INTERNATIONAL LEGAL PROBLEMS OF FOREIGN MILITARY PRESENCE

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Matters pertaining to the presence of foreign military bases and defense facilities (or defensive posts), on one hand, are of significant interest to the science of international law, and, on the other, are no less meaningful for practical application in international relations. To date, the State having the greatest number of military bases, defensive posts, and other similar facilities abroad is the United States of America: as of 2003, there are 703 American military facilities on the territory of 130 countries of the world.[1] Moreover, the United States is the only country of the world that deploys nuclear weapons at their bases on foreign soil. There are 150 nuclear weapon units in Germany alone. This places into a country with nuclear weapons deployed on their territory in a sensitive situation, although, in legal terms, these weapons are the property of the United States Government leasing this territory.

Many similar issues arise in this connection. For instance: how does the exercise of State sovereignty over its territory fit, in practice, the constant presence of foreign military personnel on its territory; what are the rights of foreign military personnel outside the territory of the base they are stationed at; how are issues related to the passage of naval vessels and military aircraft of the lessee State to the territory of the base over the sea and air space of the lessor country regulated; as well as other issues of international law. It is no wonder, therefore, that the issue of military bases is mentioned in virtually every textbook on international law, usually in the section dealing with State sovereignty.[2] It is this question that legal theoreticians have considered on many occasions.[3] This is why we, in turn, consider here some issues related to recent legal trends in the deployment of military bases and their personnel.

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[1] A Summary of DoD's property Inventory (Washington, D.C.: Department of Defense, 2003): See http://www.defense.gov/news/jun2003/basestructure2003.pdf.

[2] *I. Brownlie*, Международное право: в 2-х кн. [International Law: in 2 Volumes] (Moscow, 1977), I, pp. 182–183, 511–518.

[3] *V. M. Koretsky*, «Создание американский военных баз на чужих территориях — нарушение норм международного права» [The Creation of U. S. Military Bases on Foreign Territories is Violation of Norms of International Law], Советское государство и право [Soviet State and Law], no. 6 (1953), pp. 120–132; *M. I. Lazarev*, Империалистические военные базы на чужих территориях и международное право [Imperialist Military Bases on Foreign Territories and International Law] (Moscow, 1963) — 230 p.; *V. F. Petrovskyi*, Доктрина «национальной безопасности» в глобальной стратегии США [Doctrine of National Security in the Global

To begin, an apology is in order for the use of a term alien to international law: «military base». Usually, the phrase «military bases» is used neither in modern international law nor in the texts of treaties concerning the transfer of certain territories to be used by foreign military personnel. In Soviet international legal doctrine, this phrase had exclusively negative connotations, although, in fact, the USSR Navy and Army did possess such facilities. Officially, such objects were named in Soviet and post-Soviet international legal practice radio-electronic centers (as in Cuba) or a material and technical support facility for the Navy (as in Vietnam). Most Western lawyers have taken a similar approach to the term «military base abroad».[1] We will understand the term «military base» to mean a broad range of the utilization by foreign troops, on a contractual basis, of the territory of a certain country for military purposes. At the same time, taking advantage of this opportunity, we disagree with the proposition advanced by M. Lazariev that the meaning of the term «military base» is narrower than «defensive point».[2] In our opinion, it is actually the other way around. We offer the following definition of these objects: a base is a site of permanent deployment, the headquarters, the seat of the high command; whereas a «defensive point» is a distant or flanking outpost, the venue for deployment of a relatively small military unit, its main objective being to replenish fuel or food supplies in the army and navy, or a temporary site for aircraft to land. In order to clarify the actual and legal difference in this kind of use of foreign territory, we suggest a certain qualification of treaties on the use of foreign territory for military purposes or by the military (we use these phrases in their broad meaning).

All military bases may be broken down into two large groups: those bases that are on national territory and bases deployed on a territory that is foreign to the troops stationed there. In addition, options exist of the joint use of a military base by national and foreign Armed Forces.[3] The object of this study is the last two options. One needs to bear in mind the difference in the legal status of a foreign military base and of foreign troops stationed at that base.

Therefore, we deal with at least two parties: a country that provides its territory for foreign military base deployment (lessor country) and a country that deploys its military base on this territory (lessee country). Accordingly, military bases on a foreign territory are one type of the international lease of territory which is encumbered by a political or State servitude.[4] It is interesting to note that the term «servitude» was used in international law for the first time with respect specifically to military purposes: in 1281 a treaty was signed under which Prince Liechtenstein gave the magistrate of the town of Speer

Strategy of the USA] (Moscow, 1980). — 254 p.; *«Откуда* исходит угроза миру» [Where the Threat to the World Comes From] (2d ed.; Moscow, 1981). — 147 p.; *M. I. Lazarev,* Империалистические военные базы на чужих территориях и международное право [Imperialist Military Bases on Foreign Territories and International Law] (Moscow: IMO, 1963). — 246 p.; *M. I. Lazarev*, «Вопрос об иностранных военных базах и вооруженных силах на чужих территориях в международно-правовой литературе» [The Question Concerning Foreign Military Bases and Military Troops on Foreign Territories in the International Law Literature], Советский ежегодник международного права [Soviet Yearbook of International Law] (1960.), pp. 374–380; *M. I. Lazarev*, «Запрещение иностранных военных баз на чужих территориях нормами международного права» [The Prohibition of Foreign Military Bases in Foreign Territories by Norms of International Law], Советский ежегодник международного права [Soviet Yearbook of International Law] (1962), pp. 64–77.

[1] *F. H. Mefferd,* Le Statut Juridique des cessions a bail Americaines (Paris: These, 1950), pp. 149–155.

[2] *M. I. Lazarev*, Империалистические военные базы на чужих территориях и международное право [Imperialist Military Bases on Foreign Territories and International Law] (Moscow: IMO, 1963), p. 151.

[3] This is how military bases are used by NATO members, for example, a Spanish-American naval base at Roth.

[4] *M. I. Lazarev,* «Международные сервитуды», [International Servitudes], Правоведение [Jurisprudence], no. 1 (1965), p. 121.

his own castle and lands for military purposes.[1] In turn, an international lease of territory in modern international law is the provision by one State to another, on a contractual basis, of a portion of its territory or objects or facilities located on this territory for a certain period of time, for certain purposes, and under certain conditions. The lessor country retains sovereignty over the leased territory, restricting by the method specified in detail by the lease agreement some of its rights in favor of the lessee country.[2]

With regard to the classification of military bases on foreign territory, this depends upon is used as the basis of the classification. For example:

1) depending on the site, all foreign military bases may be broken down into naval bases (for the Navy) and land bases (for aviation and infantry units);

2) depending on the legal grounds for their deployment, such bases may be broken down into:

— those deployed on State territory pursuant to a bilateral treaty (deployment of the Black Sea Fleet in Sevastopol; the United States military base in Guantanamo, Cuba);

— those deployed on the territory of allied States within the framework of an international organization or a multilateral treaty (for example, the United States Army bases in NATO members or 3) Russian bases on the territory of member-States of the Collective Security Agreement Organization);

— depending on material grounds: for payment or for free (the United Kingdom base in Cyprus);[3]

— depending on the objective: as a security guarantee (the United States bases in Japan) or as reprisals (the USSR bases in Finland after World War II);

— depending on the periods of use: for temporary or periodic use (the base in Kant, Kyrgyzstan, for the United States) or for long-term use (the base in Rammstein, Germany, for the United States); and

— depending on the needs: military bases built for use by the Army and military bases for peacekeeper use (for instance, in the town of Tuzla, Bosnia and Herzegovina).

Sometimes, these categories are mixed. For example, the Bondstil base in Kosovo was built for and is owned by the United States Army, although it is being used in practice by the entire KFOR peacekeeping contingent (an abbreviation of the term Kosovo Force), whereas the decision to allocate the territory for this site was approved by the civil administration of the United Nations in the town of Kosovo.

This list is not exhaustive, but it outlines directions for further studies. For example, the United States breaks down its military units stationed overseas into five categories:

— troops permanently stationed abroad. Currently, most of them have quarters in Germany, South Korea, and Japan;

— troops regularly sent abroad. For instance, naval exercises of United States Navy squadrons;

— troops sent to participate in training or military actions. Currently, the biggest military contingent of the United States is deployed in Afghanistan;

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[1] *F. Vali*, Servitudes in International Law (London, 1948), p. 36.

[2] *V. N. Dodonov, V. P. Panov, O. G. Rumiantsev,* «Аренда территории международная» [International Lease of the Territory] in Международное право: словарь-справочник [International Law: Reference Book] (Moscow: Infa, 1997), pp. 14–15.

[3] *Military* bases in Europe — What are the Issues Report of a Discussion Arranged by the Intergroup on Peace Initiatives At the European Parliament on 14 June 2005 in Brussels. See the Quaker Council for European Affairs Website: http://www.quaker.org/qcea/report140605.htm.

— troops sent abroad under international programs, for instance, to teach military personnel of other countries, to provide them additional assistance, and so on;

— international training and analytical centers in whose operations United States troops participate.[1]

For the purpose of identifying the rights and obligations of military personnel in foreign countries, the practice has developed in the United States of entering into so-called «SOFA agreements» (from the English phrase Status of Forces Agreements — SOFA). They cover a broad range of issues related to taxation, compensation for lawsuits, the rights for troops to be deployed and withdrawn, and the core issues of criminal and civil jurisdiction over foreign troops. Traditionally, most SOFA agreements provide for the jurisdiction of the host country in case of any violations of home country legislation by foreign troops, with two exceptions: when the crime they are charged with has been committed against servicemen who are their compatriots; or when a crime has been committed in the process of carrying out their official duties.

Historically, SOFA agreements have often caused tensions in relations of the United States with other countries: American military servicemen periodically commit crimes in Okinawa, Japan, but due to the special nature of the 1960 U.S.-Japan SOFA, none of the persons guilty of those crimes has been punished by Japanese courts.[2] In the 1970s, Ayatollah Khamenei called the USA-Iran SOFA a source of national shame.[3] At the same time, in the absence of such an agreement, foreign troops automatically become subject to the jurisdiction of the country on whose territory they are stationed because the host country has renounced its territorial (spatial) jurisdiction by virtue of the special SOFA agreement. Therefore, at least in theory, the NATO peacekeeping troops in Kosovo or the coalition forces in Iraq are under the jurisdiction of that country due to an absence of agreements on their special status.[4] Although, on the other hand, we should not overlook certain customary immunities of foreign servicemen pursuant to international law.

Special attention is accorded in SOFA agreements to the use of arms outside military bases. For instance, in the Russian Army, second in the world by the number of military contingents outside Russia, the general procedure for servicemen to use weapons if on guard detail or when performing combat tasks outside their military base is regulated by the manual of guard duty and by the garrison regulations. But special rules may be established by bilateral agreements. For example, Article 5 of the agreement between Russia and Armenia provides that weapons may be used outside a military base in the event of a sudden or armed attack, or an attack with the use of combat materiel, vehicles or aircraft.[5] Article 2 provides that Russian servicemen may carry weapons outside their military base as a measure of last resort. One should note the conflict between Articles 2 and 5 of this Agreement: to repulse an attack, weapons may be needed on short notice; therefore they may and should be issued

[1] Солдаты США на чужой территории [U.S. Soldiers in Foreign Territories], available at http://www.humanities.edu.ru/db/msg/80103.

[2] *История* военного присутствия США в Японии [A History of the U.S. Military Presence in Japan]. See http://www.tebyan.net/articles/2008/8/10/72050.html.

[3] *M. Patel,* The Legal Status of Coalition Forces in Iraq after the June 30 Handover, The American Society of International Law. See http://www.asil.org/insigh129.cfm.

[4] *The Schooner Exchange v. McFaddon,* 11 U.S. (7 Cranch) 116 (U.S. Supreme Court 1812).

[5] The Agreement Between the Russian Federation and the Republic of Armenia on the Issues of Jurisdiction and Mutual Legal Assistance on Matters Related with the Presence of the Russian Military Base on the Territory of the Republic of Armenia (1997). See http://www.allbusiness.ru/BPravo/DocumShow_DocumID_53694.html.

each time when it is necessary to perform duties outside the military base and not only as a «last resort» measure.

Some Special Features of Legal Regime of Several Military Bases

We turn first to the Black Sea Fleet of the Russian Federation deployed in Ukraine. Under the general rule established by the 1996 Constitution of Ukraine (Article 17), it is illegal to create and operate armed units not provided for by law, as well as for foreign troops to be stationed in the country. However, under clause 14 of the transitional provisions of the Constitution, the use of the existing military bases for the temporary deployment of foreign military personnel is possible on a lease basis in accordance with ratified international treaties. In other words, this clause permits the stationing of the Russian Black Sea Fleet in Sevastopol. Moreover, in conformity with Article 92(1), legislation of Ukraine shall establish the method of admittance and the terms of deployment of the armed forces units of other States on the territory of Ukraine. Therefore, the Constitution does not prohibit the deployment of the Russian Black Sea Fleet in Ukraine on the basis of an international treaty.

The package of agreements concerning the Russian Black Sea Fleet consists of four principal Russian-Ukrainian treaties: the Treaty on the status, terms and conditions of the Russian Black Sea Fleet deployment on the territory of Ukraine (hereinafter: the Russian Black Sea Fleet Status Treaty);[1] the Treaty on mutual settlements related to the division of the Black Sea Fleet and the deployment of the Russian Black Sea Fleet on the territory of Ukraine (hereinafter: the Mutual Settlements Treaty),[2] both signed in May 1997 and ratified by the Verkhovna Rada of Ukraine and the State Duma of the Russian Federation in 1999; as well as the Treaty between Ukraine and the Russian Federation on issues of Russian Black Sea Fleet deployment on the territory of Ukraine dated 21 April 2010 (so-called Kharkiv agreements) ratified by both parties in the same year.[3]

Article 25 of the Russian Black Sea Fleet Status Treaty provides that «the present Treaty shall enter into for 20 years, beginning from the moment of its provisional application. The term of validity of the Treaty shall be automatically extended for the next five-year period unless one of the Parties notifies the other Party in writing about the termination of the Treaty no later than one year prior to its expiry».[4] That is, in conformity with this Article, the Russian Black Sea Fleet could stay until 2017 and beyond in the absence of objections by the Parties. Alternatively, the Kharkiv agreements prolonged the validity of this Treaty and, accordingly, the deployment of the Russian Black Sea Fleet until at least 2042 («for twenty five (25) years from 28 May 2017, with an automatic extension for the next five-year period unless one of the Parties notifies the other Party in writing about the termination of the Treaty no

[1] *Угода* між Україною та Російською Федерацією про статус і умови перебування Чорноморського флоту Російської Федерації на території України [The Treaty on the Status, Terms and Conditions of the RF Black Fleet Deployment on the Territory of Ukraine]: See http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=643_076.
[2] *Угода* між урядами України та Російської Федерації про взаєморозрахунки, повязані з розділом Чорноморського флоту Російської Федерації і перебуванням Чорноморського флоту Російської Федерації на території України [Treaty on the Status, Terms and Conditions of the RF Black Sea Fleet Deployment on the Territory of Ukraine]. See http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=643_077.
[3] *Урядовий* кур'єр [Government Courier], no. 80, 30 April 2010.
[4] *Угода* між Україною та Російською Федерацією про статус і умови перебування Чорноморського флоту Російської Федерації на території України [Treaty on the Status, Terms and Conditions of the Russian Black Sea Fleet Deployment on the Territory of Ukraine]. See http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=643_076.

later than one year prior to its expiry»[1] (Article 1)). In reality, the period of validity of the Treaty is unlimited in the event of any objections by the Parties.

The Treaty concerning the parameters of the division of the Black Sea Fleet provides that «the primary base of the Russian Black Sea Fleet shall be in Sevastopol»[2] (Article 2); in addition, the Russian Black Sea Fleet may use other objects of infrastructure located outside Sevastopol, an exclusive list thereof being specified in Article 3 of the parameters of the Russian Black Sea Fleet division Treaty and in Annex 2 to this Treaty; they are to be used in accordance with legislation of Ukraine. However, there does not exist a single lease agreement for any object used by the Russian Black Sea Fleet even though the Russian Black Sea Fleet not only uses those objects and land plots that Ukraine provides for temporary use, but also other property not included in the Russian Black Sea Fleet division Treaty, in particular, hydrographic objects and lighthouses. These actions of the Russian Black Sea Fleet have been challenged by the General Procuracy of Ukraine in Ukrainian economic courts, which deemed those actions to be illegal, in accordance with legislation of Ukraine and the regional treaty on the method of resolving disputes related to economic operations in CIS countries, both Ukraine and Russia being parties to this treaty. Pursuant to this treaty, the parties mutually recognize and enforce judgments of competent courts that have entered into legal force.

It should be made abundantly clear that the city of Sevastopol is not the base of the Russian Black Sea Fleet: only some of its moorings are leased to the Russian fleet ships. The city itself is part of Ukraine and has never been leased to the neighboring country.

For the purpose of regulating the crossing of the State border of Ukraine by military personnel and military materiel of the Russian Black Sea Fleet, the President of Ukraine issued an edict in 2008 to specify the procedure for crossing the border of Ukraine by servicemen, naval vessels (or support ships), and aircraft of the Russian Black Sea Fleet[3] stationed on the territory of Ukraine. This edict is based on the sovereign right of the State to regulate the crossing of its borders by foreign citizens and is not contrary to the provisions of the three above-mentioned treaties on the Russian Black Sea Fleet.

In 2010 the Ministries of Defense of Ukraine and of Russia at long last agreed on the method for disclosing information about the total number of military personnel and basic weapons of the Russian Black Sea Fleet stationed on the territory of Ukraine,[4] as provided by the Russian Black Sea Fleet status treaty and the Black Sea Fleet division parameters treaty. To date, there are 25,000 servicemen, a signifi-

[1] *Урядовий* кур'єр [Government Courier], no. 80, 30 April 2010.
[2] *Угода* між Україною та Російською Федерацією про параметри розділу Чорноморського флоту [Treaty on the Parameters of the Black Sea Fleet Division]. See http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=643_075.
[3] *Указ* ПрезидентаУкраїни «Про рішення Ради національної безпеки і оборони України від 13 серпня 2008 року «Питання перетинання державного кордону України військовослужбовцями, військовими кораблями (судами забезпечення) і літальними апаратами Чорноморського флоту Російської Федерації, який перебуває на території України» [The Decree of the President of Ukraine «On the Resolution of the National Council for Security and Defense of Ukraine «The Issues of the Crossing of the State Border of Ukraine by Servicemen, Navy Ships (Support Ships) and Aircraft of the RF Black Sea Fleet Stationed on the Territory of Ukraine»], Офіційний вісник Президента України [Official Herald of the President of Ukraine], no. 31 (2008), p. 44.
[4] *Протокол* між Міністерством оборони України і Міністерством оборони Російської Федерації про надання інформації про загальну кількість особового скалу та основних озброєнь Чорноморського флоту Російської Федерації, який знаходиться на території України від 20.10.2010 [Protocol on the Method of Disclosing Information about the Total Number of the Military Personnel and Basic Weapons of the RF Black Sea Fleet Stationed on the Territory of Ukraine Between the Ministry of Defense of Ukraine and the Ministry of Defense of the Russian Federation], Офіційний вісник Президента України [Official Herald of the President of Ukraine], no. 88 (2010), p. 204.

cant number of naval vessels, and military materiel at the military formations of the Russian Black Sea Fleet in Ukraine.

Under the Black Sea Fleet division parameters treaty, the Russian Black Sea Fleet is permitted to lease 18,323.62 hectares of land, 4,591 buildings and facilities, and 127 moorings of 10,415 line meters total length in Sevastopol, Feodosia, Kerch, and Mykolaiv. For a long time the Russian Federation did not pay money for the leased facilities, writing off each year an amount of about USD$97.75 million from Ukraine's debt for natural gas consumed. However, it was stipulated in the 2010 Kharkiv agreements that the annual payment by Russia constituted USD$100 million, as well as «an additional amount of funds to be received as a result of a discount in the amount of USD$100 from the price established in the contract in force between the National Joint-Stock Company Naftogaz Ukrainy and the Open Joint-Stock Company Gazprom per each 1,000 cubic meters supplied to Ukraine, based on the volume of agreed gas supplies under the above contract in accordance with the following formula: at a price of USD$333 and more per 1,000 cubic meters of natural gas, the discount will be USD$100, and if the price is lower than USD$333, the discount will be 30% of the price»[1] (Article 2). In other words, the price of leasing the Russian Black Sea Fleet base is not fixed and is varies, depending on the price of natural gas supplied by Russia to Ukraine under a private law contract between juridical persons of the two countries. Even more interesting is that the validity of this contract expires earlier than does the Kharkiv Agreement.

Foreign military servicemen also come to Ukraine within the framework of the NATO Partnership for Peace Program (PFP). Their rights and obligations are regulated by the Treaty between members of the North Atlantic Treaty Organization and other States participating in the Partnership for Peace Program regarding the status of their armed forces (SOFA PFP), as well as by the Additional Protocol (ratified by the Verkhovna Rada of Ukraine on 2 March 2000)[2] and by the Further Additional Protocol (ratified by the Verkhovna Rada of Ukraine on 20 April 2000) to the PFP SOFA Treaty as to the possibility to apply provisions of the 1952 Paris Protocol on the status of the international military headquarters to relations between States participating in the Further Additional Protocol. The purpose of these treaties is the mutual facilitation and establishment of a certain uniformity in the procedure for permitting access for NATO members and PFT States-parties to each other's territories, extending to other States the provisions of the 1951 Treaty of members of the North Atlantic Treaty Organization on the status of their armed forces, the so-called NATO SOFA Treaty. This treaty is not a «base allocation agreement»; moreover, the PFP SOFA Treaty does not provide automatic access to any means of transport to the territory of a country; therefore, this treaty does not infringe the sovereignty of any party. All the provisions are implemented on the basis of the principle of mutuality: the status provided to NATO troops on the territory of Ukraine will be also provided to forces of Ukraine on the territory of NATO members. Of special interest in this treaty is Article 6, which permits troops of States-parties to carry arms on the

[1] *Урядовий* кур'єр [Government Courier], no. 80, 30 April 2010.
[2] *Закон* України «Про ратифікацію Додаткового протоколу до Угоди між державами, які є сторонами Північноатлантичного договору, та іншими державами, які беруть участь у Партнерстві заради миру, щодо статусу їхніх збройних сил» [The Law of Ukraine «On the Ratification of the Additional Protocol among the States Parties to the North Atlantic Treaty and the other States participating in the Partnership for Peace Program Regarding the Status of their Forces»] of 2 March 2000, Відомості Верховної Ради України [The Official Bulletin of the Verkhovna Rada of Ukraine], no. 18 (2000), p. 134.

territory of another State-party, if this is permitted by the [command's] order. This means that Ukraine agreed in advance to the deployment of armed contingents of foreign States on its territory, although under Article 86(23) of the Constitution of Ukraine, the admittance of units of the armed forces of a foreign State is within the competence of the Verkhovna Rada of Ukraine.

Foreign military bases play an important role in ensuring Japan's security. There are numerous military bases of the United States in Okinawa; moreover, from 1945 to 1972, this island had been under direct United States administration, but has since been returned to the sovereignty of Japan in 1972. In accordance with the U.S.-Japanese treaties of 1951 and 1960 on security[1] and the 1971 Agreement on the Ryukyu archipelago and the Daito islands,[2] the United States military bases were deployed for an indefinite period (this is a ten-year treaty with an automatic extension until one signatory expresses the wish to denounce). A major portion of the territory of United States bases on Okinawa is on private land rather than on lands owned by the government. Of the 32,000 private owners of lands under the United States military installations, 3,000 are not satisfied with this arrangement, even though they own, at best, microscopic plots (several square meters), which in total account for 1/10,000 of the territory of the Okinawa bases. Under Article 29 of the 1947 Constitution of Japan, no rights of ownership shall be violated, although elsewhere in the text the Constitution says that private property may be used for public interests for fair compensation. In practice this means that in the event of the owner's refusal, the land plot agreement is to be signed instead by a representative of the local government; that is, the Governor of Okinawa in this case.[3]

An interesting situation is shaping up with the United States base in Guantanamo, Cuba. Under Articles 1 and 2 of the 1903 Lease Agreement, the base may only be used loading coal and for naval purposes, but in no other way.[4] In other words, the fact that the United States is using the base as a concentration camp for suspected terrorists is in direct violation of the lease agreement. Moreover, the Guantanamo lease agreement had been signed by a government of Cuba friendly to the United States at the time, whereas following the 1959 Cuban Revolution, more than 40 years of the blockade, and a ban against all United States citizens and businessmen to have any relations with Cuba, this agreement was subject to termination on the principle of the law of treaties law regulating a change of circumstances (clausula rebus sic stantibus). Therefore, the Guantanamo base is actually an occupied territory in a hostile environment, or in fact a colonial outpost, which is an express violation of modern international law, which requires that an international lease of the territory of any State be exercised on the basis of mutual interest of the parties. In addition, under Article 3 of the additional lease agreement, it was provided that «no person, enterprise or corporation shall be permitted to engage in entrepreneurial, industrial or any other activities within the territories leased»,[5] which provision has been directly violated as a result of establish-

[1] Treaty of Mutual Cooperation and Security Between Japan and the United States of America, signed on 19 January 1960. See http://www.mofa.go.jp/region/n-amercia/us/q&a/ref/1.hrml.
[2] Agreement Between the United States of America and Japan Concerning the Ryukyu Islands and the Daito Islands, 17 June 1971. See http://www.niraikanai.wwma.net/pages/archive/rev.71/1.hrml.
[3] *N. Yatsenko,* «Базам на Окинаве угрожают» [Okinawa Bases Under Threat], in Зеркало недели [Mirror of the Week], 19–25 October 1996, p. 6.
[4] *Agreement* Between the United States of America and Cuba for the Lease of Lands for Coaling and Naval Stations; February 23, 1903. See http://www.yale.edu/lawweb/avalon/diplomacy/cuba/cuba002.htm.
[5] A quote from A Constructive Plot to Return Guantanamo Bay to Cuba in the Near Future. See http://www.coha.org/2007/03/a-constructive-plot-to-return-guantanamo-bay-to-cuba-in the near-future/

ment on this base of commercial companies, including McDonalds. However, in 1934, Cuba and the United States signed a new lease agreement providing that this agreement may not be terminated unless the parties so mutually consent. The United States refuses to do so despite the repeated attempts of Fidel Castro to remove ideological opponents from the island. The United States Government wires to Cuba each month a check for US$4,085,[1] cashed by the Cuban communists once in 1959, the year they came to power. This was proof sufficient for the United States that the new government of the island recognized the legitimacy of the agreement. Moreover, Cuba does not pose a direct threat to the United States; the base is not being used as intended; and the government of Cuba is against the base's continued deployment. This leads one to conclude that the Guantanamo base is merely a colonial outpost used for the purpose of exercising control over a rebellious regime.

Conclusions

Having analyzed different international legal aspects of the functioning of foreign military bases, it is evident that they operate primarily on the basis of bilateral agreements. The status of military personnel serving on these bases is regulated by SOFA agreements, whereas the bases themselves, by their legal nature, are a form of international lease of territories. At the same time, due to foreign servicemen being deployed on a certain portion of the territory of a foreign country, one can speak, because of this arrangement, of at least actual, if not legal, limitation of the sovereignty of the State on whose territory such bases are located. Regarding the term «foreign military base» itself, this is not used in international treaties because it conveys a negative connotation linking such objects to colonial times. This is why in actual practice the texts of such treaties provide for «the station venues of operational units», «lease of the territory for military use», and so on in an attempt to avoid using the term «military base».

Bilotskyi S. International Legal Problems of Foreign Military Presence

Abstract. The article analyzes international legal aspects of international leasing of territory for military use. The author performs a comparative analysis of the status and conditions of leasing for the purposes of Russian Black Sea Fleet in Ukraine and United States Army and fleet in Japan and Cuba. A personal classification of international territory leased for military purposes is proposed.

Key words: international leasing, international servitudes, international security law, territory in international law, law of treaties.

Білоцький С. Д. Міжнародно-правові проблеми іноземної військової присутності

Анотація. Статтю присвячено аналізу міжнародно-правових аспектів міжнародної оренди з метою військового використання території. Проведено порівняльний аналіз статусу і умов оренди для цілей Чорноморського флоту Росії в Україні та армії і флоту США в Японії і на Кубі. Запропоновано власну класифікацію міжнародної оренди території для військових цілей.

Ключові слова: міжнародна оренда, міжнародні сервітути, право міжнародної безпеки, територія в міжнародному праві, право міжнародних договорів.

Белоцкий С. Д. Международно-правовые проблемы иностранного военного присутствия

Аннотация. Статья посвящена анализу международно-правовых аспектов международной аренды с целью военного использования территории. Проведен сравнительный анализ статуса и условий аренды для целей Черноморского флота России в Украине и армии и флоте США в Японии и на Кубе. Предложена собственная классификация международной аренды территории для военных целей.

Ключевые слова: международная аренда, международные сервитуты, право международной безопасности, территория в международном праве, право международных договоров.

[1] A quote from A Constructive Plot to Return Guantanamo Bay to Cuba in the Near Future. See http://www.coha.org/2007/03/a-constructive-plot-to-return-guantanamo-bay-to-cuba-in the near-future/