THE PROBLEMS OF LEGAL REGULATION OF TNC ACTIVITY

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Abstract. *Nowadays, TNCs play an important role in the process of globalization. They have become an integral part of world economic relations. However, the issue of their legal regulation is becoming increasingly relevant and complex. We consider the existing international law aspects that regulate the activities of transnational corporations.*

Keywords: *international economic relations, TNC, international law, national law, international transnational law.*

One of the most important elements in the development of international economic relations is the activity of transnational companies.

The most general definition of a TNC is a corporation with a predominantly national share capital that carries out its business activities in other countries through the creation of branches and subsidiaries.

The main features of TNCs are:

- the presence of branches in two or more countries, regardless of their legal form and framework of activity;
- the possibility of the existence of TNCs of any form of ownership, including state ownership;
- the existence of one or more decision-making centers;
- the presence of a special connection of all links of the TNC;
- TNCs usually attract highly qualified personnel;
- concentration of R&D at headquarters in home countries under their full control;
- foreign enterprises adapt goods to local conditions [5].

The main problem of regulating the activities of transnational corporations is that at present moment there is no universal international legal act in the world, which would regulate their activities. Such regulation takes place at the national level of the home country, which is not entirely fair, because in addition to the headquarters and the parent company, there are subsidiaries and other branches of TNCs located in other countries.

It should be taken into account the fact that TNCs are a collection of legal entities belonging to different states, which means that they have legal personality under other laws. It follows that the activities of TNCs should be coordinated at the international level. To date, TNCs are not just a commercial organization, but also a special kind of international formation, comparable in strength and power to a state, because the capital of some TNCs may exceed the budget of a particular country.

In general, in the science of international law, there are two approaches to the issue of the legal status of TNCs. According to the first, TNCs cannot be a subject of international law, and according to the second, they have the features of a subject of international law. The legal personality of TNCs is based on three features:

- participation in international economic relations;
- the presence of private law and public law obligations;
- the presence of an autonomous will.

With modern law, it is discussed that not the entire transnational corporation (together with branches and subsidiaries) has legal personality, but only its individual parts, i.e. legal personality is reduced to separate parts of TNCs [3]. It turns out that, in fact, only those parts of TNCs that were registered by special authorities of the respective home states of TNCs have the status of legal entities. With the development of international economic relations in the process of globalization, this

state of affairs ceases to satisfy all participants in the world economy (in particular, the countries where parts of TNCs are located).

Currently, there are three levels of legal regulation of TNCs: domestic legislation, bilateral and multilateral agreements [1].

Domestic regulation assumes that all branches and subsidiaries are subject to the national law of the host country, and in most cases, it is the investment law, which determines the legal status of the foreign investor. However, this method of regulation has its drawbacks. For example, the desire of the home countries of TNCs to extend domestic legislation to foreign affiliates of companies, the lack of institutions of national legislation of the host states.

At the second level of regulation, the countries concerned draw up bilateral agreements. Currently, the most common way to regulate the activities of TNCs is precisely bilateral agreements between the host country and the home country. Such agreements expand state practice, lead to the unification of norms, which contributes to the development of international law in the field of economic cooperation. Nevertheless, even here there are drawbacks: developing countries that need an influx of investment enter into such agreements directly with TNCs, thereby providing large benefits for foreign capital, which jeopardizes the stability of economic relations.

The third level involves multilateral international treaties, which can be universal and regional. The universal is undertaken under the auspices of the UN within the framework of the Intergovernmental Commission on TNCs and the Center for TNCs. In 1975, a Code of Conduct for TNCs was developed, which has not yet been adopted. Countries disagree on issues of obligations between TNCs and states, the possibility of granting national treatment to affiliates of foreign TNCs, the application of customary international law in relation to the activities of TNCs, and jurisdiction in resolving disputes. Disputes are taking place between groups of countries: host countries, which are in favor of unilateral obligations of TNCs to the host country, and home countries, in favor of mutual obligations of TNCs and their partners. In our opinion, in order to implement this Code, it is necessary to create a special body that will have the right to issue decisions, and an international mechanism for applying appropriate sanctions.

Regional regulation is undertaken within the framework of the European Union, the Latin American and Caribbean community, the Commonwealth of Independent States. We would consider the regulation of TNCs within the CIS, it is aimed at the creation of multinational companies as an essential component of integration and investment activities. "Agreement on assistance in the creation and development of industrial, commercial, financial and mixed associations" dated April 15, 1994 is the first CIS document regulating the activities of TNCs between the governments of Belarus, Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Russia. Further, in March 1998, the Convention on TNCs was signed, which states the legal basis for cooperation between the CIS countries in the field of regulation and creation of the activities of TNCs [2]. The main problem hindering the development of TNCs in the Commonwealth countries is the existence of discrepancies in the national legislations of the countries. An important condition for the development of a single post-Soviet economic space should be the harmonization of the legislation of the CIS countries on TNCs, which should be carried out on the basis of the model legislation of the CIS.

To our mind, the most effective should be the international level of regulation and control over the activities of TNCs. It may be necessary to give TNCs the status of international legal entities, which would by itself remove them from national jurisdiction. But, at the moment, international legal entities are those that are formed by an international treaty or on the basis of national legislation adopted in accordance with an international treaty. It turns out that today TNCs cannot acquire the status of an international legal entity, since they do not meet these two criteria.

There is a theory about the creation of international transnational law, its meaning was revealed in the early 2000s. For example, the legislator V. M. Shumilov wrote that the essence of this branch of law is that the participants in international economic relations

themselves develop norms of behavior that are outside the scope of domestic law and are not covered by either national or international law. It turns out that transnational law could become a special area of law, where subjects of international law interact with subjects of domestic law [4]. This would be ideally suited to situations where it is not enough to apply the norms of national legislation, and the norms of international law can not be applied. Since the nature of the activities of TNCs is more international in nature, it seems appropriate to regulate them at the international level.

In general, we can say that in the context of globalization, the activities of TNCs are becoming ever larger. This means that the problem of legal regulation of such corporations deserves more and more attention of the world community. Modern and future legislators face a difficult task - to create an effective international legal framework that clearly regulates the activities of TNCs.

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ПРОБЛЕМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ ДЕЯТЕЛЬНОСТИ ТНК

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Аннотация. *В настоящее время ТНК играют важную роль в процессе глобализации. Они стали неотъемлемой частью мировых экономических отношений. Однако вопрос их правового регулирования становится все более актуальным и сложным. В статье проанализированы существующие международно-правовые аспекты, регулирующие деятельность транснациональных корпораций.*

Ключевые слова: *международные экономические отношения, ТНК, международное право, национальное право, международное транснациональное право.*