ISSN 2764-6068

IJ LCW

International Journal of

Law in Changing World

Volume 2 Issue 2 December 2023

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International Journal of Law in Changing World

Volume 2 Issue 2 (2023) ISSN 2764-6068

International Journal of Law in Changing World

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Chief Editors' Note

The International Journal of Law in Changing World: Introduction to the Second Issue of 2023

Dear Readers,

We proudly present the Second Issue of the International Journal of Law in Changing World – IJLCW – volume two.

We are delighted that this Issue is an example of international knowledge exchange. Authors worldwide presented their papers on current legal problems in South Africa, Russia, India, Greece, Spain, Algeria, and Iran.

Our authors gave the Journal the honor of publishing highly relevant research papers devoted to different aspects of law and regulations that the modern world faces.

This Issue presents the paper "European private international law and national civil codes: interactions and Synergies." Professor Martín Jesús Urrea Salazar (Spain) explores the role of global law in the current legal reality and the importance of autonomy of the will in regulating international legal relationships.

The following paper is entitled "Employment Implications for naturalized South African citizens" by William Manga Mokofe (South Africa). Considering the historical context, the author provides insights into the challenges and opportunities these citizens face in the labor market.

"The human right to safe drinking water - a study of the prospects for the accession of Arab countries to the 1992 Water Convention" by Laidani Mohammed and Djairene Aissa (Algeria) devoted to identifying the international recognition of the human right to safe and safe drinking water, as well as the 1992 Water Convention, which works to protect and use transboundary watercourses and international lakes and their relationship to sustainable development and environmental protection, as well as the prospects and consequences of the accession of Arab countries to this Convention to ensure water security.

The paper "The right to explanation in the processing of personal data with the use of AI systems" by Professor Eleftheria (Ria) Papadimitriou (Greece) refers to the legal basis of a new, independent, sui generis right to explanation that data subjects are afforded when automated decision-making processing takes place.

"Artificial intelligence and its role in the development of the future of arbitration" by Mohammad Ali Solhchi and Faraz Baghbanno (Iran) studies ethical considerations such as privacy and bias that must be taken into account to ensure that AI does not compromise fairness or jeopardize confidentiality in arbitration proceedings.

Published December 2023

The paper "Artificial Intelligence and National Security: perspective of the Global South" by Kushal Srivastava (India) aims to depict a descriptive approach to the perspective of the global South, and it analyses the entire situation of AI and its prospective future in the cyber security and national security of the connected nations.

Another paper, "The Doctrine of Beneficial Ownership in Russian Law" by Tikhon Podshivalov (Russia), addresses the problems of differentiation of the spheres of application of doctrine, the piercing corporate veils and the doctrine of beneficial ownership. Both of these doctrines are grounds to challenge corporate decisions.

The Journal also contains the paper "The right to development: BRICS' understanding of the human rights," written by Danil Karimov and Moritz Hieronimy (China), which analyses one of the relatively new human rights - the right to development. The authors conclude that implementing and applying this right in international law is necessary to develop society and social relations further.

We truly hope you will find this Issue valuable and informative because that is the mission of the Journal – to find solutions to crucial legal issues that arise from the forever-changing world.

We want to thank our authors, reviewers and editorial team members for their excellent job, support, and efforts to make the Second Issue possible. We hope the Journal can inspire academics and researchers to keep expanding their horizons and reducing the research distance between countries.

Sincerely yours

Editors-in-Chief

Elizaveta Gromova and Daniel Brantes Ferreira

Published December 2023

International Journal of Law in Changing World

Volume 2 Issue 2 (2023) ISSN 2764-6068

Research article
JNL: https://ijlcw.emnuvens.com.br/revista
DOI: https://doi.org/10.54934/ijlcw.v2i2.62

EUROPEAN PRIVATE INTERNATIONAL LAW AND NATIONAL CIVIL CODES: INTERACTIONS AND SYNERGIES

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Article Information:

Received
August 1, 2023
Approved
August 16, 2023
Accepted
December 9, 2023
Published
December 28, 2023

Keywords:

private international law,
conflict of laws,
civil code,
European Union,
Dilemma of international exchange,
global law

ABSTRACT

The objective of this work is to emphasize the role of global law in the current legal reality and the importance of autonomy of the will in regulating international legal relationships. The study starts from the existence of a legally fragmented world and the differentiation of three levels of regulation of legal relationships with a foreign element. One block of universal regulation, consisting of international treaties and rules of uniform law, another regional level based on the existence of regional integration organizations with their own regulations, and finally a diminishing state level, formed by national legal systems. Whether in a phase of globalization or post-globalization, the juridical reality of international trade and legal relations, in general, undergo significant changes that are worth analyzing. The perspective of global law allows us to contemplate this juridical reality from an eminently practical standpoint, which places the autonomy of will as the protagonist of the legal framework for international contracting, and points to an increasingly significant role in the field of personal and family legal relations.

FOR CITATION:

Urrea Salazar, M. J. (2023). European Private International Law and National Civil Codes: Interactions and Synergies. International Journal of Law in Changing World, 2 (2), 3-15. DOI: https://doi.org/10.54934/ijlcw.v2i2.62

1. INTRODUCTION

The explicit connection between Private International Law (PIL) and national civil codes proposed in this work requires, first of all, to focus on its subject and explain the reason for the chosen title. Why European Private International Law and civil codes, and where do the interactions and synergies lie? Well, we find rules of Private International Law in all legal systems, and these can have either a national or international origin.

In the case of Spain, the sources of PIL are of two types: a) on one hand, rules elaborated by the Spanish legislator following the mechanisms provided in its legal system (referred to as domestic PIL); and b) on the other hand, rules contained in Treaties and International Conventions signed by Spain (conventional PIL rules) [2].

Furthermore, Spain, like the other 27 Member States, is part of an International Integration Organization, the European Union (EU). Therefore, European Union Law is not "foreign law" in any of the States that make up the Union. When a Spanish judge applies EU Law, they are applying the law in force in and for Spain. The CJEU, in the famous Costa v. ENEL judgment of July 15, 1964, expressly refers to the fact that "EU law is integrated into the legal system of the Member States."[1]

Consequently, the legal system of the Member States is now composed of two legal frameworks: the national legal system and the legal system of the European Union. Moreover, due to article 93 of the Spanish Constitution, matters regulated by rules derived from the European Union have become the competence of EU Law. In these matters, the European Union legislates with complete freedom, so that in case of a normative collision between this law and one elaborated by the national legislator, EU law prevails. Therefore, EU Law enjoys primacy over the national production law, as clearly defined by the case law of the Court of Justice of the European Union.

[1] Indeed, the Court of Justice of the European Union defined from the beginning of the integration process the features and nature of the Community legal system. Notable in this regard are the judgments rendered in the cases Van Gend en Loos/Administratie der Belastingen, case 26/62 (Judgment of 5th February 1963), and Costa/Enel, case 6/64 (Judgment of the CJEU of 15th July 1964). The following are characteristics of this legal system: a) it is a set of international rules whose recipients are both the Member States and their nationals; b) this legal system consists of rules of primary or original law and rules of secondary or derivative law; c) by virtue of the "principle of primacy," it prevails over national jurisdictions; d) it is an autonomous legal system with respect to the domestic law of the Member States and also independent from international law (Urrea Salazar, 2021).

https://doi.org/10.54934/ijlcw.v2i2.62

One might wonder where the Spanish Civil Code and the civil codes of the other Member States fit into this framework. This is because, in many instances, I would say the majority, and it is the case in Spain, domestic Private International Law rules are contained within the civil code[2]. For example, which national law will apply to determine filiation or to determine the legal capacity of a person. In Spain, article 9.1 of the Civil Code expressly states that "The personal law corresponding to natural persons is determined by their nationality. And that law governs capacity."

In German Law, these rules are mainly found in articles 3 to 46 of the BGB (German Civil Code), and in French Law, in articles 311-14 to 370-12 of the code civil. In the case of Peru, excluding the rules contained in Treaties and Conventions, these rules are regulated in articles 2046 to 2111 of Book X of the civil code.

On the other hand, the civil code will be applicable to the merits of the case by reference of the conflict rule itself. Indeed, the legal consequence of the conflict rule is the determination of an applicable state law. And it is possible that within that state law, the civil code may be applicable.

2. THE ROLE OF PRIVATE INTERNATIONAL LAW IN REGULATING LEGAL RELATIONS IN THE POST-GLOBALIZATION ERA

Therefore, the subject at hand equally demands an analysis of the role of Private International Law in the international legal context, as a means to overcome the dilemma of international exchange [6] [7]. Notably, the birth of this discipline during the late Middle Ages, by the jurist of the Bolognese School, Francesco di Accursio (1182-1263), is linked to the activities of merchants and the existence of a global market. The rule *Statutum non ligat nisi subditos*, devised by the jurist, is believed to mark the birth of PIL. The crossing of borders should not entail a change in the applicable law to facilitate international trade. That is the essence of the maxim, which rested on the application of the law of the country of origin of the person, and today, we could translate it into the need to ensure the continuity of legal relations in space. This continues to be the role of Private International Law in the present day – to overcome the

[2] Indeed, after a long and complex codification process in Spain, motivated by its regional peculiarities, the Civil Code of 1889 came into existence, almost a hundred years after its inspiring model, the French Civil Code, and following several unsuccessful attempts at codification. Regarding the provisions of Private International Law, its Articles 8 to 11 contained outdated regulations that were distant from European trends in the field. These provisions reproduced the statutary scheme with some influence from the Piedmontese Code of 1865, promulgated in Italy during the reign of Victor Emmanuel II. The reform of the preliminary title of the Spanish Civil Code in 1974 brought a significant improvement to the regulation of conflict of laws. This regulation, adapted to the specificity of European Union law, and largely replaced by European Regulations, still endures to the present day [4].

https://doi.org/10.54934/ijlcw.v2i2.62

dilemma of international exchange, guaranteeing the continuity of legal relations in a legally fragmented world.

In exchange relations between parties, from a game theory perspective, the option to breach a contract is more efficient in the Pareto sense. The State, through Law and the Judiciary, provides the necessary legal certainty to the parties, ensuring that in case of a potential breach, the aggrieved party is duly satisfied, thereby counterbalancing the greater efficiency of the breaching option.

However, in the realm of international trade, the situation becomes even more complex due to the diversity of national legislations and judicial systems worldwide. Overcoming the dilemma of international exchange, therefore, requires the contribution of PIL rules. The rules of international civil procedure and those concerning applicable law provide the necessary legal certainty in international trade. The rules of international jurisdiction allow parties to determine before which judicial authorities they can bring their claims, while conflict of laws rules determine which rules of substantive law will apply to resolve the dispute. Both sectors are complemented by the realm of recognition and enforcement, which prevents court decisions from becoming ineffective in states different from the one where they were issued. The underlying idea here is that the atypical nature of contracts in international trade is sought after by the very operators who opt for self-regulation [10].

Indeed, in international trade, we encounter a series of contracts, such as leasing, factoring, or forfaiting, characterized by their atypical nature. They are either not regulated or only minimally regulated in national laws.

And it is a characteristic of international trade the limited regulation of private contractual activity, with the exception of international sales of goods, given that it is one of the most common transactions in the international commercial sphere and is governed by an international instrument of uniform law, the United Nations Convention on Contracts for the International Sale of Goods (April 11, 1980, in force since January 1, 1988) [2], [3] [1]. We can assert that the remaining contracts are sparsely regulated, and in a heterogeneous manner, in domestic legal systems.

In the European Union, taking the example of international franchise agreements, a deficient penetration of international franchises has been observed, resulting in a loss of commercial opportunities.

https://doi.org/10.54934/ijlcw.v2i2.62

It has been mentioned by European institutions themselves that the lack of regulatory framework may be at the core of the problem.

Despite this, contracts are not entirely devoid of regulation; rather, they are subject to the general contract regulations contained in each national law (whether commercial or civil law).

We can assert, then, that the atypical nature is an intrinsic characteristic of international contracts. However, these are not "novel" contracts newly articulated by merchants. Leasing, lease-back, or franchising, among others, have been in circulation since the late 19th century in the United States, from where they spread to the Old Continent through the phenomenon known as the "Americanization of commercial law," referring to how American commercial practice became the driving force behind the creation of legal-commercial institutions in the Old Continent [8].

We might ask, then, why state, regional, or international legislators have not addressed their material regulation. This is perhaps a speculative reflection that I venture to propose: it has not been regulated because it would not benefit international commercial traffic in any way. Operators in trade do not long for detailed regulation of international contracts. They precisely seek "self-regulation" as the optimal solution. Therefore, what they seek is to incorporate the "rules of the game" within the realm of autonomy of the will. When discussing autonomy of the will in international trade, we must distinguish between conflictual autonomy and material autonomy. The former allows for choosing the applicable state law to the contract ("no contract without law"), while the latter allows for incorporating the material regulation of the contract.

It is precisely this tendency towards self-regulation as the optimal solution in international trade that places us in the realm of global law. This brings us to the second basic idea: the preeminence of Global Law in a globalized, or perhaps already "post-globalized," world. What matters, from this perspective, is not the origin of the norms, i.e., whether they come from the State, institutions of an international organization, or the parties themselves, but their application to specific cases and their ability to regulate particular legal relationships. In this sense, a legal norm contained in a law can be just as valuable as a covenant or commitment recorded in a contract. This is true even though the consequences of their non-compliance may differ in one or the other case (ranging from the nullity or voidability of a contract to the application of a penalty). With this approach, the extraordinary value attributed to autonomy of the will in international trade becomes easily understandable.

https://doi.org/10.54934/ijlcw.v2i2.62

We can, therefore, affirm that in the globalization of law, what matters are the processes of transmission, circulation, and penetration of norms into legal systems. This places the issue on a methodological level, rather than focusing on the existence of a unified or uniform law or the pursuit of a set of common principles for legal systems. We could conclude, then, that in the current reality, the foundations of legal life transcend States, which is also manifested in a loss of control in the creation of law [10]. In this sense, a group of authors defends the central role of judges in this "new" global legal reality, turning them into enforcers of internationalization, as they do not see the law as the primary mechanism for social regulation. They reject that the articulation of norms occurs in terms of hierarchy, in favor of a heterogeneous normative space.

In any case, this approach is not contradictory to the success achieved by the Vienna Convention of 1980 on Contracts for the International Sale of Goods, which is considered a paradigm of uniform regulation of international contracts. Indeed, the broad scope of the text (with 95 State parties currently) and the frequency of this type of operation in international trade contrast with its discretionary nature. Under its article 6, the parties may exclude the application of the Convention or any of its provisions, or even modify its effects. Even if the Convention is applicable, as the litigious situation falls within its scope, there may be no applicable rules in the Convention, and it may be necessary to resort to a national law.

Nevertheless, and this is the third basic idea, in the current state of law, the regulatory intervention of the State cannot be dispensed with. Whether due to the absence of uniform rules regulating international trade or the presence of gaps, even in self-regulation, it becomes necessary to identify the contract under a specific national law. This task falls under Private International Law. Furthermore, it will be necessary to determine the authority responsible for resolving any disputes arising from the contract and, ultimately, to ensure the extraterritorial validity of the judicial decision. That is, it will be necessary to enforce the Judgment obtained in Spain, for example, in Italy or France if the condemned party has assets there. The existence of a legally fragmented world, with a plurality of judicial bodies, serves as one of the foundations of this branch of law.

These are the three classical areas of Private International Law: international jurisdiction, applicable law, and recognition and enforcement of judicial decisions. And the European legislator has chosen the path of unification of Private International Law.

3. THE REGULATION OF INTERNATIONAL PRIVATE SITUATIONS

https://doi.org/10.54934/ijlcw.v2i2.62

As we have indicated, international private situations require specific regulation, and Private International Law provides solutions to the regulatory challenges of such situations through three techniques [5] [6] [7]:

A) Indirect regulation techniques: These are conflict of laws rules, as mentioned earlier. Within Spain and the European Union, we have a series of European Regulations that enjoy primacy and contain uniform Private International Law rules. Perhaps the most prominent is Regulation 593/2008 known as Rome I, which governs conflict of laws in contractual obligations. We also have Regulation 864/2007 of July 11, 2007, concerning the law applicable to non-contractual obligations, known as Rome II. Similarly, Regulation 650/2012 on succession contains conflict of law rules in this area, as does the 2007 Hague Protocol on maintenance obligations, referred to in Article 15 of Regulation 4/2009.

B) Direct regulation techniques: As a second technique, these involve what is known as special substantive rules. These are rules that govern the substance of the matter. Such rules exist in all legal systems but are in the minority compared to conflictual techniques. These special substantive rules can be:

- "Independent," applying irrespective of the conflict of laws rule and the governing law of the country. For instance, Article 29.1 of the Spanish Historical Heritage Law states that: "The movable assets forming part of the Spanish Historical Heritage that are exported without the required authorization under Article 5 of this Law belong to the State. These assets are inalienable and imprescriptible." The rule governs an international private situation and does not refer to the law of any specific country.

- "Dependent," applying only when the conflict of laws rule of the country whose courts are hearing the case leads to the application of the law of the State where the rule is in force. For example, in certain cases, the 1980 Vienna Convention on the International Sale of Goods, which, according to Article 1.1 letter b), applies within its material scope when the relevant conflict of laws rule designates the law of a State where the Convention is in force.

- "Special substantive rules with spatial indicators", applicable only in certain cases connected to the country whose courts are hearing the case. For example, the 1988 Ottawa Convention on International Financial Leasing, which, under Article 3, requires the lessor and the lessee to have their place of business in different States.

https://doi.org/10.54934/ijlcw.v2i2.62

C) The third technique of Private International Law regulation is known as intermediate. This involves extension rules, which extend the application of certain domestic substantive laws to certain international private situations. An example of this type of rule is Article 9.6 II of the Spanish Civil Code, which indicates that the law applicable to the protection of adults will be determined by the law of their habitual residence, but "Spanish law will apply to the adoption of provisional or urgent protection measures."

And what is the usual situation? The coexistence of methods with a predominance of the conflictual-multilateral method. This is the case in most countries, including within the European Union, where the majority approach taken by the European legislator is to regulate through conflict of laws rules.

4. PROOF OF FOREIGN LAW

One last issue related to the subject at hand is the proof of foreign law. This matter is not regulated in European Law and is left to the discretion of individual States. Perhaps because it is linked to the issue of national sovereignty or as an "extension" of the rule lex fori regit processum, which governs procedural acts in all legal systems. In Spain, this rule is formulated in Article 3 of the Civil Procedure Law (LEC), stating:

"With the sole exceptions that may be provided by Treaties and International Conventions, civil proceedings conducted in the national territory shall be governed solely by Spanish procedural rules."

Regardless of the reasons, the regulation of the three basic questions concerning the application of foreign law, namely the need for allegation, the need to prove the content and other aspects relating to foreign law, including the legal framework for such proof and solutions when foreign law is not proven in the process, can be found in Spain in Articles 288 of the Treaty on the Functioning of the European Union (TFEU), 12.6 of the Civil Code, 281.2 of the LEC, and 33 of the Law on International Judicial Cooperation in Civil Matters (LCJIMC).

Articles 288 TFEU and 12.6 of the Civil Code refer to the binding nature of European and Spanish conflict of laws rules. This means that parties cannot disregard what these rules stipulate[3].

[3] Indeed, Article 12.6 of the current Civil Code states that "Courts and authorities shall apply Spanish conflict of law rules ex officio." With less clarity but easily extrapolated to the level of European Private International Law, Article 288 of the TFEU establishes that "To exercise Union competences, the institutions shall adopt regulations, directives, decisions,

https://doi.org/10.54934/ijlcw.v2i2.62

However, the essential regulation of the proof lies in Article 281.2 of the LEC, which deals with general proof in civil proceedings and addresses the need to prove foreign law and the possibility of the court's involvement in such proof. According to paragraph 2 of the aforementioned article:

"Customs and foreign law shall also be subject to proof. Proof of custom shall not be necessary if the parties agree on its existence and content, and its rules do not affect public order. Foreign law must be proven with regard to its content and validity, and the court may use any means of investigation it deems necessary for its application."

On the other hand, Article 33 of the LCJIMC refers to the probative value of evidence provided to establish the content and validity of foreign law, the solution to be followed if the parties are unable to prove foreign law, and the legal framework for the so-called "information on foreign law." The text of the article, titled "Proof of foreign law," is as follows:

1. The proof of the content and validity of foreign law shall be subject to the rules of the Civil Procedure Law and other applicable provisions.

2. Spanish courts shall determine the probative value of the evidence provided to establish the content and validity of foreign law in accordance with the rules of sound judgment.

3. In exceptional cases where the parties have been unable to establish the content and validity of foreign law, Spanish law may be applied.

4. No report or opinion, national or international, on foreign law shall be binding on Spanish courts.

The introduction of Article 33 in Law 29/2015 on international judicial cooperation was considered by some of the doctrine as a step forward in overcoming the optional regime that had been operating in the Spanish conflictual system, according to the jurisprudence of the Supreme Court. This means that the applicable law to any international private situation would be Spanish law, except when two circumstances coincide: a) a conflict of law rule designates foreign law as applicable, and b) one of the parties proves its

recommendations, and opinions" and that "Regulations shall have general application. They shall be binding in their entirety and directly applicable in all Member States." And since the EU's normative action in Private International Law has been predominantly carried out, by the will of the European legislator, through Regulations, European conflict of law rules enjoy the same mandatory character and prevail over the internal conflict of law rules of the Member States.

https://doi.org/10.54934/ijlcw.v2i2.62

content and validity. However, the ambiguity of the norm conditions the subsidiary application of Spanish law to the impossibility of proving the "content and validity of foreign law" by the parties[4].

In summary, the combination of these three provisions leads to the following legal framework:

- Although Article 281.2 of the LEC refers to the proof of facts, foreign law is not a procedural fact but a substantive law and, therefore, is subject to different rules. Consequently, Article 399 of the LEC does not obligate the parties to allege foreign law. Foreign law applies because the European or Spanish conflict of laws rule determines so.

- However, foreign law must be proven. Article 281.2 expressly provides for this requirement, and it falls upon the parties to do so. The principle *iura novit curia* does not apply to the law of other states. The national judge must know their own law but not that of other countries. The general rule is that whenever foreign law must be applied, it must be proven in the specific case. However, this general rule has two exceptions: a) the first is when the court already has accurate knowledge of it, in which case it must be established on record; and b) the second is when a party invokes foreign law not as the *ratio decidendi* to be applied to the merits of the case but as mere support *ad adjuvandum* of their claims or as a legal example.

- Foreign law can be proven at first instance, on appeal, and in cassation. However, as the Supreme Court has stated, for foreign law to be admissible on appeal or cassation, it must have been introduced at the appropriate procedural time, i.e., with the claim and/or in the response to the claim.

- Foreign law comprises all legal norms that apply to the specific case and must be exhaustively proven.

[4] *Vid*. Garcimartín Alférez, F. J., *op. cit*. in footnote 10, who proposes a solution for forensic practice based on a system of presumptions. Thus, if the plaintiff has been unable to prove the foreign law, their mere assertion will suffice, and they will base their claim on Spanish law. It will then be the defendant's responsibility to demonstrate that the plaintiff had means to prove the foreign law. If the defendant remains silent and responds to the claim based on Spanish law, the doctrine of admitted facts will apply, and the judge will apply Spanish law. If the defendant proves that the plaintiff had means to prove the foreign law referred to in the conflict of law rule, the judge will dismiss the claim or decide in accordance with the foreign law proven by the defendant in their response. If the defendant fails to demonstrate that the plaintiff could have proven the foreign law, the judge will rule applying Spanish law. It is easily understandable how challenging this form of proof can be.

https://doi.org/10.54934/ijlcw.v2i2.62

- While the parties are responsible for proving foreign law, the court may intervene: a) optionally, to complete the evidence already provided by the parties, or b) mandatorily, if the parties have tried but failed to provide such evidence.

- What happens in the absence of proof of foreign law? There are three hypotheses accepted by doctrine and jurisprudence: a) the first is the automatic application of the conflict of law rule, resulting in the court proving foreign law and allocating the costs to the party that was supposed to prove it; b) the second possibility is the application of Spanish substantive law; and c) the third is the dismissal of the claim. Of these three options, only the last two are constitutionally admissible, with the dismissal of the claim being the most correct and doctrinally sound option.

The Supreme Court and part of the doctrine, however, have leaned towards providing a substantive response based on Spanish substantive law.

5. CONCLUSIONS

It is not far-fetched to state that the current phase of globalization or interconnection demands a global response from a legal perspective. The treatment of law must adapt to legal relationships that are increasingly interconnected with various legal systems. Overcoming the dilemma of international exchange through rules of private international law, including uniform rules within the European legal space, is a useful solution that must be combined with material regulations of uniform law and an increasing intervention in the field of personal and family relationships.

In this context, the autonomy of the will is called upon to play an increasingly significant role. While it has found ample space in the realm of international trade, supported by the will of self-regulation by operators, the legal reality is also demonstrating its growing relevance in family relationships.

Indeed, in the field of family relationships, the ancestral tension between autonomy of the will and public order is much more evident than in the patrimonial domain. This has not prevented, in recent years and based on international treaties on human rights, its gradual expansion, as demonstrated by European Regulations in private international law governing family relationships (Article 5 of Regulation 1259/2010 on the applicable law to divorce and legal separation, and Articles 22 of Regulations 2016/1103 and 2016/1104 on matrimonial property regimes and the property effects of registered partnerships),

https://doi.org/10.54934/ijlcw.v2i2.62

international codification (Articles 7 and 8 of the Hague Protocol on the Law Applicable to Maintenance Obligations of 2007), and autonomous private international law of some States.

In conclusion, this "self-regulating" role assumed by the autonomy of the will is directly connected to the concept of Global Law. It is a perspective that can be supported by a methodological foundation and that affects the role of the State as the protagonist in creating legal norms. Focusing not so much on the origin of norms as on their application to specific cases, their ability to regulate specific legal relationships, is to adopt a realistic, appropriate, and suitable perspective for regulating private international situations, which are becoming increasingly prevalent in the current reality. The problems that may arise from such regulation will continue to be addressed by private international law, using its techniques and traditional fields of study in most cases.

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ABOUT THIS ARTICLE

Conflict of interests: Author declares no conflicting interests.

International Journal of Law in Changing World

Volume 2 Issue 2 (2023) ISSN 2764-6068

Research article
JNL: https://ijlcw.emnuvens.com.br/revista
DOI: https://doi.org/10.54934/ijlcw.v2i2.64

EMPLOYMENT IMPLICATIONS FOR NATURALIZED SOUTH AFRICAN CITIZENS

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Article Information:

Received
August 15, 2023
Approved
September 7, 2023
Accepted
November 27, 2023
Published
December 28, 2023

Keywords:

naturalized citizens,
employment implications,
South Africa,
inclusivity,
post-apartheid era

ABSTRACT

This article investigates the employment implications for individuals who acquired South African citizenship through naturalization after 27 April 1994, marking the end of apartheid and heralding the post-apartheid era. The study aims to provide insights into the challenges and opportunities faced by these citizens in the labour market, considering the historical context. Employing a qualitative research and historic approach, the study conducts in-depth investigations with naturalized citizens to gain first-hand insights into their experiences and challenges when seeking suitable employment opportunities. The findings of this study reveal the enduring presence of discrimination and difficulties in skills recognition and social integration for naturalized citizens in the labour market. However, the research also highlights significant advantages stemming from their language proficiency and cultural adaptability, which can positively influence their job performance and overall workplace dynamics. Policymakers, employers, and stakeholders can draw valuable insights from this research to design and implement targeted policies and initiatives aimed at fostering a more inclusive and equitable work environment.

FOR CITATION:

Mokofe, W. M. (2023). Employment Implications for Naturalized South African Citizens. International Journal of Law in Changing World, 2 (2), 16-32. DOI: https://doi.org/10.54934/ijlcw.v2i2.64

1. INTRODUCTION

In the wake of the momentous transition to democracy in South Africa on 27 April 1994, citizenship by naturalization became an avenue through which individuals from diverse backgrounds could become bona fide citizens of the nation. This historic event marked the end of apartheid and set the stage for a new era of inclusivity and opportunity. However, as South Africa embraced its newfound democratic values, questions arose regarding the implications of naturalized citizenship on various aspects of society, including the realm of employment.

This article seeks to explore the multifaceted employment implications faced by those individuals who attained South African citizenship through the process of naturalization after the pivotal date of 27 April 1994. With a particular focus on the post-apartheid labour market, we endeavour to uncover the challenges, opportunities, and dynamics that shape the professional journey of these naturalized citizens. Our investigation rests on a foundation of comprehensive analysis, incorporating authoritative data, pertinent legal frameworks, and compelling case studies. By delving into the key factors influencing the employment prospects of this distinctive cohort, we aim to illuminate the intricacies of their integration into the South African workforce.

This study acknowledges that, although South Africa's transformation brought about a more inclusive and egalitarian society, it also introduced unique obstacles for naturalized citizens seeking employment. Discrimination, recognition of foreign qualifications, and social acceptance emerged as crucial areas influencing their career paths. Conversely, this research also recognises the potential advantages that naturalized citizens may possess, such as linguistic diversity and cultural adaptability, fostering a more enriched and cohesive work environment.

The significance of this exploration lies in its relevance to policymakers, employers, and stakeholders alike. By gaining a nuanced understanding of the employment challenges faced by South African citizens granted naturalization post-1994, we can craft informed strategies to cultivate a truly inclusive and equitable workforce – one that values and harnesses the diverse talents of all its citizens to propel the nation towards greater socio-economic growth.

In the following sections, we will delve into the intricacies of the post-apartheid labour market, examining the various aspects that shape the employment landscape for naturalized citizens, and offering insights to pave the way for a more prosperous and harmonious future for all South Africans.

https://doi.org/10.54934/ijlcw.v2i2.64

The post-apartheid labour market in South Africa is a complex landscape shaped by historical legacies, socio-economic disparities, and policy interventions. After the end of apartheid in 1994, the government embarked on a journey to dismantle discriminatory labour practices and create a more inclusive and equitable job market. However, several intricacies continue to influence the employment dynamics for both natural-born citizens and those who acquired South African citizenship through naturalisation. After providing a brief overview of affirmative action and its implications for foreign nationals, we can now delve into a discussion of some of the intricacies related to this topic.

2. AFFIRMATIVE ACTION IMPACT ON NATURALIZED SOUTH AFRICANS

The South African Constitution of 1996 (Constitution) allows for affirmative action based on the following terms:

Equality includes the full and equal enjoyment of all rights and Freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantage by unfair discrimination may be taken (section 9(2) of the Constitution).

Affirmative action is defined as measures designed to ensure that suitably qualified people from designated groups have equal opportunities and are equitably represented in all occupational categories and levels in the workplace of a designated employer. It is a policy designed to permit a measure of discrimination in favour of employees disadvantaged by discrimination in the past (Grogan, 2020). Although the South African Constitution and the Employment Equity Act (EEA) prohibit unfair discrimination, both expressly state that measures designed to remove the effects of past discrimination are not in themselves unfair.

It is worth noting that due to the prevailing socio-economic situation in South Africa, employers frequently encounter a substantial influx of job applicants whenever they advertise new or vacant positions. These job seekers comprise a diverse pool, encompassing both South African citizens and foreign nationals, some of whom are naturalized and others who possess a permanent residence status. This influx can pose significant challenges for employers inefficiently and fairly managing the recruitment process.

In South Africa, when determining which candidate to appoint, employers often, and seek to advance their employment equity targets and to obtain the maximum amount of broad-based black

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economic empowerment (BBBEE) points. Consequently, South African citizens are often favoured over foreign nationals for employment.

The EEA is one piece of legislation which explicitly ascribes rights to South Africans. It applies to "designated groups" who are defined as "black people" women and people with disabilities who are South African citizens or who became citizens by naturalization before 27 April 1994 (or persons who would have been entitled to acquire citizenship by naturalization before that date but who were precluded by apartheid policies).

For purposes of broad-based black economic empowerment, it is generally understood that an individual needs to be African, Coloured, or Indian and also a South African citizen. Black economic empowerment (BEE) allows for an individual to be a South African citizen through birth, descent, or naturalization. However, citizenship through naturalization only applies under limited circumstances. With an increasing number of people immigrating to South Africa (Macrotrends, 2023) and acquiring citizenship, the requirement that an individual be a South African citizen has come under increasing scrutiny. The change has resulted in people who previously qualified as black no longer qualifying as black.

The circumstances in which citizenship by naturalization results in qualification as a Black person were recently amended when the Codes of Good Practice on Broad-Based Black Economic Empowerment were amended in 2015. In terms of the revised Black Economic Empowerment (BEE) Codes, citizenship through naturalization must have occurred (a) before 27 April 1994 (being the date of the commencement of the Constitution of the Republic of South Africa Act of 1993) or (b) on or after 27 April 1994 for anyone who would have been entitled to acquire citizenship by naturalization before that date. The test for whether an individual meets the naturalization criteria is therefore a factual, objective test.

By comparison, under the original BEE Codes, citizenship through naturalization must have occurred (a) before the commencement date of the Constitution or (b) after the commencement date of the Constitution, but who, without the Apartheid policy would have qualified for naturalization before then. The wording "but who, without the Apartheid policy would have qualified for naturalisation before then" was broad enough to allow for a variety of circumstances to be accepted as reasons for an individual not being naturalised before the specified date. The original BEE Act defined a Black person even more widely than the original BEE Codes – a Black person was defined as African, Coloureds, and Indian without any

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link to South African citizenship. The BEE Act has similarly been amended to reflect the same definition as in the revised BEE Codes.

As a result, where an individual is a South African citizen through naturalisation, they may have qualified as Black for BEE purposes under the original BEE Act or BEE Codes but may no longer qualify as Black under the revised BEE Act and BEE Codes. This also has implications for employment and entities in which that person holds shares because that entity will, due to the operation of law and amendment of the definition of a Black person, no longer have the same Black ownership that they had before the amendments.

3. INTRICACIES IN SOUTH AFRICAN EMPLOYMENT DYNAMICS FOR NATURALIZED CITIZENS

Generally, the naturalization of citizenship is a legal process through which an individual who is not born a citizen of a particular country can acquire citizenship and enjoy the same rights and privileges as those who are native-born citizens. It is a way for immigrants or foreign nationals to become full-fledged members of the society they have chosen to make their permanent home. The process of naturalization varies from country to country but typically involves fulfilling certain requirements and meeting specific criteria. Naturalization confers a range of benefits and responsibilities, including the right to work, vote, access to certain government services, and protection from deportation in most cases. Naturalized citizens are also expected to uphold the laws of their new country and fulfil their civic duties. You can obtain South African citizenship through three distinct pathways: birth, descent, and naturalisation. The South African Citizen Act of 1995 (Act 88 of 1995) was revised by the South African Citizenship Amendment Act of 2010 (Act 17 of 2010) which became effective on 1 January 2013.

The post-apartheid labour market in South Africa is a complex landscape shaped by historical legacies, socio-economic disparities, and policy interventions. The legacy of apartheid left a profound impact on the distribution of economic opportunities. After the end of apartheid in 1994, the government embarked on a journey to dismantle discriminatory labour practices and create a more inclusive and equitable job market. However, several intricacies continue to influence the employment dynamics for both natural-born citizens and those who acquired South African citizenship through naturalisation. Some of these intricacies are discussed below.

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Throughout the apartheid regime in South Africa, a deeply troubling historical chapter, certain communities that had long faced systemic disadvantages found themselves subject to a particularly egregious form of discrimination. Among these groups, black South Africans bore the brunt of this exclusionary system. The apartheid regime not only perpetuated racial segregation but also extended its reach into the realm of economic opportunities. Black individuals were deliberately kept away from gaining access to skilled jobs and positions that offered better remuneration and prospects for advancement [6].

This exclusion was not accidental; rather, it was a meticulously crafted and ruthlessly enforced strategy to maintain a hierarchical social structure. The apartheid government enacted laws and policies that explicitly limited the aspirations and potential of black South Africans. These discriminatory measures encompassed every aspect of life, including employment. As a result, individuals from historically disadvantaged backgrounds were systematically denied access to educational and vocational training that would have enabled them to compete on an equal footing with their white counterparts.

The ramifications of this exclusion were far-reaching and multifaceted. Black South Africans faced a perpetuating cycle of limited economic mobility, as they were largely confined to low-skilled and poorly paid jobs. The denial of opportunities for career growth further entrenched socio-economic disparities, leaving a lasting impact on generations to come. The struggle for equal rights and the dismantling of apartheid was not just a fight against political segregation but also an endeavour to rectify economic injustices.

In sum, the systematic exclusion of historically disadvantaged groups, particularly black South Africans, from skilled employment and higher-paying roles during the apartheid era stands as a stark reminder of the deep-seated injustices that were perpetuated. This historical context underscores the imperative of ongoing efforts to rectify these injustices and create a more equitable and inclusive society for all.

While efforts have been made to redress these imbalances through affirmative action policies and employment equity initiatives, achieving true equality remains a challenge**.** The labour market faces a persistent issue of skills mismatch [1]. There is often a mismatch between the skills demanded by employers and those possessed by job seekers. This issue affects both citizens and naturalized individuals and can lead to underemployment or unemployment. Many naturalised citizens bring diverse educational backgrounds and work experiences from their countries of origin, but their qualifications may not always

align with the needs of the South African job market. This can lead to underemployment or difficulties in finding suitable positions, despite possessing valuable skills. Further, naturalised citizens, especially those from other African countries, often face discrimination and xenophobia in the workplace (OHCHR, 2022). Stereotypes and prejudices can result in limited opportunities for career advancement, unequal pay, or even job insecurity for these individuals. Further Naturalized individuals who are foreign-born may face challenges related to work permits and legal status. Employers may have certain preferences or biases when hiring individuals from different backgrounds.

The recognition of foreign qualifications can be a bureaucratic challenge, making it difficult for naturalised citizens to have their education and skills recognised by local authorities and potential employers (SAQA, 2021). This can hinder their access to certain professions and industries. South Africa is a linguistically diverse nation with twelve official languages. Naturalized citizens may face communication barriers in the workplace, particularly if their language proficiency does not align with the predominant languages used in their work environments. While social integration is vital for any citizen to feel a sense of belonging and participation in the workforce. Naturalized citizens may encounter challenges in integrating into local social networks, which can impact their access to job opportunities and professional networks.

Further, the labour market in South Africa is characterized by segmentation, where certain sectors or industries are dominated by specific racial or ethnic groups. This segmentation can create barriers for both citizens and naturalized individuals seeking employment in certain sectors. Labour market segmentation refers to the division of the labor market into distinct segments or categories based on various factors such as occupation, industry, skills, and often, race or ethnicity. In the context of South Africa, labour market segmentation has historical roots in the apartheid era, where racial discrimination was institutionalized, leading to significant disparities in employment opportunities for different racial or ethnic groups.

Even after the end of apartheid, the legacy of labour market segmentation persists, as certain sectors or industries continue to be dominated by specific racial or ethnic groups. This creates barriers for individuals from other racial or ethnic backgrounds who seek employment in those sectors. The dominance of certain racial groups in particular industries can be a result of historical privilege, access to education and skills training, social networks, and economic factors.

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To address labour market segmentation, policymakers need to implement comprehensive and inclusive strategies that promote equal access to education and training opportunities for all racial and ethnic groups. Efforts to diversify and integrate the workforce across different sectors can help break down the barriers that perpetuate labour market segmentation. Additionally, promoting fair labour practices, anti-discrimination policies, and affirmative action measures can also play a role in creating a more inclusive and equitable labour market in South Africa.

In addition, the post-apartheid labour market is not immune to global economic trends and fluctuations. Economic downturns can affect job availability, while shifts in international trade and investment can impact the demand for specific skills and industries in South Africa (Allan et al., 2021). Further, disparities between urban and rural areas can create unequal access to employment opportunities. Naturalized citizens settling in rural areas may face limited job prospects compared to their urban counterparts, where industries and services are more concentrated.

In addition, the informal sector plays a substantial role in South Africa's economy, providing employment opportunities for many citizens and naturalized individuals. However, informal jobs often lack job security, social benefits, and other labour protections [5]. The term "informal economy" remains challenging to precisely define, with numerous attempts over the years to articulate a comprehensive and operational definition. In 1993, the Fifteenth International Conference of Labour Statisticians (15th ICLS) took on the task of defining the informal sector.

According to the resolution, the informal sector can be broadly delineated as comprising units involved in the production of goods or services that aim primarily to foster employment opportunities and generate income for individuals. These units typically operate on a small scale and exhibit a low level of organizational complexity, with labour and capital elements of production displaying a limited or non-existent division (ILO, 2018).

Addressing these intricacies requires a multifaceted approach, including continued efforts to eliminate discrimination and xenophobia, enhance skills development and recognition processes, promote inclusive hiring practices, and bridge the urban-rural divide. Moreover, fostering an environment of understanding and appreciation for the diverse contributions of all citizens is crucial in building a united and prosperous post-apartheid South African labour market.

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4. ASPECTS THAT SHAPE THE EMPLOYMENT LANDSCAPE FOR NATURALIZED CITIZENS

Have never seem that before… lies. I have seen it before, but just a few authors worry about this format. Mostly put everything together and then we must fix it somehow.

The unemployment situation in South Africa is a matter of significant concern, characterized by a notably high and persistent rate of joblessness. These socio-economic challenges have far-reaching consequences for the country's democracy. Poverty and inequality undermine the principles of equal opportunity and social justice, and limit citizens' ability to participate fully in democratic processes particularly naturalized citizens.

Since the onset of the Covid-19 pandemic in 2020, South Africa has faced significant challenges in recovering the jobs lost during the initial months of the crisis. As a result, the number of unemployed individuals reached a staggering 2,2 million (Smith, 2021). Although there was a decline in unemployment rates at the beginning of 2022, the country is still struggling to regain pre-pandemic employment levels with an unemployment rate of 32,9% in the first quarter of 2023 Statistics South Africa's "Quarterly Labour Force Survey" (QLFS, 2023) – one of the highest rates globally. This represents a 0.2-percentage point increase compared to the fourth quarter of 2022 and points to ongoing challenges in job creation and employment opportunities (QLFS, 2023).

In addition to the high unemployment rate, there is also a rise in time-related underemployment. Time-related underemployment refers to individuals who are employed but work fewer hours than a specified threshold and are therefore available for additional work. According to Statistics South Africa's QLFS, in the first quarter of 2023, 4,9% of employed persons fell within the category of time-related underemployment. This level is consistent with the underemployment recorded in the pre-COVID-19 period of Q1:2020, with a slight increase of 0,2 percentage points over these years' QLFS. This further underscores the need for effective policies and strategies to promote job creation and address the underutilisation of the workforce.

The employment landscape for naturalised citizens in South Africa is influenced by a wide range of aspects that impact their access to job opportunities, career progression, and overall integration into the workforce. Understanding these various factors is essential for crafting policies and initiatives that

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promote inclusivity and equal opportunities for all citizens. Here are the key aspects shaping the employment landscape for naturalised citizens:

The legal framework governing citizenship and immigration plays a pivotal role in shaping the employment prospects of naturalised citizens. Clarity in citizenship policies, streamlined naturalisation processes, and the recognition of dual citizenship status can provide a more conducive environment for these individuals to participate in the labour market (OECD, 2018). The recognition of foreign qualifications is a critical aspect that affects naturalised citizens' ability to find employment commensurate with their skills and education. Streamlined and transparent processes for evaluating and validating foreign qualifications are essential to ensure their integration into the South African job market.

Additionally, affirmative action and employment equity policies aim to redress historical inequalities and promote representation of previously disadvantaged groups in the workplace are policies that can create more opportunities for marginalised backgrounds, including black South Africans and other African immigrants. Affirmative action and employment equity are two sets of policies aimed at addressing historical inequalities and promoting the representation of previously disadvantaged groups in the workplace (Dupper & Garbers). These policies are often implemented in countries with a history of systemic discrimination and marginalization, such as South Africa, to rectify past injustices and foster diversity and inclusivity in the workforce.

Affirmative action refers to a set of proactive measures taken by employers or governments to ensure that individuals from historically disadvantaged groups have equal access to employment opportunities and are not discriminated against based on their race, ethnicity, gender, or other protected characteristics. The goal is to level the playing field and create a more equitable society.

Employment equity, on the other hand, focuses on specific mechanisms and strategies designed to achieve a representative and diverse workforce. It involves setting targets and goals for the proportional representation of previously disadvantaged groups within organisations, particularly at higher levels of employment. The policies might include initiatives such as preferential recruitment, targeted training programs, and mentorship opportunities for underrepresented groups.

However, it is essential to note that implementing such policies can be complex, and they should be designed and executed carefully to avoid potential reverse discrimination or other unintended consequences. The ultimate goal of affirmative action and employment equity is to create a fair and

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inclusive society where everyone has equal access to opportunities and can contribute to the economy and society's growth regardless of their background.

South Africa's linguistic diversity [12] can present challenges for naturalised citizens, particularly if they are not proficient in one of the dominant languages used in their work environment. Language barriers can affect effective communication and limit career growth in certain industries. While discrimination and xenophobia remain prevalent issues in the labour market [10] affecting naturalized citizens, especially those from other African countries. Addressing these prejudices and fostering a culture of inclusivity and acceptance is crucial for creating a conducive work environment for all citizens.

Social integration is vital for naturalised citizens to build professional networks and access job opportunities. Supportive social environments and community networks can aid their assimilation into the workforce. While the demand for specific skills and industries in the labour market, as well as overall economic conditions, influence job availability for all citizens, including naturalised ones [3]. Economic downturns can exacerbate competition for jobs, impacting naturalised citizens' chances of securing employment.

Further, access to education and skills training can significantly impact naturalised citizens' employability. Adequate provision of educational opportunities and vocational training tailored to their needs can enhance their competitiveness in the job market. For naturalised citizens who were not born in South Africa, migration policies and work permits are essential aspects that determine their eligibility to work and remain in the country. Transparent and efficient migration procedures contribute to a more stable and secure workforce [11].

Recognising and valuing the work experience gained in other countries can positively impact naturalised citizens' career trajectories, allowing them to leverage their skills and expertise in the South African job market (OECD/ILO, 2018). Different industries and sectors may present unique challenges and opportunities for naturalised citizens. Understanding these sector-specific dynamics is crucial for targeted interventions and support.

Addressing these various aspects requires a comprehensive approach that involves collaboration between government agencies, employers, civil society, and the community. By fostering an inclusive environment that recognises and values the contributions of naturalised citizens, South Africa can harness

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the full potential of its diverse workforce, driving economic growth and social cohesion in the post-apartheid era.

5. FOSTERING A PROSPEROUS AND HARMONIOUS FUTURE FOR SOUTH AFRICANS

South Africa held its first democratic elections in 1994, marking a historic moment as citizens from diverse racial backgrounds participated in the electoral process. The transition from the oppressive apartheid regime to democracy was a remarkable achievement, seemingly bringing about a peaceful conclusion to a long period of racial segregation and discrimination (Jahn, 2022). However, it was evident that considerable efforts were still needed to address the deep-rooted socio-economic disparities and challenges that had been exacerbated by decades of apartheid policies.

In pursuit of a more prosperous and harmonious future for all South Africans, including naturalized citizens, the exploration of invaluable insights becomes imperative. As the diverse tapestry of South Africa continues to evolve, so must our collective efforts to pave the way for growth, cohesion, and equitable opportunities. By delving into these insights, we aim to foster an inclusive society that celebrates cultural diversity, embraces unity, and enables each individual to thrive. This journey towards a brighter tomorrow necessitates a collaborative spirit and an unwavering commitment to uplifting every South African, regardless of their origin, towards a shared vision of prosperity and well-being. The insights offered below pave the way for a more prosperous and harmonious future for all South Africans.

The lingering legacy of apartheid continues to loom over South Africa, casting a long shadow that has resulted in profound and persistent socioeconomic challenges, deep divisions, and glaring disparities. Despite the nation's commendable progress in dismantling the formal structures of racial segregation, the scars of the past persist in various aspects of society [9]. These historical injustices have left both South African-born citizens and naturalised citizens grappling with systemic barriers that hinder their access to essential resources, quality education, and equal opportunities. As the country ardently pursues a path towards a more equitable and unified future, confronting these deeply rooted issues becomes an indispensable endeavour in fostering a genuinely inclusive and prosperous society for all its citizens. Only through collective dedication and decisive action can South Africa truly overcome the burdens of its history and embrace a brighter and more harmonious future for every member of its diverse population.

Naturalised citizens often bring diverse skills and qualifications from their countries of origin. Improving the recognition of foreign qualifications and facilitating skills development programs tailored

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to the needs of these individuals can enhance their employability and contribution to the South African workforce [11]. Discrimination and xenophobia can hinder the integration of naturalised citizens into the labour market. Educational campaigns, awareness programs, and stricter measures against workplace discrimination can promote inclusivity and foster a sense of belonging among all citizens (Spatari, 2019). More so, South Africa's linguistic diversity [7] can be an asset for its workforce. Encouraging language training and creating inclusive work environments that respect and value linguistic differences can improve communication and collaboration among naturalised citizens and their local colleagues.

Further, social integration is crucial for creating a sense of community and belonging. Initiatives that facilitate the integration of naturalised citizens into local social networks and promote cultural exchange can strengthen social bonds and break down barriers [2]. While equitable access to education and training is essential for the development of a skilled and competitive workforce. Implementing accessible education programs that cater to the needs of all citizens, regardless of their background, can empower naturalized citizens to pursue diverse career opportunities (Commission, 2023). Employers should embrace inclusive hiring practices that value diversity and consider the unique strengths and experiences of naturalised citizens. Diverse workforces have been shown to drive innovation and foster a more inclusive work culture.

Additionally, a prosperous future for all South Africans depends on sustained economic growth and investment. A prosperous future for all South Africans hinges on the foundation of sustained economic growth and robust investment. Economic growth creates a ripple effect that extends beyond financial metrics, touching every facet of society (United Nations, 2019). As the economy expands, it generates job opportunities, enhances living standards, and increases revenue for essential public services. This growth fosters innovation, encourages entrepreneurship, and fuels technological advancements, positioning the nation on a trajectory of progress.

However, economic growth cannot thrive in isolation; it requires significant investment in various sectors. Investments stimulate infrastructure development, education, healthcare, and research, creating an environment conducive to productivity and competitiveness. A thriving economy attracts both domestic and foreign investors, further propelling growth through capital infusion and knowledge exchange. Ultimately, a nation's prosperity is interwoven with its economic health and investment landscape, as they collectively pave the way for equitable opportunities, improved quality of life, and a brighter future for all South Africans. Creating a favourable business environment, attracting foreign direct investment [8] and supporting local entrepreneurship can generate job opportunities for naturalized citizens and the broader

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workforce. While collaborations between government agencies, non-governmental organisations, and community groups can provide a holistic approach to addressing the challenges faced by naturalized citizens in the labour market. Working together can lead to more effective and sustainable solutions.

Furthermore, the challenge of integrating into social and professional networks adds to the difficulties naturalized citizens in South Africa encounter in the competitive job market. Networking is more than just exchanging business cards; it is a powerful tool that can propel career advancement. When naturalized citizens actively cultivate relationships within their industry, they open doors to referrals and recommendations that can remarkably influence their career trajectory. The presence of advocates within one's network who can confidently vouch for their skills, work ethic, and expertise can fast-track professional growth (Wolover, 2019). These advocates serve as trusted endorsers, showcasing an individual's value to potential employers, clients, or collaborators. This endorsement not only expedites the hiring process but also instils confidence in decision-makers, giving naturalized citizens a competitive edge. By building a network of supporters who champion their abilities, these citizens can overcome initial barriers and ascend the ranks more swiftly, demonstrating the tangible impact of networking on their journey toward success in South Africa's dynamic job landscape.

By focusing on these aspects and implementing proactive policies, South Africa can unlock the full potential of its diverse citizenry. Embracing naturalized citizens as integral members of society and the labour force will contribute to a more prosperous, harmonious, and united future for all South Africans.

6. CONCLUSION

In conclusion, this article has delved into a crucial aspect of South African society by examining the employment implications for individuals who acquired citizenship through naturalization after the historic milestone of 27 April 1994 – the end of apartheid. Through a comprehensive analysis of challenges and opportunities in the labour market, this study has shed light on the complex dynamics these citizens face, considering the historical context. The findings of this research have brought to the forefront some disheartening realities. Discrimination, a remnant of the past, still presents a significant barrier for naturalized citizens seeking employment opportunities. Additionally, the struggle for recognition of their skills and qualifications persists, limiting their access to suitable and fulfilling jobs. Furthermore, the challenge of integrating into social and professional networks adds to the difficulties they encounter in the competitive job market.

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Despite these hurdles, this study also reveals encouraging insights. Language proficiency and cultural adaptability among naturalized citizens emerge as valuable assets in the workforce, offering potential advantages that positively impact job performance and contribute to harmonious workplace interactions.

This research underscores the utmost importance of fostering inclusivity and equity in the workforce. The key to realising the full potential of all citizens, regardless of their citizenship origins, lies in the creation of an environment that embraces diversity and actively combats discrimination.

Policymakers, employers, and stakeholders can leverage the insights gleaned from this study to develop targeted initiatives that prioritize inclusivity. By implementing comprehensive policies that address skills recognition, social integration, and equal opportunities, South Africa can build a stronger and more united society.

The implications of this research extend beyond the labour market. Creating a truly inclusive society goes hand in hand with national progress. As South Africa continues its journey towards a more equitable future, ensuring that naturalized citizens can fully participate in and contribute to the nation's growth is vital. By providing equal access to opportunities and breaking down barriers, South Africa can harness the rich talents and diverse perspectives of its citizens to drive innovation, economic growth, and social cohesion.

In the pursuit of an inclusive and equitable work environment, this article's findings serve as a valuable compass, guiding policymakers, employers, and stakeholders towards sustainable and meaningful change. By acting based on these insights, South Africa can fortify its position as a beacon of progress and unity, where every individual's contribution is celebrated, irrespective of their citizenship history.

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ABOUT THIS ARTICLE

Conflict of interests: Author declares no conflicting interests.

https://doi.org/10.54934/ijlcw.v2i2.64

International Journal of Law in Changing World

Volume 2 Issue 2 (2023) ISSN 2764-6068

Research article
JNL: https://ijlcw.emnuvens.com.br/revista
DOI: https://doi.org/10.54934/ijlcw.v2i2.52

THE HUMAN RIGHT TO SAFE DRINKING WATER: A STUDY OF THE PROSPECTS FOR THE ACCESSION OF ARAB COUNTRIES TO THE 1992 WATER CONVENTION

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Article Information:

Received
July 4, 2023
Approved
July 29, 2023
Accepted
November 27, 2023
Published
December 28, 2023

Keywords:

human right to water,
1992 water convention,
water security,
human rights,
water safety

ABSTRACT

The right to water expresses one of the basic rights enjoyed by the human beings, as it is called for by international conventions and the international community. Countries seek to secure it and ensure its provision to individuals and impose it at the international and regional levels as Arab countries are not immune from ensuring water security for their individuals, and for this reason, they had to unite their initiatives in light of the current challenges and work side by side to recognize this right through their accession to the 1992 Water Convention and adoption of regional agreements that unify different views. The aim of this research paper is to identify the international recognition of the human right to safe and safe drinking water, as well as the 1992 Water Convention, and their relationship to sustainable development and environmental protection, as well as the prospects and consequences of the accession of Arab countries to this Convention in order to ensure water security for their members.

FOR CITATION:

Mohammed, L., & Aissa, D. (2023). The Human Right to Safe Drinking Water: A Study of the Prospects for the Accession of Arab Countries to the 1992 Water Convention. International Journal of Law in Changing World, 2 (2), 33-42. DOI: https://doi.org/10.54934/ijlcw.v2i2.52

1. INTRODUCTION

Water is one of the most important natural resources, as it is the main engine of life before it is a vital and strategic resource, in addition to its great importance in achieving sustainable water and environmental safety, and with a geographical look at the map of the Arab countries, we find that it is one of the most The impact of the limited water and the increase in water on it, especially since the nature of the Arab region is generally characterized by a mild climate and a semi-desert climate, as it saves only a little fresh water Therefore, the accession of the Arab States to the 1992 Water Convention, after its amendment in 2003, which allows the accession of States Members of the United Nations, has achieved that the Arab States ensure water security for their peoples and also work to protect their natural environment from pollution and from all environmental dangers and problems and even to achieve human security and food security.

The aim of this research paper is to identify the international recognition of the human right to safe and safe drinking water, as well as the 1992 Water Convention, which works to protect and use transboundary watercourses and international lakes and their relationship to sustainable development and environmental protection, as well as the prospects and consequences of the accession of Arab countries to this Convention in order to ensure water security for their members.

He responded to address this topic, which imposed the descriptive approach, as he addressed the human right to access safe drinking water, showed the relationship of the Water Convention to sustainable development and mentioned the effects resulting from the accession of Arab countries to the 1992 Water Convention.

In view of the right to water and as one of the basic human rights that the international community is working to guarantee to all individuals, the Arab States are obliged, like other countries in the world, to protect this right and its continuation for their peoples, and in order to work to enshrine this right, the importance of raising the following problem arises: How sufficient is the Arab States' accession to the 1992 Water Convention in guaranteeing the right of their peoples to safe and safe drinking water?

In response to the problem at hand and taking note of the issue from several different aspects, we adopted the following plan:

https://doi.org/10.54934/ijlcw.v2i2.52

2. INTERNATIONAL RECOGNITION OF THE RIGHT TO WATER

Although water is not explicitly recognized as an independent human right in international treaties, international human rights law has specific obligations with regard to access to safe drinking water, requiring States to ensure that everyone has access to adequate safe drinking water for personal and personal use [5] [12]. These obligations also require States to progressively ensure access to adequate sanitation as an essential element of human dignity and privacy, and for States to protect the quality of drinking water supplies and resources.

2.1 Right to water at the United Nations

Agenda 21, adopted at the UN conference on environment and development in 1992, Referred to a number of plans of action concerning the right to safe drinking water and sanitation as human rights, and in the programme of action of the 1994 international conference on sustainable development that all persons have the right to an adequate standard of living for themselves and their families, Including adequate Food, Clothing, Housing, Water and sanitation, and the habitat agenda adopted by the United Nations conference on human settlements (habitat II) in 1996 in turkey also recognized water and sanitation as part of the right to an adequate standard of living.

In 2002, the UN Committee on Economic, Social and Cultural Rights adopted General Comment No. 15 on the right to water, which states: "The right of everyone to an adequate, safe, acceptable and accessible quantity of water for personal and domestic purposes".

In 2006, the Sub-Commission on the promotion and Protection of Human Rights adopted the Guiding Principles for the Implementation of the Right to Drinking Water and Sanitation, and UNDP emphasized that the starting point for action on water and sanitation must demonstrate that the right to water is a fundamental human right.

It should be recalled that in 2008, the Human Rights Council, in its guarantee and role in recognizing the human right to water, created the mandate of the independent expert on human rights obligations related to access to safe drinking water and sanitation in 2008 to help clarify the scope of the United Nations obligations to protect and guarantee this right.

https://doi.org/10.54934/ijlcw.v2i2.52

In September 2010, the Human Rights Council affirmed that the human right to safe drinking water and sanitation derives from the right to an adequate standard of living and is linked to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.

In July 2010, the United Nations General Assembly recognized the right to safe drinking water and safe and clean sanitation as a fundamental human right to the full enjoyment of life and the right to exercise all the fundamental rights of the human being [3] [4].

Former UN Secretary-General Kofi Annan also acknowledged the right to water: "Access to safe water is a fundamental human need and therefore a fundamental human right, and upholding the human right to water is an end in itself and a means to advance more comprehensive rights enshrined in the Universal Declaration of Human Rights, and other legally binding documents, including the rights to water, education, health and adequate housing."[1]

2.2. Territorial recognition of the right to water

Although the human right to water has also been adequately protected within the framework of regional systems such as the African, Arab, European, American and Asian systems, which have recognized it and stipulated it in the conventions they have adopted:

With regard to the African system, the 1990 African Charter on the Rights and Welfare of the Child and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa set out explicit human rights commitments related to access to safe drinking water and sanitation.

Under the American system, the Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights of 1988 (Article 11/01) stipulates that everyone has the right to live in a healthy environment and to basic public services, including the right to safe drinking water and cleanliness.

Article 39 of the 2004 Arab Charter on Human Rights also recognizes the right of everyone to the enjoyment of the highest attainable standard of health, towards which States should work to provide basic food, clean drinking water for all and sound sanitation systems.

As for the European system, the 1999 London Protocol on Water and Health to the 1992 Water Convention stipulates that all States parties to the Protocol shall take all appropriate measures to provide access to drinking water and sanitation and to protect water resources used as sources of drinking water

https://doi.org/10.54934/ijlcw.v2i2.52

from pollution. Emphasis was placed on the sustainable use and protection of water for present and future generations, as well as access to information and public participation in water and health decision-making, and the European Committee of Social Rights has recognized, inter alia [9] [6], that the right to adequate housing enshrined in Article 31 of the revised European Social Charter includes specific obligations with regard to access to Access to safe drinking water and sanitation.

The Abuja Declaration adopted at the first Africa-South America Summit in 2006, where Heads of State and Government declared that they would promote the right of their citizens to clean and safe water and sanitation within each State.

The 2008 agreement of leaders of the Asia-Pacific region, recognizing the right of people to clean drinking water and sanitation as a fundamental human right and an essential aspect of human security, although not legally binding, reflects a consensus and a political statement of intent on the importance of recognizing and realizing the right to water.

2.3 Right to water in international organizations

The press announcement issued by the World Health Organization (WHO) on 27 November 2002 that the human right to water is a fundamental right to be able to live in a healthy environment and environment, which is the prerequisite for the realization of all other rights, was included as a result of the interpretation given by the United Nations Committee on Economic, Social and Cultural Rights of the provisions of the International Covenant on Economic, The 145 States that have ratified the ICCPR are obliged to progressively ensure access to safe drinking water that is fair and non-discriminatory.

In 2017, the World Health Organization issued what is known as the Drinking Water Quality Guidelines, which stated in this document that water is essential for life and must be available to all people, and these guidelines say that improving better access to safe drinking water can translate into significant benefits for health, so all efforts must be focused to reach safe drinking water to the maximum extent that guarantees this right [3] [7].

3. THE IMPORTANCE OF JOINING THE 1992 WATER CONVENTION

The 1992 Water Convention is in line with the United Nations Action Plan for Sustainable Development for 2030, and therefore most of what is stated in this plan is consistent and shared with the provisions of the 1992 Water Convention in achieving common water security, and therefore the concept

https://doi.org/10.54934/ijlcw.v2i2.52

of this agreement has been linked to sustainable development, and we also touched on the importance of Arab countries joining this Convention in order to protect the right to water for their peoples.

3.1. Definition of the 1992 Water Convention and its relationship to sustainable development

What is the 1992 Water Convention?

The Water Convention, known as the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, whose secretariat is hosted by the United Nations Economic Commission for Europe (UNECE), is a mechanism for promoting national measures and international cooperation for the environmentally sound management and protection of transboundary surface and groundwaters, having been originally adopted as a regional treaty, which is today a global [2] instrument. The Convention was held in Helsinki, Finland in 1992 and entered into force in 1996, in 2003 the parties to this Convention agreed to amend the Treaty to enable any Member State of the United Nations to accede to this instrument, and in 2016 the Convention officially became a legal framework for cooperation on transboundary waters available to all Member States.

The 1992 Water Convention is an agreement that does not replace specific bilateral and multilateral agreements on transboundary basins and aquifers, but rather supports the establishment, implementation and further development of such agreements and lays out the principles that form the basis for countries working together to protect and sustainably use their shared freshwater resources.

This Convention is based on 03 main pillars: prevention, control and reduction of transboundary impacts, ensuring reasonable and equitable use of water, cooperation through joint agreements and bodies, development of joint programmes and collective action plans and measures.

The relationship of the 1992 Water Convention to sustainable development

The Water Convention is an important tool for working towards achieving the 2030 Agenda for Sustainable Development and the Sustainable Development Goals that the United Nations is working on, and with regard to cooperation in the field of transboundary waters, the Water Convention seeks to facilitate the achievement of Goal 06 (the right to clean water and sanitation), through its integrated and intersectoral approach, and in terms of its interest in preventing and reducing water pollution, as well as maintaining the balance of the ecosystem.

Because 60% of the world's freshwater flows into transboundary basins between countries, this agreement aims primarily to provide the legal framework and cooperation mechanisms to ensure the

https://doi.org/10.54934/ijlcw.v2i2.52

availability of adequate quantities of clean water in a timely manner for humans, economies and ecosystems in general, and this agreement also directly supports the implementation of SDG 05 and 06, which requires all countries, including Arab countries, to work by 2030 on the implementation of management, Work under the Water Convention is therefore relevant to supporting the achievement of other sustainable development goals such as: Target 11/5 to reduce the impact of disasters such as water-related disasters, Goal 13 to include climate action through the activities of the Convention on Water and Climate Change, and Goal 16 to promote the creation of In addition to Goal 17 of establishing partnerships to achieve the Goals through the Convention's activities on integrated water resources management, and partnerships aimed at establishing cooperation in the field of transboundary water [2] [9].

3.2 Effects of the accession of the Arab States to the 1992 Water Convention

Before we include the effects of the accession of Arab countries to the Water Convention, we must first ask the following question: What do Arab countries achieve as a result of their accession to the 1992 Water Convention?

The Arab States that become parties to the 1992 Water Convention shall:

a. The accession of Arab States to this Convention serves as an indication to other countries, international organizations, financial institutions, and other actors of their willingness to cooperate on the basis of the rules and standards of the Convention, and through their accession they also enhance their balance of respect among other actors in the international community.

b. Arab countries that will join this agreement can also contribute and participate in the institutional structure and decision-making mechanism of the Water Convention, leading to the enhancement of the implementation of the Convention and its further development.

The accession of the Arab States to the 1992 Water Convention also achieves:

Support the achievement of the SDGs / Join a solid global legal framework / Access to an advanced institutional platform / Improve transboundary water management / Gain recognition from the international community / Contribute to regional and international peace and security / Access to financial aid and cooperation from donors / Receive support from the community of Parties / Receive advice and share experiences in various fields / Benefit from the support of bilateral cooperation and cooperation at the level of water basins [10] [11].

https://doi.org/10.54934/ijlcw.v2i2.52

4. CONCLUSION

UN Secretary-General António Guterres said: "The water agreement can help countries address the global challenge of sharing transboundary water resources in a sustainable and peaceful manner, and I urge all UN Member States to join and implement this indispensable instrument".

From this point of view and in conclusion, we say that due to climate change, it is accompanied by a decrease in the availability of water resources in the long term or makes some areas more vulnerable to drought.

States parties to the 1992 Water Convention seek to work together to identify possible solutions and in 2006 they formed an ad hoc working group on water and climate to help countries adapt to climate change including floods, droughts and water scarcity, Guidance documents such as: the 2009 Guidance on Water and Climate Change Adaptation, the 2018 Guidelines, the Implementation Guide for Water-Related Disaster Management and Transboundary Cooperation; which is an official guide for the implementation of the Sendai Framework for Disaster Risk Reduction between 2015 and 2030, the Global Basin Network working on climate change (some focusing on water scarcity, others on floods), as well as regular global workshops aimed at helping Countries are developing and implementing joint adaptation strategies and sharing experiences in this area, and the UNCCD pilot projects on adaptation to climate change in transboundary basins aim to enhance the adaptation capacity of specific basins to climate change.

The accession of Arab countries to this agreement not only guarantees Arab water security, but goes beyond guaranteeing this right to achieve the 2030 Sustainable Development Goals that the United Nations seeks to achieve, as well as receiving international recognition for good faith in maintaining international peace and security, as well as receiving international support, and most importantly gaining international respect.

Among the suggestions are:

1) Activating the role of the League of Arab States in order to achieve Arab water security and holding it accountable for ensuring it as a regional organization that brings together all Arab countries and also that it is concerned with Arab affairs in such matters.

https://doi.org/10.54934/ijlcw.v2i2.52

2) Intensify efforts among all Arab countries to work towards the adoption of regional charters and instruments of a mandatory nature that ensure greater protection of the human right to safe and safe drinking water.

3) According to the opinions of international experts and observers, the wars of the 21st century will be due to water, so it is necessary to take these views seriously and accelerate the adoption of a strategy that guarantees common Arab water security in which the right of the individual to enjoy clean, safe and healthy water free of all pollutants is realized.

4) Initiatives that seek to achieve international cooperation that ensures water security for Arab countries should be supported.

5) The role of information and awareness is an important part in maintaining water security and its continuity for present and future generations.

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ABOUT THIS ARTICLE

Conflict of interests: Authors declare no conflicting interests.

International Journal of Law in Changing World

Volume 2 Issue 2 (2023) ISSN 2764-6068

Research article
JNL: https://ijlcw.emnuvens.com.br/revista
DOI: https://doi.org/10.54934/ijlcw.v2i2.53

THE RIGHT TO EXPLANATION IN THE PROCESSING OF PERSONAL DATA WITH THE USE OF AI SYSTEMS

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Article Information:

Received
July 12, 2023
Approved
July 29, 2023
Accepted
December 9, 2023
Published
December 28, 2023

Keywords:

GDPR,
AI,
explainability,
automated decision-making,
right to explanation,

ABSTRACT

Transparency is one of the basic principles enshrined in the General Data Protection Regulation (GDRP). Achieving transparency in automated decision-making processing especially when artificial intelligence (AI) is involved is a challenging task on many aspects. The opaqueness of AI systems that usually is referred as the "black-box" phenomenon is the main problem in having explainable and accountable AI. Computer scientists are working on explainable AI (XAI) technics in order to make AI more trustworthy. On the same vein, thus from a different perspective, the European legislator provides in the GDPR with a right to information when automated decision-making processing takes place. The data subject has the right to be informed on the logic involved and to challenge the automated decision-making. GDPR introduces, therefore, *sui generis* right to explanation in automated decision-making process. Under this light, the paper analyzes the legal basis of this right and the technical barriers involved.

FOR CITATION:

Papadimitriou, E. (2023). The Right to Explanation in the Processing of Personal Data with the Use of AI Systems. International Journal of Law in Changing World, 2 (2), 43-55. DOI: https://doi.org/10.54934/ijlcw.v2i2.53

1. INTRODUCTION

One of the main principles provided by the General Data Protection Regulation (hereinafter GDRP)[1] is the principle of transparency. The latter's role is to provide to data subjects with a fair and transparent processing of their personal data. Transparency, however, is an element that is largely absent in AI systems. By and large, algorithms used in AI systems, are not fully understood, even by the same people who developed them. This is mostly the case when machine learning is employed, where the program analyzes large volumes of data and "self-learns" during this process. This means that the rationale of decision-making escapes, in the above case, the programmer's control. The characterization of these systems as "black boxes" is indicative of the opacity that describes them.

The GDPR aiming, however, to ensure transparency in automated decision-making, provides data subjects with the right to obtain information regarding the logic followed, to know exactly what this means and what are the consequences of this processing (articles 13 par. 2 par. f', 14 par. 2 par. g' and 15 par. 1 par. h' GDPR). Moreover, in the case of automated individual decision-making, it provides data subjects with the right to human intervention, the right to express their opinion and to challenge the decision, which was taken via automated processing of personal data (Article 22 of the GDPR).

The GDPR (both in its' preamble and in the main body) does not refer to algorithmic processing of personal data per se. The European legislator mainly took under consideration the cases of automated processing, which include "profiling", such as the case of the automated assessment of the creditworthiness of borrowers or the assessment of the work performance of employees. Nevertheless, what happens in the case where automated processing with or without the purpose of "profiling" takes place with the use of more complex technological means, such as artificial intelligence systems, which, as mentioned above, are characterized as the opaquest?

The central research question that this paper shall attempt to address refers to the emergence and the legal basis of a new, independent, sui generis right to explanation that data subjects are afforded when automated decision-making processing takes place. Have data subjects a right to explanation when automated decision-making processing takes place? If the answer to the above central question proves to be affirmative, which provision could be the legal basis for the establishment of this new right? Is the legal

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88, ELI: http://data.europa.eu/eli/reg/2016/679/oj.

https://doi.org/10.54934/ijlcw.v2i2.53

basis the right to information, the right to access, the right to non-automated decision-making or none of the above? If new sui generis right to explanation is indeed established, what is the minimum content of this right, what kind of protection are data subjects afforded and how are data controllers' obligations shaped accordingly?

Given the fact that breaches of the GDPR's provisions related to data subjects' rights are subject to a higher administrative fine than breaches of other provisions of the GDPR, the answer to the above questions is of crucial practical importance. Especially, in the case of personal data processing via AI systems, the relevant issues should be effectively resolved before or during the AI systems' development phase in order to have a GDPR compliant AI system.

2. THE RIGHT TO INFORMATION IN AUTOMATED DECISION-MAKING

Providing information to data subjects can take many forms in the context of the GDPR. When decisions are solely based on automated processing of personal data and this processing produces legal effects or similarly significantly legal effects for data subjects, the latter have a right to be informed as well. In article 22 of the GDPR, data subjects are provided with the right to non-automated decision making when this takes place under certain circumstances. Based on that right, data subjects have the right to obtain human intervention, to express their point of view and contest the decision[2]. However, the exercise of these rights on behalf of data subjects presupposes that relevant information has been provided to them. Article 22 of the GDPR raises first and foremost two important issues: when the decision-making processing is "solely" automated and what are the "legal effects" and subsequently the "similarly significant" effects that render this processing prohibited or require safeguard measures to be taken when the exceptions of art. 22 par. 1 a-c apply.

A controller cannot avoid article's 22 prohibition merely by invoking some kind of human involvement in the decision-making processing. On the contrary, this human involvement has to be meaningful (not just a token gesture) carried out by someone that has both the authority and the competence to change the decision[3]. "Meaningful" has the notion of a human intervention capable of changing the outcome of the decision. Therefore, a mere review of the decision by a human, which is more

[2] Art. 22 par. 3 GDPR.
[3] See Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 (wp251rev.01) p. 20-21.

https://doi.org/10.54934/ijlcw.v2i2.53

or less of a typical nature, does not qualify as a meaningful human involvement. Subsequently, this kind of decision-making processing equals to a solely automated data processing.

It has been proposed by authors turning in favor of the existence of a right to explanation, four types of information that could be provided as "meaningful information". This information should be on a) the input data that were used for the automated decision, b) the factors that influence the decision, c) the importance of these factors and d) textual information explaining reasonably the grounds for reaching a certain decision [1].

Other authors focus more on the kind of explanations provided with respect to their content and their timing in relation to the decision-making processing. According to this approach, there are explanations that refer to system functionality (general functionality of an automated decision-making system such as decision trees, pre-defined models etc.) and explanations referring to specific decisions (the rationale of specific decisions, such as machine - defined decision rules on specific cases etc.) [11] [12] With respect to the timing of the explanation in relation to the decision-making processing, two types of explanations can be distinguished a) ex ante explanation, that is explanation offered before the decision-making processing takes place and b) ex post explanation that is after the decision-making processing takes place [11] [12].

When it comes to the wording "legal effects" or "similarly significant" effects a further explanation is needed. GDPR does not provide any clarification on this wording. In the GDPR's preamble, recital 71 refers only to indicative situations that may stand as legal effects, such as a refusal of an online credit application or an e-recruiting practice[4]. A legal effect, however, may also be something that affects the legal status of a person or his/her right under a contract such when the automated-decision making processing results to an entitlement or cancellation of a contract (bank loan, lease contract) or to a refusal of a right (citizenship right, social benefits)[5]. It could also result to a severe restriction or even denial of a fundament right such as the access to justice right.

The "similarly significant" affects wording, is open, thus, to broader interpretations. What falls within this category can only be examined on a case-by-case basis, as there is not a specific right that is affected in these cases. Generally, it could be accepted that the data subject is significantly affected by an

[4] Rec. 71 GDPR.
[5] See Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 (wp251rev.01) p. 21.

https://doi.org/10.54934/ijlcw.v2i2.53

automated decision-making processing when the latter affects his/her choices or behavior, have a prolonged or permanent impact on the data subject or even leads to the exclusion or discrimination of an individual[6]. The "significant" threshold is met when the decision may affect someone's financial circumstances (eligibility to credit), access to health services, access to education (a university or college admission), or access to employment[7].

An exception to article's 22 prohibition may apply in three cases a) when the automated decision is necessary for the preparation or the performance of a contract between the data controller and the data subject, b) when the Member State allows such decision-making or c) when the data subject provides explicit consent[8]. In the first case, the controller has to provide adequate reasoning for choosing this type of privacy-intrusive processing instead of a less intrusive, such as when there is automated processing of applications for a work position due to the high volume of the applicants[9]. On the other hand, a Member State should be allowed to authorize such processing especially for fraud and tax evasion monitoring and prevention purposes[10]. The third exception based on data subject's explicit consent may prove in practice to be the riskiest for the data subjects' privacy and respectively the most challenging exception for data controllers to apply, especially when AI applications are used in the processing. Last, but not least, automated decision-making processing of special categories of personal data is prohibited unless two conditions are met cumulatively, that is a Member State's exception is in place and the data subject explicitly consents to this processing or the processing is necessary for reasons of substantial public interest[11]. All the above exceptions, however, go hand in hand with suitable safeguards that need to apply in order controllers to ensure fair and transparent personal data processing[12].

3. THE RISE OF A SUI GENERIS RIGHT TO EXPLANATION?

There is an ongoing debate among legal scholars on the existence and the possible legal basis of a right to explanation in the algorithmic processing of personal data. There are views supporting the non-

[6] See Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 (wp251rev.01) p. 21.
[7] See Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 (wp251rev.01) p. 22.
[8] Art. 22 par. 1 a-c.
[9] See Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 (wp251rev.01) p. 23.
[10] Rec. 71 GDPR.
[11] Art. 22 par. 4 and art. 9 par. 2 a and g GDPR.
[12] Rec. 71 GDPR.

https://doi.org/10.54934/ijlcw.v2i2.53

existence of a right to explanation under the GDPR and views that acknowledge the legal existence of such a right, thus under different legal bases.

Wachter, Mittelstadt and Floridi are turning down all possible legal bases for the existence of a right to explanation, namely articles 22, 13(2)f, 14(2)g and 15(2)h of the GDPR. According to their approach, article 22 of the GDPR does not explicitly mention a right to explanation as Recital 71 does, thus with no binding effect [12]. Articles 13 and 14 of the GDPR on the other hand, cannot, in the authors' opinion, support article 22 of the GDPR and the claim for an ex-post explanation duty of the controller, as they require only an ex-ante explanation of system functionality that precedes decision-making [12]. Finally, when it comes to article 15(2)h of the GDPR, the authors reach the same conclusion but on different grounds. In their opinion, article 15(2)h of the GDPR seems not facing the "timeline problem", however, the wording "envisaged" refers again to an ex-ante explanation of system functionality, thus not applicable to an ex-post explanation right [12].

Edwards and Veale do not find article 22 of the GDPR useful in getting a transparent explanation of a machine learning system, rather they deem article 15 more appropriate, even though is not specifically related to automated decision-making processing [6]. They argue that article's 15 access rights come after the processing and therefore ex post knowledge on the *"logic or rationale, reasons and individual circumstances of a specific automated decision can be offered to data subjects"* [6]. Mendoza and Bygrave are not turning down a right to explanation that may have its' legal basis on articles 22 and 15 of the GDPR. According to their view, the wording of article 15 does not necessarily excludes the possibility of an ex-post explanation right of automated decisions, while article's 22(3) term "contest" means more than "object to" or "oppose", rather it is akin to an appeal right [7].

Brkan, on the other hand, provides with an interesting approach. She proposes a combined interpretation of the provisions of the GDPR, that is a combination of articles 22 (red in the light of recital 71), 13(2)f, 14(2)g and 15(2)h, in order to provide data subjects with a right to ex post explanation of the automated decision [1]. Goodman and Flaxman may not provide for a specific legal basis for a right to explanation under the GDPR, however they acknowledge the need for such a right, especially when the processing is related to sensitive data, along with the need to overcome technical barriers that may be connected to such a right [5].

Kaminski's approach on the right to explanation differentiates substantially. Kaminski does not focus on a specific provision of GDPR as a legal basis for a right to explanation. Nevertheless, she is in

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favor of "systematic transparency" that goes deeper than an individualized transparency regime. In the author's view, this "systematic transparency" regime should include data protection impact assessments for automated processing, access to information about algorithms by regulators and adoption of internal accountability and disclosure regimes by the companies [9].

Article 22 of the GDPR indeed does not explicitly refer to a right to explanation. However, the latter is presupposed in article 22(3) of the GDPR. How the data subject can be, truly, in position to contest the decision without any information on the rationale of the specific decision? What would amount as "suitable measures" for the rights and freedoms of the data subject if information on how the specific decision was reached is not provided? Subsequently, it is obvious that a stricto sensu grammatical interpretation of article 22(3) of the GDPR narrows down, unjustifiably, the data subject's protection under the GDPR. To the contrary, a teleological interpretation of the provision seems, in this case, more appropriate. This approach is supported, also, by article's 22(3) wording itself as the data controller has to "implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, *at least* (emphasis added) the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision". The indicative and the minimum threshold of protection the data subject is afforded, advocate in favor of the existence and legal justification of the right to explanation in automated decision-making processing of personal data.

Article 13(2)f and 14(2)g indeed impose informational obligations to the controllers before a specific decision is reached. In automated decision-making processing, the controller is required to provide the data subject with meaningful information about the logic involved and information with regard to the significance and the envisaged consequences of such processing for the data subject. However, in the case of the abovementioned articles, this information should be available to the data subject at the time when personal data are obtained[13]. Therefore, articles 13(2)f and 14(2)g cannot support the argument in favor of an ex-post explanation duty for the controller as this is established in article 22(3). Nevertheless, how could we accept the fact that the GDPR establishes an ex-ante explanation right but not an ex-post explanation right when the processing has already taken place and the specific decision has legal implication on the data subject? It would not be rational to reach such a conclusion interpreting the GDPR, especially in light of its Recitals. Therefore, the said provisions act complimentary one to another and

[13] See article 13(1) and 14(3)a of the GDPR.

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enhance the protection of data subjects' rights and freedoms providing data subjects both with an ex-ante and an ex-post explanation right respectively.

Article 15(2)h on the other hand, shares the same wording with articles 13(2)f and 14(2)g, thus, it is provided under the established right of access that can be exercised by the data subject at any time of the processing. Therefore, the explanation required by the controller due to the nature of the access right and of the fact that is not defined in the wording of article 15, can be both ex ante and ex post[14]. Article 15(2)h may not be the legal basis for the ex-post right to explanation in automated decision-making processing as serving different legal purposes, however supports the existence of such a right in the meaning that a post explanation should always provide to the data subject.

All in all, in the author's opinion, the GDPR in article 22(3) establishes sui generis right to an ex-post explanation that the data subject is afforded when algorithmic decision-making processing takes place. The legal basis for this right to explanation is article 22(3) of the GDPR and not the non-binding Recital 71, thus the latter supports article's 22(3) teleological interpretation.

4. EXPLAINABILITY IN AI SYSTEMS

The legal establishment of a right to explanation is inherently connected with the problem of algorithmic explainability. As mentioned above, AI systems may be extremely opaque not only to third parties, but to their creators as well. How much transparent can a "black-box" be and subsequently how much GDPR compliant in terms of transparency can it be? The explainability and therefore the transparency of algorithmic decision-making goes beyond data protection and GDPR provisions. It affects data subjects' rights and freedoms as well. Algorithmic decision-making may discriminate against data subjects or even deprive them from certain fundamental rights, such as the right to access to justice, the right to access to healthcare etc. The key question, therefore, is why explainability in AI has become a problem and how we can overcome it.

Algorithmic transparency may face three types of obstacles, mainly technical obstacles, secondly intellectual property obstacles and finally secrets and confidential information of state authorities. Other authors add to the above taxonomy a fourth category which is legal barriers stemming of the arguing that a right to explanation does not exist under the GDRP [11] [12]. The latter, should not be perceived as obstacle as presupposes that the right to explanation does not legally exist and that this is widely

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acceptable, while, on the contrary, this is highly debatable at the moment[15]. When it comes to privacy obstacles relating to personal data, freedoms and rights of third people, the existence of such obstacles in practice is also arguable [11] [12]. Article 22(3) of the GDPR interpreted in the light of Recital 71 and articles 13, 14 and 15 of the GDPR requires the disclosure on behalf of the controller of information about the "logic involved" into the automated decision-making and not the disclosure of specific data. Therefore, the danger of revealing personal data of individuals that were used as training data seems not presumable. However, the revealing of trade secrets is highly probable. This may in fact deter controllers from disclosing "too many" information about the logic involved in their algorithms as reverse engineering is always a possible scenario.

Wachter, Mittelstadt and Russell propose counterfactual explanations as an approach to provide insight to the internal logic of algorithms without opening the "black-box" [12]. The proposal of the counterfactual explanations model seems interesting. Especially the fact that explanation based on counterfactuals may be both understandable and useful for data subjects. However, counterfactual explanations may bring about more problems than the ones attempting to solve. Do counterfactual explanations actually provide "meaningful" information about the logic involved in an algorithmic decision-making processing? Can counterfactual explanations offer to data subjects the information required about the logic involved in an AI system in order to challenge the decision and to ask for human intervention in the decision-making processing?

Edwards and Veale on the other hand propose two types of explanation. The Model-Centric Explanations (MCE's) which includes setup information, training metadata, performance metrics, estimated global logics and process information, while the Subject-Centric Explanations (SCE's) include sensitive-based, case-based, demographic-based and performance-based subject centric explanations [6].

The fact is that any model selected to serve algorithmic explainability should be carefully designed to offer as much transparency as necessary for the data subject to exercise the rights provided under the GDPR, whether this is the right to information, the right to access or the right to explanation when automated decision-making processing takes place. Already AI computer scientists are working on different explainable AI (XAI) technics, such as Local Interpretable Model-agnostic Explanations (LIME)

[15] All the debate currently is based on the GDPR's wording. However, European case law and especially the case law of the European Court of Justice shall shed more light on the legal existence of the right to explanation. It will not be a surprise to see in the future case law of ECJ a right to explanation as was the case with the right to be forgotten.

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and Shapley Additive exPlanations (SHAP), in order to enhance the interpretability of AI, which is particular useful to auditing practitioners and researchers [13].

In most cases, automated decision-making involves AI technology in the decision-making processing. Explainability of AI systems, that is humans to be able to understand the inner logic of AI systems, is definitely pivotal in promoting human trust into AI [4]. Especially when the processing is related with fundamental rights, such when AI is employed in the justice or the medical domain. In the latter, system explainability would be extremely important and useful not only to patients but to health professionals as well. Understanding the medical predictions of a neural network system, indeed, would facilitate a more effective and not just an accurate decision-making.

The above example opens up a different perspective on the issue of algorithmic explainability. Can a ML system be explainable to all stakeholders involved, namely data subjects, data scientists, companies and regulators? Can that system provide explainability, be accurate and technical feasible in terms of development at the same time? Explainability in AI may be indeed a challenging task for AI developers, thus not impossible. Already, computer scientist in the AI domain is developing explainable ML models that provide for understandable and accurate sets of explanations [2].

Finally, Desai and Kroll provide with a different perspective on the evidence problem in private systems, especially when these systems are used within a regulated industry such as the auto industry [3]. In networked auto systems (e.g. Tesla's cars), almost any functionality is connected with a PC or a browser for regular, even daily sometimes, system update. Providing ongoing verification in these cases may face hurdles, thus, it is not impossible to be achieved.

All in all, transparency of the source code of algorithmic decision-making processing, along with the relevant inputs and outputs of the system, does not necessarily satisfy the transparency criterion for many reasons, that being randomness involved in the process, regular changes in the decision-making processing and system incompatibility with evaluation and accountability [10]. Last, but not least, full transparency of the decision-making processing may not be optimal for all cases, as maintaining the secrecy of certain aspects of a decision policy can prevent manipulation of the decision-making process.

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5. CONCLUSIONS

Acknowledging a right to explanation under the GDPR is not just a matter of a mere theoretical importance. To the contrary, a right to explanation may prove in practice to be more important than any other right a data subject is entitled under the GDPR. This stems from the fact that the right to explanation is connected with legal consequences that can be contested and overturned by the data subject. The latter is given actually the opportunity to challenge an automated decision that was taken against her/him and not to just the opportunity to get informed or access to a certain type of information.

Striking a balance between algorithmic transparency and third-party rights such as protected IP rights or trade secrets, while taking into consideration the possible technical barriers is not an easy task to achieve. This may be, also, one possible reasoning behind the adoption by the European Commission of article 22(3) of the GDPR at its' final wording without the explicit reference to the right to explanation "described" in Recital 71 of the GDPR.

In any case, transparency may in practice face technical barriers indeed. Privacy by design in solving the explainability problem in AI system seems the most appropriate approach, as a future embedment of XAI technics into an AI system does not seem to be viable or at least effective. Computer scientists have paved the way for explainability in AI systems by developing XAI technics. Explainable neural networks may be the answer to AI's explainability problem, thus, may not be plausible in all kinds of AI systems [8]. ML systems for instance, may prove more "resistant" to explainability or interpretability models. However, since explainability is becoming part of the AI system's technical requirements, technical barriers to the right to explanation may not be the point we want to focus on. On the contrary, more light should be shed on the content of this right to explanation from a legal point of view. Maybe, AI systems are not so much of "black-boxes" as someone would want to believe. At the end, the opaqueness of AI systems and of any kind of system rests on their creators. Acknowledging a right to explanation to data subjects under the GDPR, would be a positive step towards a more transparent regime in AI systems for all stakeholders.

https://doi.org/10.54934/ijlcw.v2i2.53

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ABOUT THIS ARTICLE

Conflict of interests: Author declares no conflicting interests.

Funding: This research was funded by the Special Account for Research Funds of the Aristotle University of Thessaloniki (ELKE).

International Journal of Law in Changing World

Volume 2 Issue 2 (2023) ISSN 2764-6068

Research article
JNL: https://ijlcw.emnuvens.com.br/revista
DOI: https://doi.org/10.54934/ijlcw.v2i2.56

ARTIFICIAL INTELLIGENCE AND ITS ROLE IN THE DEVELOPMENT OF THE FUTURE OF ARBITRATION

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Article Information:

Received
July 19, 2023
Approved
July 29, 2023
Accepted
November 27, 2023
Published
December 28, 2023

Keywords:

artificial intelligence,
arbitration,
judgement,
law,
technology

ABSTRACT

AI has proven to be a powerful tool in various fields, and its integration into arbitration is highly anticipated due to its potential to improve efficiency, accuracy, and objectivity. This paper aimed to analyze how AI can help streamline arbitration, reduce costs, ensure faster dispute resolution, and improve accessibility. By using machine learning algorithms and natural language processing techniques, AI systems can analyze large volumes of legal text, extract relevant information, recognize patterns, and predict case outcomes. In addition, AI-driven chatbots could provide users with instant support and assistance in navigating the complex arbitration process. However, ethical considerations such as privacy and bias must be taken into account to ensure that AI does not compromise fairness or jeopardize confidentiality in arbitration proceedings. The article concludes with an examination of the transformative impact that artificial intelligence will have on the future of arbitration and emphasizes the need for continued research and collaboration to realize its full potential while preserving the integrity of arbitration practice.

FOR CITATION:

Solhchi, M. A., & Baghbanno, F. (2023). Artificial Intelligence and Its Role in the Development of the Future of Arbitration. International Journal of Law in Changing World, 2 (2), 56-76. DOI: https://doi.org/10.54934/ijlcw.v2i2.56

1. INTRODUCTION

The intersection of artificial intelligence (AI) and international arbitration presents new opportunities and challenges in this area. AI technologies, such as machine learning algorithms and natural language processing, have the potential to revolutionize various aspects of arbitration. For example, AI can help with case management by organizing and analyzing large volumes of documents more efficiently than human counterparts. It can also facilitate the recognition of patterns and trends in past decisions, support parties' arguments at hearings, or even predict possible outcomes.

However, integrating AI into international arbitration requires careful consideration to ensure that transparency, accountability, reliability, and ethical standards are maintained [22] [11] Questions arise as to how AI systems should be deployed, who is responsible for their maintenance and monitoring, and how parties can trust the neutrality of the algorithms.

As technology continues to advance, it is imperative for arbitrators and practitioners to use AI wisely while upholding essential principles such as party autonomy and due process in this important dispute resolution mechanism on a global scale [8].

This paper aimed to analyze how AI can help streamline arbitration, reduce costs, ensure faster dispute resolution, and improve accessibility. By using machine learning algorithms and natural language processing techniques, AI systems can analyze large volumes of legal text, extract relevant information, recognize patterns, and predict case outcomes. In addition, AI-driven chatbots could provide users with instant support and assistance in navigating the complex arbitration process. However, ethical considerations such as privacy and bias must be taken into account to ensure that AI does not compromise fairness or jeopardize confidentiality in arbitration proceedings.

2. THE CONCEPT OF ARTIFICIAL INTELLIGENCE IN LAW

The concept of artificial intelligence in law has gained considerable attention and prominence in recent years [15]. AI technology offers immense potential for efficiency and accuracy in the legal field. From chatbots that can quickly answer basic legal questions to sophisticated algorithms [16] that can analyze massive amounts of data and recognize patterns, AI has the potential to revolutionize the work of legal professionals. One key area where AI is making great strides is in the review and analysis of contracts. With its natural language processing capabilities, AI can efficiently sift through complex

https://doi.org/10.54934/ijlcw.v2i2.56

contracts, identify critical clauses, and even make recommendations based on past cases and legal precedents [18]. In addition, AI-powered predictive analytics tools are being developed to help lawyers assess the likely outcome of a case based on similar past cases. It should be noted, however, that while AI offers great potential, it should be used as a tool and not as a substitute for human judgment and expertise in complex legal matters. The concept of trust and ethical considerations also come into play as these technologies deal with sensitive information, making privacy and security critical to their successful use in the legal industry.

3. LEGAL ANALYSIS OF ARTIFICIAL INTELLIGENCE

Artificial intelligence (AI) has been a rapidly growing field in recent years with numerous applications in various industries. However, the legal implications and challenges associated with AI have also attracted a great deal of attention. it is important to understand the key legal aspects of AI to ensure its fair and responsible use [17]. One of the most important legal issues related to AI is liability. Unlike traditional software, autonomous AI systems have the ability to make decisions and take actions on their own. This raises the question of who should be held responsible if an AI system causes harm or makes a mistake. Determining legal responsibility can be challenging when AI operates in ways that cannot be easily attributed to human actors. Establishing a framework for AI accountability is necessary to ensure that the benefits of AI can be realized while protecting individuals from potential harm. Another important legal aspect of AI is data protection and privacy.

AI systems often rely on large amounts of personal data to make accurate predictions or informed decisions. This raises concerns about the collection, storage, and processing of data in compliance with data protection regulations. It is important to investigate and understand how AI systems handle sensitive data to ensure that proper consent is obtained and data protection rights are respected. Regulatory frameworks must keep pace with the rapid advances in AI to protect individual privacy and ensure that data is used ethically. In addition, AI poses a challenge to intellectual property (IP) law. Works created by AI, such as paintings or novels, raise copyright issues. Determining whether AI should be considered a legitimate creator is a complex matter that requires careful analysis of existing IP laws. In addition, the use of AI to automate certain tasks, such as patent searches, raises concern about the patentability of inventions made by AI systems.

Legal analysis is needed to define the scope of intellectual property protection and address the emerging challenges posed by AI technologies. Legal professionals and lawyers need to understand the

https://doi.org/10.54934/ijlcw.v2i2.56

legal aspects of AI in order to navigate the evolving landscape of this technology. Liability, privacy, and intellectual property are some of the most important legal issues related to AI. It is important to create a legal framework that balances the promotion of innovation with the protection of individual rights. Addressing these legal challenges will be critical to realizing the full potential of AI for the benefit of society.

4. EVOLUTION OF TECHNOLOGY IN INTERNATIONAL ARBITRATION

The development of technology in international arbitration has significantly changed and improved the efficiency of dispute resolution procedures. With the increasing globalization and complexity of business transactions, it has become essential to adapt to technological advances in order to meet the demands of the modern world [1] [21]. One of the most important technological advances is the emergence of online dispute resolution platforms, which have revolutionized the way arbitration is conducted. These platforms offer parties the convenience and flexibility to participate in arbitrations remotely, reducing travel costs and saving time. Moreover, with the introduction of artificial intelligence tools, big data analysis, legal research, and drafting of legal documents have become more accurate and efficient.

Another significant technological development in international arbitration is the use of videoconferencing and teleconferencing. These means of communication have bridged the geographical differences between parties, arbitrators, and experts and made cross-border dispute resolution more feasible and cost-effective. Video conferencing allows for face-to-face interaction by replicating the physical presence of the parties in a hearing room, thus enhancing cooperation and communication during the proceedings. In addition, the integration of electronic evidence presentation systems has made it easier for parties to present complex documents, exhibits, and multimedia presentations, resulting in a more streamlined and visually appealing mediation process.

In addition, the digitization of case management systems and the establishment of virtual hearing rooms have played a crucial role in the development of technology in international arbitration. Case management systems allow for efficient organization and storage of case-related documents, simplify case management, and ensure easy access to information for all parties. Virtual hearing rooms mimic the traditional hearing environment by providing secure and user-friendly interfaces for parties, arbitrators, and witnesses to present evidence, examine witnesses, and cross-examine remotely. These virtual hearing rooms also offer additional features such as real-time transcription and interpretation services that enhance the transparency and accessibility of the arbitration process.

https://doi.org/10.54934/ijlcw.v2i2.56

In conclusion, the advancement of technology in the realm of international arbitration has brought about a revolutionary transformation in the resolution of disputes on a global level. The introduction of online dispute resolution platforms, teleconferencing, digitized case management systems, and virtual hearing rooms has significantly enhanced efficiency, reduced expenses, and expanded the availability of justice. As technology continues to progress, it becomes crucial for practitioners in this field to remain up-to-date and effectively utilize the potential of technology to adapt to the constantly evolving demands of international arbitration.

4.1. Important technological developments shaping the landscape of arbitration in international law

Significant technological advancements have revolutionized the field of arbitration in international law, enhancing efficiency, accessibility, and the overall process of dispute resolution. One noteworthy development is the emergence of virtual arbitration hearings, facilitated by video conferencing platforms, which eliminate geographical barriers and enable parties from different corners of the globe to participate remotely.

This breakthrough not only reduces travel costs and time but also fosters inclusivity and diversity in international arbitration. Another pivotal advancement lies in the integration of artificial intelligence (AI) tools into case management systems. These tools efficiently process vast amounts of legal data, analyze precedents, and offer predictive insights to arbitrators. Moreover, AI-powered technologies provide automatic translation capabilities, effectively overcoming language barriers during arbitration proceedings. This integration of AI not only expedites the process but also enhances the quality of decision-making. Furthermore, block chain technology has demonstrated its potential in enhancing transparency and security in international arbitration. By securely storing evidence and enabling real-time tracking of procedural steps, block chain ensures a higher level of trust and accountability within the system.

Collectively, these significant technological developments are reshaping the landscape of international arbitration. They accelerate proceedings, reduce costs, improve access to justice, promote equality among participants, and foster trust in the system. As a result, the field of arbitration is becoming more efficient, inclusive, and reliable, ultimately benefiting all parties involved.

https://doi.org/10.54934/ijlcw.v2i2.56

4.2. Advantages and challenges of the emergence of artificial intelligence in international arbitration

The emergence of artificial intelligence (AI) in the realm of international arbitration presents a host of unique advantages and challenges. Foremost among these benefits is the potential to enhance the efficiency and accuracy of arbitration proceedings. AI technology possesses the ability to analyze vast quantities of data, discern patterns, and provide swift and dependable predictions, thereby enhancing the decision-making processes of arbitrators.

Furthermore, AI can expedite the review of documents by facilitating the identification of pertinent evidence and reducing the laboriousness of manual work. Nevertheless, the utilization of AI in international arbitration also entails several challenges. The primary concern revolves around ensuring transparency and accountability in decision-making, particularly when relying on intricate algorithms that may lack human supervision.

Additionally, legitimate concerns regarding privacy and security arise as these systems process sensitive information. Striking the right balance between the advantages of AI and its potential drawbacks poses a significant challenge for arbitrators worldwide. A prudent approach that amalgamates human expertise with the capabilities of machine learning [23] could assuage these challenges and foster a harmonious coexistence between AI technology and the practice of international arbitration.

5. UNDERSTANDING THE ROLE OF ARTIFICIAL INTELLIGENCE IN INTERNATIONAL ARBITRATION

Artificial intelligence (AI) is revolutionizing the field of international arbitration, transforming and enhancing various aspects of the dispute resolution process. As AI continues to evolve, it has become an indispensable tool for international arbitration, offering immense benefits. By automating repetitive tasks and providing valuable insights, AI technology empowers lawyers to concentrate on the more intricate and strategic elements of the dispute resolution process [19]. This not only amplifies efficiency but also elevates the quality of decision-making in international arbitration.

The remarkable ability of AI to process vast amounts of information and learn from previous cases is reshaping the way disputes are resolved. It introduces a new era of efficiency, cost-effectiveness, and reliability to the process. By leveraging AI, international arbitration is propelled into a realm where time-consuming tasks are streamlined, allowing legal professionals to focus on the complexities of each case

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[7]. This technological advancement not only expedites the resolution process but also ensures that decisions are based on a comprehensive analysis of relevant data.

AI technology offers a wide range of benefits in the field of law, including contract analysis, case prediction, legal research, document review, and even virtual hearings. One of the key advantages of AI lies in its remarkable ability to swiftly and accurately process vast amounts of data, thereby significantly reducing the time and cost associated with traditional information gathering methods. By utilizing machine learning algorithms, AI systems meticulously analyze past cases and legal precedents, equipping parties with invaluable predictive insights regarding potential outcomes or settlement options. Consequently, arbitrators are empowered to make well-informed decisions based on comprehensive and pertinent information.

It is important to note that while AI should not replace human expertise, its potential to revolutionize international arbitration cannot be overlooked. By enhancing efficiency, minimizing bias, and ultimately delivering fairer and more reliable outcomes, AI has the capacity to transform the landscape of cross-border disputes. This transformative technology holds the promise of streamlining the arbitration process, enabling parties to navigate complex legal matters with greater ease and confidence. As a result, the integration of AI into the realm of law stands to benefit all stakeholders involved, fostering a more efficient and equitable legal system.

5.1. Increasing efficiency and accuracy through artificial intelligence-based tools in arbitration-based

Artificial intelligence (AI) has revolutionized numerous industries, and arbitration is no exception. The integration of AI-based tools in arbitration has the potential to significantly enhance efficiency and accuracy. These cutting-edge tools can streamline the entire process of evidence gathering, research, and analysis of intricate legal matters. By leveraging machine learning algorithms, AI tools can swiftly sift through vast volumes of data to identify pertinent information and precedents, saving valuable time for both arbitrators and the involved parties.

Moreover, AI's ability to minimize human bias, a potential pitfall in arbitration proceedings, further fortifies the accuracy of decisions. AI-based tools also offer real-time comparisons of cases and predictive analytics based on historical patterns, thereby contributing to more informed decision-making in complex

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disputes. By automating routine tasks and providing timely insights, AI serves as an invaluable assistant to arbitrators, ultimately enhancing the efficiency and effectiveness of the overall arbitration process.

Furthermore, the integration of AI-based tools holds immense potential for enhancing transparency and accountability within the realm of arbitration. By leveraging algorithms meticulously programmed to adhere to specific rules and guidelines, AI can ensure that decisions are rendered consistently and impartially. This, in turn, mitigates the risk of bias or favoritism, as the AI system remains impervious to personal opinions or external influences. Moreover, AI has the capability to furnish a comprehensive audit trail of the decision-making process, enabling parties involved to comprehend the rationale behind a particular outcome.

This heightened transparency serves to foster trust in the arbitration process, as it becomes evident that decisions are grounded in objective analysis rather than subjective assessments. Ultimately, the integration of AI has the power to revolutionize the field of arbitration, rendering it more efficient, accurate, and transparent.

5.2. Automation and streamlining of administrative tasks

Say goodbye to tedious administrative tasks AI-powered tools can automate and streamline various administrative aspects of arbitration proceedings. From managing case files to scheduling hearings and issuing notices, these tools can take care of the smallest details, saving time and effort for all parties involved. As technology continues to advance within the legal system, the integration of artificial intelligence (AI) is becoming increasingly prevalent in automating and simplifying administrative tasks within the courts. AI systems have proven to be highly effective in streamlining various aspects of court proceedings [12], allowing legal professionals to devote their attention to more complex matters.

These technologies encompass a wide range of functions, including document analysis and retrieval, case management, and scheduling. By harnessing the power of machine learning algorithms, AI can swiftly analyze vast volumes of legal documents and extract pertinent information, facilitating efficient decision-making processes. Furthermore, AI-driven chatbots offer cost-effective solutions by addressing frequently asked questions from litigants or providing basic legal advice. This integration not only enhances efficiency but also significantly alleviates the workload of court staff. With the increased accessibility of data analysis tools through AI applications, courts can also better evaluate their own performance and identify areas for improvement, ultimately leading to the provision of superior services

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to the public. In essence, automation and the utilization of AI technology possess the potential to revolutionize administrative tasks within the courts, boosting productivity while ensuring accurate and timely results.

5.3. Evidence and document management by artificial intelligence in dispute resolution

Evidence and document management is an important aspect of dispute resolution because it plays a critical role in identifying, collecting, organizing, and presenting evidence. The advent of artificial intelligence (AI) systems has revolutionized the way these processes are conducted [6] [4]. AI-driven platforms are able to streamline and automate mundane tasks related to evidence management, such as indexing documents and extracting relevant information. Through advanced algorithms and machine learning, AI can quickly analyze vast amounts of data from multiple sources including emails, contracts, and invoices and identify patterns or anomalies that may be critical to resolving a dispute.

In addition, AI systems can use natural language processing techniques to understand complex legal documents and provide valuable insights to lawyers and judges for decision-making. With these technological advances, AI is transforming the management of evidence and documents in dispute resolution by minimizing human error, reducing costs, saving time, increasing accuracy, and ultimately improving access to justice for all parties involved.

Furthermore, AI can also help predict the outcome of legal cases based on historical data and precedent. By analyzing past rulings and decisions, AI algorithms can provide attorneys with valuable insights into the potential outcomes of their cases, allowing them to make more informed decisions and develop stronger legal strategies. This predictive capability of AI not only saves time and resources but also increases the chances of a favorable resolution for the client. Additionally, AI-powered chatbots and virtual assistants can support clients 24/7 by answering their legal questions and providing assistance, improving access to legal information and services.

5.4. Use in legal research and case analysis

Artificial intelligence (AI) is revolutionizing the field of legal research and case analysis, significantly enhancing the efficiency and accuracy of lawyers. AI-powered platforms have the remarkable ability to process vast amounts of legal documents in a fraction of the time it would take a human, thereby saving valuable hours of laborious research. These platforms employ sophisticated machine learning

https://doi.org/10.54934/ijlcw.v2i2.56

algorithms to analyze patterns and extract invaluable insights from legal documents, enabling lawyers to swiftly locate relevant precedents, statutes, and case law.

Moreover, AI-based tools elevate case analysis by unearthing connections between cases that may elude human researchers. By uncovering these hidden connections, AI empowers lawyers to fortify their arguments and develop more compelling strategies for their clients. The integration of AI[1] in this domain also ensures consistency in legal research by eliminating human error and bias that can potentially impact the outcomes. Consequently, by incorporating AI into legal research and case analysis, professionals can produce work of superior quality with heightened efficiency.

Moreover, AI technology can analyze vast amounts of legal data in a fraction of the time it would take a human researcher. This allows lawyers to quickly identify relevant precedents, statutes, and case law, saving valuable time and resources. In addition, AI-powered tools can provide real-time updates on changes in the law and court rulings, ensuring that lawyers are always up to date with the latest developments in their field. By using AI in legal research and case analysis, lawyers can increase their expertise and provide more accurate and comprehensive advice to their clients.

6. UNDERSTANDING THE CONCEPT OF MACHINE LEARNING AND ITS APPLICATION IN JUDGING

The concept of machine learning, a branch of artificial intelligence, has revolutionized the judiciary by using data and algorithms to make informed decisions [14]. Using machine learning, judges can analyse large amounts of information and identify patterns that humans may miss. By training models on large data sets, machine learning algorithms can learn from past cases and make predictions about future outcomes with remarkable accuracy. In the context of adjudication, this technology has applications in various areas, such as predicting sentencing based on the severity of the crime and the characteristics of the offender or assessing the credibility and reliability of witness testimony. The ability to automate these tasks reduces human bias, increases efficiency and ensures more consistent decision-making.

By combining the power of algorithms with human judgment, we can strive for a fairer and more equitable justice system. Algorithms [5] can help judges by making data-driven predictions and recognizing patterns that may not be immediately apparent. However, it is important to remember that

[1]Voltaire Uses AI and Big Data to Help Pick Your Jury, Artificial Lawyer (26 April 2012), www.artificiallawyer.com/2017/04/26/voltaire-uses-ai-and-big-data-to-help-pick-your-jury/ (last visited on 13 May 2023).

https://doi.org/10.54934/ijlcw.v2i2.56

algorithms are only as good as the data on which they are trained, and they can also perpetuate biases present in the data. Therefore, judges must exercise caution and critically evaluate the results of the algorithms to ensure that they are consistent with legal principles and fairness. In addition, the human element in the justice system allows for empathy, discretion, and the ability to consider special circumstances that may not be fully captured by algorithms. The right balance between technology and human judgment is critical to the maintenance of justice and the integrity of the legal system.

Predictive analytics, with its ability to analyze large amounts of data and make accurate predictions about future events, has the potential to revolutionize decision-making in international arbitration. By using historical case data, machine learning algorithms can identify patterns and trends that can help arbitrators make more informed decisions. These predictive models can provide insights into various aspects of arbitration, such as the likelihood of success or failure of a particular argument, the optimal timeframe for settlement negotiations, or even the selection of a suitable arbitrator based on their past track record. The impact of predictive analytics on decision-making in international arbitration is immense - it increases the efficiency and effectiveness of the process by reducing uncertainty, increasing transparency, and ultimately improving outcomes for all parties involved. Although the use of predictive analytics in this context presents challenges in terms of data protection and reliability, the potential benefits should not be overlooked. As technology advances and more lawyers realize its value, predictive analytics will become an indispensable tool in shaping the future landscape of international arbitration.

7. THE POSITION OF MORALITY AND HUMANITY

Ethical considerations and the role of humans in AI-assisted arbitration are crucial aspects that need to be carefully considered. While artificial intelligence (AI) has made remarkable progress in its ability to analyses vast amounts of data, make accurate predictions and facilitate decision-making processes, it is important to recognize its limitations and potential biases. Human participation is essential to ensure fairness, accountability and transparency in AI-driven arbitration systems. Because arbitration involves complex legal issues and the assessment of people's behavior and intentions, human expertise is invaluable in correctly interpreting the context, upholding ethical standards and preventing unfair or adverse outcomes. Humans can provide the necessary balance by critically examining AI results for hidden biases or errors, assessing subjective factors beyond quantitative data analysis, and taking into account cultural sensitivities when making decisions that have a significant impact on the various parties involved in an arbitration [10]

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Furthermore, the involvement of humans can ensure an element of empathy and compassion that machines cannot fully replicate. Therefore, it is imperative that when using AI in arbitration, we also recognize the importance of an active human presence to ultimately support a fair and equitable resolution process. By involving humans in the arbitration process, we can also address the ethical concerns associated with the use of AI. Humans can ensure that decisions are made with integrity and in accordance with legal and moral standards. In addition, human involvement allows for consideration of unique circumstances and exceptions that may not be captured by AI algorithms. This combination of human judgment and AI capabilities can lead to a more comprehensive and equitable resolution process.

The use of artificial intelligence (AI)[2] in arbitration raises a number of ethical dilemmas and concerns. A primary problem is that the decisions made by AI algorithms may not be transparent or explainable, leading to a lack of accountability and potentially unjust outcomes. There is also the problem of bias in AI systems, as they are trained based on historical data that may contain inherent biases. This could lead to discriminatory judgments[3] that perpetuate inequalities in society. In addition, privacy and confidentiality issues must be addressed when using AI in arbitration, as these systems can process and store sensitive personal data. This raises questions regarding the security of data processing and the possibility of unauthorized access or misuse. The ethical use of AI in arbitration requires clear guidelines and control mechanisms to ensure fairness, transparency, non-discrimination, and compliance with data protection standards.

In addition, it is critical to establish accountability and responsibility for decisions made by AI systems in arbitration. As these systems become more sophisticated and autonomous, it is important to clarify who can be held liable for any errors or biases. This raises important legal and ethical considerations that must be addressed to ensure that AI is used in a just and fair manner. In addition, continuous monitoring and evaluation of AI systems in arbitration is essential to identify and correct potential biases or discriminatory patterns that may emerge over time. This will help maintain public confidence in the fairness and integrity of the arbitration process.

[2] "The Intelligent Legal Research Choice", Ross Intelligence, www.rossintelligence.com/ (last visited on 11 May 2023). Other applications such as Casetext are now claiming superiority over Ross, see "Casetext v. Ross Intelligence", Casetext, https://casetext.com/ross-vs-casetext/ (last visited on 11 May 2023).
[3] Aletras et al., supra note 29, at 5 (The researchers' assumption was èthat the text extracted from publishedjudgments of the Court bears a sufficient number of similarities with, and can, therefore, stand as a (crude) proxy for, applications lodged with the Court, as well as for briefs submitted by parties in pending cases.æ).

https://doi.org/10.54934/ijlcw.v2i2.56

8. BALANCING THE ROLE OF AI AND HUMAN JUDGEMENT IN ARBITRAL PROCEEDINGS

Balancing the role of AI and human judgment in arbitration is a complex undertaking that requires a thoughtful and nuanced approach. While AI technologies have the potential to significantly streamline and improve the efficiency of arbitration proceedings, it is critical to preserve the integrity and fairness of those proceedings by ensuring that human judgment remains central. The use of AI can expedite tasks such as document review, legal research, and data analysis, saving costs and time in arbitration proceedings. However, due to the inherent limitations of machine learning algorithms, human intervention is required to verify results and provide contextual interpretation.

In addition, arbitrators possess invaluable qualities such as empathy, discretion, and interpretive skills that are critical to applying legal principles to each individual case. Therefore, to achieve an optimal balance between the capabilities of AI technology and human decision-making authority, guidelines must be carefully formulated to determine when to use or override automated judgments based on ethical considerations and the specific characteristics of the arbitration in question. By leveraging the strengths of AI tools and humans, we can increase efficiency while maintaining fairness in arbitration proceedings.

Artificial intelligence (AI) has significant implications and potential consequences for arbitrators and legal practitioners. One noticeable impact is the automation of repetitive and time-consuming tasks, such as sorting through large volumes of documents during evidence hearings or conducting legal research. AI-powered software can speed up these processes, allowing lawyers to focus on more complex aspects of their cases and increasing their overall efficiency.

In addition, AI algorithms enable predictive analytics that help arbitrators evaluate case outcomes or predict settlement opportunities by analyzing past decisions and data patterns. However, there are concerns about bias in AI decisions because they rely heavily on historical data that may reflect existing biases. Ethical considerations are paramount when implementing AI in arbitration or practice to ensure the transparency of the algorithm and regularly review its results. Moreover, the use of AI may require lawyers to develop new skills to understand, interpret, and challenge machine-generated decisions.

Ultimately, the use of AI can revolutionize the field of arbitration and law by streamlining processes and improving access to justice. However, careful implementation is critical to minimize potential risks. In addition, it is important to address the potential biases that may be inherent in AI

https://doi.org/10.54934/ijlcw.v2i2.56

algorithms. The data used to train the AI system can inadvertently introduce biases that lead to unfair results. Therefore, it is essential to ensure that the training data is diverse, representative, and free of discriminatory patterns. Regular audits and monitoring of the AI system can help identify and address any biases. While AI can greatly improve efficiency and accuracy in arbitration and litigation[4], it should never completely replace human judgment. The human element is critical to maintaining fairness, empathy, and the ability to consider special circumstances that cannot be captured by algorithms. AI should be seen as a tool to assist lawyers, not as a substitute for their expertise.

8.1. The effects of artificial intelligence on the activity of legal professionals

Artificial intelligence (AI) has undoubtedly revolutionized the legal profession and significantly impacted the role and activities of lawyers. Thanks to its ability to process large amounts of data quickly, AI has greatly improved the efficiency of tasks such as document review and due diligence, reducing the time-consuming manual work previously performed by lawyers. In addition, AI-powered technologies have significantly improved legal research by enabling comprehensive analysis and access to a wide range of legal information. However, concerns remain about the potential displacement of certain tasks traditionally performed by lawyers. While AI can efficiently analyze data and predict outcomes, complex decisions often require human input to address ethical considerations and interpret context-specific nuances.

Therefore, it is critical for lawyers to adapt their skills to complement AI-driven systems, rather than be replaced by them. Lawyers should view AI as a tool that can improve their work, not as a threat to their profession. By using AI technology, lawyers can streamline their workflows, increase their efficiency, and focus on more complex and strategic tasks. This collaboration between humans and AI can lead to better outcomes for clients, as lawyers can use AI's data analytics capabilities to make more informed decisions and provide more accurate advice.

In addition, lawyers can use their expertise to ensure that AI systems are designed and implemented to meet ethical standards and respect the rule of law. In addition, AI technology can help lawyers conduct extensive legal research and analysis in a fraction of the time it would take a human. By automating repetitive tasks like document review and contract analysis, AI can free up valuable time for attorneys to

[4] Boundless Legal Intelligence, ArbiLex, www.arbilex.co/welcome (last visited on 20 May 2023).

https://doi.org/10.54934/ijlcw.v2i2.56

focus on complex legal arguments and strategic planning. Not only does this increase productivity, but it also allows lawyers to provide more customized and tailored services to their clients.

In addition, the use of AI in the legal field can lead to cost savings for both law firms and clients. By automating routine tasks, law firms can reduce their reliance on large teams of staff, resulting in lower overhead costs. This, in turn, can make legal services more accessible and affordable to clients who were previously deterred by high fees. However, it is important to note that while AI can significantly improve the legal profession, it should not completely replace human lawyers. The expertise, judgment, and empathy of human lawyers are irreplaceable. AI should be seen as a tool to complement and support lawyers, not replace their skills and experience.

In summary, the integration of AI technology into the legal field has the potential to revolutionize the way lawyers work and deliver services to their clients. By leveraging AI, attorneys can streamline their workflows, increase efficiency, and ultimately achieve better outcomes for their clients without sacrificing ethical standards and the rule of law. The ability to use artificial intelligence (AI) tools for legal research and analysis is becoming increasingly important in the legal field. As technology advances, AI-powered platforms are revolutionizing the way lawyers conduct research and analyze cases. Students pursuing legal careers must acquire a high level of competency in using these tools to stay ahead in the ever-evolving legal landscape. AI tools offer several advantages for legal research. They are able to analyze large amounts of data and provide comprehensive and relevant information in a fraction of the time that manual research methods would require.

In addition, these tools can identify patterns and highlight important findings that are not immediately apparent to human researchers. By effectively using AI tools, lawyers can streamline their workflows, focus more on legal analysis, and make informed decisions with greater efficiency. It is equally important to understand the results generated by AI tools. While AI can help find and organize relevant legal information [17], it is critical for students to critically evaluate and interpret the results. A solid foundation of legal principles and theoretical knowledge is essential to understanding the context and meaning of the information retrieved by AI tools. Students should not rely solely on AI-generated results, but use them as a starting point for further investigation and analysis. By linking their legal knowledge to AI-driven insights, students can develop a comprehensive understanding of legal issues and make informed judgments.

https://doi.org/10.54934/ijlcw.v2i2.56

In summary mastering AI tools for legal research and analysis has become an indispensable skill for students pursuing legal careers. The ability to use these tools effectively can greatly increase the efficiency and accuracy of research papers. However, students must remember that AI is a tool and not a substitute for critical thinking and legal expertise. By combining their legal knowledge with AI-driven insights, students can develop a well-rounded skill set that will serve them well in the ever-evolving legal profession.

8.2. Importance of human oversight and decision-making in AI-based arbitration

As fascinating as AI technology may be, it lacks one thing: good old human judgment [25]. In AI-powered arbitration, lawyers provide the human oversight necessary to ensure that AI systems operate within ethical and legal boundaries. They are responsible for interpreting the results generated by the AI, reviewing the rationale behind those results, and ultimately making informed decisions that take into account not only the data but also the human impact. Human supervision and decision-making play an important role in AI-based arbitration. Artificial intelligence systems are supposed to be efficient and objective, but they lack the fundamental qualities of empathy, intuition, and contextual understanding that humans possess. Human involvement ensures a fair and equitable outcome by interpreting the nuances of each case, considering unique circumstances, and appropriately applying ethical principles or legal precedents.

In addition, human arbitrators have a wealth of experience and expertise that allows for a more comprehensive evaluation of complex cases involving multiple variables. Their ability to empathize with the individuals involved also increases overall satisfaction with the arbitration process. Human supervision is also critical to maintaining the accountability of AI algorithms, as biases can unwittingly creep into machine learning models during data collection or model training phases. Ultimately, combining the strengths of AI technology and human intelligence results in a balanced and reliable arbitration system that ensures transparency, fairness, and equity.

Legal research and analysis form the backbone of any successful legal strategy. In the field of AI-based arbitration, lawyers must master the use of AI tools specifically designed for legal research and analysis. By harnessing the capabilities of these tools, they can streamline their research process, access relevant case law, and extract valuable information more efficiently, giving them a competitive advantage in the arbitration arena. With the right mix of legal expertise, technical know-how, and a keen eye for human scrutiny, lawyers are well equipped to navigate the exciting terrain of AI-based arbitration.

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Harnessing the potential of AI while upholding the fundamental principles of the legal profession is the silver bullet to achieving the best results. As artificial intelligence plays an increasingly important role in the legal field, ensuring fairness and impartiality is critical. Lawyers must carefully evaluate the algorithms used in AI-powered arbitrations to identify and eliminate any biases or discriminatory patterns.

Maintaining confidentiality and privacy is another important aspect to consider in AI-based arbitration. With the use of technologies robust measures are needed to protect sensitive information [13]. Lawyers must be well-versed in data privacy laws and regulations to ensure confidentiality and protection of client data. In the era of AI-based arbitration, effective communication and negotiation skills are essential for lawyers. They must be able to make complex legal concepts understandable to non-legal stakeholders such as clients or arbitrators who may not have a legal background. Clear and concise communication is critical to ensure that everyone involved in the arbitration understands the legal implications and rationale for decisions.

Negotiating with opposing parties can be challenging, even in AI-based arbitrations. Lawyers must master negotiation strategies and techniques to achieve favorable outcomes for their clients. Collaboration and teamwork are also critical in a technology-based arbitration environment. Lawyers must be prepared to work with AI systems and collaborate effectively with other professionals to ensure the arbitration runs smoothly and efficiently. The landscape of AI-enabled arbitration is constantly evolving and requires lawyers to be able to continuously educate and adapt.

To understand the capabilities and limitations of these systems, it is important to keep up with advances in AI technologies. Lawyers must also be prepared to adapt their strategies and approaches as AI technologies continue to shape the field of arbitration lawyers involved in AI-based arbitration must be ethical, have effective communication and negotiation skills, and continuously learn and adapt in a rapidly evolving landscape. By mastering these skills and knowledge areas, lawyers can navigate the complexities of AI-based arbitration while ensuring fairness, confidentiality, and favorable outcomes for their clients. In summary, the integration of AI technologies into arbitration presents both opportunities and challenges for lawyers. By acquiring the necessary skills and knowledge, lawyers can leverage AI-based arbitration to improve their practice and provide efficient and effective dispute resolution to their clients.

Continuous learning, adaptability, and ethical considerations discussed in this article are essential to navigating the evolving landscape of AI-based arbitration. By making an effort to stay abreast of

https://doi.org/10.54934/ijlcw.v2i2.56

advances in AI technologies and focusing on maintaining fairness and transparency, lawyers can build a successful career in this emerging field. By harnessing the power of AI and combining it with their legal expertise, lawyers can achieve optimal outcomes for all parties involved in the arbitration process.

9. CONCLUSION

Artificial intelligence (AI) plays a crucial role in shaping the future of arbitration. The use of advanced technologies such as machine learning and natural language processing can revolutionize the way disputes are resolved and deliver more efficient and accurate outcomes. AI-powered arbitration systems have the potential to streamline the process by automating routine tasks such as document review and analysis, allowing arbitrators to focus on more complex matters.

In addition, AI algorithms can analyses large amounts of data and past precedents to help arbitrators make informed decisions. This integration of AI into arbitration not only saves time, but also increases transparency and fairness by reducing human bias. However, it is crucial to recognize that while AI brings several benefits, its implementation must be approached with caution. A balance between human judgement and technological assistance is essential to ensure trust in the arbitration process while harnessing the benefits of AI for more effective dispute resolution.

An important consideration in the introduction of AI in arbitration is the need for proper regulation and oversight. Clear guidelines and standards must be established to ensure that AI systems are used ethically and responsibly. In addition, continuous monitoring and evaluation of AI algorithms is needed to avoid potential biases or errors that may occur. By taking these precautions, we can harness the power of AI to improve the arbitration process while maintaining trust and integrity.

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ABOUT THIS ARTICLE

Conflict of interests: Authors declare no conflicting interests.

https://doi.org/10.54934/ijlcw.v2i2.56

International Journal of Law in Changing World

Volume 2 Issue 2 (2023) ISSN 2764-6068

Research article
JNL: https://ijlcw.emnuvens.com.br/revista
DOI: https://doi.org/10.54934/ijlcw.v2i2.63

ARTIFICIAL INTELLIGENCE AND NATIONAL SECURITY: PERSPECTIVE OF THE GLOBAL SOUTH

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Article Information:

Received
July 19, 2023
Approved
July 29, 2023
Accepted
November 27, 2023
Published
December 29, 2023

Keywords:

artificial intelligence,
global south,
internal security,
human rights,
cyber security

ABSTRACT

More than six decades since its inception, Artificial Intelligence (AI) stands at the cusp of a transformative shift. The global perspective on AI has evolved optimistically, as it increasingly permeates every facet of human life. AI is revolutionizing national security strategies and capabilities worldwide, but its impact on the Global South remains a topic of growing significance and concern. Every nation actively seeks to bolster internal security through AI-driven initiatives, including surveillance, cyber security, and autonomous technologies. This review paper delves into AI's role in analyzing vast datasets, uncovering patterns, and identifying security threats and challenges focusing specifically on the Global South. It considers the potential advantages AI offers in enhancing national security capabilities while addressing concerns surrounding its integration. Drawing from existing literature, it presents a comprehensive analysis of AI's prospective future in the cyber and national security domains within these nations. Ultimately, this paper aims to answer whether AI serves as a facilitator in strengthening internal security or poses unforeseen challenges and raises the importance of capacity-building, technology transfer, and international cooperation. It provides valuable insights into the evolving landscape of AI in the context of national security in the Global South.

FOR CITATION:

Srivastava, K. (2023). Artificial Intelligence and National Security: Perspective of the Global South. International Journal of Law in Changing World, 2 (2), 77-87.
DOI: https://doi.org/10.54934/ijlcw.v2i2.63

1. INTRODUCTION

It has been more than sixty years since the concept of Artificial Intelligence ("AI") took its initial form. Since then, there have been several discussions and debates on AI, its future as the focal point, and its potential for a paradigm shift. In an era defined by technological advancement and interconnected global dynamics, the utilization of AI has emerged as a pivotal and transformative force within the realm of national security. The amalgamation of AI's cognitive capabilities and data processing efficiency has ushered in a new era of strategic possibilities, enabling governments and security agencies to elevate their efforts in safeguarding integrity, sovereignty, and peace within the nations. It has the potential and capability to proactively detect threats, and work towards robust cyber resilience, intelligent surveillance, comprehensive data analysis, and informed decision-making. Though the potential of AI in national security is undeniable, it is accompanied by a nuanced landscape of ethical considerations and policy implications [2] [3] [7]. These scenarios advocate for a balanced approach towards imperatives of security and civil liberties, privacy, and human rights. Thus, as we navigate this uncharted territory, the incorporation of AI into national security endeavors compels us to reflect not only on the immense potential it offers but also on the ethical boundaries it prompts us to define.

In addition, such voices intensify when this aspect is evaluated from the perspective of the global south. The contemporary developments within the countries of the global south depict an ongoing challenge that underscores the need for robust governance frameworks and responsible deployment practices. Countries of the global south have been working towards strengthening their internal security and ward off every possible hurdle. The significance of national security in the global south is a multifaceted and profound consideration, deeply rooted in historical legacies, contemporary challenges, and the imperatives of sovereignty, development, and well-being. There are historical contexts that demarcate the vital aspect of sovereignty with such countries. The entire global south is characterized by a diverse range of conflicts, including internal strife, ethnic tensions, regional disputes, and transnational threats. Thus, national security efforts play a pivotal role in mitigating such conflicts, fostering stability, and preventing the escalation of violence that can undermine social progress, economic growth, resource management, and human and economic development [10] [4]. Therefore, addressing national security imperatives in the global south demands collaborative efforts, innovative strategies, and a nuanced understanding of the interconnected nature of global security dynamics [11] [6] [8]. This study attempts to analyze the usage of AI as a tool to safeguard the realm of national security within the jurisdiction of the global south. Moreover, it has been witnessed that the countries falling in the domain of the global

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south often navigates complex geopolitical landscapes that depict the existing geopolitical dynamics. In consideration of these facets, connected countries have initiated technological advancements, digital security, development of robust cybersecurity measures, and working towards enhancing their overall capabilities. The importance of national security in the global south transcends mere military concerns to encompass a holistic and comprehensive approach. Ultimately, a secure Global South contributes to the well-being of its nations and the broader goals of global peace, prosperity, and justice. This study also aims at depicting a descriptive approach towards the perspective of the global south and it analyses the entire situation of AI and its prospective future in the cyber security and national security of the connected nations. The discussion also considered the existence of several concerns about the congruence of AI and national security. Through reviewing various existing literature, it projects a discussion and analyzes different pertinent aspects connected to this domain. Eventually; it attempts to put forward suggestions to the question at hand as to whether AI in national security is a facilitator that can help in strengthening the internal security of nations or whether are we overlooking a hurdle that it may entail and is still a far-sighted dream.

2. LITERATURE REVIEW

The Congressional Research Service (CRS) Report titled "Artificial Intelligence and National Security'" (2020) [9] initiated by acknowledging the escalating aspect of AI in terms of its use of technology and analyses the fact that entities like defense personnel, policymakers, investors of various nature have started being attracted to this very aspect. The military of multiple countries is depicting keen interest in such developments. Countries, like the U.S. and China have already begun integrating their AI systems. This report attempts to explain the trajectory of the entire concept by explaining the definition attached to the term AI. There are debates and discussions in the U.S. Congress regarding the usage and future of military AI. The members of Congress have highlighted the importance of executing a road map in this regard and the need to establish commissions and centers that would work to facilitate the transition in terms of AI-based technologies and strengthen AI-enabled operations and other connected systems. Congress is also in continuous debates about policies and laws to regulate these transactions. The report also highlights the aspects of Intelligence, Surveillance, and Reconnaissance and the importance of analyzing these aspects while considering the evolving domain of connected data and other inputs [9] (p.10). It goes on to explain the usage and volume of AI technologies regarding the logistics scenario, command, control, and information and cyberspace operations of the nation. In addition to depicting the

https://doi.org/10.54934/ijlcw.v2i2.63

need for military AI, this report also emphasizes the existing challenges. The entire process and technology involved, and the cultural transition, are not that easy and flexible.

Moreover, there are many international competitors present and functional in this domain who are indulging and analyzing their mediums and calculations towards the development of AI and its connected elements. Thus, it also accepts the reality of challenges and hurdles that are there in the domain of AI within the national security context. The challenges range from the aspect of autonomy, the race for information superiority, the ambit of predictability, the test of speed and endurance, and the possibilities of instances of exploitation [9] (p.30).

In the paper titled “Artificial Intelligence and Security: Transformation and Consistency” (2022), Aleksei Turobov researches the aspect of dynamics of using AI technology in national security. The paper focuses on vital questions revolving around "who", "what", and “how” regarding the expansion of the security domains and connected issues [12] (p.5). There has indeed been research that depicts the paradigm shift in terms of security and AI technologies and how technology plays an important role in the security sphere. This paper has attempted to analyze the various existing literature on security and technological studies. It also points out the existing lacunae in reporting mechanisms and the lack of available information that talks about the actions of nations towards AI and national security. This paper is an attempt made to analyze the infiltration of AI and its technologies into the domain of national security. The author has tried to execute and test an empirical model to understand and analyze the entire system. It’s also evident that the national security realm has deepened with the escalation of relevant digital technologies. Through evidence, it builds a trajectory and linkage between the aspect of security and the advancement of AI technologies [12].

Moreover, the author of this paper has taken various hypotheses, tested them, and commented on their validity. The premise involves aspects like the evaluation of threat, capabilities of threat response, and dynamics of the use of AI technologies in the security domain during the years 2008-2010 and comparing it with the indicators active in the years 2018-2019. A practical understanding of the entire concept has been demarcated through data interpretations. This research paper also demonstrates that countries lack “alarming", “exaggerated fears”, and leniency on technological changes in national security systems. Connected governments execute their own assessment and implementation mechanism to assess the pros and cons of such aspects. Eventually, through this paper, the author has attempted to measure the changes that society has been witnessing in their execution of security operations as and when technology has gone through a transition [12] (p.9).

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In the paper titled "Artificial Intelligence in War: Human Judgment as an organizational strength and a strategic liability" (2020), the authors Avi Goldfarb and Jon Lindsay try to emphasize the potential of AI in terms of changing the nature of war. AI can act as an enhancer regarding military actions toward data collection, analyzing those data, and making decisions based on such analysis. Paper initiates by emphasizing the change like the prediction that has become more accessible and easier with the help of development in the aspect of machine learning. The authors have divided the entire discussion into four different parts and have debated how added AI technologies have assisted in human decisions and judgments [5] (p. 7). However, a lack of understanding and reasoning of actions within technologies, gives way to the possibility of errors. Thus, it majorly depends on the genuine and sufficient nature of the data that is fed into some particular technologies whose assistance is sought for various endeavors. Then they comment on the war scenario and explain that there has been an information revolution that has boosted the awareness level of war and warfare that are intensively based on data, intelligence, and the entire related ecosystem. However, on the other hand, the economic perspective of military affairs cannot be ignored in its entirety. It also highlights many operational challenges that might creep into the system. There is indeed a difference between the theoretical and practical aspects of a given topic, and the organizational challenges in terms of its usage, analysis, and execution are not an exception. The extent of AI-driven technologies does not only depend on the nature of such technologies but also on the ways, such operational technicalities are used. The organizational, political, and strategic implications have their complexities [5] (p. 7). Ultimately, there is indeed space for human acumen to determine what to consider and what not to consider.

In the special report titled "Artificial Intelligence for Defence and Security" (2022), under the Centre for International Governance Innovation, Daniel Araya comments on the revolutionary nature of the advancements in the field of AI [15]. Contemporary security threats have indeed posed a great challenge to military strategies. It studies the actions and endeavors of several vital countries in terms of AI technologies for their security. Countries' regional and trade ambitions or economic ascendance, and everything, are witnessing a paradigm shift due to the overarching presence of a new element in the game i.e., AI and related technologies. In the current scenario, the strategic arena that a particular nation wants to delve into depends on the application of technologies and their nature. Some strategic giants are working with a motive to transform the entire digital ecosystem. Canada, for instance, has a vital and strong AI talent pool. AI is that prominent subset that includes both the development of machine learning and deep learning [15] (p.8). It also focuses on the importance of coordination among entities. Any automated weapons, some technology-driven strategic operations, complex military networks, or satellite

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applications, every such element needs appropriate coordination for error-free execution and to achieve the desired output. The report also entails a discussion on the importance of cyber security and AI. The data-driven economy has many tedious tasks for any act that revolves around AI and cyber security. When we talk about and debate these two elements, the importance of decentralization in terms of federal data governance is vital. The report also provides recommendations about the transformation of the entire digital infrastructure. Eventually, it projects the importance of collaboration between the industry and the government of the concerned nation for better results. It suggests for countries like Canada that more change is required to enhance military capabilities by tapping the data as per the need and usage. Since this report result from a workshop, it witnessed several vital discussions like the quality assessment of data, the need for military planning, and the execution of an analytical framework [15] (p.8).

In the paper titled "AI and National Security: Major Power Perspectives and Challenges" (2022), Sanur Sharma analyses the postulates of AI and National Security by considering the development of significant economies of the world in this regard. The author, through this paper, has tried to project the fact that AI is more of an enabler of technologies and not a mere technology per se. Private and public sectors have indeed increased their dependency on the domain of AI. Be it-structured flow of data, its appropriate, and cost-effective storage or capable and relevant algorithms are now much more accessible with the help of AI and can challenge human intelligence at different stages. An attempt is made to establish the linkage between the National Security of a country and AI. It also analyses the development with a special focus on the military domain. Another vital part of the paper comments on and analyses the emerging powers of the globe ranging from the USA, China, and India. It analyses the entire trajectory of these three nations regarding their security strategies, and defense plans to keep AI and connected technologies as the focal point. For instance, these countries have been allocating budgets with specific objectives to meet such demands of AI with national security. A country like China has released detailed plans and goals to meet by 2030. Such techniques have AI at their core [13] (p.6). Another facet of the paper acknowledges the regulatory and ethical challenges that are real and evident on the road to meeting such goals. Changing landscape of security and strategy has hidden hurdles that a nation is bound to face while chalking out its course of action. The instances of misuse of such endeavors at the hand of non-state actors cannot be ignored. Ultimately, this paper analyses the threats standing at the door and focuses on the need for countries to keep an eye on such instances [13].

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3. DISCUSSION

The interplay of AI and National Security has gained momentum in contemporary times. Several facets are vital to be tabled for discussion and can assist in bringing in a paradigm shift within the ongoing debates both nationally and internationally.

The domain of Military AI

The most significant aspect of AI is to talk about its development regarding the defense of a particular nation. There has been much discussion on the potential that AI holds and its capability to transform the entire defense structure of the country. The military of various countries has opened up and is welcoming AI-based technologies [1]. There is indeed a difference between the theoretical and practical aspects of a given topic, and the organizational challenges in terms of its usage, analysis, and execution are not an exception. The importance of human presence cannot be ignored or replaced. If military AI has to see an escalating trajectory, then such AI-driven technologies cannot depend only on the nature of such technologies but also on the usage of such operational technicalities. In the domain of the military, the organizational, political, and strategic implications have their complexities, and if, AI is to cover the significant aspect, then one has to take note of such complex scenarios. Following is an excerpt from the news that acknowledges that when countries think and debate about military AI, human presence cannot be excluded. This convergence aims to enhance the capabilities and effectiveness of armed forces by leveraging advanced computational techniques and autonomous systems. Military AI encompasses a range of applications, each contributing to the modernization and efficiency of military endeavors. Therefore, AI within the military can bolster and strengthen the domain of cybersecurity, training, simulation, and logistics optimization. The domain of military AI also envisages the facet of ethical considerations, international laws, and accountability for AI-driven actions. Thus, such an element represents the synergy between artificial intelligence and military operations. It drives innovation, efficiency, and effectiveness within the armed forces while necessitating careful deliberation on ethical and legal implications. Responsible integration of Military AI is crucial for maintaining security, stability, and ethical conduct in an evolving technological landscape.

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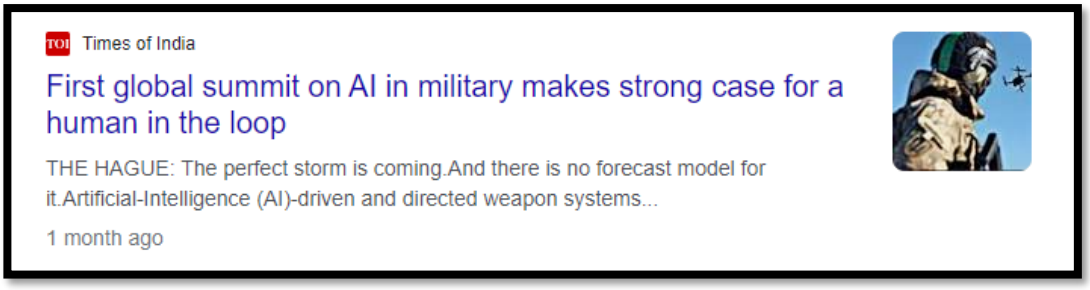

(Fig. 1.1) (Mund, 2023)

Importance of Collaboration

When we talk about and debate these two vital elements of Military and AI, the importance of decentralization in terms of federal data governance is essential too. It means that there will be hurdles in execution if it goes through checks and balances at different levels. The existing literature gives way to the importance of collaboration between the industries, the government of the concerned nation, and other institutional actors. Such collaborations can only help in achieving the goal that is sought after. If there is consensus and cooperation between entities, it becomes accessible to debate, discussion, research, and talk on solutions towards appropriate governance of AI.

The Perspective of the Global South

Another pertinent element in the discussion of AI and national security is to see the entire trajectory from the perspective of the global south. With the above discussion, it is evident that AI has the potential to transform the military and security landscape of the nations and change the entire nature of the battlefields and thus act as an essential aspect in the domain of national security. In contemporary times, countries of the global south, especially India and China, have emerging countries that are developing and planning security strategies for their citizens. The defense planning and the budget deliberations of recent times are thought upon and executed while keeping AI and connected technologies as the focal point. Countries of the global south are indulging in target-oriented activities and are pretty proactive when it comes to strengthening their internal security, and countries try to ward off hurdles and mitigate them to a great extent in every possible way. In light of the development and increase in the usage of AI, it is worth pondering on the future of AI in the domain of national security from the perspective of the entire domain of the global south. Indeed, every concerned government entity, like the military of such nations, is focusing more on AI-based technologies to enhance their overall capabilities. The significance of national security in the global south is a multifaceted and profound consideration, deeply rooted in historical

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legacies, contemporary challenges, and the imperatives of sovereignty, development, and well-being. The global south is characterized by a diverse range of conflicts, including internal strife, ethnic tensions, and regional disputes. National security efforts play a pivotal role in mitigating such conflicts, fostering stability, and preventing the escalation of violence that can undermine social progress, economic growth, and human development. By addressing the root causes of instability, nations can create an environment conducive to sustainable peace and prosperity. The global south is often disproportionately affected by transnational threats, including terrorism, organized crime, drug trafficking, and human trafficking. Robust national security measures are essential for countering these threats, safeguarding governance structures, and fostering human rights and regional cooperation. The region often navigates complex geopolitical landscapes, marked by shifting alliances, power dynamics, and global interests. Effective national security decisions allow countries to assert strategic influence, negotiate equitable trade agreements, and safeguard regional interests. Furthermore, in an era defined by technological advancements, the global South confronts challenges related to digital security, data privacy, and cyber threats [14]. Ultimately, the importance of national security in the global south transcends mere military concerns to encompass a holistic and comprehensive approach.

Hurdles

Though a lot of discussion has been towards highlighting the potential of AI; however, hurdles in the shape of challenges are the reality. Such, challenges range from the aspect of autonomy, race of information superiority, the ambit of predictability, a test of speed and endurance, and the possibilities of instances of exploitation. In addition to this, there are regulatory and ethical challenges too that are real and evident on the road to meeting such goals. The changing landscape of security and strategy has hidden hurdles that a nation is bound to face while chalking out its course of action. The instances of misuse of such endeavors at the hand of non-state actors cannot be ignored entirely. Moreover, transparency and biases in AI-driven decisions cannot be ignored in their entirety. The probability of vulnerability in terms of privacy issues and cyber-attacks against AI endeavors can have the capability of compromising the national security of a country.

4. CONCLUSION

In contemporary times, we as individuals are witnessing a paradigm shift in the security landscape of the globe, and AI is one major enabler of the same. It will not be wrong to state that if human interpretation meets the appropriate AI interventions, the game can be more reliable and futuristic. One

https://doi.org/10.54934/ijlcw.v2i2.63

needs to accept the fact that today's data is the new oil. There should be well-researched policy documents and regulations in place that would govern the entire transaction happening in this arena. Eventually, the aspect of national security is indeed susceptible to a nation; therefore, nations should analyze the potential of AI towards national security not in haste but in a holistic manner. Nations can create an environment conducive to sustainable peace, prosperity, and unlock their economic potential and uplift their populations through improved living standards and human security. Diplomatic endeavors using AI within the military domain can aim at conflict prevention and resolution and contribute to maintaining stability and global security.

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ABOUT THIS ARTICLE

Conflict of interests: Author declares no conflicting interests.

International Journal of Law in Changing World

Volume 2 Issue 2 (2023) ISSN 2764-6068

Research article
JNL: https://ijlcw.emnuvens.com.br/revista
DOI: https://doi.org/10.54934/ijlcw.v2i2.70

THE DOCTRINE OF BENEFICIAL OWNERSHIP IN RUSSIAN LAW

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Article Information:

Received
November 27, 2023
Approved
November 27, 2023
Accepted
December 9, 2023
Published
December 29, 2023

Keywords:

artificial intelligence,
global south,
internal security,
human rights,
cyber security

ABSTRACT

The article deals with the problems of differentiation of the spheres of application of doctrine, the piercing corporate veils and the doctrine of beneficial ownership. Both doctrines are used to challenge corporate decisions. Challenging is possible if a person exercising corporate control has abused them or has lost the reality of its course. The article proposes solution of the problem when persons controlling a legal entity, thus structuring contractual relations, so as not to lose control over the company and in cases of introduction of bankruptcy procedures, and transfer of management by its creditor. The doctrine of beneficial ownership is applicable where the following conditions are met: the beneficiary makes a full disclosure of corporate information and details of the business structure; the complexity of the business structure is immaterial; the beneficiary has proved that he exercised corporate control over the company whose decision or transaction he is contesting, but has lost this control as a result of wrongdoing; the contested resolution of the company's general meeting is void (voidable); the beneficiary has acted in good faith; the beneficiary has motivation due to fear of financial losses, which he is certain to suffer unless the transaction or decision is contested; the doctrine is applied by way of exception.

FOR CITATION:

Podshivalov, T. P. (2023). The Doctrine of Beneficial Ownership in Russian Law. International Journal of Law in Changing World, 2 (2), 88-99. DOI: https://doi.org/10.54934/ijlcw.v2i2.70

1. INTRODUCTION

The supreme judicial authorities in Russia adopted the doctrine of shareholder reinstatement, the doctrine of piercing the corporate veil, the beneficial ownership doctrine, corporate estoppel, and others. It is these doctrines that are quite often invoked in challenges to corporate decisions and transactions.

Although they are all rooted in the principle of good faith, these doctrines differ in their scope of application and must not be in conflict with each other. The judicial doctrines under discussion have both common features, which enable their systematization, and differences.

2. IMPLEMENTATION OF THE DOCTRINE OF BENEFICIAL OWNWERSHIP INTO RUSSIAN LAW

The doctrine of beneficial ownership has been developed and is widely used in English law as an equitable remedy. Webster's Online Dictionary defines a beneficial owner as one who enjoys the benefit of a property of which another is the legal owner [4]. The situation here is where an asset is held by a company, but the person who controls it behaves to all intents and purposes as the owner of the asset.

Black’s Law Dictionary offers a more detailed definition of beneficial owner: one recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else [1].

It is only natural that the doctrine was fine-tuned and localized when incorporated into Russian law. This is largely due to the fact that the doctrine of beneficial ownership was developed in English law in the context of trust property. There is no such doctrine in Russian law; moreover, it is alien to codified private law, with its key separation of property and contract law.

In Russian law, provisions dealing with trust property are covered by contract law and an asset management contract. Neither, however, can the Russian courts disregard the doctrine of beneficial ownership because business structuring using offshore companies and trusts is fairly common. And it is English law that most offshore jurisdictions follow in their legislation. That is why, when introducing the doctrine of beneficial ownership in its case law, the SC RF changed it from the classic English model.

For a long time, Russian law ignored the beneficial owner as an entity and afforded him no legal status. However, as trusts and offshore companies became more widespread, a trend arose for beneficiaries

https://doi.org/10.54934/ijlcw.v2i2.70

to be held liable at first for tax and then for civil debts of a company controlled by him (secondary liability, piercing the corporate veil affiliation etc. [6]).

Recently, judicial authorities have been increasingly focusing on the figure of the beneficiary in dispute adjudication:

– in referring to a beneficiary when either considering a matter (the RF SAC Presidium judgment of 21.01.2014, No 9324/13, in case No A12-13018/2011; the RF Supreme Court determination of 30.01.2017, No 305-16409, in case No A40-100700/2015; the RF Supreme Court determination of 28.12.2015, No 308-ES15-1607, in case No A63-4164/2014; the RF Supreme Court determination of 27.05.2015, No 305-KG15-5431, in case No A40-68718/2014; the RF Supreme Court determination of 18.06.2013, No 5-KG13-61; the RF SAC determination of 22.04.2014, No VAS-13433/12 in case No A40-21546/2011; the RF Supreme Court decision of 18.07.2016, No AKPI16-421);

– making a legal ruling on his actions (the RF SAC Presidium judgment of 10.06.2014, No 8095/12, in case No A40-126114/11-137-435; the RF Supreme Court determination of 21.12.2015, No 305-ES15-16066, in case No A40-129788/14; the RF Supreme Court determination of 09.02.2015, No 301-ES14-6363, in case No A79-8878/2013; the RF Supreme Court determination of 15.08.2014 in case No 305-ES14-67, A40-74217/2013).

Note that the words “ultimate beneficiary”, “recipient of benefit”, and “ultimate recipient of benefit” are used to refer to a beneficiary in case law. In terms of its scope of application, the legal status of beneficiary is identified in disputes over the division of marital property (the RF Supreme Court determination of 07.07.2015, No 5-KG15-34) or over voidance and reversal of a transaction (the RF Supreme Court determination of 01.12.2016, No 305-ES15-12239, in case No A40-76551/2014), including alienations of equity interests (the RF Supreme Court determination of 15.12.2014, No 309-ES14-923, in case No A07-12937/2012) and divestitures of corporate real estate assets (the RF Supreme Court determination of 21.09.2016, No 305-ES16-11168, in case No A40-106582/14).

The enactment of the principle of good faith, in art. 1 of the CC RF, as a doctrine affected the availability of redress against any entity, including beneficiaries. This, coupled with art. 10 of the CC RF, laid down the rule that this category of persons must act reasonably and in good faith, which spells out the prohibition of actions likely to cause harm to another person and a controlled company.

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But the legal status must involve not only duties and liability, but also legal rights and guarantees. That is why the option of holding a beneficiary liable for debts of a controlled company should be quite naturally coupled with the option for the beneficiary to challenge transactions and decisions of the controlled company. Because the beneficiary has a legitimate interest in the preservation of the assets of the company under his control.

The SC RF formulated the Russian doctrine of beneficial ownership based on the construct of "right to actual income" in the context of proceedings in cases No A40-104595/14 and No A40-95372/14. That is why the decision of the Moscow Court of Arbitration of 5 August 2016 in case No A40-104595/14 says: "Seeing that Plaintiff is an ultimate beneficiary, the court upholds his legitimate interest in the governance of ZAO Aspekt-Finans". The beneficiary has a legitimate interest in preserving the assets of the controlled company and in challenging decisions and transactions he will have standing as the beneficial owner of the company. The same decision says that according to the bright-line rule laid down in cl. 2 of the determination of the Constitutional Court of the Russian Federation of 17.02.2015, No 404-O, the provisions of art. 181.5 of the CC RF that formulate criteria for categorizing meeting resolutions as void are designed to provide redress both for the persons involved and for others who might be legally affected by the resolutions adopted.

The decision of the Moscow Court of Arbitration of 5 August 2016 was appealed against but was upheld by the Ninth Arbitration Court of Appeal in its judgment of 17.10.2016 and by the Arbitration Court of the Moscow District in its judgment of 19.01.2017; the SC RF in its determination of 12 May 2017, No 305-ES15-14197, threw out a cassation complaint. To a large extent, the judgment of the trial court is based on the arguments put forward in prior rulings entered by the SC RF upon completion of the first round of the legal precedent-setting case under analysis (SC RF determination of 31.03.2016, No 305-ES15-14197, and SC RF determination of 27.05.2016, No 305-ES15-16796).

The case under investigation further proves that the SC RF equates in its case law meeting resolutions with the legal framework of transactions. In this context, the SC RF held that a corporate decision can be challenged in the above-referenced matter on grounds that third parties can challenge a decision if it infringes their rights. The beneficiary, however, has no privity with the controlled company. The beneficiary's standing to challenge a decision of the controlled company can be based on the construct of legitimate expectation [3] [7] [9].

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The term “legitimate expectations” was first used by the judge Lord Denning in Schmidt v Secretary of State, 1968, where he said that apart from legal rights and legitimate interest a person can also have legitimate expectations. The RF Constitutional Court used the term “legitimate expectations” in its judgments more than once, saying that the legislature should change the conditions for the acquisition of any legal right in furtherance of the principle of public trust in law and the government, which calls for preserving reasonable stability of statutory regulation and precluding arbitrary enactments. Citizens are entitled in this context to legitimate expectations that the right acquired by them under the laws in place will be respected by the authorities and will be exercisable (judgment of the RF Constitutional Court of 24.05.2001, No 8-P; judgment of the RF Constitutional Court of 20.04.2010, No 9-P; judgment of the RF Constitutional Court of 25.06.2015, No 17-P).

Initially, the doctrine of legal expectations was applied in disputes with the state and from administrative law [2] [11]. But later it was developed in other institutions of law, including in the sphere of rights to things [5] [10].

The Russian doctrine of beneficial ownership has not been enacted as such, having been developed in the case law of the SC RF. Indirectly, a regulatory framework can be said to be provided by art. 1 and 10 of the CC RF, cl. 2, art. 7 of the Tax Code of the Russian Federation (TC RF) and the Model Tax Convention on Income and on Capital of the Organization for Economic Cooperation and Development (updated 22 July 2010).

The court rulings in the cases under review provide no rationale for the decisions, which makes it impossible to follow the reasoning of the SC RF. Absent a rationale, the question remains as to the grounds on which a beneficiary can challenge decisions and transactions.

3. APPLICABILITY CRITERIA FOR THE DOCTRINE OF BENEFICIAL OWNERSHIP IN RUSSIAN LAW

Our review of the court rulings in cases No A40-104595/14 and No A40-95372/14 suggests that the beneficiary can challenge corporate decisions and transactions of the controlled company where the following conditions are met:

First, a full disclosure of corporate information and details of the business structure: the chain of the affiliated companies and trusts through which the beneficiary controls the business. This is how the beneficiary proves that he holds not direct, but indirect equity interests in the controlled company.

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Note that the term "ultimate beneficiary" is quite often used in the Russian case law, which highlights the absence of nominal owners down the chain and the focus not on a straw man, but on the real business owner, who determines the strategy.

Second, the complexity of the business structure and length of the chain of legal entities, offshore companies, and trusts to structure the business is inconsequential.

It is important to understand that the incorporation and operation of an offshore company or its use in business structuring is not a legal wrong in and of itself. This is why beneficiaries cannot be faulted because they hide behind legal entities rather than hold stock in the controlled company directly.

Of significance in this regard is the RF SAC Presidium decree of 26 March 2013, No 14828/12, which lays down the following bright-line rule for the first time: "Ownership of real property in the Russian Federation by an offshore corporate, which therefore does not disclose publicly its beneficiary, does not constitute a legal wrong in and of itself."

Adverse consequences from using an offshore company are only suffered when the offshore companies do not name their beneficiary. Failure to disclose this information is held by the court to be wrongdoing (art. 10 of the CC RF). This is because offshore jurisdictions have special rules on the disclosure of details of companies' beneficiaries, which obscures the equity-holding structure of an offshore company.

Therefore, an offshore company which does not name its beneficiary is held to be acting in bad faith, which shifts the burden of proof and is punishable under art. 10 of the CC RF, including, without limitation, by denial of redress.

Beneficiaries exercise control over offshore companies through a nominee director and a nominee shareholder (acts as the legal owner (legal title holder) of stock in the offshore company). Oversight of the activities of these straw men is arranged under a trust agreement (declaration of trust), based on confidentiality and freedom of contract. This gives the beneficiary the so-called beneficial owner's rights in equity.

A trust is an institution which does not canonically fit into the Russian system of private law. A trust is outside of schools and outside of systems, so to speak. It has a number of unique features. A trust is not a legal entity, which generally eliminates the need for public registration or accountability. A trust

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is created when assets are transferred to a trustee (trustee) and he accepts them in this capacity. Nor is the trust a contract: the relationship between a trustee and a beneficiary are based on equity rather than contract law.

The concept of trust rests on two ideas. One: the trustee must hold assets (trust property) for the trust beneficiaries and do this on the terms and conditions set forth in the trust agreement (his bundle of rights is determined by the agreement rather than by operation of law). The trust is most typically created by a settlor, who enters into a confidential trust agreement with a trustee. Two: a trustee has fiduciary duties to a beneficiary. The trust property is owned by neither the settlor nor the beneficiaries. Generally speaking, neither can remove property from the trust.

The focus on trust is largely due to the tendency to ratchet up the requirements for the disclosure of corporate information of offshore companies, specifically by naming the beneficiary of the offshore company. For example, effective as of 30 June 2017, the authorities of one of the most popular offshore jurisdictions, the British Virgin Islands (BVI), have agreed to disclose the official details of the owners of incorporated companies to the UK authorities. The BVI's BOSS Act (The Beneficial Ownership Secure Search System Act, effective date 15 July 2017) lays down the procedure for punishing those who refuse to name the beneficial owner of an offshore company. The BVI Government has set up a database called BOSS (Beneficial Ownership Secure Search System), which allows searches. Given that the BVI is the UK's dependency, the details of the beneficiaries of BVI offshore companies are already available to the UK authorities. Note that access to this database will only be available to the British, and no content thereof will be shared with foreign governments without an Interpol enquiry. However, enabling private asset holding will require a more sophisticated corporate structure of business, with a greater use of trust agreements.

Third, the beneficiary has proved that he controls the company whose decision or transaction he contests. It is worth bearing in mind that this doctrine can also apply where a beneficiary has lost control over a company as a result of third-party wrongdoing and is seeking to re-establish corporate control.

The SC RF's judgment leaves open the question of the extent of control that a beneficiary must have in order to have standing to challenge a corporate decision of a controlled company. This is because the legal case under discussion (No A40-104595/14) involved three beneficiaries, who equally co-owned the first company in a chain of affiliates. Therefore, the court allowed a challenge to a corporate decision

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by a beneficiary who owned a third of the company. It appears that the matter can be resolved because ultimate beneficiaries are few.

Fourth, a beneficiary can only challenge a company's decision that is voidable. Pursuant to art. 181.3 of the CC RF, a meeting resolution can be voided on grounds laid down in a code or other laws, by a court of law (a voidable decision) or by operation of law (a void decision).

And whereas a challengeable decision can only be voided if requested by a shareholder, a voidable decision can be voided if requested by any person with a legitimate interest infringed by the decision (by analogy with the voidance of transactions the provisions wherefor can be extended to decisions). It is this premise that the SC RF used in examining cases No A40-104595/14 and No A40-95372/14 and finding that the beneficiary has standing to challenge the decision of the controlled company. The transaction was most likely found to be voidable because the contested decision is at variance with the legal framework or morality (cl. 4, art. 181.5 of the CC RF).

However, limiting a beneficiary's standing to challenge decisions to ones that are voidable (art. 181.5 of the CC RF) does not seem very reasonable. It would be more fair to allow the beneficiary to challenge any decision, whether challengeable [voidable] or void.

Fifth, the beneficiary's bona fides, but not in a subjective way (whether he was or was not aware of any circumstances), but in an objective way—as a manifestation of the principle of good faith—his behavior matches normal business conduct; he uses no deception or subterfuge.

The principle of good faith is that a person is not only required to fully comply with the law, but also to exercise his rights as diligently as is generally practiced, i.e. act “as others do”, “as is customary”. This reasoning yields a number of inferences:

a) bona fide conduct can be said to be that which is shown by a normal, average economic agent. Mala fides is deviation from the typical and generally accepted patterns of behavior. Mala fides conduct is affected, contrived.

The principle of good faith is most often taken to mean a yardstick for business conduct.

b) bona fides is a term of art rather than a category of ethics or morals.

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c) the principle of good faith is established for practical considerations rather than pursuant to any legal theory, let alone any legal requirement, and this principle has but applicatory relevance.

The West-European school of thought understands bona fides as a standard of behavior rather than law. However, as far back as Ancient Rome, lawyers premised that bona fides was a legal concept: if you act in good faith, then you are within the law.

It is more consistent and logical to treat bona fides as a legal concept rather than a behavioral standard. Anyone who is technically within the law but acts in bad faith shall be deemed to be in breach of the law. Anyone who acts in good faith in grey areas of the law shall be deemed to be law-abiding.

Bona fides can be found in legislation not only in as a principle (objective bona fides), but also as subjective bona fides: awareness of any factual circumstance. The best example of subjective bona fides is denial of recovery where property has been acquired in good faith for a consideration and where usucapion is involved (art. 234 of the CC RF and 302 of the CC RF).

Naturally, the beneficiary's bona fides must be assessed in terms of the principle of good faith because he cannot claim ignorance of the corporate structure of his business.

Sixth, motivation due to fear of financial losses, which the beneficiary is certain to suffer unless the transaction or decision is contested. The beneficiary's legitimate interest is in the preservation of the company's assets. Therefore, the challenged corporate decision or transaction must involve stripping of the controlled company's assets.

Seventh, the exceptional nature of application of the doctrine under discussion: it is only applied by the court as a last resort where no other *restitutio in integrum* remedy is available against the transaction or decision that is challenged.

The exceptionality of the application of the doctrine of beneficial ownership is explained by the fact that no one has standing to challenge corporate decisions and transactions except a shareholder (art. 181.4 of the CC RF). Therefore, exceptional circumstances are needed for a beneficial owner to gain standing to challenge transactions and decisions. Run-of-the-mill, garden-variety situations cannot give a beneficiary standing to challenge decisions and transactions of the company under his control.

Because a beneficiary can only put forth challenges in exceptional circumstances, he can only do so through the courts. Only a court can ascertain such exceptionality and grant this opportunity. This is

https://doi.org/10.54934/ijlcw.v2i2.70

why the doctrine under discussion was developed in the case law of courts at different levels (RF SC determination of 7 July 2015, No 5-KG15-34; Ninth Arbitrazh Court of Appeal judgment of 16 March 2015, No 09AP-4138/2015 in case No A40-17025/2014, Ninth Arbitrazh Court of Appeal judgment of 23 November 2015, No 09AP-46990/2015 in case No A40-70319/15; Moscow Arbitrazh Court decision of 16 December 2014 in case No A40-17025/2014).

Eighth, it is a means of dealing with corporate conflicts or resolving corporate disputes, that is, it is only used in corporate or trust contexts.

The applicability criteria of the doctrine of beneficial ownership focuses on situations wherein the beneficiary has standing to challenge corporate decisions and transactions of the controlled company. It is, however, important to understand that the doctrine of beneficial ownership has a broader scope of application because Russian courts apply this construct to disputes between former spouses over the division of marital estate, where the court extends the legal treatment of joint tenancy to the assets of offshore companies and trusts controlled by a spouse.

4. CONCLUSION

Our research suggests the following conclusions.

First, the Russian doctrine of beneficial ownership has not been enacted as such, having been developed in the case law of the SC RF. The court formulated the Russian doctrine of beneficial ownership via the construct of "entitlement to earnings." The beneficiary can challenge the decisions and transactions of a controlled company even where he exercises control through a chain of parent-subsidiary companies.

Second, the SC RF case law is shaped based on equating meeting resolutions with the legal framework of transactions. A beneficiary who exercises actual corporate control has no privity with the controlled company. The beneficiary's standing to challenge decisions of the controlled company can be based on the construct of legitimate expectation.

Third, the doctrine of beneficial ownership is applicable where the following conditions are met: the beneficiary makes a full disclosure of corporate information and details of the business structure; the complexity of the business structure is immaterial; the beneficiary has proved that he exercised corporate control over the company whose decision or transaction he is contesting, but has lost this control as a result of wrongdoing; the contested resolution of the company's general meeting is void (voidable); the

https://doi.org/10.54934/ijlcw.v2i2.70

beneficiary has acted in good faith; the beneficiary has motivation due to fear of financial losses, which he is certain to suffer unless the transaction or decision is contested; the doctrine is applied by way of exception.

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ABOUT THIS ARTICLE

Conflict of interests: Author declares no conflicting interests.

https://doi.org/10.54934/ijlcw.v2i2.70

International Journal of Law in Changing World

Volume 2 Issue 2 (2023) ISSN 2764-6068

Research article
JNL: https://ijlcw.emnuvens.com.br/revista
DOI: https://doi.org/10.54934/ijlcw.v2i2.73

THE RIGHT TO DEVELOPMENT: BRICS' UNDERSTANDING OF THE HUMAN RIGHTS

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Article Information:

Received
December 4, 2022
Approved
December 6, 2022
Accepted
December 9, 2022
Published
December 28, 2022

Keywords:

human rights,
the right to development,
BRICS approach,
international human rights law,
regional human rights law

ABSTRACT

This article analyses the BRICS countries' understanding of the right to development through the prism of this political entity's internal structure, declarations, and official legal documents. The authors conclude that implementing and applying this right in international law is necessary to further develop society and social relations. The article also identifies the problems of understanding human rights in civilisations, which results from different historical, social, economic, and political developments. The article shows regional unions' understanding of human rights in this regard. Developing countries' defence of this right to development. It also analyses the idea of the President of the People's Republic of China, "Brighter Shared Future for the International Community" for a new world order, which has become a key idea for the BRICS countries.

FOR CITATION:

Hieronymi, M. & Karimov, D. (2023). The Right to development: BRICS' Understanding of the Human Rights. International Journal of Law in Changing World, 2 (2), 100-123. DOI: https://doi.org/10.54934/ijlcw.v2i2.73

1. INTRODUCTION

In August 2023, the leaders of Brazil, Russia, India, China, and South Africa, collectively known as the BRICS group of countries, came together for the XV. BRICS Summit in Johannesburg, South Africa. In their joint final declaration, the Johannesburg II Declaration, the most important developing and emerging nations pledged to promote and protect human rights, including the right to development.

The right to development or development as a human right? Some divergent views have emerged in human rights literature regarding the scope of protection, the addressee of the norm or legal classification. The focus is on the determinability of development and how it relates to other human rights. With the *Declaration on the Right to Development*, development was recognised as a human right for the first time and a deterministic approach was introduced. At the same time, the regional levels of human rights protection have developed specific understandings of the right to development.

With the change in the significance of the BRICS, which will represent almost half of humanity and a third of the global economy with their member state expansion, their commitment to the right to development represents a possible paradigm shift in the international human rights discourse. Based on the BRICS-genuine concept of development, which was most recently laid down in the Johannesburg II Declaration, the right to development could also be subject to a changed definition in terms of content.

In the following, the evolution of the right to development at the international and regional levels is used to examine how it can be classified in the context of human rights. The first part explains the genesis of the right to development and its relationship to human rights. This is followed by examining regional conventions that contain the right to development. The second part presents the concept of development of the BRICS countries. To this end, it is necessary to consider how participation in regional conventions and the countries' understanding of the right to development have affected the right to development. The third part of the article examines the BRICS development concept. The focus here is on presenting the human rights concept and the nexus to the BRICS-genuine development concept. To this end, the development goals and implementations are analysed. Finally, the article examines the relationship between the right to development and the BRICS development concept.

2. ASSUMPTION OF HUMAN RIGHTS AND FOR THE RIGHT OF DEVELOPMENT: INTERNATIONAL APPROACH

Human rights are an integral part of modern international law. They serve to ensure that people's living conditions are protected and improved. However, the scope of many rights is uncertain, including the relatively new right to development. This has led to controversy among legal scholars and state

https://doi.org/10.54934/ijlcw.v2i2.73

representatives since it was established under human rights law. As a result, various approaches to defining the right to development have emerged at both the international and regional levels of human rights protection.

2.1. Key Assumption of the Human Rights

The Universal Declaration of Human Rights, adopted in 1948, marked the beginning of universal human rights standards. In its preamble, the UN General Assembly proclaimed the Declaration *"as a goal to which all peoples and nations should aspire*"[1]. The preamble of the Declaration emphasises the importance of a universal understanding of the nature of human rights and freedoms for their full implementation [1] (p. 60).

The Universal Declaration of Human Rights was not intended as an exhaustive catalogue of rights but should be subject to constant further evolution and expansion. In this regard, Eleanor Roosevelt, being part of the Universal Declaration of Human Rights drafting, stated: "We must remember that we are writing a bill of rights for the world and that one of the most important rights is the opportunity for development. As people grasp this opportunity, they will be able to demand new rights if they are broadly defined" [2] (p. 5). The relationship between human rights and development has evolved into a legal nexus over time and has emerged in regional human rights protection systems [4] (p. 55).

2.2. Key Assumption of the Right of Development

Ascertaining the subject of the right to development can prove difficult due to its process-oriented nature. This paragraph aims to define the legal purpose and subject of this right while also analysing its impact on social, economic, and political relations among people and its role in advancing human rights and freedoms.

2.2.1. Legal Definition and International Legal Sources of The Right to Development

Oxford Dictionary defines development as the action or process of bringing something to a fuller or more advanced condition[2]. Accordingly, development consists of two features: 1. a process; 2. aimed at an improved condition.

[1] United Nations General Assembly. (1948). Universal Declaration of Human Rights, preamble.
[2] Oxford University Press. Oxford English Dictionary. [Electronic source]. URL: https://www.oxfordlearnersdictionaries.com /definition/english/development

https://doi.org/10.54934/ijlcw.v2i2.73

The right to development has not been given due attention in international documents. However, the fundamental components of this right can be discerned in the provisions set forth in paragraphs "a" and "b" of Article 55 of the UN Charter: "The United Nations will promote higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation"[3].

The category of development is also reflected in Article 22 of the UDHR, which states that: "Everyone […] has the right to social security and is entitled to realisation, through national effort and international co-operation and by the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality"[4].

The first far-reaching changes occurred in the 1950s. More and more peoples invoked the principle of self-determination to free themselves from their colonial constraints [15] (p. 87). The emergence of new states, which were swiftly admitted to the UN, faced the challenge of establishing state, social, economic and cultural structures [3] (p. 8). As a result, there were in-depth discussions in the international community about whether peoples should have a right to development.

This new pressure was considered with the Tehran Proclamation (1968), which recognised the interconnection between the realisation of human and economic development[5].

For the first time, the right to development was enshrined in 1986 in the Preamble and Article 1 of the Declaration on the Right to Development[6].

The preamble of the Declaration on the Right of Development implemented the following definition:

:"*…development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom…"*[7]. This concept of the right to development revolves around improving living

[3] United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 55.
[4] United Nations General Assembly. UDHR, article 22.
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[6] United Nations General Assembly. (1986). Resolution 41/128: Declaration on the Right to Development. Adopted by the General Assembly on 4 December 1986.
[7] Ibid, preamble.

https://doi.org/10.54934/ijlcw.v2i2.73

conditions while protecting all human rights. This involves the promotion of economic, social, cultural, and political progress through collaborative national and international efforts. Each country is expected to contribute to this process based on its available resources.

This is presupposed by Art. 1 of the Declaration: *"The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised"*[8].

The Declaration states that the right to development is a fundamental human right, which every individual and community are entitled to take part in, contribute to and enjoy the benefits of development. It acknowledges that development is about economic growth and social, cultural, and political progress. Thus, development cannot be measured solely by economic indicators such as GDP or per capita income." [15] (p. 89). Furthermore, it emphasises that the human right to development is crucial for attaining other human rights and freedoms.

According to Felix Kirchmeier, Arjun Sengupta, the right to development is understood as: 1) the right of everyone to participate in the development, regardless of its nature; 2) to manage natural wealth and resources within a framework of self-determination; 3) collectively on the individual as well as collectively on the community to promote and protect an appropriate political, social and economic order for development [3] (p. 8).

Another view argues that the right to development is a collective right [9] (p. 18). However, this view does not recognise its interdependence with individual civil, political and socio-economic rights. A holistic approach is therefore needed to distinguish the substantive content of the right to development. Generally, the Declaration on the Right to Development reflects such a holistic approach. It takes into account both the conflicting rights of people and the individual right to development [15] (p. 88). Nevertheless, it is argued that the right to development has no binding effect on states and should, therefore be categorised as soft law [3] (p. 11).

Over the past two decades, it was persistently sought to enshrine the right to development in a separate new convention, or at least in an international legally binding standard [15] (p. 89). The adoption of the 1986 Declaration was landmark, with many states disagreeing with the text of the document

[8] Ibid, article 1.

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(Source) However, consensus was first reached at the World Conference on Human Rights in Vienna in 1993, where the right to development was described as "an integral part of fundamental human rights" and human rights were reaffirmed as interdependent, indivisible, and mutually reinforcing[9].

Industrialised and developing countries had thereby committed themselves to the right to development. The right to development is an integral part of international human rights protection. Nevertheless, its scope and content remain controversial.

2.2.2 Structural Intrinsicality and Shortcomings of Right to Development

The right to development is closely linked to the principles of human rights. Nevertheless, states cannot guarantee all human rights gradually due to a lack of resources or economic, social, cultural and political reasons. States, therefore, have to continuously improve human rights standards, which requires a right to development of the citizen to be effectively implemented.

The right to development refers to a process of development that aims to achieve the realisation of each human right and all of them together. This process should be carried out according to international human rights standards and in a participatory, non-discriminatory, accountable, and transparent manner. The process should also ensure fairness in decision-making and sharing of the outcomes [17] (pp. 845-846.).

Many authors consider this definition to be tautological and seriously flawed. For example, they argue as follows: "The right-based process of development is precisely the one that produces human rights realisation, and human rights realisation is necessarily based on international human rights standards" [9] (p. 20). A significant criticism and shortcoming of the right to development is that "it is a right about everything and nothing at the same time". For example, Noel G. Villaroman quotes David Beetham as saying that the right to development in literature has "gone beyond its traditional understanding; lost its clear focus; lost its normative force" [9] (p. 18) [22].

However, the right to development can be understood in both broad and narrow legal sense: The right to development, the process of development, and human rights are closely interrelated. At the same time, the development process should be carried out with respect for human rights and freedoms and other necessary conditions. [17] (p. 845-846). Other authors adhere to the same position. So argues Marks S.P.

[9] World Conference on Human Rights. (1993). Vienna Declaration and Programme of Action. World Conference on Human Rights, para. 10

https://doi.org/10.54934/ijlcw.v2i2.73

that “development and human rights are mutually reinforcing strategies for the improvement of human well-being”, hinting at the close connection between the two definitions [5] (p. 169). Therefore, the right to development is the driving force behind the evolution of human rights.

At the same time, demarcation problems can hardly be avoided; as Beetham D. points out, "the more the terminological meaning of the right to development expands to include new aspects of the right, the more difficult it is to determine what aspects of the right are being violated. As it encompasses virtually everything. Also, the responsibility for such violations becomes increasingly vague and imprecise" [22]. This is accompanied by the problem of implementing and realising development [5] (p. 168).

The legal structure of the right to development remains indeterminate. While political and civil rights presuppose a state, process structures are ongoing and cannot be finalised. In particular, the argument that the right to development guarantees purely objective rights has been consolidated in the literature.

The nature of development is not the achievement of a state but the maintenance of the continuous improvement of living conditions by raising minimum human rights standards. This is also confirmed by Nico Shriver's references to the words of Mohammed Bedjaoui, former President of the UN International Court of Justice, that "the right to development is a prerequisite for freedom, progress, justice and creativity" and "the first and last human right, the beginning and the end, the means and the end of human rights” [15] (p. 85).

The right to development creates opportunities for States to ensure human rights and freedoms and create new rights and freedoms for citizens, generating further development.

3. REGIONAL APPROACHES TO THE RIGHT TO DEVELOPMENT

Within the various regional human rights regimes, consider how other civilisations' experience, culture, history, social, political, and economic relations influence the understanding of the right to development and its relationship to human rights and freedoms.

https://doi.org/10.54934/ijlcw.v2i2.73

3.1. Different Understandings of Human Rights Due to Civilizations Socio-Historical Approach

In recent decades, since the end of the Cold War, a process of legalisation of international agreements has been underway. Nevertheless, economic and political contradictions are fraught, which also impact international law and the protection of human rights. With the 2030 Agenda of Sustainable Development and Rio+20 of the UN Conference on Sustainable Development (hereinafter referred to as the RIO+20 Conference)[10] these adversities within the international economic system should have been overcome. Nevertheless, most developing countries "face unfair foreign trade restrictions, unstable commodity markets, constant changes in interest rates in global financial markets, and weak inflows of foreign investment and technical assistance" [13] (p. 28).

At the stage of drafting the Declaration on the Right to Development, specific differences in the interpretation of certain rights emerged between those States representing different political and religious systems and sociocultural traditions. The voting pool shows 146 States voted in favour (including the Netherlands), one against (USA under the Reagan Administration) and eight abstentions [18] (p. 26).

Three different theories of this outcome of the vote to adopt the Declaration have been noted in the literature: 1) The tense and distrustful relationship of the NATO and Warsaw Pact countries to each other, the confrontation between the socialist bloc countries and the capitalist bloc countries. US distrust of the proposals of "*potentially communist countries*" [3] (p. 8); 2) Suspicion on the part of Western developed countries to the formulation of human rights to development by developing countries. According to that position, developing countries may abuse this right if they fail to provide their people with the necessary opportunities. At the same time, the developed states feared to lose their dominant economic position [15] (pp. 85-86).

It has established an overly broad understanding of the right to development, ranging from its complete negation to the fact that it is an inalienable human right and should be legally binding and central to human rights and freedoms [5] (p. 170).

[10] UN Conference on Sustainable Development RIO+20. Outcome document "The Future We Want" dated 19 June 2012. A/CONF.216/L.1 // URL: https://sustainabledevelopment.un.org/rio20

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Moiseev N.N. notes that "the concepts of human rights and human values are closely connected in the minds of people with those features of civilisation to which they belong and which have determined for many hundreds of years the conditions of their existence and behaviour" [6] (pp. 105-106).

The fact that the objectively determined processes of globalisation have not automatically led to the emergence of a universal world culture plays a vital role in the fact that globalisation is essentially Westernisation, i.e. the expansion of the Western model of society, and the adaptation of the world to the needs of this model. In contrast, a significant part of the world's population - above all the Muslim Middle East and Confucian China - lives according to systems other than the Western one.

For example, in the Islamic concept of human rights lie the individual's duties and, above all, his submission to authority. Many authors have observed that "Islamic conceptions of freedom, equality and justice do not coincide in many respects with their European understanding" [12] (p. 37).

In contrast to the Western concept, where the purpose of enshrining human rights is their protection by the state, Muslim jurists consider the state power as an institution linked to Shariah and playing the leading role in the implementation of its prescriptions [16] (pp. 320-321). Therefore, in this paradigm, the state plays the leading role in implementing human rights and freedoms.

Human rights must be interpreted within the historical and cultural context of nations and people, influencing their understanding of such rights. This is especially relevant in the context of globalisation and intercultural exchange between countries.

3.2. Regional Legal Regimes on the Right To Development

Each nation has a different understanding of human rights for historical, social, cultural, economic and political reasons. This applies to the understanding of the right to development.

Moreover, regional unions adopt legislation compatible with their national customs and establish special bodies and mechanisms to protect human and civil rights and freedoms.

Many countries from regional unions participate in BRICS or have applied for this formation. For example, Egypt, Saudi Arabia and Syria have used to participate in BRICS and are members of the Arab Charter of Human Rights. Brazil is a member of BRICS and the American Convention on Human Rights, and the same is the South Africa - African Charter on Human Rights.

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Just as we know, the main objective of the BRICS is the reformatting of international relations to increase the influence of new centres of power of "rising" countries [18] (p. 34).

Some scholars indicate that regional defence of human rights has long been unpopular in the UN, for such 'deviant movements' were seen as a threat to the universal protection of human rights because of their low standards. [8] (p. 132). Only after the adoption of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) the UN began to support the idea of regionalism of human rights and freedoms.

The American Convention on Human Rights[11] was adopted in 1979 and is the second implementation of a regional human rights union after the European Convention on Human Rights[12] implemented in 1953. This was followed by the African Charter on Human Rights[13] adopted by the African States in 1981—the Arab Charter of Human Rights[14] in 2008.

In each regional convention, there is a right to development, but it is interpreted differently everywhere. Literature comparing the right to development focuses on the following characteristics: 1) rights holder; 2) obligation holder; 3) active right; 4) objective content [7] [10].

3.2.1. American Convention on Human Rights

The American Convention on Human Rights was one of the first to be adopted after the European Convention on Human Rights. The progressive right to development is referred to here in Article 26, which is found in Part One on State obligations and protected rights and Section Three on economic, social and cultural rights.

The text of the article on "progressive development" [26] contains the following provision: "The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, to achieve progressively, by legislation or other appropriate means, the full realisation of the rights implicit in the economic, social, educational, scientific,

[11] Council of Europe. (1950). Convention for the Protection of Human Rights and Fundamental Freedoms. Rome: Council of Europe.
[12] Organization of American States. (1969). American Convention on Human Rights. Treaty Series, No. 36, Organization of American States.
[13] African Union. (1981). African Charter on Human and Peoples' Rights.
[14] League of Arab States. (2004). Arab Charter on Human Rights.

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and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires"[15].

The participating countries focus in the convention on terms such as the obligation of the state party to take measures, both individually and through international cooperation, to fully achieve the realisation of the rights derived from the economic, social, educational, scientific and cultural standards set out in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires (hereinafter OAS Charter).

Based on the definition of the right to development in the Declaration on the Right to Development, which is discussed in paragraph 3.2.1, it can be analysed whether the right to progressive development is similar in meaning to the term right to development. This can be seen in the realisation of social, cultural, and economic standards process. It also indicates that the State party and State parties are obligated to adopt such measures.

As for the active right, or the holder of this right, of development in the political sphere, these categories are not reflected in this norm and refer us to the Charter of the Organisation of American States as amended by the Protocol of Buenos Aires (hereinafter OAS Charter)[16].

The OAS Charter in Article 17 and Chapter 7 also contains norms on the right to development. Article 17 includes the provision that "the State has the right to develop its cultural, political and economic life freely and naturally", and it also states that the State is obliged to respect the rights of the individual and the principles of universal morality in such development[17].

Chapter 7 deals with integral development. As the authors note, there are two understandings of the right to development: (1) "Development is a primary responsibility of each country"; (2) Development "should constitute an integral and continuous process for the establishment of a more just economic and social order that will make possible and contribute to the fulfillment of, the individual" (Art. 33) [7] (p. 65)[18].

[15] American Convention on Human Rights, article 26.

[16] Organization of American States. (1948). Charter of the Organization of American States.
[17] Ibid, article 17.
[18] Ibid, article 33.

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Based on the mentioned, it can be subsumed that an individual's right to development is to be intended by the OAS [7] (p. 69). Instead of portraying holistic development as a means of achieving self-actualisation, it should be perceived as a fundamental right of individuals.

In the case of states, it can be concluded that they have the right to develop their cultural, political, and economic life as stated in Article 17[19]. The system concerning the right to development in this document is rather intricate. The terms "progressive right to development" and "integral right to development" are utilised perplexingly, and there is a dearth of comprehension concerning the specific right holder and the import of the active right.

3.2.2. African Charter on the Human Rights

The 1981 African Charter on Human and Peoples' Rights (hereinafter African Charter) enshrines the right to development in Article 22[20].

The first part of this article deals with the subject of the right, the active right. It is reflected as follows: "All peoples have the right to economic, social and cultural development with due respect for their freedom and identity and to enjoy equally the common heritage of mankind".

Accordingly, the subject of the law here is all peoples. "Peoples" is also found in other parts of the treaty, but this category remains undefined in the African Charter. According to the authors, the concept of peoples is used quite clearly here and does not include the right of the individual [10] (p. 57).

The components of the right to development are economic, social and cultural development. The active right of peoples is to "enjoy equally the common heritage of mankind".

The second part of the article refers to the obligation holder: "States have an obligation, individually or collectively, to ensure the realisation of the right to development". It is easy enough to deduce from it that the obligation holder is a State (individually or collectively). The authors emphasise that the collective obligation includes only parties to the Charter [10] (p. 59).

The authors of the articles also emphasise that the African Charter does not make the availability of resources to an actor conditional on responsibility. This is often an even more significant economic, social and political loss to the State party [10] (p. 61). The authors believe it is necessary to slow down

[19] Ibid, article 17.
[20] African Charter on Human and Peoples' Rights, article 22.

https://doi.org/10.54934/ijlcw.v2i2.73

the process and realise the right to development gradually so that it does not turn against itself. Ensuring a state's capacity to implement the right to development is a crucial step in preventing economic crises and upholding accountability. Failure to adequately test this capacity may lead to undesirable outcomes, such as the inability to realise this fundamental right.

3.2.3. Arab Charter on the Human Rights

The Arab Charter on Human Rights is considered the youngest instrument in this field, adopted in 2008 (hereinafter ACHR). As reflected in other conventions, the ACHR also has its particularities.

The right to development is specified here in Article 37 of the ACHR[21]. This norm is one of the most detailed to date. The first two sentences of this article state that "The right to development is a fundamental human right and all States are required to establish the development policies and to take the measures needed to guarantee this right. They must give effect to the values of solidarity and cooperation among them and at the international level to eradicate poverty and achieve economic, social, cultural and political development".

The first thing that strikes one is the reference to the right to development as a fundamental human right. Even from this sentence, we can deduce that the right holder is "All States". The components of the right to development are economic, social, and political development and the goal of poverty eradication.

Here, as in the African Charter, it is not stated that the responsibility of the State should depend on the availability of the necessary resources. This may also complicate the realisation of the right to development.

The second part already states that ".... every citizen has the right to participate in the realisation of development and to enjoy the benefits and fruits thereof". The right holder is a citizen of a member state. In this Charter, the term citizen appears quite often and does not have a specific definition. If we analyse the treaty for other subjects, we will see that there are such subjects as "peoples", "human beings", and "individuals". However, the tr has deliberately used a narrowed subject composition. Compared to other regional agreements, it is somewhat reduced.

The ACHR also specifies an active right to "participate in the realisation of development" and "enjoy the benefits and fruits thereof". There are still uncertainties with the realisation of the right to

[21] League of Arab States. (2004). Arab Charter on Human Rights, article 37.

https://doi.org/10.54934/ijlcw.v2i2.73

development, and they are also related to regional peculiarities of historical and socio-economic development.

3.2.4. Results of Analysis of The Right To Development from Regional Conventions

The right to development is considered an inalienable human right that entitles all human persons and peoples to participate in, contribute to, and enjoy economic, social, cultural, and political development. It is closely linked with other human rights and enables their full realisation.

The broad nature of the right has led to criticism that it tries to cover too much ground and lacks specificity on how development should be achieved. There is ambiguity around subjects, content, and responsibilities.

Regional human rights regimes have incorporated the right to development but show differences in interpretation: 1) The American Convention focuses more on state responsibilities and ties it to existing OAS principles. The subject and content are not clearly defined; 2) The African Charter specifies "peoples" as the subject and shows obligation is on states individually/collectively. Does not condition responsibility on resources; 3) The Arab Charter also does not drill responsibility on resources but specifies citizens as the critical subject and their rights to participate and benefit.

In summary, while some common elements exist, there remains ambiguity and regional differences around subjects, content, responsibilities, and implementation of the Right to Development.

4. BRICS – HUMAN RIGHTS CONCEPT

Under the title "*BRICS and Africa: Partnership for Mutually Accelerated Growth, Sustainable Development and Inclusive Multilateralism*", the state cooperation BRICS presents a comprehensive development concept.[22] Therein, the member states are committed to the protection of human rights, including the right to development:

We agree to continue to treat all human rights, including the right to development, in a fair and equal manner, on the same footing and with the same emphasis. […] We reaffirm our commitment to ensuring the promotion and protection of democracy, human rights and fundamental freedoms for all with

[22] BRICS, XV BRICS Summit, Johannesburg II Declaration, 23.8.2023, para. 2.

the aim to build a brighter shared future for the international community based on mutually beneficial cooperation.[23]

By emphasising the right to development as a human right, different questions arise about the understanding of human rights and development and a possible nexus of both in the legal understanding of BRICS.

4.1. Methodology of the BRICS development concept

The BRICS cooperation of states is not an international organisation under international law. Based on the informal political consultations of the G7 and G20, BRICS coordinates policies in various fields. The annual rotating *pro tempore* presidencies set political priorities, negotiated at the joint summits of the heads of state and government. The BRICS Summits end with a declaration that serves as a joint agreement on the political, economic and strategic objectives of BRICS cooperation under the respective presidency.

The BRICS have adopted implementation frameworks adapted to the various policy areas to realise the goals set in the declarations. The BRICS members undertake to realise these goals, while preserving their national sovereignty. Separate implementation guidelines are provided for the various goals. The BRCIS have *defined* this implementation process as a *determination to jointly address new global challenges, including macroeconomic shocks and financial volatility, and draw up a positive, balanced, and clear economic agenda, including intra-BRICS cooperation.*[24]

Although BRICS is a loose association of states, the first structural elements that could promote future institutionalised strengthening can be identified. The focus is on the development path across various political and social domains.[25] To this end, the states use the instrument of the Summit Declaration to set themselves political goals to be realised with the help of the implementation and strategy frameworks.

4.2. BRICS Human Rights Perspective

The BRICS are committed to the promotion and protection of human rights and fundamental rights as part of *the Partnership for Inclusive Multilateralism* under the international system of the UN.[26]

[23] ibidem, para. 6.
[24] BRICS, Strategy for BRICS Economic Partnership 2025, November 2020, available: http://www.brics.utoronto.ca/docs/2020-strategy.html
[25] cf. Fn. 21, Partnership for Mutually Accelerated Growth, para. 26-51.
[26] iibidem, para. 3.

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Concerning the goals of the UN Charter, BRICS refers to Art. 1 No. 2, 3, in which the respect for the principle of equal rights and self-determination of peoples and human rights and for fundamental freedoms is enshrined. By strengthening the UN General Assembly and the Human Rights Council as well as multilateral fora, human rights are to be strengthened in a non-selective, non-politicized and constructive manner.[27] The BRICS thus want to counter the possible instrumentalisation of human rights, which is described as the prevention of double standards.

By referring to the UN system, regional systems and the national level, the BRICS adopt a multidimensional human rights approach and commit themselves to a universal understanding of human rights. Consequently, the member states agreed that all human rights, including the right to development, should be promoted and protected in a fair and equal manner, on the same basis and with the same emphasis. [28]

Except for the UN international system, the BRICS do not make any reference to existing human rights regimes. Given the different levels of ratification between the member states, this leads to factual questions of determination. Since the BRICS have agreed to treat human rights with equal emphasis based on inclusive multilateralism, it can be assumed that all member states' human rights treaties signed and ratified will be considered.[29] Particularly noteworthy are[30] International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women and Convention on the Rights of Persons with Disabilities as well as customary international human rights law.

Furthermore, the BRCIS states have agreed to recognise the right to development as a human right. This recognition took place at the XIII BRICS Summit in New Delhi[31]. Since then, the human rights passage has been adopted in unchanged form in the Beijing[32] and Johannesburg II Declarations. The human rights passage was placed in front of the specific policy areas for the first time at the XV BRICS Summit. It is thus closely linked to the development agenda pursued by the BRICS and therefore has a concretising character about policy goals.

[27] ibidem.
[28] ibidem, para. 6.
[29] Ibidem.
[30] Ratification status of Brazil, Russia, India, China and South Africa available: OHCHR Dashboard, https://indicators.ohchr.org [4.12.2023].
[31] BRICS, XIII BRICS Summit: New Dehi Declaration, 9.11.2021, para. 49.
[32] BRICS, XVI BRICS Summit Beijing Declaration, 23.06.2022, para. 9.

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4.3. BRICS Development Concept

BRCIS formulates development goals whose implementation is aimed at building a "brighter shared future for the international community". The following section describes the BRICS development concept, how it is to be implemented, and the concept of a brighter shared future for the international community.

4.3.1. BRICS development terminology

The word *development* is used 78 times in the Johannesburg Declaration in substantive form. The most frequent combination occurs 21 times as with the adjective "sustainable". Sustainable development has been defined as three-dimensional by the BRICS since the Brazilia Declaration concerning the UN Sustainable Development Goals 2030 Agenda for Sustainable Development.[33] According to this, development should encompass economic, social and cultural fields.

The 2030 Agenda for Sustainable Development[34] sets out 17 goals and 169 targets aimed at achieving a comprehensive improvement in the global basis of life. These goals range from social, political and economic areas to multifaceted environmental protection. This broad concept of development has two characterisations: 1. universality, which is aimed at the comprehensive development of humanity, and 2. sustainability, which is aimed at the sustainable development of humanity [21].

Sustainable development is specified within the framework of the BRICS concept concerning workers' rights and the achievement of social justice.[35] First and foremost is the fight against child labour and improving the quality of work. Workers should develop skills to ensure resilient recovery, gender-responsive employment and social protection policies, including workers' rights.[36] To improve access to relevant and quality skills for workers in the informal economy and workers in new forms of employment.

The reference to the 2023 Agenda is supplemented by another BRICS-specific development program. In the Johannesburg II Declaration, the *Partnership for Mutually Accelerated Growth* section

[33] Fn. 21, para. 31, 52.
[34] United Nations (2015). A/RES/70/1. Resolution adopted by the General Assembly on 25.9.2015, Transforming our world: the 2030 Agenda for Sustainable Development.
[35] Fn. 21, para. 39.
[36] ibidem, para. 38

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lists various policy areas under the BRICS development agenda. In light of the experience of the COVID-19 pandemic, the focus is on the recovery of the global economy and pandemic prevention.[37]

The BRICS want to concentrate their efforts on the following non-exhaustive areas: poverty and hunger reduction, access to energy, water and food, fuel, fertilisers, health , s well as mitigating and adapting to the impact of climate change, education, health as well as pandemic prevention, preparedness and response.[38]

BRICS also addresses industry and micro, small and medium-sized enterprises (MSMEs).[39] Not as a means of realising development goals, but also as a development goal, eliminating constraints such as lack of easily accessible information and financing, skills shortage and network effects.[40] The application of development measures to industry should lead to the overcoming of social, economic and structural imbalances. To this end, women, young people and older people should be involved in the economic process.[41]

In the area of finance, long-term financial stability, robust creditor rating and preferred creditor status are to be achieved. This area, which is aimed at the development of international structures, has no internal development orientation. The BRICS have formulated national and international development goals for all policy areas. The focus here is on strengthening multilateralism and existing international organisations. [42]

3.3.2. Development Implementation

The Johannesburg II Declaration can be derived from a matrix of five development areas: Finance,[43] Macroeconomics[44], Agriculture[45], Trade[46], and Digital Technology[47]. Based on this, topic-specific frameworks have been developed to determine implementation principles.

[37] ibidem, para. 26.
[38] ibidem, para. 28.
[39] ibidem, para. 36.
[40] ibidem, para. 37.
[41] ibidem, para. 38.
[42] ibidem, para. 3.
[43] ibidem, para. 27.
[44] ibidem, para. 28-31.
[45] ibidem, para. 32.
[46] ibidem, para. 33
[47] ibidem, para. 33,36.

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The BRICS are focusing on macroeconomic measures. The aim is to promote MSMEs and strengthen intra-BRICS investments and trade as well as science, technology and innovation capabilities.[48] A key focus here is on digital transformation, which should reach all areas, from business and education to administration. In addition to traditional areas such as road construction and urban development, the expansion of infrastructure also includes social infrastructure.[49] The improvement of healthcare is closely linked to the fight against the pandemic and health research. The expansion of technological capabilities is to be achieved through the promotion of science.[50]

As part of *The Strategy for BRICS Economic Partnership*, the BRICS countries want to grant each other simplified market access and strengthen economic exchange. Furthermore, the business conditions for market participants from BRICS countries are to be improved. The improvement of poly-lateral relations will significantly serve to combat poverty.[51] The BRICS consider the national, regional and international levels of economic development. In the area of trade, intra-BRICS exchange should be strengthened, and any form of protectionism should be avoided in accordance with WTO rules.[52]

The BRICS attaches great importance to food security. Measures are to be introduced to ensure the production and processing of agricultural products. In the Implementation Framework *Action Plan 2021-2024 for Agricultural Cooperation of BRICS Countries*, these measures are expanded to include securing food supply, combating hunger, and protecting biodiversity and the climate.[53] In addition to improving supply chains, the BRICS are focusing on investments in biological and ecological production conditions, which should consider the changing conditions in the context of climate change on the one hand and promote sustainable production conditions on the other. [54]

Implementing the development goals for the financial sector relates to the framework of measures of the G20 Common Framework for Debt Treatment.[55] To this end, financing security is to be achieved

[48] ibidem, para. 3.
[49] ibidem, para. 48
[50] Fn. 24.
[51] ibidem, Ch. III.
[52] ibidem, Ch. Implementation; BRICS, BRICS Framework for Cooperation in Trade and Services, 2016, available: https://brics2023.gov.za/wp-content/uploads/2023/07/BRICS-Framework-for-Cooperation-in-Trade-in-Professional-Services-2021.pdf [4.12.2023].
[53] BRICS, XII BRICS Summit in Russia Action Plan 2021-2024 for Agricultural Cooperation of BRICS Countries, Preamble, availblable: http://www.brics.utoronto.ca/docs/210827-agriculture-action-plan.pdf [4.12.2023].
[54] ibidem.
[55] Fn. 21, para. 27.

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by creating a Multilateral Development Bank. This will be supplemented by strengthening international financial situations and improved crisis prevention systems.

3.3.3. Development Perspective

The expansion and defence of human rights aim to create a shared future for the international community based on mutually beneficial cooperation. The BRICS declarations and documents do not provide any further explanation of this concept.

The concept of *a global community of shared future* was first introduced in Chinese President Xi Jinping's speech at the Moscow State Institute of International Relations, which was elaborated on at the 70th session of the UN General Assembly in 2015. In it, President Xi outlined an international order based on peace through dialogue and consultation, common security and prosperity through win-win cooperation, mutual exchange and learning, and a clean and beautiful world through CO2 reduction. These ideas of reforming the international order should also encompass economic and social reorientation areas. Through a new type of economic globalization, the People's Republic of China aims to narrow the gap between rich and poor, between developing and developed countries and within developed countries.

This principle, which is anchored in Chinese human rights thinking, goes back to Deng Xiaoping's theory "Development is the absolute principle" [20] (p. 5). According to Oud M.: "The right to development has been a centrepiece of official Chinese human rights policy ever since China issued its first white paper on human rights in 1991" [11] (p. 70). Also, many authors putting our attention that from 1991, Chiha stated that "development is a top priority". China has formed a complete set of new development theory systems; namely, it adheres to the five new development concepts of innovation, coordination, ecology, openness and sharing to provide sufficient motivation to improve human rights potential continuously. China uses the right to development in international human rights law to promote its idea of multilateralism centred on states' rights, not only concerning economic development but increasingly to "political development".

The milestone of the global community is the creation of a global civilisation. From China's perspective, this should consist of four components: Respect for diversity, advocacy of shared values of humanity, advocacy of the importance of continuity and evolution of civilisations, and advocacy of closer people-to-people exchanges and cooperation.

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Therefore, the peaceful interaction of different civilisations can only be achieved and guaranteed through a comprehensive development dynamic. In this concept, development is not synonymous with the international right to development. The understanding of development goes beyond the scope of human rights. It becomes the guiding principle of international law and, thus, of civilizational development.

3.3.4. Interim conclusion

The BRICS are committed to the promotion and protection of human rights based on economic development. From the Johannesburg II Declarations and Implementation Framework, a concept of development is to be derived that should cover multidimensional national, intra-BRICS and international areas. The right to development is realised through economic measures and intergovernmental cooperation. These measures are aimed at strengthening social, economic, cultural and collective human rights, particularly about a clean and healthy environment. The implementation of the law is to be achieved through economic measures. It is not determinable from the BRICS documentation whether subjective rights are to arise from the right to development. From the development perspective, the BRICS represents a global community of shared futures in a model that understands the right to development as a prerequisite but goes beyond human rights. It has been demonstrated that development should extend to the strengthening and further development of international organisations and cooperation.

5. HUMAN RIGHT TO DEVELOPMENT OR DEVELOPMENT AS HUMAN RIGHT

The right to development is an elementary component of international and regional human rights protection. Since the Declaration on the Right to Development, both the World Conference on Human Rights in its Vienna Declaration of 1993 and the United Nations with the 2030 Agenda for Sustainable Development and Rio+20 have recognised the right to development. Accordingly, development is a human rights paradigm, which is the prerequisite for developing human rights for all. Regardless of whether human rights justify subjective claims or which dimensions they are assigned to, development is related to the areas of participation, economy, social affairs, culture and politics.

The right to development can also be found in the regional human rights regimes discussed here, to which the member states of the BRICS or their future members belong and to which they have committed themselves. Using the example of the American Convention on Human Rights, it was possible to show that subjective rights can arise from the right to development.

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As a co-operation of states, the BRICS is in itself a development project; consequently, its members states have committed themselves to the right to development. Therefore, the BRICS have set themselves goals and implementation steps to drive development forward. This development concept is based on a holistic approach that requires national, regional and international cooperation.

Nevertheless, the development approach of BRICS and the international right to development are not consistent. In their development concept, the BRICS include economic, social and collective rights and, in particular, environmental rights. Although civil and political rights are not excluded, they could not be given equal consideration in the BRICS declarations and frameworks. Based on the understanding, the right to development is determined simultaneously as a human right and a right suis generis. In this regard, Development is an engine that develops the entire international order in and of itself.

About the realisation of development, the BRICS places considerable emphasis on economic implementation processes. Development is generated by initiating economic processes. The BRICS, therefore, represents a right to economic development, a prerequisite for overall development and thus for the protection of human rights. For the BRICS, the right to development is a prerequisite for human rights. However, no direct right can be derived from the development at present.

The right to development needs to be reassessed in the context of international human rights protection.

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ABOUT THIS ARTICLE

Conflict of interests: Authors declare no conflicting interests.

https://doi.org/10.54934/ijlcw.v2i2.73

International Journal of Law in Changing World

Volume 2 Issue 2 (2023) ISSN 2764-6068

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