

ABSTRACT

This article focuses on the identification of primary infringements within the domain of human rights and freedoms in temporarily occupied territories, as well as the delineation of protective mechanisms. The study systematically examines the existing legislation in Ukraine concerning the determination of the legal status of individuals residing in these territories. Extensive evidence is provided to substantiate mass violations of human and citizen rights and freedoms in temporarily occupied areas, with a particular emphasis on the considerable transgressions against personal, economic, social, and cultural rights. A meticulous analysis of these rights' violations within these territories is conducted. Notably, the article underscores that the list of systematically restricted or violated rights and freedoms may be expanded due to the armed aggression of the Russian Federation. Furthermore, the study delves into the instruments available for safeguarding human rights in temporarily occupied territories.

It has been determined that, with the aim of addressing national security issues amid a state of war and persistent armed aggression, the state is obliged to systematically and efficiently respond to all potential infringements upon the rights and freedoms of individuals residing in temporarily occupied territories. A conclusion has been drawn that, for the effective safeguarding of human rights in the temporarily occupied territories of Ukraine, the legislator has incorporated a series of normative legal acts into the national legislative framework, exerting a direct influence on the protection of the rights and freedoms of individuals situated in these territories.

Nevertheless, the temporarily occupied territories remain beyond Ukraine's jurisdiction, rendering the implementation mechanism of normative provisions in this sphere intricate. It is posited that, in light of the substantial and systematic violations of national legislative norms and international treaties in this domain by the Russian Federation, Ukraine's primary task lies in the development of an efficacious toolkit for the protection of the rights and freedoms of individuals within the context of temporary occupation. Additionally, it determines the position and role of international cooperation in the protection of rights and freedoms for individuals and citizens in such territories. The article concludes by highlighting the imperative need for a comprehensive approach in the mechanism designed for protecting human rights in temporarily occupied territories to attain the most effective outcomes.

Keywords: *state of war, armed aggression, temporarily occupied territories, human rights and freedoms.*

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Olena MARCHENKO[©]
D.Sc. (Philosophy),
Associate professor
(Dnipropetrovsk State
University of Internal Affairs,
Dnipro, Ukraine)

THE INFLUENCE OF TNCs ON THE STATE SOVEREIGNTY OF DEVELOPING COUNTRIES

Олена Марченко. ВПЛИВ ТНК НА ДЕРЖАВНИЙ СУВЕРЕНІТЕТ КРАЇН, ЩО РОЗВИВАЮТЬСЯ. У статті здійснено комплексний аналіз ролі сучасних транснаціональних компаній (ТНК) у формуванні соціально-економічної та геополітичної реальності інформаційного суспільства. Здатність ТНК швидко конвертувати значні матеріально-фінансові, правові, організаційні ресурси у політичний вплив задля отримання надприбутків актуалізує необхідність дослідження ступеню їх впливовості на традиційні інститути державної влади. З одного боку, мова йде про аналіз феномену ТНК в категоріальній площині влади, легітимності й суверенітету, з урахуванням системної взаємодії корпорацій з іншими акторами і суспільством в цілому. З іншого боку, попри усі економічні і соціальні перспективи розвитку, які відкриваються для держави,

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ORCID ID: <https://orcid.org/0000-0002-2069-9942>

Lina728@ukr.net

завдяки входженню ТНК у національний економічний і правовий простір, постає питання про безпеку, яку вони можуть становити для державного суверенітету приймаючих країн. У сфері інтересів сучасних великих корпорацій опиняються держави і цілі групи держав, на території яких розташовані сировинні бази, виробництва, транспортні вузли та ринки збуту, необхідні для функціонування і розвитку ТНК. Відповідно вони проявляють природне прагнення до максимально можливого контролю за соціально-політичними й економічними процесами у цих країнах.

Таким чином, визначення ступеню загрози ТНК для державного суверенітету країн, що розвиваються, а також умов збереження державної правоздатності під впливом ТНК на політичну та соціально-економічну ситуацію в країні є актуальним напрямом дослідження міждисциплінарного характеру, в якому доцільним буде поєднання методологічного інструментарію теорії та історії держави і права, економіки, політології тощо. З огляду на визначені дослідницькі пріоритети, метою статті є аналіз наслідків діяльності ТНК для національного суверенітету країн, що розвиваються, а також пошук і обґрунтування необхідних умов для його збереження.

Ключові слова: ТНК, державний суверенітет, глобалізація, країни, що розвиваються.

Relevance of the study. The modern world economy constitutes a complex structure of interaction of various actors among which the primary role is played by multinational corporations (MNC) whose interests are being directly or indirectly lobbied by the governments of a number of countries. The scope of political interests of modern large corporations includes countries and entire groups of countries whose territories incorporate sources of raw materials, manufacturing facilities, transport hubs and markets necessary for operations and development of MNCs. Correspondingly, they demonstrate a natural striving for maximum possible control over socio-political and economic processes within these countries. Consequently, two significant problems arise in the theoretical and methodological aspect: 1) interference in the internal affairs of the state by a foreign actor (the problem of violation of state sovereignty); 2) the creation on the territory of individual countries of artificially created centers of social tension and confrontation in favor of TNCs.

In the last decades there has occurred an unprecedented growth in the number of MNCs and their branches all across the globe. For instance, since the end of the 20th century up until mid-2010s the number of MNCs grew from 11 000 to over 80 000 while the number of branches and representative offices increased from 100 000 to 810 000. A notable fact consists in that 4/5 of all commercial operations in the world are accounted for by the industrial sector of multinational corporations. According to the statistics by the World Bank, the total count of MNCs in the world is nearing a 100 thousand mark. In the view of the World Bank's experts, in 2024 the number of MNCs may already constitute 160 thousand [10].

The strengthening of the role of transnational companies in the sphere of economy and politics actualizes the question of the degree of their influence on the traditional balance of forces of subjects of interstate interaction. On the one hand, TNCs are the engines of global economic and social development (TNCs are interested in increasing the incomes of all strata of the population, which will later provide demand for their products), and on the other hand, they are actually exploiters of the natural and labor resources of countries that, for various reasons willing to sacrifice humanitarian and environmental values for profit. The most pressing issue is the legitimacy of the transformation of TNCs into subjects of world-class economic regulation, as well as the question of what consequences this will lead to at the national level, that is, in the states, the vast majority of which are developing.

It is important to investigate to what extent the activities of specific TNCs contribute to or, on the contrary, hinder the establishment and strengthening of the state sovereignty of developing countries, as well as the realization of their interests in the economic, political and humanitarian spheres.

Recent publications review. A conceptual framework for the presented study is represented by the actor-centered approach (transnationalism) substantiated in the works by R.Keohane & J. Nye [8], J.Rosenau [14], T. Risse [13]. The author as well relied upon the concept of the structural power of business developed by C. Offe & V.Ronge [11], F. Block. They advocated the viewpoint that the state power is being directly influenced by the functioning of business entities: «the occupant of a power position is in fact powerless unless the volume of accumulation process allows that individual to derive the material resources (through taxation) necessary to promote any political ends» [11, p.250]. Toffler, 20th century classic futurologist, in his work «The Third Wave» pointed out that the world of MNCs, which forces national states out of the system of international relations, requires new political

framework, new approaches and concepts with regard to state-building in order it would be capable of competition in the conditions of mass «interference» of MNCs into the sphere of world politics [18].

Within a scientific discourse related to the problem of MNCs the authors of the presented paper have not revealed categorical standpoints with regard to merely positive or negative impact of large corporation on the sovereignty of the country which become the object of their «soft» conquest. As a general rule different correlations of positive and negative impacts are being referenced: preferences which the state obtains with the expansion of MNCs and, conversely, the disruption of foundations of the state legal capacity. Advantages of the positive impact are being considered in the works by T. Cohn & A. Hira [3], D. Fuchs & B. Lennartz [5].

Among the positive aspects of the functioning of MNCs the said authors list the reduction of unemployment, accelerated economic development, increased tax proceeds into the state budget, implementation of technological innovations. What is furthermore mentioned is the economies of scale in managing human resources, possibility of transnational marketing, employment of multinational staff resources, international management practices, availability of patented designs.

Dangers that MNCs pose to the state sovereignty of economically unstable countries are corroborated by F. Teichmann & B. Sergi [17]; E. Orts [12]; S. Williams [21]; G. Ballor & B. Aydin [1]; E. Shever [15]; C. May [9]. Among arguments against the activities of multinational corporations the researchers cite their oligopolistic propensity that may considerably weaken the market potential of the country; MNCs' practices of tax evasion by means of transfer pricing; deployment of production facilities that cause environmental pollution. MNCs directly affect the host party's choice of its production specialization, threaten the national economic security of the country by establishing control over its foreign trade, while the free movement of transnational capital may undermine the stability of national currencies.

According to Scott Turner, «the relationship between states and corporations is as cooperative as it is adversarial. Transnational corporations undermine sovereignty not only by escaping state jurisdictions, but by constricting the range of policy alternatives available to states» [20].

Recently, a third viewpoint has gained wide circulation among the specialists, according to which the role of MNCs is going to be leveled down due to objective reasons. Certain researchers (P.Ghauri, R.Strange, F.L.Cooke [6], G.Jetto-Gillies [7]) have since recently been speculating the decimation of the model of globalization where the international flows of goods and capital were realized within the framework of activities of MNCs with the inherent dominant role of highly developed countries.

The article's objective is to determine the degree of threat that MNCs pose to sovereignty of developing countries as well as conditions required to preserve state legal capacity under the influence of MNCs upon political and socio-economic situation in the country.

Discussion. A multinational corporation constitutes a business entity that, despite its particular country affiliation and legal form of organization, has branches in several other countries, conducts management activities there in accordance with the determined corporate strategy through one or several of its centers of decision-making. The structure of an MNC is represented by the head office or a cluster of head offices which directly influence branches or divisions located in other countries and coordinate their operations. A characteristic trait of all MNCs is the presence of their branches in other countries as well as broad geographical spread of their business activities. MNCs are able to operate in a variety of legal forms of organization, may be state- or privately-owned or have a mixed ownership; conduct their commercial activities in any area of business. However, as experts emphasize, the most widespread form of operations for MNCs is a joint-stock company. Presently, over 70% of funds pertaining to foreign investment are controlled by 500 largest MNCs. Among their spheres of activity are pharmaceutical industry (95%), chemical industry (80%), electronics (78%), mechanical engineering (76%), etc. Approximately 60% of MNCs are engaged in manufacturing, 3% – in agricultural sector and 37% operate in the service sector [10].

Thanks to the ability to accumulate large volumes of financial resources, attract highly qualified specialists and maintain a network of branches and representative offices in many countries around the world, TNCs can influence political, economic and social processes. This

influence is exercised at the local (cities and individual local communities), national and global levels. Large corporations represented by owners and top management enter into interaction (of any direction and modality) not only with other TNCs and states, but also with international organizations, human rights structures, legal and illegal armed groups, etc. Thus, TNCs should no longer be viewed simply as participants in purely economic markets, but as political actors who implement their own strategies in different institutional contexts.

At the present stage, the most common concepts of power can be applied to the analysis of the political activities of TNCs. The political potential of business is not limited to influencing government institutions or interacting with supranational organizations to establish the «rules of the game» in a particular area (for example, environmental), but also includes the formation of ideas about the public good and the introduction of various models of social development.

Corporations act not only as political actors who have the resources to lobby for their interests, but also as creators and disseminators of ideas and meanings through various media conglomerates and digital products.

The issues of the legitimacy of state power are inextricably linked with the problems of TNCs. In the case of TNC activities, the concept of legitimacy can be applied in two senses.

First, corporations can contribute to reducing the legitimacy of state power and generally pose a threat to the principle of sovereignty. In particular, this may manifest itself in the participation of TNCs in the formation of supranational rules for investment and currency movement, as well as in attempts to limit the freedom of action of the state in the economic sphere to protect their own business interests. The range of solutions for governments due to the significant role of TNCs in the economic sphere can indeed be significantly limited due to the desire of the state to retain large companies. The state provides corporations with more favorable conditions for doing business, which can harm national production.

Secondly, the concept of legitimacy covers a range of issues related to the attitude of citizens towards the work and products of corporations and their activities in general. Individuals' support for large TNCs and the use of their products and services in everyday private life can lead to certain identity conflicts [4]. On the one hand, the individual feels like a citizen of the country in which he was born and/or lives, on the other hand, he feels like a consumer, user, buyer of a product created by a corporation. This applies primarily to modern TNCs from the IT sector that implement a platform business model, since its implementation assumes the active participation of the user as the creator of the product or its consumer. The threat is the predominance of user identity over civilian identity. Individuals' "affinity" with digital products is a potential source of their alliance with TNCs to resist government regulation: «...as long as platform users see themselves as consumers rather than citizens, these companies have a strong ally in public opinion, which places greater value on convenience and innovation potential of platforms than trusts the strong regulatory hand of the government. However, platforms' deep involvement in the modern economy means that their algorithms can change the outcome of a state's elections, and their privacy policies can allow them to learn much more about citizens than governments can» [4, p.290-291].

A significant risk in this situation is that the trust of individuals (as consumers) in digital corporations reduces their trust (as citizens) in the government in the business-government dichotomy. Depending on the speed of reaction to challenges, both actors can appeal to one of the identities in order to attract individuals to their side to create a coalition and support a legislative initiative or political decision.

These circumstances force us to pay attention to the problem of sovereignty in the context of the activities of TNCs. It also has a dual character. On the one hand, corporations can act as violators of the sovereignty of the state, reducing the possibility of control on its part over the movement of investments, goods, currency, or, for example, violating human rights and polluting the environment on its territory.

The weakening of state sovereignty in relation to TNCs is manifested in their «escaping» from the jurisdiction of the government and the narrowing of alternatives available to the state when choosing possible decisions in the economic sphere. Accordingly, the autonomy of the government in the implementation of economic policy is violated due to the need to take into account the interests of such large actors as TNCs.

Violation of autonomy occurs in the case of both conflict and cooperation relations between the state and business [20]. In the first option, the government is limited by the possibility of a corporation leaving the country (and, as a consequence, a reduction in jobs,

products, etc.), and in the second, by the need to establish and maintain a legislative and political framework that facilitates the arrival and consolidation of TNCs in the territory of the state.

Special attention should be paid to corporations operating in the military-industrial sector of the global economy, which involves maintaining demand for military equipment, weapons and ammunition produced by these companies.

The «divide and conquer» principle remains highly relevant for such MNCs: if one may succeed in dividing a country into territorial units separated on religious or ethnic grounds, it would become far simpler to manipulate them. To exemplify, it is possible to cite India and Pakistan which, from the mid-20th century, are not capable of finding a solution to the territorial dispute over Jammu and Kashmir. Similar situation occurred during the separation into sovereign states of French Equatorial Africa, later on – the Socialist Federal Republic of Yugoslavia, secession of Kosovo from Serbia. Any kind of warfare for military-industrial MNCs represents not only a real profit but also advertisement for new types of armaments, testing of the state-of-the-art weapon samples. It is therefore that with the outbreak of regional armed conflicts the stocks of MNCs, whose arms and equipment are involved therein, see a sharp rise in price.

At the same time, however heightened the interest of MNCs in destabilizing the political and socio-economic situation in the region is, to artificially induce a conflict (or to conduce to its fueling) may be possible only under specific conditions, among those – the presence of profound contradictions within the targeted society.

An example of a developing country, where the promotion of interests of MNCs through an internal conflict, is the Democratic Republic of the Congo. It is one of the most resource-rich countries of the Central Africa. Its territory boasts considerable deposits of copper, cobalt, cadmium, bauxites, iron ore, diamonds, gold, silver, oil, zinc, manganese, tin, uranium (with over half of world's discovered reserves). Apart from this, DR Congo possesses 80% of an entire global reserve of a valuable ore columbite–tantalite (coltan) which proves to be highly essential for the digital development of economy. The struggle for control over these resources has turned the country in the battleground: from 1996 to 2002 the First and the Second Congo War had been raging, in the course of which over a dozen of armed groups backed by nine countries (among them the key role belonging to USA, France and China) have been eradicating each other and the civilian population. During this period approximately 5,4 million people have perished. Even today the echo of these conflicts rolls over the country during the armed skirmishes regularly occurring between armed groups present in the country and acts of violence against the civilian population.

In November 2004 several Belgian non-governmental organizations filed a complaint against Cogecom and three other Belgian companies accusing them of illegal exploitation of subsoil resources in DR Congo and trade in coltan [19]. The claim stated that coltan was being imported into Belgium from the DRC through Rwanda and Cogecom directly participated in funding the RCD-Goma rebel movement which secured the patronage for such supplies. The country also has an army of 20 000 mercenaries operating under the guidance of the pastor of the Rwandan Seventh-day Adventist Church covertly funded by the American-based Adastra Minerals. In 2018, having obtained armaments from Rwanda, this armed group drove away the Angolan Armed Forces, which protected Chinese interests, as well as government troops of the DRC. The reason for the conflict – a \$ 9 billion contract with China for development of coltan deposits.

The scheme of extracting coltan is inextricably linked with the supply of arms into the country. For a decade the UN has been attempting to impose an embargo on arms supplies to the region however it still remains without result. At the same time, living standards within the country are extremely low. Extraction of coltan and other valuable ores is in fact conducted by manual labor, with miners being exposed to radiation during the works. As a consequence, almost a half of newborns in Congolese families are dead-born. 70% of country's population are members of legal or illegal armed groups, other are working in extraction of coltan and other precious minerals for \$ 1-2 per day. Over 8 million people in the country are starving. The life of people is worth nothing: every day at least one person dies here due to police abuse and two more at the hands of militants. One of the highest violent death rates was recorded in March-May 2018 – 251 people perished, with 62 of them – children. Every year refugee flows into neighboring countries are increasing with another approximately 4 million people being internal migrants. According to the expert data, in 2030 the DRC will occupy the first position

in the world by the poverty rate of the population while remaining one of the most resource-rich countries in the world [19].

According to Ukrainian researchers A.Sydorov, N.Fisunenکو, and T.Alyoshina, the effective leverages for counteracting disruptive behavior of MNCs, as well as for leveling down the advantages they possess in contrast to government structures, are as follows:

1. *Presence of mature political elites and / or a strong leader of the nation in the country.* The main requirement – their readiness and ability to secure national interests.

2. *Creating national MNCs – one of the key steps towards national economic security.* The experience of other actively developing countries – China, Mexico, India, Indonesia and others – affirms: national capital will be able to sustain competition with MNCs only under the condition of its self-structuring into powerful financial and industrial associations, similar to their international counterparts, and being capable of conducting active foreign economic policy.

3. *Effective legal framework.* The primary goal of regulating the activities of MNCs at the national level is to subordinate the activities of its branches and subsidiaries to the national legislation of the host country. The main tool of such regulation is the investment legislation of the country aimed at determining the legal status of the foreign investor: private individual or business entity. The more detailed such definition is, the more effective the impact of MNCs on the national economy will be. There exists an urgent necessity for adopting at the international level of such regulatory documents that would address the entire scope of activity of MNCs irrespective of the number of countries that host these MNCs [16].

There exists an urgent necessity for adopting at the international level of such regulatory documents that would address the entire scope of activity of MNCs irrespective of the number of countries that host these MNCs. It is imperative to establish stringent and clear extent of liability of an MNCs as an integral international entity for any violations of national legislations. Effectiveness of such a regulatory document would depend on its legal form: it must be legally binding or combine binding norms and recommendations.

Conclusions. Thus, TNCs have significant political power and strive to further increase it. Due to their position in the political-economic sphere and resources (financial, managerial, intellectual), TNCs have the potential to exercise structural, instrumental, institutional and discursive types of power. At the same time, their active participation in the daily lives of citizens can contribute to the conflict between civic and user identities, and this negatively affects trust in government institutions and calls into question their legitimacy. It is important to note that TNCs operating in the military-industrial sector of the world economy are interested in inciting armed conflicts in developing countries rich in natural resources. An example of this is the situation in DR Congo and other «hot spots» of the world.

In the modern world, relations between the state and TNCs are changing towards greater independence of corporations, even to the point of their “taking over” a number of public functions, especially in developing countries. Although the state still has the resources and capacity to limit the actions of corporations and maintain its position as the main political entity, the activities of modern TNCs can lead to change and revision of the main categories of politics and the state, including the concepts of power, legitimacy and state sovereignty.

Further research into this issue in three directions is promising. Firstly, it is advisable to consider the influence of TNCs on state sovereignty using the example of developed countries. Secondly, it is necessary to study in more detail the resources and capabilities of military-industrial TNCs to influence the socio-political situation in developing and underdeveloped countries. Thirdly, it is necessary to assess the role of TNCs in the context of increasing geopolitical competition, growing global threats, such as pandemics and armed conflicts, as well as the development of artificial intelligence technologies. These trends are already causing debate in the scientific community and require further in-depth study.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article provides a comprehensive analysis of the role of modern transnational companies (TNCs) in the formation of the socio-economic and geopolitical reality of the information society. The ability of TNCs to quickly convert significant material, financial, legal, and organizational resources into political influence in order to obtain excess profits actualizes the need to study the degree of their influence on traditional institutions of state power. On the one hand, we are talking about the analysis of the TNC phenomenon in the categorical plane of power, legitimacy and sovereignty, taking into account the systemic interaction of corporations with other actors and society as a whole. On the other hand, despite all the economic and social prospects for development that open up for the state, thanks to the entry of TNCs into the national economic and legal space, the question arises about the danger they can pose to the state sovereignty of the host countries.

Thus, determining the degree of the threat of TNCs to the state sovereignty of developing countries, as well as the conditions for preserving state legal capacity under the influence of TNCs on the political and socio-economic situation in the country, is an urgent direction of research of an interdisciplinary nature, in which it will be appropriate to combine the methodological tools of theory and history state and law, economics, political science, etc. Given the identified research priorities, the purpose of the article is to analyze the consequences of the activities of TNCs for the national sovereignty of developing countries, as well as to find and justify the necessary conditions for its preservation.

Keywords: TNC, state sovereignty, globalization, developing countries.