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Public International Law in the Mechanism for Preventing Violations of Peace in the Context of an Armed Aggression by the Russian Federation on Ukraine

Oksana Hnativ[1]

Abstract

This paper considered the mechanism of operation of international treaties in general and the content and problems of applying jus cogens norms. The study investigated the practice of implementing the provisions of several international acts, namely the Vienna Convention on the Law of Treaties, the Budapest Memorandum, and the Charter of the United Nations. The article examines the interaction of the Russian Federation with the international institutions of which it is a member, examines the reaction of the most influential international organisations, such as the United Nations, the Council of Europe, the International Federation of Red Cross and Red Crescent Societies, the International Atomic Energy Agency, and the World Health Organisation, in connection with Russian aggression. The study considers the issues of deterring armed aggression, protecting human rights, reforming global institutions, and coordinating the actions of the international community in response to threats to peace and security.

Keywords: International Law, Military Aggression, International Security, Humanitarian Law, Sanctions, Russian-Ukrainian War, Jus Cogens.

Introduction

February 24, 2022 can be considered the starting point for reviewing the effectiveness of international law as a guarantee of maintaining peace and the global rule of law. This day also begins the countdown to war crimes committed by the Russian military and political leadership and the army. Such an unprecedented act of aggression and genocide against Ukraine and its people in the 21st century stirred up the entire civilised world and became an impetus for finding ways to ensure the effectiveness of international law not only to maintain world peace, but also to protect the interests of Ukraine and everyone affected by the war waged by the Russian Federation (RF) against Ukraine and the entire civilised society. After the end of the First and Second World Wars, international law was intended to become the tool that

[1]Associate Professor, Department of Civil Law and Procedure, Ivan Franko National University of Lviv, Lviv, Ukraine. hnativoksana0@gmail.com

would protect the civilised world from war and armed conflicts that could threaten peace. Undertaking the obligations under international treaties in the field of security and peace meant deliberately refraining from actions that would pose a threat of their violation in the world. At the same time, the member states, realising that it would not be possible to completely avoid armed conflicts, developed several international treaties to ensure the safety of the civilian population, as well as the decent treatment of prisoners of war. These conventions constitute international humanitarian law, essentially forming a "military code of honour". The latter should serve as the line that should not be crossed during the conduct of hostilities; otherwise, it would inevitably lead to criminal prosecution.

However, the RF's attack on Ukraine, threats to other sovereign states and the world with the use of nuclear weapons demonstrated the inability of international humanitarian law to protect the world from a new large-scale war or nuclear tragedy. International legal mechanisms do not have the deterrent effect for which they are implemented. Furthermore, the RF blocks numerous decisions of international and regional organisations, which it is a part of. All of the above encourages contemplation on the need to review international norms and develop new mechanisms to ensure their effectiveness and efficiency. The maintenance of peace requires effective mechanisms that need to be developed now.

Public international law, and law in general, originates from customary law. Customary international law should be considered as the result of a common and consistent practice of states, which they adhere to out of a sense of legal duty (American Law Institute, 1987). To a certain extent, this feature of customary international law has been preserved in modern international convention law. Despite the binding nature of international treaties, their implementation depends on a sense of legal obligation encouraging the subject to perform it. Modern international law is defined as a system of rules, methods, and guidelines, as well as mechanisms that provide a common conceptual language for sovereign states, international organisations and other international actors (Haliantych et al., 2021; Afanasenko, 2016). Without delving into the historical studies of the first international treaties, peacekeeping treaties are as ancient as the first treaties in the field of interstate trade. Today, States and international organisations conclude international treaties in all spheres of activity, defining the terms of cooperation, mutual aid and support.

Binding nature of international law

The main act defining the legal basis for the conclusion, amendments, termination, and invalidity of international treaties remains the Vienna Convention on the Law of Treaties of 1969. In this Convention, a principle that is equally decisive for both public and private international law has found its direct consolidation. This refers to the *pacta sunt servanda* principle, i.e., contracts must be executed properly, regardless of whether they are private (civil) contracts or international ones. According to Article 2 of the Vienna Convention on the Law of Treaties of 1969, a treaty is binding on a contracting state, regardless of whether it has entered into force. The Convention itself repeatedly notes that it is mandatory to implement international treaties, including those concluded prior to its conclusion. The Vienna Convention on the Law of Treaties contains general sanctions in case of violation by a contracting party of its obligations – termination of the treaty or suspension of its validity, depending on the type of international treaty (bilateral or multilateral). At the same time, it contains general exceptions when an international treaty cannot be executed without consequences for the contracting party (Articles 61, 62) (Vienna Convention on the Law of Treaties, 1969).

Furthermore, if the norms of an international treaty contradict a mandatory norm of general international law (*jus cogens*), such agreement becomes null and void and loses its force. This legal construction indicates that international law can be divided into mandatory and contractual. Despite the *jus cogens* is mentioned in several international acts, none of them covers the content of this concept, as well as the list of norms that are attributed to it. Theorists of international law argue about the existence of such norms in international law in general. The majority is inclined to believe that generally recognized norms should include the prohibition of the use of force between states, the prohibition of slavery, racial discrimination, torture and genocide, as well as the right of peoples to self-determination (Cherniavskyi et al., 2019). As S. Afanasenko (2016) notes, the ambiguity in the interpretation of some of them and the lack of a real coercive mechanism is illustrated by the situation with the annexation of the Crimean Peninsula and the armed aggression in the Donbas. It appears necessary in public international law to distinguish between:

– peremptory norms of general international law (*jus cogens*), which are binding by virtue of a legal obligation regardless of the fact that the state is in contractual relations;

– norms of international treaties that become binding after the conclusion of international treaties due to the voluntary assumption of obligations by a contracting state.

International and regional security organizations should ensure compliance with the former. This refers to security organizations in a broad understanding: the United Nations (UN), its specialized agencies (World Health Organization (WHO)) and bodies (Security Council), the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe, its bodies, etc. The norms of international treaties are binding from the moment of conclusion to termination of the treaty, if their content does not contradict *jus cogens*. The implementation of an international treaty should ensure the *pacta sunt servanda* principle, as well as sanctions provided for violating the terms of an international treaty. They should have been provided for in the international treaty itself. If there are no such sanctions, the provisions of Article 60 of the Vienna Convention on the Law of Treaties[3] apply. It appears appropriate that the UN should develop several conventions that would define:

– content of *jus cogens* norms to avoid their double interpretation and manipulation, which take place on the part of the RF when recognizing the so-called Donetsk and Luhansk People's Republics, as well as attempts to create a similar one in Kherson Oblast;

– creation of a mechanism for ensuring their compliance, namely the development of multi-level sanctions and their mandatory application to the offending state by all other UN member states.

Five days before the start of a full-scale attack by the RF on Ukraine, on February 19, 2022, on the Ukraine 24 TV channel, Anka Feldhusen, the Ambassador of the Federal Republic of Germany in Kyiv, noted that the Budapest Memorandum does not make provision for legal obligations, it is merely a proposal (The Ambassador for Germany stated that the Budapest …, 2022). This statement is erroneous. The Memorandum on Security Guarantees in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of nuclear weapons of December 5, 1994 (the so-called Budapest Memorandum) (Memorandum of Security Guarantees …, 1994), cannot create obligations only for Ukraine as a signatory state, since this will contradict the provisions of the Vienna Convention on the Law of Treaties (1969). These provisions prescribe the binding nature of convention obligations: a state that has concluded an international treaty, regardless of its type, assumes

obligations under this treaty. Accordingly, the above-mentioned memorandum forms the basis for the emergence of obligations for all states that have signed it.

According to Clauses 1-6 of the Memorandum on Security Guarantees in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons(Charter of the United Nations and the Charter of the International Court of Justice, 1945) of December 05, 1994, the signatories confirm their obligations to Ukraine as a non-nuclear-weapon state to respect its independence and sovereignty and existing borders, not to use weapons and economic pressure against Ukraine to submit it to personal interests. These obligations arose in the RF, the United Kingdom of Great Britain and Northern Ireland, and the United States of America (USA) based on other convention acts – the Charter of the United Nations and the Charter of the International Court of Justice of 1945 (1945), the Final Act of the Conference on Security and Cooperation in Europe (Helsinki Final Act) of 1975 (1975), the Treaty on the Non-Proliferation of Nuclear Weapons of 1968 (1968). In this regard, the Budapest Memorandum does not create new ones, but only confirms the existing obligations of the contracting states to Ukraine, so any manipulation regarding the non-binding nature of this act is unacceptable and is an indulgence of lawlessness, as well as a manifestation of legal nihilism.

Legal grounds for creating an international security mechanism

Reading the preamble of the Charter of the United Nations (1945) today, one understands its declarative nature, despite the algorithms prescribed in the Charter itself for the actions of states in case of a violation of peace and security in the world. This refers not only to human rights, which are not just violated daily, but are entirely ignored by the aggressor state, but also to preserving the lives of civilians, using prohibited weapons, and ensuring the rights of prisoners of war. However, as the experience of Ukraine shows, in international law there is no effective mechanism for protecting future generations from humanitarian disasters created by a state whose actions fall under the signs of crimes prescribed in the International Convention for the Suppression of Terrorist Bombings of 1997 (1998). International law does not make provision for actions in cases when a state finances terrorism, promotes intolerance towards other peoples, states, and all those who do not share its lifestyle. At the same time, international conventions in the field of countering terrorism make provision for the characteristics of crimes related to the financing of terrorism, as well as particular actions that should be considered as terrorist bombing. The purpose of

the convention law is to prevent war, and not to be patient with those who commit violence, in particular against children, in the hope of the loyalty of other UN member states. The UN would have to learn from the experience of its predecessor, the League of Nations.

Chapter 7 of the Charter of the United Nations (1945) regulates actions in case of threats to peace, violations of peace, and acts of aggression. These actions are conditionally divided into preventive and compulsory in the Charter itself. It is considered that the actions of the RF have long threatened peace and encroached on the territorial integrity of independent states. This refers to holding a referendum in 2006 on the independence of the so-called Transnistria Republic from the Republic of Moldova and future integration with the RF, the attack of the RF on Georgia in 2008, the use of Nagorno-Karabakh to incite hostility and war between the Republic of Azerbaijan and the Republic of Armenia (possibly devised with the purpose of weakening both republics for their further occupation), the recent entry of Russian troops into the Republic of Kazakhstan, including constant and unjustified threats from the Russian Federation regarding military intervention in the Baltic States, as well as threats regarding the use of nuclear weapons (Hnativ, 2022). In this context, one should also mention the use of weapons by the RF in the Syrian Arab Republic, which are prohibited by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 1993 (1993), the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980 (1980), the Convention relative to the Protection of Civilian Persons in Time of War of 1949 (1949), the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Agents (1925), which led to the mass destruction of the civilian population of different age groups. This fact was confirmed by the UN War Crimes Commission, but the blame for its use was laid on Assad's troops. Acts of aggression should also directly include the occupation of the Crimean Peninsula by the RF and its recognition of the so-called Luhansk and Donetsk People's Republics.

At the same time, everyone remembers that the UN Security Council cannot implement numerous resolutions due to the lack of consensus in decision-making, which makes this permanent UN body incapable of implementing binding decisions. An example is the situation with the downing of a passenger airliner MH17, the UN Security Council's decision on this issue was blocked by the RF (Russia blocks the

decision of the UN Security Council, 2015). The legality of Russia's "inheritance" of UN Member Rights has repeatedly caused discussions. There were proposals to apply to the International Court of Justice for an advisory opinion on the legality of the RF replacing the Union of Soviet Socialist Republics (USSR) as part of the UN. It is clear that the Charter of the United Nations (1945) needs to be updated to consider the current trends and avoid situations when the activities of UN bodies are blocked. It is necessary to clearly prescribe the procedure for accepting legal successors of UN member states into the UN, the procedure for accepting new members. An equally prominent issue is the settlement of a situation where a permanent member of the UN cannot use the right of veto over a decision taken against it. This approach does not deprive permanent members of their veto power, but it also does not allow them to be abused.

However, all these acts of aggression, which are directly aimed at violating world peace, have not received a proper assessment of the international community in terms of existing threats. Moreover, the RF continues its terrorist activities, as well as supports terrorist organizations in other countries, which violates its obligations under the International Convention on the Suppression of the Financing of Terrorism (1999). Such silence led to an attack by the RF on Ukraine, an encroachment on its territorial integrity and sovereignty. Notably, the International Security Assistance Force was more determined to deal with the threat of international terrorism originating from the Republic of Iraq. The reform of public international law should also consider case law in cases involving crimes against humanity and peace. This particularly refers to the so-called "Foce case", where the International Court of Justice in Hague recognized rape as a war crime, a weapon (The tribunal over putin: an eyewitness to the …, 2022). It is evident that this international tribunal provides a legal assessment of the acts of war criminals during the review and sentencing process. This allows improving the mechanisms of convention protection of the rights of civilians. Moreover, the issue of the possibility of seizing and confiscating the property of the aggressor state and persons involved in the commission of war crimes requires separate convention regulation. Coordination of actions of the international community in this aspect would ensure the development of effective legal mechanisms designed to provide an opportunity for partial compensation of damage caused by the aggressor state in the conditions of its refusal to conclude a treaty on voluntary compensation for such damage (Borysova et al., 2019; Curanovic, 2022).

No less urgent is the need to consider new aspects of cyber security and countering cyber terrorism in the context of the RF's attack on Ukraine. The full-scale aggression was preceded by massive cyber attacks on the servers of state authorities, as well as other entities. This will improve the provisions of the Convention on Cybercrime (2001) regarding the war crimes in this area. The nihilistic attitude of the RF towards international law is demonstrated by its withdrawal from the Council of Europe. Moreover, this act is deliberately aimed by the RF to avoid submitting new applications to the European Court of Human Rights related to the attack on Ukraine, since the Russian Federation is obliged to answer for all violations that occurred within six months from the date of submitting a written application for denunciation. However, it did not succeed because the day before the withdrawal announcement, the Council of Europe excluded the RF from its membership. To assess such an extraordinary situation, the European Court of Human Rights suspended consideration of all applications against the RF. In these circumstances, the jus cogens norms should come into force. Violations of peremptory norms should not affect the international obligations of the state that has committed such violations, which necessitates reforming the regional convention law for the protection of human rights.

The role of international organizations in ensuring respect for the rights of the civilian population

This part of the study highlights certain aspects of the activities of the International Federation of Red Cross and Red Crescent Societies. This organization is designed to coordinate the actions of national societies to ensure the protection of vulnerable segments of the population during armed conflicts. The activities of the International Federation of Red Cross and Red Crescent Societies should ensure the safety of children, people with limited mobility, the wounded, etc. There is no doubt that employees of these societies in Ukraine fear for their lives since the aggressor state does not adhere to any written or unwritten rules of warfare. Thus, some of the oldest humanitarian institutions are unable to perform the functions for which they were created, as well as to withstand the challenges of the aggressor state. Admittedly, no one could have predicted that in the 21st century, in the era of innovative development, the RF would start a war against an independent state to destroy it. However, it is precisely in such crises that the performance of obligations assumed to protect civilians, especially children, the seriously ill, and other people with limited mobility, should be a priority.

The active efforts of the International Federation of Red Cross and Red Crescent Societies in Ukraine began during the exit of the Mariupol defenders from the premises of the Azovstal plant, where the International Committee of the Red Cross registered them to avoid manipulations by the RF (Zakharova, 2022). At the same time, there is a need to ensure the return of Ukrainian children and adults who were forcibly deported to the territory of the RF. Such actions are necessary to protect Ukrainian children from the procedure of so-called "quick adoption", which the RF is trying to introduce. An equally important aspect of the International Federation of Red Cross and Red Crescent Societies' activities is assistance in removing the corpses of Russian military personnel, since the refusal of the RF to take them threatens the environment on the territory of Ukraine. To ensure the safety of International Federation of Red Cross and Red Crescent Societies' activities, it becomes necessary to accompany their employees by representatives of neutral states based on convention obligations.

According to the events in Ukraine, no one can feel safe during bombing and shelling. Thus, since February 24, 32 journalists and 262 children have died (Verkhovna Rada will oblige the media …, 2022; Childhood and war: two …, 2022). These data, as well as other crimes against children, require the active work of relevant organizations, such as the Committee to Protect Journalists, the International Federation of Journalists, and the United Nations International Children's Emergency Fund. These organizations provide financial and social support to affected individuals. At the same time, during the seizure and shelling of nuclear power plants located on the territory of Ukraine, the International Atomic Energy Agency (IAEA) only expressed concern, demonstrating the sheer lack of necessary powers. The situation is similar with international environmental organizations, which silently observe the destruction of the ecosystem of the Sea of Azov, the deterioration of the ecological situation in the Black Sea. No less threatening is the destruction of cultural monuments. The silence of the World Health Organization regarding the creation of a food crisis by the Russian Federation and the blackmail of the international community to lift sanctions are absolutely unacceptable. The actions of all international and regional organizations clearly require coordination and development of solutions. It is already necessary to create "roadmaps" that would make provision for actions to reduce and/or eliminate adverse consequences in these areas.

Conclusions

Now, to preserve the international principles that have become the property of the international community, it is necessary, more than ever, to demonstrate the effectiveness of the institutions of international law, determination in their protection and maintenance of peace. The international community should act without hesitation within the framework of public international law. No state should stand aside, tolerating violence and lawlessness. In turn, the Russian attack on Ukraine revealed many issues in the international mechanism for ensuring peace and security in the world. This paper attempts to summarize the existing problems and suggest respective solutions.

First, it is necessary to restore the effectiveness of the mechanisms of public international law, namely humanitarian law, which turned out to be powerless against the aggression and legal nihilism of the Russian Federation. It is necessary to guarantee the inviolability of imperative principles (jus cogens) and providing them with coercive norms, considering their binding nature. A novel, effective system of sanctions against violators of international security treaties should be established. The conventions on war crimes, terrorism, cybercrime, nuclear security, environmental security, respect for human rights, etc. need to be updated. There is an urgent need to further research of the functioning of international law and to find methods to ensure the preservation of the global legal order and avoid the threat of large-scale military conflicts.

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