

INTERNATIONAL DEFENSE COOPERATION AGREEMENTS - NEW OPPORTUNITY OR THREAT TO A STATE SOVEREIGNTY

Acuerdos internacionales de cooperación en defensa: ¿nueva oportunidad o amenaza para la soberanía de un Estado?

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Abstract

The paper aims to analyze the DCA between Slovak Republic and the USA from the point of view of state sovereignty. These kinds of agreements are nothing new in the world. Different states approach them in different variants and combinations. But the approach of the USA is hegemonic. Agreements with the US are concluded for the benefit of the US and in the interest of the US. Based on the analysis of Brandon J. Kinne, this paper analyses and compares bilateral defense cooperation agreements between the USA and the Slovak Republic. I proceed from the assumption that it is a purely vassal treaty, which makes Slovakia a second, European Puerto Rico, subordinated to the USA in the military, but also in the legislative area.

The assumption that the agreement with the USA is a vassal agreement rather than an agreement between two equal partners is confirmed. The treaty significantly limits the sovereignty of the Slovak Republic, which contradicts Article 1, paragraph 1 of the Constitution, which states that "The Slovak Republic is a sovereign, democratic and legal state". And therefore, in this case, the Slovak authorities should follow Article 2, paragraph 2 of the Constitution which states: "State authorities can act only based on the constitution, within its limits and to the extent and in the manner established by law". This means that the relevant ministry should not have negotiated such an agreement because it contradicts the constitution, and vice versa, to negotiate an unconstitutional agreement should have no mandate. Based on this agreement Slovak Republic lost its sovereignty in several ways. This agreement significantly affects and disrupts the sovereignty of the Slovak Republic. In our opinion, this agreement is significantly

asymmetric, and favorable to the interests and needs of the stronger party. So this is an example of a vassal agreement that favors one party over another, limiting the sovereignty of one party without compensation.

Key words: security; defense; cooperation, sovereignty, the USA, Slovakia.

Resumen

El artículo analiza el Acuerdo de Cooperación en Defensa (ACD) entre la República Eslovaca y los Estados Unidos desde la perspectiva de la soberanía estatal. Este tipo de acuerdos no es nuevo en el mundo. Distintos Estados los abordan con distintas variantes y combinaciones. Sin embargo, el enfoque de los Estados Unidos es hegemónico. Los acuerdos con los Estados Unidos se celebran en beneficio y en interés de los Estados Unidos. Basado en el análisis de Brandon J. Kinne, este artículo analiza y compara los acuerdos bilaterales de cooperación en defensa entre los Estados Unidos y la República Eslovaca. Parte de la base de que se trata de un tratado puramente vasallaje, que convierte a Eslovaquia en un segundo Puerto Rico europeo, subordinado a los Estados Unidos tanto en el ámbito militar como en el legislativo.

Se confirma la suposición de que el acuerdo con los Estados Unidos es un acuerdo vasallaje y no un acuerdo entre dos socios en igualdad de condiciones. El tratado limita significativamente la soberanía de la República Eslovaca, lo que contradice el artículo 1, párrafo 1, de la Constitución, que establece que “La República Eslovaca es un Estado soberano, democrático y de derecho”. Por lo tanto, en este caso, las autoridades eslovacas deberían acatar el artículo 2, párrafo 2, de la Constitución, que establece: “Las autoridades estatales solo pueden actuar con arreglo a la Constitución, dentro de sus límites y en la medida y forma establecidas por la ley”. Esto significa que el ministerio competente no debería haber negociado dicho acuerdo, ya que contradice la Constitución, y viceversa, negociar un acuerdo inconstitucional no debería tener competencia. En virtud de este acuerdo, la República Eslovaca perdió su soberanía de diversas maneras. Este acuerdo afecta y perturba significativamente la soberanía de la República Eslovaca. En nuestra opinión, este acuerdo es significativamente asimétrico y favorece los intereses y necesidades de la parte más fuerte. Por lo tanto, este es un ejemplo de un acuerdo vasallático que favorece a una parte sobre otra, limitando la soberanía de una de ellas sin compensación.

Palabras clave: security; defense cooperation; sovereignty; the USA; Slovakia.

Sumario

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1. INTRODUCTION

The security policy of the state is generally perceived as the protection of state interests. We consider these to be the values that society, which forms the living substrate of the state, professes. These values need to be defended, preserved and replicated. They form the essence of the physical, political and cultural identity of society in relation to the external environment. It is necessary to protect and preserve them; they must be superior to the interests of classes, strata, groups, political parties or minorities and ethnic groups living on the territory of the given state.¹ It is a set of requirements, the fulfillment of which conditions the preservation of state sovereignty.²

It is sovereignty meant as the basic value of the state, understood as the independence of state power from any other power, or as Bodin's absolute and permanent power of the state,³ which needs to be protected, and that is the subject of this contribution. Based on the theoretical analysis of the issue of bilateral agreements on defense cooperation by Brendon J. Kinne,⁴ this contribution analyzes and evaluates the bilateral agreement on defense cooperation between the USA and Slovakia, very fast ratified by the Slovak parliament and signed by the Slovak president⁵ without discussion on 9th of February 2022 against the will of majority of Slovak citizens.

¹ BRHLÍKOVÁ, Radoslava, Bezpečnosť ako národnoštátny záujem v kontexte členstva v Európskej únii, pp. 69-70.

² KREJČÍ, Oskar, *Mezinárodní politika*, p. 645.

³ BODIN, Jean, *Six books of the Commonwealth*, 1576.

⁴ Brandon J. KINNE is an associate professor of political science at the University of California, Davis, USA. He focuses on research on political networks, international cooperation and global security. He published his studies in journals such as *International Organization*, *American Political Science Review*, *Journal of Politics*, *British Journal of Political Science*, *International Studies Quarterly*, *Journal of Conflict Resolution*. He received his doctorate (PhD.) in political science from Yale University.

⁵ In one of the pre-election debates, the president promised that she would never sign this agreement.

First part of the contribution presents an analysis of Brendon J. Kinne's *Defense Cooperation Agreements and the Emergence of a Global Security Network*, which was published in the journal *International Organization* in 2018. Based on this analysis, the contribution defines the basic characteristics of bilateral defense cooperation agreements (DOS) which are later on applied to the Defense Cooperation Agreement between the Government of the Slovak Republic and the Government of the United States of America (DCA) in the second part of this contribution. The basic assumption of the contribution is that –unlike Kinne's analyzed agreements and the characteristics derived from them– the agreement offered by the American government to Slovak government or any other east European government shows different characteristics. The assumption is that in the case of Slovakia (or Estonia, Romania, Bulgaria, Hungary, Czech Republic, Greece) it is more about curtailing the sovereignty of the state in favor of the interests of the USA than about an agreement between two equal partners.

2. DEFENSE COOPERATION AGREEMENT ACCORDING TO KINNE

It is surprising that scientific analyzes and studies have so far focused on various international agreements - especially trade and human rights, but in the field of security this has only been done in connection with formal military alliances.⁶ However, in the area of security policy, we observe that governments rarely form new alliances, and the global alliance structure has been static for decades. However, governments are increasingly actively approaching the signing of bilateral agreements on defense cooperation, which, as they are framework and therefore flexible contracts, enable them to institutionalize day-to-day defense relations between themselves and facilitate large-scale activities such as defense policy coordination, joint research and development, arms production and arms trade or joint exercises and training and exchange programs. Since 1980, almost 2,000 such bilateral

⁶ See for example: MORROW, James D., "Modeling the Forms of International Cooperation: Distribution versus Information", *International Organization*, Vol. 48, No. 3, 1994, pp. 387-423; LONG, Andrew G., "Defense Pacts and International Trade", *Journal of Peace Research*, Vol. 40, No. 5, 2003, pp. 537-52; JUNG, Danielle F. & David A. LAKE, "Markets, Hierarchies, and Networks: An Agent-Based Organizational Ecology", *American Journal of Political Science*, Vol. 55, No. 4, 2011, pp. 972-990; SANDLER, Todd, "The Economic Theory of Alliances: A Survey", *Journal of Conflict Resolution*, Vol. 37, No. 3, 1993, pp. 446-483; WALT, Stephen M., *The Origins of Alliances*; MRÁZ, Stanislav, František POREDOŠ & Peter VRŠANSKÝ, *Medzinárodné právo verejné*; POTOČNÝ, Miroslav & J. ONDŘEJ, *Mezinárodní právo veřejné*, WEISSOVÁ, Šárka., *Mezinárodní organizace a režimy*.

agreements on defense cooperation have been signed in the world, yet these have not become the subject of academic analysis and professional discussion.⁷ The Slovak public was excited and outraged by the highly secretive considerations of signing such an agreement with the United States of America, which were leaked to the public in 2019, connected with the possibility of the deployment of American army units on the territory of Slovakia. However, the academic discussion on this issue did not take place and, if it did, only in the form of blogs or short reactions, especially on Facebook. Even abroad, no one addressed this issue until 2018,⁸ although, despite various commitments in various economic, security and defense alliances, bilateral agreements on cooperation in the framework of interstate relations are not unusual, and it is agreements on defense cooperation (DCA) that are the most common in the form of such relationships.⁹ DCAs between the signatories establish broad legal frameworks aimed at defense. Their goal is to facilitate cooperation in an area very sensitive to the sovereignty of the state, namely in the coordination of defense policy, research and development, education and training, in the organization of joint exercises, in the procurement of military equipment and weapons in the exchange of classified information. However, no attention was paid to the investigation and analysis of their content, their impact and influence on state sovereignty and state interests, their possible, extensive impact on national and international security. We are only gradually discovering the impact of such agreements on the international security environment.

The first larger study on this issue was published by Brandon J. Kinne in 2018 in the *International Organization* magazine under the title *Defense Cooperation Agreements and the Emergence of a Global Security Network*. In this study, by combining the theory of cooperation and the results of social network analysis, he constructs a theory about the network diffusion of such agreements.¹⁰ According to him, the reason is the changes in the global security environment until the end of the 80s of the 20th century, which caused an enormous

⁷ KINNE, Brandon J., "Defense Cooperation Agreements and the Emergence of a Global Security Network", *International Organization*, Vol. 72, fall 2018, p. 799.

⁸ Based on my own experience with the topic and to the best of my knowledge, I can state that there is no political science literature and, most likely, no legal literature on this topic.

⁹ WEISSOVÁ, Šárka, 2008, *Mezinárodní organizace a režimy*.

¹⁰ See also: NEWMAN, Mark E. J., "The Structure and Function of Complex Networks", *SIAM Review*, Vol. 45, No. 2, 2003, pp. 167-256; FEARON, James D., "Bargaining, Enforcement, and International Cooperation. *International Organization*", Vol. 52, No. 2, 1998, pp. 269-305.

demand for this type of agreement. According to his findings, the US alone signed bilateral defense cooperation agreements with dozens of countries at the end of the Cold War. In 2015, various countries such as Indonesia and Turkey, South Africa and Liberia or Argentina and Russia signed almost a hundred such agreements.¹¹ States began to prefer DCAs over alliance commitments due to their high flexibility and effectiveness. They use them to modernize their armed forces, to respond to common security threats, to create security umbrellas with like-minded countries. They thus create a diverse, often unpredictable, criss-crossing network of security relations. Countries that do not even have a traditional relationship with each other often sign DCAs among themselves, i.e. historically, nor geographically close.

However, the demand for these agreements alone does not explain their spread, since in this special case states have to overcome such sensitive issues as the dilemma of mistrust and distributional conflicts in order to cooperate.¹² Often these agreements provoke controversies, condemning reactions and internal political earthquakes, as was the case in 1998, for example, in the case of the prime minister of Slovenia, who faced accusations of treason after signing the DCA with Israel, or in the case of the agreement between Iran and Belarus, which in 2007 a strong reaction from the USA and the European Union. Because of the DCA between Greece and Armenia, in 1996 a Turkish government spokesman accused Greece of threatening peace and stability in the region and of trying to encircle Turkey, and the 1995 agreement between Australia and Indonesia proved so controversial that it was canceled after four years.¹³

But what makes these agreements so attractive for states? According to Kinne, it's the network's influence that makes the DOS offer attractive. Networking relationships provide governments with information about the credibility of the partner and the risks associated with asymmetric distribution of profits¹⁴. According to Kinne's interpretation, states prefer to sign DCAs simply because

¹¹ KINNE, Brandon J., "Defense Cooperation Agreements...", *cit.*, p. 800.

¹² KYDD, Andrew. H., *Trust and Mistrust in International Relations*; SNIDAL, Duncan, "Coordination versus Prisoners' Dilemma: Implications for International Cooperation and Regimes", *The American Political Science Review*, Vol. 79, No. 4, 1985, pp. 923-942.

¹³ KINNE, Brandon J., "Defense Cooperation Agreements...", *cit.*, p. 800.

¹⁴ NEWMAN, Mark E. J., "The Structure and Function...", *cit.*, pp. 167-256; JUNG, Danielle F. & David A. LAKE, "Markets, Hierarchies, and Networks...", *cit.*, pp. 972-990.

more and more states are signing them. As also emerged from the leaked diplomatic correspondence, states began to perceive traditional military alliances as archaic, insufficiently reflecting the current global security environment. It was reported by American diplomats that the French government, soon after Nicolas Sarkozy took office in 2007, began to consider its alliance with African states as “apparently absurd and outdated”,¹⁵ that France sought to “radically change the current system of defense agreements” and replace traditional post-colonial defense pacts with agreements that would focus on “combating illicit trafficking and acts of terrorism” while encouraging “defense and security cooperation and prioritizing the strengthening of African peacekeeping capacities”.¹⁶ This shift was also welcomed by African states, and the Comoros, for example, called for a “new agreement on military cooperation with France” that would not focus on traditional issues of mutual defense, but on “training and exchange programs”.¹⁷ It is DOS that often provide partners with material benefits such as training, participation in seminars and exercises, mutual exchange of students, or presence in foreign missions, as well as involvement in the arms trade or acquisition of certain armaments, as Kinne states. According to him, two specific network influences are mainly responsible for the spread of DCA after the end of the Cold War. The first is preferential attachment and the second is triadic closure. By synthesizing them and adding cooperation theory, Kinne attempts to construct a comprehensive theory describing the birth of DCAs. Network influences originate in the outlined information mechanism: states use other states’ DOS ties to obtain information about possible potential defense partners, thereby endogenously supporting the further growth of the global DCAs network.¹⁸

Exogenous shifts at the macro level of the global security environment, including the collapse of the Soviet Union, a decrease in the threat of war between states (especially in the Euro-Atlantic area) and an increase in security threats of a non-traditional nature, increased the mutual benefits from defense

¹⁵ Published by: France’s Changing Africa Policy: Part I (Background and Outline of the New Policy), Wikileaks: Public Library of US Diplomacy, 1 August 2008.

¹⁶ Published by: France’s Changing Africa Policy: Part III (Military Presence and Other Structural Changes) Wikileaks: Public Library of US Diplomacy, 9 September 2008.

¹⁷ KINNE, Brandon J., “Defense Cooperation Agreements...”, *cit.*, p. 805.

¹⁸ *Ibidem*, p. 799.

cooperation, which led to an increase in the demand for DCAs. These system-wide trends translate into specific dyadic impacts, and states use DCAs to:

- 1) modernization of its armed forces and improvement of their defense capacities;
- 2) improving coordinated responses to common security threats and
- 3) alignment with communities of like-minded collaborators.¹⁹

At the dyadic level, the demand for DCAs depends on whether potential partners can help each other achieve these goals. States cooperate to achieve common gains.²⁰ And these agreements are ideal for this because they essentially establish long-term institutional frameworks for normal bilateral defense relations, including defense policy coordination, joint military exercises, working committees and groups, exchanges and training, defense research and development and procurement. As these are frameworks that are signed by the government, the details are worked out based on protocols and implementing legislation. Such flexibility is beneficial to both parties and means that DCAs can help improve a country's traditional defense capabilities and address such non-traditional threats as terrorism, human trafficking, piracy or cyber security and crime. It is important to emphasize that the DCA do not contain any commitments regarding the budget, mutual defense and non-aggression. They are not alliances. Unlike the forms of defense cooperation of the Cold War era –and here we can talk about the North Atlantic Alliance– this form is usually highly symmetrical. It mutually binds signatories to a common set of guidelines.²¹

But joint profits are only part of the overall picture. We still have to take information asymmetry into account. States often lack comprehensive and reliable information about their partner's credibility and willingness to cooperate and not unilaterally abuse their partners.²² And since DCAs also

¹⁹ *Idem*, p. 801.

²⁰ LIPSON, Charles, "International Cooperation in Economic and Security Affairs", *World Politics*, Vol. 37, No. 1, 1984, pp. 1-23.

²¹ KINNE, Brandon J., "Defense Cooperation Agreements...", *cit.*

²² KYDD, Andrew H., *Trust and Mistrust...*, *cit.*; SNIDAL, Duncan, "Coordination versus Prisoners' Dilemma...", *cit.*, pp. 923-942; GRIECO, Joseph, ROBERT POWELL & DUNCAN SNIDAL, "The Relative-

contain sensitive information about national security, including access to classified information or information about sophisticated weapons technologies, the question of trust is appropriate. If states are not sure of the partner's reliability and trustworthiness, the willingness to approach DCAs would be low.²³ However, we observe the opposite.

Even so, we can conclude that the logic of joint profits does not sufficiently explain why, despite persistent mistrust and possible distributional conflicts, states approach these agreements. Kinne believes that by establishing DCAs, governments reveal their degree of credibility and preferred institutional patterns to third-party observers,²⁴ who then adopt and replicate that pattern. This replication overcomes the problem of distrust in cooperation and creates favorable conditions for new DCAs. Thus, the popularity of DCAs is affected by the influence of the network - the relations between one pair of states affect the relations between other states. Kinne mentions two, already cited, specific types of network influence, namely preferential connection, when highly active states, the so-called nodes, endogenously attract new partners in the network and triadic termination, when DCA contractual parties share a connection (relationship) with the same third parties, or with the so-called "friends of friends" establish direct cooperation. This is the same mechanism that we observe working on social networks like Facebook, Twitter and others.²⁵

Regarding the basic definition or characteristics of these agreements, Kinne claims that they are "all-encompassing" agreements, or agreements on everything possible - from the care of war cemeteries, through student exchange, joint exercises, to nuclear materials and military cartography. Most of them are focused on specific threats or problems that arise from unique historical experiences such as wars, occupations, state failures or colonialism. Their simple definition would be roughly as follows: they are formal bilateral agreements that create institutional frameworks for routine defense cooperation. They contain relatively symmetrical and long-term commitments

Gains Problem for International Cooperation", *American Political Science Review*, Vol. 87, No. 3, 1993, pp. 729-743.

²³ MORROW, James D., "Modeling the Forms of International Cooperation...", *cit.*, pp. 387-423.

²⁴ We can talk about the so-called followers, similar to what we observe on social networks.

²⁵ KINNE, Brandon J., "Defense Cooperation Agreements...", *cit.*, p. 802.

for both sides with an emphasis on coordinating the main areas of defense policy and promoting people-to-people contacts.²⁶

To determine the basic characteristics of these agreements, we can use the agreement concluded between France and India from 2006, from which we deduce:

- 1) The purpose of this Agreement is to promote cooperation between the parties in the field of defense and military capabilities, defense industry, production, research and development and procurement of defense material.
- 2) This Agreement establishes a framework that focuses on all cooperation activities carried out by the Parties in the field of defense.
- 3) The forms of such cooperation can be specifically defined through agreements between the relevant ministries of the contracting parties.²⁷

From these three basic characteristics, the specific characteristics of these agreements can be further derived, namely:

- 1) DCAs are always framework agreements. A framework is understood as “a legally binding treaty... that sets out broad obligations for the contracting parties and a general system of governance, leaving more detailed rules and the setting of specific objectives either to subsequent agreements between the parties, usually referred to as protocols, or to national legislation”.²⁸ That is, that they only establish general procedures and their fulfillment requires additional tools. Therefore, they are often described by responsible officials as “legal umbrellas”.

²⁶ KINNE, Brandon J., “Defense Cooperation Agreements...”, *cit.*, pp. 802-803.

²⁷ See and compare: Agreement between the Government of the French Republic and the Government of the Republic of India on Defense Cooperation, signed 20 February 2006, New Delhi. This agreement, unlike the American-Slovak or other east European agreements with the USA, has a total of 5 pages.

²⁸ MATZ-LÜCK, Nele, “Framework Agreements”, In *Max Planck Encyclopedia of Public International Law*, Vol. 4, pp. 220-224.

- 2) DCAs emphasize day-to-day interactions in areas of defense such as mutual consultation and coordination of defense policy; joint exercises, training and education; coordination in peacekeeping operations; defense research and development; defense industrial cooperation; arms procurement; and security of classified information. The aim is therefore to support cooperation on a quasi-daily basis in specified areas. It is in no way a mutual defense commitment.
- 3) On the basis of the DCAs, bilateral committees, working groups and other mechanisms to support cooperation are usually established. Many also require the development of annual defense cooperation plans detailing joint summits, policy goals, exercises, and exchanges or pending contracts.
- 4) The language and content of the agreements can be assessed as highly symmetrical, and terms such as "parties" and "signatories" are used instead of proper names.
- 5) These are long-term agreements with duration of 10 years, many are concluded indefinitely.
- 6) Partners often sign several DCAs, so they can replace the previous agreement or prefer a gradual approach when they single out individual problem areas in separate agreements.²⁹

In his study, Kinne states that in the period 1980-2010, about half of the countries that signed the DCAs in that period subsequently concluded at least one other agreement. These subsequent DCAs are new legal instruments, not additions or changes to the original agreement. In no agreement examined by him do we find a request by one party to temporarily or permanently place a military unit or base on the territory of the other party, thereby limiting the sovereignty of one over the other. None of these agreements generally say anything about the deployment of one party's troops on the other's territory and vice versa.³⁰ Kinne is optimistic about the issue of DCAs in general, as a new possible form of cooperation in the field of defense, and it could therefore be concluded that it could be a way to eliminate conflicts between states. Yes, it could be, however, if there was perfect information and trust in the partner

²⁹ KINNE, Brandon J., "Defense Cooperation Agreements...", *cit.*, pp. 803-804.

³⁰ *Ibidem.*

when concluding them, and if the states approached it as equal partners without ulterior motives, in an effort to gain advantages for themselves, or from the position of a hegemon to completely dominate a vassal militarily and politically. Such optimistic new agreements are certainly not the agreements proposed by the US side to the countries of the former Eastern bloc.

3. DCA BETWEEN THE USA AND SLOVAKIA – THE STORY

At the beginning of 2019, the public in Slovakia was outraged by the information that the Slovak government was negotiating with the USA on a bilateral agreement on defense cooperation, which would legalize the presence of American troops on the territory of Slovakia.³¹ The document, which has long been speculated about and even claimed to not exist, dates back to 2017 and was leaked to the public copied on a copier at high speed. In response to public pressure, the Ministry of Foreign Affairs and European Affairs of the Slovak Republic stated that the Agreement on Defense Cooperation with the USA will enable expanded defense cooperation between Slovakia and the USA and was also a condition for the provision of a financial contribution from the USA for the modernization of the Sliač and Kuchyňa military airports in the amount of 46 million USD in the framework of the so-called European Deterrence Initiative (EDI), which was first mentioned by US President Barack Obama at the NATO summit in Warsaw in 2016. However, it gradually became clear that the initiative to conclude such an agreement came primarily from the American side and is exclusively in the American interest, as evidenced by an article in the professional magazine *Defense News* with the telling title *“US Air Force tests ‘base in a box’ in Poland to prep for future wars”*, which does not only talk about Poland;³² as well as the material of the US Department of Defense, which sets aside financial items for the modernization of American bases not only on the American continent, but also in countries where there are still no official American bases, such as Slovakia.³³

³¹ In addition to Slovakia, Iceland and Norway, similar offers from the USA were also addressed to Hungary, Latvia, Estonia, Romania, Malta, Luxembourg and Bulgaria. In all these cases, it is about building US military bases or facilitating the presence of US soldiers on the territory of the addressed states.

³² INSINNA, Valerie, “US Air Force tests ‘base in a box’ in Poland to prep for future wars”, *DefenseNews*, August 27, 2018, dostupné na: <https://www.defensenews.com/air/2018/08/27/us-air-force-tests-base-in-a-box-in-poland-to-prep-for-future-wars/>

³³ See: DEPARTMENT OF DEFENSE: Fact Sheet on Section 2808 Funding Pool, p. 12.

After the document was scandalously leaked to the public and there was widespread angry public discussion about it, even the representatives of the Ministry of Defense came to the opinion that DCA is significantly asymmetrical in favor of the USA, what can be read also from the explanatory material of the American side, according to which Slovakia is asked to host US troops –not NATO troops!– and the distribution of the so-called financial aid for the modernization of the airports in Kuchyňa and Sliač in the ratio of 25 to 77% in favor of the USAF, while up to 56% of these funds are to go to build ammunition warehouses in Kuchyňa.³⁴ That was why Ministry of Defense of the Slovak Republic withdrew from the negotiations in 2017 on the grounds that this offer does not reflect the operational requirements of the Armed Forces of the Slovak Republic and at the same time that the conclusion of this agreement threatens Slovakia with a significant limitation of sovereignty and the occupation of Slovakia's territory by foreign troops “and moreover without , to determine the number of American soldiers, the numbers of military equipment, as well as material without specifying the type and specific purpose”, and that the members of the US Army, civilian components, their family members and American contractors are unreasonably favored “compared to the members of the armed forces of the member states NATO”. The Ministry of Defense of the Slovak Republic also stated that the US offer in accordance with the EDI program was focused exclusively on the construction of facilities, or objects that serve as a priority for the deployment of members of the American army, military equipment and material, or use for any purposes, and therefore does not meet the requirements of the Armed Forces of the Slovak Republic, nor the requirements of NATO.³⁵

The then social democratic Slovak government and Parliament subsequently rejected this agreement. And it was not discussed or talked about it. But then the elections came. The issue of DCA became the subject of the presidential and later parliamentary election campaigns. The future progressive President Zuzana Čaputová, literally said in the election campaign in 2019: “I do not see a reason for the permanent presence of foreign troops in Slovakia. I want Slovakia to be a reliable and solidary ally within NATO, and today it means mainly focusing on the real and transparent modernization of our army. This is

³⁴ INSINNA Valerie, “US Air Force tests ‘base in a box’ in Poland...”, *cit.*; DEPARTMENT OF DEFENSE: Fact Sheet on Section 2808 Funding Pool, *cit.*

³⁵ Ministry of Defense of the Slovak Republic [The Ministry of Defense has ended negotiations on money from the US...] official page, 2019. This page is no longer available today (2024).

our main role". Already at that time she laid, in 2022 she expressly fast signed the DCA, without any objections and control, whether it is contrary to the Constitution of the Slovak Republic.³⁶

Also, future Prime Minister Matovič made an oral promise at one of his many press conferences during election campaign 2020 that, if it should ever happen that DCA will be approved, it will not be without a nationwide referendum. During this statement, future Minister of Defense Nad' stood behind Matovič. Even Matovič lied. The right wing Government of the Slovak Republic, on the initiative of Nad' and Korčok in 2021, approved the DCA without assessing and analyzing a number of comments from the interdepartmental comment procedure and despite the public resistance, and sent it for approval to the Parliament. Even the General Prosecutor's Office of the Slovak Republic rejected the agreement with the USA as a whole, in the interdepartmental comment procedure. It applied 35 fundamental comments. It has to be noted that Minister Nad' included the draft of this agreement for comment during the Christmas and New Year holidays, in order to prevent a broad public debate. His intention was to shorten the time prescribed for comments, and that the draft of this agreement would escape public attention. The right wing majority in the Parliament approved it, after a thwarted discussion, rejected hearing of the General Prosecutor with 35 objections against and big pressure on MPs from Minister Nad'. The same day, it was expressly signed by President Čaputová, despite the calls on her to send the DCA for a review to the Constitutional Court whether it is in accordance with the Constitution of the Slovak Republic. It was passed without the promised referendum.

Jaroslav Nad', together with President Zuzana Čaputová and Foreign Minister Ivan Korčok, rushed, after the elections and government change, as soon as possible to accept DCA, which rightly can be described as an "invitation letter" – which dislocates foreign, alien army in Slovakia for many years which will not be a subject to the control of Slovak authorities, with a high probability of the presence of nuclear weapons – to concrete and to enforce their vision of the world and the direction of foreign policy of the Slovak Republic in the future.³⁷ Let's remind once again that the representatives of the Ministry of Defense of the Slovak Republic refused to deal with the comments, objections and reservations of both the professionals and citizens of the Slovak Republic.

³⁶ BRHLÍKOVÁ, Radoslava, "Hľadanie tváre zahraničnej politiky Slovenska po roku 1989", Nitra, 2023.

³⁷ *Ibidem*.

4. DCA BETWEEN THE USA AND SLOVAKIA – THE DOCUMENT ANALYSIS

DCA between the USA and the Slovak republic is a significantly asymmetric agreement, shifted significantly in favor of the USA, which talks about the legalization of the deployment of units of the Armed Forces of the USA on the territory of Slovakia. Nowhere does it mention mutual cooperation, student exchanges, joint procedures and exercises, training and education, coordination in peace operations, the establishment of joint committees and commissions,³⁸ as we would expect based on Kinne's analysis. However, it talks about the deployment of foreign troops on the territory of Slovakia and their legal status, the rights of the American side and the obligations of the Slovak side. It literally refers to the exemption of the US Armed Forces, their contractors, family members and other persons from both the criminal and civil jurisdiction of Slovakia, as well as exemption from tax and customs duties for official and private purposes. While the Defense Cooperation Agreement between the Government of France and the Government of the Republic of India has five pages, is signed by the Ministers of Defense of both countries, and at first sight it is clear that it is a typical framework agreement signed by equal partners as described by Kinne in his study, the agreements between the USA and Slovakia have more than thirty pages. In it, Slovakia sounds like a vassal territory, so it is an asymmetric document, clearly favoring and prioritizing the interest and benefit of the USA, with a significant impact on geopolitical contexts, because this agreement made Slovakia, its territory and its inhabitants an easy target in a possible future regional or global conflict character. According to the agreement, the US armed forces are stationed in the area of Sliač airport and Kuchyňa airport, where they also plan to build ammunition warehouses, i.e. in areas where the population density in Slovakia is among the highest.³⁹

Slovakia undertakes to lease both airports to the US Armed Forces for a period of 10 years, with the provision that after this period the agreement will automatically continue. It is possible to terminate it, but not immediately, and

³⁸ Joint commissions and committees are to be established, for example, on the basis of an agreement between France and India, as stated in: Agreement between the Government of the French Republic and the Government of the Republic of India on Defense Cooperation, signed 20 February 2006, pp. 3 and 4.

³⁹ Agreement on Defense Cooperation between the Government of the United States of America and the Government of the Slovak Republic, Article 2, point 6.

only on the basis of the annual notice period.⁴⁰ Moreover, DCA cannot be terminated without US consent. This agreement is an international treaty of a military nature, which directly establishes rights and obligations not only for natural persons and legal entities, but also for the state.

Article 2 of the Agreement defines the basic terms, conditions and principles of the deployment of not only American soldiers on the territory of the state, but also their families, civilian employees and contractual partners. This brings with it the open question of the possibility of housing all these people near the bases. But what is missing in this article is the so-called nuclear insurance, but which, for example, Turkey has. The American army is present on territory of Turkey at the Incirlik base, and the agreement has a paragraph according to which the storage of nuclear weapons on Turkish territory will be possible exclusively and only with the consent of the Turkish government and on the condition that the Turkish inspection has free access to warehouses with this type of weapons.⁴¹

At the same time, Article 2 point 6 provides that both parties shall have common access to and joint use of agreed facilities and premises, except for those portions which the parties or their executive representatives specifically reserve for the exclusive access and use of the United States Armed Forces. According to Article 2 point 7 the term "executive representative" includes: for the Slovak Republic the Ministry of Defense of the Slovak Republic or an authorized representative, for the USA: the US Department of Defense or an authorized representative. In other words, based on such legislation, the Slovak Republic will lose complete control over part of its territory during the entire period of validity of this agreement.

Article 3 states that Slovakia will provide the USA with two types of objects and land; these will be objects and land shared jointly with the Slovak Armed Forces and objects and land intended exclusively for the US Armed Forces, where the Slovak side will have access only based on the consent of the American side. It is supposed to concern American weapons warehouses, which are likely to contain missiles with a flat flight path, or nuclear weapons. The cost of repairing buildings, as well as the construction of new buildings, will be under the direction of the

⁴⁰ Agreement on Defense Cooperation between the Governments of the United States of America and the Government of the Slovak Republic, Article 30.

⁴¹ The Defense and Economic Cooperation Agreement-U.S. Interests and Turkish Needs, 1982.

American side, but Slovakia undertakes to speed up and facilitate the issuance of land and building permits for the American army and its contractors. The Slovak side basically provides all required items to the American side free of charge, "... without requiring rent or similar fees".⁴² The Slovak side leaves the entry and control of access to the agreed objects to the American side, and even "facilitates temporary access and use of public lands and objects (including roads, ports and airports) that are not part of the agreed objects and spaces, including those that are in owned or under the control of the Slovak Republic, or local government, as well as temporary access and use of private land and facilities (including roads, ports and airports)... and that free of charge". In relation to this it should be noted that: a) the property right of all owners has the same legal content and protection (the content of the property right is defined by § 123 of the Civil Code), and that b) according to Art. 20 par. 4 of the Constitution of the Slovak Republic, forced restriction of property rights is possible only to the extent necessary and in the public interest, based on the law (not an international treaty) and for adequate compensation.⁴³

According to Article 2 par. 2 of the Constitution of the Slovak Republic state bodies may act only on the basis of the constitution, within its limits and to the extent and in the manner established by law. However, no law establishes how to proceed with the forced limitation of the property right of natural persons and legal entities, including the property right of self-governing regions and municipalities, to land and facilities that will be used by the US armed forces or their suppliers based on an international treaty. Law no. 282/2015 Coll. on the expropriation of land and buildings and on the forced limitation of the ownership right to them does not apply to such forced limitation of the ownership right.⁴⁴

The overall financing as well as the operation is to be carried out in accordance with the American regulations.⁴⁵ With this article, Slovakia would actually, among other things, have to limit the exercise of the rights (sovereignty) of not

⁴² Agreement on Defense Cooperation between the Governments of the United States of America and the Government of the Slovak Republic, Article 3, point 5.

⁴³ ŽILINKA, Maroš, PLNÉ ZNENIE PREJAVU M.ŽILINKU: Poslanci mu neumožnili vystúpiť v NR SR. 2022.

⁴⁴ *Ibidem*.

⁴⁵ Agreement on Defense Cooperation between the Governments of the United States of America and the Government of the Slovak Republic, Article 3, point 3.

only municipalities, but also of its own citizens in favor of the Americans! The US will not fully, and perhaps not at all, cover the costs of the construction and development of the agreed facilities and premises, which will be provided exclusively for the use of its armed forces, or the costs of their operation and maintenance.⁴⁶ In addition, according to Article 3 point 9 financing of construction projects implemented by the US Armed Forces must comply with US laws and regulations. Ultimately, this means that according to this Article nothing prevents the Slovak Republic from paying from its state budget all costs for the construction and development of agreed facilities and premises intended for exclusive use by the US armed forces, as well as the costs of their operation and maintenance. It also follows from the wording of Article 29 point 1 of DCA, which stipulates that all activities under this agreement are subject to the availability of resources and funds allocated for these purposes.⁴⁷

From all this it follows that:

- a) The Slovak Republic waives its sovereign rights on its territory when it transfers the exercise of its right to enter facilities and premises on its territory provided for the exclusive use of the US armed forces, for example, even if the law enforcement authorities have evidence that, that a crime was committed in these facilities and premises,
- b) The Slovak Republic waives its sovereign rights on its territory when it restricts its right to enter premises facilities on its territory, which, according to the agreement, it uses jointly with the US armed forces, because it authorizes the US armed forces to coordinate the entry of its bodies into these facilities and premises, for example, even if the law enforcement authorities have evidence that a crime was committed in these facilities and premises.

⁴⁶ Agreement on Defense Cooperation between the Governments of the United States of America and the Government of the Slovak Republic, Article 3, point 8.

⁴⁷ The Slovak Republic already has many years of negative experience regarding the use of land by the US Embassy in Bratislava and its fencing. To this day, this problem has not been properly resolved despite the repeated friendly approach of the Slovak Republic. So why should Slovakia believe that the United States of America will properly pay significantly higher costs according to this agreement, when it is already included in the text of the agreement itself that it is possible to "agree" otherwise. In other words, the U.S. commitment that the U.S. will share proportionately in the cost of construction and development of agreed facilities and spaces for shared use is vague. By agreement with the Ministry of Defense of the Slovak Republic, they can waive the obligation to pay any costs

Here, the DCA comes into conflict with the Constitution of the Slovak Republic, since bilateral contracts of a military nature are covered by Article 7, paragraphs 4 and 5 of the Constitution of the Slovak Republic. This means that the Slovak Republic cannot give up its sovereignty or limit its sovereignty and transfer the exercise of part of its rights to another state through bilateral treaties. The Slovak Republic can only transfer the exercise of part of its rights:

- according to Article 7 paragraph 1 of the Constitution of the Slovak Republic (on the basis of a free decision to enter into a state union with other states, namely by a constitutional law that will be confirmed by a referendum),
- according to Article 7 paragraph 2 of the Constitution of the Slovak Republic (to the European Union, namely by an international treaty ratified and declared in the manner established by law or on the basis of such a treaty),
- according to Article 7 paragraph 3 of the Constitution of the Slovak Republic (by joining the organization of mutual collective security, for example NATO).⁴⁸

A Solomonic solution brings Article 4, in which in the first paragraph the Slovak side demands that the American side inform it in advance about “temporarily located materials”,⁴⁹ but in the very second paragraph it is said that the control of warehouses and stored material has the sole and exclusive competence of only and only the American side. Through the agreement, the American side also gains access to all types and methods of material transportation by road, river, rail, and air, as well as unhindered access to common areas.⁵⁰ It can import and export basically anything that will be labeled as US material. So, it means that the US Armed Forces will therefore be authorized to transport, deploy and store military equipment, military supplies and military material throughout the territory of the Slovak Republic, after mutual agreement but DCA does not specify with whom and in what form this agreement should be concluded; perhaps it is an agreement with the Ministry of Defense of the Slovak Republic –if so, it is questionable whether the ministry will ask the government or the president for prior consent to conclude such an agreement.

⁴⁸ ŽILINKA, Maroš, PLNÉ ZNENIE PREJAVU M.ŽILINKU..., *cit.*

⁴⁹ That is ammunition, rockets, bombs, even nuclear bombs...

⁵⁰ Agreement on Defense Cooperation between the Governments of the United States of America and the Government of the Slovak Republic, Article 4.

Also, the US Armed Forces will have exclusive control over their military installations, military supplies, and military materiel. According to the agreement, planes, vehicles and vessels operated by the US armed forces or for the US, i.e. also of other countries, will be able to move freely throughout the territory of the Slovak Republic. Legal regulation on the basis of which they should inform the Ministry of Defense of the Slovak Republic about the types, quantities and delivery schedules of deployed material that the US armed forces intend to transport or deploy on the territory of the Slovak Republic, as well as about the US suppliers who will make such deliveries, is basically irrelevant. Not only does failure to fulfill this obligation have no legal consequences, but the Slovak side will not be able to influence or control at all what military equipment, what types and quantity of weapons will be imported and placed on the territory of the Slovak Republic.

It is clear from the above that it is a violation of the sovereignty of the Slovak Republic, which, contrary to Article 7 of the Slovak constitution transfers part of the exercise of the rights of the Slovak Republic to a foreign state. Slovakia loses control over military equipment, means of transport, weapons, ammunition and other military material of a foreign state located on the territory of the Slovak Republic. The Slovak Republic will not be entitled to control their import and export, their use or the purpose of their import, export or use. In other words, with this treaty, the Slovak Republic leaves its territory to a foreign state for military purposes, outside the framework of collective defense through NATO. DCA ignores the possibility of deployment of nuclear weapons, chemical weapons and biological weapons on the territory of Slovakia. The Slovak authorities will not be notified and will not know whether such weapons are deployed on the territory of Slovakia.

Article 5 is also interesting, which says that all buildings, whether repaired or newly built, "remains the property of the Slovak Republic", but the American side retains access to them even if the agreement ceases to apply, or "as long as their" The US Armed Forces "need". In that case, it would mean that Slovakia will not be able to object if the American side decides to relocate any unit to its territory. This policy is known as Permanent Strategic Access (PSA) and is a tool by which the US essentially circumvents international law and international agreements on military base registrations. Of course, this instrument is not explicitly named in the examined agreement, so it is really necessary to read it very carefully. Paragraph 2, in turn, states that the American side will indeed return all buildings and land to Slovakia after the conclusion of the agreement, but only on the condition that the American side "does not incur any costs in

this regard”.⁵¹ This means that the Slovak Republic will be obliged to pay for the valuation of real estate built and used by the American side, but the American side will not be obliged to compensate for damage or wear and tear to real estate owned by the Slovak Republic that is built on the land in the agreed facilities and premises. US title to chattels remains.

Article 6 transfers to the Slovak Republic “direct responsibility” for the security of the US Armed Forces during their stay on the territory of the Slovak Republic and at the same time allows the American side to establish on its territory, reading between the lines, essentially military police, claiming that the Slovak Republic “entitles the US Armed Forces to the exercise of all rights and administration necessary for the provision, use, operation, defense and control... including the adoption of such appropriate measures for the preservation or restoration of order and protection”⁵² The question arises how the Slovak Republic should practically ensure this security, if it has given up the right to enter the objects and the right to control the means of transport of the American side!

This means that after the ratification of the DCA, the Slovak Republic will no longer be able to properly fulfill its obligations in the area of responsibility for security on its territory, because it will not have sufficient information about who is entering its territory, who is on its territory, what military installations, weapons and material are located on its territory or transported through its territory. Here we note again that taking measures to defend maintain or restore order in a sovereign democratic and legal state cannot be entrusted to a foreign state. And not only that, the activity of Slovak state’s authorities cannot be conditioned by coordination with a foreign state. It should be emphasized again; this is a bilateral agreement with a foreign state, not a multilateral agreement on collective security concluded according to Article 7 paragraph 3 of the Constitution of the Slovak Republic!

By Article 7, Slovakia waives the right to countersign American orders regarding transfers from abroad to the territory of Slovakia and vice versa! It means that the US Army will have the right to reassign or remove any of its units or members of its Armed Forces to or from the territory of Slovakia, and the Slovak

⁵¹ Agreement on Defense Cooperation between the Governments of the United States of America and the Government of the Slovak Republic, Article 5.

⁵² *Ibidem*, Article 6.

side will not be able to prevent such reassignment or placement. On the basis of this same article, not only soldiers, but also their family members and contractors will not be subject to the visa obligation, residence registration and control of foreigners on the territory of Slovakia⁵³. The Slovak Republic will not have the opportunity to find out who is moving freely and without restrictions on its territory! And whether, according to international law, there are no illegally detained persons in the premises of the bases.

It is clear from the above that the Slovak Republic will not have a regular, or no control over who enters its territory and who is on its territory, and whether these persons enjoy in the Slovak Republic the basic human rights and freedoms guaranteed by the Constitution of the Slovak Republic even to foreigners.⁵⁴ By accepting such legislation, the Slovak Republic renounces the guarantee of basic human rights and freedoms on its territory. This article refers also, among other things, to the NATO SOFA treaty. Such wording leads to the interpretation that it is a transfer of members of the armed forces of the North Atlantic Treaty, but this is not the case. This agreement applies only to the bilateral legal relations of the Slovak Republic and the United States of America - outside the framework of NATO, i.e. outside the fulfillment of tasks according to the NATO SOFA agreement.

In Article 8, Slovakia undertakes to provide logistical support to the US military, in Articles 9 and 10 it recognizes the American registration of motor vehicles, as well as the validity of driver's licenses issued in the USA even for family members and contractors without requiring a driving test, and it waives the right to require certificates and licenses to perform profession. In this context, it may be noted that free license plates or other benefits for private motor vehicles of members of the US Armed Forces, US contractors and dependents do not respect Article 20 paragraph 1 of the Constitution of the Slovak Republic, according to which the property rights of all owners have the same legal content and protection. In addition, binding guidelines for the procedure of the Military Police of the Slovak Republic in the performance of its tasks by procedures agreed with the authority of a foreign state - outside the framework established for state authorities by the diction of Article 2 paragraph 2 of the Constitution of the Slovak Republic - limits the sovereignty of the Slovak Republic.

⁵³ *Idem*, Article 7.

⁵⁴ Article 52 paragraph 2 of the Constitution of the Slovak Republic.

By Article 11, the Slovak Republic allows the American side free movement of all its vessels, aircraft and motor vehicles without the possibility of their inspection and search, and that is free of charge. Essentially, this means that, for example, planes will be able to land, take off and refuel anytime and anywhere at state-owned or state-operated airports without paying navigation and other fees. The same applies to vessels. Motor vehicles will not be able to be controlled; the Slovak side will not know what is being transported in them freely without restrictions on its territory.⁵⁵ The free movement of aircraft, vessels and vehicles tied up by the armed forces of the USA or exclusively for the USA⁵⁶ violates the sovereignty and sovereignty of the Slovak Republic and grossly interferes with the activities of the state bodies of the Slovak Republic, which without consent of the US, they will not be able to fulfill their obligations (for example, law enforcement agencies). At the same time, the Slovak Republic will bear responsibility if there is a violation of its obligations regarding the handling of military material, the transport of weapons and dangerous materials. The right to fly over, refuel in flight, land and take off on the territory of the Slovak Republic without any consent in a specific matter essentially means that the territory of the Slovak Republic also becomes the territory of the USA (but the reverse is not true, meaning that the Slovak Republic could also consider the territory of the USA as its own). Exemption from fees for navigation services, including track fees and terminal fees, only confirms the one-sided advantage of this treaty for the US.

We come to the most controversial articles of the entire agreement, which will essentially turn Slovakia into Japan's Okinawa. Article 12 includes a clause on the basis of which Slovakia waives criminal jurisdiction. Article 12 par. 1 of the DCA proposal literally says that "...based on the request of the US...the Slovak Republic, within its sovereign authority, hereby waives its primary criminal jurisdiction...".⁵⁷ This article, as Fábry argues, is a problem and will create a serious precedent,⁵⁸ because the Slovak government must act on the basis of

⁵⁵ Agreement on Defense Cooperation between the Governments of the United States of America and the Government of the Slovak Republic, Article 11.

⁵⁶ *Ibidem*, Article 11, point 1.

⁵⁷ *Idem*, Article 12.

⁵⁸ FÁBRY, Branislav, *Ústava, suverenita a dohoda o obrannej spolupráci s USA*, 2019.

the constitution,⁵⁹ and if it wants to give up its sovereign rights, there must be a constitutional basis for it. And although DCA allows this relinquishment of jurisdiction to be appealed in writing within 21 days of the notification, if “he special interest of the Slovak Republic is affected”, it is a relinquishment of a larger range of rights, which former American colonies have relinquished. Also unacceptable is the provision of Article 12 para. 2, on the basis of which the American authorities would not even have to inform the Slovak side about less serious crimes committed by members of the US army on the territory of the Slovak Republic! According to paragraph 4, American soldiers and their family members cannot be “...tried in absentia without their consent” in Slovakia.⁶⁰ This is basically an insurance policy of the American army, known from the American bases in Japan, which basically means that if an American soldier shoots a Japanese man or rapes a Japanese woman, he is transferred from Japan to another base abroad by the American command, and that is the whole case actually obliterated because the Japanese authorities cannot try a soldier in absentia unless he gives them permission to do so. And in Article 7 of the DCA, the Slovak side waived the right to countersign orders for reassignment and in subsequent articles also to control the means of transport and objects used by the American side! This means that in the case of a crime committed by an American soldier on the territory of Slovakia, the Slovak authorities will not be able to prevent this person from leaving the territory of the Slovak Republic; they will never know where this person is and when he left the territory of Slovakia. Thus, such a case will never be closed.

As stated by the Prosecutor General of the Slovak Republic, the Slovak Republic cannot transfer its criminal powers to a foreign state, or waive them, except in cases covered by Art. 7 paragraph 1, 2 and 3 of the Constitution of the Slovak Republic:

- according to article 7 par. 1 of the Constitution of the Slovak Republic (on the basis of a free decision to enter into a state union with other states, namely by a constitutional law that will be confirmed by a referendum),

⁵⁹ SvÁK, Ján, *et al.*, *Ústavné právo Slovenskej republiky*.

⁶⁰ Agreement on Defense Cooperation between the Governments of the United States of America and the Government of the Slovak Republic, Article 12.

- according to article 7 par. 2 of the Constitution of the Slovak Republic (to the European Union, namely by an international treaty ratified and declared in the manner established by law or on the basis of such a treaty),
- according to article 7 par. 3 of the Constitution of the Slovak Republic (by joining the organization of mutual collective security, for example NATO).⁶¹

Article 13 of the DCA applies to the arrest, detention, detention, and imprisonment of members of the US Armed Forces and their dependents. According to this, Slovak authorities guarantee to immediately inform the authorities of the US armed forces about the arrest or detention of a member of the US armed forces or a dependent person by the Slovak authorities, the authorities of the US armed forces, in coordination with the Slovak authorities, will have immediate access to any such person whenever they request it, US armed forces may be present at all proceedings, including interrogations of such a member or dependent by Slovak authorities, A member of the US Armed Forces or a dependent who is being investigated by the Slovak authorities or is subject to legal proceedings shall remain or be placed under the control of the US Armed Forces authorities, if requested by those authorities, until the completion of all related legal proceedings (including appeal proceedings), in such cases, the authorities of the US armed forces will ensure that a member of the armed forces participates in these proceedings and will make every effort to ensure the presence of a member of the civilian component or a dependent person before the Slovak authorities in the proceedings that may require the presence of this person, in the event that the Slovak court proceedings are not concluded within one year of their initiation, the obligation of the authorities of the US armed forces ceases (is this the obligation to place under control, ensure participation or presence? - the text is unclear), at the request of the Slovak authorities, this period may be extended according to the agreement between the authorities of the US armed forces and the relevant Slovak authorities; the US Armed Forces will consider the request with understanding, the period of restriction of personal freedom by the Slovak authorities or the period of detention by the authorities of the US armed forces shall be included in the prison sentence, if it is imposed in the matter in question, in the event that both contracting parties do not agree otherwise, the deprivation of liberty imposed by a Slovak court on a member of the US armed forces or a dependent person shall be carried out in one or more Slovak

⁶¹ ŽILINKA, Maroš, PLNÉ ZNENIE PREJAVU M.ŽILINKU..., *cit.*

correctional facilities designated by the contracting parties for these purposes, the Slovak authorities will allow the US Armed Forces to visit these persons outside of normal visiting hours and will allow them to provide assistance to these persons, including care for the health, welfare and morale in the form of clothing, food, bedding, medical and dental care and religious counseling, Slovak authorities will allow family members to visit these persons during normal visiting hours and, depending on a special arrangement, will also allow them to provide assistance to these persons, including care for their health, well-being and morals in the form of clothing, food, bed linen, medical and dental care and religious counseling.⁶² What can be added to such a formulation? Without any reasonable justification, it accords to prosecuted and convicted members of the US armed forces and their dependents privileges that other criminals do not have. And not only that. It intervenes in the activities of Slovak state authorities and instructs them on how to proceed in the event of the arrest, detention, detention or imprisonment of members of the US armed forces and their dependents.

Also unacceptable for the sovereignty of Slovakia is Article 14, which states that “[A]gencies of the US Armed Forces are responsible for maintaining discipline... and may establish military police units. The US Armed Forces, in cooperation with the authorities of the Slovak Republic, can use these units in villages adjacent to military facilities and areas where the US Armed Forces are located”.⁶³

The exercise of military police authority by the US armed forces on the territory of the Slovak Republic, even in communities outside military facilities and premises, is a gross and unjustifiable interference with the sovereignty of the Slovak Republic. Such a wording is a precedent, because the intervention of the US authorities in Slovak municipalities is absolutely unacceptable, and the same applies to the implementation of disciplinary measures, the observance of the prohibition of torture or the understanding of human dignity.

According to Article 15, the Slovak Republic should also give up its civil and administrative jurisdiction, which would absolve the American side from responsibility not only for administrative offenses committed on the territory

⁶² Agreement on Defense Cooperation between the Governments of the United States of America and the Government of the Slovak Republic, Article 13.

⁶³ *Ibidem*, Article 14.

of the Slovak Republic, but also from civil liability for damage caused by members of the American army, including their civilian component, during their activities caused. Moreover, paragraph 3 of this article states that “[F]or the determination of the fact whether any civil liability/responsibility has arisen from the actions or omissions of the US Armed Forces, including the civilian component, in the performance of its official duties, the conclusive evidence of this fact is the confirmation by the appropriate by the authorities of the US Armed Forces on the territory of the Slovak Republic”. That is, the US Armed Forces themselves will decide whether the US Armed Forces have caused damage to someone, and it will not help even if a hundred witnesses confirm that the American vehicle really polluted the land or damaged someone’s fence. This is a unilateral favoring of members of the US armed forces, including the civilian component. Such legislation creates room for subjectivism and voluntarism. Liability for damage in civil or administrative proceedings can simply be excluded by issuing a certificate that the damage occurred in the performance of official duties. And who will bear responsibility for the damage caused by members of the armed forces, including the civilian component, in the performance of official duties, this agreement does not regulate at all. So, this legislation essentially establishes the substantive and procedural exemption of members of the US armed forces, including the civilian component, from liability for damage.

Disrespect for one’s own state sovereignty is also contained in Article 15, paragraph 4 DCA, which states that members of the U.S. Armed Forces, including the civilian component, will not be subject to default judgment or actions prejudicial to their interests if duty or duly authorized absence temporarily prevents them from participating in civil proceedings. Such proceeding is also unilateral; protects members of the US Armed Forces, including the civilian component, from liability for damages without any reasonable cause. It is sufficient to prove, even repeatedly, that the defendant’s participation in the civil proceedings before the court was prevented by official duties or approved absence. This can lead to unnecessary delays in proceedings and, ultimately, to the impossibility of inferring responsibility for illegal actions and the obligation to compensate for damage that did not arise even in connection with the performance of official duties.⁶⁴

⁶⁴ BRHLÍKOVÁ, Radoslava, Bilaterálne dohody o obrannej spolupráci - dohoda medzi Slovenskom a USA: Bilateral agreements on defence cooperation - agreement between Slovakia and the USA, 2022; ŽILINKA, Maroš, PLNÉ ZNENIE PREJAVU M.ŽILINKU..., *cit.*

In Articles 16 and 17, at the request of the American side, Slovakia exempts American soldiers, their family members, civilian partners, and the American army from paying VAT for goods, services and materials purchased on the territory of Slovakia, if the goods and services directly serve the American army, but also private purposes. This mainly concerns construction services, suppliers of construction materials, fuels and such services for soldiers as, for example, contracts for the provision of mobile services. Article 17 explicitly states that American soldiers will not pay any taxes, VAT fees and any other payments related to the mandatory payments required from citizens of the Slovak Republic. According to articles 18 to 20, members of the US military will be able to import or export anything in their possession from the territory of Slovakia without any import and export duties and fees. Regarding import and export for official purposes, instead of customs control of goods imported and exported by the US armed forces or for the US armed forces, the Slovak authorities will only have to accept the presentation of a certificate⁶⁵. According to Article 21, the American side will even be allowed to open its own shops and recreational facilities under the jurisdiction of American law, while the Slovak Republic "... will not require any licenses, permits, inspections or other regulatory control of the performance of these activities..."⁶⁶. According to Article 22 of this agreement, the United States of America will be authorized to establish, maintain and operate military postal offices on the territory of the Slovak Republic for the purpose of collecting, transporting and delivering postal items and providing related postal services for the US armed forces, dependents and suppliers of the US. US postage stamps may be used on items sent from these post offices. Official shipments of the U.S. Armed Forces will be exempt from inspection, search, or seizure.⁶⁷ According to Article 23 of DCA the armed forces of the United States shall have the right to import, export and use the currency of the United States or financial instruments denominated in the name of the United States of America in any amount. The U.S. Armed Forces will be authorized to distribute or exchange to members of the U.S. Armed Forces and dependents currency and instruments denominated in the currency valid in the U.S., the Slovak Republic, or any other country. Members of the US armed forces and dependents will be authorized to import and export US currency and instruments denominated in the US currency and to export from

⁶⁵ Agreement on Defense Cooperation between the Governments of the United States of America and the Government of the Slovak Republic, Article 18.

⁶⁶ *Ibidem*, Article 21.

⁶⁷ *Idem*, Article 22.

the territory of the Slovak Republic any currency and instruments denominated in any currency, if they were imported into the territory of the Slovak Republic or received from the US armed forces.⁶⁸ Such legislation will cause unsolvable situations in application practice in the area of paying taxes, fees, levies and insurance premiums. In addition, it will deform the business environment in the Slovak Republic.

According to Article 24 of this Agreement, the U.S. Armed Forces and organizations performing military service activities referred to in Articles 21 and 22 shall be authorized to employ dependents as well as local civilian employees. Dependents will not be required to have a work permit. Conditions of employment shall be established by the U.S. Armed Forces and relevant organizations in accordance with applicable U.S. laws and regulations. Wages and salaries, benefits, supplemental payments, and increases in such payments shall be in accordance with U.S. laws and regulations. Wages for local civilian employees shall be determined taking into account on the employee's tax obligations, as well as employee contributions, including social and health insurance.⁶⁹ However, the employment of local civilian employees by the US Armed Forces does not impose any obligations on the US Armed Forces under Slovak law. Who will pay the employer's insurance rates for the employee?

Pursuant to Article 25 of this Agreement, the U.S. Armed Forces shall be authorized to contract for the supply of any material, supplies, equipment, and services (including construction), without limitation in the selection of the contractor, supplier, or person providing such material, supplies, equipment, or services. These contracts will be governed by US regulations. And according to Article 26 of this agreement, US suppliers will not be subject to laws regarding: the conditions of their employment for the performance of work under contracts with the US Armed Forces, the granting of licenses and registration of business entities exclusively in connection with the provision of goods and services to the US Armed Forces in the territory Slovakia. Such U.S. suppliers will be exempt from all taxes, including corporate income tax, excise taxes, and value added tax, arising from the supply of goods or services to the U.S. Armed Forces or from the construction of facilities for the U.S. Armed Forces. And they will also not be subject to any type of income or profit tax from the Slovak Republic or its territorial units on the part of their income or

⁶⁸ *Idem*, Article 23.

⁶⁹ *Idem*, Article 24.

profit that derives from the contract or subcontract with the US Armed Forces. Such formulation does not respect the constitutional principle of equality and grossly disrupts the business environment in the Slovak Republic.

An example of disrespect for one's own statehood is shown in Article 27 of the proposal, which states that "... (SR) confirms its policy to implement the relevant laws, regulations and standards regarding the protection of the environment, safety and health with adequate regard for the health and safety of the Armed Forces USA...". This means that the Slovak Republic undertakes to adopt new laws according to the needs of the US Army, while it is not clear which specific laws will need to be changed. And this commitment also raises other questions, such as whether the Slovak Republic will be obliged to reduce the level of nature protection in the area near the airport in order to increase the safety of US soldiers. Or how Slovakia will deal with it if it violates European Union legislation in this regard and will be sued by the Commission or its own authorities or citizens at the European Court of Justice. Together with Branislav Fábry, we ask why the laws of the Slovak Republic should be prepared according to the needs of the US military. Shouldn't it be the other way around that we condition agreements with the US on compliance with our laws?⁷⁰

The part of this article concerning the obligations in the management of hazardous waste is also problematic. All obligations arising from the Basel Convention on the Management of Movements of Hazardous Wastes Across State Borders and Their Disposal (promulgated in the Collection of Laws under No. 60/1995 Coll.) must be fulfilled by the Slovak Republic, without being able to influence the origin, quantity and the danger of this waste for the environment, public health and safety. The US Armed Forces undertake only to provide the information necessary for the Slovak Republic to fulfill these obligations.

Article 28 of the DCA applies to public services and communications. According to it, the U.S. armed forces and U.S. contractors will be able to use water, electricity and other public services based on contractual conditions, including rates or fees that are no less favorable than those available to the armed forces of the Slovak Republic or the Slovak Republic under similar circumstances, free of taxes or other government charges - the cost to the US Armed Forces will be equal to

⁷⁰ FÁBRY, Branislav, *Ústava, suverenita a dohoda o obrannej spolupráci s USA*, cit.

their proportionate share of the use of these public services.⁷¹ Personal use of municipal waste management services by members of the US Armed Forces, their dependents and US contractors will be subject to fees.⁷² The US military will use the radio spectrum; the United States shall be entitled to operate its own telecommunications systems (this right shall include the right to use such facilities and services as are necessary to guarantee the full ability to operate telecommunications systems and the right to use the radio spectrum necessary for this purpose in accordance with the coordination requirements set forth in of point 4 of this article, which governs the forward deployment of defense equipment, supplies, and material.⁷³ The use of the radio spectrum shall be free of charge to the United States.⁷⁴ In order to avoid mutual interference, the US armed forces will be obliged to make all reasonable efforts to coordinate the use of the radio spectrum with the relevant Slovak authorities, while committing to take into account the national frequency spectrum table.⁷⁵ In the case that the equipment of the US armed forces or US suppliers causes harmful interference during the operation of the equipment on the territory of the Slovak Republic, the US armed forces and the Slovak authorities will promptly consult with the aim of mitigating such interference, taking into account operational aspects.⁷⁶

In this case too, it is a serious interference with the sovereign rights of the Slovak Republic in the field of radio spectrum use. The radio spectrum is a key public resource for the transmission of information in important areas, for example in communication via satellite systems, in transport (including aviation), in radio and television broadcasting, in various other public and private communication systems, as well as in short-range devices such as are medical devices, alarms, weather stations, etc. Radio frequencies are a limited resource, while they are necessary for the functioning of many things, for example, mobile phones, the Internet, remote controlled devices. According to this agreement, in the event that equipment of the US armed forces or US

⁷¹ Agreement on Defense Cooperation between the Governments of the United States of America and the Government of the Slovak Republic, Article 28, point 1.

⁷² *Ibidem*, Article 28 point 2.

⁷³ *Idem*, Article 28, point 3.

⁷⁴ *Idem*, Article 28, point 3, last sentence.

⁷⁵ *Idem*, Article 28, point 4.

⁷⁶ *Idem*, Article 28, point 5.

suppliers interferes with the operation of equipment on the territory of the Slovak Republic, they will not have to remove the interference - it is enough if they consult with the Slovak authorities with the aim of mitigating such interference, i.e. not eliminating the interference. And it's not just disruptive influences. The radio frequency spectrum in the European Union is regulated. It cannot be ruled out that the US armed forces will use the radio frequency spectrum at the expense of the Slovak Republic, which must comply with its international obligations.⁷⁷

According to Article 29 point 1; all activities under this agreement are subject to the availability of resources and funds allocated for these purposes. Such a declaration is unclear. It would be appropriate to request an explanation of which contracting party allocated, and to what extent, the resources and funds for the activities under this agreement. And what about providing the sum of 100 million dollars for the repair of military airports as promised by the American side? Will these funds be provided to the Slovak Republic and under what conditions? There is not a word about it in DCA. The USA does not have to conclude any other agreement on this issue; nothing obliges them to do so. As it is with financing in reality, it was already mentioned above in the text. Article 29 point 2 resolves the issue of disputes between the contracting parties. These will be dealt with at the lowest possible level and, if necessary, will be referred to the executive representatives, i.e. the Ministries of Defense, for consideration and resolution, and if they cannot be resolved at this level, they will be referred to the contracting parties for consultation and resolution. This point is followed by point 3, according to which disputes and other issues that are subject to consultation shall not be submitted to any international court, tribunal or similar body, or to any other third party. This means that none of the disputes between the contracting parties subject to consultation cannot be submitted for decision to any independent court or arbitration body.

The Slovak Republic on the basis of DCA, under the conditions specified in this agreement in particular:

- cedes its territory to a foreign state for military purposes, outside the framework of collective defense through the North Atlantic Treaty,

⁷⁷ BRHLÍKOVÁ, Radoslava, Bilaterálne dohody o obrannej spolupráci - dohoda medzi Slovenskom a USA: Bilateral agreements on defence cooperation - agreement between Slovakia and the USA, *cit.*; ŽILINKA, Maroš, PLNÉ ZNENIE PREJAVU M.ŽILINKU: Poslanci mu neumožnili vystúpiť v NRSR. 2022.

- during the entire period of validity of this agreement, it will lose complete control over part of its territory, not only over Malacky-Kuchyňa Military Airport and Sliač Military Airport,
- will have to allow access and use of land and facilities (including roads, ports and airports) owned by the state, self-governing regions and municipalities, as well as privately owned by the US armed forces and their suppliers, for an unlimited period of time and without compensation,
- will not have proper control over who enters its territory and who is on its territory,
- resigns from guaranteeing the protection of basic human rights and freedoms granted by the Constitution of the Slovak Republic to foreigners as well,
- waives its criminal jurisdiction,
- grant to members of the US Armed Forces and dependents who are arrested, detained, in custody or serving a prison sentence such privileges that other perpetrators of criminal offenses are not granted by our legal system,
- will enable the exercise of the authority of the military police of the US armed forces on the territory of the Slovak Republic, even in communities outside military facilities and premises,
- will allow the US Armed Forces and organizations performing military service activities to employ dependents as well as local civilian employees (dependents will not be required to have a work permit); in the area of labor law, it will enable the application of US laws and regulations in our territory,
- will enable exemption from paying taxes, duties, fees and insurance premiums, even in cases where such exemption will distort the business environment,
- must fulfill the obligations arising from the Basel Convention on the Management of Movements of Hazardous Wastes across State Borders and their Disposal, without being able to influence the generation, quantity and danger of this waste for the environment, public health and safety,

- must recognize the substantive and procedural exemption of members of the US armed forces, including the civilian component, from liability for damage in civil or administrative proceedings,
- it will lose many of its sovereign rights in areas in which it transfers part of the exercise of its rights to the US or the US armed forces.

What can be more indicative of the threat of losing one's statehood and sovereignty than such agreement?

5. CONCLUSION

Result: DCA between the USA and the Slovak republic means the completion of the European encirclement of Russia. By it the USA tries to hold back and provoke a conflict with Russia on European soil. With it, the USA is creating a frontier for the protection of its own hegemonic position, unilateralism and territory, the so-called an eye that will attract a possible attack. This means that in a possible conflict with Russia and China, Bratislava will be bombed instead of Washington, Warsaw instead of New York, and Bucharest instead of another American city.



Picture 1: Necklace of US military bases around the neck of Russia.

The Slovak Republic has experience with the occupation of foreign troops on its territory. It were the troops of the Warsaw Pact who had a temporary stay on its territory based on the Treaty between the government of the Czechoslovak Socialist Republic and the government of the Union of Soviet Socialist Republics on the conditions for the temporary stay of Soviet troops

on the territory of the Czechoslovak Socialist Republic, which entered into force on October 18, 1968⁷⁸. In this treaty, it was explicitly stated that the temporary stay of Soviet troops on the territory of the Czechoslovak Socialist Republic **would not violate its sovereignty** and that Soviet troops would not interfere in the internal affairs of the Czechoslovak Socialist Republic, that Soviet troops, persons belonging to them and members of the families of these persons located on the territory of the Czechoslovak Socialist Republic will preserve the legal order valid in the Czechoslovak Socialist Republic⁷⁹ and that in the case of crimes and misdemeanors committed on the territory of the Czechoslovak Socialist Republic by persons belonging to the Soviet troops or members of their families, the Czechoslovak law and the Czechoslovak courts, the prosecutor's office and other authorities responsible for the prosecution of criminal offenses operate and that crimes committed by Soviet soldiers are investigated by the military prosecutor's office and heard by the military justice authorities of the Czechoslovak Socialist Republic.⁸⁰ The exceptions applied to cases in which persons belonging to the Soviet troops or members of their families committed crimes or misdemeanors only against the Soviet Union or to persons belonging to the Soviet troops or members of their families and to cases in which persons belonging to the Soviet troops committed criminal acts or misdemeanors during the performance of official duties in the premises of permanent garrisons of military units.⁸¹ This legal regulation was undoubtedly more advantageous for the Slovak Republic than the one coming out from the DCA with the USA. According to the General Prosecutor of the Slovak republic it is a paradox that needs to be seriously thought about. No occupation treaty can be more beneficial to the state than a treaty that has in its title and in the preamble that it is a defense treaty.⁸²

⁷⁸ Collection of laws No. 11/1969 Coll.

⁷⁹ Article 2, Treaty between the government of the Czechoslovak Socialist Republic and the government of the Union of Soviet Socialist Republics on the conditions for the temporary stay of Soviet troops on the territory of the Czechoslovak Socialist Republic.

⁸⁰ Article 9, paragraph 1, Treaty between the government of the Czechoslovak Socialist Republic and the government of the Union of Soviet Socialist Republics on the conditions for the temporary stay of Soviet troops on the territory of the Czechoslovak Socialist Republic.

⁸¹ Article 9 par. 2 letters a) and b), Treaty between the government of the Czechoslovak Socialist Republic and the government of the Union of Soviet Socialist Republics on the conditions for the temporary stay of Soviet troops on the territory of the Czechoslovak Socialist Republic

⁸² ŽILINKA, Maroš, 2022.

The Slovak Republic also has experience with the presence of the troops of the member states of the North Atlantic Treaty on its territory based on the Treaty between the states that are parties to the North Atlantic Treaty, relating to the status of their armed forces; this contract entered into force for the Slovak Republic on October 13, 2004 and it was published in the Collection of Laws under No. 566/2004 Coll. This legal arrangement is also more advantageous for the Slovak Republic than the one coming out from the DCA with the USA. Moreover, the Slovak Republic is a member state of the North Atlantic Treaty. This does not apply to the United States of America; the Slovak Republic is not a member state. But the DCA with the USA makes of Slovakia a vassal territory, or even more explicitly the European Puerto Rico.

The assumption that the agreement with the USA is a vassal agreement rather than an agreement between two equal partners was confirmed. The treaty significantly limits the sovereignty of the Slovak Republic, which contradicts Article 1, paragraph 1 of the Constitution, which states that "The Slovak Republic is a sovereign, democratic and legal state". And therefore, in this case, the Slovak authorities should follow Article 2, paragraph 2 of the Constitution which states: "State authorities can act only on the basis of the constitution, within its limits and to the extent and in the manner established by law".⁸³ This means that the relevant ministry should not negotiate an agreement that contradicts the constitution, and conversely, it should not have any mandate to negotiate an unconstitutional agreement. Professor Mráz also confirmed this in an interview for RTVS News and Comments when he said that "...if infrastructure for the American army starts to be built here (at our air bases), in that case it could be a loss of sovereignty... military equipment is always subject to the legal order of the state whose sovereign insignia it bears" and he expressed the opinion that it would not be good if "...our airfields on Sliač and in Kuchyňa end up like Ramstein in Germany".⁸⁴

The DCA does not create mutual cooperation between military of host country and the US military. It constitutes an interference with state sovereigns and threatens peace in Europe. In fact, Slovakia does not need DCA for its defense, because membership in NATO should provide it with sufficient guarantees, as politicians convince citizens. But with DCA, NATO loses its justification and has become just an appendage of US foreign policy. DCA does not bring anything new or good to Slovakia, just radicalization of the domestic political scene.

⁸³ Constitution of the Slovak Republic.

⁸⁴ MRÁZ, Správy a komentáre, 19. 3. 2019, 22.00 h.

More than 51% of Slovak citizens are against this treaty, which rudely trampled on the legacy of November 89 and killed security guarantees in Europe. In fact, this agreement represents a threat to Slovakia, it increases the need to invest in defense and at the same time makes Slovakia a target whereas the nowadays Europe is walking blindly towards war under the leadership of the USA.⁸⁵

From this analysis, it can be clearly concluded that this agreement significantly interferes with the rights and violates the sovereignty of the Slovak Republic. It is a significantly asymmetric agreement, beneficial to the interests and needs of the stronger party. So this is an example of a vassal agreement that favors one party over another, limiting the sovereignty of one party without compensation. From Kinne's analysis of DCAs in the world, it can be deduced that, in general, DCAs are symmetrical, they speak of cooperation between two equal partners in different areas of security policy without the requirement to deploy military units on the partner's territory. Typical DCAs say nothing about the deployment of foreign troops on the territory of a sovereign state. And as we have illustrated with the example of DCA between France and India, no other country, except the USA, imposes the presence of its troops on its territory on its partners. None of them talks about limiting the sovereignty of the partner in the way and to the extent that it is in the case of the DCA offered by the USA to Eastern European countries. Even the promise of financial investment can in no way balance and outweigh the inviolability of state sovereignty. No proud state will accept such a gift.

In general, the opening of the issue of the deployment of foreign military units on the territory of Slovakia is an extremely sensitive, even blatant and arrogant issue. It is a denial of the message of November 1989, which established the departure of foreign troops from the territory of the Czechoslovak Republic as one of the requirements for the revival of society.

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⁸⁵ BRHLÍKOVÁ, Radoslava, "Hľadanie tváre zahraničnej politiky Slovenska po roku 1989", *cit.*

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