

## **EVOLUTION OF THE HIGHER EDUCATION ISSUES IN THE INTERNATIONAL TREATIES**

**Hromovenko K. V.**

### **INTRODUCTION**

The improvement of regulation of the aspects of educational relations has now become an extremely important issue of the domestic legal doctrine. Such a scientific analysis cannot be complete without studying the processes of development of international mechanisms in the field of education, in particular, in the formation of international law of the classical period, which seems relevant to the modern legal doctrine. The purpose of this Article is to define the specifics of the regulation of the aspects of higher education in bilateral and multilateral international legal acts of XIX – XX centuries.

To achieve it, it is necessary to solve the scientific tasks of analyzing and comparing the content of relevant agreements, searching for common features or subjects of regulation in them, and determining the specificity of their emergence, taking into account global social, political and legal factors. Among domestic specialists, such domestic authors as B.V. Babin, M.V. Buromensky, V.G. Butkevych, O.O. Grinenko, A.I. Dmitriiev, V.V. Mytsyk<sup>1</sup>, etc. paid attention to the issues of the development of sources of international law in the period preceding the modernity, at the same time the educational issues were not practically raised in their works.

The importance of the format of international regulation of cooperation in the field of education in bilateral treaties is due to the rapid growth of the number of these agreements in the nineteenth century, which have received in comparison with the previous period a significant diversity in the subject matter and regulatory mechanisms. For instance, a number of bilateral interstate treaties of the 19th century with Asian countries directly focused on certain issues of the organization of education, including higher education. In particular, Article 18 of the Treaty of Peace, Amity, and Commerce, between the United States of America and the Chinese Empire of 3 July 1844 (the Treaty of Wangxia) established the right for the officials and citizens of the USA located in China, to «employ scholars» for «teaching any languages of the Empire and for assistance in literary works». Article 10 of the Treaty of

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<sup>1</sup> Babin B. Legal Statute and Perspectives for Indigenous Peoples in Ukraine / Borys Babin, Olena Grinenko and Anna Prykhodko // *Indigenous, Aboriginal, Fugitive and Ethnic Groups Around the Globe*. L. : IntechOpen, 2019. P 161–177.

Amity and Commerce (the Harris Treaty) between the United States and Japan on 29 July 1858 established the right of the Japanese Government to exchange the «scientific men» with the United States.

The Treaty between the USA and China of 1868 (the Burlingame Treaty of 1868) regulated the issue of education even more thoroughly. In particular, Article 7 of this Act states that the citizens of the USA may enjoy all the privileges of public educational institutions that are under the control of the Chinese Government and, based on reciprocity, Chinese citizens may enjoy all the privileges of public educational institutions that are under the control of the Government of the USA.

Under these privileges, the Treaty provided for the granting of «most privileged nations» in both states. Moreover, the Treaty allowed the citizens of the USA to establish and maintain schools in China in places where foreigners are allowed to live, and accordingly, Chinese citizens were granted similar privileges and immunities in the United States. And the level of such «schools» was not determined by the Treaty, obviously, they could also have a format of higher ones.

The mentioned educational norms of the agreements between the USA and China were interestingly continued in the first half of the 20th century. In particular, the matter concerns the implementation of the Boxer Protocol, an act signed on September 7, 1901, between the Government of Imperial China and eight allied states (Austria-Hungary, Great Britain, Italy, Germany, Russia, the USA, France, and Japan) on payment by China of huge indemnity (18000 tons of silver or 333 million of US dollars) to the winners of the Boxer Rebellion within forty years. The USA received 7.32% of these payments<sup>2</sup>.

This Treaty was already perceived as clearly unfair at that time, and in 1906 President Edmund J. James of the University of Illinois proposed to US President T. Roosevelt a plan to establish a programme to educate Chinese students in the United States. He wrote that «a nation that will succeed in educating young Chinese of the current generation will be one that will get the most benefit from the incurred losses due to the moral, intellectual, and commercial influence» on China. T. Roosevelt supported this plan and addressed an annual message to the US Parliament with a proposal to finance such a training of Chinese students at the expense of the indemnity that the USA receives from China under the Boxer Protocol; this decision was made on the basis of 17 million dollars that the USA was to receive from China respectively<sup>3</sup>.

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<sup>2</sup> Boxer Protocol ; URL: [https://en.wikipedia.org/wiki/Boxer\\_Protocol#The\\_clauses](https://en.wikipedia.org/wiki/Boxer_Protocol#The_clauses)

<sup>3</sup> Boxer Indemnity Scholarship ; URL: [https://en.wikipedia.org/wiki/Boxer\\_Indemnity\\_Scholarship](https://en.wikipedia.org/wiki/Boxer_Indemnity_Scholarship)

The programme was started since 1909 by establishing selection, initial training, and transportation of Chinese students to the USA. For this training, since April 2011, under this funding, the United States of America opened a preparatory school in Peking – Tsinghua College, which in the next was developed for studying at a four-year preparatory programme and postgraduate training, and became Tsinghua University since 1929.

Since 1924, the China Foundation has been operating in the United States of America, and under this programme, it provided funds to the China Institute in New York, founded in 1926. In total, until 1929, up to 1300 Chinese students received higher education within the framework of the Boxer Indemnity Scholarship programme in the USA. A similar programme was founded in Great Britain (a little later than in the USA), which was to receive from China 11.25% of the Boxer Indemnity amount<sup>4</sup>.

In 1924 during the Soviet-Chinese negotiations, the issue of Chinese students' education at Soviet universities at the expense of the Boxer Indemnity was also raised<sup>5</sup>. Though in Article 11 (approved after these negotiations) of the Agreement concerning General Principles for the Settlement of the Questions Between the Union of Soviet Socialist Republics and the Republic of China on May 31, 1924, the USSR formally refused to receive the Boxer Indemnity without any conditions, in the Declaration of the parties, added to the present Agreement, it was noted that the Russian part of the Boxer Indemnity «after satisfaction of all past obligations» will be directed «exclusively and completely to the formation of the fund for the improvement of the Chinese people's education». The distribution of resources of this fund should be implemented by a special commission of three persons, two of whom were appointed by the Government of China and the third – by the USSR. The prescription of Article 15 of the Treaty of Friendship between Persia and the Russian Socialist Federal Soviet Republic on February 26, 1921, is also interesting in this context. According to this prescription, Russia gave the property and the territory of Russian religious missions in this country to Persia on condition of their further use for «cultural and educational institutions».

It is also worth providing the Agreement between China and Japan on Detailed Arrangements for the Execution of the Treaty for the Settlement of Outstanding Questions Relative to Shantung (with Annex. Agreed Terms of Understanding and Notes Exchanged) of December 1, 1922. In Article 7 of

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<sup>4</sup> Boxer Indemnity Scholarship (United Kingdom) ; URL: [https://en.wikipedia.org/wiki/Boxer\\_Indemnity\\_Scholarship\\_\(United\\_Kingdom\)](https://en.wikipedia.org/wiki/Boxer_Indemnity_Scholarship_(United_Kingdom))

<sup>5</sup> Boxer Indemnity Scholarship ; URL: [https://en.wikipedia.org/wiki/Boxer\\_Indemnity\\_Scholarship](https://en.wikipedia.org/wiki/Boxer_Indemnity_Scholarship)

this Agreement, which regulated the transfer of a number of Chinese territories to Japan, the Government of Japan was assigned to the secondary school («Ariake – mashi») and the higher school for girls («Mikasa – mashi») on the relevant Chinese territory. In addition, the Agreement provided for the granting of a number of facilities for the needs of the Commercial University and guaranteed the further operation of the Chinese Public School in the former German possession of Kiao-Chao in China<sup>6</sup>. The Agreement in the form of Exchange of Notes between Germany and China regarding the Restoration of the State of Peace dated 20 May 1921 has also got a significant meaning for the regulation of education. This act defined the rights of Chinese students in Germany; the Government of Germany was to provide every possible assistance to such students in their enrolment in German universities and in their pre-diploma internship placement<sup>7</sup>.

At the end of the nineteenth century and at the beginning of the twentieth century, the aspects of guaranteeing education, including higher education, continued to be reflected in bilateral interstate treaties also in other regions of the world, in particular, on issues related to colonial wars. Thus, Article 8 of the Treaty of Peace Between the United States of America and Spain of 10 December 1898 regulated the transfer of Spanish public property in Cuba, Puerto Rico, Guam, and the Philippines, and established that the peaceful possession and use of public property by the relevant municipal, public and private entities are preserved; this norm has certainly been extended to the educational institutions. Article 9 of this Agreement preserved the right of local residents to continue their own professional activities, and Article 10 of the Treaty of 1898, among other things, established the right of intellectual property for scientific works, previously legalized in the indicated territories by Spain.

These norms of the Treaty of 1898 have been successfully applied to the oldest university in Asia, the Pontifical and Royal University of Santo Tomas, which was founded in 1611 in Manila under the Royal Charter of Philip III, confirmed by Pope Innocent X in 1645 and continued working under American jurisdiction as the Catholic University of the Philippines (59). The Peace Treaty of Vereeniging, between the South African Republic and the Orange Free State, on the one side, and the United Kingdom on the other side,

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<sup>6</sup> Agreement between China and Japan on Detailed Arrangements for the Execution of the Treaty for the Settlement of Outstanding Questions Relative to Shantung (with Annex. Agreed Terms of Understanding and Notes Exchanged) signed at Peking, December 1, 1922 [№ 559] ; URL: <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%2027/v27.pdf>

<sup>7</sup> Agreements between Germany and China regarding the Restoration of the State of Peace. Pekin May 20, 1921. [№ 261] ; URL: <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%209/v9.pdf>

of 31 May 1902 in Article 5 guaranteed teaching of Dutch in schools of Transvaal and the Orange River Colony at the request of parents or pupils.

After the First World War, the issue of higher education has sometimes been raised in bilateral treaties as well as in unilateral acts of states of international importance; this has usually concerned the provision of education to ethnic minority groups in geographically altered states and overcoming the consequences of regional and local conflicts. As an example, it is worth mentioning the bilateral Agreement for the Purpose of Executing and Completing the Polish-Danzig Convention of 9 November 1920, signed on 24 October 1921. In its Article 228, it was defined that the Parties will conclude a separate agreement to determine the ways and limits of mutual recognition of certificates issued by schools and institutions of higher education, other diplomas, and certificates in the territory of both Parties of the Agreement<sup>8</sup>.

Albania in the Declaration concerning the Protection of Minorities in Albania of 2 October 1921 stipulated in Article 5 that the citizens of the country belonging to racial, religious or linguistic minorities shall establish and use the educational institutions; Article 6 regulated the teaching of minority languages as well as the education in minority languages in public institutions in Albania. The Protocol and Additional Article Regarding the Settlement of the Question of Western Hungary, signed in Vienna on 13 October 1921, contained the measures of the Hungarian Government concerning the «pacification» of the West of the country. This Protocol obliged the students who took part in the riots to report to universities and schools within ten days of the announcement of the special Government proclamation; the students, who evaded such a reporting, shall be expelled.

Bilateral agreements concluded with the Holy See (the Vatican City) and individual states with a significant proportion of the Catholic population were of particular importance for streamlining the higher education issues. In fact, such agreements reflected a medieval understanding of the supranational authority of the Church in the regulation of educational issues, but in the 20th century, their subject was primarily spiritual rather than secular higher education.

The Lateran Pacts between the Vatican City and Italy of 1929 are a prime example of such bilateral acts, in particular, the Lateran Treaty of 11 February 1929, Article 16 of which guarantees inviolability and tax immunities for papal institutions in the territory of Italy, including the Gregorian University,

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<sup>8</sup> Agreement for the Purpose of Executing and Completing the Polish-Danzig Convention of November 9, 1920. Signed at Warsaw, October 24, 1921 [№ 2699] ; URL: <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20116/v116.pdf>

Lombard College, the Bible, Pontifical Oriental, and Archaeological institutions and the Russian Seminary. In addition, Article 18 of this Treaty guarantees the students the free access to the «artistic and scientific treasures» of the Vatican City, while preserving the right of the Holy See to regulate the corresponding access of the public.

The Concordat between the Holy See and Italy, concluded at the same time as this Treaty, regulates the aspects of Catholic spiritual education in this country very thoroughly. According to Article 3 of the Concordat, the students of theology, who in the last two years of study are preparing for obtaining the priestly rank, may be granted a postponement in military service until the age of 26. Article 26 of the Concordat regulated in detail the activity of church structures, including the seminaries, established the guarantees of their existence by the state.

In addition, the Concordat also affected the secular Italian education, because according to its Article 36, the teaching of «Christian doctrine within the framework established by the Catholic tradition» in higher schools was to be implemented by means of the programme agreed between Italy and the Vatican City, and professors and other persons, who were to carry out this teaching, were obliged to obtain permission from the church authorities, confirmed by a special certificate. The church authorities had the right to revoke the certificate, which meant that the right to teach was revoked; the textbooks for the relevant teaching had to be approved by the church authorities.

According to Article 38 of the Concordat of 1929, the nomination of professors of the Catholic University of the Sacred Heart and the Academy of the Immaculate Conception of the Virgin Mary, which is dependent on it, should be the subject of agreement (*nihil obstat*) with the Vatican City regarding the moral and religious qualities of candidates. According to Art. 40 of this Act, the doctorate in theology, donated by the faculty that is acting with the support of the Holy See, will be determined by the Italian state, as well as the diplomas issued by the schools of paleography, archives and diplomatic documents based in the Library and Archives of the Vatican City. The key is Article 39 of this Act, according to which the universities, large and small diocesan, inter-diocesan or regional seminaries, academies, colleges, and other spiritual and cultural Catholic institutions will continue to operate in Italy in the exclusive dependence on the Holy See, without any interference in their activities by the Italian public educational authorities.

Also, it is worth mentioning the provisions of the additional Agreement between the Holy See and the Roumanian Government of 30 May 1932 Regarding the Interpretation of Article IX of the Concordat that was approved between them on 10 May 1927. Article 5 of this Agreement regulated the

issues of the use of church property in Transylvania concerning the establishment of foundations for the support of students and teachers of educational institutions of the respective Catholic Diocese.

Article 7 of the Agreement of 1932 regulated the transfer of lands, buildings and adjoining constructions of the University of Cluj, which were in the ownership of the Roumanian state, to the full possession to another university, while its Article 9 regulated the status of the church adjoining this educational institution, where the monks were engaged in educating of the Catholic Order of Piarists. An annex to the Agreement contained the Statutes of the Council of the Catholic Diocese of Alba-Iulia, according to which the General Assembly of the Council should include the professors of theological seminary and university professors as well as the teachers of academic schools located in the Diocese<sup>9</sup>.

The Concordat concluded between the Holy See and the German Reich on 20 July 1933 cannot be ignored either. According to the norms of Article 14 of this act, the Church «as a rule» had the autonomous right to appoint the spiritual officials, including the teaching posts. At the same time, this Article of the Concordat laid down the requirements for persons, who were to be engaged in educational activities, to hold a German citizenship, to have a certificate (a diploma) of completion of German higher education and to have studied philosophy and theology for at least three years at a German state university, a church academic college, or a Papal higher school in Rome<sup>10</sup>.

Article 19 of the Concordat pointed out that the Catholic faculties of theology at state universities in Germany were to be maintained and that their interaction with the church organs was to be further regulated by the protocols to the Concordat concluded in accordance with the church law, while the uniforms at these faculties, established by the state, were to conform to the «general spirit» of such a regulation, taking into account a number of instructions approved by the Holy See and mentioned in the Concordat.

In addition, Article 20 of the Concordat enshrined the right of the Church to establish theological and philosophical colleges for the training of clergy; if no public funds were spent on these colleges, they were to depend solely on the church organs. This Article of the Concordat also included the foundation, management, and administration of seminaries and dormitories for the seminarians; for tax purposes, such dormitories were recognized as church institutions<sup>11</sup>.

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<sup>9</sup> Agreement Regarding the Interpretation of Article IX of the Concordat of May 10th 1927, between the Holy See and the Roumanian Government, signed at the Vatican, May 30th, 1932 [№ 4719] ; URL: <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20201/v201.pdf>

<sup>10</sup> Concordat between the Holy See and the German Reich signed on 20 July 1933 ; URL: [http://www.newadvent.org/library/docs\\_ss33co.htm](http://www.newadvent.org/library/docs_ss33co.htm)

<sup>11</sup> Concordat between the Holy See and the German Reich signed on 20 July 1933 ; URL: [http://www.newadvent.org/library/docs\\_ss33co.htm](http://www.newadvent.org/library/docs_ss33co.htm)

According to Article 21 of Concordat of 1933, the Catholic religious regulations must be taught in Germany, including in higher schools, in accordance with the principles of the Catholic Church. At the same time, there was a requirement to foster patriotic, civic and social consciousness during the religious education. The curriculum and textbooks for religious teaching were to be determined in Germany by agreement with the supreme ecclesiastical authority (but not by this authority itself as the Concordat of 1929 with Italy envisaged). Also, the supreme ecclesiastical authority in Germany was given the right to control the educational process «in harmony with the authority of the educational institution».

According to Article 22 of the Concordat, the bishopric and the Governments of the German states had to make deals on the personalities of teachers of religious subjects; the bishops had the right to dismiss such teachers for both teaching and moral qualities. Article 23 of this Act guaranteed the continuation of existing Catholic educational institutions and the possibility of opening new ones, while Article 25 granted the right to open the educational institutions to religious orders and congregations.

However, in the period between the First and the Second World Wars, the aspects of higher education in bilateral international agreements were regulated not only on the issues of religious education. For example, the Inter-School Convention concluded between Estonia and Latvia on 17 February 1934; although it mainly concerned secondary education, Article 5 of the Convention defined the levels of requirements for teachers, according to which, those persons, who had the right (including the respective higher education) to teach in a school in Latvia, had to obtain the right to teach in a Latvian-speaking school in Estonia and vice versa.

Also during this period, bilateral agreements covered the involvement of higher educational institutions in the interstate exchange of official publications. For instance, the Agreement in the form of Exchange of Notes between the Government of the United States of America and the Estonian Government Constituting an Agreement for the Exchange of Official Publications of 6 December 1938, is worth noting. In particular, the Smithsonian Institution, as the key research and educational organization of the USA, became the institution responsible for such an exchange on the part of this country under the mentioned Agreement (on the Estonian side this function was performed by the National Library of the country). While on the US side the publications of the authorities (but also the annual reports of the Smithsonian Institution) were to be provided first of all to Estonia, the monthly publications of the Estonian Institute of Economic Research, academic publications and lecture schedules of the University of Tartu and Tallinn University of Technology were to be provided to the USA from Estonia.



Thus, the analysis of interstate agreements of the XIX and the first half of the XX centuries proves that there were a few special acts on educational issues between the countries during this period, and the aspects of higher education were usually one of the subjects of regulation in them, which, above all, did not have a key role. As an exception, the Agreement concerning Scientific, Scholastic and Artistic Relations Between the Republic of Poland and the Kingdom of Yugoslavia on 2 December 1931 should be mentioned.

The preamble to the Agreement, as a basis for its endorsement, referred to the necessity of implementing the Pact of Friendship and Cordial Collaboration of 1926 between these countries in the field of «mutual intellectual cooperation» and stated that the relevant scientific and educational relations between the countries should contribute to «approchement of the two nations in view of their racial and linguistic affinity»<sup>12</sup>.

According to Articles 1 and 2 of the Agreement of 1931, the Technical Commission was to study all the aspects of scientific and educational relations between the two countries and provide proposals on their development. This Commission was divided into two sub-commissions, one in Belgrade and the other one in Warsaw, which were to be headed by the Ministers of Education of the two sides respectively. Each of the sub-commissions was to be comprised of four members, including one delegate from the Ministry of Foreign Affairs, two delegates from the Ministry of Education and one delegate from the sub-commission of the other side of the Agreement.

The members of the sub-commissions, except for a foreign sub-commission, were appointed by the parties for a period of three years, the chairpersons of the sub-commissions and their deputies were elected annually, and the meeting of the sub-commissions was to be held at least once a year; the sub-commissions themselves determined their own rules of procedure. At the same time, according to Article 5 of the Agreement of 1931, the sub-commissions could directly address to each other all the issues that were within their competences for the decision-making by the Government of Poland or Yugoslavia, respectively. According to Article 4, the sub-commissions had the following powers:

- to organize more frequent contacts between the representatives of higher education of the Parties, with the promotion of the widest possible study of geography and history of another nation participating in the Agreement;
- to introduce, through special regulatory and organizational procedures, the comparability of the academic qualifications and student assessments in

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<sup>12</sup> Agreement concerning Scientific, Scholastic and Artistic Relations Between the Republic of Poland and the Kingdom of Yugoslavia. Signed at Warsaw, December 2, 1931. [№ 3207] ; URL: <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20139/v139.pdf>

order to encourage the citizens of one side of the Agreement to attend courses in another country and to be admitted to the examinations without undue hindrance, bearing in mind that the access to certain specialties for the foreigners may be legally restricted by the state concerned;

- to simplify the exchange of pupils and students on the most favourable conditions and to organize the exchange of teachers in higher education;

- to organize the vacation activities and the camps for young people and cooperation between the student associations;

- to organize the exchange of scientific publications, to simplify and initiate the relations between the scientific institutions and the centres of national education.

At the same time, such agreements did not become widespread among the states of modernity in the first half of the 20th century.

The evolution of the regulation of the organization of higher education can be seen in multilateral international treaties. It can be claimed that certain issues of the organization of higher education were for the first time regulated at the level of collective agreements from the 19th century. In particular, in the acts of the Vienna Congress of 1815, despite the lack of general norms in the field of regulation of education, much attention was paid to the status of the University of Cracow (the Jagiellonian University).

This educational institution, founded in May 1364 by King Casimir III the Great with the permission of Pope Urban V, was mentioned in Article 10 of the Final Act (Treaty) of the Congress of Vienna of June 9, 1815, according to which the constitution of the Free City of Cracow should, among other things, reflect the status of the «academy» of this city according to articles 7, 15, 16 and 17 of the Additional Treaty relative to Cracow, which had the similar effect as the Final Act (Treaty).

The said Additional Treaty relative to Cracow («The Free, Independent, and Strictly Neutral City of Cracow with its Territory») was signed in Vienna between Austria, Prussia, and Russia on 21 April 1815. According to Article 13, the property of the former Duchy of Warsaw, which was created on the territory of the Free City of Cracow, must belong to the city and constitute one of its financial sources. At the same time, the income from such property was to be used for «support of the academy and other literary institutions and mainly for the improvement of public education».

In addition, according to Article 15 of this Treaty, the buildings and the libraries owned by the «Academy of Cracow», its land property and the invested capital, together with all the privileges that it received, shall continue to be assigned to this university. Moreover, taking into account the position of the three states that shared the Duchy of Warsaw between themselves, the

right to enter and study at this university was to be guaranteed to the population of their Polish provinces that were close to Cracow<sup>13</sup>.

Also, the status of the Jagiellonian University was regulated by the initial version of the Constitution of the Free City of Cracow, which was signed on May 3, 1815, by authorized representatives of the three states that divided Poland. According to Article 11 of this international legal act, the Assembly of Representatives of the Free City included three Doctors of Faculties appointed by the University<sup>14</sup>.

However, during the first ten years of these treaties, the privileges of the university were decreasing, primarily because of the support of its leadership of the pro-Polish position in the authority of the Free City, the supervisory bodies over its activities were established, and three states gradually prohibited their own subjects from entering this educational institution.

Also noteworthy is another act of the Vienna Congress, namely the Federative Constitution of Germany, signed by representatives of the sovereign German states of that time on 8 June 1815. According to parts 3 and 4 of Article 12 of this international act, the four free German cities (Bremen, Hamburg, Lübeck, Frankfurt) were to establish a single judicial body, the Supreme Court; but every person, who was a party to the proceedings of such a tribunal, was entitled to demand that the case be submitted from that tribunal to «a law faculty belonging to a foreign [German] university». This mention of universities as an alternative to the Supreme Court of the Free Cities is not surprising, considering that the signatories of this Federative Constitution from Lübeck and Frankfurt titled themselves in the Treaty as Doctors of Law.

Later on, Article 6 of the General Act of the Berlin Conference on West Africa, signed by the majority of the then states on 26 February 1885, laid down their duty «to protect and promote» «all kinds of ... scientific institutions» which are founded with the aim of improving the «moral and material welfare» of the population of West Africa, destroying slavery and «educating the natives so that they may understand and appreciate the benefits of the civilization».

The following act, the Brussels Act on these issues of 2 July 1890, contained no norms concerning the education or the enlightenment in Africa,

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<sup>13</sup> Additional Treaty relative to Cracow, between Austria, Prussia, and Russia of 21st April (3d May) 1815 [Act № III]. ; URL: [https://en.wikisource.org/wiki/Final\\_Act\\_of\\_the\\_Congress\\_of\\_Vienna/Act\\_III](https://en.wikisource.org/wiki/Final_Act_of_the_Congress_of_Vienna/Act_III)

<sup>14</sup> Constitution of the Free City of Cracow. Done at Vienna the 3d day of May, 1815 ; URL: [https://en.wikisource.org/wiki/Final\\_Act\\_of\\_the\\_Congress\\_of\\_Vienna/Constitution\\_of\\_the\\_Free\\_City\\_of\\_Cracow](https://en.wikisource.org/wiki/Final_Act_of_the_Congress_of_Vienna/Constitution_of_the_Free_City_of_Cracow)

but the Convention on the Revision of the said Acts of 1885 and 1890<sup>15</sup>, approved on 10 September 1919, between Belgium, the United Kingdom of Great Britain, Italy, Portugal, the United States of America and Japan at Saint-Germain-en-Laye, in Article 11, part 2, contained the provisions similar to those of the General Act of Berlin concerning the scientific and educational activities in Africa «to assist the indigenous peoples in their progress and civilization». At the same time, these norms in practice did not particularly contribute to the establishment of higher educational institutions by the colonial powers.

In Central Africa, for example, the first institution of the appropriate level (Fourah Bay College, present-day Sierra Leone) was founded by Britain in 1827, but the school became an affiliated college of the English Durham University in 1876 and only awarded the first scientific degree in Africa in 1878 (it was not until 1967 that this college became a full-fledged university). The colleges founded in South Africa in 1829 and 1866 respectively became the University of Cape Town and the Stellenbosch University only in April 1918. The Makerere University in Uganda was established in 1922, and the formation of the University of Khartoum in Sudan was preceded by its activities as a college since 1902. The rest of the universities and even colleges in Africa were actually founded after World War II and in the context of decolonization.

The issue of organization of higher education was mentioned to a certain extent in international intellectual property law, which began to develop rapidly in the last decades of the XIX century. In particular, the Convention Concerning the Creation of An International Union for the Protection of Literary and Artistic Works of September 9, 1886 (the Berne Convention) is interesting not only by regulating the relations important for the educational process in the field of scientific works and periodicals (Articles 4 and 7). In Article 8, it establishes the freedom of use of the fragments (citations) of the works protected by copyright in the publications with educational and scientific orientation, as well as in the anthologies.

These provisions were confirmed in Article 10 of the Berlin Act, Revised Berne Convention for the Protection of Literary and Artistic Works<sup>16</sup> and in Article 10 of the Rome Act of July 2, 1928. In addition, the Rome Act in Art. 2bis further granted the states parties the right at the national level to determine the order of printing and distribution of lectures and speeches as a

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<sup>15</sup> Babin B. Legal Statute and Perspectives for Indigenous Peoples in Ukraine / Borys Babin, Olena Grinenko and Anna Prykhodko // *Indigenous, Aboriginal, Fugitive and Ethnic Groups Around the Globe*. L. : IntechOpen, 2019. P 164.

<sup>16</sup> Berlin Act, Revised Berne Convention for the Protection of Literary and Artistic Works, of November 13, 1908 ; URL: <http://global.oup.com/booksites/content/9780198259466/15550017>

special form of implementation of copyrights, with the presumption of freedom of such printing, while preserving the exclusive right of the author to publish the lectures in the form of their collections (courses).

Other collective agreements of that period also contained certain exceptions from various areas of international relations to facilitate scientific and educational activities. As an example, the International Convention for the Protection of Birds Useful to Agriculture, Art. 7 of which did not extend the relevant restrictions on catching such birds to activities related to scientific activity<sup>17</sup>. Thus, the relevant specialized work of the Faculties of Natural Sciences was objectively simplified.

Also, during this period, interstate research institutes are beginning to be formed under international agreements. For example, according to the Convention of 7 July 1905 for the Creation of an International Institute of Agriculture, a designated institution began to function in Rome, consisting of a general assembly and a standing committee, whose members were delegated by the states parties to the Convention.

Despite its broad powers in the field of organizing the scientific research on the issues of statistical, technical and economic information related to the farming, crop production, and animal husbandry, agricultural trade and relevant pricing, the International Institute of Agriculture cannot be considered as an international educational institution, because the Convention of 1905 did not provide for the training of personnel there. At the same time, the approach itself to the possibility of forming international research institutions is important for the evolution of the attitude in international law towards the problems of higher education.

The issue of protection of the educational institutions was raised at the turn of the nineteenth and twentieth centuries in the international humanitarian law, too. In particular, the Regulations concerning the Laws and Customs of War on Land, added to the Convention (II) with Respect to the Laws and Customs of War on Land of 29 July 1899, in Article 27, among other things, proposes to take all the necessary means for the protection during the sieges and bombardments of «the buildings that serve for the purposes of science», the institutions of higher education undoubtedly belong to this category. The party to the conflict controlling these buildings should mark them with the special visual signs, which were to be provided in advance. Moreover, according to Article 56 of these Regulations, the property of the educational and scientific institutions, both public and other ones, shall be equated to the private property. This means that any intentional seizure, destruction or

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<sup>17</sup> Bowman M. J. The 1902 Convention for the Protection of Birds in Historical and Juridical Perspective / Michael J. Bowman // *Ardeola*. 2014. Vol. 61. № 1. P. 175.

damage of such institutions is prohibited and must be prosecuted by the party to the conflict that has taken control of these institutions.

These norms are fully reproduced in Articles 27 and 56 of the Regulations concerning the Laws and Customs of War on Land annexed to the Convention (IV) respecting the Laws and Customs of War (the Hague Convention IV) of October 18, 1907. Besides, the Hague Convention IX of 1907 in Article 5 provided the protection of «buildings which serve for the purposes of science» from bombardments from the sea, and the Hague Convention XI of 1907 in Article 4 prohibited the seizure of the scientific vessels (apparently also those ones belonging to the universities).

A number of mentions of the aspects of the organization of higher education can be seen in the Treaty of Peace of Versailles of June 28, 1919, signed by a significant number of states, the relevant norms were very variable and fragmented. For example, according to the Treaty concerning the French Occupation of Saarland, Part III, Section IV, Chapter I, § 14, the relevant occupation authorities were empowered to establish the technical educational institutions in the mining industry. In Art. 134 Germany renounced the right of ownership for the colleges, which it had in Shanghai, in favour of France and China.

A group of norms of the Treaty of Versailles was aimed at restricting military education in Germany, including higher education. Thus, according to part 3 of Article 175, the officers, demobilized after the reduction of the army, were forbidden to participate in the training process, and according to part 5 of Article 194, it was forbidden to provide military training to the officers and the privates of the merchant fleet. According to Article 177 of this Agreement, two months after the entry into force of the Treaty of Versailles, Germany was to reduce the number of military schools in the quantity corresponding to the needs of the recruitment of the officers in the authorized units, and no more than one school per one type of troops, with a limited number of students. All the military academies «and similar institutions» were to be closed in Germany.

Moreover, according to Article 177 of the Treaty of Versailles, all the educational institutions and universities in Germany «shall have no right to deal with any military matters», in particular, with the teaching or training of their own pupils or teachers in the field of military arts or weapons possession. In addition, all the educational institutions and universities in Germany were prohibited from having any connection with the military ministries or any other military authority. Special measures of supervision over the compliance of Germany with the above prescriptions on the part of the victorious states were fixed in articles 211 and 213 of the Treaty of Versailles.

Article 247 of the Treaty of Versailles of 1919 is of particular interest, under which Germany undertook to provide the Catholic University of Leuven with the manuscripts, incunabula, printed books, maps, and objects from the collections that «correspond in quantity and value to similar objects destroyed during the burning of the Library of the Catholic University of Leuven by Germany» within three months after receiving through the Reparation Commission the relevant request. The details of the appropriate replacement intended for the Belgian university were to be determined by the Reparation Commission.

It is worth adding that the Catholic University of Leuven was opened in 1425 by Pope Martin V upon request of John IV, Duke of Brabant, and operated continuously until World War I, except for the period of 1797–1834, caused by the French intervention. The seizure of Leuven by German troops in 1914 was accompanied by the burning of half of the city, during which the university library burned down along with 300 thousand publications and a thousand incunabula, a large number of unique manuscripts. The mentioned destruction of the university library during the First World War was actively used in anti-German propaganda<sup>18</sup>.

In addition to these fragmented requirements, the Treaty in Versailles did not contain any general prescriptions for the regulation of education; the only general norm found in this area is the provision of p. 6 of Article 427 of this Treaty, under which the states must impose restrictions on the work of young people of both genders to enable them to continue their education. Moreover, paradoxically, the Covenant of the League of Nations, approved during the Versailles Peace Conference on 28 April of 1919, generally contained no norms on education and did not enshrine the powers of the League, giving priority to political, economic and legal issues.

It is important to trace the impact on relations in higher education and on the conventions that were concluded in the first half of the twentieth century under the auspices of the International Labour Organization (hereinafter the ILO) established in 1919. Although none of these conventions was specifically devoted to the educational issues, a number of relevant agreements contained the norms that were significant for the organization of the educational processes, including in higher education. In particular, a number of the ILO conventions, which set a minimum age for the workers, contained the clauses on the possibility of working for the purpose of training of persons who are students of vocational education institutions.

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<sup>18</sup> Catholic University of Leuven (1835–1968) ; URL: [https://en.wikipedia.org/wiki/Catholic\\_University\\_of\\_Leuven\\_\(1835–1968\)](https://en.wikipedia.org/wiki/Catholic_University_of_Leuven_(1835–1968))

In particular, Article 3 of the ILO Convention No. 5 Fixing the Minimum Age for Admission of Children to Industrial Employment of 1919 contained such norms; Art. 3 of the ILO Convention No. 7 Fixing the Minimum Age for Admission of Children to Employment at Sea of 1920 (for work on the educational or training vessels), Art. 3 of the ILO Convention No. 10 concerning the Age for Admission of Children to Employment in Agriculture of 1921, Art. 2, p. «b» of the ILO Convention No. 33 concerning the Age for Admission of Children to Non-Industrial Employment, 1932, Art. 3 of the ILO Convention No. 58 Fixing the Minimum Age for the Admission of Children to Employment at Sea of 1936 (Revised) and Article 3 of the ILO Convention No. 59 Fixing the Minimum Age for Admission of Children to Industrial Employment of 1937 (Revised). Part 2 of Article 3 of the ILO Convention No. 13 concerning the Use of White Lead in Painting, 1921 and part 1 of Article 2 of the ILO Convention No. 17 concerning Workmen's Compensation for Accidents, 1925 also contained the mentioning of the industry training.

Also, a number of the ILO conventions of that time provided for the possibility of not including the persons, related to the training, by relevant prescriptions. Thus, the prescriptions of the ILO Convention No. 22 concerning Seamen's Articles of Agreement, 1926, and the Convention No. 23 concerning the Repatriation of Seamen, 1926, did not apply to the cadets, the students on the training vessels and the students under the training agreements. The above-mentioned ILO Convention No. 17 of 1925 in paragraph «d» of part 2 of Article 2 allowed the national legislator not to extend its requirements to «the persons of intellectual work».

Such exceptions were also included in the «insurance» conventions of the ILO approved in 1933, such as the ILO Convention No. 35 concerning Compulsory Old-Age Insurance for Persons Employed in Industrial or Commercial Undertakings, in the Liberal Professions, and for Outworkers and Domestic Servants; the ILO Convention No. 36 concerning Compulsory Old-Age Insurance for Persons Employed in Agricultural Undertakings; The ILO Convention No. 37 concerning Compulsory Invalidity Insurance for Persons Employed in Industrial or Commercial Undertakings, in the Liberal Professions, and for Outworkers and Domestic Servants; the ILO Convention No. 38 concerning Compulsory Invalidity Insurance for Persons Employed in Agricultural Undertakings; The ILO Convention No. 39 concerning Compulsory Widows' and Orphans' Insurance for Persons Employed in Industrial or Commercial Undertakings, in the Liberal Professions, and for Outworkers and Domestic Servants, and the ILO Convention No. 40 concerning Compulsory Widows' and Orphans' Insurance for Persons Employed in Agricultural Undertakings.



Although all these conventions in part 1 of Article 2 provided for the extension of «non-physical work, including apprentices», in part 2 of this Article they allowed the states not to extend their action to «apprentices», to «any non-physical workers engaged in the activities which are generally regarded as free professions» and to «workers who, during their own training, give lessons or carry out paid work while preparing for a profession that corresponds to the purpose of such training»<sup>19</sup>.

At the same time, it is interesting to note that the ILO Convention No. 30 concerning the Regulation of Hours of Work in Commerce and Offices of 1930 did not include any reference to the educational institutions among the detailed list of possible forms of work outside the industry, indicating only about «the institutions ... where the workers are primarily engaged in clerical work» (p.) b «, part 1 of Article 1).

In addition, p. «b» of part 1 of Article 11 of the ILO Convention No. 29 concerning Forced or Compulsory Labour, 1930, provided for the restrictions on the involvement of «school teachers and pupils» in this kind of work, but not in relation to the teachers and students of higher education. The ILO Convention No. 53 concerning the Minimum Requirement of Professional Capacity for Masters and Officers on Board Merchant Ships of 1936 should be considered as the first convention that actually provided for a particular educational level for a certain professional activity. This act in Article 4 provided for the special examinations and the existence of professional training for the candidates for posts, although the Convention No. 53 also did not require higher education.

So, we should come to the following conclusions. The increase in the number of references to the aspects of higher education in bilateral international acts, noticeable in the second half of the XIX century, should be connected with the penetration of European standards in this field in the Asian states such as China and Japan. At the same time, the guarantees of the realization of educational rights and the preservation of educational institutions in the territories that changed their status are characteristic of the interstate agreements of the nineteenth and twentieth centuries concluded after the colonial wars.

Attention to the organization of higher education can be traced in the new national states of Europe that emerged according to the results of the First World War. The concordats concluded with the Holy See in the first half of the 20th century are of special importance in the organization of higher education in the states with a significant part of the Catholic population. The

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<sup>19</sup> Convention concerning Compulsory Invalidity Insurance for Persons Employed in Agricultural Undertakings № 38 ; 29 June, 1933 ; URL: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312183:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312183:NO)

further reflection of higher education issues in the international treaties of the second half of the twentieth and twenty-first centuries should be the subject of separate research.

The international agreements of the XIX and the first half of the XX centuries as a whole did not ensure the formation of holistic international legal institutions in the field of higher education. The references to higher education in the acts of the Vienna Congress of 1815 referred to individual practical circumstances that the states parties had to resolve. The prediction of the mechanisms of education and enlightenment in the collective agreements concerning West Africa of the late nineteenth century did not lead to the development of the higher education systems in these territories.

### **CONCLUSIONS**

The reflection of the higher education aspects in the conventions concerning the humanitarian law and the protection of intellectual property was certainly of practical importance, but fragmented and specialized. The Treaty of Peace of Versailles of 1919 put the educational issues into the format of reparations for Germany and limited the development of its military system, while the statutory acts of the League of Nations and the International Labour Organization, in general, avoided the issues of educational relations. However, the realities of life have led to the reflection of individual educational issues in the conventions approved under the auspices of the ILO in 1919-1939. The definition of the role of these norms in the next formation of modern international legal institutions in the field of higher education should become a subject for new scientific research.

### **SUMMARY**

This Article is devoted to the evolution of the international legal provision of the regulation of educational relations in bilateral and multilateral international agreements of the XIX and XX century. Special attention was devoted to the issues of the coherent international legal framework of the treaties with Asian states, of the agreements targeted to the defense of the minorities' educational rights and of the concordats with Holy See. Particular attention is paid to the role of higher education in the universal peace agreements, the impact of agreements in the fields of intellectual property protection, of labour and social rights, and of humanitarian law on the educational relations is highlighted.

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**Information about the author:**

**Hromovenko K. V.,**

Ph.D., Docent,

Rector of the International Humanitarian University

Odesa, Ukraine