PRINCIPLE OF NON-USE OF FORCE OR THREAT OF FORCE IN INTERNATIONAL RELATIONS.

Abstract. This study explores the pattern of principles of non-use of force or threat of force in international law. This principle is studied from the perspective of international treaties and customary law through the recent state practice. This research underlines the prohibition of the use of force and submits the international mechanism of this principle including peaceful settlements of conflicts. Study provides an estimation of application of this principle.

Keywords: non-use of force, threat of force, principle, international law, treaty, war, document, conflict, analysis, peace, foreign policy.

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” [1].

The problem of using force has always been one of the most difficult and controversial issues in the field of international law. In international arena, the role of force is not diminishing, so countries have still a will to build up and modernize their weapons, militarize of outer space and place weapons within it, which may weaken the system of global security and arms control. According to West's Encyclopedia of American Law, “force” means power, violence, compulsion, or constraint exerted upon or against a person or thing. Commonly the word occurs in such connections as to show that unlawful or wrong action. Power statically considered, that is, at rest, or latent, but capable of being called into activity upon occasion for its exercise. Efficacy; legal validity. This is the meaning when we say that a statute or a contract is in force. Reasonable force is that degree of force that is
appropriate and not inordinate in defending one's person or property. A person who employs such force is justified in doing so and is neither criminally liable nor civilly liable in tort for the conduct [2].

An analysis of the documents revealing the content of the principle of non-use of force or threat of force leads to the conclusion that the following are prohibited:

1) any action that constitutes a threat of force or the direct or indirect use of force against another State;

2) the use of force or the threat of force to violate the existing international borders of another State or to resolve international disputes, including territorial disputes and issues related to state borders, or to violate international demarcation lines, including armistice lines;

3) reprisals with the use of armed force; these prohibited actions include, in particular, the so-called "peaceful blockade", i.e. the blocking of ports of another state, carried out by the armed forces in peacetime;

4) organizing or encouraging the organization of irregular forces or armed groups, including mercenaries;

5) organizing, instigating, aiding or participating in acts of civil war or condoning organizational activities within one's own territory aimed at committing such acts, if the said acts involve the threat or use of force;

6) military occupation of a State's territory resulting from the use of force in violation of the UN Charter:

   – acquisition of the territory of another State as a result of the threat or use of force;

   – Violent acts that deprive peoples of their right to self-determination, freedom and independence [3].

The first international document to prevent wars was the Kellogg–Briand Pact or Pact of Paris in 1928, officially the General Treaty for Renunciation of War as an Instrument of National Policy. The first article of Kellogg–Briand Pact states: “The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations
with one another”. According to the international agreement, member states
committed not to use force to resolve” disputes or conflicts of whatever nature or of
whatever origin they may be, which may arise among them” [4]. However, it did not
prevent humanity from armed conflicts, when the number of deaths were colossal.

Having a look at Second World War, dissatisfaction with the outcome of the
previous war pushed the defeated towards revenge, the desire to establish a just order
in the world and to a new war. Hurrying to start that terrible act and establish
particular power, no state thought about the upcoming human victims and suffering.
A volunteer who went to the front in 1942, Viktor Astafiev, during his service,
received the Order of the Red Star and the Medal for Courage. In his novel, he tried
to convey to readers his personal views and deep condemnation of military
action, perceiving this phenomenon as a "crime against reason" [5].

Having witnessed all dreadful consequences of the wars, humanity finally
realized that usage of force does not benefit people, but merely able to destroy and
ruin. In order to prevent subsequent wars and ensure peace and safety throughout
the world, the United Nations Organization was formed in 1945. Importance of
principles of non-use of force or threat of force in international relations was
emphasized by Kofi Annan, Secretary-General of the United Nations at the time of
the 2003 Iraq conflict.

“No principle of the Charter is more important than the principle of the non-
use of force as embodied in Article 2, paragraph 4 .... Secretaries General confront
many challenges in the course of their tenures but the challenge that tests them and
defines them inevitably involves the use of force” [6].

The UN Charter legally enshrined the prohibition on the use of force in
international relations, with the exception of two permissible cases - self-defense
and by decision of the Security Council [7]. The Hague Peace Conferences of 1899
and 1907, the Statute of the League of Nations of 1920, the Paris Pact of 1928 played
an important role in the evolution of this principle. But only the UN Charter
introduced into international law the peremptory principle (jus cogens) on the
prohibition of the use of force and the threat of force, which covers all types of
violence: armed, economic, political, etc. In the view of the fact that it is the
peremptory norm, the violation of those principles provides for the responsibility of that state, particularly in Article 26 of ARSIWA [8]:

“Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law”.

These articles, which were adopted by the International Law Commission of the United Nations in 2001 codified the customary law on state responsibility. The Articles develop basic concepts of international law, in particular peremptory norms and obligations to the international community as a whole.

Is that legal issues arise not only when a State uses force itself, but also when it aids or assists another State to use force. In the words of article 16 of the 2001 Articles on State Responsibility,

“A State which aids or assists another State in the commission of an internationally wrongful act … is internationally responsible for doing so if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act;

(b) the act would be internationally wrongful if committed by that State. [9]”

The part of the International Court of Justice, one of the six principal organs of the United Nations, is to take into consideration the objective of worldwide debates: it is an instrument for keeping up global harmony. Around when he was chosen for the International Court of Justice, Sir Hersch Lauterpacht, perhaps the most acclaimed global legal counselors of the twentieth century, composed a book on The Development of International Law by the International Court. In the absolute first sentence of that book, he expressed that: "No doubt the main role of the International Court . . . lies in its capacity as one of the instruments for getting the harmony to the extent that this point can be accomplished through law”.

The Court contributes to worldwide harmony in two ways (I) by settling debates, the irritation of which may prompt global strain and (ii) by creating rules of global law, which thusly gives a premise to serene relations among States.

Instead of using force as a way to resolve international conflicts, the UN obliges states to find peaceful ways of resolving disputes. To be exact,
pursuant to the Paragraph 3 of the Article 2 of the UN Charter all Member States have to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. This view was again confirmed in 1982 in a resolution of the UN General Assembly, the so-called Manila Declaration on the Peaceful Settlement of International Disputes. The Manila Declaration was expanded on the inventiveness of non-aligned countries (Egypt, Indonesia, Mexico, Nigeria, Philippines, Romania, Sierra Leone, and Tunisia).

This declaration emphasizes “equal rights and self-determination of peoples”, the “need for all States to desist from any forcible action which deprives peoples, particularly under colonial and racist regimes or other forms of alien domination, of their inalienable right to self-determination, freedom and independence” and the “right of these peoples to struggle to that end and to seek and receive support” [10].

The alternatives are more fully given in Article 33 of the UN Charter provides a number of alternatives to choose from in resolving disputes, e.g., negotiation, enquiry, mediation, conciliation, arbitration, and judicial settlement. The Manila Declaration underlines the legal obligation of parties to find a peaceful solution to their dispute and refrain from action that might aggravate the situation. The example of Korean peace process is a justification to the Manila Declaration. The 2018–21 Korean peace process was initiated to resolve the long-running Korean conflict and denuclearize Korea. A series of summits were held between North Korea’s Kim Jong-un, South Korea’s Moon, and Donald Trump of the United States. Through many hardships, US former president Donald Trump and North Korean Chairman of the State Affairs Commission Kim Jong-un agreed to speed up the denuclearization process on the Korean Peninsula and established a new relationship between the United States and North Korea, signing a Joint Statement on June 12, 2018. Kim asked the US to formally end the Korean War (1950–1953) to finalize the denuclearization schedule [11].

The case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) may serve as a good example. The overview of the very case is that Nicaragua filed an Application instituting
proceeding against the United States of America, together with a Request for the indication of provisional measures concerning a dispute relating to responsibility for use of force in and against Nicaragua. After sometimes, the International Court of Justice made an order indicating provisional measures. One of these measures required the United States immediately to cease and refrain from any action restricting access to Nicaraguan ports in the laying of mines. After hearing argument from both Parties, the ICJ delivered a Judgment stating that it possessed jurisdiction to deal with the case and that Nicaragua’s Application was admissible. The ICJ also found that the United States had violated certain obligations arising from a bilateral Treaty of Friendship, Commerce and Navigation of 1956, and that it had committed acts such to deprive that treaty of its object and purpose [12].

The ICJ rejects the justification of collective self-defense upheld by the United States of America in connection with use of force activities in and against Nicaragua the subject of this case. The ICJ consider certain attacks of the United States of America, on Nicaraguan territory namely attacks on Puerto Sandino; an attack on Potosi Naval, an attack on San Juan del Sur; attacks on patrol boats at Puerto Sandino and an attack on San Juan del Norte ; and further by those acts of intervention referred to in subparagraph (3) hereof which involve the use of force, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to use force against another State. The ICJ Decides that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations. The ICJ recalls to both Parties their obligation to seek a solution to their disputes by peaceful means in accordance with international law [13].

The United Nations aims to maintain international peace and security, give humanitarian assistance to those in need, protect human rights, and uphold international law [14].

The non-use of force or threat of force is one of the core principles of international law, which formed the basis for several universal and regional treaties. In spite of the existence of implementation mechanism, states ignore this principle. Armed confrontation between Armenia and Azerbaijan is an example of recent wars.
conflict which resurfaced in 2020 because of the territory of Nagorno-Karabakh, led to the both Armenian and Azerbaijani losses and to a political crisis in Armenia. Against this background, Uzbekistan clearly declares its peace-loving position based on the key principles of international law. In the field of international security, Uzbekistan remains committed to using primarily political and legal instruments, mechanisms of diplomacy and peacekeeping. The foreign policy of Uzbekistan is aimed at creating a stable and sustainable system of international relations based on international law and the principles of equality, mutual respect, noninterference in the internal affairs of states, mutually beneficial cooperation. As a central element of such a system of international relations, Uzbekistan is considering the UN and Security Council of United Nations.

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