

G. Askhat, Zh.R. Zhabina

*Ablai khan Kazakh University of International Relations and World Languages, Kazakhstan
(E-mail: gulgash@inbox.ru)*

Politico-legal aspects of states in relation to foreign diasporas

The article considers the problem of the relationship between the modern state and the diaspora usually seen in the cultural and social (less often historical) and rarely becomes the subject of political and legal studies. Today the diasporas are playing an increasingly active role not only in the cultural life of the society, their influence becomes more visible even in such areas as the formation and implementation of foreign policy, the domestic lobby, the economy and investment. This circumstance requires determining the policy and legal fields, in which the diasporas act as actors. At present, there is an intensification of national self-awareness and national self-identification in diasporas. Any country that conducts any diasporal policy today can and should use the political, cultural and economic potential of diaspora to protect its national interests and develop interstate relations. The growing global diaspora and the contributions they bring to the development have warranted such high-level attention. The article defines how the recognition of the diaspora at the international legal and national level has become an important milestone in the overall humanization of law and the state. This legitimized the right of nations to self-determination and opened the way to active influence on the political, legal and cultural life of modern states.

Keywords: modern state, diaspora, legal status of diaspora, domestic lobby.

The entire history of mankind can be viewed from the point of view of the continuous migration of tribes and peoples. In some epochs, migration was not very significant, but in others it was the most important factor in the development of civilization. Historical analysis shows that migration has always been the result of the external expansion of mature social systems with a stable structure, social ties and relationships and the evolution of nomadic tribes and nationalities.

In the modern era, migration assumes the role of an important lever of economic development in a globalizing world. Millions of people leave the countries where they were born each year and travel thousands of kilometers to find work and a new place of residence.

But migration is also a serious challenge for humanity. Due to migration, the image of countries and cities changes, they create multicultural communities, which intensify the rapid changes that occur in societies. Migration from the threat has turned into a boon, countries need to work out a joint strategy and response to the challenges that we face in the 21st century. Processes taking place in modern world have an impact on national relations. This determines further theoretical understanding, taking into account such a phenomenon of the ethno social structure as diaspora. At present, there is an intensification of national self-awareness and national self-identification in diasporas. Any country that conducts any diasporal policy today can and should use the political, cultural and economic potential of diaspora to protect its national interests and develop interstate relations. The growing global diaspora and the contributions they bring to the development have warranted such high-level attention.

The relevance of analyzing the experience of modern states in the sphere of diasporal policy is conditioned by a number of circumstances. Firstly, the development of such a phenomenon as transnational networks in a completely different way made it necessary to look at the role and place of diasporas in the system of international relations and pay special attention to the economic, sociocultural and socio-political potential of modern diasporas. The approach to the foreign diaspora as an important foreign policy and economic resource is becoming increasingly widespread in the international practice of modern states.

Secondly, a comparative analysis of the experience of different states in the sphere of diasporal policy has a special interest and relevance, both from the theoretical and from the practical point of view. This analysis will reveal the overall global trend and predict the further development of dialogue between the diasporas and the state, as well as within the diaspora community.

Thirdly, the analysis of experience shows conceptual approaches and builds models of support and interaction with foreign compatriots.

Using the potential of the foreign diaspora to create a network of economic, social, political and other ties is a fairly common world practice. But not always the first word belongs to the state. Often the diaspora itself creates a system of network connections and the state - the historical homeland becomes one of the links of this international chain.

It is characteristic that modern states pay more and more attention to the part of the diaspora that maintains the closest contacts with the titular state. The experience of China is indicative in this regard. According to Chinese experts, it is the new Chinese migrants that are now in the focus of attention of their historical homeland. They are recognized as a highly useful resource for economic construction in China, attracting foreign investors and business partners.

Within the same diaspora, different social strata can be identified, which, in principle, speaks of the diaspora not as a corporate community, but as an alliance of corporations. The diaspora that manages to combine the interests of different social groups within it can survive. First of all, the interests of those who keeps of the ethnocultural heritage, who provides an economic basis for the survival of the diaspora and who creates socio-political conditions for the preservation of the diaspora.

Especially the institutions are important that are the connecting links between these groups of interests. Many actively writing about such a phenomenon as diasporal lobbyism, but they do not write about diasporal communications and communicators.

Accordinging to Steven Vertovec politically active diaspora communities are the Jewish, Greek, Cuban and Armenian-American associations that represent some of the strongest lobbies in Washington, DC. Diasporic Iraqi groups and individuals played crucial roles in encouraging American military intervention in Iraq in 2003 [1]. Modern diasporas are not only the form and mechanism of the existence of historically established communities that are carriers of certain ethno-cultural traditions, but also a political tool. This circumstance requires the definition of the political and legal framework in which diasporas act as subjects of politics, as well as the designation of illegitimate, but existing rules of the political game, which the diaspora are forced to follow.

Recognition at the international legal, later national level of collective rights, which are a kind of people's right, has become a significant milestone in the general humanization of law and the state. On the one hand, it has legitimized the right of nations to self-determination, and on the other hand opened the way to the subjectivity of those collective subjects of law without being an independent nationality, actively influence the political, legal and cultural life of modern states. First of all, they include diasporas as special ethno-cultural entities, the specifics of which are determined by the refusal of its members to assimilate and aimed at preserving an original culture.

Effective diaspora policy requires the capacity not only to articulate a policy but also to enact it consistently. Most formal diaspora policies are articulated and executed at the national level. But what are the realities in local government jurisdictions? Diaspora policies may falter because they are insufficiently responsive to localised needs, and/or the state lacks the capacity and/or political will at the local level to effectively implement them. A variety of institutional innovations can signal a state's engaging in diaspora politics. In diaspora studies, interests in diaspora governance tend to focus on how and why homeland states engage their diaspora communities through various strategies and institutions. Dominant accounts of diaspora politics are economic reasons, issue of identity, state relations with their diasporas through the lens of political-economic rationality and regimes.

Theoretically, diasporas have been posited as challenging traditional state institutions of citizenship and loyalty, and as an important feature of the relationship between domestic and international politics. More generally, diasporas are increasingly able to promote transnational ties, to act as bridges or as mediators between their home and host societies, and to transmit the values of pluralism and democracy as well as the «entrepreneurial spirit and skills that their home countries lack.

It should be noted that the problem of the relationship between the modern state and the diaspora is usually seen in the cultural and social (less often historical) and rarely becomes the subject of political and legal studies. It seems that this is due to the scientific tradition of perceiving diasporas as one of the varieties of relatively closed social groups, and such an approach does not imply its output beyond the concrete - sociological research. However, today the diasporas are playing an increasingly active role not only in the cultural life of the society, their influence becomes more visible even in such areas as the formation and implementation of foreign policy, the domestic lobby, the economy and investment. This circumstance requires determining the policy and legal fields, in which the diasporas act as actors, as well as the designations of illegitimate, but existing rules of the political game, which diasporal associations are forced to follow. Discussion about the diaspora is conducted by specialists of different directions and it can be stated that the concept of «diaspora» is used for such heterogeneous phenomena as ethnic minorities, refugees, labor migrants, etc. Ultimately, we are talking about any groups living for some reason or other outside their country of origin, but at the same time retaining their ethnic and religious identity, the idea of having a common historical origin, a set of interests, cultural values and public solidarity with their nationality [2].

These facts allow us to consider the diaspora as a special ethnic group that resists assimilation by establishing certain cultural restrictions related to the use of language, traditions, and so on. National minorities should also be distinguished from diasporas. The problem of correlation of these concepts is that national minorities have a special legal status, since they have been assigned to demand from the state recognition of their rights to identity, and in case of infringement or violation of rights they have the right to their protection in state and supranational structures. The Diaspora does not have such an opportunity. In particular, as Yu. Fukanov noted, one of the fundamental foundations of the formation of the diaspora is the concept of a «National hearth», a kind of ideological myth according to which representatives of the diaspora consciously or unconsciously perceive themselves as those who continue not only the traditions, culture, language practices of their homeland, but also preserves the state idea. It is believed that the diaspora emerges as an attempt to preserve statehood and culture when they are under threat, and therefore there are no factors for the formation of the diaspora in nations whose state existence has never been threatened: there are no such diasporas as the German, English or French [3; 286].

It is worth emphasizing that not only external but also internal functions of the diaspora are important in the consideration of the relations between the state and the diaspora. These include: 1) preserving the language of their people; 2) preservation of ethno-national culture (rituals, traditions, life standards, home way of life, holidays, literature, etc.); 3) preservation of a certain confessional identity; 4) preservation of ethnic identity (national identity, ethnic stereotypes, common historical fate)[4; 198].

Growing interest in diasporas by political leaders ensure diasporas as a part of international development agenda. My participation in the 16th International Annual Conference by World Association for Sustainable Development and 5th of International Diaspora hosted by the United Nations Joint Inspection held 10-13 April in Geneva is also one of the examples where diasporas are recognized as key actors not only in national, bilateral affairs, but also global affairs where diasporas shared experiences and thoughts at high political level. Engaging diasporas in such important activities mean that we are founding trust building, as diasporas develop networks, transfer resources and exchange information. In order to develop their potential, social protection, citizenship, right to vote as well as to build bridges between societies facilitating engagement is essential. This allows individuals and societies to strengthen their links which will contribute to well-being.

As is often emphasized in the scientific literature, strengthening the status of diasporas in the modern world is a consequence of a significant, if not colossal, surge in migration processes. If in the XIX-XX centuries the formation of diasporas depended mainly on political processes, often associated with persecution and the need to search for a «new» homeland, today diaspora growth is ensured through labor and educational migration [2]. This is connected with the changes in the policy of states towards the diasporas, the development of such approaches to migration policy that would not impede the interaction of the diaspora with the state of origin, the protection of the cultural identity of the diasporas. In our opinion, the problem of the relationship between the state and the diaspora has a dual character: the relationship between the diaspora and the state of origin; relations between the diaspora and the host state.

The first aspect, in the establishment between the diaspora and the state of origin, is most often expressed in the existence of special legislation. For example, in Kazakhstan since 1995 a new stage in the relations between the Republic of Kazakhstan and representatives of the Kazakh irredent and diaspora has been established. First of all, the «State Program for Supporting the Kazakh Diaspora», approved by the President of the Republic of Kazakhstan on December 31, 1996, the «Law on Migration» (1998) and other governmental acts, decrees and instructions were signed. State quotas for repatriates were established. All of the above-mentioned problems of the Kazakh diaspora and irredents began to be solved more or less successfully with the assistance of the Agency for Migration and Demography under the Ministers of the Republic of Kazakhstan and the World Association of Kazakhs, who are also closely involved in the immediate problems of repatriates in Kazakhstan. The Kazakh diaspora is formed from three countries of exit or former residence: Kazakhstan, Turkey and China, and then spreads around the world. For Kazakhs living in different countries of the world, trilingualism is more typical: Kazakh, the language of the country of exit and the language of the host country [4].

The state support of diasporas today is becoming quite an effective and popular direction of foreign policy activity. On the one hand, it allows the state of origin to improve its image in the world, to form a corresponding symbolic and cultural image. On the other hand, diasporas tend to be more loyal to the state of origin than citizens, and this kind of relationship favorably correlates with the need of the state of origin to establish profitable ties with the host state (a vivid example is Spain and Brazil, Ukraine and Canada, and so on).

The world practice shows that when developing a policy of interaction between the state and its diaspora, one should pay attention to who the diaspora is, where the diaspora is localized, how and why to involve

them for the development of state initiatives. The governments of many countries set out to mobilize the diaspora by attracting and actively using human, social, financial, cultural and political capital. Many states use their diasporas as a tool for implementing their external and internal development strategies. Some diaspora associations influence the formation of the policy of the states-opponents of their countries of origin in favor of the homeland, influence the governments support or opposition, and provide financial or other assistance to political parties, movements, and public organizations. The factor of influence of the state of origin on its diasporas is also used with a legitimate aim and with the aim of lobbying certain foreign policy strategies. In the political sense, the diaspora, as a rule, depends more on the state of origin than national minorities. First of all, this is due to the fact that the diasporas are characterized by greater integrity and a high degree of organization and unity, which allows them to resist assimilation. At the same time, national minorities are more susceptible to it, which indicates their lack of political and legal interest in constant contact with the country of origin.

From this position, the diaspora can be viewed as a kind of continuation of the state. Here it appears in static, since its status, composition and functioning are determined by the political and legal aspects of relations with the state of origin. On the one hand, this means that the diaspora acts as a kind of «unofficial» institution of the state, since it can often be used as a foreign policy tool for influencing the governments of other states. On the other hand, the statics of the diaspora is determined by the fact that it is in the relationship with the state of origin that the basic parameters of its cultural, economic and historical functioning in another society are determined.

No less important is, in terms of modern states functioning, the second aspect of the problem is the relationship between the diaspora and the receiving state. In a sense, these relations can be viewed as a continuation of interstate relations, since the use of diasporas as an informal lever to influence the host state is a fairly common practice. So, Israel traditionally has a powerful lever of influence on the US government at the expense of the Jewish diaspora. Another interesting example is the example of the activities of the Armenian Diaspora, which managed to influence the situation in Armenia in the post-conflict period of 1994 when there was a lack of national consolidation, split and confrontation of the political elite affected by internal contradictions, which led to the stagnation of economic reforms and thus to a significant slowdown investment proceeds, and achieve through the successful lobbying in the US government the expansion of official assistance for Azerbaijan.

However, it would be wrong to reduce the interaction of the diaspora and the receiving state exclusively in such a narrow context. It seems that the range of relations between these entities is much broader and is covered by the problem of legal and institutional design of multiculturalism. For example, the legal heritage and continuity in the legal status of the diasporas was determined in Canada when the 4th volume of the report of the Parliamentary Commission «Cultural contribution of other ethnic groups» was published in 1971, where the preservation of the Canadian way of life was established through two official languages, but of any official culture with the same attitude to all existing cultures in the country. In the famous Canadian Multicultural Law, the Canadian Multicultural Act of 1985, it is written that all individuals receive equal protection before the law, respecting and evaluating diversity and ethnic origin. The law establishes encouragement and assistance to the social, cultural, economic and political growth of the national diasporas of Canada through the adoption of multiculturalism [5].

The relations between the host state and the diaspora are realized in the context of the principle of multiculturalism and ensuring the free development of all diasporas and cultures. At the same time, it is worth noting that not always the state loyally refers to the idea of multiculturalism, which raises significant challenges for the development of the diaspora and its institutions in it. In this regard, the important role is played by the impact of the diaspora as an organized and integrated background with national minorities in upholding their rights to state structures.

From this position, the functioning of the diaspora expresses its dynamics: the diaspora in its relations with the receiving state appears as a special collective subject of law, which, even without the rights that national minorities possess, still has powerful levers of influence on the government.

Thus, the functioning of many modern states is inseparably linked with the diasporas as specific ethno-national political entities. Their interaction should be based on the recognition of the idea of pluralism, which has both cultural and legal expression. Formulating the legal status of the diaspora, institutionalizing legal relations between the state and its nation's representatives abroad, developing the diaspora as an «unofficial» institution of the state, its foreign policy agent expresses the static elements of the relationship between these two social institutions. The legal registration of the protection of cultural diversity, the influence of the dias-

pora on the legislative detail of the state, its domestic and foreign policies, principles and activities of the executive branch disclose the specifics of the dynamics of their mutual relations. The combination of dynamics and static characteristics of interaction between the state and the diaspora is an important methodological principle, on the basis of which the problems of diasporas in the modern state should be studied.

In conclusion, I would like to say that diasporas are groups participating in the domestic political process of the homeland. As such, they seek to advance their identity-based interests, both directly through lobbying and indirectly by providing information to the institutional actors. Furthermore, their international locations are singularly (among groups) important to the homeland government as tools of influence vis-a-vis foreign governments. Analyzing this relationship between diasporas and homeland governments will explicate the potential efficacy of diasporic activity. Diasporas are among the most prominent actors that link international and domestic spheres of politics. Thus if the homeland is in need of diasporic support, and the diaspora is united about the direction the homeland's foreign policy should take, then the ability of the diaspora to influence that direction is enhanced.

The 'weaker' the homeland is both in terms of need for diasporic assets and permeability to societal pressures, and the more cohesive the diaspora is (in terms of its organized voice and determination to influence policy), the greater influence the community will exert on the homeland. In a nutshell, and quite intuitively, if the strength relations between the diaspora and the homeland favor the former, then the diaspora will be better able to influence the homeland's foreign policy. As migration flows accelerate, and diasporas increase both in numbers and in political access to their homelands, becomes all the more important in understanding the future directions of homeland foreign policies.

Understanding this fact is necessary in general to all countries, but especially those who today tend to occupy a leading place in the modern world politics and should be seen as a tool for promoting national interests in improving the country's foreign policy image.

References

- 1 Steven Vertovec The Political Importance of Diasporas // Online Journal of Migration Policy Institute, June1, 2005. [Electronic resource]. — Access mode: <https://www.migrationpolicy.org/article/political-importance-diasporas>.
- 2 Фоканов Ю.В. Диаспора: к вопросу о концептуализации понятия в условиях глобализации / Ю.В. Фоканов // *Общественные и гуманитарные науки*. — 2008. — № 60. — С. 284–289.
- 3 Залитайло И.В. Природа этнонациональных и диаспоральных образований / И.В. Залитайло // *Аналитика культурологии*. — 2009. — № 13. — С. 194–200.
- 4 Мендикулова Г.М. Казахская диаспора и ирредента: история и современность / Г.М. Мендикулова. — Алматы: Всемирная ассоциация казахов, 2006. — 343 с.
- 5 Canadian Multiculturalism Act [Электронный ресурс]. — Режим доступа: <http://www.laws.justice.gc.ca/en/c-l/8.7/322.7.html>.

Г. Асхат, Ж.Р. Жабина

Шетелдік диаспораларға қатысты мемлекеттердің саяси-құқықтық аспектілері

Мақалада мәдени және әлеуметтік (сирек тарихи) саладағы қазіргі заманғы мемлекет пен диаспораның арасындағы қарым-қатынас мәселесі, сонымен қатар саяси және құқықтық зерттеулер қарастырылды. Бүгінгі таңда диаспоралар тек қоғамның мәдени өмірінде ғана емес, сыртқы саясатты, ішкі лоббиді, экономика мен инвестицияларды қалыптастыру мен жүзеге асыру сияқты салаларда алатын орны ерекше. Бұл жағдай саяси және құқықтық құрылымда диаспораларды актор ретінде анықтауды талап етеді. Қазіргі уақытта диаспоралардың ұлттық өзін-өзі сезінуі мен ұлттық өзін-өзі тануының ұлғайғандығы байқалады. Кез келген диаспоралық саясатты жүргізетін ел саяси, мәдени және экономикалық әлеуетін, өз ұлттық мүдделерін қорғау және мемлекетаралық қатынастарды дамыту үшін диаспораларды пайдалана алады. Өлемдік диаспораның өсіп келе жатқаны және олардың қоғам дамуына қосқан үлесі осындай жоғары деңгейде. Мақалада диаспораларды халықаралық-құқықтық және ұлттық деңгейде тану заң мен мемлекеттің жалпы гуманизациясындағы маңызды кезеңге айналғаны қарастырылды. Бұл халықтардың өзін-өзі анықтау құқығын заңдастыруды және заманауи мемлекеттердің саяси, құқықтық және мәдени өміріне белсенді ықпал етуіне жолын ашады.

Кілт сөздер: қазіргі заманғы мемлекет, диаспора, диаспорасының құқықтық мәртебесі, ішкі лобби.

Политико-правовые аспекты государств в отношении иностранных диаспор

В статье показана проблема взаимоотношений современного государства и диаспоры, которая обычно рассматривается с культурной и социальной (реже исторической) точек зрения и редко становится предметом политических и правовых исследований. Сегодня диаспоры играют все более активную роль не только в культурной жизни общества, их влияние становится более заметным даже в таких областях, как формирование и осуществление внешней политики, внутреннего лобби, экономики и инвестиций. Авторы подчеркивают, что данное обстоятельство требует определения политического и правового поля, на котором диаспоры выступают в качестве акторов. В настоящее время наблюдается усиление национального самосознания и национальной самоидентификации в диаспорах. Отмечено, что всякая страна, которая проводит любую диаспоральную политику сегодня, может (и ей следует это делать) использовать политический, культурный и экономический потенциал диаспоры для защиты своих национальных интересов и развития межгосударственных отношений. Растущая глобальная диаспора и вклад, который ею привносится в развитие, заслуживают такого высокого уровня внимания. В статье определяется, как признание диаспоры на международном правовом и национальном уровне стало важной вехой в общей гуманизации права и государства, это узаконило права наций на самоопределение и открыло путь к активному влиянию на политическую, правовую и культурную жизнь современных государств.

Ключевые слова: современное государство, диаспора, правовой статус диаспоры, внутренний лобби.

References

- 1 Steven Vertovec The Political Importance of Diasporas. *Online Journal of Migration Policy Institute*, June1, 2005. Retrieved from <https://www.migrationpolicy.org/article/political-importance-diasporas>.
- 2 Fokanov, Yu.V. (2008). Diaspora: k voprosu o kontseptualizatsii poniatii v usloviakh globalizatsii [Diaspora: to the question of the conceptualization of the concept in the context of globalization]. *Obshchestvennye i humanitarnye nauki – Social and Human Sciences*, 60, 284–289 [in Russian].
- 3 Zalitaylo, I.V. (2009). Priroda etnonatsionalnykh i diasporalnykh obrazovaniy [The nature of ethnonational and diasporal formations]. *Analitika kulturologii – Analytics of Culturology*, 13, 194–200 [in Russian].
- 4 Mendikulova, G.M. (2006). *Kazakhskaya diaspora i irredenta: istoriya i sovremennost* [Kazakh diaspora and irredenta: history and modernity]. Almaty: Vsemirnaia assotsiatsiya kazakhov [in Russian].
- 5 Canadian Multiculturalism Act. *laws.justice*. Retrieved from <http://www.laws.justice.gc.ca/en/c-1/8.7/322.7.html>.