 2017.

[43] HOBBES, Thomas. *Leviatã*: ou a matéria, forma e poder de um Estado eclesiástico e civil. Tradução Daniel Moreira Miranda. São Paulo: Edipro, 2015, p. 122.

[44] SCRUTON, Roger. *Filosofia verde*: como pensar seriamente o planeta. Tradução Mauricio G. Righi. São Paulo: É Realizações, 2016, p. 274.

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como sintomas de uma doença sem cura. Isso porque, tais instituições existem dentro do espaço institucional criado por Estados; seria uma fantasia produzir uma governança que aberta ou veladamente não se baseasse em jurisdições territoriais dos Estados. Isso porque um sentimento de lealdade nacional, especialmente para o cumprimento das leis, é uma precondição do Direito, algo que se constrói em fundações domésticas. Não se trata de negar jurisdições transnacionais, mas sim considerar realmente o que são e em que base se fundam.

É preciso ter em mente, como sustenta Scruton[45], que pessoas que compartilham um território também compartilham uma história, possivelmente uma língua e religião. Como consequência desse compartilhamento territorial, surge no processo histórico a jurisdição territorial e um processo político. Esse processo transforma o território compartilhado em Estado-nação. Significa dizer que nações não se definem basicamente por parentesco ou religião, mas por território. Portanto, existe uma lealdade pré-política que vincula as pessoas ao território e, por assim dizer, ao Estado. Essa lealdade precisa ser defendida pelo Estado, evitando-se a influência indevida de propostas transnacionais na sociedade local, haja vista os riscos não apenas sobre a cultura, tradição e ordem social inerente àquele povo, mas também aquele perigoso risco de desenraizamento que tem uma capacidade altamente destrutiva sobre as sociedades.

Quando o Estado deixa de agir, permitindo uma produção jurídica tão difusa e se submetendo a ela passivamente, no qual mesmo entidades privadas sejam produtoras do direito global, o Estado, além permitir difusão de poder a quem, provavelmente, não deveria, aceita passivamente uma espécie de autotutela moderna, pois permite que esses produtores transnacionais do direito global criem suas próprias "regras do jogo". E essas regras nem sempre, talvez quase nunca, podem ser tidas como regras que prestigiem o bem comum, senão os interesses e ideologias próprias de quem as cria.

A atuação do Estado segundo as virtudes, nesse contexto, cumprindo com seus deveres de justiça, proteção, segurança e honestidade, em uma expressão: "defendendo o bem comum"; é fundamental para garantir que a sociedade não seja presa fácil de um direito construído sobre interesses que, por vezes, podem vir a se revelarem escusos. Não se trata de dizer que todo o direito global é um mal em si, mas saber que pode haver muito mal nesse direito, razão pela qual o Estado deve prevenir-se.

Infelizmente o mundo ainda não é um local que reúne apenas pessoas boas e confiáveis. Há pessoas e instituições (inclusive transnacionais) que não tem qualquer compromisso com o bem comum. Desse modo, é urgente ao Estado exercer um dever de proteção própria e da sociedade que o constitui, seja filtrando, seja regulando, seja impedindo que os perigos do direito global possam causar danos significativos à ordem social dirigia ao bem comum.

Além disso, não há motivo para imaginar que as soluções globais sejam as melhores. O que pode ser ótimo em um local, pode ser péssimo em outro[46]; duas soluções completamente diferentes podem trazer resultados ótimos em diferentes lugares e circunstâncias. No arrimo do que pensa Roger Scruton[47], é possível defender "soluções locais contra esquemas globais, a associação civil contra o ativismo político e as fundações de pequeno porte contra as campanhas de massa".

Nesse contexto, talvez o maior dever do Estado seja garantir que a legislação seja feita por quem recebeu do povo essa atribuição, ou seja, o legislativo, prestigiando o processo democrático que faz emergir a habilitação legal de um poder público para construir a legislação. Logo, o Estado não deveria permitir a outros, que não seja o poder legislativo, produzirem legislação, tampouco que o legislativo transferisse tal poder a terceiros. John Locke (2014. p. 113) foi um homem de outro tempo, mas o que disse ainda está muito válido: "O povo não pode ser compelido a obedecer a quaisquer outras leis que não às aprovadas por aqueles que o povo escolheu e autorizou a legislar em seu nome. [...] O legislativo não tem [sequer] o poder de transferir a autoridade de fazer as leis para outras mãos" [48].

Com efeito, ante os problemas do globalismo e do direito global, a resposta do Estado precisa ser uma atuação virtuosa, segundo a justiça, mãe das virtudes, para proteção dos interesses locais de sua sociedade e, pois, defendendo a si mesmo. Uma ação que filtre o que há de positivo no direito global e impeça os inúmeros efeitos negativos que ele pode trazer é um dever irrecusável dos Estados. Afinal, como disse Spinoza[49], citando Florentino: 'num Estado, todos os dias, como num corpo humano, há certos elementos que se agregam a outros e cuja presença requerer de tempos a tempos um tratamento médico'. É necessário, às vezes, que se faça uma intervenção para religar o Estado aos princípios sobre os quais é fundado. Se

[45] SCRUTON, Roger. *Filosofia verde*: como pensar seriamente o planeta. Tradução Mauricio G. Righi.. São Paulo: É Realizações, 2016, p. 216-217.

[46] Roger Scruton demonstra na obra "*Filosofia verde*: como pensar seriamente o planeta", por meio de inúmeros exemplos ao longo do livro, como soluções globais, por vezes, acabam agravando os danos que pretendiam prevenir.

[47] SCRUTON, Roger. *Filosofia verde*: como pensar seriamente o planeta. Tradução Maurício G. Righi. São Paulo: É Realizações, 2016, p. 9.

[48] LOCKE, John. *Segundo tratado sobre o governo civil*. Tradução Marsely de Marco Dantas. São Paulo: Edipro, 2014, p. 113.

[49] SPINOZA, Baruch. *Tratado político*. Tradução e prefácio de José Pérez. Rio de Janeiro: Nova Fronteira, 2017, p. 132.

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falhar tal intervenção, o mal irá crescendo a tal ponto que não poderá mais ser suprimido, senão pela supressão do Estado mesmo.

IV. Considerações Finais

Este artigo se propôs a estudar o direito global, identificar alguns de seus perigos e analisar quais seriam alguns dos deveres do Estado nesse cenário globalizado.

No primeiro tópico, durante o estudo do direito global, observou-se que se trata de um direito transnacional, de caráter altamente difuso, produzido por inúmeros atores globais em múltiplos níveis, que se propõe a interagir global e localmente com as mais diversas camadas do direito, sem qualquer vinculação. Anotou-se que para alguns autores a proposta do direito global é de interagir com o Estado, porém para outros a ideia é mesmo de supressão do Estado para a assunção de um direito e governo globais.

Já na segunda parte do estudo, foram identificados, sem pretensão de esgotamento, inúmeros problemas trazidos pela ideia de direito global. Dentre eles, cabe mencionar a dificuldade de harmonização de regulamentações globais e o perigo de restrição das liberdades de alguns povos; o déficit democrático dessa modalidade do produção jurídica, diante da baixa possibilidade de participação da sociedade na produção jurídica; o risco de autoritarismo das propostas globalistas de direito e governo global; a afetação dos princípios da abstração e generalidade das normas diante da produção de normas jurídicas por autores desvinculados do processo legislativo e até desconhecidos; risco de incoerência do sistema ante a produção altamente difusa das normas; instancias legislativas e processos de produção jurídica pouco transparentes; pouca ou nenhuma representatividade dos destinatários das normas; risco de abuso de poder por parte dos operadores; opacidade da produção normativa; baixa ou inexistente transparência na produção jurídica; inexistência de legitimidade democrática e de controle político na produção jurídica. Além disso, em uma perspectiva mais filosófica/sociológica, apontou-se o risco do desenraizamento da sociedade diante do excesso de ideias globalistas, gerando com isso desvinculação da noção de pertencimento à localidade e a perda dos valores sociais/culturais, especialmente dos valores das virtudes e da noção de dever (cidadania) para com a sociedade e o bem comum.

Na parte final do estudo, analisou-se a noção de dever, notadamente na sua histórica vinculação às virtudes morais. Constatou-se que é possível replicar aos Estados os deveres inerentes às pessoas. Diante disso, foi possível verificar o dever de uma atuação Estatal no contexto do direito global, atuando positivamente como agente de controle e regulamentação, permitindo e incentivando a produção normativa transnacional que esteja volta aos objetivos da sociedade, porém vedando práticas e normas globalistas que se afastem do horizonte do bem comum.

O papel do Estado nesse processo é de colocar-se à frente do processo, chamando para si a responsabilidade, fazendo valer sua soberania e filtrando o que há de interesse e benefício para a sua sociedade, e afastando toda e qualquer produção jurídica que vise suprimir o Estado, relativizar o ordenamento jurídico interno e impor à sociedade local um direito ao qual ela não participou da construção.

O Estado precisa cuidar das necessidades da alma de seus cidadãos, mantendo suas tradições e valores, mantendo as pessoas enraizadas, valorizando e fortalecendo sua cultura.

Trata-se de um dever de filtragem normativa e de controle, orientados pelas virtudes, essencialmente a mãe de todas elas, a justiça, como forma de prevenir os problemas do direito global que foram apontados no estudo, além de outros que porventura possam vir a ocorrer.

References Références Referencias

1. AQUINO, Santo Tomás de. *As virtudes morais*. Campinas: Ecclesiae, 2012.
2. AQUINO, Santo Tomás de. *Suma teológica*. Campinas: Ecclesiae. 2016. v. 2.
3. ARISTÓTELES. *Ética a Nicômaco*. Tradução e notas: Luciano Ferreira de Souza. São Paulo: Martin Claret, 2015.
4. BAEZ, Narciso Leandro Xavier; MEZZAROBA, Orides. Direitos Humanos Fundamentais e Multiculturalismo: a coexistência do universalismo com o relativismo. *Pensar*, Unifor, v. 16, 2011.
5. CERVANTES, Aleida Hernández. *La producción jurídica de la globalización económica*. Ciudad de México: CIICH/UNAM, 2014.
6. DEMARCHI, Clovis. Crise do estado e da democracia no contexto da globalização. *Revista Jurídicas*, Manizales, Universidade de Caldas, Colômbia, v. 16, n 2, 2019. p. 33, disponível em: http://juridicas.ucaldas.edu.co/downloads/Juridicas 16(2)_3.pdf.
7. DEMARCHI, Clovis; FONTANA, Douglas Cristian. Deveres Fundamentais e Dignidade Humana: uma perspectiva diferente. *Revista Eletrônica Direito e Política*, Programa de Pós-Graduação *Stricto Sensu* em Ciência Jurídica da UNIVALI, Itajaí, v. 14, n.3, p. 564, 3º quadrimestre de 2019. Disponível em: https://siaiap32.univali.br/seer/index.php/rdp/article/view/15828.
8. DÍAS REVORIO, Francisco Javier. Derechos humanos e deberes fundamentales. Sobre el concepto de dever constitucional y los deberes em

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la Constitución Española de 1978. *Revista del Instituto de Ciencias Jurídicas de Puebla*. México, a. V, n. 28, p. 278-310., Julio-Diciembre de 2011.
9. GIARO, Tomasz. *Transnational law and historical precedents*. Studia Iuridica, Varsóvia, v. 38, 2016.
10. HOBBES, Thomas. *Leviatã*: ou a matéria, forma e poder de um Estado eclesiástico e civil. Tradução Daniel Moreira Miranda. São Paulo: Edipro, 2015.
11. HOLBACH, Barão de. *A moral universal*: ou os deveres do homem fundamentados na sua natureza. Tradução Regina Schöpke, Mauro Baladi. São Paulo: Martins Fontes, 2014.
12. KANT, Immanuel. *À paz perpétua*. Tradução Marco Zingano. Porto Alegre: L&PM, 2017.
13. LOCKE, John. *Segundo tratado sobre o governo civil*. Tradução Marsely de Marco Dantas. São Paulo: Edipro, 2014.
14. MCKAY, Hollie. World Health Organization under the microscope: what went wrong with coronavirus? *Fox New Channel*, 2020. Disponível em: <https://www.foxnews.com/world/world-health-organization-coronavirus-what-went-wrong>. Acesso em: 21 abr. 2020.
15. OSLÉ, Rafael Domingo. *Que és el derecho global*? 6 ed. Pamplona: Aranzadi, 2009.
16. PLATÃO. *A república*. Tradução, textos complementares e notas de Edson Bini. 2 ed. São Paulo: Edipro, 2014.
17. PLATÃO. *Diálogos III*: Apologia de Sócrates, Críton, Fédon. São Paulo: Edipro, 2015.
18. PUFENDORF, Samuel. *Os deveres do homem e do cidadão de acordo com as leis do direito natural*. Tradução Eduardo Francisco Alves. Rio de Janeiro: Topbooks, 2007.
19. RE, Gregg. Trump announces US will halt funding to World Health Organization over coronavirus response. *Fox New Channel*, 2020. Disponível em: <https://www.foxnews.com/politics/trump-announces-funding-to-world-health-organization-who-halted>. Acesso em: 21 abr. 2020.
20. SASSEN, Saskia. *Territorio, autoridad y derechos*. De los ensamblajes medievales a los ensamblajes globales. Buenos Aires: Katz, 2015.
21. SCRUTON, Roger. *Filosofia verde*: como pensar seriamente o planeta. Tradução Mauricio G. Righi. São Paulo: É Realizações, 2016.
22. SPINOZA, Baruch. *Tratado político*. Tradução e prefácio de José Pérez. Rio de Janeiro: Nova Fronteira, 2017.
23. STAFFEN, Marcio Ricardo. *Interfaces do Direito Global*. 2 ed. Rio de Janeiro: Lumen Juris, 2018.
24. WEIL, Simone. *L'enracinement. Prélude à une déclaration des devoirs envers l'être humain*. Paris: Les Éditions Gallimard, 1949.
25. ZUBIZARRETA, Juan Hernández. *Las empresas transnacionales frente a los derechos humanos*: historia de uma asimetría normativa. De la responsabilidad social corporativa a las redes contrahegemónicas transnacionales. Bilbao: Hegoa, 2009.

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Popular Sovereignty during the Covid-19 Pandemic Organize Legislative and Municipal Elections in the Shadow of the Virus Concerns

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Introduction- This contribution forms part of an extensive effort conducted by the academic literature of constitutional law to immediately reflect the extraordinary and unprecedented constitutional challenges entailed by the virus concerns.[2] Although the fact, that several contributions have been published during the last months from these issues within a relatively short timeframe, we are still at the initial stage of assessing the constitutional implications in their entirety and complexity.

The pandemic caused the relativization of several constitutional principles and the constitutionally acceptable scope of state intervention during such emergencies,[3] especially during public health concerns are still to be elaborated. The Covid-related measures lead to the severe limitation of fundamental rights,[4] the distortion of the traditional understanding of separation of powers, and the reconsideration of the rule of law in more respects.

The impact of these tendencies concerns all segments of constitutional law. Still, amongst these paramount issues, the conduct of elections constitutes a crucial consideration since it shall secure the democratic legitimacy of legislation and governments even despite the particular restrictions.

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Popular Sovereignty during the Covid-19 Pandemic Organize Legislative and Municipal Elections in the Shadow of the Virus Concerns[1]

Boldizsár Szentgáli-Tóth

Introduction

This contribution forms part of an extensive effort conducted by the academic literature of constitutional law to immediately reflect the extraordinary and unprecedented constitutional challenges entailed by the virus concerns.[2] Although the fact, that several contributions have been published during the last months from these issues within a relatively short timeframe, we are still at the initial stage of assessing the constitutional implications in their entirety and complexity.

The pandemic caused the relativization of several constitutional principles and the constitutionally acceptable scope of state intervention during such emergencies,[3] especially during public health concerns are still to be elaborated. The Covid-related measures lead to the severe limitation of fundamental rights,[4] the distortion of the traditional understanding of separation of powers, and the reconsideration of the rule of law in more respects.

The impact of these tendencies concerns all segments of constitutional law. Still, amongst these paramount issues, the conduct of elections constitutes a crucial consideration since it shall secure the democratic legitimacy of legislation and governments even despite the particular restrictions.[5] Several authors have provided a deeper understanding of individual experiences regarding elections during the pandemic; however, a complete and systematic analysis is still ahead. After almost one year has been passed from the beginning of the pandemic, and a significant number of elections took place or expected to occur during this year, this may be the time to turn to this general assessment to draw constructive conclusions for future reference.

Bearing in mind this background, I conceptualize the main models of electoral policies since the beginning of the pandemic and the effect of the extraordinary measures on the fundamental electoral principles. On the ground of this analysis I will outline the main directions of the development, while Some alternatives will be also put forward as regard the perspective of democratic elections during the XXI. century.

I. Nemzetközi Standardok a Választásokra Vonatkozóan, Különös Tekintettel a Világjárvány Kihívásaira

Külön disszertáció témája is lehet a demokratikus választások követelményeit rögzítő nemzetközi jogi dokumentumok számbavétele, illetve az ezek által felállított mércék pontos tartalmának értelmezése. Ilyen részletességű elemzésre jelen keretek között nem vállalkozhatunk, elengedhetetlen azonban megemlítenünk két olyan nemzetközi egyezményt, amelyek meghatározóak a régió választási rendszerei szempontjából: A Polgári- és Politikai Jogok Nemzetközi Egyezségokmánya (a továbbiakban: PPNE),[6] valamint az Emberi Jogok Európai Egyezménye (a továbbiakban: EEJE).[7]

Az említett nemzetközi egyezmények által felállított, a járványügyi korlátozásokra nézve releváns standardokat három főbb csoportba sorolhatjuk: a választási kampány szempontjából nagy jelentőségű

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[2] Please see 'Erik Asplund, Toby James: Elections and Covid-19: making democracy work uncertain times' for one of the earliest contributions. International IDEA, 2020. https://www.democraticaudit.com/2020/03/30/elections-and-covid-19-making-democracy-work-in-uncertain-times/

[3] Knight, D. R. (2020): COVID 19 and States of Emergency: Lockdown Bubbles through Layers of Law, Discretion, and Nudges – New Zealand. In: *Verfassungsblog*. Available at SSRN: https://ssrn.com/abstract=3566873

[4] Joseph, S. (2020): COVID 19 and Human Rights: Past, Present, and Future. *Journal of International Humanitarian Legal Studies, Forthcoming, Griffith University Law School Research Paper,* No. 20-3, pp. 1–12. http://dx.doi.org/10.2139/ssrn.3574491

[5] Macfarlane, E. (2020): Public Policy and Constitutional Rights in Times of Crisis. *Canadian Journal of Political Science*, Vol. 53, No. 2, pp. 299–303. https://doi.org/10.1017/S0008423920000256

[6] Magyarországon kihirdette az 1976. évi 8. törvényerejű rendelet. *net.jogtar.hu/jogszabaly?docid=97600008.tvr*

[7] Magyarországon kihirdette az 1993. évi XXXI. törvény. *net.jogtar.hu/jogszabaly?docid=99300031.tv*

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alapvető jogok (gyülekezés, egyesülési jog, valamint a szólás- és sajtószabadság) korlátozása; a meghatározott időszakonként történő választások tartásának követelménye; továbbá a választójog gyakorlásának újabb feltételekhez kötésével összefüggő mércék.

A PPNE választójogra vonatkozó 25. cikkéből származó követelményeket[8] az Egyesült Nemzetek Szervezete Emberi Jogi Bizottsága által elfogadott, az említett cikkhez fűzött kommentár részletezi.[9] A Kommentár 8.[10] és 12.[11] bekezdése is rögzíti a gyülekezés, az egyesülés, a véleménynyilvánítás, a sajtó-, valamint a mozgás szabadságát annak érdekében, hogy a jelöltek szabadon terjeszthessék nézeteiket, a választópolgárok pedig korlátozások nélkül tájékozódhassanak a kandidáló személyek és szervezetek programjairól. Az elmúlt időszakban számos olyan járványügyi intézkedés merült fel, amelyek rendkívüli beavatkozást jelentettek ezen jogosultságok gyakorlásába. A legtöbb országban a személyes jelenléten alapuló kampánygyűléseket betiltották vagy legfeljebb igen csekélyszámú résztvevővel engedélyezték;[12] az állampolgárok mozgásszabadságát jelentősen korlátozták; egyes országokban felmerült a sajtó- vagy a véleménynyilvánítás szabadságának korlátozása is a járványhelyzetre tekintettel. Ezen intézkedések kapcsán az a fő kérdés az Emberi Jogok Európai Bírósága (a továbbiakban: EJEB) által kimunkált teszt értelmében, hogy a választójog korlátozása esetén a korlátozást törvény (jogszabály) írja-e elő; van-e az intézkedésnek egy demokratikus társadalomban legitimnek tekinthető célja; illetve a korlátozás mértéke és konkrét módja megfelel-e a szükségesség és az arányosság követelményeinek.

A választások rendszeres időközönként való megszervezésének követelményét ugyancsak a Kommentár 8. bekezdése rögzíti,[13] továbbá az EEJE 1. kiegészítő jegyzőkönyvének 3. cikke is hangsúlyozza.[14] Ez nem feltétlenül jelenti azt, hogy az egyes választások között minden esetben azonos vagy szinte azonos hosszúságú időnek kell eltelnie, járványhelyzet híján is szembesültünk előrehozott- vagy éppen elhalasztott választásokkal. Ezek száma azonban megugrott az elmúlt hónapokban, különösen a halasztások gyakorisága szembeszökő. A kérdés ilyenkor az, hogy valóban indokolt-e a járvány jelenlétére tekintettel megváltoztatni a választások időpontját, vagy esetleg egyes politikai erők olyan törekvései állnak a háttérben, hogy ezzel számukra kedvezően befolyásolják a választási eredményeket. Természetesen az időpont megváltoztatását szorgalmazók mindig a közegészségügyi szükséghelyzettel érvelnek, míg az intézkedés ellenzői hatalomtechnikai megfontolásokat sejtenek a háttérben.[15] Régiónkban több példát is láttunk a voksolás dátumának mozgatására, a kontextus tükrében lehet vizsgálni, hogy ez mikor és mennyiben támasztható alá alkotmányjogi érvekkel. További kérdésként merül fel, hogy halasztás esetén az átmeneti időszakra az adott pillanatban regnáló szervek mandátumát hosszabbítják meg, vagy egy átmeneti szakértői- vagy egységkormány lép-e hivatalba, amelynek feladata kifejezetten a későbbi választásokig tartó időszak politikai értelemben történő áthidalása.

A választójog konkrét gyakorlását érintő korlátozások rendkívül sokrétűek lehetnek a Covid-19 előidézte különleges jogrendben. Szükséges kétfelé bontanunk az itt felmerülő intézkedéseket aszerint, hogy alkalmazásuk a választójogból történő de facto kizáráshoz vezet-e, vagy pedig „csak" voksolást nehezítő előírást testesít meg a választópolgárok számára. Az előbbi csoportba jellemzően kétféle intézkedés kerülhet. Egyrészt bizonyos országokban a Covid-fertőzött személyeket gyakorlatilag megfosztották választójoguktól, mivel megtiltották számukra, hogy belépjenek a szavazóhelységekbe, alternatív szavazási módot pedig nem dolgoztak ki számukra. Ezen felül több országban az utazási és egyéb szervezési

[8] „Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) To have access, on general terms of equality, to public service in his country."

[9] Az ENSZ Emberi Jogi Bizottsága 1996. július 12-én fogadta el ezt a dokumentumot. www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf

[10] „Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves."

[11] „Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected."

[12] Erik Asplund [et al.]: Elections and COVID-19: How election campaigns took place in 2020 (International IDEA 2021) www.idea. int/news-media/news/elections-and-covid-19-how-election-campaigns-took-place-2020

[13] "Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights."

[14] "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

[15] H. D. Gunnarsdóttir – M. S. Sinha – S. Gerke – T. Minssen (2020): „Applying the proportionality principle to COVID-19 antibody testing" Journal of Law and the Biosciences Vol. 7, No. 1, pp. 1–8.

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nehézségek miatt nem teremtették meg a külföldön élő vagy tartózkodó állampolgárok számára a szavazás feltételrendszerét, így az ilyen esetekben ezt a választói csoportot is gyakorlatilag megfosztották választójogától.

A választójog gyakorlását, tehát a szavazatok leadását övező szabályok számtalan módon igazodtak a vírushelyzethez a különböző országokban: a szavazókörök számának növelése; nyitvatartási idejük meghosszabbítása; a választás több napossá tétele; külön szavazási idősáv a legveszélyeztetettebb társadalmi csoportoknak; távolságtartás, maszkviselés, kézfertőtlenítés; saját toll használata és rendszeres szellőztetés; a szavazatszámláló bizottsági tagok maximális életkorának meghatározása; alternatív, személyes jelenléthez nem kötött szavazási módok (postai, elektronikus, urnás) igénybevételének ösztönzése.

A következőkben a fentiekhez hasonló adaptációs lépéseket vizsgáljuk az egyes országokban, majd ezt követően térünk rá az előttünk álló magyarországi választásokra.

II. The Competing Fundamental Rights and Constitutional Values

The different countries have applied various solutions to adapt their electoral regimes to the unique needs to reduce the disease's transmission. Before considering the concrete scale of these measures, those fundamental rights should be enumerated, which may be concerned by the organization of either legislative or municipal election during public health concerns. In these situations, one may argue that a constitutional democracy should be based on elections periodically and foreseeably to secure the legislative and executive power's moral legitimacy either on the national and municipal levels. According to this line of argumentation, the virus's presence should not mean such a factor, which may justify the postponement of the elections constitutionally. The acting political leaders have been elected for a mandate with exact length. Even though society's restrictions due to the pandemic caused an extraordinary situation, this argument has not sufficient weight to extend the terminating grants. The running seats' prorogation should rely on even more serious considerations, such as when the country is engaged in an armed conflict with external power to protect its sovereignty or territorial integrity. Although the fact, which the significance of constitutional shortcomings caused by the pandemic is beyond doubt, elections should take place as expected. Obviously, all available means should be implemented to minimize the harmful public health consequences.[16] Therefore, the procedural rules should be amended concerning the electoral campaign and the voting itself to comply with the Covid-related additional requirements.

On the contrary, the holding of elections according to the original schedule may violate several fundamental rights, especially to the right to a healthy environment and the highest possible physical and mental health of all persons. Simultaneously the fairness of the elections might also be questionable in the light of the ordered restrictions and the unusual procedural regimes determined for the polls.[17] The main argument from these three is the primary duty to protect human life's,[18] and for this reason, the number of human contacts should be limited with all available tools. Accordingly, the holding of elections during the pandemic is irresponsible and will threaten the life and the well-being of several people, especially the older generations.[19] The continuous feedback from the society to its leaders and the rare chance to give the power into other hands are crucial elements of the democratic framework. However, these undoubtfully critical values should not prevail over the tangible harms be rising from the organization of the elections. It is also noteworthy that modern technological instruments, which may also be utilized in polls, may decrease the number of personal contacts considerably. Nevertheless, the demanding circumstances are indispensable. Without a pressing social need, the state should not require its citizens to endanger their life and physical integrity, and the holding of elections on the due date shall not mean such a pressing social need.

Apart from this, it is also dubious whether this surrounding with huge fear is acceptable to make such an important decision, then vesting the power to confident leaders for some years. Furthermore, the restrictions limited the physical margin of movement of lots of people. Simultaneously, the spread of reliable information is also much more difficult due to the technical difficulties and even to the lack of accessible a vast number of voters, who fall into political apathy. Moreover, the unusual procedural rules may provide additional opportunities for the interested stakeholders to foster fraud and manipulate the elections' outcome with unlawful means, which is also a risk factor.

In the light of the above arguments, should extend the existing mandates, or should establish an interim technocratic government until the end of the

[16] Spadaro, A. (2020): COVID-19: Testing the Limits of Human Rights. In: *European Journal of Risk Regulation*, Vol. 11, No. 2, pp. 317–325. https://doi.org/10.1017/err.2020.27

[17] Gunnarsdóttir, H. D. – Sinha, M. S. – Gerke, S. – Minssen, T. (2020): Applying the proportionality principle to COVID-19 antibody testing. In: *Journal of Law and the Biosciences*, Vol. 7, No. 1, pp. 1–8. https://doi.org/10.1093/jlb/lsaa058

[18] Karavokyris, G. (2020): The Coronavirus Crisis-Law in Greece: A (Constitutional) Matter of Life and Death. In: *Verfassungsblog*. https://verfassungsblog.de/the-coronavirus-crisis-law-in-greece-a-constitutional-matter-of-life-and-death/

[19] Weidemaier, W. – Gulati, M. (2020): Necessity and the Covid-19 pandemic. In: *Capital Markets Law Journal*. Vol. 15, No. 5, pp. 277–283. https://doi.org/10.1093/cmlj/kmaa013

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virus concerns. The related restrictions and elections should be organized within such circumstances when may express the will of the society democratically.[20]

The introduced models for treating elections sought proper balances between the arguments of these two approaches. In the following subchapters, the distortion of certain electoral principles will be conceptualized, examining the main directions of current endeavors. Finally, we will assess the long-term consequences of the recent crisis from an electoral law perspective.

III. Electoral Campaign during the Pandemic

The exact framework of the right to vote differs remarkably from country to country. However, the objections, which required the adaptation of the procedural background, have been a global issue. Therefore, the reflections on these challenges are also comparable.[21] This is particularly valid in the campaign stage since disseminating political views relied traditionally primarily on rallies based on the participants' physical presence or door-to-door canvassing. Nevertheless, the virus concerns may have forced the legislatures to impose a ban on political demonstrations, even during the direct campaign period, or at least severe limitations have been ordered. For instance, several countries allowed gatherings for campaign purposes; however, the number of participants has been strictly limited.[22] In reality, most of the interested voters could follow these rallies just from elsewhere via electronic means. Still, the impact of these demonstrations may have been more significant in countries less equipped with technical infrastructure than messages conveyed on social media platforms. Meanwhile, the holding of the even restricted live campaign events contributed to the population's comfort sentiments.

Just numerous countries permitted political parties to mobilize their voters via campaign gatherings. Still, another tendency has also been noteworthy to refer the whole campaign process to the virtual sphere.[23] The candidates shared their views via electronic means, via social media platforms, or videos,[24] and the voters also discussed the raised ideas in such forums.[25] Moreover, the electoral offices informed the citizens of the particular rules and restrictions with the help of technological information instruments: via emails, videos, podcasts, or social media posts, like in Australia or Belize. Also habitual celebrations after the publication of the outcome have been cancelled for this occasion,[26] and supporters should have expressed their sentiments just from home, via electronic social networks. Door-to-door canvassing was allowed in several countries, like in Georgia,[27] with evident public health restrictions, such as respect of social distancing. However, it may have imposed a ban on such activities also.

Collecting of electronic supporting signatories for candidatures was also allowed simultaneously or instead of paper-based subscriptions, like in Iceland.[28]

The spread of virtual platforms and their growing significance in public discourse have been a widely discussed tendency during the last years; particular circumstances of recent elections' just strengthened this. However, these arenas for exchanging political views are still not regulated in sufficient detail; several concerns have been raised regarding their operation, the filtering of contents, and the transparency of their functioning. The European Commission is about to draft a directive from these matters. The virtualization of the electoral campaign just underlined the urgency of this demand.[29]

It has also been reported from several countries, for instance, from Croatia.[30] that Due to the unique restrictions, political parties without clear political backgrounds and a well-established circle of supporters had almost no chance to communicate their ideas effectively to the society.[31] This aspect of Covid-related elections has not been analyzed in-depth, but this would also be an essential task to enact procedural rules to balance the inequalities derives from the limited access

[20] Romain Rambaud: Holding or Postponing Elections During a COVID-19 Outbreak: Constitutional, Legal and Political Challenges in France (v2). International IDEA, 2020. https://www.idea.int/sites/default/files/publications/holding-or-postponing-elections-during-a-covid-19-outbreak-v2.pdf

[21] Toby James: Adapting elections to COVID-19: five key questions for decision makers. International IDEA, 2020. https://www.idea.int/news-media/news/adapting-elections-covid-19-five-key-questions-decision-makers

[22] Erik Asplund et al.: Elections and COVID-19: How election campaigns took place in 2020. International IDEA, 2021. https://www.idea.int/news-media/news/elections-and-covid-19-how-election-campaigns-took-place-2020

[23] Pistor, K. (2020): *Law in the Time of COVID-19.* New York: Columbia Law School. "Law in the Time of COVID-19" by Katharina Pistor (columbia.edu)

[24] Imposed such ban, for instance, in Algeria: https://www.bbc.com/news/world-africa-54748146

[25] International IDEA: Adapting to the New Normal: Political Parties During Lockdown and Social Distancing. 2020. https://www.idea.int/sites/default/files/publications/adapting-to-the-new-normal-political-parties-during-lockdown-and-social-distancing.pdf

[26] For instance, in Jamaica: https://ecj.com.jm/statement-from-the-ecj-on-readiness-for-september-3-election/

[27] https://www.osce.org/files/f/documents/a/d/469005.pdf

[28] https://www.icelandreview.com/news/icelands-presidential-election-scheduled-for-june/

[29] Anika Heinmaa, Nana Kalandadze: Special Voting Arrangements in Europe: Postal, Early, and mobile voting. International IDEA, 2021. https://www.idea.int/sites/default/files/publications/special-voting-arrangements-in-europe.pdf

[30] https://www.osce.org/files/f/documents/b/4/465120_0.pdf

[31] Alberto Fernandez Gibaja: Transforming political parties in the middle of a pandemic: The moment for online voting? International IDEA, 2020. https://www.idea.int/news-media/news/transforming-political-parties-middle-pandemic-moment-online-voting

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of voters and ensure equal opportunities for all candidate's and political parties.

A further notice has been the increase of political apathy: those voters, who have shown a willingness to ignore the elections and, more broadly, the participation in public life, decided to refrain from voting due to the quarantine rules and the virus concerns.[32] Although the fact that a clear link between the holding of elections and the spread of the virus has not been proved in any country, the limited public space eliminated most of those voters from the active members of the democratic community. They have had not any clear and strong political engagement.

The significant experience from Covid-19 in this regard was that an electoral campaign mostly without physical presence is at least feasible at the moment; however, the distortive effects are still significant. As supplementary venues of the electoral campaign with rapidly growing importance, the electronic platforms are not sufficiently regulated, while may also undermine the equality of all candidates. Furthermore, the political activity of voters may also be diminished by extraordinary circumstances.

IV. The Fundamental Principles of the Right to Vote during the Public Health Emergency

I will detail the Covid-related measures during the following subchapter when the three main models' structure will be elaborated. Before this classification, the central electoral principles will be taken into account; some of them are questioned partly or totally by the public health concerns. The universality of the elections and the vote's secrecy has been under pressure, as will be demonstrated accordingly.

a) Universal and equal voting rights

The equality of votes has not been dubious during the pandemic, or at least an issue in this respect has not been attributable to the epidemic. However, as regard universality, more uncertainties have been experienced.[33] The main issue was the treat of Covid-19-positive and quarantined voters, who are undoubtedly entitled to exercise their democratic, participative rights; however, their physical presence will mean an undue risk for the whole electoral staff. One possible direction to solve this issue is the fostering of electronic and postal voting. Still, only a tiny number of the most developed countries have the necessary technical infrastructure and electoral staff to introduce these methods reliably for broader circle of voters.

In certain countries, the Covid-19-positive persons were simply disenfranchised, like in Belize,[34] Chile,[35] or Mali,[36] which may be constitutionally justifiable from a public health perspective, but relativise seriously the fairness and the legitimacy of the whole electoral process.[37] Should we exclude individual citizens from their most important democratic participative rights based on their current state of health?[38] If this is the case, should we extend this treatment to persons with other infecting diseases also?

More frequently, legislations targeted to implement particular adaptations of the voting mechanisms with existing solutions and innovations. To set an example, in certain states, mobile urns were used to collect the votes from infected people. However, the counting of these papers also constituted a massive risk for the electoral staff. Therefore, several of them refused to get involved in this task.[39] During the casting of these ballots and counting these votes, special public health measures were applied: mouth and nose masks, gloves, regular fertilizers, and distance keeping for all persons concerned.

Apart from these ideas, some countries provided a unique way for symptom-producing persons to participate in the elections. It was prohibited for Covid-positive or suspected citizens to show up at the polling station; some countries even criminalized such behavior, like Jordan.[40] To secure the transparent and feasible participation of these people, some countries allowed them also to approach the voting venue with a car, where they should have travel alone or a maximum with a driver. The vehicle should have parked close to the voting venue. Some members of the electoral staff provided the electoral sheet to the infected or quarantined citizen, who filled the sheet and showed the ballot to the officers, who verified it. Regarding the universality of the voting, this mechanism may be

[32] International IDEA: Going against the trend: elections with increased voter turnout during the COVID-19 pandemic. 2020. https://www.idea.int/news-media/news/going-against-trend-elections-increased-voter-turnout-during-covid-19-pandemic

[33] Lebret, A. (2020): COVID-19 pandemic and derogation to human rights. In: *Journal of Law and the Biosciences*, Vol. 7, No. 1, pp. 1–15. https://doi.org/10.1093/jlb/lsaa015

[34] https://www.elections.gov.bz/pages/2020-covid19-protocols.php

[35] https://www.archynewsy.com/chile-threatens-sanctions-against-those-infected-with-covid-19-who-vote-in-the-constitutional-plebiscite-international/

[36] https://www.theglobeandmail.com/world/article-mali-holds-election-despite-coronavirus-and-insurgency-2/

[37] Erik Asplund et al.: Elections need to be accessible for the ill during COVID-19 to avoid disenfranchisement. International IDEA, 2020. https://www.idea.int/news-media/news/elections-need-be-accessible-ill-during-covid-19-avoid-disenfranchisement

[38] Erik Asplund et al.: People with COVID-19 and those self-isolating must not be denied the vote. International IDEA? 2020. https://blogs.lse.ac.uk/covid19/2020/10/23/people-with-covid-19-and-those-self-isolating-must-not-be-denied-the-vote/

[39] For instance, this happened in Israel. Moshe, M. – Raanan, S-K. & Chinitz, D. (2020).: When COVID-19, constitutional crisis, and political deadlock meet: the Israeli case from a disproportionate policy perspective. In: *Policy and Society*, Vol. 39, No. 3, pp. 442–457. DOI: 10.1080/14494035.2020.1783792

[40] https://www.al-monitor.com/pulse/originals/2020/11/jordan-low-voter-turnout-parliament-elections-apathy.html

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deemed satisfactory, since all citizens' real participation is ensured. However, there are numerous concerns from the perspective of the voting's secrecy, but this will be assessed in the following subchapter.

In the Czech Republic, the combination of three alternative methods has been recommended for infected or quarantined citizens: mobile voting; voting from a vehicle; or unique polling stations, organized, for instance, in hospitals.[41]

Another challenge from a universality perspective was to provide the possibility of voting for people living abroad. To set examples, Ghana[42] and Guinea[43] simply apparently disenfranchised their citizens living in abroad due to the existing travel restrictions in the countries of their permanent residences.

Suppose universality of the elections is aimed to be maintained. In the case, should elaborate a long-term and safe framework for the voting of those people who have been infected or quarantined at the moment of the elections. The exact details may vary from country to country. However, the personal contact should be excluded or at least minimized between the electoral staff and the Covid-19-infected citizen, while the voting's secrecy should also be protected with proper safeguards, as will be conceptualized in the preceding.

b) Direct and secret ballot

The directness of the voting is also untouched by the pandemic. However, secrecy shall face new challenges due to the unique voting methods and to the complexity of the electoral system in a traditional election, most of the votes are submitted with the same technical facilities, special rules are only applied for a narrower, clearly distinguished group of voters. During the pandemic, even the conventional voting based on physical presence should be renewed in several respects, fewer people will be allocated to each voting venue, and certain people, who are at least suspected of being infected with Covid-19, may vote under extraordinary regimes, which have never experienced before. In light of these circumstances, some people's votes may be revealed for others, especially of those who may be affected by the virus. For the legislation, this constitutes an additional task to prescribe the requirements of secret voting even during public health concerns to avoid personal votes. In the previous subchapter, the voting method from the car has also been rumoured. It may be more worthy of replacing this with electronic voting without any even distant physical contact between the voter and the citizens. However, only some of the most developed countries are ready to receive electronic votes from the citizens. Several issues are still to be mapped out: how should people register for electronic voting, and how could we avoid the verification of the reliability with the maintenance of unanimity for the voter? The conclusion of this chapter, in case of the voting of Covid-19-affected persons, such a regulatory framework should be developed, which will find a proper balance between the public health concerns and the secrecy considerations.[44]

V. Various Methods to Organize Elections during the Pandemic

The main theoretical challenges have been set, raised by the pandemic to manage democratic elections. Now I turn to the practices applied to bridge this exceptional period by electoral terms. All countries' reflections differ to a particular extent; may classify the vast variety of national models into three main categories. Some states decided to hold the scheduled initially elections to utilize such forms of elections, where personal presence and contact are not required. One possible option in this direction is the development of electronic voting, where people should not meet each other so that public health concerns may be excluded.[45] Postal voting has also been used to minimize human contacts during the electoral process, but the whole election relied only rarely exclusively on these means.

It was more popular to hold the elections with combined solutions: apart from maintaining traditional voting, electronic and postal voting were also included in these systems.[46]

In several countries, secret voting remained dominant, however, with lots of adopting measures to meet the unique public health requirements.

Finally, many countries decided to postpone their elections sometimes for a whole year, to avoid the unwanted consequences of the pandemic.[47] In some states, the postponement was shorter and was not sufficient to prevent the impact of the virus concerns,

[41] https://covid19.who.int/region/euro/country/cz

[42] Addadzi-Koom, M. E. (2020): Quasi-state of emergency: assessing the constitutionality of Ghana's legislative response to Covid-19. In: *The Theory and Practice of Legislation*, Vol. 8, No. 3, 311–327. 10.1080/20508840.2020.1777648

[43] https://www.aljazeera.com/news/2020/03/guinea-holds-controversial-referendum-marred-violence-boycott-200323050642649.html

[44] Hasen, R. L. (2020): Three Pathologies of American Voting Rights Illuminated by the COVID-19 Pandemic, and How to Treat and Cure Them. In: *Election Law Journal: Rules, Politics, and Policy*, Vol. 19, No. 3, pp. 263–288. http://doi.org/10.1089/elj.2020.0646

[45] Peter Wolf: The COVID-19 crisis – A much needed new opportunity for online voting? International IDEA, 2020. https://www.idea.int/news-media/news/covid-19-crisis-%E2%80%93-much-needed-new-opportunity-online-voting

[46] Anika Eleni Heinmaa: Special Voting Arrangements (SVAs) in Europe: In-Country Postal, Early, Mobile and Proxy Arrangements in Individual Countries. International IDEA, 2020. https://www.idea.int/news-media/news/special-voting-arrangements-svas-europe-country-postal-early-mobile-and-proxy

[47] Ingrid Bicu – Erik Asplund: Risk mitigation measures for national elections during the COVID-19 crisis. International IDEA, 2020. https://www.idea.int/news-media/news/risk-mitigation-measures-national-elections-during-covid-19-crisis

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while in other cases, the final schedule of the postponed elections is still pending.

These three main models are known on the ground of those Covid-related solutions, which the countries of the world have introduced. In the next subchapters, I will analyze the details of these approaches more in-depth.

a) Enhanced inclusion of electronic and postal voting

During the last years, the significance of electronic and postal voting has constantly been growing in at least the more developed countries of the world. During the pandemic, this form of electoral participation was rarely able to manage the whole process,[48] just especially in such cases, when the election was not direct (based on electors' participation) or where the postal or electronic voting still had an important role before the outbreak of the corona crisis. For instance, in Ohio, the governor and Congress decided to postpone the elections from March 17 to April 28 2020. and it was determined that the primary mode of voting should be the postal one. Only the disabled persons and the citizens without permanent residence were permitted to vote in person. The number of polling stations has been reduced remarkably compared to the usual number of these places.[49]

Similar solutions were applied in Maryland, wherein one of the congressional constituencies, interim elections took place in April 2020. The methodology was very close to the instruments used in Ohio. Postal voting constituted the primary form of electoral participation, while three constituencies were organized for people with disabilities and persons without a permanent residence.[50]

In Bayern, the South-East of Germany, the first round of municipal elections was based on a combined method: personal and postal voting was also possible. However, the second round constituted a fully postal election of mitigating the spread of the virus across the country. This stage of the elections took place on 30-31 March 2021. The necessary documents were supposed to be sent to the citizens until 15th March 2020. If, for someone, these documents have not been provided until this date, he/she shall have registered to the electoral system with his/her identity.[51]

In the Republic of Ireland, the senatorial elections are indirect electors who submit their votes through postal means. Therefore, no adaptation was necessary to hold these elections on their original schedule. The former senators, the members of regional and municipal councils, and the Lower House representatives participated in the polls as they usually do. Nevertheless, an additional restriction was imposed, which was also present in numerous other countries.[52] The representatives of the media and the candidates should not have entered into the venues of vote-counting. Instead of this, as a safeguard, the process was broadcasted and streamed through the different channels of the media. Owing to this regulation, despite the extra-ordinary circumstances, the whole community was able to follow the mechanism and to verify its lawfulness.

Direct presidential elections were planned in Poland on May 10, 2020. Still, the opposition initiated the declaration of a state of emergency, and the postponement of the elections at least until 60 days will pass after the end of the extraordinary period. The government rejected this idea allegedly to avoid the strengthening of the opposition. The Seim, the lower house of the Polish Parliament, passed a bill to extend postal voting and vest the Seim president with the power to postpone the elections just in indispensable cases. Moreover, a particular control body under the minister of justice would have replaced the National Electoral Commission as the main actor responsible for managing the whole process.[53] The Senate, which was dominated by the opposition, used its 30-day term for consideration to set back the government to hold the elections at the beginning of May. When the government realized this intention, the critical preparatory steps were made for organizing the polls without senatorial approval, which entailed lots of criticism even from the civil society. Finally, a compromise has been concluded: the polls were held de facto on 10th May, but in reality, people submitted their votes on 28th June with the combination of traditional and postal voting.[54]

b) Adaptation of the traditional electoral process

The most known sample of the adapted electoral regime is the French municipal elections, where the first stage of the two-round process was held on 15th March 2020. as originally planned. Staging the elections was criticized heavily by several

[48] Ting, D.S.W. – Carin, L. – Dzau, V. et al. (2020): Digital technology and COVID-19. In: *Nature Medicine. No.* 26, pp. 459–461. https://doi.org/10.1038/s41591-020-0824-5

[49] https://www.nytimes.com/article/2020-campaign-primary-calendar-coronavirus.html#link-35cbf62

[50] https://www.reuters.com/article/us-health-coronavirus-ohio-election/democrat-mfume-retakes-maryland-congressional-seat-in-special-election-idUSKCN22A1FF

[51] Rebecca Wagner: Responding to COVID-19 with 100 per cent Postal Voting: Local Elections in Bavaria, Germany. International IDEA, 2020. https://www.idea.int/sites/default/files/responding-to-covid-19-with-postal-voting-local-elections-in-bavaria.pdf

[52] https://www.oireachtas.ie/en/elections/seanad-general-election-2020/

[53] Nana Kalandadze: Switching to all-postal voting in times of public health crises: Lessons from Poland. International IDEA, 2020. https://www.idea.int/news-media/news/switching-all-postal-voting-times-public-health-crises-lessons-poland

[54] Vasil Vashchanka: Political, legal and organizational lessons from elections in the time of a pandemic – Republic of Poland. International IDEA, 2020. https://www.idea.int/news-media/news/political-legal-and-organizational-lessons-elections-time-pandemic-republic-poland

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commentators, and individual sources also rumored that the government had severe fears that the postponement will potentially lead to unexpected oppositional successes, which was the main reason why the rescheduling to a later date was rejected. The number of participants in campaign events was limited to thousand people; the electoral staff were obliged to wear mouth and nose masks; the citizens were required to bring their pens; the polling booths should have been fertilized regularly and sanitizer was provided for each participant.[55] These adaptative steps formed part of the special rules enacted for the Covid-related elections in almost all countries concerned.[56] The willingness to participate was remarkably lower than in the previous similar elections. However, as usual, despite of the reporting of some illnesses and deaths during the next days, the overall rate of disease transferring remained almost unchanged. The second round was organized on 28th June, surrounded by less severe restrictions, but with similar adaptive elements to prefer carefulness. Similarly to France, the first round of the parliamentary elections was held in Iran on schedule, while the second round was moved from April to September 2020.[57]

In Wisconsin, the presidential pre-selection of the Democratic Party was supposed to take place on April 7 2020, but the Democratic governor, Tony Evers, decided to postpone the event until June. The Republican Party challenged this decree and the Supreme Court of Wisconsin found the postponement as unconstitutional since – according to the Court – the governor overstepped his constitutional margin of movement. So the pre-selection remained on its original schedule, but the citizens were asked to keep the social distance, to wear masks during the whole process, and to use their pen during submitting their votes. These measures were effective: the elections were reported as wholly safe.

On April 15 2020, South Korea elected parliamentary members with traditional methods, with necessary supplementary elements. Contrary to France, the in-person instruments of campaigns were banned, the dissemination of political views was possible only via electronic means. The duration of the voting was prolonged: more days soot at the citizens' disposal to avoid unnecessary personal meetings in the voting venues. For similar reasons, also increased the number of polling stations, so fewer people should have visited the same location for this purpose. Apart from this, extended the option of postal voting to decrease further in-person contacts. In the polling booths, and during the whole process, provided fertilizers, the wear of masks was mandatory, requested distance keeping, the body temperature was checked. At the same time, the counting of votes was broadcasted and streamed in the media. The elections were successful, and despite those concerns, that increased the indicators of the epidemic remarkably five weeks after the elections. This was not attributable to the voting, and numerous factors may have been responsible for the spread of the virus in South Korea.[58]

One should also enumerate some additional innovative elements of other electoral regimes with less significance. In Austria, the number of those who shall stay at the voting station simultaneously was also limited to further decreasing the number of masses, incredibly close contacts. In Bermuda, early voting was possible for older people and those whose Covid-19 test was positive.[59] In Bolivia, the size of polling stations has been extended,[60] and opened the windows regularly. In addition to this, special training was held for the electoral staff from the virus-related public health requirements. The voters were requested to leave the polling station immediately after submitting their votes. Italy provided two consecutive days for voters to cast their ballot to reduce the number of citizens who simultaneously visited the polling stations.[61]

In Brazil, voters were recommended not to bring children or other companions to the polling station to reduce the number of persons present in the building. Those who produced symptoms during the last two weeks before the elections were advised to stay at home, while Covid positive or suspected persons were allowed to refrain from voting despite the fact that participation is deemed to be mandatory for all citizens between ages 18-70 unless a due reason of absence is justified. Training was provided for the electoral officers, and did not select persons over 60 to the electoral staff.[62] In Burkina Faso, no more than 800 voters shall be assigned to each polling station,[63] and in reality, less than 500 people were registered to each venue.[64]

[55] Romain Rambaud: Constitutional, legal and political lessons from elections in the time of pandemic – The French Republic. International IDEA, 2020. https://www.idea.int/news-media/news/constitutional-legal-and-political-lessons-elections-time-pandemic-french-republic

[56] Erik Asplund et al.: Elections and COVID-19: Health and safety in polling stations. International IDEA, 2021. https://www.idea.int/news-media/news/elections-and-covid-19-health-and-safety-polling-stations

[57] https://www.reuters.com/article/us-health-coronavirus-iran-qom/elections-ties-with-china-shaped-irans-coronavirus-response-idUSKBN21K1NO

[58] Antonio Spinelli: Lessons from elections in the time of pandemic – Republic of Korea. International IDEA, 2020. https://www.idea.int/news-media/news/lessons-elections-time-pandemic-republic-korea

[59] https://elections.gov.bm/general-election/covid-19-guidance-for-polling-stations.html

[60] https://www.reuters.com/article/us-bolivia-election-coronavirus-idUSKBN2730PT

[61] http://www.interno.gov.it/it/notizie/rinviato-referendum-29-marzo-sul-taglio-dei-parlamentari

[62] Gabriela Tarouco: Covid-19 and the Brazilian 2020 Municipal Elections. International IDEA, 2020. https://www.idea.int/sites/default/files/covid-19-and-the-brazilian-2020-municipal-elections.pdf

[63] https://www.aa.com.tr/en/africa/burkina-faso-holds-presidential-poll-without-incident/2053351

[64] Similar prescriptions were implemented in Indonesia. For more details, please see: Adhy Aman: Indonesia's Big-size COVID-19

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It is also worth-contemplating that it was reported from lots of African countries that the implemented virus-related measures have not been enforced strictly.[65]

By contrast, in Belarus, where the official leadership denied the existence of the virus,[66] the president of the National Electoral Office published recommendations for the electoral staff. Early voting was also possible, and also prolonged the opening hours of voting polls to provide broader flexibility for the people. Controversially, the number of observers were limited: three were allowed to enter each polling station due to the problematic epidemiological situation. Similar tendencies were perceptible in Burundi:[67] the leaders of the country called for electoral participation without additional protective measures.[68] In the meanwhile, the electoral office recommended exceptional carefulness for the citizens, and the international observers were expelled from the country on public health grounds.[69]

c) Postponed and ahead of elections

Many legislative and municipal elections have been postponed during the last months due to virus concerns. The reasoning of postponements was various, and the possible motivations also differed remarkably depending on the exact circumstances. Those political forces, who had allegedly enhanced popularity around the initially scheduled date of the elections, always insisted on holding the voting with special safeguards.[70] Those parties, which hoped to access more voters highlighted the seriousness of the public health situation and argued for the elections' postponement.[71]

The exact term of the postponement waries also considerably: in some cases, the forced delay was just some weeks or some months,[72] but this was not always sufficient to avoid the adverse effects of the virus. Some countries decided from a half-year-long[73] and a one-year-long[74] postponement and the final schedule of some voting are still pending,[75] so the disease will influence the electoral tendencies, at least even for years.[76]

It was also frequently contested, how should be the country governed and especially by whom until the staging of the delayed elections.[77] One tangible solution would be to extend the existing mandates. Still, it was a commonly phrased oppositional argument that an interim government should be set up with the cooperation of all political stakeholders to bridge the virus period, and then until the recent elections would be feasibly held.[78]

By contrast, the virus concerns lead to several postponed elections and some early ones. In Bermuda, where the next election would have been due in 2022, an early election took place in October 2020, with the justification of achieving more focused governmental efforts to rebuild the local economy.[79] In Croatia, the elections moved forward from the autumn to July 2020;

Elections – What to Watch For? International IDEA, 2020. https://www.idea.int/news-media/news/indonesia%E2%80%99s-big-size-covid-19-elections-%E2%80%93-what-watch

[65] International IDEA: Taking Stock of Regional Democratic Trends in Africa and the Middle East Before and During the COVID-19 Pandemic. January 2021. https://www.idea.int/news-media/news/taking-stock-regional-democratic-trends-africa-and-middle-east-and-during-covid-19

[66] https://www.oesterreich.gv.at/themen/leben_in_oesterreich/wahlen/7.html

[67] Erik Asplund, Olufunto Akinduro: The COVID-19 electoral landscape in Africa. International IDEA, 2020. https://www.idea.int/news-media/news/covid-19-electoral-landscape-africa

[68] https://www.aljazeera.com/news/2020/05/25/burundi-election-commission-says-ndayishimiye-new-president/

[69] Laura Thornton: I'm an 'election observer' - but what do we actually do? International IDEA, 2020. https://www.idea.int/news-media/news/im-election-observer-what-do-we-actually-do

[70] A particular case is notable from the Central African Republic: the Government aimed to postpone the elections to a later date, but the Constitutional Court called for holding the parliamentary elections on the original schedule. https://au.int/sites/default/files/pressreleases/39821-pr-declaration_preliminaire_moeua_-_elections. The constitutional review had similar outcomes in some member states of the United States of America, as the already mentioned example of Wisconsin demonstrates this excellently.

[71] Toby James, Sead Alihodzic: When Is It Democratic to Postpone an Election? Elections During Natural Disasters, COVID-19, and Emergency Situations. International IDEA, 2020. https://www.liebertpub.com/doi/pdf/10.1089/elj.2020.0642

[72] Slight postponements just with some weeks, or months (less than half a year): Austria, Bangladesh, Bosnia and Herzegovina, Brazil, Czech Republic, Dominican Republic, France, Guam, India, Indonesia, Jamaica, Kiribati, Latvia, Liberia, Libia, Moldova, Montenegro, New Caledonia, New Zealand, North Macedonia, Papua New Guinea, Poland, Romania, Russia, Serbia, Somalia, Spain, Sweden, Switzerland, Syria, Tunisia, Uganda

This list and the whole forthcoming classification are based on the database of the International Institute for Democracy and Electoral Assistance (International IDEA). The category is established regardless of the exact type of elections concerned. https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections

[73] The half year-lengthy postponements: Argentina, Bolivia, Chile, Gambia, Iran, Italy, Kenya, Kosovo, Mexico, Nigeria, Puerto Rico, Slovakia, Solomon Islands, South Africa, Sri Lanka, Uruguay

[74] One year-long postponements: Armenia, Chad, Colombia, Ethiopia, Gabon, Hong Kong, Kyrgyzstan, Maldives, Paraguay,

[75] Postponed elections with still pending agenda: Bahamas, Botswana, French Guyana, Gibraltar, Oman, Pakistan, Peru, Zimbabwe

[76] Some countries applied a combined set of postponements for different types of national and local elections; these are: Australia, Canada, Malaysia, the USA.

[77] Toby James, Erik Asplund: What happens after elections are postponed? Responses to postponing elections during COVID-19 vary by regime type. International IDEA, 2020. https://www.idea.int/news-media/news/what-happens-after-elections-are-postponed-responses-postponing-elections-during

[78] Gostin L. O. – Hodge J. G – Wiley L. F. (2020): Presidential Powers and Response to COVID-19. In: *JAMA*. Vol. 323, No. 16, 1547–1548. https://doi.org/10.1001/jama.2020.4335

[79] https://www.gov.bm/articles/notice-parliamentary-registrar

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this decision was also surrounded by political accusations.[80]

VI. Long-Term Consequences of the Covid-19 Pandemic to Democratic Elections

Numerous solutions have been elaborated globally to comply with special public health requirements during the whole electoral process: some of them have been implemented in most of the relevant countries. At the same time, certain margin of movement always left within the hands of national decision-makers despite the inherently similar challenges. Some of these elements, which are directly linked to the mitigation of the pandemic, will probably disappear when the virus threat is not as intense as it was during the last months. However, some tendencies are deemed to remain in our life even after the pandemic's termination; at least three of these directions should be highlighted.

Firstly, the inclusion of modern technologies in the electoral process will be extended; postal and electronic voting will be integrated more cohesively into the procedural legal framework of elections.[81] Apart from this, the role of electronic platforms will increase further during the collection of signatories, during the campaign period, and after the results' announcement, when politicians and their supporters reflect on the outcome, respectively.[82] Before the pandemic, such elements were mostly supplementary except some countries, but the extraordinary circumstances highlighted their significance and demonstrated the advantages of these methods.

Secondly, Future electoral frameworks will be probably more flexible and diverse than the current ones, which are usually grounded on the dominance of traditional voting based on physical presence.[83] The crisis showed the importance of alternative paths and the necessity to adapt the procedural rules to the electoral demands more efficiently and to the unexpected external challenges. The future elections are supposed to be more expensive,[84] For instance, financial issues have already been raised during the crisis in Bosnia and Herzegovina.[85]

Thirdly, electoral systems' response capacity to emergencies should be regulated with more carefulness either at the constitutional and legislative level.[86] It was uncertain whether elections should be held during emergencies. It was also dubious how should the period should be bridged between the original schedules of elections and the date of the postponed ones. Even if several constitutions explicitly stipulate the way of delaying elections, the due reasons of such a step, and the bridging of the interim period, it quickly turned out that several of these provisions lack a sufficient level of precision.

VII. Conclusions

When approximately one year has been passed from the outbreak of the Covid-19 pandemic, and the epidemic is still on-going, I attempted to provide a cursory glance at the central development observable in the field of electoral law consequences of the virus concerns. The scale of implemented novelties has probably not been finalized, but some crucial directions are still identifiable for future references.

The known public health requirements imposed additional responsibility on all stakeholders from legislations to each citizen to decide whether elections should be held on schedule or should be postponed; and on keeping the whole electoral process within the bounds of safety and reliability.[87] Due to urgent reflections, the decisions were based on practical considerations, or actual or alleged political aspirations. However, the dogmatic aspects of the new challenges of the electoral system have inevitably not been analyzed in depth. After one year of experience, several practical examples have been seen, and in the light of these points of reference, in my sense, the science of constitutional law has two main tasks in this field. On the one hand, the Covid-related elections should be monitored closely. Those conclusions should be drawn, which might orient legislations and electoral bodies during the preparation of such events amongst public health requirements. It is still an imaginable perspective that virus concerns will not disappear wholly in the future. Further epidemics might also appear, so some aspects of these protocols might remain in electoral

[80] https://balkaninsight.com/2020/05/18/croatian-parliament-dissolved-ahead-of-summer-elections/

[81] Hasen, R. L. (2020).: Three Pathologies of American Voting Rights Illuminated by the COVID-19 Pandemic, and How to Treat and Cure Them. In: *Election Law Journal: Rules, Politics, and Policy*, Vol. 19, No. 3, pp. 263–288. http://doi.org/10.1089/elj.2020.0646

[82] Peter Wolf, Ingrid Bicu: COVID-19 as an accelerator for information operations in elections. International IDEA, 2020. https://www.idea.int/news-media/news/covid-19-accelerator-information-operations-elections

[83] Landman, T. – Di Gennaro Splendore, L. (2020).: Pandemic democracy: elections and COVID-19. In: *Journal of Risk Research*, Vol. 23, No. 7-8, pp. 1060–1066. 10.1080/13669877.2020.1765003

[84] Erik Asplund et al.: Electoral officials need more money to run elections during Covid-19. International IDEA, 2020. https://www.democraticaudit.com/2020/07/14/electoral-officials-need-more-money-to-run-elections-during-covid-19/?fbclid=IwAR25KX7o06eGIkhUOsKhWcTvHJLalrJvpBMf5Q6xtKhpD1wk-TbdT6nblN8

[85] https://abcnews.go.com/International/wireStory/bosnia-postpones-local-elections-due-lack-funding-708

[86] Waismel-Manor, I. et al. (2020).: COVID-19 and Legislative Activity: A Cross-National Study. In: *Bar Ilan University Faculty of Law Research Paper* No. 20-12, pp. 1-15. http://dx.doi.org/10.2139/ssrn.3641824

[87] Gostin L. O. – Wiley L.F. (2020): Governmental Public Health Powers During the COVID-19 Pandemic: Stay-at-home Orders, Business Closures, and Travel Restrictions. In: *JAMA*. Vol. 323, No. 21, pp. 2137–2138. https://doi.org/10.1001/jama.2020.5460

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regimes. On the other hand, the latest development entailed the broad applications of such solutions, mostly neglected, or at least significant fears have been expressed concerning their deeper integration into the electoral process. The forcing circumstances of the public health emergency convincingly justified that these instruments are feasible. In light of these changing attitudes and the well-established technological and social tendencies, their role will increase further during the following years. Constitutional scholars should identify the pandemic's long-term consequences from an electoral law perspective and should elaborate proposals to the exact framework of post-Covid elections. This contribution aimed to be a modest contribution to the fulfillment of these two main tasks.

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Revisions and Alternatives: Which Foundations for a Renewed Political thought by Moncef Marzouki

By Amany Alsiefy

Violence, Freedom and Modern Individual- The book deals with several philosophical and political values and topics. These topics include how to manage violence in modern societies, freedom and responsibility. Through a historical excursion, the book interrogates the religious narrative and modern philosophies that position the human as the centre of the universe while all that is on earth is under his control to serve his needs. These philosophies and narratives are grounded on the assertion that humans are logical beings who have the capacity to make the most significant judgments. However, the book argues that this "rational individual" misused the environment and nature. Our planet has already reached a hazardous stage, with rising temperatures, rising sea levels, droughts, extreme heat, and forest fires rising worldwide.

The book asks: Is not the "rational individual" to be blamed for his irresponsible dealings with the environment? Is it still reasonable to leave the environment and all human beings under the absolute control of the assumed "rational human "?

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REVISIONSANDALTERNATIVESWHICHFOUNDATIONSFORARENEWEDPOLITICALTHOUGHTBYMONCEFMARZOUKI

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Revisions and Alternatives: Which Foundations for a Renewed Political thought by Moncef Marzouki

Amany Alsiefy

Revisions and Alternatives: What are the foundations for a renewed political thought is a recent book by the human rights activist, physician and politician Moncef Marzouki. The book was published in Arabic by Arab Centre for Research & Policy Studies in Doha. It consists of 312 pages starting with a preface by Faisal Al-Qasim (a British-Syrian anchor of political and cultural programs based in Qatar) followed by four chapters: "Evaluation", "Update", "Challenges", and "Resources". The book's central question is: To what extent can the citizens' and the state's visions and attitudes rooted in these five major ideologies threaten the human project in the contemporary capitalist technological global village?

I. Violence, Freedom and Modern Individual

The book deals with several philosophical and political values and topics. These topics include how to manage violence in modern societies, freedom and responsibility. Through a historical excursion, the book interrogates the religious narrative and modern philosophies that position the human as the centre of the universe while all that is on earth is under his control to serve his needs. These philosophies and narratives are grounded on the assertion that humans are logical beings who have the capacity to make the most significant judgments. However, the book argues that this "rational individual" misused the environment and nature. Our planet has already reached a hazardous stage, with rising temperatures, rising sea levels, droughts, extreme heat, and forest fires rising worldwide.

The book asks: Is not the "rational individual" to be blamed for his irresponsible dealings with the environment? Is it still reasonable to leave the environment and all human beings under the absolute control of the assumed "rational human "?

Furthermore, author argues that despite all ideologies claimed to be adopted for achieving the good of the individual and community, historical records of past incidents prove that these ideologies have not achieved their noble goals and ideals mainly because of the individual's selfishness. Although all the ideologies (nationalism, liberalism, democracy, progressivism, and religious ideologies)claim to find solutions for poverty, ignorance and injustice, the book shows that rational individuals misused and wielded these ideologies not only to exploit nature but even to fight, kill and torture even his neighbour to serve his own his greed and selfishness. However, the writers maintain that the "predator man "succeeds in achieving his goals because of the submissiveness of another person who accepts oppression and lives on crumbs without protest. The writer calls this person a "prey man". Furthermore, between the "predator man" and the "prey man," the writer believes that there is a "knight man" or the bearer of noble values and morals and seeks to achieve social justice and fraternity. By referring to past examples and psychological studies, the writer confirms that no boundaries separate these three characteristics of man in general, for each of us carries the distinctive characteristics of man in his three forms. Hence comes the environment that stimulates or curbs these traits and behaviours. The writer affirms the role of the state, law and transparency. Only then can the state curb the "predatory person." and stimulate human prey.

II. Rethinking Ideologies between Violence and Social Justice

Marzouki argues that the nationalist ideology that assumes the mobilization of soldiers, individuals, and feelings behind a nation and a homeland to confront the aggression of another human group also carries within it the tyranny of a ruler and a national group against another group or sect of the people of the same country. The nationalists who showed violent nature through their atrocious behaviour against other enemy nationals showed a similar attitude to their neighbours, just as the world witnessed civil war and massacres in many regions. Recent examples include Rwandan Civil War (1990–1994) and Algerian Civil War (1991–2002), and more than twenty ongoing civil wars worldwide.

Revisions and Alternatives stresses that "freedom" is a fundamental value that must be enforced and supported in all societies. In a capitalist society, freedom contributes to the development and prosperity of society by unleashing the energies, gifts and resources of individuals. Nonetheless, it reveals human greed and exploitation, which comes at the expense of large groups of people in society, other species and the environment. We achieved countless medical advances and scientific discoveries that facilitate the lives of large sections of our societies today. However, these developments have created new challenges. The

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benevolent rational individual who helps humanity through these new medicines and tools also manipulates them to achieve personal profits and interests. In our advanced technological world, technology itself can become an enemy causing unemployment in many work sectors, inequality and even manipulation in favour of greedy and/or authoritarian forces.

Marzouki believes that democracy is also considered the best political system, as it empties the breasts of hatred and turns violence into "symbolic violence". This process of "emptying violence" is expressed in disagreement with an elected leader or representative and the right to elect an assumed more appropriate individual. Democracy's fundamental value is "deliberation". Nevertheless, the writer wonders: Who are the real actors in society? Does the democratic ideology really apply the principle of the rule of the people for the people by the people? The writer believes that this ideology is still often undermined and exploited in all societies worldwide by a class of political and economic elites. Those few elites are not necessarily integral people who work to serve society and communities but rather seek to achieve personal goals with the help of corrupt media, misleading research, misleading reports, and even technology. Even though technology is utilized to reveal the manipulation of these corrupt people, it is also exploited to manipulate the minds and feelings of the public, especially when studies reveal that those who elect are not always the rational and far-sighted person who is able to choose appropriate for the interest of the individual and the group in his society.

Then the author discusses the ideology of progressivism, that is, the belief in the development of history as a linear process that takes humanity from worse to less bad and from good to better. The writer challenges this ideology and refers to past and ongoing wars and natural catastrophes, demonstrating that humanity and human conditions can deteriorate and even retreat to horrible conditions. This happens because of climatic changes, natural catastrophes, or even human miscalculations and mismanagement of the capabilities in dealing with the challenges. As for religious ideology, the writer argues that it cannot provide an answer to our challenges. However, the writer does not reject the inspiration of religious values such as honesty, courage and solidarity to encourage and motivate behaviours to build a just society and preserve the environment and its capabilities. Furthermore, the author does not entirely reject the democratic or liberal ideology but considers the need to reconsider dealing with them.

Liberal ideology postulates individual freedoms as universal rights, but Marzouki asserts that it is no longer possible to continue advocating "absolute freedom" exempt from all responsibilities. He says: "Freedom is the pillar of liberal ideology, in its political and economic aspects… It is not true that freedom is the value of all values. However, past and contemporary experience prove that freedom without moral constraints and legal controls for the human project is like daubing honey with poison, whether in the political or economic field"(p.24). Hence, the author calls for a strong state return to curb the exploitation of individuals represented, especially in the major capitalist companies, to prioritise the public interest over private interests. He maintains that freedom should in no way precede social justice. However, the writer draws the reader's attention to the fact that the state he refers to is a democratic state that must guarantee the unconditional human dignity of individuals and absorb societal violence through "elections" that support a peaceful and egalitarian society. The writer says, "The concept of dignity is devoid of all content if economic dignity is not achieved, as nothing erodes human dignity in the dirt as much as poverty. The feeling resulted from economic humiliation, political humiliation, and humiliation over identity is considered the most intrinsic causes of widespread verbal violence in virtual and actual domestic and public spaces" (p.107). Therefore, there is no solution to get out of the triple humiliation except through a democratic political system. A democratic system is the most transparent system capable of defending values, laws and the public interest, provided it is not just a false glamorous facade for the capitalist economic system.

III. Social Justice and Global Solidarity

The writer affirms that we must assume responsibility in building the "Humanitarian Project", whose main goal is "survival, continuity of life, and improvement of living conditions for all human beings." He proposes a vision and suggestions to serve this goal, including:

- Establishing a political, social, economic and technological vision to confront the environmental changes we face at the local and global levels. Dealing with the issue of climate change is not only a scientific issue left to scientists, researchers or officials, but it is also a social issue. All members of society must participate in taking responsibility for addressing this challenge and contributing to its treatment. The writer believes that dealing with climate risks must be embedded in our daily interactions in our social environment, as well as through monitoring the discourse addressed to the masses on the issue of climate change and its effects on the individual, society and at the global level. The narratives for dealing with climate change are deeply intertwined with our social and political identities, and new policies will only bear fruit if they are consistent with a new discourse that supports belonging to a local but, at the same time,

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cosmopolitan identity. As he puts it, writing, “think cosmopolitan, act local"(p.118).

- Stimulating civil society institutions and organizations and granting effective communication between them and the diction-making institutions.
- Developing international policies to control and monitor the manufacture of medicines and vaccines. These policies should ensure the proper use and fair distribution of medicine.
- Monitoring technology, especially in the field of artificial intelligence, which is a significant challenge that can generate new mechanisms to strengthen the forces of tyranny and marginalize or, better said, the "enslavement" of large groups of humanity (the application of the project of ´transhuman´ will be an example of this new enslavement).
- Ensuring the state´s control of the economic system is at the service of the people and not the other way around.
- Protecting the democratic system with all the legislations and policies that limit the hazards that threaten it from outside and inside it.
- Establishing an international system based on the power of legitimacy, not on the legitimacy of force as understood by the national ideology.

Overall, the writers neither idealize the five ideologies nor entirely reject them. Instead, he shows that their ideals and values find their limits in new challenges and ways of their appropriation. Thus, he maintains that these ideologies are mechanisms and instruments to deal with realities and current conditions that will change with new challenges and different circumstances. Furthermore, he calls for mobilizing energies and morale to take care of nature and prepare for its changes. Finally, the writer invites the cosmopolitan citizen, each in his position, to adhere to good values without exaggeration or deficiency. As for the state´s responsibility, the writer believes that international treaties and agreements concerning human rights must be acknowledged and protected beyond the discourse of cultural particularity.

Furthermore, the state still has enormous tasks and challenges ahead. The most significant urgent challenges include supporting social justice, strengthening diplomatic relations, and enacting long-term laws and policies to preserve the environment for the benefit of the local and cosmopolitan citizens. Thus, according to the author, in our globalized village with all its possibilities and challenges, the “rational individual” is the problem and also the only hope to save humanity.

In summary, the book takes the reader on a philosophical journey and a political stance through which the writer presents his political ideas, medical and philosophical knowledge and moral beliefs. The book addresses philosophical values such as freedom, responsibility, and violence within, discussing the five major ideologies that dominated modern political and philosophical thought. Instead of discussing these values from a philosophical perspective in light of Western or eastern philosophies, the author chose to rely on past incidents and references to psychological studies in direct but profound words that suit his reader perfectly. The book is recommended to politicians, academic activists, and ordinary cosmopolitan citizens who should assume responsibility for saving the universe and the human project.

Marzouki, Moncef. *Revisions and Alternatives: Which Foundations for a Renewed Political Thought.* Doha: Arab Centre for Research & Policy Studies, 2022.

1. Moncef Marzouki (1945)- is a Tunisian politician who served as the fifth president of Tunisia from 2011 to 2014. Through his career he has been a human rights activist, physician and politician.
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The Importance of Qualitative Addition to the New Arbitration Rules in the Settlement of International Disputes Study of the Experience of the Kingdom of Bahrain International

By Dr. Azab Alaziz Al Hashimi

Abstract- The UNCITRAL Arbitration Rules have added a comprehensive set of procedural rules on which parties can agree to apply arbitration procedures that may arise out of their commercial relationship and which are widely used in ad hoc arbitrations as well as in arbitrations administered by institutions.

The rules cover all aspects of the arbitration process, as they include a model arbitration clause, set out rules of procedure for the appointment of arbitrators and the conduct of the arbitration proceedings, and establish rules regarding the form, effect and interpretation of the arbitral award. Currently, there are three different versions of the arbitration rules: (i) the 1976 version; (ii) the 2010 revised version; and (iii) the 2013 version, which was a qualitative addition to the Rules of International Arbitration Dispute Resolution where Bahrain benefited from this addition in the development of the rules previously in force.

Keywords: *arbitration rules - modern - dispute settlement - kingdom of bahrain.*

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The Importance of Qualitative Addition to the New Arbitration Rules in the Settlement of International Disputes Study of the Experience of the Kingdom of Bahrain International

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I. Presentation

The UNCITRAL transparency rules include treaty-based arbitration between investors and countries. The UNCITRAL Arbitration Rules were first adopted in 1976. They have been used to resolve a wide range of disputes, including disputes between private sector commercial parties where arbitration institutions do not interfere, disputes between investors and States, disputes between one country and another, and commercial disputes handled by arbitration institutions.

In 2006, the Commission decided to revise the UNCITRAL Arbitration Rules to reflect changes in arbitration practice over the past 30 years. The purpose of the revision was to improve the efficiency of arbitration under the UNCITRAL Arbitration Rules without changing the original structure, spirit and wording of the text of the Rules.

The UNCITRAL Arbitration Rules (as revised in 2010) entered into force on 15 August 2010. They include provisions dealing, inter alia, with multilateral arbitration and annexation, liability and objection procedures for experts appointed by the arbitral tribunal. The revised rules contain a number of innovative features aimed at improving procedural efficiency, including revised procedures for the replacement of an arbitrator, the requirement of reasonable costs and an audit mechanism regarding arbitration costs. It also includes more detailed provisions on interim measures.

Following the adoption of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("the Transparency Rules") in 2013. A new paragraph 4 has been added to article 1 of the Arbitration Rules (as revised in 2010) to allow the use of transparency rules in arbitration that commences with or after an investment treaty concluded on 1 April 2014. The new paragraph makes it clear that the transparency rules apply to investor-state arbitration that is commenced under the UNCITRAL Arbitration Rules. In all other respects, the 2013 UNCITRAL Arbitration Rules are the same as the revised version, published in 2010, without change.

II. Research Problem

International law has adopted modern rules to which reference can be made to resolve international and other disputes. Disputes that have certain methods are mentioned when settling them, and international perspectives differed in the solution of border disputes in our time due to the development of international relations that were positively reflected in the search for legal rules for their solution. It can be said that these legal rules have become binding in that they oblige the international community to follow them in order to resolve any conflict that may arise between different countries. The conflicts of the past, especially in former empires, were used to resolve them by traditional methods, but after recent world developments, the new rules of international arbitration have become clearer in terms of mandatory controls on both parties to the dispute.

a) Research objectives

Research objectives can be determined by two points

1. The Kingdom of Bahrain is the most committed to modern international rules in the field of arbitration and dispute settlement, as it is an important reference for the Gulf countries.

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2. The scope of the parties' response to the arbitration dispute to the parties in the modern international rules of the Bahraini claim.

b) The importance of the subject

This research highlights one of the most important topics in international commercial arbitration under modern international dispute resolution rules.

The reasons for the choice of this topic:

There are several reasons for our choice of this topic, the most important of which is that

- The lack - but scarcity - of specialized literature dealing in detail with articles related to this subject.
- The lack of adequate legal organization for this subject in the modern law and regulations in Bahrain.
- The absence of arbitral awards rendered in this case.

c) Research method

In this research, I relied on the comparative analytical method.

i. *Research plan*

First Requirement: International models for new arbitration and dispute settlement rules.

Second Requirement: A comparative study of the foundations of the main arbitration institutions and organizations.

American AIA Arbitration Chamber.

Third Requirement: Modern rules for international arbitration in Bahrain.

The First Requirement: International models for new arbitration and dispute settlement rules.

Some international institutions and bodies have established rules of conduct for international trade in general and electronic commerce in particular. Some of the most important of these institutions and bodies are listed below:

1. ICC

It was developed under the auspices of the International Chamber of Commerce ("Rules for the Unified Conduct of Electronic Exchange of Commercial Data by Remote Transmission") in 1987 in association with a number of international organizations. The International Chamber of Commerce has also set up an e-commerce project that includes three working groups specializing in the issues of electronic business practices, information security and electronic terminology. The ICC's motive was to develop a self-regulatory framework for e-commerce and make it usable in the trading community.

One of the works presented by the authority concerned is the revision of the guidelines on online advertising and purchasing, as these guidelines apply to all advertising and marketing activities on the World Wide Web to promote any type of products or services. These guidelines also include a set of standards of ethical conduct that must be followed by advertisers and merchants to increase public credit in purchases to ensure the freedom of advertisers to express and reduce the issuer of government regulation and the relevance of reasonable expectations of consumers. As well as what the guide provided by the International Chamber of Commerce went Linked to electronic terms (E-terms) which came into force in 2003 as they are used by parties when starting their electronic transactions. This guide includes all the necessary means to organize contracts on the World Wide Web and to engage in electronic transactions with the lowest legal risks. This guide has been further developed and complemented by guides, including the guide to media activities on the Internet.

2. United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT)

In March 2001, the Centre adopted a recommendation entitled (Standard Rules of Conduct for Electronic Commerce) which is considered a means of facilitating electronic commerce agreements to support the previous recommendation of the electronic agreement. These codes of conduct are self-regulatory instruments that can work in parallel with other measures to facilitate electronic commerce. This recommendation calls on countries to encourage and develop self-regulatory instruments for electronic commerce. The recommendation is attached to an example of such rules, which are the standard rules of conduct for e-commerce established by the e-commerce program in the Netherlands.

3. International Institute for the Unification of Private Law UNIDROIT

This Institute has developed a number of principles for international commercial contracts since 1994.

4. Habits, customs and practices of electronic commerce

Initially, a distinction is to be made between custom and commercial custom by defining each of them, where e-commerce custom is defined as the behavior of most electronic commerce resellers, traders or consumers, to be expected on a specific commercial issue of electronic commerce problems.

As for electronic commercial custom, it includes the definition of electronic commercial custom with its compulsory element, because whenever dealers believe that electronic commerce deals with the obligation of a certain behavior, its introduction becomes binding and its surrender entails a specific sanction, since electronic commerce workers have automatically contributed to the establishment of objective rules of electronic law. Perhaps one of the most important of these rules is the habits established by professional circles in terms of

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customs, usages and practices in the digital world of information and communications, which are characterized by a sectarian and cooperative character specific to each type of transaction that takes place in this world; except Hypothetically, as in the customs and traditions in force in the field of advertising and promotion of goods and services. As well as in the field of privacy protection, and in relation to the protection of the electronic consumer, in addition to customs and traditions relating to the preservation of intellectual property rights. ()

As for the application of customs and customs of electronic commerce, many customs have been codified, and others are in the process of being legalized, by including them in the standard contracts or in the general conditions mentioned in the contracts required to start electronic commerce , or those that have been legalized by international bodies or institutions in the form of rules of conduct, which have made these habits an intermediate rank between the rule of the convention and the legal rule ().

The Second Requirement: A comparative study of the rules of the main arbitration institutions and organizations.

American AIA Arbitration Chamber

Selection of referees

A. Where the arbitration agreement includes the appointment of the parties to an arbitrator or the method of selecting the arbitrators, this choice shall be followed, but if the arbitration agreement does not specify the number of arbitrators. The dispute shall be referred to an arbitrator to settle it, unless the American Arbitration Association considers that the matter requires the appointment of a certain number of arbitrators.
B. If the parties do not appoint an arbitrator or do not provide for any method of appointment, the arbitrator shall appoint from the American Arbitration Association's list of arbitrators at the same time for each party to the dispute a duplicate of the names of the persons selected from the list.

The American Arbitration Association shall invite persons who have been approved on both lists in order of preference to accept the task of arbitrator or arbitrators to adjudicate the dispute.

In the event that the parties select the arbitrators with their knowledge, or if the arbitrators have appointed and authorized the parties to appoint a neutral arbitrator within a specified period of time and no appointment has been made, the American Arbitration Association may appoint a neutral arbitrator to head the arbitration panel.

If the parties are nationals or residents of different countries, the neutral arbitrator shall be appointed at the request of one of the parties from among citizens of the State of the parties or of the State of the parties.

The request must be submitted before the time fixed for the appointment of the arbitrator in the agreement of the parties or in accordance with these Rules (Rule 16).

Evidentiary and pleading procedures

The same U.S. system that may follow procedures and that arbitrators may change (rule 28).

The questioning of the witnesses is certain

Applicable law

There is no provision on applicable law (a text may be added to the agreement): The arbitrators are separated according to the terms of the contract, taking into account the application of business practices).

Arbitral Award

Arbitral awards shall be rendered by the majority of the arbitrators by a short decision without reasons.

Administrative services

The American Arbitration Association provides full administrative services

Arbitration Clause Forms at the American Chamber of Arbitration

If the parties agree to arbitration under the UNCITRAL Arbitration Rules and the American Arbitration Association is the appointing authority and provides its administrative services, they may add this condition:

Any dispute, controversy or claim arising out of or in connection with this contract or relating to a breach, termination or invalidity thereof shall be settled in accordance with the UNCITRAL Arbitration Rules in force on the date of the contract and the appointing authority shall be the American Arbitration Association.

Note:

The Parties may wish to add:

A. The arbitrators are (one or three).
B. The place of arbitration shall be (city or country).

The arbitration shall be administered by the American Arbitration Association in accordance with its rules, procedural procedures in accordance with the UNICTRAL Arbitration Rules.

Arbitration clause in accordance with the UNCITRAL Rules for Joint Ventures:

Any disagreement or claim arising out of or relating to this Agreement or the breach of its provisions shall be settled by arbitration to be held in accordance with the Arbitration Rules of the United Nations Committee on International Trade Arbitration in force at the time of the conclusion of this Agreement.

All arbitration proceedings, including identifiers and notes, shall be conducted in (language). The

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arbitrator shall accept evidence directly from witnesses and documents submitted by the parties.

Arbitral Award

The tribunal shall decide all matters by a majority of all its members.

– The decision of the tribunal shall be in writing and signed by the members of the tribunal who voted for it. The arbitration decision shall be detailed in all cases submitted to the tribunal and shall state the reasons on which it is based.

Administrative Services

Full administrative services.

The Third Requirement: Modern rules of international arbitration in Bahrain

The current Arbitration Rules of the Bahrain Chamber for the Settlement of Disputes were adopted in 2010, which adopted the existing Arbitration Rules of the International Centre for Dispute Resolution (ICDR). Since the Bahrain Chamber for Dispute Resolution adopted its current arbitration rules, a number of arbitration centers have been launched, including the International Chamber of Commerce (ICC) in 2012, the London Court of International Arbitration (LCIA) in 2014 and the International Centre for Dispute Resolution (ICDR) in 2014, with new arbitration rules.

New UNCITRAL Rules for Free Arbitration were adopted in 2010.

In order to bring the Arbitration Rules of the Bahrain Chamber for Dispute Resolution adopted in 2010 in line with the best practices and rules followed in international arbitration. The Board of Directors of the Bahrain Chamber for Dispute Resolution requested a Tripartite Commission (the Commission) composed of Antonio Barra *, Adrien Winstanley ** and Naseeb Ziyada *** Review and drafting of new arbitration rules (new draft rules) for consideration by the Board of Directors.

The committee reviewed the most recent arbitration rules for the most important international and regional arbitration institutions in addition to the UNCITRAL Arbitration Rules for 2010, and the committee submitted the new rules, including what the committee considered to be the best standards in the field of arbitration, to the Board of Trustees. Currently, the Bahrain Chamber for Dispute Resolution is presenting the draft new rules to current and potential users, even on the sidelines of the 2016 annual conference of the International Bar Association held in Washington, D.C. (The Chamber hosted a draft law on the new draft rules for the Bahrain Chamber for Dispute Resolution on 20 September 2016). The discussion session was moderated by Sheikha Haya Bint Rashid Al Khalifa, Chairperson of the Board of Directors of the Bahrain Chamber for Dispute Resolution, and Mr. William Slate II, Member of the Board of Directors of the Bahrain Chamber for Dispute Resolution, President and Chief Executive Officer of Dispute Resolution Data LLC.

The three-committee members made a separate presentation. Professor Ziada provided a general description of the House and its main activities. He discussed the legal environment in which the Chamber operates, including the framework provided by the Arbitration Law of Bahrain published in 2015, It applies the UNCITRAL Model Law on International Commercial Arbitration to national and international disputes. Professor Ziada recalled that the Bahrain Chamber for the Settlement of Disputes is a regional dispute settlement institution established by Decree-Law No. 30 of 2009 and has been operating since 2010. Decree No. 30 of 2009 defines two types of jurisdiction for the chamber: jurisdiction under the law (cases for the first semester) and jurisdiction by agreement of the parties (cases for the second semester).

Under Chapter I, the Chamber has jurisdiction to hear disputes that were originally brought before the Bahraini courts whenever the value of the claim exceeds US$ 1.3 million and one of the parties to the dispute was - at least - a financial institution approved by the Central Bank of Bahrain or was engaged in international trade. The dispute settlement panel is composed of three members of the first term (two members are judges of the highest levels of the Bahraini courts and a third member are appointed from a special list established by the Chamber).

Professor Ziada stated that as of December 31, 2015, 152 cases had been registered under the jurisdiction of the first half of the year and that the total amount of the claim was more than $2.53 billion. Of these cases, 29.6% were settled with final decisions or reconciled parties within six months, 44.1% over a period of 6 to 12 months and 12.5% over a period of 12 to 18 months, and 9.2% over a period of 18 to 24 months, and 4.6% over a period of more than 24 months. Professor Ziada noted that under Chapter 2 of the Act, the jurisdiction of the Chamber is exercised in disputes referred to it in accordance with the written agreement of the parties in accordance with the rules of the Chamber for Arbitration or Mediation. He then presented an increase in the new draft rules that will apply to Chapter 2 cases, and provided a detailed explanation of two of the provisions that violated the CWSI arbitration rules.

The first of these concerns the appointment of arbitrators. Under the CWSI Arbitration Rules, the parties may agree on any procedure for the appointment of the arbitrator with or without the assistance of the arbitration institution. In contrast, the ICC Rules of Arbitration for the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the Singapore International Arbitration Centre (SIAC) all require that, although arbitrators may be appointed by the parties, they may not be appointed by the parties.

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However, the appointment of arbitrators is made or confirmed by the institution. The draft new rules adopted the latter measure in Article 7, which provides for the independence and impartiality of the arbitrator's additional guarantees.

Professor Ziada referred to the second case in which the new draft rules deviated from the provisions of the CWSI Arbitration Rules, which is the decision on disclosure of appeals.

Under the CRID arbitration rules, panelists are not informed of appeals against them, although the center may inform the arbitrator who is required to respond to the appeal against him or her, and the center may request information about the subject matter of the appeal. Otherwise, Article 9 of the new draft rules provides that the appeal must be communicated "to all parties and to the arbitral tribunal", and that the Chamber may request the rejection of information relating to the appeal from the arbitrator, the parties and any other member of the arbitral tribunal.

Professor Ziada stated that the panel was of the view that the impugned arbitrator should have the right to respond automatically to the appeal. In addition, that the opinion of other panel members may be important in some cases because they are well versed and able to give an opinion on the merits of the appeal.

In his presentation, Adrian Win Stanley focused on the proposed provisions that deviate from the CWSI arbitration rules. He first addressed Article 3 of the new draft rules, which deals with the issue of the determination of jurisdiction ostensibly, whereby the chamber is granted the power to refuse to register a request for arbitration based on a condition that is exempt from an express text referring to the chamber. The purpose of this decision is to avoid unnecessary delays and costs when appointing a body that manifestly lacks jurisdiction. Whereas the Commission retains its power to decide on its competence in the event of an appeal and challenge of its lack of competence.

Mr. Win Stanley also reviewed the two new articles, the second (Request for Arbitration) and the fourth (Answer to the Request for Arbitration), of the draft new rules, which amended the provisions relating to the current requirements for the filing of a case under which the arbitration begins with a record of the "Notice of Commencement of Arbitration and the Settlement of the Case", which the defendant must submit a "Statement of Defense". Otherwise, the draft new rules formulated a concept similar to that pursued by the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), where the Request for Arbitration and the Answer to a Request for Arbitration do not require a full statement of the parties' position.

The parties will always have the opportunity to present their claims and defend them in the proceedings through their subsequent written submissions. This amendment is intended to reduce the inconvenience that the defendant may experience when required to submit a full statement of defense and counterclaim within a specified, usually narrow, time limit after receiving the notice of arbitration, which may have taken months to prepare.

Mr. Win Stanley also referred to article 15 of the draft new rules (urgent exclusion of claims), noting that such measures already existed in the special rules of the Singapore International Arbitration Center (SIAC) for the year 2016 and in the draft new arbitration rules for the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). In Mr. Win Stanley's view, it is time to introduce provisions that give the commission the power to expedite urgently to exclude all or part of claims and defenses in the case which are clearly lacking legal evidence or clearly outside the commission's jurisdiction, especially as the escalation of time and costs associated with arbitration proceedings It is the subject of increasing criticism. The text of article 18 of the draft new rules contained provisions relating to the representation of the parties and followed a similar approach to the IBA Guide for 2013. Mr. Win Stanley noted that the LCIA Arbitration Rules for 2014 also include in one of its annexes "general rules of representation legal parties" and with sanctions for violations of those rules are similar to those proposed by the International Bar Association (IBA).

Antonio Barra discussed Articles 16 and 17 (seat and language of arbitration), 24 (jurisdiction of arbitration), 28 and 33 (arbitration panel fees and costs), 29 (applicable law and compensation), 37 (confidentiality) of the new draft rules that follow the corresponding provisions of the International Centre for Dispute Resolution (ICDR) Arbitration Rules for the year 2014, which included many of its unique features. For example, the new draft rules allow the chamber to continue the proceedings even if non-competence has been postponed prior to the formation of the arbitration panel, as the panel will decide on such payment. Another important feature that has been retained in the new draft rules derives from the CRTI arbitration rules, namely confidentiality. Considering that, in view of the inadmissibility of publication of an entire decision of the Chamber without the consent of the parties, it is permitted to publish a selection of provisions provided that what may indicate the identity of the parties is concealed and in accordance with the protection of the principle of confidentiality.

Among the amendments proposed by many well-known arbitration rules, Mr. Barra indicated that the new draft rules would abandon the distinction between "provisions of law" and "law" applicable to the subject-

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matter of the dispute. As is the case in some arbitration rules, including the rules of the International Centre for Dispute Resolution (ICDR), preferring to work with the term "provisions of law" throughout the new draft rules, in line with the current arbitration rules of the International Chamber of Commerce (ICC) in this regard. With respect to the determination of arbitrators' fees, the draft new rules adopted the most frequently used approach in that regard, which was to establish a timetable for determining arbitrators' fees rather than leaving the assessment of fees to the arbitrators themselves.

Professor Ziada believes that the current state of fee setting has caused avoidable friction in some cases before the Chamber. Andrea Menaker, Partner, White and Case, Washington, DC, and John Townsend, Partner, Hughes Hubbard and Red in Washington, DC, Issam Al-Tamimi is a partner of Raiis 'Al-Tamimi and their joint venture partner in Dubai, commenting on the committee's presentation.

Ms. Menaker noted that the new draft rules reflect best practices and are certainly a welcome addition to the region. In particular, he commended the straightforward method of drafting the text and the avoidance of placing references or sources that do not need or should be mentioned, which makes reading and searching the rules easy and particularly straightforward for those who do not deal with them on a continuous basis. She highlighted many provisions of the overall draft, which are aimed at making the procedures work in an efficient and timely manner. Ms. Menaker added that it is not uncommon for arbitration rules to provide guidance for the concession principle. She welcomed the rule that, in the event that the law applicable to the parties or their representatives or documents differs, the commission must apply the same law on the concession principle to all parties, with priority given to choosing the law that offers the highest level of protection. Finally, Ms. Menaker suggested that the Chamber should reconsider the decision on the waiver of the right to appeal, since, so far, the inclusion of the term "reconsideration" could be interpreted very broadly as a waiver by a party of its right to defend itself against the implementation of the arbitral award.

Mr. Tonsend noted that the project included the best elements derived from the recently amended rules of the major arbitration institutions, with particular emphasis on the International Centre for Dispute Resolution (ICDR)'s amendment of its arbitration rules in 2014, which provides the Bahrain Chamber for Dispute Resolution Rules Sophisticated and advanced arbitration.

It recommended secondary amendments to link the rules to the unique option available under the Bahrain Arbitration Law, which allows the parties to agree to conduct an arbitration in Bahrain, in accordance with the procedural law of a third country, and to give the national courts of that country exclusive jurisdiction to review the arbitral award. Thus allowing the parties to conduct the arbitration in an appropriate location in the Middle East region, according to modern rules, so that the review of the verdict is for the State courts that the parties have agreed. Mr. Al-Tamimi welcomed and highlighted the important role played by the Chamber in training and awareness raising through the organization of international events in the field of arbitration in addition to its regular leading legal review. He added that the Chamber's initiatives have encouraged the inclusion of arbitration clauses in contracts, even by those who have claims with other arbitration institutions in the region.

Mr. Al-Tamimi also stated that the new draft rules included the latest developments in arbitration and adequately reflected the legal environment in the region. The draft had reduced some of the challenges facing arbitration proceedings in the region, including the implementation of national and international arbitration decisions.

Mr. Al-Tamimi also noted that the U.S. model of the ICDR Arbitration Rules has been modified to be more consistent with the requirements of the region. For example, the rules for compelling the opponent to modify its documents to adapt them to local needs and to balance the customs and traditions of the civil and Anglo-Saxon legal systems have been modified. Finally, Mr. Al-Tamimi stressed the need for rules of procedure to expedite the process of settling smaller and complicated disputes, and supported a mechanism that would allow for the implementation of decisions rendered in emergency arbitration in the region. Mr. Richard Nemark, Senior Vice President of the American Arbitration Society at the International Centre for Dispute Resolution (ICDR/ AAA), and member of the Board of Trustees of the Bahrain Chamber for Dispute Resolution, delivered the closing address of the meeting.

A few notes from the meeting participants:

The speeches of the participants were presented at the meeting, during which Mr. William Slate II stated: << The draft of the new Arbitration Rules of the Bahrain Chamber for the Settlement of Disputes, prepared by an excellent team of experts and specialists, verified by a large number of academics and practitioners in the profession, reflects the great interest that the Bahrain Chamber has in settling disputes in arbitration proceedings.

Certainly, the experience and competence of the members of the Arbitration Rules Development Committee, composed of Messrs. Nasseeb Ziada, Antonio Barra and Adrian Win Stanley, are unsurpassed and unmatched by any tripartite commission that may be set up for the same purpose. Where the results of their work, which they have shared with us, form a basis for fundamental arbitration rules that take account of the

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requirements of the present and anticipate the demands of the future.

Lord Goldsmith QC, Head of European and Asian Litigation at Debevoise & Plimpton LLP, said:

The emergence of regional centers around the world has benefited greatly from the strengthening of arbitration practices and has helped to promote arbitration as an effective and efficient method of dispute resolution. The launch of the new arbitration rules by the Bahrain Chamber for Dispute Resolution continues this positive trend. Much effort has been devoted to the new draft rules.

These rules refer to the modern and comprehensive approach to the practice of arbitration in the region. I wish the Bahrain Chamber for the Settlement of Disputes more success with the launch of the new Arbitration Rules."

In turn, Mr. Jad Kessler, a partner at Porter Wright Morris & Arthur LLP in Washington, DC, said: "While the trend is developing in the interest of regional arbitration centers, the Bahrain Chamber of Dispute Resolution is a pioneer in this field, not only because of its leadership. Its distinguished and close cooperation with the American Arbitration Association, in addition to its excellent record in the prompt and transparent settlement of international disputes within the framework of rules and regulations for the observance of national and international law.

Mr. Alec Emerson, former head of the Dispute Resolution Group of Clyde & Co Dubai, said: "With the emergence of the Gulf region and its large number of arbitration centers. It is important for the centers wishing to excel in the performance of their work, to ensure that His firm not only focuses on the prompt and efficient management of business, but also extends to the need to constantly review and update the arbitration rules it adopts and applies.

Therefore, I welcome the new draft arbitration rules launched by the Bahrain Chamber for the Settlement of Disputes and was pleased to participate in this morning discussion session held on the sidelines of the annual conference of the International Bar Association in Washington, D.C., where the proposed amendments were reviewed by leading arbitration experts."

III. Conclusion and Proposals

1. We propose to the Bahraini legislator to prepare an advanced draft law called (the Amended Arbitration Law) which includes the most recent texts contained in the laws of the precursors in the publication of arbitration laws with the need to be guided by the Model Law on International Commercial Arbitration prepared by the United Nations Committee for the year 1985. It was amended in 2006 so that we take the provisions Relevance of our legal system with some modifications and additions that correspond to the reality of Bahrain's economic policy.
2. We suggest to the legislator to organize arbitration within the framework of regional and international institutions, as a procedural guarantee for investors and an encouraging factor for investment in Bahrain.
3. We suggest adhering to international agreements governing arbitration, in particular the 1958 New York Convention on the Recognition and Implementation of Foreign Arbitration Provisions, as well as the 1965 Washington Agreement on the Settlement of Investment Disputes between Countries and Citizens of Other Countries. Other relevant agreements in this regard, as this will encourage foreign investors to invest in Bahrain to make this clear to the foreign investor when considering the legal environment for investment in Bahrain.
4. We propose to merge international legal provisions in a manner proportionate to the privacy of the Gulf States' regional situation in the settlement of disputes and to amend the implementation of foreign judgments that are not appropriate to include. In addition to the implementation of foreign court decisions, the implementation of foreign arbitration provisions and in accordance with the requirements of the law, which will make arbitration as a procedural guarantee for the settlement of investment and other disputes highly effective.

References Références Referencias

1. Nabil Ahmed Helmy. (1983). Conciliation as a peaceful means of settling international disputes in public law. House of the Arab Renaissance.
2. Sarhan, Abdulaziz. (1971). the Middle East Problem. House of Arab Renaissance.
3. Galli, Peter. (1993). Towards a Stronger Role for the United Nations. International Politics: Cairo. Al-Ahram Centre for Political and Strategic Studies. Number 111.
4. Van Gellan, Gerhard. (1970). the law between nations. Translation by Abbas. New Horizons House: Beirut. C 1. 2nd floor.
5. Lauter, Jane and Bastandono, Michelle. (1993). International Intervention, State Sovereignty and the Future of the International Community. Translated by Muhammad Jalal Abbas. International Social Science Journal: UNESCO. Number 138.
6. Refaat, Ahmed Mohamed. (2015). Diplomatic and Consular Relations: Settlement of International Disputes. Cairo Regional Centre.
7. Mahmoud, Abdul Ghani. (1988). Interference in the case before the International Court of Justice. Arab Renaissance House.

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8. The integrative path of the Lebanese national dialogue in the parliamentary systemic approach. Directorate General of Studies and Information in Parliament: Beirut. Vol. 96. September 2015 issue.
9. Masrah, Antoine. Conflict Packaging. Beirut: An-Nahar newspaper. 26 August 2008. Issue 76.
10. Moawad, Simon. Arbitration Laws in Lebanon between Legislation and Jurisprudence (Part II). Parliamentary life. Directorate of Studies and Information in Parliament: Beirut. Vol 87. June 2013 issue.
11. Al-Musa, Muhammad Khalil. (2004). the Use of Force in Contemporary International Law. Wael Publishing House: Amman. I 1.
12. Al-Mawla, Haider. Sectarian relationship and basis of citizenship. Parliamentary life. Directorate General of Studies and Information in Parliament: Beirut. Vol 87. June 2013 issue.
13. Nafaa, Hassan. (1995). the United Nations in Half a Century: A Study of the Development of the International System since 1945. National Council for Culture and Literature: Kuwait.
14. Nguyen, Quoc. Dallier, Patrick et pellet, Alain. (1980). Droit international public. 2nd Edition. L.G. D.J: Pars
15. Virally, Michal. (2012). The Charter of the United Nations. 2nd Edition: Paris.
16. GA.LEC.37/10.
17. Evans, Malcolm. (2010). International Law. Third Edition. Oxford University Press.
18. Rousseau, Charles. (1983). Droit international public: les rapports conflictuels. Tome V. Sirey.
19. CPJI. (1924). Judgment. No. 2. Serie A. Rec.
20. ICJ. Reports. (1969). North Continental Shelf .Part3.
21. Kelsen, Hans. (1962). Pure theory of law. Translation by Charles Eisenmann. Paris: Dalloz.

– *Al-Musa, Muhammad Khalil. (2004). the Use of Force in Contemporary International Law. Wael Publishing House: Amman. I 1. P. 30.*
– *Van Glan, Gerhard. (1970). the law between nations. Translation by Abbas. New Horizons House: Beirut. C 1. 2nd floor. P. 184.*
– *Nafaa, Hassan. (1995). the United Nations in Half a Century: A Study of the Development of the International System since 1945. National Council for Culture and Literature: Kuwait. P. 208.*

22. Nguyen, Quoc. Dallier, Patrick et pellet, Alain. (1980). Droit international public. Edition 2Eme. L.G.D.J: Paris. P 777.
23. Virally, Michal. (2012). The Charter of the United Nations. 2nd Edition: Paris. P 121.
24. Op. cit. P 122.
25. GA.LEC.37 / 10. P19.
26. Evans, Malcolm. (2010). International Law. Third edition. Oxford University Press. P 19.
27. Galli, Peter. (1993). Towards a Stronger Role for the United Nations. International Politics: Cairo. Al-Ahram Centre for Political and Strategic Studies. Number 111. p. 11.
28. Rousseau, Charles. (1983). Droit international public: les rapports conflictuels. Tome V. Sirey. P 257.
29. Nguyen, Quoc and Diont et al. Op. cit. P 778.
30. Lauter, Jane and Bastandono, Michelle. (1993). International Intervention, State Sovereignty and the Future of the International Community. Translated by Muhammad Jalal Abbas. International Social Science Journal: UNESCO. Number 138. p. 81.
31. CPJI. (1924). Stop. No2. Serie A. Rec. P 15.
32. ICJ. Reports. (1969). Northern Continental Shelf, Part 3. P 85.
33. Rousseau, Charles. Op. cit. P 261.
34. Refaat, Ahmed Mohamed. (2015). Diplomatic and Consular Relations: Settlement of International Disputes. Cairo Regional Centre. P. 80.
35. Previous reference. P. 83.
36. Evans, Malcolm. (2010). International Law. Op. cit. P 564.
37. Helmy, Nabil Ahmed. (1983). Conciliation as a peaceful means of settling international disputes in public law. House of the Arab Renaissance. P. 87.
38. Rousseau, Charles. Op. cit. P 314.
39. Settlement of International Disputes. Previous reference. P. 89.
40. Mahmoud, Abdul Ghani. (1988). Interference in the case before the International Court of Justice. Arab Renaissance House. P. 13.
41. Settlement of International Disputes. Previous reference. P. 112.
42. Kelsen, Hans. (1962). Pure theory of law. Translation by Charles Eisenmann. Paris: Dalloz. P 299.
43. Sarhan, Abdulaziz. (1971). The Middle East problem. Maison de la Renaissance arabe. P. 133.

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Democracy in the Democratic Republic of Congo: Myth or Reality?

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Abstract- Democracy is a regime by which the people impose their veto by choosing their representatives for a defined time on the basis of a social program that adapts to the socio-political realities of the primary sovereign. In the case of the DRC, we are in fact proposing the foundation of the Congolese state which must start from democracy to impose a state with strong and enlightened leadership, authoritarianism, a bit like what happened in Russia with Putin and in Mao's China because for us not only does it correspond to a Western-type regime corresponding to the way of life, the understanding of things and adaptations to Western realities and behavior, but it is the result or the reflection of the States already mature, developed which have already laid the foundations for development, is where state institutions and entities are seated. A State where the leaders and the people are well prepared, educated in development and democratic values, by defining its prerogatives, its needs, to love and protect national interests.

Keywords: *democracy, war, democratization.*

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Democracy in the Democratic Republic of Congo: Myth or Reality?

Pistis Mbala Sinza

Abstract- Democracy is a regime by which the people impose their veto by choosing their representatives for a defined time on the basis of a social program that adapts to the socio-political realities of the primary sovereign. In the case of the DRC, we are in fact proposing the foundation of the Congolese state which must start from democracy to impose a state with strong and enlightened leadership, authoritarianism, a bit like what happened in Russia with Putin and in Mao's China because for us not only does it correspond to a Western-type regime corresponding to the way of life, the understanding of things and adaptations to Western realities and behavior, but it is the result or the reflection of the States already mature, developed which have already laid the foundations for development, is where state institutions and entities are seated. A State where the leaders and the people are well prepared, educated in development and democratic values, by defining its prerogatives, its needs, to love and protect national interests.

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Introduction

The various social forces within a state associate either fight each other politically with the aim of establishing relations, later become political forces in presence capable of influencing a new dynamic of the political class and management. of the public thing. Congolese society, which has been going through several decades, is experiencing a crisis of self-management which deeply affects all sectors of national life and does not allow it to play a significant influence internationally.

On the political and security level, complaints are coming from everywhere, despite the various reforms of political and security organizations on the one hand, and on the other hand the transition from figureheads to the exercise of power. There is also a lack of political consensus around key ideals characterized by the political fragmentation that remains rooted in the country's history of power dynamics. The less effective and less sustainable democratization process in the country could be justified by the State's failure to take into account the crucial issue of the security of people and their property.

Complaints of the regular violation of sovereignty and around the state's inability to defend territorial integrity, recurrent rebellions, secessions and military coups, suspensions of political activities and (or the establishment of a single party, party-State, the absence of a true rule of law and democracy, the absence of a medium and long-term development program for the Democratic Republic of Congo, the non-respect of the Rights of the 'Man, external interference keeps the Congolese State from fully playing its role and assuming its responsibility in the country's development process.

Aware of the difficulty encountered by the DR Congo in the exploitation of its Congolese system for the benefit of the international community and the small group which pilots the country, the actors of the process are struggling to succeed in this complex undertaking which is democratization.

Do we all know that the Democratic Republic of Congo since independence to date has not yet managed to meet its social obligations and build its own economic base to boost the development of the country. Often the Congolese state continues to be a predatory state or a state referring to the external model of development. Hence the destiny of the Congo is expressed in terms of a territory exploited to the detriment of the natives.

Indeed, Congolese public opinion is held hostage to a small elite or a remaining group that drives the country; it is observed that because of the petty interests of the international community dictates the orders under the pretext of supporting the country in the normalization of its political, security and economic situation, this state of affairs creates ambiguity in the governance of the country. State through a redefinition of the interference of international organizations under public policies of international aid.

In our study, we looked at the reason for the effectiveness or applicability of this process, but also the causes and consequences of the contribution of the international community to the challenges of democratization in the Congo. To this, know the impact of this reform of political organization on the internal and external level of the country.

I. General Considerations on Democracy

The concept of democracy is an ancient phenomenon that originated in Athens in the fifth century BC. Etymologically, the word democracy comes from

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two Greek words: Demos and Kratos', the first of which means people and the second power or command.

According to the political lexicon, democracy is seen as a political regime in which the people exercise their sovereignty themselves, without the intermediary of a representative body (direct democracy) or through their representatives (representative democracy).

For Makwala quoted by Sabakinu, of his distant Egyptian and Greek origins, democracy has always been considered as a political system in which the people are sovereign. So, in this type of political system, authority comes neither from God nor from the rulers themselves, but from the people.

According to Marion quoted by Sabakinu, democracy is the only institution assuming the fragile balance between individual interest, sought by most political constructors.

According to Kapanga, democracy is linked to the idea of freedom, the simplest definition of which is government by the people and sovereignty is vested in the people and exercised directly by them or their designated representatives during elections.

De Tocqueville, for his part, defines democracy as being the power of the people, implying freedom, equality, justice, the capacity for dialogue, listening to others, tolerance, acceptance of the right to difference and respect for others.

Mottu, For his part from a moral point of view to affirm that democracy is first of all a state of mind, a way of being and behaving of a people.

As for Burdwan, Georges. Democracy is above all a fundamental value: the inalienable vocation of men to take charge of their individual and collective destiny. This is what founds the unity of democracy beyond the plurality of expressions.

It should be noted that democracy is also a form of political organization. It is a contingent political practice. In fact, democracy is also a plural notion. This is how we can encounter pluralist democracy based on the game of political parties in the membership of members and in the development of government programs on the one hand. There is single-party democracy which is, on the other hand, based on the only framework of political life which is the single party, for the definition and management of the interests of the community on the other hand.

It's with Lincoln, Abraham. 16th/President of the United States of America that the term democracy has taken on its most popular meaning, that of 'government of the people, by the people and for the people'. This postulates a rapprochement of views between the governed and the rulers.

Of all these definitions mentioned above, we believe that democracy, a governmental type, can be summed up in the possibility of the existence within society of conditions that ensure everyone the security, culture and ease required for their happiness.

In addition, democracy remains and remains a means of limiting the scope of action of those who govern and of materially and morally raising the standard of living of citizens.

In the context of our study, democracy is understood by Congolese men and women as the solution to all problems, in particular: political, economic, social and cultural. In this order of ideas, democracy is seen as a form of government of the city that must ensure the realization of the reasonable expectations of the people. To do this, it must be well conducted, because its poor application leads to disorder, anarchy, the non-development sought. In short, to the much condemned dictatorship.

According to G. Burdeau, democracy means: “a more open power that gives a large place to human rights”. NGOY adds to say that democracy is a permanent process of conquest of new rights and freedoms. On the one hand and on the other hand is a recalcification of social and political transformation that takes root in the mind of man.

According to MakengoNkutu; “Democracy is a political regime in which sovereignty is exercised or controlled by the people”.

This term democracy is the regime in which the people are sovereign. According to the famous formula of Abraham Lincoln, (16th President of the United States of America from 1860 to 1865), democracy is "the government of the people, by the people and for the people".

This is one of the commonly used canonical definitions. This definition is close to the etymological meaning of the term democracy. However, this definition remains open to different interpretations, both in terms of the concrete meaning of popular sovereignty and its practical application. This is clearly apparent in view of the diversity of political regimes that have claimed and claim to be democratic.

Thus, even today, there are no commonly accepted definitions of what is or should be democracy. Some, like that of Jean Jacques Rousseau, consider that democracy cannot be represented, for the same reason that it cannot, and the will generally cannot be represented.

In general, a Government is said to be democratic as opposed to monarchical systems of one, where power is held by a single person, and on the other hand, to oligarchic systems, where power is held by a small group of individuals. Nevertheless, these oppositions, inherited from Greek philosophy (in particular from Aristotle's classification) are today equivocal due to the existence of parliamentary monarchies. Others, including Kart Popper in particular, challenge democracy as opposed to dictatorship or tyranny, considering that it allows the people to control their leaders and oust them without resorting to a revolution.

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Moreover, the term democracy does not only refer to governments, but can also designate a form of society whose value is freedom and equality.

II. Process of Democratization in DR. Congo

The political trajectory of the Democratic Republic of Congo involves the entire Great Lakes region and beyond. It makes it possible to better appreciate the difficulties encountered by Africans in building the rule of law and in modernizing society, which constitute the fundamental objectives of the democratization process.

Congolese political history is strewn with paradoxes. Getting to know it better allows us to better appreciate the current situation of the country, which is struggling to lay the solid foundations for its development, its long-term existence, that is to say its survival in a world that sees its space shrinking every day.

The destiny of the Congo is expressed in terms of a territory exploited to the detriment of the natives. As history will show, with decolonization the brief interlude of the first democratic experience was carried away by an authoritarian power. Three decades of monolithism have consecrated the third experience of appropriation of the Congolese territory and whose convening of the National Conference was proposed as a moment of re-reading.

The objective of the work of the "National Sovereign Conference" organized in 1991-1992 was in fact to democratize Congolese society by putting an end to more than thirty years of personal power characterized by the decay of the State, political violence and the criminalization of the country's economy by a predatory and corrupt ruling elite.

This process of democratization of the DRC which is taking place just as painfully, follows several phases with the hope of breaking the cycle of appropriation of the country on behalf of an individual and the West. The main stages of this long and painful process are marked by the Popular Consultations of 1989, the National Sovereign Conference (1991-1993), the wars of 1996-2013, the Inter-Congolese Dialogue (2002) and the general elections of 2006 and those of 2011.

a) Popular Consultations

In January 1990, Marshal Mobutu decided to organize “popular consultations” where Zairians were called upon to give their opinions on the functioning of the country's institutions. The opinions gathered across the country by the President's envoys are very critical and severe. In the overwhelming majority, the Popular Movement of the Revolution (MPR-Party-State) is held responsible for the "Zairian evil" characterized by the country's "multifaceted" crisis. He is disavowed. The Zairians express their desire to see a multiparty system established.

In a speech delivered to the militants of the MPR gathered in N'sele on April 24, 1990 and drawing lessons from these popular consultations, Marshal Mobutu took leave of the MPR and thereby put an end to the "leading role of the MPR become a private fact, that is to say a simple political party.

The political pluralism proclaimed in this speech of April 24, 1990 limits to three, initially, the number of political parties which has been authorized, that is to say an integral multiparty system of three. Speaking on June 30, 1990 on the occasion of the National Independence Day, the President of the Republic Marshal Mobutu announced the calendar of the “primary elections” at the end of which the first three winning political parties would be constitutionally recognised. On this date, several dozen political party candidates have been registered. These elections will never take place, the opposition having refused to adhere to the principle of tripartism, seeing in it a maneuver by the authorities to establish what it calls a “multi mobutisme”.

In a manifesto, thirty-nine political parties reject the law on political parties, inaugurating with this gesture the idea of regrouping already experimented in the 1960s, which will give birth to the "Sacred Union of the Opposition" (USO) which will become the "Sacred Union of the Radical Opposition" (USOR) after the exclusion of some of its members who have switched to the. “Presidential movement”.

In October 1990, understanding the benefit he could derive from it, President Mobutu widened the system to full pluralism. At the same time, he announced his candidacy for the presidential election scheduled before December 5, 1991, the deadline for the expiry of his third seven-year term. The opposition could not pretend to ignore the political maneuver underlying such an enlargement. What the government was looking for was to weaken the opposition by favoring or creating microscopic political parties with a system of generalized corruption.

This strategy aimed to cause the implosion of the Zairian political system. Objective largely achieved since, in February 1991, the Ministry of Territorial Administration registered 66 political parties. This figure will be exceeded and increased to 156 at the opening of the Sovereign National Conference. One hundred and ten of these political parties will be referred to as "consensus parties", saying they are ready to collaborate with Marshal Mobutu.

The freedoms of association and opinion won, it became obvious that the definition of a new Zairian political order was essential. All that remained was to find the frame. Zaire, all opinions combined, will demand the States General of the living forces of the country.

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b) National Conference

On April 29, 1991, after much hesitation, President Mobutu called a national political conference to prepare a draft Constitution. He also entrusted him with the mission of drafting a new electoral law intended to organize free pluralist elections. Several opposition parties refuse to get involved in the formula proposed by Mobutu. They demand "his departure from power". They propose their own formula for a "Sovereign National Conference" (CNS), which should be composed of "all the living forces of the Nation" and which was responsible for laying the foundations of the Third Republic.

Its schedule provides for the drafting of a new Constitution, the formation of a transitional government responsible for applying the political calendar, the organization of elections and the establishment of new institutions.

After several postponements, the work of this National Conference opened on August 7, 1991. The "Speakers", as they were called, who numbered 1,875 delegates, came from all walks of life, namely, public institutions, parties politics and civil society. From the start of the Conference, they proclaimed the "sovereignty" of the assizes. The majority of the population adheres and supports the Speakers who believe that the death knell is sounding for the Marshal's regime.

Full of illusions, the population believed even more in its victory when on August 15, 1992, the Sovereign National Conference which was led by Mgr Laurent Mosengwo Pansinya, then Bishop of Kisangani, elected Mr. Etienne Tshisekedi Wa Mulumba, the leader of the opposition, as Prime Minister of a government of public safety.

On August 23, the delegates to the national conference adopted a "Transition Act" which changed the name of the country and its regime. The Republic of Congo was, in this act, a federal state with a bicameral parliamentary system, as in 1960. The "constitutional commission" chaired by Mr. Marcel Liahu elaborates a constitutional text in relation, which defines the nature of the new state. It is one of the so-called "sensitive" commissions of the CNS, along with the "ill-gotten gains commission" and "the commission for assassinations and human rights violations".

The opposition sets conditions for its participation in the elections. Its demands are considered unrealistic. For observers of Zairian political life at the time, this chronicle, which highlights the leadership conflicts at the top of the state, is a good reminder of what happened in 1960 and which pitted Prime Minister Patrice Emery Lumumba against President of the Republic Joseph Kasa-Vubu.

At the time, Marshal Mobutu decided in his own favor by removing the two personalities from power. While politicians are vying for power in Kinshasa, the population is going through one of the most tragic periods in its history. The economic crisis reached record levels, with inflation of 10,000% in 1994. Twice in a row, Kinshasa and the main cities of the country were the scene of encouraged and organized looting. A first time in September 1991; a second time in January 1993 when several hundred men were killed during security operations.

c) 1996 Liberation War

While the country had resumed hoping and waiting for the forthcoming organization of the constitutional referendum, Kivu was set ablaze under the pressure of the Alliance of Democratic Forces for the Liberation of Congo (AFDL) led by the man no one was waiting for, Mr. Laurent-Désiré Kabila.

The war is, in reality, the logical consequence of four major political and/or geopolitical facts: the procrastination of the democratization process in Zaire and the long disastrous management of the regime of Marshal Mobutu challenge the Congolese population. (i) the genocide of the Tutsi and moderate Hutus following the assassination of President Juvénal Habyarimana in 1994. the collapse of the Zairian state, whose territory has become both the bastion of the mafia and the rear base of many foreign rebel groups for the destabilization of their respective countries, (iv) for the United States of America, the new order in Central Africa and in the Great Lakes region must be based on new so-called non-ideological leaders.

It is therefore a large and powerful coalition of Mobutu's enemies who are plotting to put an end to three decades of the Marshal's reign. All that was missing was the opportunity. She was found in September 1996 when the news of Marshal Mobutu's critical state of health and his "secret" hospitalization in Switzerland spread. Physically weakened, Mobutu was unable to manage a war and emerge victorious. This was the reasoning of the General Staff of the anti-Mobutism coalition.

Thus, the war began in April 1996, with skirmishes and intensified with attacks on towns in eastern DRC. This war and subsequent events confirmed the prediction of Mr. Jacques Delors, then President of the European Commission, according to which the 1990s risked being that of the political explosion in Africa "which will become an area of fundamental instability". With this war, the question of the future of the democratization of Zaire was posed. People were then inclined to think that the process would be accelerated. Hence the enthusiasm of all those who had been fighting for many years without success against the Mobutu regime and who thought that "things" were finally going to change.

Indeed, the war in Zaire revealed the multiplicity of power issues and strategies of national, regional and international actors. Among the actors involved in the

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conflict, either in the causes, or in the effects, or even in the solutions, there are first of all the Congolese and the confrontation between Mobutism power and the opposition forces. Opposition political forces are torn between two strategies to overthrow Mobutu. For some, it is necessary to rely on the legality which follows the National Sovereign Conference'. This is the strategy of the so-called “radical” or “Sacred Union” opposition formed around the UDPS under the leadership of TSHISEKEDI, the PDSC and some Lumumbist factions. For her, the post of Prime Minister is rightfully hers according to the agreements made with the “presidential movement”.

When war broke out, Mr. Etienne Tshisekedi, who was the "Leader of the unarmed opposition", proposed the formation of a government of national unity which he would lead and which would be responsible for negotiating with the Rebel leader Laurent-Desire Kabila. But, Marshal Mobutu decides to renew Mr. Kengo Wa Dondo at the head of the government.

This government was responsible for leading the reconquest of the eastern provinces heavily occupied by AFDL forces, aided mainly by Uganda, Rwanda and Burundi. But the "total and lightning" offensive promised by General Likulia, who was the Deputy Prime Minister in charge of Defence, failed. The reconquest army was actually unorganized and ineffective.

More worrying for the power, the Zairian soldiers lack the will to fight. Especially since they no longer know in the name of which power they must fight; since the Mobutism regime reduced them to misery. They have been unpaid for several months, finding a way to live on their own and the systematic looting of areas still controlled by the government. Fleeing the fight without a fight, the Zairian defense system regularly gives way to the thrust of the Alliance forces.

Obviously, only negotiation could have saved the loyalist troops from total collapse. The emergence of the armed opposition was a new deal that considerably changed the rules of the game. The Alliance of Democratic Forces for the Liberation of Congo believed that its military strategy, supported by political and diplomatic actions, would enable it to succeed in the liquidation of the Mobutism regime. This strategy began with the phase of political rallying to the Alliance. The AFDL or the Alliance itself was not officially formed until October 18, 1996 in Lemera Kivu, more than a month after the "official" outbreak of hostilities. The personalities who “create” it each have a history of political activism.

The creation of the AFDL constitutes the first link in the political “platform” that the political actors in Kinshasa neither expected nor had foreseen. This new force imposed itself. Laurent-Désiré Kabila has multiplied calls towards his compatriots in order to obtain their support. He counted in particular on the Lumumbists, the partisans of Tshisekedi and other political formations of Kinshasa composing "the Sacred Union". The war is directed against all those who participated in the Mobutism management. The CNS had pointed the finger at them in the Commission on Assassinations and Violations of Human Rights as well as in the Commission on Ill-Acquired Assets.

At the time of the conflict, the neutrality of civil society organizations is desired by the belligerents. This does not prevent the pressures from being exerted on them; especially since they happen to be witnesses to abuses or to suffer them themselves. In most cases, the Zairian NGOs defend their "little village" without however clarifying their position vis-à-vis the government whose sovereign role they have taken over, nor vis-à-vis the armed opposition considered by their leaders sometimes as an ally in the fight against the Mobutu regime, sometimes as an invader and enemy. However, local populations quickly embraced the Alliance's “liberating discourse”.

During this time, on the military level, the strategy of the Alliance is to generalize the attacks by pushing further and further towards the West. The city of Kisangani is a capital objective on the symbolic level. The occupation of this city would also make it possible to neutralize the main rear base of the government army and to definitively register the armed struggle as the only way to access power in Zaire. It obviously remained to succeed in the conquest of the other rich provinces of the country, in particular Shaba and the two Kasai; with the foreseeable consequence of asphyxiating Kinshasa financially. And above all, it was necessary to reach Kinshasa and Gbadolite, stronghold of Mobutu.

Since it was difficult to militarily occupy all of the national territory, the Alliance's strategy had aimed to occupy as much of the "useful" (meaning: richer) national territory as possible in order to be in a position of strength in the negotiations. policies. However, during the course of the military campaign, the Alliance understood that it could and would win the war thanks to the support of several armed groups. Among the rallies, there are the former. Katangese Gendarmes or their descendants from Angola. Party after the liquidation of the Katangese secession in the sixties, this group is the author of two Zairian wars, the first is that of 1977 called "war of 80 days" and the second is that of 1978 or "war of six days which nearly carried away the regime. This one was saved only thanks to the intervention of the foreign armies; notably French and Moroccan and other African countries which intervened to save the autocratic Mobutism regime in 1977. The allies of the regime reproached Marshal Mobutu in his way of autocratically leading the country, demanding that he liberalize political life.

Having become the “Tigers” under the banner of the National Front for the Liberation of Congo (FNLC), the ex. Katangese gendarmes joined the AFDL after the

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capture of Kisangani. The rallying was organized and facilitated thanks to the contacts that took place between Kabila and certain leaders of the FNLC who were exiled in Belgium. The "Tigers" made it possible to take the towns of Shaba and two Kasaïs alongside the Angolan Army.

The latter, which brings Commander Faustin Munene in "his suitcases", will be decisive for marching on Kinshasa after Kikwit and the battle of Kenge, the last stronghold or before the capital and the capitulation of Marshal Mobutu.

While the war "was in full swing", diplomacy worked and aimed to put pressure on the belligerents to bring them to a negotiating table with the powers that sponsored these negotiations wanted to make Mobutu and Kabila admit, the idea of fair sharing and balance of power. Meetings organized in Togo, South Africa and off Pointe-Noire in Congo-Brazzaville aboard a South African military vessel bearing the name Utenika, under the patronage of the United States of America and of South African President Mr. Nelson Mandela, all fail. Doubt was no longer permitted; Laurent-Désiré Kabila was convinced of his victory over the military approach.

During this time, the cities of Goma and Lubumbashi were taken by storm, at the beginning of the month of May 1997, by the Zairians of the diaspora who had come mainly from Africa, Europe and America. the emotional call of the Fatherland, which at the political invitation of the rebel leader or even a desire to concretize a project of return to the native land, these hundreds of Zairians were in fact the scouts of their compatriots for whom the victory of the The Alliance of Democratic Forces for the Liberation of Congo (A.F.D.L-) would open new and interesting perspectives for Zaire; or better, the fall of Mobutu would mark the end of the dictatorship and the beginning of a new era of democracy in the country. The misunderstanding was there and the sequence of events will show it more.

When Alliance forces entered Kinshasa in single file on May 17, 1997, all hopes were high. Zaire as the denomination of the State is rebaptized. The Democratic Republic of Congo restored and proclaimed by Laurent-Désiré KABILA, who declared himself President of the Republic. It therefore appears as a huge construction site where, for some, everything has to be rebuilt: these start from the idea that Mobutu inherited an organized and prosperous State, which he completely ruined and destroyed in three decades of reign. For the others, everything is to be built. In other words, the post-colonial Congolese state was never built; the Lumumbist project, the only democratic one, having been unexpectedly interrupted by the anti-national forces, it is at this level that we should resume and start.

In Kinshasa, the enthusiasm for building a modern, democratic and powerful state is at its peak. Upon their arrival, the new elites discovered the general state of disrepair of the country. All administrative, economic, social infrastructure, etc. are to be rebuilt. Kinshasa and the cities crossed by the forces of the Alliance offer the image of the places devastated by the cyclone.

The Government of Public Safety installed by President N'zée Kabila inaugurates forum after forum to collect ideas and initiatives. The enthusiasm is general. It is within this framework that the symposium on development was organized by Congolese from the diaspora. The government's initiative to organize a national meeting on reconstruction did not succeed; it is carried away by fratricidal conflicts.

To rebuild this vast state, the AFDL government drew up a three-year plan of more than 3 billion dollars. He asks for the support of donors. Promises are made by "friends of the Congo" in Brussels; but, they will not be held.

The waste of national resources, mismanagement, corruption and impunity form the breeding ground of Mobutism. To remedy this, we must make a kind of revolution. This does not occur, we have also witnessed the manifestation of the same practices decried under Marshal Mobutu to the point where President Kabila did not refrain from qualifying his collaborators as a band of adventurers. And the other collaborators will dissociate themselves from him while denouncing his way of managing with the freezes of the dictatorship of the regime as under Mobutu.

III. Conclusion and Recommendations

Democracy in Congo-Kinshasa has brought a governance of dependence and mediocrity to power, because until then, it does not seem to be fully understood by the Congolese population following the political lack of culture of the natives: it does not apply as validly because everything would be dictated by the West or by great powers or either for the benefit of the International Community to the detriment of the Congolese people. Since all the decisions taken would come to us from the West, so it sometimes proves that there is a hand in control of the country. In other words, the DR Congo is considered a territory under the trusteeship of the International Community despite its independence.

The awareness of Congolese policies and the improvement of the behavior that Congolese politicians must display in the face of the whims of the policy of the International Community expressed by the great powers impose a broad spirit of saying no to Western hegemony. The policy of the international community which has an impact on the domination and exploitation of Congolese leaders on their soil does not allow the Congolese people as sovereigns to change the standard of living despite the democratization of the country. This policy is only intended to plunder the raw materials and create the market to sell the materials into finished products. As a result, we have found that so far:

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Democracy is not yet understood by the Congolese population because of the primordial role played by Westerners in the DR Congo, which manifests itself despite the democratization of the country, as the search for natural resources by exploiting the Congolese to impoverish the population.

Interference has also manifested itself when Congolese politicians find their strength and protection in the international community, rather than in the Congolese population which gives them a mandate. It is also observed that Congolese politicians do not consider themselves equal in the face of so-called great power politicians, they work first and foremost for the international community under pressure from their overthrow from power by the West, their own both biological and political family. Congolese politicians think that the prerogative of development is the West, which means that the latter considers the DR Congo as a territory under their tutelage.

Through this study, we wanted to inform Congolese politicians and the people they manage to understand that the prerogative of development is not Western; but it is a question of the Congolese taking their destiny in hand, because no state in the world has received a mandate to develop another state.

Therefore, we suggest to the Congolese authorities to have ethics, to work first for Congo-Kinshasa, because it is their one and only wealth, and also to find their strength and protection only in the Congolese people.; because he is the only one who has the power to give mandate to Congolese politicians. The Congolese authorities must understand that international relations are made on the basis of interests, that is to say, States have no soul, only national interests that concern them; so here the domination and exploitation of one people by another is natural in the sense that States are looking for territorial integrity, the permanent and perpetual survival and ultimately the survival of their culture and their population. So the development of one country does not depend on the other, because we repeat in this study that no country in the world has received a mandate to develop the other. Hence the Congolese democracy, which must be a "democracy of palaver" must be built not only on the method based on permanent dialogue, or at least on the Congolese palaver which is its original model; but, also, relies on the positive contributions, the basic principles of liberal democracy adapted to Congolese community realities in order to build and develop true Congolese democracy as the name of the country "Democratic Republic of Congo" indicates. To remedy this, institutionalization remains the only criterion for the development of the DR Congo. This institutionalization will suppose the achievement by a system of a high level of adaptability, complexity, autonomy, and cohesion. Because it is said that development is an observable phenomenon of all ages of humanity.

Bibliographie

1. Fundin (2020). Political glossary, Paris: Armand colin.
2. Sabakinu, J. (1999). Democracy and Peace in the Democratic Republic of Congo, Kinshasa: PUK.
3. Kapanga, F. (2005). Small dictionary: Practice of elections, AGB, Kinshasa.
4. De Tocqueville, A. (1963). Democracy in America, Paris: Union Générale d'Editions.
5. Mottu, P. (1963). Political revolutions and human revolutions, La Baconière, Neuchâtel.
6. Burdeau, G. (1956). Democracy, Paris: Threshold.
7. Lincoln, A. (1991). What is Democracy?, United States News Agencies, New York.
8. Makengo Nkutu A (2014). Political science seminars, unpublished course notes, L1 SPA, FSSAP, UPN, Kinshasa.
9. Mafurine (2017). Constitutional Law and Political Institutions, Paris: PUF.
10. Friedrich Karl (1958). constitutional democracy, Paris: PUF.
11. Beckmann C (1999). The Congolese challenge, Paris: The harmattan.
12. Kazawcigil A. (1985). The State in the Plural, Paris: economica.
13. Ngbanda H (1999). The Last Days of Marshal Mobutu, Paris: Gideppes.
14. Kirongozi (2010). African political system, course, l1 spa, UNIKIN, sirus publishing house, Kinshasa.
15. Ilunga shamambas (1994). The fall of Mobutu and the collapse of his army, Kinshasa.

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Saudi Arabia and Sri Lanka's Expanding Economic Ties

By Anjali Singh

Introduction- On January 22, 2023, Sri Lanka's Minister of Foreign Affairs, Ali Sabry, visited Saudi Arabia and met the Kingdom's Minister of Foreign Affairs His Highness Prince Faisal bin Farhan Al Saud. The two leaders discussed prospective ventures between Saudi Arabia and Sri Lanka, which would have an impact on their bilateral ties with respect to economic engagement in a changing world order. The visit is significant because it included discussions on areas including growing trade, raising investment, and promoting tourism. On January 27, 2023, the Agreement on Avoiding Double Taxation was signed between the two countries.[1] Additionally, Saudi Arabia proposed hiring up to 200,000 Sri Lankans in 2023.[2] This paper analyses the current Saudi Arabia - Sri Lanka relations and looks at several potential areas of collaboration. Moreover, it discusses the shared interest of both countries in advancing their economic ties and highlights the challenges in this regard.

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SAUDIARABIAANDSRILANKASEXPANDINGECONOMICTIES

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Saudi Arabia and Sri Lanka's Expanding Economic Ties

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I. Introduction

On January 22, 2023, Sri Lanka's Minister of Foreign Affairs, Ali Sabry, visited Saudi Arabia and met the Kingdom's Minister of Foreign Affairs His Highness Prince Faisal bin Farhan Al Saud. The two leaders discussed prospective ventures between Saudi Arabia and Sri Lanka, which would have an impact on their bilateral ties with respect to economic engagement in a changing world order. The visit is significant because it included discussions on areas including growing trade, raising investment, and promoting tourism. On January 27, 2023, the Agreement on Avoiding Double Taxation was signed between the two countries.[1] Additionally, Saudi Arabia proposed hiring up to 200,000 Sri Lankans in 2023.[2] This paper analyses the current Saudi Arabia - Sri Lanka relations and looks at several potential areas of collaboration. Moreover, it discusses the shared interest of both countries in advancing their economic ties and highlights the challenges in this regard.

II. Economic Ties: A Background

Diplomatic relations between the two countries have been established since Sri Lanka established its embassy in Riyadh in 1984 and its Consulate General in Jeddah in 1997, and Saudi Arabia established its embassy in the Republic of Sri Lanka in 1995. The Saudi government has offered Sri Lanka assistance in carrying out development projects as well as humanitarian and relief aid. It also provided emergency aid to Sri Lanka during the tsunami disaster in 2004. King Abdullah City and housing initiative for tsunami victims was put into action in the "Norachcholai" region.[3] In 2013, Sri Lanka ranked 28th in terms of exports to Saudi Arabia. By taking into an account its market potential, the Export Development Board (EDB) of Sri Lanka has designated Saudi Arabia as one of the entry points into the expanding Middle Eastern markets.[4] On December 8, 2017, a bilateral cooperation accord was signed between the Ceylon Chamber of Commerce (CCC) and the Council of Saudi Chambers of Commerce.[5]

In the Gulf region, Sri Lanka's most significant trading partner is Saudi Arabia. In 2019, there were 440.59 USD million worth of total trade between the two countries[6] as evident in Table: 1. The value of total trade between Saudi Arabia and Sri Lanka in 2021 was 431.21 USD million.[7] According to embassy of Sri Lanka 150,000 Sri Lankan migrants were employed in Saudi Arabia in 2018, making a substantial contribution to the country's economy. 23.5 percent of all overseas remittances comes from migrant workers in Saudi Arabia.[8]

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[1] Foreign minister Ali Sabry concludes official visit to Kingdom of Saudi Arabia, Ministry of Foreign Affairs – Sri Lanka – Ministry of Foreign Affairs – Sri Lanka, https://mfa.gov.lk/fmsl-official-visit-to-ksa/, Retrieved on February 08, 2023

[2] STEVEN GANOT. (2023, January 24). Saudi Arabia to quadruple job offers to Sri lankans in 2023. The Media Line. https://themedialine.org/mideast-daily-news/saudi-arabia-to-quadruple-job-offers-to-sri-lanka ns-in-2023/, Retrieved on February 13, 2023

[3] New Saudi ambassador pledges to develop Saudi-Lanka bilateral relations to new heights - Colombo Times. (2022, November 30). https://www.colombotimes.net/new-saudi-ambassador-pledges-, Retrieved on February 09, 2023

[4] COUNTRY BRIEF- SAUDI ARABIA, (2014, July). Export Development Board, Sri Lanka, https://www.srilankabusiness.com/pdf/Saudi_Arabia.pdf, Retrieved on February 09, 2023

[5] The Ceylon Chamber of Commerce, CEYLON CHAMBER MISSION TO SAUDI SEES POSITIVE RESULTS, https://www.chamber.lk/home-page-full-width/page/118/?responsive=true, Retrieved on February 10, 2023

[6] New Saudi ambassador pledges to develop Saudi-Lanka bilateral relations to new heights - Colombo Times. (2022, November 30). https://www.colombotimes.net/new-saudi-ambassador-pledges-, Retrieved on February 09, 2023

[7] Trade with Sri Lanka – SL embassy in Saudi, (2023, February 7). SL Embassy in Saudi – Welcome to Our Official Site. https://slemb.org.sa/trade-with-srilanka/, Retrieved on February 10, 2023

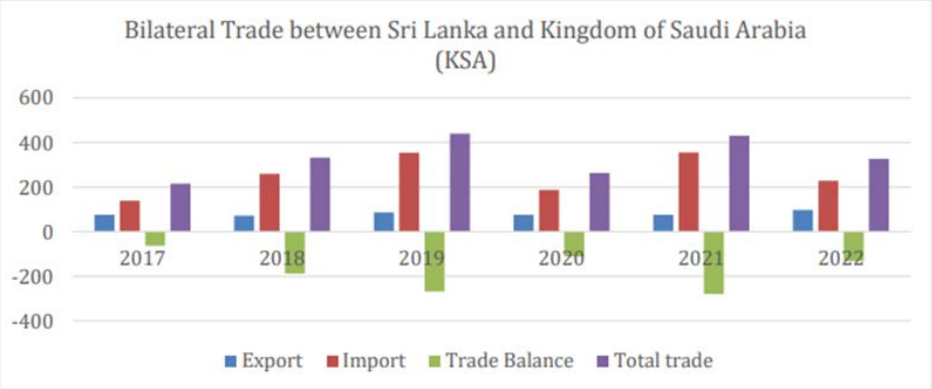
[8] Sri Lanka – KSA bilateral relations – SL embassy in Saudi. (n.d.). SL Embassy in Saudi – Welcome to Our Official Site, https://slemb.org.sa/bilateral-relations/, Retrieved on February 13, 2023

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Table 1: Sri Lanka's Bilateral Trade with Saudi Arabia (2017-2022)

All Values in USD Million

Year	Export	Import	Trade Balance	Total trade
2017	76.08	139.3	-63.22	215.38
2018	71.93	260	-188.07	331.93
2019	86.16	354.43	-268.27	440.59
2020	75.77	187.55	-111.78	263.32
2021	75.69	355.52	-279.83	431.21
2022	97.34	229.12	-131.78	326.46



Source: MARKET AND COUNTRY BRIEF ON Kingdom of Saudi Arabia (KSA) 2023, https://www.srilankabusiness.com/pdfs/market-profiles/2023/saudi-arabia-2023.pdf

III. Recent Initiatives of Economic Expansion

During his visit to Saudi Arabia, Sri Lanka's Foreign Minister, Sabry, highlighted the strong bilateral ties between the two countries and commended Saudi Arabia for supporting Sri Lanka at international forums, particularly during its membership at the UNHRC in 2009, 2012, and 2014.[9] The Minister also expressed gratitude for the Saudi Development Fund's support of the International Monetary Fund's (IMF) debt restructuring programme and its investment in Sri Lanka's infrastructure projects. The Minister underlined his dedication to enhancing Sri Lankans' professional, skilled, and semi-skilled work opportunities in Saudi Arabia and thanked his counterpart for hosting about 185,000 Sri Lankans. Saudi investors were invited to invest in Sri Lanka, notably in the Colombo Port City and the renewable energy industry, by Minister Sabry.[10]

a) Double Taxation Avoidance Agreement

The Double Taxation Avoidance Agreement (DTAA) between Sri Lanka and Saudi Arabia was signed on January 27, 2023, in accordance with Section 75 (1) of the Inland Revenue Act No. 24 of 2017, with the intention of preventing double taxation and fiscal evasion in income taxes.[11] By paying tax in a single nation, this clause enables taxpayers to save money on their income. The discrepancy in global tax collection resulted in the establishment of this DTAA. For instance, a person who intends to operate a business in another nation must pay two taxes. Both in their native country and the country where the income is earned. This might be difficult financially and in terms of savings for a budding entrepreneur. So, DTAA is a step of relief against this as an individual can earn interest in both countries as global income even if they have deposits in native country or have moved to another nation.[12]

b) Labour Market

The economy of Saudi Arabia can be analysed from two aspects; the conventional, labour-intensive non-oil sector and the dominant, capital-intensive oil sector. However, the problem with Saudi Arabia's economy is that there aren't enough human resources there to support the country's manufacturing sector. Thus, Riyadh depend on the migrant labour force.

[9] Foreign minister Ali Sabry concludes official visit to Kingdom of Saudi Arabia, Ministry of Foreign Affairs – Sri Lanka – Ministry of Foreign Affairs–Sri Lanka, https://mfa.gov.lk/fmsl-official-visit-to-ksa/, Retrieved on February 13, 2023

[10] Ibid

[11] Tax treaty brief: February 2023. (2023, February 9), IRegfollower - Tracking regulatory changes around the world, https://regfollower.com/tax-treaty-brief-february-2023/, Retrieved on February 10, 2023

[12] Double Taxation Avoidance Agreement: What is DTAA, Benefits & Rates, (2023, January 30), Digit Insurance, https://www.godigit.com/finance/salary/double-taxation-avoidance-agreement-dtaa, Retrieved on February 10, 2023

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[13]According to the Central Bank of Sri Lanka, in 2022, more than 300,000 Sri Lankans were employed abroad, primarily in the Middle East. One of Sri Lanka's biggest sources of foreign income comes from the remittances by migrant workers, totaling 3.8 USD billion in 2022. Minister of Labour and Foreign Employment of Sri Lanka, Manusha Nanayakkara, stated on January 24, 2023 that Saudi Arabia proposed to hire up to 200,000 Sri Lankans in 2023. This is almost four times the number of employment Saudi Arabia gave to workers from Sri Lanka in 2022, when Riyadh offered 54,000 positions.[14] This will be beneficial for Sri Lanka's economy as well for Saudi Arabia's Labour market.

c) Trade

Together with the Sri Lanka Tea Board (SLTB), the Sri Lankan Embassy in Riyadh and the General Consulate in Jeddah participated in "Foodex Saudi 2022," the largest international food and beverage trade show in Saudi Arabia, which was held in Jeddah, Saudi Arabia, from February 28 to March 3, 2022. At the "Foodex Saudi 2022" exposition, His Excellency P.M. Amza, the Sri Lankan ambassador to the KSA, ceremonially opened the pavilion for Sri Lanka.[15]

In 2022, Sri Lanka's entire exports to KSA was worth 97.34 USD million, and Saudi Arabia's total imports were worth 229.12 USD million. Compared to the year 2021, Sri Lanka's exports to Saudi Arabia increased by 25.16 percent in 2022.[16]

d) Investments

In the Energy sector, number of power projects with an estimated cost of 800 USD million was proposed to Sri Lanka by ACWA Power of Saudi Arabia. All of these projects would produce roughly 100 MW of electricity, and the Public Investment Fund (PIF) of Saudi Arabia, one of the five biggest Sovereign Wealth Funds (SWF) in the world, owns 50 percent of the company.[17] Additionally, Sri Lanka was one of the first nations to support Saudi Arabia's effort to host EXPO 2030 in Riyadh in order to modernise the Gulf Arab nations and diversify its economy to wean it from oil export revenue.[18]

Also, in environment sector, there were prospects for collaboration between Colombo and Riyadh, particularly in mining industry. The Sri Lanka's Environment Minister, mentioned that Sri Lanka might gain from Saudi Arabia's knowledge to know how to develop the mineral business as well as its laws and policies.[19]

e) Tourism

As Sri Lanka struggles with an ongoing crisis in its tourism sector, participants in the travel businesses, are seeking to draw more visitors from Saudi Arabia. Sri Lanka has relied heavily on tourism as a source of funding for many years, officials are giving priority to the revival of tourism. Saudi Arabia is among the top primary markets and top potential markets that Sri Lanka's Tourist Development Authority has identified using visitor statistics from 2022 until July. Data from the tourist bureau shows that visitors from the Saudi Arabia spend, on average, 230 USD per day in Sri Lanka. According to chairman of the Travel Agents Association of Sri Lanka, Saudi market has the potential to grow as one of the key country's Sri Lanka should try to engage with to boost its inflows of foreign currency.[20]

IV. Saudi Arabia and Sri Lanka's Interest in the Expanding Economic Ties

Since early 2022, Sri Lanka has been engulfed in a severe financial crisis. The country with a population of 22 million person is experiencing its worst financial situation since indep0endence, with issues ranging from low foreign currency reserves to out-of-control inflation. People have been dealing with severe shortages of basic necessities including food, medication, and fuel for months, while the inflation rate soared to a record 60.8 percent in July.[21] Saudi Arabia's investments at this time can be very helpful in resolving the problem. Strong relationships and international collaborations are required in light of the many difficulties Sri Lanka's economy has faced since the latter half of last year and the start of this one. Saudi Arabia can assist Sri Lanka with its economic management and recovery plans. Because of its huge oil production, Saudi Arabia is known for generating significant amounts of revenue and international exchange. Sri Lanka needs the Saudi

[13] Cleron, J. P, Saudi Arabia 2000 (RLE Saudi Arabia): A strategy for growth, Retrieved on February 08, 2023

[14] STEVEN GANOT. (2023, January 24). Saudi Arabia to quadruple job offers to Sri lankans in 2023, The Media Line, https://themedialine.org/mideast-daily-news/saudi-arabia-to-quadruple-job-offers-to-sri-lankans-in-2023/, Retrieved on February 13, 2023

[15] Sri Lanka participates at "Foodex Saudi 2022" exhibition – SL embassy in Saudi. (2022, March 1). SL Embassy in Saudi – Welcome to Our Official Site. https://slemb.org.sa/sl-participates-at-foodex-2022/ , Retrieved on February 13, 2023

[16] Market Profiles and Briefs Related to Saudi Arabia, https://www.srilankabusiness.com/exporters/market-profiles/saudi-arabia.html, Retrieved on February 23, 2023

[17] Ibid

[18] Ministry of Foreign Affairs- Sri Lanka. (2023, January 27). Foreign minister Ali Sabry concludes official visit to Kingdom of Saudi Arabia. Ministry of Foreign Affairs – Sri Lanka – Ministry of Foreign Affairs – Sri Lanka. https://mfa.gov.lk/fmsl-official-visit-to-ksa/, Retrieved on February 16, 2023

[19] Fatehelrahman Yousif. (2023, January 29). Sri Lanka seeks to benefit from Saudi mining experience. Asharq AL-awsat. https://english.aawsat.com/home/article/4125761/sri-lanka-seeks-benefit-saudi-mining-experience, Retrieved on February 14, 2023

[20] MOHAMMED RASOOLDEEN. (2022, August 21). Sri Lanka looks to Saudi travelers to boost tourism industry. Arab News. https://www.arabnews.com/node/2146841/world, Retrieved on February 16, 2023

[21]MOHAMMED RASOOLDEEN. (2023, January 26). Crisis-hit Sri Lanka seeks support, investment from OIC countries. Arab News. https://www.arabnews.com/node/2238076/world, Retrieved on February 20, 2023

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government's assistance to aid the development of their energy sector due to the present energy issues that country is facing.[22] Enhancing bilateral ties was crucial for Sri Lanka since Saudi Arabia, one of the Group of 20 largest economies, is a very prominent member of the international community, particularly in the Islamic world. If Sri Lanka improves its ties with Saudi Arabia, this might serve as a catalyst for more extensive and beneficial ties with the Islamic world,[23] for serving Sri Lanka's national interest as well to attract more investment to overcome this crisis.

Saudi Arabia's economy, with its enormous potential and distinctive investment opportunities, is one of the economies that anticipates the future. As a country with a wealth of natural resources and a prime location at the crossroads of the major trade routes connecting the three continents, Saudi Arabia presents opportunity for investors. Many economic reforms implemented as part of Saudi Vision 2030 have been effective in boosting Saudi Arabia's key strategic assets, fostering economic growth, and diversifying the country's economy. If Sri Lankan investors invest in Saudi Arabia, there are a number of interesting investment options that will allow them to fully own their investment projects without the need for a local partner.[24]

V. Saudi Arabia's Interest in Investing in Sri Lanka

Since Sri Lanka is geographically located at the intersection of important shipping routes to South Asia, the Far East, and the continents of Europe and America, it serves as a beneficial port of call for shipping companies and airfreight services and provides an important opportunity for industries seeking to grow worldwide. A further benefit of Sri Lanka's proximity to the Indian subcontinent is that it serves as a gateway to a market with 1.3 billion people. These elements have brought up a great deal of interest from manufacturers looking for business prospects in South Asia as well as the country's logistics industry. These elements have combined to spark intense interest in the countries' logistics industry from both manufacturers looking for possibilities in the South Asian region and the country itself. The government is committed to open, market-oriented policies that will support private sector economic activity and overcome challenges to a free market economy. Sri Lanka's primary objectives in its quest of a knowledge-based Social Market Economy founded on social justice precepts are multi-disciplined economic strength, local competitiveness, international trade, and investments. Following these changes, Sri Lanka's position for "Ease of Business" has greatly increased, surpassing that of most of its South Asian neighbours.[25]

Sri Lanka is a key geographic location for Saudi Arabia in terms of investment prospects in the petroleum, hospitality, and renewable energy sectors and there are multiple prospects to establish free trade and partnership agreements with one of the South Asian country easily.[26] Furthermore after signing Double Taxation Avoidance Agreements it will provide relief from double taxation for international investors. Additionally, Sri Lanka is an agile talent pool since it has a multifaceted and adaptable workforce that can meet every need of the Saudi Arabian industry at an affordable price. The Sri Lankan labour force is highly trainable and recognised throughout the world for its ability to manage precision industrial activities. This may be advantageous for the labour force in Saudi Arabia.[27]

VI. Challenges Ahead

Notwithstanding the positive trends and opportunities, there are still certain obstacles to be overcome if the two countries are to continue their economic collaboration. Sri Lanka is dealing with a serious balance of payments issue and unmanageable debt, which is hindering the country's ability to develop and increase poverty. Due to the economy's forecast downturn, poverty is predicted to have increased in 2022. Moreover, in June 2022, the banking system's net foreign assets decreased to -5.9 USD billion. Official reserves decreased from 7.6 USD billion in 2019 to less than 400 USD million in June 2022. The political unpredictability and growing imbalances in the fiscal, external, and financial sectors are major concerns for Sri Lanka's economic outlook. The real GDP of Sri Lanka is estimated to decline by 9.2 percent in 2022 and by an additional 4.2 percent in 2023.[28]

[22] Daniel Manoba. (2023, January 24). Foreign Minister of Sri Lanka begins state visit to Saudi Arabia. https://thediplomaticinsight.com/foreign-minister-of-sri-lanka-begins-state-visit-to-saudi-arabia/, Retrieved on February 21, 2023

[23] MOHAMMED RASOOLDEEN. (2023, January 23). Sri Lanka seeks investment, employment opportunities from Saudi Arabia. Arab News. https://www.arabnews.com/node/2237656/world, Retrieved February 22, 2023

[24] MOHAMMED RASOOLDEEN. (2022, November 30). New Saudi ambassador pledges to develop Saudi-Lanka bilateral relations to new heights. Colombo Times - First to know news in Colombo. https://www.colombotimes.net/new-saudi-ambassador-pledges-to-develop-saudi-lanka-bilateral-relations-to-new-heights/, Retrieved on February 23, 2023

[25] Trade with Sri Lanka – SL embassy in Saudi. (2023, February 7). SL Embassy in Saudi – Welcome to Our Official Site. https://slemb.org.sa/trade-with-srilanka/ , Retrieved on February 23, 2023

[26] RASHID HASSAN. (2023, January 28). Sri Lankan foreign minister's trip to Saudi Arabia yields 'positive vibes. Arab News. https://www.arabnews.com/node/2240626/saudi-arabia, Retrieved on February 24, 2023

[27] Why Sri Lanka – New – Investment Opportunities – Board of Investment of Sri Lanka, https://investsrilanka.com/why-sri-lanka-new/#:~:text=Sri%20Lanka, Retrieved on February 24, 2023,

[28] The World Bank In Sri Lanka: Overview. (2022, October 6). World Bank. https://www.worldbank.org/en/country/srilanka/overview, Retrieved on February 27, 2023

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A substantial economic overhaul can often be spurred by an economic crisis, but there are serious downside consequences when there is no political stability. Given that the Sri Lankan public has amplified its willingness to penalise those who have failed to deliver, there is a loss of faith in political institutions and leaders, which elevates the risks. Even if all goes according to plan, it would be another two to three years before the Sri Lankan population notices any significant improvement in economic conditions. Given all the ambiguities, Sri Lanka will need to focus on 2023 as it prepares for the upcoming presidential elections in 2024.[29] If Saudi Arabia makes an investment in Sri Lanka at this moment, they will need to have the patience to wait until the country achieves political stability because an economic recovery without it is impossible. As a result, Saudi Arabia may be taking a risk by investing in Sri Lanka given the country's unclear political and economic future.

VII. Conclusion

In order to get out of this predicament, Colombo is attracting investment from other countries as Sri Lanka experiences its greatest economic crisis since gaining independence. Given the numerous challenges Sri Lanka's economy has encountered, strong ties and economic cooperation with Saudi Arabia are necessary. However Saudi Arabia is also investing in Sri Lanka because of its strategic location as a gateway to the South Asian market, as it serves its own national interests. The Double Taxation Agreement, which both countries have signed, would combat double taxation and tax evasion with regard to income taxes. It is expected to boost the bilateral economic relationships between the two countries and the influx of foreign investment into the country. There is challenge that Saudi Arabia must overcome while investing in Saudi Arabia, but it may be worthwhile to take the risk of entering the South Asian market through Sri Lanka. The convergence between Saudi Arabia and Sri Lanka benefits both countries equally.

[29] Dushni Weerakoon. (2023, January 10). Sri Lanka's hard road to recovery from economic and political crisis. East Asia Forum. https://www.eastasiaforum.org/2023/01/08/sri-lankas-hard-road-to-recovery-from-economic-and-political-crisis/ , Retrieved on February 28, 2023

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Enforcing Foreign Judgments in Nigeria: Any Role for the National Industrial Court?

By Honourable Justice Oluwakayode Ojo Arowosegbe
National Industrial Court of Nigeria

Abstract- The *Third Alteration Act* altered the *Constitution* to make the *National Industrial Court* [*NIC*] a superior Court. In spite of this, jurists have continued to deny the *NIC*, the right to enforce foreign judgments on labour matters. The arguments are that: because, the *NIC* is not listed in S. 2(1) of the *Foreign Judgments [Reciprocal Enforcement] Act* [*FJA*], it lacks jurisdiction in this regard and that; enforcement of foreign judgments does not involve exercise of jurisdiction, but mere exercise of power. Consequently, the *NIC* has handed down a decision divesting itself of jurisdiction! However, the research finds that, the arguments are fallacious and that, the *NIC* has exclusive jurisdiction to enforce foreign labour judgments in Nigeria. The research opines that, the gestating controversy must be nipped in the bud for the nation to reap the benefits of the bounties of the globalized labour market. It recommends deletion of the problematic part of S. 2(1) of the *FJA*, the overhaul and, merging of the two cognate statutes, to bring up the Nigerian law in tune with international best practices. The research, being doctrinal, relies on cognate statutes, case laws and journal articles.

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Enforcing Foreign Judgments in Nigeria: Any Role for the National Industrial Court? *

Honourable Justice Oluwakayode Ojo Arowosegbe

Abstract- The *Third Alteration Act* altered the *Constitution* to make the *National Industrial Court* [*NIC*] a superior Court. In spite of this, jurists have continued to deny the *NIC*, the right to enforce foreign judgments on labour matters. The arguments are that: because, the *NIC* is not listed in S. 2(1) of the *Foreign Judgments [Reciprocal Enforcement] Act* [*FJA*], it lacks jurisdiction in this regard and that; enforcement of foreign judgments does not involve exercise of jurisdiction, but mere exercise of power. Consequently, the *NIC* has handed down a decision divesting itself of jurisdiction! However, the research finds that, the arguments are fallacious and that, the *NIC* has exclusive jurisdiction to enforce foreign labour judgments in Nigeria. The research opines that, the gestating controversy must be nipped in the bud for the nation to reap the benefits of the bounties of the globalized labour market. It recommends deletion of the problematic part of S. 2(1) of the *FJA*, the overhaul and, merging of the two cognate statutes, to bring up the Nigerian law in tune with international best practices. The research, being doctrinal, relies on cognate statutes, case laws and journal articles.

I. Introduction

a) Research Problem

The importance of enforcement of foreign judgments in the municipal courts cannot be overemphasized in this age of globalization, which has led to phenomenal increase in the mobility of labour and commerce[1]. Any developing nation that desires economic breakthrough in this modern world of globalized labour force must simplify its law on enforcement of foreign judgments. If enforcement of foreign judgments in the local courts was a rarity in time past, it has now assumed prominence in this modern time, where advancements in communication and transport technologies have transformed mobility of labour and commerce, making labour, a fluid and trans-national commodity, by its newfound mobility. These in turn have engendered phenomenal increase in applications for municipal enforcement of foreign judgments, making them the new normal in labour relations. With workers and employers crisscrossing the world as a close-knit global village, the need has never been more felt.

Unfortunately, at this critical stage of the nation's development, when foreign investments and industrial revolution are seriously desired, meaning increased globalized labour relations, with the consequential increase in the need for municipal enforcement of foreign judgments, the national law is bedeviled with many bottlenecks, one of which is the uncertainties regarding the municipal court with the requisite jurisdiction to enforce foreign judgments on labour relations. Therefore, the need arises for this research. Evidently, the research does not cover recognition and enforcement of international arbitral awards, governed by international convention[2].

b) Background, Literature Review, Research Objectives and Methodology

The anchor for the research problem is the omission of the *National Industrial Court* [***NIC***] in S. 2(1) of *Foreign Judgments (Reciprocal Enforcement) Act* [***FJA***]. Such is the reconditeness of the mischief created by this omission that, the *NIC* itself decided in *Richard Saxton & Ors v. Opi International Nigeria Limited*[3] [***Saxton's case***] that, it lacked jurisdiction to enforce foreign judgments on labour causes!

The incentive for this paper is the debate generated amongst the judges of this *Court,* who are members of the *Rules, Practice Direction and Digitalisation Committee* [***Rules Committee***], currently reviewing the *National Industrial Court of Nigeria [Civil Procedure] Rules, 2017* [***NIC Rules***] on the proposal for rules for enforcement of foreign judgments. This further marked out the recondite nature of the problem. The debate was centred on two prongs: the non-listing of the *NIC* in S. 2(1) of the *FJA*, which confers the power to enforce foreign judgments on Nigerian courts and, the reasoning that, foreign judgment enforcement does not involve the exercise of jurisdiction, but merely the

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[1] The views expressed are entirely my personal views, except otherwise stated.
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"*Labour mobility and globalization – UNECE*" at www.unece.org posted 16/02/2017 [accessed19/12/2020]; Dani Rodrik, "*Globalisation: New Deal On Labour Mobility*" at www.socialeurope.eu published 26/04/2018 [accessed 19/12/2020]; Rakkee Thimothy, "*Labour mobility in globalisation era*" at www.thehindu.com posted 21/08/2012 [accessed 19/12/2020]; Ray Tomasco, "*Labor Mobility and Globalization: The World Is Now Your Workplace*" reesmarxGlobal – Global Recruitment x Business Expansion, posted 29/10/2017 at www.reesmax.com [accessed 19/12/2020].

[2] *Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958* at www.uncitral.un.org [accessed 21/09/2022].
[3] Unreported Suit No. NICN/LA/305/2019 [delivered by Lagos Division, November 21, 2019].

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exercise of power, as the municipal courts did not give the judgments in the first place. These arguments seemed alluring. When this debate came up at the *Rules Committee*, the author held the view that; the *NIC* was vested with the exclusive jurisdiction to enforce foreign judgments on labour relations. Because of the irreconcilable views, the author felt the need to thoroughly re-examine the issue alongside the decision of the *NIC* in *Saxon's case* [supra] and, and for this reason, did further rigorous research[4], in order to settle the issue, once and for all. In all the research sources consulted, most did not touch on the issue of the competent courts to enforce foreign judgments, as this was assumed settled, and the few that did, there appeared to be collective amnesia of the existence of the *NIC* as a superior court within the legal regime of the law and practice of foreign judgments enforcement in Nigeria, even though, they were all published post-2011[5], after the *Third Alteration Act*[6] had made the *NIC* a superior court, with exclusive civil jurisdiction on labour matters.

There is thus, a vacuum in this area of the law, which this research intends to interrogate. With the scanty case-law authorities and the divergent opinions of the *NIC's* eminent jurists, coupled with the collective amnesia of legal writers on *NIC's* place in this, it is clear, the issue is recondite and; therefore, needs good clarification. It is also the conviction of the research that, this area of the law needs detailed and lucid clarification to obviate the resultant difficulties that would arise, if the issue of the competent court to enforce foreign judgments on labour matters is not cleared at the outset, and snowballs into the usual jurisdictional objections that often take laborious time to determine in Nigeria, at the detriment of the substantive applications for enforcement of foreign judgments, with spiral negative effects on the Nigerian labour market and the economy. The research also posits that, unwittingly denying the *NIC* jurisdiction in this area of the law would shut out litigants from the benefits of the innovations brought about by the *Third Alteration Act*.

It is the finding of the research that, since the modes of enforcing foreign judgments in Nigeria are two, definitely, the common law mode, which is activated by filing a new action in the municipal courts to rehear the obligations arising from the foreign judgments, would lose the full benefits of the worker-friendly innovations of the *Third Alteration Act*, if the *NIC* is denied jurisdiction to enforce foreign judgments on labour causes. With regard to the statutory mode, it is not impossible, though, enforcement under this mode is not a rehearing, to apply some of the innovations of the *Third Alteration Act*, over which the *NIC* alone has exclusive jurisdiction, during the course of deciding applications for enforcement of foreign judgments. It is also felt that, if this issue is clarified at the earliest, it augurs well for stakeholders in the labour market to know well in advance, without much ado and waste of time, the proper court to approach for foreign judgment enforcement in Nigeria, in view of the labour adage that, time is of essence in labour issues. Denying *NIC* jurisdiction entails unwittingly sidetracking the advantages of the innovations in the *Third Alteration Act*. While it is the law that, a court must not be hungry for jurisdiction, it is the law too, that, nothing shall be taken out of the jurisdiction of a superior court, except that, which is expressly excluded in the enabling statute[7]. In determining the extent of jurisdictions of the superior courts in Nigeria, the *Constitution* is the first port of call, being the source of their jurisdictions.

Apropos of the foregoing, the scope of the research covers restatement of the law on enforcement of foreign judgments in Nigeria, in the lights of the constitutionally enhanced status of the *NIC*, the globalized labour markets and international best practices. As the research is doctrinal, it relies on both primary and secondary materials. The primary sources are the: *FJA*, *Reciprocal Enforcement of Judgments Act* [***REJA***], *Constitution of the Federal Republic of Nigeria 1999* [***Constitution***] and, the *National Industrial Court Act* [***NICA***]. The secondary sources are: the *Sheriffs and Civil Process Act* [***SCPA***], the *Interpretation Act*, relevant case laws and, the Internet. With the research methodologies settled, the stage is set for the major task.

[4] Emmanuel Ekpenyong, "*Nigeria: Procedure For Recognition And Enforcement Of Foreign Judgments In Nigeria*" at www.mondag.com uploaded 23/04/2018 [accessed 21/12/2020]; Adeniyi Shoda and Abolanle Davies, "*Nigeria: Enforcement of Foreign Judgments Laws and Regulations 2020*" at www.iclg.com published 08/04/2020 [accessed 21/12/2020]; Udo Udoma & Belo-Osagie, "*Enforcement of Foreign Judgments Under Nigerian Law*" at www.uubo.org [accessed 21/12/2020]; ALEX Legal Practitioners & Associates "*Litigation: Enforcement of foreign judgments in Nigeria*" published 25/01/2019 at www.lexology.com [accessed 21/12/2020]; SPA Ajibade & Co., "*Enforcement of Foreign Judgments 2016*", at www.spaajibade.com [accessed 21/12/2020]; Abimbola Akeredolu and Chinedum Umeche of Banwo & Ighodalo, "*Enforcement of Foreign Judgments 2017*" 2nd Edition at www.banwo-ighodalo.com [accessed 21/12/2020]; Etigwe Uwa *SAN*, Adeyinka Aderemi and Chinasa Unaegbunam, "*Enforcement of Foreign Judgments – in 29 jurisdictions worldwide 2014*" at www.sskohn.com [accessed 21/12/2020]; Chukwuma Okoli and Anthony Kennedy, "*The Recognition and Enforcement of Foreign Judgments at Common Law in Nigeria*" at www.conflctoflaws.net published 05/12/2020 [accessed 21/12/2020].

[5] Ibid.

[6] It came into effect March 3, 2011.

[7] *Union Capital Markets Limited v. BJ Export Limited & Anor* (2018) LPELR-43156 (CA) 23-38, A-E.

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II. The Law on Municipal Enforcement of Foreign Judgments

a) General Statement of the Law, Practice and Procedure

There are two ways by which foreign judgments could be enforced in Nigeria: statutory[8] and *Common Law*[9] channels. There are two statutes: the *FJA* and *REJA*. And there are conditions that must be met before applications under both *FJA* and *REJA* could be entertained[10]. Both statutes have complementary applications[11]. Conditions precedent and presence of jurisdiction are focal to the exercise of a court's power on any matter before it[12]. The implication of not meeting any of the relevant conditions precedent is that, even though, the municipal court has the substantive jurisdiction, it would not be able to exercise any of its powers to enforce the foreign judgment. Thus, the relevance of jurisdiction must be determined at the outset because; it could neither be waived nor acquiesced by the parties[13].

b) Whether the NIC has the Jurisdiction to Enforce Foreign Judgments?

It needs be stated at the outset that, when it comes to the issue of enforcement of foreign judgments via the common law medium, it is settled that, the *NIC* would be the exclusive municipal forum for enforcement of foreign judgments obtained on labour matters, being that, this involves filing a new suit and, not enforcement simpliciter and thus, involves the direct invocation of the civil jurisdiction of the *NIC*, as the municipal *Court* with exclusive civil jurisdiction over labour matters, since fresh suits must be filed to re-litigate the obligations arising from such foreign judgments[14]. Such fresh suits could legally and logically not be filed in a court that lacks substantive jurisdiction on the subject matter. And issue of enforcement of foreign judgment by way of bringing a fresh suit, is not governed by or subject to the *FJA* and the *REJA*, but only to the principles appertaining to it under the common law. Though, it is observed that, the literatures seemed to have narrowed the issue of the competent courts to the: *Federal High Court [FHC], Federal Capital Territory High Court [FCTHC], and State High Court [SHC]*[15]. If they had adverted to the common law mode of enforcement of foreign judgments and, the enhanced status of the *NIC* as a superior court, with exclusive civil jurisdiction on labour matters, it would not have been difficult to know that, *NIC* would have original jurisdiction on enforcement of foreign judgments on labour maters, brought as fresh suits, by virtue of its exclusive civil jurisdiction pursuant to S. 254C-(1) of the *Constitution*.

The principles, as could be decoded from the practice and procedure of enforcement of foreign judgments, via the common law mode, are actually what have been codified into the *FJA* and *REJA*, for easy application, with just minor innovations dispensing with the need to file fresh suit. If jurisdiction on substantive subject matter is so central to common law mode of enforcement of foreign judgments, it axiomatically follows that; it is only the municipal courts with the requisite jurisdiction that should logically also enforce foreign judgments under both *FJA* and *REJA*, but this fact seems lost because of the misconception that, statutory enforcement of foreign judgments does not involve invocation of jurisdiction, but merely exercise of powers. So, the area of serious abstruseness is with regards to enforcements under the *FJA* and the *REJA*, where, it seemed, there is clear and direct statutory provisions[16] excluding the *NIC* in that behalf.

We have noted that, two statutes principally cover the subject of enforcement of foreign judgments in Nigeria. The major statute is the *FJA*, which impliedly validates the *REJA* and, sets the conditions for its continued validity[17]. S. 2(1) of the *FJA* lists the superior courts in Nigeria, which it says, are the only courts that can register and enforce foreign judgments. These courts are: *FHC*, *FCTHC* and *SHC*. Before the *Third Alteration Act*, it would have been normal to dismiss with a wave of the hand that, the *NIC* had no *vires* to entertain applications to register and enforce foreign judgments, not being a superior court then[18], but with the ascendancy of the *Third Alteration Act* in 2011, this view needs to be re-examined to put the law straight. The relevant provisions of the *Constitution* [as altered] along with those of the other relevant statutes must now be thoroughly examined to determine whether the *NIC* now has the jurisdiction, to register and enforce foreign judgments. S. 2(1) of the *FJA* obviously excludes the *NIC* from the list of superior courts in Nigeria. Ordinarily, the express mention of one thing is the exclusion of that, which is not mentioned[19]. But there are several rules of interpretation and, a court applies the one relevant to the

[8] *Witt & Busch Ltd v. Dale Power Systems Plc* (2007) LPELR-3499 (SC) 26-29, C-A.
[9] *Mudasiru & Ors v. Onyearu & Ors* (2013) LPELR-20354 (CA) 24, E.
[10] SS. 3(1)-(2), 3(4), 4, 6(2)(a)(i),(iii)&(iv) & 9(1) *FJA* and 3(1)&(2) & 5 *REJA*, See also Udoma & Belo-Osagie [supra] and *Marine & General Insurance Company Plc v. Overseas Union Insurance* (2006) LPELR-1840 (SC) 17-19, D-B.
[11] Witt & Busch Ltd v. Dale Power Systems Plc op sit 9-13, D-A.
[12] *Madukolu & Ors v. Nkemdilim* (1962) LPELR-24023 (SC) 9-10, F-D.
[13] *Osi v. ACP & Ors* (2016) LPELR-41388 (SC) 15-16, E.
[14] *Willbros West Africa & Ors v. Mcdonnel Contract Mining Ltd* (2005) LPELR-24808 (CA) 42-43, F-D; and Ekpenyong [supra] para. b.
[15] S. 2(1) *FJA*.
[16] S. 2(1) *FJA*.
[17] S. 9(2) *FJA*; Udoma & Belo-Osagie [supra] para. 1.0 and *Macaulay v. Raiffeisen Zentral Bank Osterreich Akiengsell Schaft (RZB) of Austria* (1999) LPELR-13079 (CA) 7-9, D-E.
[18] *N.U.E.E. & Anor v. B.P.E.* (2010) LPELR-1966 (SC) 40-42, F-D.
[19] *Mazelli v. Mazelli* (2012) LPELR-19945 (CA) 19, F.

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facts of a case[20]. The provisions of S. 2(1) of the *FJA* are the anchor on which the absence of power in *NIC* to enforce relevant foreign judgment is based.

The golden rule is that, a statute must not be construed in a way that would produce absurdity[21]. To interpret the provisions of S. 2(1) of the *FJA* to deny the *NIC* the jurisdiction to register and enforce relevant foreign judgments because, *NIC* is not listed in the *FJA*, which was enacted long before the enactment of the *Third Alteration* Act, would produce the absurdity that, the *NIC's* subsequent constitutionally conferred status of superior court, is denied it, by its mere omission in the *FJA*, an ordinary statute, contrary to the decision of the *Supreme Court* in *N.U.E.E. v. B.P.E*[22]. [supra] that, the status of a superior court is iron-cast and, cannot be tampered with by an ordinary statute. This could not have been the intendment of the *FJA* for, it did not anticipate the *Third Alteration Act* and; thus, only listed the superior courts in existence at the time it was amended in 1990. And in interpreting the provisions of statutes, hierarchies of the laws must be borne in mind. The *Constitution* is the grundnorm and takes preeminence over all other municipal laws[23].

The above position has received imprimatur in *Saraki v. FRN*[24], wherein the *Supreme Court* opined: "The time honoured principle of law is that wherever and whenever the Constitution speaks any provision of an Act/Statute, must remain silent…" Therefore, all laws and statutes must bow to the voice of the *Constitution* on this issue. The *Constitution* [as altered] has spoken, by listing the superior courts in Nigeria, stating emphatically that, the list is exhaustive[25]. And incidentally, this list now includes the *NIC*[26]. Therefore, S. 2(1) of the *FJA*, which lists the superior courts in Nigeria, and omits the *NIC*, is void to the extent of the omission[27]. This view is reinforced by two other rules of interpretation. The first is the *doctrine of covering the field*, which postulates that, when the *Constitution* makes exhaustive provisions on anything, such that, it has sufficiently covered the field, provisions contained in any other statute on the subject matter, are void or go into abeyance[28]. The second is the principle of law, which is really superfluous, when the *Constitution* is concerned, because of the doctrine of constitutional supremacy. This is that, when two statutes, both expressed in affirmative languages, are contrary on a matter, the later abrogates the former[29]. This is otherwise called the doctrine of implied repeal[30].

The *Third Alteration Act* that altered the *Constitution* to make the *NIC* a superior court is later, and both SS. 2 of the *FJA* and 6(3)&(5) of the *Constitution* [as altered] are affirmative; but contrary on the matter of *NIC* being a superior court. S. 6(3) & (5)(cc) of the *Constitution* [as altered], which is later in time, and listed the *NIC* amongst the superior courts in Nigeria, must prevail, were it an ordinary Act of the *National Assembly* [***NASS***]. And being a constitution amending *Act*, it abrogates S. 2(1) of the *FJA* for its inconsistency, in trying to whittle down the field entirely covered by S. 6(3)&(5) of the *Constitution*. S. 2(1) of the *FJA* is therefore void and of no effect for its inconsistency with constitutional provisions. The listing of the superior courts in S. 6(5) of the *Constitution* [as altered] is exhaustive of the number of superior courts existing in Nigeria, by S. 6(3) of the *Constitution*. Therefore, the *Constitution* has exhaustively covered the field, such that, the provisions of S. 2(1) of the *FJA*, even if not contrary to the *Constitution* is inoperative by reason of the duplication[31]. Since the listing in S. 2(1) of the *FJA* is inoperative, recourse must be had to the *Constitution* and, the *NIC* therefore, has the exclusive jurisdiction to enforce foreign judgments on labour matters.

However, as indicated earlier, the *NIC* itself, has, with the greatest respect, inadvertently handed down a decision[32], holding emphatically, it lacked jurisdiction to entertain applications to enforce foreign judgments on labour matters. The anchors of this decision, as earlier indicated, are S. 2(1) of the *FJA,* the *NICA* and, the legal implication of the distinction between jurisdiction and powers of a court, amongst others. The research also observed that, *Shoda* and *Davies*, in their incisive article [*supra*], correctly identified how to approach the interpretation of S. 2(1) of the *FJA*. They opined that, it is by virtue of S. 251 of the *Constitution* that, the *FHC* had exclusive jurisdiction on recognition and enforcement of foreign judgments on admiralty, but, regrettably lapsed into the same error of not recognizing the place of the *NIC* in the enforcement of relevant foreign judgments, by virtue of SS. 6(3)&(5(cc) and 254C-(1) of the same *Constitution* [as altered]. This takes us to a critical review of the decision of the *NIC* in *Saxton's case* [supra] and the opinion of *Shoda* and *Davies* in their article, with a view to charting a sure way for the jurisdiction of the *NIC* on matters of registration and enforcement of foreign judgments on labour matters. *Saxton's case*, being a precedent from

[20] *Adewumi & Anor v. The AG Ekiti State & Ors* (2002) LPELR-3160 (SC) 32, B-D.
[21] *Nyesom v. Peterside & Ors* (2016) LPELR-40036 (SC) 65-66, D-B.
[22] (2010) LPELR-1966 (SC) 40-42, F-D.
[23] S.1(1)&(3) of the *Constitution*.
[24] (2016) LPELR-40013 (SC) 93, D-E.
[25] S. 6(3)&(5) of the *Constitution*.
[26] S. 6(3)&(5)(cc) *1999 Constitution*.
[27] *Adisa v. Oyinwola & Ors* (2000) LPELR-186 (SC) 74-75, F-C.
[28] *INEC v. Musa* (2003) 3 NWLR (Pt. 806) 72 at 204-205, G and, J.O. Akande, *Introduction to the Constitution of the Federal Republic of Nigeria, 1999*, MIJ Professional Publishers Ltd., Lagos, Nigeria, 2000, 478-481.
[29] *FRN v. Osahan & Ors* (2006) 5 NWLR (Pt. 973) 361 at 447.
[30] Akintokun v. LPDC (2014) LPELR-22941 (SC) 64-66, F-B.
[31] *INEC v. Musa* and Akande op cit.
[32] *Saxton's case* [supra].

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the *NIC* itself, needs thorough re-examination, to justify departure from it.

But before then, it is necessary to settle the argument that, enforcement of foreign judgments does not involve invocation of jurisdiction, but mere exercise of powers because, the municipal courts in which the judgments are to be enforced never adjudicated on the foreign judgment: that is, it never delivered the judgment, and in virtue of that, S. 2(1) of the *FJA* could validly exclude the *NIC*. The resolution of this morass has direct effects on the subsequent discussions. This argument seems very plausible and would have been valid but for the fact that, it lost cognisance of the very salient fact that, application for registration of foreign judgment is brought to the Court and not the registrar. The Court would sit, hear evidence, listen to arguments of lawyer(s) and, thereafter, exercise its discretion one way or the other, after examining the facts. And its decision is subject to appeal to the *Court of Appeal* and, not by filing fresh suit. These are purely judicial functions. The provisions of SS. 3&4 of the *FJA* burden courts, and not executive or administrative bodies, with the duties to register and enforce foreign judgments. Yes, what they cover is power and not jurisdiction. But, a court cannot exercise any power without having jurisdiction[33]. It is therefore erroneous to argue that, enforcement of foreign judgments does not involve the invocation of jurisdiction, but purely exercise of powers. Be that as it may, we move to the point before the detour.

c) Critical Reviews of Saxon's Case and Shoda & Davies' Article

The kernel of the decision of the *NIC* in *Saxon's case* [supra] is contained at p. 5-6:

> "The subject matter of this application is Foreign Judgments enforcement. The question is: has the National Industrial Court Act 2006, and the 1999 Constitution (Third Alteration Act 2010) conferred the National Industrial Court with jurisdiction to enforce Foreign Judgments? The answer is No… By section 2 of the Foreign Judgments (Reciprocal Enforcement) Act, 'superior court in Nigeria' means the High Court of a State or of the Federal Territory Abuja, or the Federal High Court…The Act has expressly mentioned the Courts that can register and enforce Foreign Judgments. The National Industrial Court is not so mentioned… 'Jurisdiction is not to be equated with power…for all the reasons stated above, the orders sought by the applicants are refused. This suit is hereby struck out for want of jurisdiction."

With the utmost respect, there appears to be some confusion in the excerpt, arising from not fully appreciating the fine distinction between power and jurisdiction and the correlation between the two. Even the *Supreme NIC*, with utmost respect, has, in some occasion, fallen into this same error, which shows its tricky nature[34]. Jurisdiction is the right a court has to preside over cases, whereas, the powers of superior courts [inherent and statutory] are the specific things that courts can do and will do and, the manner of doing them in the course of exercising their substantive jurisdictions[35]. Jurisdiction and power are the two sides of the same coin. They are inseparable: where the snail goes, its shell follows. But, just as the snail leads its shell, jurisdiction leads power and not the other way round. Absence of the snail means its empty shell cannot move. It follows that; a court cannot and can never deploy any power without jurisdiction[36] and that, no statute can confer power on a court that lacks jurisdiction. At all material times, the superior courts assume the jurisdictions constitutionally conferred on them in deploying the powers granted in the *FJA* and *REJA* for the enforcement of foreign judgments. That seemed to be lost on the Court in the *Saxon's case*.

Therefore, no superior court in Nigeria could exercise any of the powers granted under the *FJA* and *REJA* without having constitutional substantive jurisdiction on the subject matter and persons[37]. Assumption of jurisdiction is therefore the assertion of the authority of courts to preside over cases for the purposes of exercising all the powers and procedures [inherent and statutory] that would lead to giving of decisions. Since the *Constitution* is the conferrer of jurisdictions on all the superior courts in Nigeria, what all other statutes do, is conferment of statutory powers, as distinct from inherent powers, which the *Constitution* made inherent in absolute terms, in all the superior courts. So, all that the *FJA* and the *REJA* did, was conferment of statutory powers to recognise and enforce foreign judgments on the superior courts in Nigeria. They did not confer substantive jurisdiction at all. Hence, it was, with the greatest respect, an error in *Saxon's* case, to equate mere statutory powers granted by the *FJA* and *REJA* with substantive jurisdiction and thereby declare that, because, the *NIC* was not listed in S. 2(1) of the *FJA*, it lacked substantive jurisdiction to recognise and enforce foreign judgments on labour matters.

[33] *Ajomale v. Yaduat & Anor* (1991) LPELR-305 (SC) 8-9, E-D.

[34] See *Osadebay v. AG, Bendel State* (1991) LPELR-2781 (SC) 29, C-D, in which *Supreme Court* exhibited this confusion by saying "If a court cannot exercise judicial powers, it cannot exercise jurisdiction…" The tail wagged the dog! Once a court has jurisdiction, it has both statutory and inherent powers by virtue of S. 6(3) & 6(6)(a) of the *Constitution*. Contrast the above authority with *Okwuosa v. Gomwalk & Ors* (2017) LPELR-41736 (SC) 8-9, A; *Ajomale v. Yaduat & Anor* op. cit. and, *Adigun v. AG Oyo State & Ors* (1987) LPELR-40648 (SC) 65-68, B-G, where the *Supreme Court* says: "There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within jurisdiction…" That is the correct statement of the law.

[35] Ibid.

[36] *Okwuosa v. Gomwalk & Ors* [supra].

[37] Ibid.

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The jurisdiction the superior courts originally had to enforce foreign judgments under common law was to rehear the case summarily, by taking a copy of the judgment as evidence against the judgment debtor and, by dint of reciprocity of jurisdiction and comity, enforce it. It is this same rehearing jurisdiction that has been altered by granting statutory powers that did away with rehearing and instead, converted the foreign judgments into municipal judgments of the registering superior courts and thereafter, enforced them. Implicit in bypassing rehearing, is that, the registering court has substantive jurisdiction, were the case to be reheard. It is observed too that, at the beginning of the quoted excerpt, reference was made to the *NICA*, with respect to the jurisdiction of the *NIC*. To begin with, it needs be stated that, it appears, with the greatest respect, a general misconception of law, with regard to the jurisdictions of the superior courts in Nigeria, to make reference to any other statute, than the *Constitution*. The jurisdiction of the *NIC*, ever since the enactment of the *Third Alteration Act*, is exhaustively conferred to the exclusion of any other statute by the *Constitution* itself, notwithstanding the introductory parts of S. 254C-(1) & (1)(L)(iii) of the *Constitution* [as altered] that, appear to suggest that, the *NASS* can give the *NIC* additional jurisdiction, aside those expressly conferred by S. 254C. The *Act* envisaged by the introductory part of S. 254C-(1) and S. 254C-(1)(L)(iii) is a constitutional amending Act, pursuant to S. 9 of the *Constitution* or, an ordinary Act conferring just additional powers, as distinct from jurisdiction, in line with section 254D-(2) of the *Constitution*. Anything outside these, by an ordinary Act of the *NASS*, is void *ab initio*[38]. The author had earlier, in another article, expounded somewhat similar view[39]:

> "No other statute, so far, appears to have added to the jurisdiction of the NICN; and where this is so, *such additional jurisdiction will be concurrent*, and if it deals with issues on which exclusive jurisdiction is already conferred on another superior court, it will be totally void; as ordinary Act of the National Assembly cannot amend the Constitution[40]."

In the light of more knowledge, the *NASS* cannot even confer the *NIC* with concurrent jurisdiction pursuant to an ordinary Act, by way of expansion of its jurisdiction on any new subject on which S. 254C of the *Constitution* has not already covered[41] because, to do so, would infringe the residual exclusive[42] jurisdiction of the *FCTHC* and the *SHC* or, the exclusive jurisdiction of the *FHC*, which could not be done by an ordinary Act of the *NASS*[43]. Be it noted that, there is no subject on earth that has not already been covered by the jurisdictions of the superior courts. To carve out any new subject for *NIC* would automatically conflict with the already vested jurisdiction of another superior court. So, for all intents and purposes, the provisions of S. 7 of the *NICA* are extinct as the *Dodo Bird*, except with respect to the appellate jurisdiction of the *NIC* and the original jurisdiction of the *Industrial Arbitration Panel* [***IAP***] directly conferred by S. 254C-(1)(L)(ii) of the *Constitution* and, the manner of exercising them, spelt out in SS. 7(4) of the *NICA* and 9-14 of the *Trade Disputes Act* [***TDA***]. By virtue of the doctrine of covering the field, it is even discourteous to the *Constitution* to continue to cite the provisions of S. 7 of the *NICA* on issues of jurisdiction of the *NIC*, in the presence of S. 254C of the *Constitution*, which has completely covered the field on the jurisdiction of the *NIC*.

There is absolutely nothing in S. 7 of the *NICA*, as it stands now, that is not completely covered by S. 254C of the *Constitution*. The rhetoric questions may be asked: why the amendment of the *Constitution* with the insertion of S. 254C, which gave *NIC* exclusive jurisdiction, if the *NICA* already conferred *NIC* with jurisdiction? Is it to duplicate the provisions in the *Constitution*? Why did the *Constitution* not simply say, the jurisdiction of the *NIC* is as contained in S. 7 of the *NICA*, if it still wanted to retain the whole of S. 7 of *NICA*? The *Constitution* did not want to because; the *Constitution* is where to find the jurisdiction of the *NIC*, if it must be a superior court. With the constitutional jurisdiction of the *NIC*, S. 7 of *NICA*, save S. 7(4), is dead [44].

The effect of the constitutional abridgments of the hitherto unlimited jurisdiction of the *SHC* in favour of the *FHC* and the *NIC*, is that, the *SHC* and the *FCTHC* now have exclusive residual jurisdiction over all items not covered by the exclusive constitutional jurisdictions of both the *FHC* and the *NIC*, such that, to newly take anything away from the *SHC* and the *FCTHC*, even concurrently, must be by proper constitutional amendment in accordance with S. 9 of the *Constitution*, for such further abridgment to be valid. Hence, where would the *NASS*, by an ordinary Act, get the subject to excise, as additional jurisdiction to the *NIC*, when there is no subject that is not already within the jurisdiction of one superior court or the other? There is none. Since the *Constitution* has taken away the jurisdictions of all other superior courts of first instance on all labour and

[38] *N.U.E.E. v. B.P.E.* op cit.

[39] "*The Imperative of Harnessing the Jurisdiction and Powers of the National Industrial Court of Nigeria*", Ife Juris Review, (2016) IFJR, Part 1 (Jan.-March).

[40] S. 9 *of the Constitution*. See also, *N.U.E.E. v. BPE* [supra] 38 – 39, F–A.

[41] *NUEE v. BPE* op. cit.

[42] Just like the residual jurisdiction of the states in the residual list of the *Constitution*, except in relation to the optional superior courts created in S. 6(5)(f)-(i) of the *Constitution*, which can sometime cut off parts of the jurisdictions of the *SHC* and *FCTHC* by virtue of SS. 262, 267, 277 & 282.

[43] *N.U.E.E. v. B.P.E.*, op cit.

[44] S. 1(1)&(3) *Constitution*, *NUEE v. BPE* op. cit and, *INEC v. Musa* op. cit.

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employment matters and matters incidental thereto or connected therewith, the implication of the *NIC* refusing to exercise its jurisdiction and powers to register and enforce foreign judgments on labour causes, is that, no court in Nigeria would be able to register and enforce such foreign labour judgments! That is the frightening implication of *NIC* divesting itself of jurisdiction to enforce foreign labour judgments. And if any other court does, such exercise of jurisdiction would be illegal and cause frivolous appeals, thereby unwittingly contributing to uneasiness in doing labour justice in the current globalized labour market in Nigeria. The attendant rigmaroles and delays would simply turn Nigeria into a pariah in comity and, negatively impact the flow of foreign labour, commerce and revenues into Nigeria, via enforcement of foreign labour judgments in aid of the globalized labour market.

It is noted, that, the decision in *Saxton's case*, was partly anchored on the distinction between jurisdiction and power and its implication on registration and enforcement of foreign judgments and, the powers of the *NIC* thereto. What is paramount here is S. 2(1) of the *FJA*. It is the section that listed the superior courts and omitted the *NIC*. And the simple question is: whether, in the presence of S. 6(5)(cc) of the *Constitution* that now includes the *NIC* in the list of superior courts in Nigeria, the listing in S. 2(1) of the *FJA* is still valid? This answer is no. It has never been valid, anyway, for duplicating S. 6(5) of erstwhile *1979 Constitution*, an act forbidden under the doctrine of covering the field[45]. What SS. 3 and 4(1) of the *FJA* granted, is not actually jurisdiction, but powers[46] to the superior courts in Nigeria to register and enforce foreign judgments thus, suggesting that, any superior court in Nigeria might be able to register and enforce any foreign judgment regardless of the subject matter and absence of jurisdiction thereto, since such court would not be exercising jurisdiction and; as such, S. 2(1) of the *FJA* could lawfully limit the participation of the *NIC* in the judicial exercise of these powers. First, the *NIC*, being now a superior court, has the right to exercise any statutory power of superior courts by virtue of S. 6(3) of the *Constitution* and could therefore, not be sidetracked by S. 2(1) of the *FJA*, which omits it from the list of superior courts. In the second place, though, the language of S. 4(1) *FJA*, taken in isolation, seems to suggest the ouster of the *NIC*. Keen study shows that, this is a misconception arising from failure to take cognisance of the correlation between jurisdiction and power.

This might be as a result of the subtleness of the distinction and correlation between them and, the attendant fogs arising there from. The law is that, the provisions of a statute must be given community construction[47]. We are bound to give all relevant provisions of the *FJA* community construction, to arrive at the legitimate implication on the issue of the jurisdiction and powers of the *NIC* to register and enforce relevant foreign judgments. S. 4(2)(d) of the *FJA* clearly suggests that, the *NIC* has the full *vires* contrary to S. 4(1); and points to the fact that, the issue of jurisdiction in the municipal superior court, is important in the enforcement of foreign judgments. It says:

> "The registering court shall have the same control over the execution of a registered judgment, *as if the judgment had been a judgment originally given in the registering court* and entered on the date of registration."

What the above quotation suggests is that, from the date of registration, the foreign judgment transmutes to one given by the registering municipal court. The transmutation could not have happened, if the registering municipal court originally lacked jurisdiction to give that type of judgment. Embedded therefore, in the provision, is the assumption that, the registering municipal court has prior jurisdiction to give that type of judgment. So, what SS. 3 & 4 of the *FJA* did, was to provide the manner of exercising the substantive jurisdiction constitutionally conferred on the *NIC* on labour matters with regard to how to register and enforce foreign judgments appertaining to labour matters: that's, power to convert and enforce foreign judgments on labour matters. Jurisdiction is the key to a court's power: without jurisdiction, a court cannot exercise any power.

So, substantive jurisdiction was the pedestal in the *FJA* and *REJA*. Apropos, judgment of a foreign superior court can only be, as if it had originally been given by the registering municipal superior court, if and only if, that registering municipal superior court originally had jurisdiction over the subject matter of the judgment, had the case been originally filed before it and heard and decided by it. Clearly, a *legal fiction*[48] is postulated. And the legal fiction postulated is that, the said 'foreign judgment', subject matter of the local registration and enforcement, is deemed actually given by the registering municipal court with the requisite jurisdiction. If the municipal court lacked jurisdiction *ab initio*, it could not be dissimulated that, it gave the foreign judgment. A court without jurisdiction could not be deemed to have given a decision over a subject matter on which it lacked jurisdiction. The axiom of the foregoing is what Shoda and Davies [supra] obliquely recognised by saying:

> "Apart from the items specifically earmarked for the Federal High Court of Nigeria, the High Court of a State has jurisdiction to entertain all applications for recognition and enforcement of foreign judgments. It is advisable, however, that *the Court that has complete jurisdiction over the subject*

[45] *INEC v. MUSA* op. cit.
[46] In accordance with S. 254D(1)&(2) *Constitution*.
[47] *Buhari & Anor v. Yusuf & Ors* (2003) LPELR-812 (SC) 20, D-F.
[48] *Black's Law Dictionary* [Ninth Ed.), 976.

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matter should be chosen by the Creditor when seeking to register the foreign judgment." – Para. 2.8.

The authors regrettably failed to follow the logic of their illuminating reasoning in the second sentence of the quotation, as italicized above. From the preceding sentence, their thoughts appeared ambivalent; suggesting that, the applicant has a choice in that, the *SHC* has omnibus jurisdiction in that behalf. It is logical inference that, only a court with requisite jurisdiction over the subject matter of a foreign judgment to be enforced, is the court that can be approached and; that, it is incorrect to hold, as they did, in the sweeping statement of the first sentence thereof that, the *SHC* has a sort of residual jurisdiction to exercise general powers to enforce all types of foreign judgments, regardless of the subject matters. This sweeping assertion with respect to the power of the *SHC* to enforce foreign judgments negated even the power of the *FCTHC* directly listed by S. 2(1) of the *FJA*. By listing all the then superior courts, S. 2(1) of the *FJA* demonstrated clearly the need to approach the particular court with the requisite jurisdiction on the subject matter of the judgment to be registered for enforcement; otherwise, there was no need.

These same errors, with the utmost respect, also afflicted the decision of the *Court of Appeal* in *Kabo Air Limited v. The O' Corporation Limited*[49] when it tied the jurisdiction and powers of the *FHC* to register and enforce foreign judgments on aviation to section 2(1) of the *FJA*, even after it had correctly opined that, S. 6(1), (3)&(5)(c) of the *Constitution* listed the *FHC* as a superior court, while S. 251 gave it exclusive jurisdiction on aviation. It is in this respect too, that, the postulation of Ananaba in his erudite book[50] that, the *FHC* lacks jurisdiction to register foreign judgments because, being debts, are not covered by section 251 of the *Constitution* because, they are not related to the administrative or executive decisions of the federal government, must be seen, with the utmost respect, as misconceived. Axiomatically, enforcements of foreign judgments follow the pattern of jurisdictions laid down by the *Constitution* for each and every of the superior courts.

How can a particular municipal registering superior court fit into the legal fiction, if it originally lacked jurisdiction over the subject matter and, there is actually another court with the requisite jurisdiction? After all, the *FHC* has been enforcing monetary judgments that emanated from it locally. If a court lacks jurisdiction by virtue of the municipal statute, it cannot be dressed in the robes of being deemed as the giver of a decision, alien to its jurisdiction. It would be self-contradictory, as it could not have given what it lacks *ab initio*. The whole of the law, practice and procedures of enforcement of foreign judgments on subjects over which it lacks jurisdiction, would be strange to it and; might ultimately negatively impact the enforcement orders to make. A foreign judgment registered in Nigeria can only appear, as if the superior municipal court originally gave it, if and only if, the superior municipal court is actually seised of jurisdiction over the subject matter of the foreign judgment brought before it for registration and enforcement. The powers exercised by courts follow their jurisdictions.

By this analogy, it is implied by force of logic that, it is only the municipal superior court vested with corresponding jurisdiction, as the foreign superior court that handed down the judgment to be enforced in Nigeria that, can be approached and; which will have the jurisdiction and power to register and enforce such judgment, power being offshoot of jurisdiction. A court has never been able to exercise power, where it lacks jurisdiction over the subject matter and persons of the suit: jurisdiction being always at the background of any exercise of power. And no statute in Nigeria can lawfully give to a court, power on a subject it constitutionally lacks substantive jurisdiction on. Hence, since the *FJA* is not the conferrer of jurisdiction on the *NIC*, but the *Constitution*, it could not have taken away its jurisdiction and powers on enforcement of foreign judgment on labour matters duly conferred by SS. 6(3) & 245C-(1) of the *Constitution*, enforcement being continuation of the original jurisdiction by which the judgment was given by way of judicial reciprocity. It could only spell out the manner of exercising the powers on enforcement of relevant foreign judgments arising from its cognate jurisdiction. The *Supreme Court*[51] carefully articulated the correlation between power and jurisdiction and the subtle but important legal implication when it held that: "power can only be exercised where the court has jurisdiction to do so…" *Adigun & Ors v. AG Oyo State & Ors*[52] is also pertinent. The *Supreme Court* says:

> "I think there is…fundamental error in construing Section 6(6)(a) of the Constitution as referring to the exercise of jurisdiction…the Constitution intended to draw and did draw a clear distinction between the exercise of judicial powers in Section 6(6), and the exercise of jurisdiction vested in Courts established by the Constitution…"

It is clear from the two quotations above that, prior constitutional jurisdiction over the subject matter and persons must co-exist for a Nigerian court to exercise any power. Thus, prior jurisdiction over the subject matter and persons of a foreign judgment to be registered and enforced, must exist in the municipal registering superior court, for it to exercise the powers conferred on it by the *FJA* and the *REJA*, to register and enforce such judgments. It is now clear that, both

[49] (2014) LPELR-23616 (CA) 17-20, E-A.

[50] Paul C. Ananaba, *Recognition and Enforcement of Foreign Judgments and Awards in Nigeria*, Jamiro Press Link, 2, Ota St., Olorunshogo, Mushin, Lagos, Nigeria, 2017, 116.

[51] *Ajomale v. Yaduat & Anor* op cit. 8-9, E-D.

[52] (1987) LPELR-40648 (SC) 66-67, A-68

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statutes conferred powers and not jurisdiction and therefore, cannot stop a court constitutionally conferred with cognate jurisdiction from assuming the jurisdiction to exercise the power of registering and enforcing foreign judgments appertaining to its jurisdiction. Thus, the question the *NIC* should have asked itself in *Saxton's case* [supra] is: had the facts of the case arisen in Nigeria and the case filed in the *NIC*, would it have had jurisdiction? Being a labour matter, it undoubtedly would have had jurisdiction; and would have logically had the subsequent power to enforce its own judgment thereto. That is what the *AJA* and *REJA* envisage in the dissimulative powers granted. Had the common law enforcement mode been employed, by filing fresh suit, barring the unproved status of the foreign court, the *NIC* would have undoubtedly had exclusive jurisdiction. Therefore, the *NIC* undoubtedly has the substantive jurisdiction and statutory powers to enforce the foreign judgment in *Saxton's case*, but could not, for failure to fulfill the conditions precedent to assumption of jurisdiction[53].

While the decision is right, citing section 2(1) of the *FJA,* as the reason for the lack of substantive jurisdiction, and not that the case did not satisfy conditions precedent, respectfully, was an unintended error, arising from the ethereal nature of the subtlety of the distinction between jurisdiction and power and, their paradoxical correlation. As the matter was undoubtedly labour matter, it should have been clear, the *NIC* had the substantive jurisdiction, irrespective of S. 2(1) of the *FJA*, since the *FJA* is not the conferrer of the *NIC's* substantive jurisdiction or that of any superior court for that matter; and could not therefore, have taken away the substantive jurisdiction, duly conferred on the *NIC* by the *Constitution*. The *NIC* should simply have held in *Saxton's case* that, because, the applicant failed to meet the conditions precedent for recognition, it could not assume jurisdiction to exercise the power to recognise the foreign judgment, instead of holding that, it lacked substantive jurisdiction.

The term 'condition precedent' means, a condition that must be fulfilled for a court to assume jurisdiction and not, lack of jurisdiction. It is different from jurisdiction but clogs the assumption of jurisdiction, if not fulfilled[54]. Once the condition precedent of proving the status of the foreign court that gave the decision as a superior court, is not met, the relevant municipal court with substantive jurisdiction over the subject matter cannot assume jurisdiction to recognise the foreign judgment. It must be noted that, for a municipal court to recognise a foreign judgment, it assumes jurisdiction first and, thereafter exercises its statutory powers to convert[55] the foreign judgment to that of the municipal court and thereafter, enforces it. The slip arose from the assumption that, the *FJA* conferred jurisdiction to recognise and execute foreign judgments, whereas, it only conferred powers, which are wholly dependent on the substantive jurisdiction duly conferred by the *Constitution*.

It needs be pointed out that, whether or not there are the *FJA* and *REJA*, the superior courts, have always had the jurisdiction to enforce foreign judgments by way of summary rehearing under *Common Law* and, the consequential inherent powers to enforce them. The powers they did not recognise hitherto and did not exercise, was to do away with rehearing by way of filing fresh suit and instead, go straight ahead, to recognise, register and enforce them. It means the idea of conversion, registration and enforcement was not part of the inherent powers under *Common Law*, which has now been statutorily conferred on them. Those are the new statutory powers that the *RJA* and the *REJA* introduced. Nothing more. Both statutes did not confer jurisdiction on the superior courts, but only powers to adopt another manner of enforcing foreign judgments: that is, another manner of exercising the jurisdiction already conferred by the *Constitution*. Hence, it follows that, where a court is to exercise its discretion to make enforcement orders on a foreign judgment, one of the factors it must consider is: is the foreign judgment the product of a subject matter over which it has jurisdiction, which could make it look as if, it was the court that originally handed down the foreign judgment? And in doing this, consideration of the fact: whether, had the case originally been filed before it, it would have had jurisdiction, crops up and; where it comes to the conclusion that, had the case been originally filed before, it would not have had jurisdiction, it simply declines to enforce such foreign judgment[56]. It is as simple as that.

That the provisions of both *FJA* and the *REJA* insist that only superior courts can exercise the powers to register and enforce foreign judgments in Nigeria, is not by chance. It is borne out of the knowledge that, superior courts of first instance, which was originally only the *High Court* [*HC*], originally had unlimited jurisdiction; and thus, being imbued with the requisite jurisdiction over all matters, fits readily into the legal fiction and, was able to register and enforce all types of

[53] *Eti-Osa LGA v. Jegede & Anor (2007) LPELR-8464* (CA) 7-8, F-C and *Agboola v. Agbodemu & Ors* (2008) LPELR-8461 (CA) 70, F.

[54] *Virgin Nigeria Airways Ltd v. Roijien* (2013) LPELR-22044 (CA) 32, 32, E-F.

[55] Hughes Hubbard & Reed LLP: Chris Pararella & Andrea Engels edit, "*The International Comparative Guide to: Enforcement of Foreign Judgments 2016 – Chapter 32 USA*", Global Group Ltd, London, 2016 at www.glgroup.co.uk [accessed 21/09/2022], para. 2.4. See also Williams & Connolly LLP: John J. Buckley, Jr. & Ana C. Reyes, "*Enforcement of Foreign Judgments Laws and Regulations USA 2022*", published 30/03/2022 at www.iclg.com [accessed 21/09/2022] para. 2.1.

[56] *Madasiru & Ors v. Onyearu & Ors* op. cit. 23-24, F-A.

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foreign judgments[57]. It would be realised that, both the *FJA* and *REJA* were enacted long before the fractionalization of the jurisdiction of the *HC* in Nigeria and; thus, implied that, everything was within the originally unlimited jurisdiction of the *HC* [now the *SHC*], as originally the only superior court of first instance in Nigeria[58]. The *FJA* was enacted in 1960 [No. 31 of 1960] and came into force 1st February 1961, while the *REJA* was originally enacted as a colonial Ordinance in 1922 [No. 8 of 1922] and came into force 19th January 1922[59]. It was compiled in the 1958 *Laws of Lagos* as Cap. 175. As the bifurcation of the jurisdiction of the *SHC* began, the *FJA* was amended in 1990 to include the *FHC* and, later, *FCTHC*. Had it been that, the *NIC* had been a superior court by then, it would logically have been included in S. 2(1) of the *FJA*. With the progressive amendments of the *FJA* to take care of the continual expanded list of superior courts in Nigeria, it is clear, the *FJA* envisaged that, only superior courts of corresponding jurisdictions on the subject matters and persons of the particular foreign judgments, are the proper municipal superior courts to approach, being that, the erstwhile parts of the unlimited jurisdiction of the *HC*, have been shared to the *FHC*, *FCTHC* and *NIC*.

With the balkanization of the originally unlimited jurisdiction of the *HC*, originally the only superior court of first instance, to *FHC*, *NIC* and [*FCTHC]* and, with their mutually exclusive civil jurisdictions, it follows that, the jurisdiction of the *SHC* is no longer unlimited, but now residually exclusive; and that, the appropriate court with the requisite jurisdiction on the subject matter of a foreign judgment is the one that must now be approached. That, the *FJA* was amended to accommodate both the *FHC* and the *FCTHC*, points to the fact that, the *FJA* intended that, only the superior courts with like jurisdictions to the foreign courts that gave the judgments to be registered, must be the courts to approach. The *FHC* is obviously accommodated to take care of the relevant foreign judgments appertaining to its jurisdiction, like the *FCTHC* with regard to its territorial jurisdiction. Otherwise, it would not have been necessary to amend the *FJA* to accommodate these new courts.

S. 104-109 of the *Sheriffs and Civil Process Act* [***SPCA***], which deals with reciprocal enforcement of the judgments between States of the Nigerian Federation[60], illustrates the jurisdictional reciprocity underlining the registration and enforcement of foreign judgments amongst the local courts and points to the soundness of the proposition that, only courts with jurisdiction over the subject matters of a foreign judgment can entertain application in that behalf. S. 105(2)&(3) of the *SCPA* provides:

> "(2) From the date of the registration the certificate shall be a record of the Court in which it is registered and shall have the same force and effect in all respects as a judgment of that Court, and the like proceedings may be taken upon the certificate *as if the judgment had been a judgment of that Court*.
>
> (3) For the purpose of this section –
>
> (a) the High Court…of the several States and the Capital Territory are courts of like jurisdiction to one another;
>
> (b) the magistrates' courts exercising jurisdiction in the several States and the Capital Territory are of like jurisdiction to one another."

The above excerpt is a clearer example of the *legal fiction* postulated by S. 4(2)(d) of the *FJA*, which has been expounded earlier on. It clearly shows that, enforcement of judgments of one State's court in that of another State's court can only happen between courts of like jurisdictions and that, only like proceedings that could have been taken in the original court that gave the judgment, could be taken in the other State's court. The above excerpt even goes further to list the corresponding courts of like jurisdictions. S. 4(2)(d) of the *FJA* provides in like manner that, the foreign judgment shall be "…as if the judgment had been a judgment originally given in the registering court…and as if the judgment had been a judgment of that court." It is clear that, their wordings are very similar and that, S. 4(2)(d) of the *FJA* merely fell short of listing the corresponding courts of similar jurisdiction. And the reason for this omission is obvious. It is an impossibility to start listing the corresponding courts of the too numerous countries of the world. It is clear that both SS. 4(2)(d) of the *FJA* and 104-105(2)&(3) of the *SCPA* treat subject matters of like natures: enforcement of the judgment of one court in another that did not give the judgment. A Federation, being composed of autonomous states, which are analogous to different countries, has similar provisions. S. 3(3)(b) of the *REJA*, which is similar to S. 105(1) of the *SCPA*, proves further, the correctness of this view, by clearly providing that:

> "The registering Court shall have the same control and *jurisdiction* over the judgments as it has over similar judgments given by itself, but in so far only as relates to execution under this Ordinance."

The *REJA* enjoins composite construction with the *FJA*[61]. It is thus very clear that, jurisdiction is central to the legal dissimulation postulated in the jurisprudence of enforcing the judgments of one court in another: ditto, judgments of foreign courts in the courts of other countries. The question is: how can a judgment from another superior court have the same force and effect in

[57] *Musaconi Limited v. Aspinall* (2013) LPELR-20745 (SC) 36-37, F-A.
[58] *Sifax Nigeria Limited & Ors v. Migfo Nigeria Limited & Ors* (20180 LPELR-49735 (SC) 110-111, G-F.
[59] *Grosvenor Casinos Limited v. Halaoui* (2009) LPELR-1340 (SC) 19, A.
[60] *Skye Bank (Nigeria) Plc v. Seph Investment Ltd & Ors* (2016) LPELR-40296 (CA) 1-20. Ogun State High Court's judgment was executed partly in both Ogun and Osun States to realise the full judgment debt.
[61] *Witt & Busch Ltd v. Dale Power Systems Plc* op. cit., 9-13, D-A.

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all respects as a judgment of the registering superior court, if it is not the type of judgment the registering superior court used to give? It won't. To successfully practice the art of dissimulation, which the *legal fiction* suggests, the dissimulator must have the capabilities of giving what is to be feigned, to evoke conviction. The thing to be feigned must be one attuned to its nature. To cover the deficiency of not being the original court that gave the judgments is the reason for the dissimulative transmutation, which is why jurisdiction is so central to it. Only a court that has jurisdiction can perform the transmutation.

A goat cannot give birth to an elephant. Thus, it is clear that, before any municipal superior court can entertain any application to register and enforce foreign judgment in Nigeria, both under the *REJA* and *FJA*, it must be seised of jurisdiction over the subject matter and persons of the foreign judgment. It is the prior jurisdiction in the registering municipal court, by which the foreign judgment to be enforced was dissimulated as handed down by the registering municipal court, that still enabled the registering municipal court, to exercise its statutory powers, under the *FJA* and the *REJA*, to register and enforce the foreign judgment. For a court to sit on any matter, including applications for enforcement of foreign judgments, it must have both subject matter and party jurisdiction. That exactly is the position in the *USA*, a federal state like Nigeria. Hughes Hubbard & Reed LLP [supra] observed of the *USA*[62]:

> "To recognise and enforce a foreign judgment, a U.S. court must generally have: (1) personal jurisdiction over the judgment or jurisdiction over the judgment debtor's assets in the forum state; and (2) *subject matter jurisdiction over the action*."

The erudite authors opined on the issue of subject matter jurisdiction that, it is only relevant to federal court, which has limited exclusive jurisdiction on diversity issues, where the judgment debt exceeds $75,000 or, where matters affecting federal laws are involved. Besides, the erudite jurists opined that, the concept of recognition, means conversion of the foreign judgment into a *USA* municipal judgment, by approaching the municipal court [federal or state court] with the jurisdiction, which would assume jurisdiction to convert it to its own[63]. The authors also pointed out that, the state courts in the *USA* have general subject matter jurisdiction. It could be seen that, apart from the few instances handled by the *Federal District Court*, the equivalence of the *FHC* in Nigeria, there are no specialized courts in the *USA*, which distinguishes Nigeria, with the *NIC* as a fully specialized court. Nonetheless; the authors clearly indicated that, court to recognise and enforce foreign judgments must possess both personal and subject matter jurisdiction; and for that reason, relevant foreign judgments for enforcement in the *USA* must go to the federal court in the few instances where the state courts lack jurisdiction on the subject matters[64].

The same thing must be applicable in Nigeria. We have the *FHC* and the *suit* as courts with exclusive federal jurisdiction and, the *NIC* is a specialized labour court. Hence, foreign judgments on labour relations, over which only the *NIC* has exclusive civil jurisdiction, could only be registered, recognised and enforced by the *NIC*. That has been the position in most of the countries of South America where their labour courts have jurisdiction to enforce foreign decisions[65]. This makes more poignant, the concept of transmutation, as one arising from the exercise of the municipal court's jurisdiction on the subject matter of the foreign judgment. It means the foreign judgment, by the recognition, is now pronounced judgment of the municipal court to enjoin the status of *res judicata*. That is where the distinction between recognition and enforcement becomes very significant. It is the recognition that converts the foreign judgment to local judgment of the relevant municipal court and, grants it *res judicata* status to make it enforceable between the parties or their assets now within the local jurisdiction[66]. The granting of recognition and registration creates fresh *res judicata* and, correlates with giving an enforceable decision by the local court.

It is therefore clear that, in *Saxton's case*, though, the *suit* truly lacked the conditions precedent for the NIC to assume jurisdiction by reason of failure of the applicant to provide evidence of reciprocity between the *USA* and Nigeria and that, the *District Court of Southern District of Texas* was a superior court and, not because *NIC* was not listed in S. 2(1) of the *FJA*. Otherwise than for the absence of these mandatory conditions precedent, the *NIC* has the jurisdiction and power, exclusive of all other superior courts in Nigeria, to register and enforce the foreign judgment, being a judgment emanating from labour relations. And in doing this, it was in vantage position to utilize the powers of the *HC* conferred on it by SS. 6(3) & 254D-(1) of the *Constitution* and, borrow rules pursuant to Order 1, Rule 9(1) of the *NIC Rules*, being that, *NIC* did not have its own rules in that regard. By community construction of SS. 2 & 5 of the *FJA* and 1(3), 6(3) & (5)(cc), 254C & 254F(1) of the *Constitution*, the *NIC*, being one of the superior courts in Nigeria, its President has the *vires* to make rules of court for the purposes of enforcement of foreign judgments in its sphere of jurisdiction, and with the exclusivity of its civil jurisdiction, all other superior

[62] para. 2.4 [supra].
[63] Ibid at 2.3.
[64] Williams & Connolly LLP [supra].
[65] ILO Labour Law and Reform Unit, "*Access to labour justice: Judicial institutions and procedures in selected South American countries*" [First published 2021] at https://www.ilo.org [accessed Jan. 12, 2023].
[66] Ibid.

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courts in Nigeria lack jurisdiction and power, wherever the *NIC* has.

It is therefore correct to say, it is because, a court has jurisdiction on the subject matter and parties in relation to enforcement of foreign judgments that, it can exercise the power to enforce relevant foreign judgments; as if they were ones it actually gave. And in this, I think matters of registration and enforcement of foreign judgments emanating from labour and employment matters are incidental thereto and connected therewith the subject matters and persons of the jurisdiction of the *NIC* and; the *NIC* would have exclusive jurisdiction and power in that regard, by virtue of SS. 6(3), 6(5)(cc), 254C-(1)(a) & 254D-(1) of the *Constitution* [as altered]. Since the *NIC* has the powers of a *HC*, why would it lack the power to enforce foreign judgments on civil causes within its realm? There appears to be no legal justification.

Being that such relevant foreign judgment is deemed to be its judgment by force of law[67], it has both inherent and statutory powers[68] to ensure that, the orders of the foreign courts deemed as its own, actually carry into effect. This is in line with the *Supreme Court's*[69] decision that: "Every Court has *inherent jurisdiction* to ensure that its order carries into effect the decision at which it arrived." The phrase "inherent jurisdiction", as italicized above, is used loosely, as a synonym for 'power' since the jurisdictions of courts are actually external and not inherent[70]. So, a court cannot have inherent jurisdiction, but only statutory jurisdiction. This further stresses the fact that, the courts exercise powers when enforcing foreign judgments, after having assumed jurisdiction to recognise the foreign judgments as theirs. So, the *NIC* is seised with the exclusive jurisdiction and powers to register and enforce foreign judgments in labour and employment matters to the exclusion of all other superior courts in Nigeria. This brings into focus the provisions of S. 10(2) of the *Interpretation Act*, which imbues a body that is conferred with power to act, with the corollary powers incidental to effectively doing the act.

This is in consonance with the very subtle but salient point imbued in S. 6(3) of the *Constitution*, to the effect that, regardless of the court directly conferred with a statutory power, like S. 2(1) of the *FJA*, which confers other superior courts, aside the *NIC*, with power to enforce foreign judgments, any superior court subsequently conferred with jurisdiction on a subject matter, like the *NIC*, now conferred with labour jurisdiction, is automatically incorporated in S. 2(1) of the *FJA*, to exercise the power. This is corollary of the doctrine of implied amendment[71]. S. 6(3) of the *Constitution* postulates that, each and every superior court in Nigeria has equal access to any cognate statutory power to lubricate its jurisdiction without further assurance, regardless of the court actually named in the enabling statute. The rationale is to solve the paradox of a court having jurisdiction and, lacking the necessary statutory powers to lubricate it, by reason of these powers being conferred on another court. S. 6(3) is different from S. 6(6)(a), which conferred all the superior courts with inherent powers.

Obviously, the two cannot be talking of the same thing, as the legislature is presumed not to use words in vain[72] plus the fact that, S. 6(6)(a) actually stated that, it is concerned with inherent powers: meaning, S. 6(3) is concerned with statutory powers, being the only other type of power. S. 54(2)(a) of the *NICA* is relevant here and, is actually in sync with S. 6(3) of the *Constitution*. It automatically inserts *NIC* into the sections of statutes that confer powers cognate to the lubrication of its jurisdiction but without naming it, as a court that can exercise the powers and, SS. 6(3) & 254D- (2) of the *Constitution* saved it. Thus, by the combined effect of SS. 6(3), 6(5)(cc), 254C of the *Constitution* and 54(2)(a) of the *NICA*, the *NIC* is deemed inserted into S. 2(1) of the *FJA* at the ascendancy of the *Third Alteration Act* in 2011 without any further assurance by dint of implied amendment[73], apart from the doctrines of constitutional supremacy and covering the field implied by S. 1(1)&(3) of the *Constitution*[74], earlier canvassed, as nullifying S. 2(1) *FJA*. Once foreign judgments on labour matters are deemed by law to be those of the *NIC* by dint of its exclusive civil jurisdiction, *NIC* automatically has the inherent and statutory powers to enforce them, including the exercise of the powers conferred in the *FJA* and *REJA*, which did not name it.

It must be noted that, the exercise of powers to register and enforce foreign judgments granted by the *FJA* and *REJA* have never been exercised in vacuum. The parties or, at least, their assets must be within the territorial[75] jurisdiction of the municipal superior courts, to be activated; and in this, the subject matter and persons' jurisdiction are paramount. This is not too dissimilar to the doctrine of *Port of State Control* in admiralty law, which is based too, on the presence of the parties or their assets within the municipal jurisdiction, irrespective of the foreign locus of the contract or of the breach. From the foregoing, it is clear that, in whatever way one looks at it, the *NIC* has the

[67] SS. 4(2)(a)&(b)&4(d) *FJA* and 3(3)(b) *REJA*.
[68] SS. 6(3)&6(6)(a) of the *Constitution*, 4 *FJA* and 3 *REJA*.
[69] *Bola & Anor v. Latunde & Anor* (1963) LPELR-15478 (SC) 6, A-B.
[70] *Adigun v. AG Oyo State & Ors* and *Ajomale v. Yaduat & Anor* [supra]
[71] *Akintokun v. LPDC & Ors* [supra] 62–63, C–A.
[72] *Ojibara & Ors v. The Governor of Kwara State & Anor* (2004) LPELR-13002 (CA) 62, D-E.
[73] *Akintokun v. LPDC* op. cit.
[74] *INEC v. Musa & Ors* op. cit.
[75] *Kabo Airline Limited v. The O' Corporation Ltd* (2014) LPELR-23616 (CA) 17-20, E-A.

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exclusive jurisdiction and power to enforce foreign judgments on labour matters. The research must therefore cruise to conclusion.

III. Conclusion

There is therefore, the urgent need for the *NIC* to cater for the procedures of exercising its civil jurisdiction to enforce foreign judgments. S. 6 *REJA* and SS. 5&13 *FJA* enjoin the relevant courts to make necessary rules. The *FHC* enacted its own rules[76]. Hence, the *NIC* must also make its rules. And because of the *NIC's* peculiarities, it is inexpedient to rely on the rules of non-specialised courts, though; it has the power to borrow from them[77]. Having its specially tailored rules, would further the aspirations of the nation to attune to international best practices in labour adjudications in order to boost the nation's economy. This is particularly relevant in the common law mode of enforcing foreign judgments, which is by way of filing fresh suit and rehearing, which means, it is fully subject to the *Third-Alteration-Act* innovations.

As S. 2(1) of the *FJA*, at "*superior court in Nigeria*", is all round problematic within the context of the current jurisprudence on the list of superior courts in Nigeria, it should be expunged. There is also urgent need, for a total overhaul of the two statutes relating to enforcement of foreign judgments in Nigeria, to bring them in tune with what obtains in the modern world. There is no reason for two separate statutes: one with problematic existence[78]. There is no reason too, why the Federal Attorney-General, has not drawn up the list of countries that would enjoy reciprocity with Nigeria on this important area of the law. This has become very urgent, if Nigeria truly desires economic development. There is yet no reason why the law on this important area, should not be simple and accommodative of the globalization of labour and commerce. The research signs off with the Nigerian *Supreme Court*'s admonition that[79]:

> "*… it is inimical to the interest of trade and commerce if Judgments in foreign countries cannot be readily enforced in Nigeria*… There is an urgent need to reform our law on this matter. It is an open invitation to fraud and improper conduct…"

[76] Order 52, Rules 16&17 of the *Federal High Court (Civil Procedures) Rules 2000*; *Heyden Petroleum Ltd v. Planet Maritime Co* (2018) LPELR-45553 (CA) 23-28, F-B and, *Kabo Air Limited v. The O' Corporation Limited* op. cit. 24-26, C-A.
[77] Order 1, Rule 9(1) of the *NIC Rules*.
[78] *Witt & Busch Limited v. Dale Power Systems Plc* op. cit. 26-29, C-A.
[79] *Grosvenor Casinos Limited v. Halaoui* [supra] 22-23, C.

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Authors can submit papers and articles in an acceptable file format: MS Word (doc, docx), LaTeX (.tex, .zip or .rar including all of your files), Adobe PDF (.pdf), rich text format (.rtf), simple text document (.txt), Open Document Text (.odt), and Apple Pages (.pages). Our professional layout editors will format the entire paper according to our official guidelines. This is one of the highlights of publishing with Global Journals—authors should not be concerned about the formatting of their paper. Global Journals accepts articles and manuscripts in every major language, be it Spanish, Chinese, Japanese, Portuguese, Russian, French, German, Dutch, Italian, Greek, or any other national language, but the title, subtitle, and abstract should be in English. This will facilitate indexing and the pre-peer review process.

The following is the official style and template developed for publication of a research paper. Authors are not required to follow this style during the submission of the paper. It is just for reference purposes.

Manuscript Style Instruction (Optional)

- Microsoft Word Document Setting Instructions.
- Font type of all text should be Swis721 Lt BT.
- Page size: 8.27" x 11'", left margin: 0.65, right margin: 0.65, bottom margin: 0.75.
- Paper title should be in one column of font size 24.
- Author name in font size of 11 in one column.
- Abstract: font size 9 with the word "Abstract" in bold italics.
- Main text: font size 10 with two justified columns.
- Two columns with equal column width of 3.38 and spacing of 0.2.
- First character must be three lines drop-capped.
- The paragraph before spacing of 1 pt and after of 0 pt.
- Line spacing of 1 pt.
- Large images must be in one column.
- The names of first main headings (Heading 1) must be in Roman font, capital letters, and font size of 10.
- The names of second main headings (Heading 2) must not include numbers and must be in italics with a font size of 10.

Structure and Format of Manuscript

The recommended size of an original research paper is under 15,000 words and review papers under 7,000 words. Research articles should be less than 10,000 words. Research papers are usually longer than review papers. Review papers are reports of significant research (typically less than 7,000 words, including tables, figures, and references)

A research paper must include:

a) A title which should be relevant to the theme of the paper.
b) A summary, known as an abstract (less than 150 words), containing the major results and conclusions.
c) Up to 10 keywords that precisely identify the paper's subject, purpose, and focus.
d) An introduction, giving fundamental background objectives.
e) Resources and techniques with sufficient complete experimental details (wherever possible by reference) to permit repetition, sources of information must be given, and numerical methods must be specified by reference.
f) Results which should be presented concisely by well-designed tables and figures.
g) Suitable statistical data should also be given.
h) All data must have been gathered with attention to numerical detail in the planning stage.

Design has been recognized to be essential to experiments for a considerable time, and the editor has decided that any paper that appears not to have adequate numerical treatments of the data will be returned unrefereed.

i) Discussion should cover implications and consequences and not just recapitulate the results; conclusions should also be summarized.
j) There should be brief acknowledgments.
k) There ought to be references in the conventional format. Global Journals recommends APA format.

Authors should carefully consider the preparation of papers to ensure that they communicate effectively. Papers are much more likely to be accepted if they are carefully designed and laid out, contain few or no errors, are summarizing, and follow instructions. They will also be published with much fewer delays than those that require much technical and editorial correction.

The Editorial Board reserves the right to make literary corrections and suggestions to improve brevity.

Format Structure

It is necessary that authors take care in submitting a manuscript that is written in simple language and adheres to published guidelines.

All manuscripts submitted to Global Journals should include:

Title

The title page must carry an informative title that reflects the content, a running title (less than 45 characters together with spaces), names of the authors and co-authors, and the place(s) where the work was carried out.

Author details

The full postal address of any related author(s) must be specified.

Abstract

The abstract is the foundation of the research paper. It should be clear and concise and must contain the objective of the paper and inferences drawn. It is advised to not include big mathematical equations or complicated jargon.

Many researchers searching for information online will use search engines such as Google, Yahoo or others. By optimizing your paper for search engines, you will amplify the chance of someone finding it. In turn, this will make it more likely to be viewed and cited in further works. Global Journals has compiled these guidelines to facilitate you to maximize the web-friendliness of the most public part of your paper.

Keywords

A major lynchpin of research work for the writing of research papers is the keyword search, which one will employ to find both library and internet resources. Up to eleven keywords or very brief phrases have to be given to help data retrieval, mining, and indexing.

One must be persistent and creative in using keywords. An effective keyword search requires a strategy: planning of a list of possible keywords and phrases to try.

Choice of the main keywords is the first tool of writing a research paper. Research paper writing is an art. Keyword search should be as strategic as possible.

One should start brainstorming lists of potential keywords before even beginning searching. Think about the most important concepts related to research work. Ask, “What words would a source have to include to be truly valuable in a research paper?” Then consider synonyms for the important words.

It may take the discovery of only one important paper to steer in the right keyword direction because, in most databases, the keywords under which a research paper is abstracted are listed with the paper.

Numerical Methods

Numerical methods used should be transparent and, where appropriate, supported by references.

Abbreviations

Authors must list all the abbreviations used in the paper at the end of the paper or in a separate table before using them.

Formulas and equations

Authors are advised to submit any mathematical equation using either MathJax, KaTeX, or LaTeX, or in a very high-quality image.

Tables, Figures, and Figure Legends

Tables: Tables should be cautiously designed, uncrowned, and include only essential data. Each must have an Arabic number, e.g., Table 4, a self-explanatory caption, and be on a separate sheet. Authors must submit tables in an editable format and not as images. References to these tables (if any) must be mentioned accurately.

Figures

Figures are supposed to be submitted as separate files. Always include a citation in the text for each figure using Arabic numbers, e.g., Fig. 4. Artwork must be submitted online in vector electronic form or by emailing it.

Preparation of Eletronic Figures for Publication

Although low-quality images are sufficient for review purposes, print publication requires high-quality images to prevent the final product being blurred or fuzzy. Submit (possibly by e-mail) EPS (line art) or TIFF (halftone/ photographs) files only. MS PowerPoint and Word Graphics are unsuitable for printed pictures. Avoid using pixel-oriented software. Scans (TIFF only) should have a resolution of at least 350 dpi (halftone) or 700 to 1100 dpi (line drawings). Please give the data for figures in black and white or submit a Color Work Agreement form. EPS files must be saved with fonts embedded (and with a TIFF preview, if possible).

For scanned images, the scanning resolution at final image size ought to be as follows to ensure good reproduction: line art: >650 dpi; halftones (including gel photographs): >350 dpi; figures containing both halftone and line images: >650 dpi.

Color charges: Authors are advised to pay the full cost for the reproduction of their color artwork. Hence, please note that if there is color artwork in your manuscript when it is accepted for publication, we would require you to complete and return a Color Work Agreement form before your paper can be published. Also, you can email your editor to remove the color fee after acceptance of the paper.

Tips for writing a good quality Social Science Research Paper

Techniques for writing a good quality homan social science research paper:

1. Choosing the topic: In most cases, the topic is selected by the interests of the author, but it can also be suggested by the guides. You can have several topics, and then judge which you are most comfortable with. This may be done by asking several questions of yourself, like "Will I be able to carry out a search in this area? Will I find all necessary resources to accomplish the search? Will I be able to find all information in this field area?" If the answer to this type of question is "yes," then you ought to choose that topic. In most cases, you may have to conduct surveys and visit several places. Also, you might have to do a lot of work to find all the rises and falls of the various data on that subject. Sometimes, detailed information plays a vital role, instead of short information. Evaluators are human: The first thing to remember is that evaluators are also human beings. They are not only meant for rejecting a paper. They are here to evaluate your paper. So present your best aspect.

2. Think like evaluators: If you are in confusion or getting demotivated because your paper may not be accepted by the evaluators, then think, and try to evaluate your paper like an evaluator. Try to understand what an evaluator wants in your research paper, and you will automatically have your answer. Make blueprints of paper: The outline is the plan or framework that will help you to arrange your thoughts. It will make your paper logical. But remember that all points of your outline must be related to the topic you have chosen.

3. Ask your guides: If you are having any difficulty with your research, then do not hesitate to share your difficulty with your guide (if you have one). They will surely help you out and resolve your doubts. If you can't clarify what exactly you require for your work, then ask your supervisor to help you with an alternative. He or she might also provide you with a list of essential readings.

4. Use of computer is recommended: As you are doing research in the field of homan social science then this point is quite obvious. Use right software: Always use good quality software packages. If you are not capable of judging good software, then you can lose the quality of your paper unknowingly. There are various programs available to help you which you can get through the internet.

5. Use the internet for help: An excellent start for your paper is using Google. It is a wondrous search engine, where you can have your doubts resolved. You may also read some answers for the frequent question of how to write your research paper or find a model research paper. You can download books from the internet. If you have all the required books, place importance on reading, selecting, and analyzing the specified information. Then sketch out your research paper. Use big pictures: You may use encyclopedias like Wikipedia to get pictures with the best resolution. At Global Journals, you should strictly follow here.



6. Bookmarks are useful: When you read any book or magazine, you generally use bookmarks, right? It is a good habit which helps to not lose your continuity. You should always use bookmarks while searching on the internet also, which will make your search easier.

7. Revise what you wrote: When you write anything, always read it, summarize it, and then finalize it.

8. Make every effort: Make every effort to mention what you are going to write in your paper. That means always have a good start. Try to mention everything in the introduction—what is the need for a particular research paper. Polish your work with good writing skills and always give an evaluator what he wants. Make backups: When you are going to do any important thing like making a research paper, you should always have backup copies of it either on your computer or on paper. This protects you from losing any portion of your important data.

9. Produce good diagrams of your own: Always try to include good charts or diagrams in your paper to improve quality. Using several unnecessary diagrams will degrade the quality of your paper by creating a hodgepodge. So always try to include diagrams which were made by you to improve the readability of your paper. Use of direct quotes: When you do research relevant to literature, history, or current affairs, then use of quotes becomes essential, but if the study is relevant to science, use of quotes is not preferable.

10. Use proper verb tense: Use proper verb tenses in your paper. Use past tense to present those events that have happened. Use present tense to indicate events that are going on. Use future tense to indicate events that will happen in the future. Use of wrong tenses will confuse the evaluator. Avoid sentences that are incomplete.

11. Pick a good study spot: Always try to pick a spot for your research which is quiet. Not every spot is good for studying.

12. Know what you know: Always try to know what you know by making objectives, otherwise you will be confused and unable to achieve your target.

13. Use good grammar: Always use good grammar and words that will have a positive impact on the evaluator; use of good vocabulary does not mean using tough words which the evaluator has to find in a dictionary. Do not fragment sentences. Eliminate one-word sentences. Do not ever use a big word when a smaller one would suffice.

Verbs have to be in agreement with their subjects. In a research paper, do not start sentences with conjunctions or finish them with prepositions. When writing formally, it is advisable to never split an infinitive because someone will (wrongly) complain. Avoid clichés like a disease. Always shun irritating alliteration. Use language which is simple and straightforward. Put together a neat summary.

14. Arrangement of information: Each section of the main body should start with an opening sentence, and there should be a changeover at the end of the section. Give only valid and powerful arguments for your topic. You may also maintain your arguments with records.

15. Never start at the last minute: Always allow enough time for research work. Leaving everything to the last minute will degrade your paper and spoil your work.

16. Multitasking in research is not good: Doing several things at the same time is a bad habit in the case of research activity. Research is an area where everything has a particular time slot. Divide your research work into parts, and do a particular part in a particular time slot.

17. Never copy others' work: Never copy others' work and give it your name because if the evaluator has seen it anywhere, you will be in trouble. Take proper rest and food: No matter how many hours you spend on your research activity, if you are not taking care of your health, then all your efforts will have been in vain. For quality research, take proper rest and food.

18. Go to seminars: Attend seminars if the topic is relevant to your research area. Utilize all your resources.
Refresh your mind after intervals: Try to give your mind a rest by listening to soft music or sleeping in intervals. This will also improve your memory. Acquire colleagues: Always try to acquire colleagues. No matter how sharp you are, if you acquire colleagues, they can give you ideas which will be helpful to your research.

19. Think technically: Always think technically. If anything happens, search for its reasons, benefits, and demerits. Think and then print: When you go to print your paper, check that tables are not split, headings are not detached from their descriptions, and page sequence is maintained.

20. Adding unnecessary information: Do not add unnecessary information like "I have used MS Excel to draw graphs." Irrelevant and inappropriate material is superfluous. Foreign terminology and phrases are not apropos. One should never take a broad view. Analogy is like feathers on a snake. Use words properly, regardless of how others use them. Remove quotations. Puns are for kids, not grunt readers. Never oversimplify: When adding material to your research paper, never go for oversimplification; this will definitely irritate the evaluator. Be specific. Never use rhythmic redundancies. Contractions shouldn't be used in a research paper. Comparisons are as terrible as clichés. Give up ampersands, abbreviations, and so on. Remove commas that are not necessary. Parenthetical words should be between brackets or commas. Understatement is always the best way to put forward earth-shaking thoughts. Give a detailed literary review.

21. Report concluded results: Use concluded results. From raw data, filter the results, and then conclude your studies based on measurements and observations taken. An appropriate number of decimal places should be used. Parenthetical remarks are prohibited here. Proofread carefully at the final stage. At the end, give an outline to your arguments. Spot perspectives of further study of the subject. Justify your conclusion at the bottom sufficiently, which will probably include examples.

22. Upon conclusion: Once you have concluded your research, the next most important step is to present your findings. Presentation is extremely important as it is the definite medium though which your research is going to be in print for the rest of the crowd. Care should be taken to categorize your thoughts well and present them in a logical and neat manner. A good quality research paper format is essential because it serves to highlight your research paper and bring to light all necessary aspects of your research.

.

Informal Guidelines of Research Paper Writing

Key points to remember:

- Submit all work in its final form.
- Write your paper in the form which is presented in the guidelines using the template.
- Please note the criteria peer reviewers will use for grading the final paper.

Final points:

One purpose of organizing a research paper is to let people interpret your efforts selectively. The journal requires the following sections, submitted in the order listed, with each section starting on a new page:

The introduction: This will be compiled from reference matter and reflect the design processes or outline of basis that directed you to make a study. As you carry out the process of study, the method and process section will be constructed like that. The results segment will show related statistics in nearly sequential order and direct reviewers to similar intellectual paths throughout the data that you gathered to carry out your study.

The discussion section:

This will provide understanding of the data and projections as to the implications of the results. The use of good quality references throughout the paper will give the effort trustworthiness by representing an alertness to prior workings.

Writing a research paper is not an easy job, no matter how trouble-free the actual research or concept. Practice, excellent preparation, and controlled record-keeping are the only means to make straightforward progression.

General style:

Specific editorial column necessities for compliance of a manuscript will always take over from directions in these general guidelines.

To make a paper clear: Adhere to recommended page limits.



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Mistakes to avoid:

- Insertion of a title at the foot of a page with subsequent text on the next page.
- Separating a table, chart, or figure—confine each to a single page.
- Submitting a manuscript with pages out of sequence.
- In every section of your document, use standard writing style, including articles ("a" and "the").
- Keep paying attention to the topic of the paper.
- Use paragraphs to split each significant point (excluding the abstract).
- Align the primary line of each section.
- Present your points in sound order.
- Use present tense to report well-accepted matters.
- Use past tense to describe specific results.
- Do not use familiar wording; don't address the reviewer directly. Don't use slang or superlatives.
- Avoid use of extra pictures—include only those figures essential to presenting results.

Title page:

Choose a revealing title. It should be short and include the name(s) and address(es) of all authors. It should not have acronyms or abbreviations or exceed two printed lines.

Abstract: This summary should be two hundred words or less. It should clearly and briefly explain the key findings reported in the manuscript and must have precise statistics. It should not have acronyms or abbreviations. It should be logical in itself. Do not cite references at this point.

An abstract is a brief, distinct paragraph summary of finished work or work in development. In a minute or less, a reviewer can be taught the foundation behind the study, common approaches to the problem, relevant results, and significant conclusions or new questions.

Write your summary when your paper is completed because how can you write the summary of anything which is not yet written? Wealth of terminology is very essential in abstract. Use comprehensive sentences, and do not sacrifice readability for brevity; you can maintain it succinctly by phrasing sentences so that they provide more than a lone rationale. The author can at this moment go straight to shortening the outcome. Sum up the study with the subsequent elements in any summary. Try to limit the initial two items to no more than one line each.

Reason for writing the article—theory, overall issue, purpose.

- Fundamental goal.
- To-the-point depiction of the research.
- Consequences, including definite statistics—if the consequences are quantitative in nature, account for this; results of any numerical analysis should be reported. Significant conclusions or questions that emerge from the research.

Approach:

- Single section and succinct.
- An outline of the job done is always written in past tense.
- Concentrate on shortening results—limit background information to a verdict or two.
- Exact spelling, clarity of sentences and phrases, and appropriate reporting of quantities (proper units, important statistics) are just as significant in an abstract as they are anywhere else.

Introduction:

The introduction should "introduce" the manuscript. The reviewer should be presented with sufficient background information to be capable of comprehending and calculating the purpose of your study without having to refer to other works. The basis for the study should be offered. Give the most important references, but avoid making a comprehensive appraisal of the topic. Describe the problem visibly. If the problem is not acknowledged in a logical, reasonable way, the reviewer will give no attention to your results. Speak in common terms about techniques used to explain the problem, if needed, but do not present any particulars about the protocols here.

The following approach can create a valuable beginning:

- Explain the value (significance) of the study.
- Defend the model—why did you employ this particular system or method? What is its compensation? Remark upon its appropriateness from an abstract point of view as well as pointing out sensible reasons for using it.
- Present a justification. State your particular theory(-ies) or aim(s), and describe the logic that led you to choose them.
- Briefly explain the study's tentative purpose and how it meets the declared objectives.

Approach:

Use past tense except for when referring to recognized facts. After all, the manuscript will be submitted after the entire job is done. Sort out your thoughts; manufacture one key point for every section. If you make the four points listed above, you will need at least four paragraphs. Present surrounding information only when it is necessary to support a situation. The reviewer does not desire to read everything you know about a topic. Shape the theory specifically—do not take a broad view.

As always, give awareness to spelling, simplicity, and correctness of sentences and phrases.

Procedures (methods and materials):

This part is supposed to be the easiest to carve if you have good skills. A soundly written procedures segment allows a capable scientist to replicate your results. Present precise information about your supplies. The suppliers and clarity of reagents can be helpful bits of information. Present methods in sequential order, but linked methodologies can be grouped as a segment. Be concise when relating the protocols. Attempt to give the least amount of information that would permit another capable scientist to replicate your outcome, but be cautious that vital information is integrated. The use of subheadings is suggested and ought to be synchronized with the results section.

When a technique is used that has been well-described in another section, mention the specific item describing the way, but draw the basic principle while stating the situation. The purpose is to show all particular resources and broad procedures so that another person may use some or all of the methods in one more study or referee the scientific value of your work. It is not to be a step-by-step report of the whole thing you did, nor is a methods section a set of orders.

Materials:

Materials may be reported in part of a section or else they may be recognized along with your measures.

Methods:

- Report the method and not the particulars of each process that engaged the same methodology.
- Describe the method entirely.
- To be succinct, present methods under headings dedicated to specific dealings or groups of measures.
- Simplify—detail how procedures were completed, not how they were performed on a particular day.
- If well-known procedures were used, account for the procedure by name, possibly with a reference, and that's all.

Approach:

It is embarrassing to use vigorous voice when documenting methods without using first person, which would focus the reviewer's interest on the researcher rather than the job. As a result, when writing up the methods, most authors use third person passive voice.

Use standard style in this and every other part of the paper—avoid familiar lists, and use full sentences.

What to keep away from:

- Resources and methods are not a set of information.
- Skip all descriptive information and surroundings—save it for the argument.
- Leave out information that is immaterial to a third party.



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Results:

The principle of a results segment is to present and demonstrate your conclusion. Create this part as entirely objective details of the outcome, and save all understanding for the discussion.

The page length of this segment is set by the sum and types of data to be reported. Use statistics and tables, if suitable, to present consequences most efficiently.

You must clearly differentiate material which would usually be incorporated in a study editorial from any unprocessed data or additional appendix matter that would not be available. In fact, such matters should not be submitted at all except if requested by the instructor.

Content:

- Sum up your conclusions in text and demonstrate them, if suitable, with figures and tables.
- In the manuscript, explain each of your consequences, and point the reader to remarks that are most appropriate.
- Present a background, such as by describing the question that was addressed by creation of an exacting study.
- Explain results of control experiments and give remarks that are not accessible in a prescribed figure or table, if appropriate.
- Examine your data, then prepare the analyzed (transformed) data in the form of a figure (graph), table, or manuscript.

What to stay away from:

- Do not discuss or infer your outcome, report surrounding information, or try to explain anything.
- Do not include raw data or intermediate calculations in a research manuscript.
- Do not present similar data more than once.
- A manuscript should complement any figures or tables, not duplicate information.
- Never confuse figures with tables—there is a difference.

Approach:

As always, use past tense when you submit your results, and put the whole thing in a reasonable order.

Put figures and tables, appropriately numbered, in order at the end of the report.

If you desire, you may place your figures and tables properly within the text of your results section.

Figures and tables:

If you put figures and tables at the end of some details, make certain that they are visibly distinguished from any attached appendix materials, such as raw facts. Whatever the position, each table must be titled, numbered one after the other, and include a heading. All figures and tables must be divided from the text.

Discussion:

The discussion is expected to be the trickiest segment to write. A lot of papers submitted to the journal are discarded based on problems with the discussion. There is no rule for how long an argument should be.

Position your understanding of the outcome visibly to lead the reviewer through your conclusions, and then finish the paper with a summing up of the implications of the study. The purpose here is to offer an understanding of your results and support all of your conclusions, using facts from your research and generally accepted information, if suitable. The implication of results should be fully described.

Infer your data in the conversation in suitable depth. This means that when you clarify an observable fact, you must explain mechanisms that may account for the observation. If your results vary from your prospect, make clear why that may have happened. If your results agree, then explain the theory that the proof supported. It is never suitable to just state that the data approved the prospect, and let it drop at that. Make a decision as to whether each premise is supported or discarded or if you cannot make a conclusion with assurance. Do not just dismiss a study or part of a study as "uncertain."



Research papers are not acknowledged if the work is imperfect. Draw what conclusions you can based upon the results that you have, and take care of the study as a finished work.

- You may propose future guidelines, such as how an experiment might be personalized to accomplish a new idea.
- Give details of all of your remarks as much as possible, focusing on mechanisms.
- Make a decision as to whether the tentative design sufficiently addressed the theory and whether or not it was correctly restricted. Try to present substitute explanations if they are sensible alternatives.
- One piece of research will not counter an overall question, so maintain the large picture in mind. Where do you go next? The best studies unlock new avenues of study. What questions remain?
- Recommendations for detailed papers will offer supplementary suggestions.

Approach:

When you refer to information, differentiate data generated by your own studies from other available information. Present work done by specific persons (including you) in past tense.

Describe generally acknowledged facts and main beliefs in present tense.

The Administration Rules

Administration Rules to Be Strictly Followed before Submitting Your Research Paper to Global Journals Inc.

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Segment draft and final research paper: You have to strictly follow the template of a research paper, failing which your paper may get rejected. You are expected to write each part of the paper wholly on your own. The peer reviewers need to identify your own perspective of the concepts in your own terms. Please do not extract straight from any other source, and do not rephrase someone else's analysis. Do not allow anyone else to proofread your manuscript.

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Criterion for Grading a Research Paper (Compilation) by Global Journals

Please note that following table is only a Grading of "Paper Compilation" and not on "Performed/Stated Research" whose grading solely depends on Individual Assigned Peer Reviewer and Editorial Board Member. These can be available only on request and after decision of Paper. This report will be the property of Global Journals

Topics	Grades		
	A-B	**C-D**	**E-F**
Abstract	Clear and concise with appropriate content, Correct format. 200 words or below	Unclear summary and no specific data, Incorrect form Above 200 words	No specific data with ambiguous information Above 250 words
Introduction	Containing all background details with clear goal and appropriate details, flow specification, no grammar and spelling mistake, well organized sentence and paragraph, reference cited	Unclear and confusing data, appropriate format, grammar and spelling errors with unorganized matter	Out of place depth and content, hazy format
Methods and Procedures	Clear and to the point with well arranged paragraph, precision and accuracy of facts and figures, well organized subheads	Difficult to comprehend with embarrassed text, too much explanation but completed	Incorrect and unorganized structure with hazy meaning
Result	Well organized, Clear and specific, Correct units with precision, correct data, well structuring of paragraph, no grammar and spelling mistake	Complete and embarrassed text, difficult to comprehend	Irregular format with wrong facts and figures
Discussion	Well organized, meaningful specification, sound conclusion, logical and concise explanation, highly structured paragraph reference cited	Wordy, unclear conclusion, spurious	Conclusion is not cited, unorganized, difficult to comprehend
References	Complete and correct format, well organized	Beside the point, Incomplete	Wrong format and structuring

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