

КОНСТИТУЦІЙНЕ ТА АДМІНІСТРАТИВНЕ ПРАВО

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INTERNATIONAL LEGAL ASSURANCE OF PEACE AND SECURITY: CONCEPT AND MEANS OF ACHIEVEMENT

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*The purpose of the article is to study the subject matter and sources of international legal peace and security, to analyze the means of international dispute resolution, and to investigate Ukraine's security priorities in times of war. **Research methods:** the chosen topic of research requires the use of various scientific methods and approaches to obtain high-quality results. Therefore, to solve the tasks, we used the following research methods: analysis - study of modern scientific approaches to the study of "international security"; systematic method helped to carry out a comprehensive analysis of the features of international legal documents on international security issues; analytical method provided an opportunity to analyze the state of cooperation between Ukraine and European security structures. **Results:** in accordance with the principles of international law, the structure of the international system and, ultimately, international relations themselves, different concepts of international security have been formed. All of them are based on scientific considerations, explain international processes, and are capable of making certain predictions about the future. At the same time, as we have noted, these concepts contain specific methods and means of ensuring international security. Among the most popular concepts are balance/balance of power, global/common/comprehensive security, collective security, cooperative security, as well as hegemonic stability, balance of threats, and peaceful coexistence. They are based on different principles: balance of power, hegemony, balance of interests, etc. **Discussion:** defining the essence of modern threats and challenges helps to determine the methodology for substantiating the tasks of ensuring international security in general, as well as the security of the state of Ukraine in particular, and to develop a regulatory framework for ensuring peace and security in the world.*

Key words: peace; security; international relations; threats; UN.

Problem statement and its relevance. The functioning of the global system is based on the principles of peace and security. Thinkers of different eras have tried to interpret the concept of "security", but the closest to the modern understanding of its definition was formed only in the early 20th century. It was then that the first security organizations and regulatory framework were created.

Today, the problem of ensuring peace and security is important in the context of ensuring peace and stability in the world and strengthening the national security of each country in particular. That is why the concept of international security is increasingly on the agenda of international organizations, studied by scholars, and published in scientific and political publications. The analysis of international

security is carried out in the context of new challenges and threats, as they intensify the construction of political security mechanisms. Territorial disputes, terrorist attacks, the possibility of nuclear war, environmental and man-made disasters pose a threat to humanity even in the twenty-first century. This list is not exhaustive, as there are many other potential threats to national and international security. Therefore, it is extremely important for the international community to respond rationally and adequately to these challenges and implement an effective security policy.

Analysis of research and publications on the issue. The principles of international security were studied by I. Miloserdna, V. Kononenko, V. Shamraeva and others. Valuable for the problem of understanding the concept of "international security" were the works of: A. Tkachuk, in which he defined the types of international security systems; S. Tolstov, who studied the concepts of international security, in particular their methodological approaches and conceptual principles. The legal regulation of security issues was studied and defined by Polish scholar W. Malendowski, Ukrainian scholars A. Dyrda and I. Todorov. The issue of ensuring international security by international legal means has been the subject of research in the publications of domestic and foreign scholars S. Tolstov, A. Dyrda, L. Polyakov, and O. Shevchenko. The study analyzes the following legal acts: The UN Charter, the General Assembly Resolution "Definition of Aggression", the Treaty on the Non-Proliferation of Weapons, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, the Convention on the Prohibition of the Development, Production and Storage of Bacteriological (Biological) and Toxin Weapons and on their Destruction, and others.

Summary of the main research material. International security is a state of the world order in which favorable conditions are created for the development of states and other subjects of international law. For its development, each state needs, first and foremost, a peaceful situation both in its region and throughout the world. Only in peaceful conditions can the authorities in the state fulfill their obligations to create an economic base, devel-

op democracy, ensure the rights and freedoms of citizens, and improve the spiritual development of a person.

A number of scholars note that international security is reduced to state security. For example, international lawyer O. Shevchenko came to this conclusion by distinguishing between the security of such objects as society and the state: "when a state ensures its own security from the negative influence of another or other states, which is expressed in the threat of an armed nature, one speaks of "state security", "national security") [1]. The meaning of the category "security" in relation to the state as a participant in international relations is associated, first of all, with its physical ability to protect itself from external threats, to preserve its existence among similar entities [1].

Currently, legal scholars have proposed various definitions of international security law. For example, V.M. Shamraeva's formulation: "International security law is a system of principles and norms governing military and political relations of states and other subjects of international law in order to prevent the use of military force in international relations, limitation and reduction of armaments" [2]. I. Todorov is of the following opinion: "International security law is a system of principles and norms governing military-political relations between states and other subjects of international law in order to prevent the unauthorized use of military force, fight international terrorism, limit and reduce armaments" [3]. According to Miloserdna I.M., "international security law has as its subject matter international relations related to the use of force and peacekeeping. Force is a powerful element of influence in any human community, including the interstate one. In this regard, any legal system regulates the use of force in order to ensure that it complies with the principles on the basis of which the community was created and functions" [4].

A.P. Tkachuk gives a different formulation: "International security law is a branch of international law, which is a system of principles and norms governing military and political relations between states in order to ensure peace and international security". Another definition proposed by Moiseyev can be found in the textbook *International Law*: "International security law is a branch of interna-

tional law, which is a system of principles and norms governing cooperation between states and other subjects of international law in the military-political sphere in order to ensure peace and international security." It should be noted that the second definition is broader and includes the key condition of "cooperation", which is the key to success in international relations [5].

All definitions of international security law as a branch of modern international law have something in common. All of them link the purpose of international security law to a state of the world order that allows all subjects of international law to develop freely in conditions of peace and international security.

International security is generally considered in both broad and narrow senses of the word. In the broad sense, it includes military, political, economic, humanitarian, information, environmental and other security aspects. In the narrow sense, it includes only its military-political component. In 1983, American professor Richard Ullman published an article "A New Definition of Security" in which he argued that a narrow definition of security, which is limited to military threats, diverts attention from non-military threats that can seriously undermine national and international security [6].

The basis of international security is based on the balance of interests of subjects of international law, which, according to its principles, are legally equal. International security law plays an important role in the process of forming the foundations of international security. The system of international (collective) security also has characteristic features. First, international security cannot be ensured by a single state. This means that its very idea has a collective beginning. Secondly, it must be legally formalized (as a rule, an international treaty or charter). The specific content of the treaty (including the nature and scope of joint activities) is determined by the states parties to it, taking into account the basic principles of international law.

German scientist Michael Bote distinguishes in the collective security system multilateral "crisis management" and the possibility (as a last resort) to compel the offender (aggressor) to comply with the rules of the international community [7].

"Crisis management" refers to joint actions of states aimed at eliminating a situation that threatens peace and security. Such specification is fair, since, on the one hand, these are collective measures, i.e., the organized unity of participants in the collective security system; on the other hand, the adoption of certain measures must be provided for by the relevant international agreement, and therefore legally formalized.

The decision to detail and separate into a separate group international legal agreements and/or charters of international organizations related to the formation of collective security systems, as well as documents adopted in the course of their activities, is quite reasonable. These include the Treaty on Economic, Social and Cultural Cooperation and Collective Self-Defense (1948), the North Atlantic Treaty (1949), the ANZUS Security Treaty (1951), the Southeast Asian Collective Defense Treaty (Manila Pact, 1954), the Warsaw Pact (1955), the Charter of the Organization of American States (1967), and the Collective Security Treaty (1992).

The Charter of the United Nations (Article 2, paragraph 3) obliges states to settle their international disputes by peaceful means in a manner that does not threaten international peace, security and justice.

The UN Charter distinguishes between disputes and situations. A situation "may lead to international complications or give rise to a dispute" (Article 34), i.e., arises when a conflict of interests between states is not accompanied by explicit claims, although it generates certain friction and tension between them. Although they do not have specific characteristics, the doctrine is based on the fact that the "situation" is not defined by clearly defined claims of one state to another, but according to the UN Charter, a party to the situation does not have the right to abstain from voting on the issue in the Security Council, but in case of a dispute, it does. Therefore, they believe that the content of the situation is broader than the dispute.

Article 33 of the United Nations Charter mentions negotiations, investigation, mediation, conciliation, arbitration, judicial proceedings, recourse to regional bodies, or agreements among the peaceful means of settling international disputes. This list is

not exhaustive, and the parties may choose other peaceful means of their choice.

We can distinguish between diplomatic (conciliation) and judicial means of resolving international disputes. The criterion for such a division is whether recourse to this procedure always leads to a certain resolution of the international dispute from the international legal point of view.

Diplomatic means are characterized by the fact that the parties to the dispute reserve the final decision in the settlement of the dispute; and they themselves are more or less involved in finding ways to resolve it. Diplomatic means include negotiations, good offices, mediation, investigative and conciliation commissions, and consultations. In turn, when applying judicial remedies, the parties to the dispute are bound by the decision and have limited opportunities to influence the resolution of the dispute [8].

Legal means include arbitration and permanent international tribunals.

Dispute resolution by international organizations is also separately distinguished. Unlike diplomatic and judicial means, which are fully dedicated to dispute resolution, dispute resolution is only one of the activities of international organizations. However, dispute settlement by international organizations is not a full-fledged peaceful means of resolving international disputes, as they usually use diplomatic and sometimes judicial means in their activities in this area.

Commissions of inquiry and conciliation are part of the diplomatic means of resolving international disputes. They consist of the appointment of general bodies of the states involved in the dispute, called commissions of inquiry or conciliation. These commissions can be permanent bodies or created temporarily. International organizations can also perform investigative and conciliation functions.

Judicial avenues for resolving international disputes include two institutions: arbitration and international justice (in the narrow sense), which have in common that they finally resolve an international dispute.

According to the 1907 Hague Convention on the Peaceful Settlement of International Disputes, arbitration, or conciliation, is "the settlement of

disputes between States by judges of their own choosing and with respect for the law" (Article 37). Recourse to arbitration entails an obligation to voluntarily submit to its decision. The arbitration agreement may take the form of an arbitration clause (ante hoc agreement) or a specific agreement called a compromise (post hoc agreement). In such an agreement, the parties to the dispute determine the subject matter of the dispute, the method of appointing arbitrators and their jurisdiction, and even the procedure for considering the dispute. The arbitral award is binding on the parties to the dispute.

Arbitration differs from permanent international justice in that the parties to the dispute can decide on procedural issues and select arbitrators (this is a possibility offered by permanent international tribunals).

In international practice, an arbitral tribunal is most often established as a collegial body consisting of an odd number of persons (three or five) whose decisions are made by a majority vote. The tribunal consists of representatives of the parties, as well as a neutral arbitrator, whose participation ensures the impartiality of the decision. Sometimes, the dispute is entrusted to a sole arbitrator, who is selected from among recognized experts in international law or persons whose authority is generally recognized.

An attempt to institutionalize arbitration was made by the Permanent Court of Arbitration based on the provisions of the Hague Conventions of 1899 and 1907. Its only permanent body is the Secretariat located in The Hague. The Chamber has a roster of arbitrators from which states may select arbitrators to hear and decide a case. At the same time, each party to the dispute does not appoint more than four arbitrators, who constitute the so-called national group. According to the Statute of the International Court of Justice, candidates for the Court are not nominated by states, but by "national groups of the Permanent Court of Arbitration", i.e. groups of judges of the Court representing one state [9].

Article 1 of the UN Charter allows us to state that the peaceful settlement of international disputes is one of the main purposes of the United Nations Chapter VI of the UN Charter, "The

Peaceful Settlement of International Disputes," gives the Security Council broad jurisdiction (Article 24 of the Charter). The UN General Assembly also has jurisdiction over the peaceful settlement of international disputes, but it is limited to the interests of the Security Council. The UN General Assembly may draw the attention of the UN Security Council to situations that may threaten international peace and security (Article 11, paragraph 3 of the Charter).

The Security Council may investigate any dispute or situation which may give rise to international misunderstanding or controversy in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security (Article 34 of the Charter).

The Security Council considers this issue on its own initiative or at the request of a member of the United Nations (Article 35(1)). A non-member state may also refer to the Security Council or the General Assembly any dispute to which it is a party, provided that it first undertakes to settle international disputes by peaceful means in accordance with the Charter of the United Nations (Article 35, paragraph 2).

A strong and independent Ukraine is of paramount importance to Euro-Atlantic security. Relations between Ukraine and NATO began to develop in the early 1990s and have since become one of NATO's most important partnerships. Since 2014, in the wake of Russia's illegal annexation of Crimea, NATO-Ukraine cooperation has intensified in a number of key areas. Since the start of the full-scale invasion of Russia in 2022, NATO and Allied countries have provided unprecedented levels of assistance to Ukraine.

Ukraine began actively participating in NATO's Science for Peace and Security (SPS) program projects in 1991. The Joint Working Group on Science and Environment helps to prioritize areas of practical scientific cooperation under the SPS program. Since 2014, following the Ukrainian crisis, cooperation with Ukraine in the field of civilian security-related science and technology has intensified, and since then, Ukraine has been the largest recipient of NATO's SSC grants. Ukraine is also involved in many other initiatives through the

NATO Advisory Mission to Ukraine, including: 1) NATO supports Ukraine's implementation of UN Security Council Resolution 1325 on Women, Peace and Security.

In order to ensure further development of operational cooperation between Ukraine and NATO, a legal framework has been developed, including the Partnership for Peace Agreement (PFP) on the Status of Armed Forces on the Territory of a Foreign State, which entered into force in May 2000, the Agreement on the Provision of Support through the Stationing of Troops, ratified in March 2004, and the Strategic Airlift Agreement, ratified in October 2006; 2) in June 2020, Ukraine became a NATO Enhanced Opportunities Partner. This status is granted to members of the Partnership Interoperability Initiative for their particularly significant contributions to NATO-led operations and other Alliance tasks; 3) Ukraine has also worked to build capacity and improve interoperability with NATO by participating in the NATO Response Force.

The aggressive behavior of the Russian Federation towards other states has prompted the European community to change its security tactics. As a result, the countries neighboring Ukraine and Russia have increased defense spending. It should also be noted that through foreign policy, diplomatic relations and information campaigns, our country seeks to participate in the European security system. Therefore, new security relations are being formed, such as joint training, exchange of military experience, etc.

Conclusions. In the context of globalization, even greater interdependence of international relations, the issue of security of the world system has become even more urgent and requires more active cooperation, which should be based on international legal means. Among them, the UN Charter plays a crucial role, establishing a certain system of international security that combines normative (international law), organizational (individual and collective security) and material (disarmament measures) means of ensuring security. Their effectiveness depends on the completeness and complexity of their application. With regard to Ukraine's security priorities, especially in view of Russia's aggression against our country, the foreign policy should be

based on national, regional and global security strategies. This will help to increase the number of allies that can become a necessary support during a crisis.

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МІЖНАРОДНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ МИРУ ТА БЕЗПЕКИ: ПОНЯТТЯ ТА ЗАСОБИ ДОСЯГНЕННЯ

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Метою статті є вивчення предмету та джерел галузі міжнародно-правового забезпечення миру та безпеки, аналіз засобів вирішення міжнародних спорів, а також дослідження безпекових пріоритетів України в умовах війни. **Методи дослідження:** обрана тема наукового дослідження потребує застосування різноманітних наукових методів і підходів для отримання якісних результатів. Тому для вирішення поставлених завдань використано такі методи дослідження: аналіз – вивчення сучасних наукових підходів до вивчення «міжнародної безпеки»; системний метод – здійснено комплексний аналіз особливостей міжнародно-правових документів щодо питань забезпечення міжнародної безпеки; аналітичний – надав можливість проаналізувати стан співпраці України з європейськими структурами безпеки. **Результати:** відповідно до принципів міжнародного права, структури міжнародної системи і, зрештою, самих міжнародних відносин, сформувалися різні концепції міжнародної безпеки. Усі вони ґрунтуються на наукових міркуваннях, пояснюють міжнародні процеси та здатні давати певні прогнози щодо майбутнього. Водночас, як ми зазначали, ці поняття містять конкретні методи та засоби забезпечення міжнародної безпеки. Серед найпопулярніших концепцій: рівновага/баланс сил, глобальна/спільна/всеосяжна безпека, колективна безпека, кооперативна безпека, а також гегемонічна стабільність, баланс загроз і мирне співіснування. Вони базуються на різних принципах: балансу сил, гегемонії, балансу інтересів тощо. **Обговорення:** окреслення сутності сучасних загроз і викликів допомагає визначити методологію обґрунтування завдань забезпечення міжнародної безпеки в цілому, а також безпеки держави Україна зокрема та напрацювати нормативно-правову базу щодо забезпечення миру та безпеки в світі.

Ключові слова: мир; безпека; міжнародні відносини; загрози; ООН.

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