

Vilenas VADAPALAS,

Cand. Sc. (Law), University of Vilnius

Vytautas ZALYS,

Cand. Sc. (Hist.), University of Vilnius

SECRET PROTOCOLS TO THE SOVIET-GERMAN TREATIES OF 1939 AND THE PROBLEM OF PRESCRIPTION IN INTERNATIONAL LAW

One of the international legal problems arising in connection with the fiftieth anniversary of the Soviet-German Non-Aggression Treaty of August 23, 1939, and its Secret Supplementary Protocol is the problem of prescription. This is a problem of the existence of prescription as regards the consequences of the implementation of these and later bilateral agreements. In other words, are the recent claims as to nullity of these agreements and the wrongfulness of their execution excluded due to the period of fifty years that has passed?

This problem has not only doctrinal importance because the substantiveness of the Appeal of the Supreme Soviet of the Lithuanian SSR to the Congress of People's Deputies and the Government of the USSR of May 18, 1989, claiming to declare these Protocols null and void from the moment of their signing depends partly on the answer to this question.

The solution of the prescription problem depends on answers to two other questions — firstly, the legal assessment of this agreement and its application, and secondly — the ascertaining of the existence or inexistence of prescription in international law in the context of the 1939 Soviet-German Secret Protocols.

The international legal qualification of the Secret Protocols of the Soviet-German Treaty and its application with regard to the Republic of Lithuania must be based on the rules of general international law valid in 1939—1941 as well as on the whole complex of Soviet-Lithuanian treaties. This qualification must be based on reliably established facts and circumstances.

Art. 1 of the Secret Protocol to the Soviet-German Non-Aggression Treaty of August 23, 1939, stipulated: "In the event of a territorial and political rearrangement in the areas belonging to the Baltic States (Finland, Estonia, Latvia, Lithuania), the northern boundary of Lithuania shall represent the spheres of influence of Germany and the USSR. In this connection the interest of Lithuania in the Wilno (Vilnius) area is recognized by each party." Art. 2 provided: "In the event of a territorial and political rearrangement in the areas belonging to the Polish State, the boundary of the spheres of influence of Germany and USSR shall pass roughly through the line of the Narew, Wisla and San rivers...»¹

On September 1, 1939, Nazi Germany attacked Poland. A practical implementation of Molotov-Ribbentrop secret bargain began. Since Vilnius belonged, according to the Secret Protocol, to Lithuania, i.e. to German sphere of influence, Hitler intended to profit by it, involving Lithuania into the war. At the beginning of September 1939 Germany proposed to

¹ Tiesa, Dec. 20, 1988.

Lithuania repeatedly to attack Poland and to regain Vilnius. Concrete military assistance for this operation was proposed. However, the Lithuanian Government refused, did not become an ally of Germany, and preserved its neutrality. On September 17 the Red Army entered Polish territory and some days later — on September 20 — a Draft Defence Treaty between the German Reich and the Republic of Lithuania was prepared in the German Foreign Ministry. The implementation of this treaty would have actually meant German protectorate over Lithuania. At the same time the USSR took measures in its sphere of interests: on September 24 a Mutual Assistance Treaty providing the establishment of military bases, was proposed to Estonia.

Military operations in Poland were completed, and on September 28, 1939, a new treaty — Friendship and Boundaries Treaty was signed between the USSR and Germany. At the same time a Confidential Protocol relating resettlement of people of German origin from the Soviet sphere of interests to Germany and two more Secret Protocols were signed. One provided the transfer of Lithuania from German to Soviet sphere of influence, that was compensated for by parts of the Warsaw and Lublin districts. "As soon as the Government of the USSR shall take special measures on Lithuanian territory to protect its interests, the present German-Lithuanian border, for the purpose of a natural and simple boundary delineation, shall be rectified in such a way that the Lithuanian territory situated to the south-west of the line marked on the attacked map should fall to Germany."² The other Secret Protocol envisaged the prohibition of Polish agitation on the Polish territory.

After the signing of the above-mentioned Protocols the Draft Treaty between Germany and Lithuania of September 20, 1939, became meaningless. On October 3, in fulfilment of the agreements of August 23 and September 28, 1939, the Lithuanian Foreign Minister J. Urbšys was invited to Moscow and the signing of three documents was proposed to him: (1) Mutual Assistance Treaty providing the establishment of Soviet Army bases on Lithuanian territory, (2) Treaty on the Transfer of Vilnius and the Vilnius district to Lithuania, (3) Treaty on the Transfer of the South-Western Part of the Lithuanian territory to Germany.³ Stalin informed J. Urbšys in detail about his negotiations with J. Ribbentrop and declared that he had given his word to the Germans regarding these Lithuanian areas.⁴

In the course of negotiations the Lithuanian delegation tried from the very beginning to defend Lithuania's neutrality, i. e. tried to resist the establishment of foreign military bases on its territory. Nevertheless V. Molotov flatly declared that under the new situation Lithuania's neutrality no longer satisfied the Soviet Union. When J. Urbšys objected, V. Molotov threatened Lithuania, saying that if circumstances should require the Soviet Union would not respect Lithuania's neutrality.⁵

Unexpectedly the question of the Lithuanian territory falling to Germany according to the Secret Protocol of September 28, was solved between September 4 and 8 when owing to divergences of opinions on the practical execution of their deal, the USSR and Germany reached an agreement to postpone the solution of this question for some time. Ultimately this question was solved at the beginning of 1941, when at Stalin's request, Germany ceded this Lithuanian territory for 7 500 000 USD in gold, this was fixed by the Secret Protocol of January 10, 1941.

² According to: *Nazy-Soviet Relations*. Washington, 1948, 107.

³ Pro-memoria of October 4, 1949 of the Lithuanian Minister in Moscow L. Natkevičius // Lithuanian SSR Central Record Office, F. 383, Ch. 7, A. 2146, p. 73.

⁴ *Ibid.*, p. 77.

⁵ *Ibid.*, p. 75.

In spite of the resistance of the Lithuanian delegation which lasted nearly a week, Stalin and Molotov compelled them to sign a disadvantageous Mutual Assistance Treaty on October 10, 1939. We have to state that the conclusion of this Treaty was imposed on Lithuania by threat. In case of refusal, armed forces would have been used against Lithuania (as it was done some time later with Finland). When signing this Treaty, the Lithuanian Government tried to preserve the independence of the Lithuanian State, the more so since the Soviet obligations according to this Treaty seemed to be guarantees of independence.

The Lithuanian Government strictly performed its obligations upon the Mutual Assistance Treaty. Till May 25, 1940, no claims by the Soviet Government or the Red Army Headquarters situated in Lithuania were presented. Moreover, on March 29, 1940, V. Molotov expressed his high opinion of the relations with the Baltic States in his speech in the Supreme Soviet. However, at the end of May, 1940, Soviet-Lithuanian relations promptly aggravated. On May 25 V. Molotov accused the Lithuanian Government of provocations against Soviet garrisons. The Government of Lithuania responded to it without any delay — on May 26 and 28 a request for additional information was addressed to the Soviet Government and the participation of representatives of the Red Army in investigation was proposed. The Lithuanian Government tried to solve the conflict by usual diplomatic means. For this purpose Prime Minister A. Merkys went to Moscow.

However, neither the arguments set forth by A. Merkys and J. Urbšys, the readiness of the Lithuanian Government to make concessions, nor the message by President A. Smetona to M. Kalinin prevented the Soviet Government from presenting an ultimatum to Lithuania on June 14, 1940. The records of the negotiations between A. Merkys, J. Urbšys and V. Molotov testify to the unwillingness of the USSR to solve the conflict by peaceful means and its deliberate instigation of tension.

In its ultimatum the Soviet Union accused Lithuania without any ground of a breach of the Treaty on Mutual Assistance, kidnappings of Red Army soldiers, the conclusion of a military alliance with Latvia and Estonia, and demanded, *inter alia*, the resignation of the lawful Lithuanian Government and the formation of a new government, acceptable to the USSR, as well as free entrance of detachments of Soviet armed forces into Lithuanian territory in large numbers.⁶ The ultimatum was composed in such a way that no concessions of Lithuania could have prevented the invasion by the Red Army. Handing over the ultimatum, V. Molotov said straightforwardly to J. Urbšys — “irrespective of your answer, our troops shall anyhow enter Lithuania tomorrow.”⁷ By the night of June 14—15 some armed provocations were organized on the Soviet-Lithuanian border, and one Lithuanian frontier-guard was killed, another kidnapped.⁸ Non-pending an answer from the Lithuanian Government, the Soviet troops dislocated earlier on the Lithuanian territory occupied strategic points. Under such conditions armed self-defence was virtually impossible. As it was stated in the Appeal-Declaration of the Supreme Soviet of the Lithuanian SSR of May 18, 1989, “Stalinist dictate fixed in the Soviet-German Secret Protocols and the ultimatum to the Lithuanian Government of June 14, 1940, predetermined the fall of the Republic of Lithuania, its

⁶ Lietuvos TSR istorijos šaltiniai. Vol. IV, V. 1961, 769.

⁷ L. Natkevičius report from Moscow of June 14, 1940 // Lithuanian SSR Central Record Office, F. 383, Ch. 7, A. 2259, p. 23, 24.

⁸ Lithuanian Foreign Ministry Note to Soviet Embassy in Kaunas of July 3, 1940 // Lithuanian SSR Central Record Office, F. 383, Ch. 7, A. 2266, p. 47; Telegram of Mr. E. Turauskas to Moscow of June 15, 1940 // Lithuanian SSR Central Record Office, F. 383, Ch. 7, A. 2258, p. 2.

annexation and incorporation into the USSR." It was promoted by such actions taken under the guidance of V. Dekanosov, Soviet Government's special envoy, as direct interference into the formation and activities of the Lithuanian Government, arrest of its former members (the former Prime Minister A. Merkys and the former Foreign Minister J. Urbšys were arrested and deported to the USSR already before the elections to People's Parliament organized under the Emergency Power Act, and carried through under repressions and deportations, under breaches of the Electoral Laws of Lithuania).

It is well known that attempts have been made to justify the actions of the Stalinist regime against Lithuania by the consent of the Lithuanian Government under the "demands of the masses". It must be stated that according to K. Marx, "under *jus gentium* each term upon which an independent state permits a foreign state to intervene in its international affairs, is invalid."⁹

The conclusion about the invalidity of the consent of the Lithuanian Government may be confirmed also by referring to the corresponding conclusions of the United Nations International Law Commission on Draft Convention on State Responsibility. The ILC provided in Art. 29 of the Draft: "The consent validly given by a state to the commission by another state of a specified act not in conformity with an obligation of the latter state towards the former state precludes the wrongfulness of the act in relation to that state to the extent that the act remains within the limits of that consent." The Commission provided also that this provision "arises out of a peremptory norm of general international law." Such norms, in particular, are general principles of international law, including the principle of non-use of force and threat of force, the principle of the respect of the sovereignty and territorial integrity of states, the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any state. The ILC concluded also that "consent obtained by armed coercion (...) cannot be considered as consent, so action in question will constitute an internationally wrongful act."¹⁰

The invalidity of such a consent is confirmed by international legal practice. For example, Preamble of the Treaty of Mutual Relations between Czechoslovakia and the Federal Republic of Germany of December 11, 1973, declares that "Parties, recognizing that the Munich Agreement of September 24, 1938, was imposed by threat of force to the Republic of Czechoslovakia ... consider the Munich Agreement null and void."¹¹ According to Art. 52 of the Vienna Convention on the Law of Treaties a treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations. The Soviet doctrine of international law also recognizes that "international treaties concluded by impact of coercion and violence, including unjust peace treaties, treaties of "concession" of territory, etc. imposed by the state-aggressor on the victim of aggression, are null and void."¹²

The western doctrine which also recognizes this standpoint, solves the question arising in this connection, namely the concrete historical moment when the rule making null and void any treaty concluded by impact of force or threat of force was established. In this connection the Pact of the League of Nations of 1919 and the Kellogg-Briand Pact of 1928 are usually referred to. It is known that the General Assembly of the League

⁹ Маркс К., Энгельс Ф. Сочинения. Т. 14, 237.

¹⁰ Yearbook of International Law Commission 1979. Vol. II, Part 2, 112.

¹¹ AFDI, 1973, p. 189—207.

¹² Талалаев А. И. Право международных договоров. М., 1980, 235.

of Nations adopted a resolution on March 11, 1932, recommending Members of the League to refuse to recognize each situation, each treaty and agreement arising from acts contradicting the Pacts of 1919 and 1928.¹³ It is notorious that Art. 10 of the League of Nations Covenant provided: "The Members of the League undertake to respect and preserve against external aggression the territorial integrity and existing political independence of all the Members of the League," and Art. 1 of the Treaty of Paris of August 17, 1928, (Kellogg-Briand Pact) established an obligation of the States to renounce a war as an instrument of national policy. The recognition of the real existence of these peremptory rules of international law was one of the legal grounds of the Judgement of the Nuremberg Tribunal of October 1, 1946.

The above-presented analysis provides general grounds for an international legal qualification of the acts committed against the Republic of Lithuania and also of the Secret Protocols of the Molotov-Ribbentrop Pacts. In the first place it must be stated without doubt that these Protocols *ipso facto* did not create any lawful consequences imposed on the victims of the Pacts, i. e. to Lithuania, Latvia, Estonia, Finland and Rumania. According to the general principles of law, recognized also by international legal order, a bilateral agreement does not create any obligations for a third party without its consent. This rule is confirmed by Art. 34 of the Vienna Convention on the Law of Treaties: "A treaty does not create either obligations or rights for a third state without its consent." But it is even more important that the Secret Protocols of the Molotov-Ribbentrop Pacts are null and void from the moment of their conclusion. It was shown above that these agreements were contrary to the generally recognized and really existing in 1939—1941 peremptory principles of international law — the principle of non-use of force and threat of force, the principle of respect of the sovereignty and territorial integrity of states, the principle of non-intervention in the domestic affairs of states. According to Art. 53 of the Vienna Convention on the Law of Treaties, a treaty is void if at the moment of its conclusion it is in contradiction with the peremptory rules of international law.

In this connection the question arises whether the fact itself of the conclusion of the Secret Protocols may be considered as an internationally wrong act? It will be proved below that the conclusion of these Secret Agreements was contrary to the principles of Soviet-Lithuanian Treaties. (It is impossible to analyse German-Lithuanian Treaties in this short article.)

"A special form of breach /.../ comes into existence when a party to a treaty, bilateral or multilateral, enters into a treaty with another state — whether or not a party to that existing treaty — the conclusion of which is prohibited by the first treaty. In the case of a treaty dealing with political status of territory, an act of this nature obviously destroys the very *raison d'être* of the earlier treaty..."¹⁴

The conclusion and implementation of the Secret Protocols of Soviet-German Treaties of 1939 breached the Peace Treaty between Lithuania and Soviet Russia of July 12, 1920. Art. 1 which declared: "Proceeding from the right proclaimed by the Russian Soviet Socialist Federated Republic, of all nations to free self-determination up to their complete separation from the state into the composition of which they enter, Russia recognizes without reservation the sovereign rights and independence of the Lithuanian State, with all the juridical consequences arising from such recognition, and voluntarily and for all time abandons all the

¹³ *Nquen Quoc Dinh, Daillier, P., Pellet, A. Droit international public.* Paris, 1987, 184.

¹⁴ *Rosenne, S. Breach of Treaty.* Cambridge, 1985, 85.

sovereign rights of Russia over the Lithuanian people and territory. That is why "territorial and political rearrangement in the areas belonging to the Baltic States (... Lithuania)" according to Article 1 of the Secret Supplementary Protocol of August 23, 1939, and "special measures on Lithuanian territory" roughly violated this solemn obligation of Soviet Russia.

According to Article 2 of the Treaty of Non-Agression between Lithuania and the USSR of September 28, 1926, the parties undertook to respect in all circumstances each other's sovereignty and territorial integrity and inviolability. Therefore, the above-mentioned provisions of the Secret Protocols and their implementation breached this solemn obligation.

The invasion by the Red Army under the threat of the ultimatum, and irrespective of the answer of the Lithuanian Government, fully corresponds to § 2, Article 2 of the Convention for the Definition of Aggression between Lithuania and USSR of July 15, 1933: "aggressor shall be considered to be that state which is the first to commit ... invasion by its armed forces, with or without a declaration of war, of the territory of another state". Moreover, according to Article 3 of the Convention no political, military, economic or other considerations may serve as an excuse or justification for the aggression referred to in Article 2. Therefore, the reference in the ultimatum of June 14, 1940, on alleged violations by Lithuania of the Mutual Assistance Treaty of October 10, 1939, ("kidnappings", "military alliance with Latvia and Estonia", etc.) as emphasized by J. Urbšys in his memoirs, are absolutely unfounded.¹⁵

The Government of the USSR violated actually also the provisions of the Soviet-Lithuanian Treaty of Mutual Assistance of October 10, 1939, signed after the conclusion of the Secret Protocols of August 23 and September 28, 1939, and upon threat of the execution of the Protocols. That Treaty provided in Article 7 that, "realization of this Pact shall not affect to any extent the sovereign rights of the Contracting Parties, in particular their state organization, economic and social systems, military measures and, in general, the principle of nonintervention in internal affairs."¹⁶ Moreover, the invasion of the Red Army on June 14, 1940, the forcible changing of the political system and the forcible incorporation of the Republic of Lithuania breached even the terms of the ultimatum of June 14, 1940 — i. e. "the guarantee of the execution of the Mutual Assistance Pact". It is necessary to pay special attention to the fact that the ultimatum demanding "free entrance of detachments of the Soviet armed forces into Lithuania" and "immediate formation of a new government" was unlawful because the Parties had agreed to exclude such a form of solution of mutual disputes. According to Article 5 of the Treaty of Non-Agression of 1926, the Parties provided that should a dispute arise between them, the Contracting Parties undertake to appoint conciliation commissions if it should not prove possible to settle the dispute by diplomatic means.

This analysis shows that the Stalinist Government's actions against the Republic of Lithuania were manifest and grave violations of generally recognized rules and principles of international law as well as of bilateral Soviet-Lithuanian obligations. The principles of friendly relations promoted by Lenin and existing between the two countries till the fourth decade of this century were roughly breached by the Stalinist Soviet Union. Direct annexation, condemned in Lenin's Decree on Peace, was committed. "In accordance with the sense of justice, of democracy in general, and of the toiling classes in particular, the Government conceives annexation, or seizure of foreign lands to mean the incorporation into a

¹⁵ Urbšys, J. Lietuva lemtingaisiais 1939—1940 m. v. 1988, 49.

¹⁶ Lietuvos TSR istorijos šaltiniai. Vol. IV, 132.

large or powerful state of a small or feeble nation without the precisely, clearly and voluntarily expressed consent and wish of that nation, irrespective of the time such forcible incorporation took place, irrespective also of the degree of development or backwardness of the nation forcibly annexed to or forcibly retained as a part of the given state.”¹⁷ In this connection it seems necessary to remind that the Decree of Peace condemned the policy of secret diplomacy. “The Government proclaims the absolute and immediate annulment of everything contained in these secret treaties that is aimed, as is mostly the case, (...) at the retention, or execution, of the annexations made by the Great Russians.”¹⁸ These principles must be re-established unconditionally in the contemporary policy of the Soviet Union.

Is prescription applicable to such violations? The problem of prescription has been analysed in the Soviet doctrine of international law only in the context of inapplicability of the prescription to the crimes against peace and humanity, and war crimes, i. e. conformably to international responsibility of individuals, and it has been examined in detail. It has contributed to the establishment of a principle of non-applicability of statutory limitations in the Convention of the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968 (Art. 1): “No statutory limitation shall apply to the following crimes, irrespective of the date of their commission: a) war crimes... b) crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal ... eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid, and the crime of genocide.” The idea upon which that principle is based is the non-recognition of prescription in cases of the most dangerous crimes in the prevention and punishment of which the whole international community is interested. Here we find a general principle of law, well known also in national law, as no community can recognize a prescription to acts infringing upon the bases of that community. We may rather speak about mitigation of punishment than about the impossibility of imposition of penalty (see, for example, Article 41 of the General Penal Code of the Soviet Union and Soviet Republics concerning penalties on grave crimes and statutory limitations).

It must be emphasized that general international law does not include any universal legal instruments providing prescription to the defense of breached rights of the States. It fully corresponds to the very nature of international law because its rules are established by the States for the purpose of the protection of their rights and interests. Establishing of the rule of the refusal of the rights of a state because of termination of the term, even a long term, seems to be impossible. The more so, as it is the protection of the principal rights of the state — the right to preserve its sovereignty, territorial integrity, etc.

Breaches committed in realizing the Secret Protocols fall under that category of breaches. That is why it is a question of the acquisitory prescription of the territory. The inexistence of the rule of acquisitory prescription of the territory can be proved by referring to the principle concerning friendly relations and co-operation between States fixed in the Declaration of the Principles of International Law which is in accordance with the Charter of the United Nations (General Assembly Resolution of October 24, 1970): “No acquisition of territory, resulting from use or threat of force can be recognized lawful.”

Moreover, an analysis of international practice and doctrine shows the

¹⁷ *Lenin, V. I. Selected Works in two volumes. Moscow, 1947. Vol. 2, 228, 229.*

¹⁸ *Ibid., p. 229.*

absence in international legal order of a general rule providing prescription. The Commission of Arbitration between Greece and the United Kingdom in Ambatielos case (1956) ascertained, "There is no doubt that there is no rule of international law which lays down a time limit with regard to prescription, except in the case of special agreements to that effect..."¹⁹ No special agreement between Lithuania and the USSR on this matter has ever been concluded. Besides, Article 1 of the Peace Treaty of 1920 which is in force up to now, declares that Russia "for all time abandons all the sovereign rights of Russia over the Lithuanian people and their territory."

The following doctrine solves the problem in the same way: "*Il est souvent contesté que la prescription acquisitive soit reçue en droit international positif, tant l'institution est attentatoire à la souveraineté territoriale et contraire au principe du consensualisme.*"²⁰

Nearly fifty years have elapsed since the signature and realization of the Secret Protocols of Molotov-Ribbentrop Pact, and the Baltic States have had no possibility to seize the right to contest the violations of their rights. "*Le fait qu'un État renonce à exercer un droit n'indique pas qu'il renonce à ce droit*"²¹, — emphasizes Prof. J.-P. Jaque. This right was seized by the Supreme Soviet of the Lithuanian SSR in its Appeal-Declaration of May 18, 1989, demanding that the Congress of People's Deputies of the USSR should declare these Secret Protocols null.

¹⁹ United Nations Reports of International Arbitral Awards. Vol. XII, 103.

²⁰ *Nquen Quoc Dinh, Daillier, P., Pellet, A. Droit international public*, 476.

²¹ *Jaque, J.-P. Éléments pour une théorie de l'acte juridique en droit international*. Paris, 1972, 343.

Vilenas VADAPALAS,

õigusteaduse kandidaat, Vilniuse Ülikool

Vytautas ŽALIS,

ajalookandidaat, Vilniuse Ülikool

NÕUKOGUDE-SAKSA 1939. AASTA LEPETE SALAPROTOKOLLID JA AEGUMISE PROBLEEM RAHVUSVAHELISES ÕIGUSES

Rahvusvahelise õiguse põhjal on antud hinnang Nõukogude Liidu ja Saksamaa 1939. aasta 23. augusti mittekallaletungilepingu salaprotokollile, 1939. aasta 28. septembri sõprus- ja piirilepingu salajasele lisaprotokollile ja 1941. aasta 10. jaanuari salaprotokollile. Need kolmandate riikide suveräänsuse ja territoriaalse terviklikkuse vastu suunatud salajased lepped on vastuolus rahvusvahelise õiguse sätetega ning seega tühi, s. t. kehtetud nende sõlmimise momendist alates.

On vaadeldud osapoolte tegutsemist lepingute elluviimisel ja näidatud, et see tegevus oli vastuolus rahvusvahelise õigusega, et rikuti Rahvasteliidu põhikirja ja 1928. aasta Pariisi pakti ega peetud kinni Leedu Vabariigi ja Nõukogude Liidu vahel sõlmitud lepingutest. Neile üleastumistele on antud rahvusvahelis-õiguslik hinnang.

On käsitletud nimetatud õigusrikkumiste aegumise küsimust. On uuritud aegumise probleemi praktika ja teooria põhjal ning selgitatud, et rahvusvahelises õiguses ei ole aegumisnormi. Seega ei tohi aegumist mitte mingil juhul kohaldada ei territooriumi vägivaldse omandamise korral üldse ega ka siin vaadeldud juhtude puhul.

Виленас ВАДАПАЛАС,

канд. юр. н., Вильнюсский университет

Витаутас ЖАЛИС,

канд. ист. н., Вильнюсский университет

СЕКРЕТНЫЕ ПРОТОКОЛЫ К СОВЕТСКО-ГЕРМАНСКИМ ДОГОВОРАМ 1939 ГОДА И ПРОБЛЕМА ДАВНОСТИ В МЕЖДУНАРОДНОМ ПРАВЕ

В статье дается международно-правовая оценка секретного дополнительного протокола к Договору о ненападении между СССР и Германией от 23 августа 1939 г., секретного дополнительного протокола к Договору о дружбе и границе от 28 сентября 1939 г. и секретного протокола от 10 января 1941 г. Показано, что эти секретные соглашения, направленные против суверенитета и территориальной целостности третьих государств, противоречили императивным принципам международного права и были ничтожными, т. е. абсолютно недействительными с момента их заключения.

Рассмотрены действия сторон этих соглашений, совершенные в процессе осуществления соглашений, показана их международная противоправность как согласно Статуту Лиги Наций и Парижскому пакту 1928 г., так и согласно целому комплексу двусторонних договоров между Литовской Республикой и СССР. Дана международно-правовая оценка конкретных нарушений.

Исходя из проведенной правовой квалификации рассмотрен вопрос о применимости давности к этим правонарушениям. В этих целях изучается общая проблема давности в международном праве. Анализ международной практики и доктрины показывает, что в международном праве отсутствует общая норма давности. Показано также, что давность ни в коем случае не может применяться к территориальным приобретениям как в целом, так и в рассматриваемой ситуации.

¹ Lenin, V. I. Selected Works in two volumes. Moscow, 1947. Vol. 2, 224, 229.

² Ibid., p. 229.