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(Editori coordonatori)

Drept , și societate

Tendențe și perspective în context
intern și internațional

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DREPT ȘI SOCIETATE

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THE RIGHT TO PEACE: MODERN APPROACHES TO LEGAL UNDERSTANDING

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Abstract

The article defines the right to peace as an international collective right, which is based on ensuring the prerequisites for a safe, stable, and dignified life of human societies away from the danger and disaster of wars, as well as the consequences and dangers of armed conflicts, in the world's basic requirements that stem from the idea of ensuring the achievement of security of human rights, non-violence, achievement of development, protection of the environment, and other elements that cannot be separated from the right to peace.

The essential characteristics of the right to peace are determined, in particular the interrelationship of peace with other fundamental human rights, as well as the interdependence of all states in ensuring the right to peace.

The means of ensuring the right to peace and measures implemented by the United Nations to maintain and establish peace and security are described.

Keywords: *the right to peace, collective rights, peacekeeping missions*

Introduction

For a long time, our state has suffered from aggression by the Russian Federation, which leads to the death of people, the destruction of infrastructure and persistent, long-term violation of people's rights. Moreover, a war between two states becomes a consequence for the emergence of crisis phenomena in other states and around the world. That is why it is important and relevant today to study the right to peace - the right of the third generation of human rights, the so-called collective and solidarity rights, which concern not a single generation, but the entire human community and subsequent generations.

Therefore, the purpose of this study is to define the concept and features of the right to peace, its features in the conditions of modern human development and to analyze the mechanism of ensuring the right to peace, in particular through the UN response mechanisms.

The right to peace and its characteristics

Human rights of the third generation are recognized as the next step in the concept of human rights, as rights that apply to everyone and everyone regardless of borders, citizenship or other conditions. It is precisely because of such universality and solidarity of execution that the problem of distinguishing the subject and the object of these rights and the question of whether they can be considered rights in the classical sense arose. The right to peace is recognized as one of the rights of the third generation. The right to peace, despite its recognition in legal documents, has always been a key issue. As Janusz Nagurny rightly points out, "peace is an essential dimension of the common good of all mankind, and as such is connected with the observance of human rights"¹.

If we turn to the doctrinal sources, the right to peace can be characterized as an international collective right, which is based on ensuring the prerequisites for a safe, stable and dignified life of human societies away from the dangers and disasters of wars, as well as the consequences and dangers of armed conflicts, in the light of the main requirements that arise from the idea of ensuring the achievement of security of human rights, non-violence, achievement of development, protection of the environment and other elements that cannot be separated from the right to peace².

Based on this definition, we can distinguish the following signs of the right to peace:

1) international organized law: this means that this law came out of the circle of intellectual ideas and philosophical theses that present ideas and ideas about peace as a legal category and a necessary guarantee and goal that should be respected, and therefore this law came out of the circle of moral values, intellectual and philosophical appeals and theories to the field of legal protection and regulatory regulation by recognizing this right in many international charters and statutes of a number of international organizations, which confirmed the existence of this right and its legal basis and called on states to respect and preserve it³.

2) is protected by international law: this is a natural result of the entry of this right into the framework of the international mechanism for the protection of human rights. The existence of the United Nations and

¹ J. Nagórny, *Prawo do pokoju. Urzeczywistnianie praw człowieka w XXI wieku. Prawo i Etyka / red. P. Morciniec, S. L. Stadniczeńko. Opole, 2004, 231 s.*

² D. Bielov, M. Hromovchuk, *The Basic Law of the State: Legal and Political Content*, in *Baltic Journal of Economic Studies*, 2019, Vol. 5, No. 3, P. 59–66.

³ W. Al Saadi, *Right of peace in international human rights law*, 2022. URL: https://www.researchgate.net/publication/362270513_RIGHT_OF_PEACE_IN_INTERNATIONAL_HUMAN_RIGHTS_LAW

the powers granted to it in the sphere of applying repressive measures against countries that disturb the peace is a true expression of this feature.

3) collective international law: Collective claims often turn into societal counterclaims against individual rights and can therefore have implications against individual rights. The rights of the third generation, called the rights of solidarity, are related not so much to the usual catalog of negative or positive freedoms, but to the integration of efforts and joint dependence within the group, that is, solidarity. The subjects of solidarity rights are individuals, local individuals, local and regional collectives and international human society. Such a multi-level concept is the answer to the rights of synthesis. Therefore, various subjective formulas depend on the dimensions of implementation⁴.

4) additional international law: the inevitable result is that the ideal and real use of this right can only be achieved through the activation of a number of other rights.

The right to peace: normative legal support

The official right to peace was first proclaimed by the UN General Assembly (hereinafter - the UN General Assembly) in 1978 as part of the adoption of the "Declaration on Educating Peoples in the Spirit of Peace"⁵. This legal act recognized that peace between peoples is the main good of humanity and a necessary condition for its further development. The declaration contained a call to all states and international organizations to promote and ensure this right by all legal means. Thus, part 1 of paragraph 1 recognizes the inalienable right to live in peace, which belongs to human persons and peoples (nations) without any limitations. Part 1 of the Declaration indicates an important feature of the right to peace, namely its belonging to different generations of people. This feature is a fundamental feature of the rights of the third generation, which distinguishes them from individual rights, which, as a rule, lose their meaning with the death of a specific person.

Respect for this right is described as a necessary condition for the progress of all peoples in all spheres of life. Only in the case of maintaining and not breaking the peace within the state and at the international level will it be possible to raise living standards and the gradual development of

human rights, as well as their more effective protection. Although such a description does not imply normative recognition of the right to peace, it is a first step towards it.

As a corresponding duty of states in part 1, paragraph 5 of the declaration, the duty to protect the right of peoples and nations to self-determination, the rights of states to independence, equality, sovereignty, territorial integrity and inviolability of borders, as well as the right to determine one's own path of development without intervention or interference in internal affairs by other states⁶.

The next no less important normative legal act was Resolution 39/11 of the UN General Assembly "Declaration on the Right of Peoples to Peace" of November 12, 1984, which determined that all peoples of our planet have a sacred right to peace, the duty to preserve peace is fundamental for each state⁷.

The right to peace: the practice of implementation after the start of the war on the territory of Ukraine

Today, the right to peace and the duty of all states to ensure it should be considered in the context of peace settlement within the framework of interstate armed conflicts. Such conflicts of a non-international nature began to appear actively, in particular after 2010. The negative perception of interstate armed conflicts by the world community is important, which is determined not only by the Geneva Conventions, but also by the UN Charter, Art. 1 of which defines peacekeeping as one of the main goals of the organization⁸.

The UN Charter also mentions the obligation of the members of the Organization to refrain from the threat of force or its use in international relations, this rule is also a norm of customary international law⁹. The obligation not to use aggression is an imperative norm of jus cogens. Due to the clear definition and prohibition of interstate armed conflicts, governments often resort to using conflicts in third countries to resolve

⁶ D. Bielov, I. Aristova, M. Hromovchuk, *The History of the Paradigm of Constitutionalism at the Present Stage of Development of the Post-Soviet States (On the Example of Ukraine)*, in *Studia Universitatis Cibiniensis. Series Historica*. Issue № XVI, 2019, p. 265-273.

⁷ The Declaration on the Right of Peoples to Peace was adopted by UN General Assembly Resolution 39/11 of 12.11.1984. URL: https://www.un.org/ru/documents/decl_conv/declarations/right_to_peace.shtml

⁸ The Charter of the United Nations and the Charter of the International Court of Justice 26.06.1945.

⁹ P. Malanchuk, *Introduction to international law according to Eickhurst / trans. from English Kharkiv: Consum*, 2000, 592 p.

⁴ S. Rakesh Kumar, *Right to peace as a human right*, in *Uttarakhand Judicial & Legal Review*, Vol. 4, Issue 2, pp. 39-47.

⁵ The Declaration on Educating Peoples in the Spirit of Peace was adopted by UN General Assembly Resolution 33/73 of 15.12.1978. URL: https://www.un.org/ru/documents/decl_conv/declarations/life_in_peace.shtml

disputes among themselves by military means or to the so-called support of the insurgency movement, as the Russian Federation tried (and is trying) to do in defense of the "people's republics".

In the context of these conflicts, the right to peace becomes especially important, because it is here that it becomes clear: even a conflict between two states negatively affects peace as a general human category. Thus, using the example of the war between Ukraine and the Russian Federation, the consequences of a conflict involving an agrarian country became clear: a decrease in export opportunities from Ukraine, as well as an increase in energy and fertilizer prices, push up international food prices, thereby threatening global food security. The conclusions presented in a short report of the Organization for Economic Cooperation and Development indicate that the complete loss of Ukraine's export capacity, together with a 50% reduction in wheat exports, could lead to a 34% increase in international wheat prices in the 2022/23 marketing year and up to famine in the countries of the Middle East and North Africa, where wheat is the main food product¹⁰.

That is why, in the context of defining the subject of the right to peace, it becomes clear that states that are not even parties to the conflict feel the consequences of this situation: economic problems, the influx of migrants, as well as communication problems. Hence, humanity must be recognized as the relevant subject of the right to peace, since only by ensuring peace on a global scale can it be recognized that each person also has a guaranteed right to peace.

Violation of this right on the territory of one state causes unpredictable consequences far beyond the borders of this state, in particular, violation of individual human rights. In this regard, humanity, i.e. all people, should be recognized as the subject of the right to peace, because then the violation of this right would be contrary to the interests of humanity and the protection of the rights of every person.

The object of the right to peace as a third-generation right is international values. Preservation and protection of peace, development and the environment are not solely the business of individual nations or even regional solutions. Their very nature implicitly determines the need for vast and deep international cooperation, which is inspired by a strong sense of international solidarity. This, however, presupposes that states,

¹⁰ *The impacts and policy implications of Russia's aggression against Ukraine on agricultural markets*, in OECD review, 2022. URL: <https://www.oecd-ilibrary.org/docserver/0030a4cd-en.pdf?expires=1664135966&id=id&accname=guest&checksum=DC81F7E0590C7A4073D0AE187E7E95E9>

without renouncing their sovereignty, will limit their part of freedom for the benefit of humanity as a whole.

A separate aspect that deserves attention is the provision of the right to peace. Despite the potential possibility of protecting the violated human right to peace through traditional judicial mechanisms, it is still necessary to take into account the peculiarities of this right and its subject. That is why it is advisable to pay attention to the existing mechanisms for the protection and restoration of this right - international peacekeeping operations. As already mentioned, this right cannot be ensured for one person, although the maintenance of peace is a basic condition for the protection and protection of other human rights.

Among the four goals of the UN, the first and most important is the maintenance of international peace and security. Article 1 (1) of the UN Charter refers to this purpose and emphasizes the use of effective collective measures to prevent and eliminate threats to peace and to achieve by peaceful means and in accordance with the principles of justice and international law, the settlement or reconciliation of international disputes or situations that may lead to the violation of peace¹¹.

UN peacekeeping missions have become one of the mechanisms for such peace enforcement. Since 1948, there have been a large number of peacekeeping missions in the world, although in fact this practice gained wide development after 1991.

In modern peacekeeping operations, issues of human rights and regulations on their observance are regularly noted in the mandate of the mission, as a result of which UN peacekeepers become observers of the state of observance of human rights¹².

The training manual for human rights officers in peacekeeping and monitoring missions makes clear the interdependence between peace and human rights: threats to state security include not only warring armed groups, but also poverty, discrimination and inequality in access to resources. Responding to conflict thus requires more than removing weapons from opposing sides of the conflict and deploying a peacekeeping force between them. These two approaches work to resolve the conflict only taking into account human rights standards developed under the auspices of the United Nations. The use of this mechanism makes it possible to build lasting peace.

¹¹ P. Malanchuk, *Introduction to international law according to Eickhurst* / trans. from English Kharkiv: Consum, 2000, 592 p.

¹² A. Gallagher, *The United Nations, Democracy and Human Rights. Manual on Human Rights Monitoring An Introduction for Human Rights Field Officers*. Norwegian Institute of Human Rights. URL: <http://www.jus.uio.no/smr/english/about/programmes/nordem/publications/manual/previous/chapter01.pdf>

Relevant for Ukraine are the OSCE Special Monitoring Mission in Ukraine (OSCE SMM), the monitoring mission to assess and report on the human rights situation in Ukraine of the Office of the UN High Commissioner (UNHCR monitoring mission).

Their official mandates include, in particular, the need to monitor the observance of human rights and fundamental freedoms, including the rights of persons belonging to national minorities, and to provide support for their observance (OSCE SMM), as well as to create regular reports on the state of observance of human rights, provide recommendations on responding to new threats and prevent human rights violations etc. (monitoring mission of the UN High Commissioner for Refugees). In regular reports, these missions, which were created due to the violation of peace in Ukraine, note that human rights are violated due to military actions, and emphasize that without the restoration of peace, the restoration of all guarantees of human rights is impossible¹³.

Conclusions

Thus, the right to peace is not an abstract category, but the right that is recognized and must be ensured by every state, every side of the conflict, because in the conditions of modern globalization processes, it becomes clear that states do not exist in isolation. Accordingly, the lack of ensuring the right to peace in one territory causes hunger, crises and violations of human rights in other territories. It is this feature that determines the specific subject of the right to peace - all humanity in general, both present and future generations. And the object is a universal human value - peace, that is, the most comfortable and acceptable condition for the development of humanity and the construction of a full-fledged mechanism for guaranteeing and realizing other human rights.

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¹³ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine, 19 September 2014. URL: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-75_en.pdf