CRIME OF AGGRESSION, TERRITORIAL INTEGRITY, SELF-DETERMINATION AND OTHER INTERNATIONAL LAW PROBLEMS

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Abstract

The purpose of this article is to analyze the relationship between the basic principles of international law and the crime of aggression. Some important principles of international law are related to the crime of aggression. These principles are imperative in nature and are the legal basis for establishing modern international law. Legal analysis of these issues is important for ensuring peace and security in the system of modern international relations. The directly focused object of the crime of aggression constitutes territorial integrity of states. In this sense, there is an exceptional importance the researching mutual relationship between aggression and the principle of territorial integrity and inviolability of states as one of the main principles of international law.

The article is indirectly reflected in relevant articles of the UN Charter, as well as in Helsinki Final Act of 1975. The universal tendency is that generally accepted in international law, the state territory should not be the object of military occupation as a result of unlawful use of force and each state has the exceptional sovereign power within its territory. It should be noted that the authority of the state which called "territorial leadership" or "territorial superiority" is considered a major component of the country's sovereignty. Considering the close interaction with crime of aggression, in the first place clarified three terms which includes the context of the principle - "territory", "integrity" and "inviolability". Because of the definition and the initial statement of aggression their practical importance is undeniable. According to international law the "territory" means of the earth, water, land, land, which consists of the airspace required for physical presence in every state, shall be regarded as the most important condition. The state territory is that areas where they under the sovereign authority and establishes their legal status of a particular country's laws and international legal agreements. The terms "Territorial integrity" and "territorial inviolability" are controversial issue in international law. "Territorial integrity" by this sense, is considered wider concept than "territorial inviolability".

The article was paid special attention to the problems of elimination of the consequences of military aggression of Armenia against Azerbaijan, right for self-defense of Azerbaijan and counter-attack operations of Azerbaijan.

Therefore, this article is investigated the crime of aggression, territorial integrity, human rights, self-determination, the use of force and some basic principles of international law and other issues.

Keywords: *crime of aggression, territorial integrity, self-determination, human rights, use of force, peace and security, principles of international law.*

The crime of aggression is one of the gravest international crimes against peace and humanity. Aggression, territorial integrity, self-determination, the use of force and some basic principles of international law and other issues are important scientific problems of international law. Of course, it will also focus on the principles of international law that they are as a regulator of the issues like use of force, to intervene in matters within the domestic jurisdiction, human rights and territorial integrity of states. These principles are imperative nature and the legal foundation for making rules of international law. The principles of international law are reflected at the UN Charter in 1945, the 1970 Declaration on the Principles of international law, the OSCE Helsinki Final Act in 1974, the Charter and decisions of the Nuremberg Tribunal. At the same time, the following principles have been developed and systematized by the International Law Commission at the "Code of crimes against the peace and security of mankind" project in 1954 and 1996. The issue of aggression and the principles of international law more detailed commented on the documents about international security and mutual relations between the states in this field which adopted by the different instances of UN. In this context, first of all, we should particularly note the "Declaration on principles of international law," dated 24 October 1970. The document which is considered to be the second for its international law importance than UN Charter is applied for cooperation and friendly relations between the countries and systematized the distinctive special categories of principles of international law. These norms have an

imperative character as jus cogens norms which are the higher legal force for all states and are considered the basic principles of international law. At the same time, the military aggression of Armenia, according to prof. A. Aliyev, "on the one hand, it directly and biasedly violates the norms and basic principles of jus cogens norms of international law, on the other hand, it leads to the emergence of international responsibility for the committing of international crimes, including aggression". [1, p.43] Their sphere of activities both for their scope of the subject, and as well as for the type and area of international relations have a universal character. In other words, the state of its international relations unconditionally comply with the requirements of these principles and signed all international treaties or other international legal acts should be consistent with the principles of the UN Charter and international law. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations in 1970, was established the following principles: the principle that States 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, the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered, the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, the duty of States to co-operate with one another in accordance with the Charter, the principle of equal rights and self-determination of peoples, the principle of sovereign equality of States, the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter. [5, p.73]

For prohibition of aggression as a crime and non-legal recognition of any territory as a result of the occupation, principles of territorial integrity and inviolability of frontiers mentioned in the OSCE Helsinki Final Act, 1975 and this document have been added another principle - the principle of respect for human rights and fundamental freedoms. Considering the relationship with crime of aggression, it should particularly be noted that, interconnecting and complementing and strengthening each other, these principles have already had erga omnes character in modern international law.

Considering the direct relationship with aggression, first of all it should be looking through in detail of the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State. Prohibition of the use of force in international law was realized on the Rhine Pact which signed between Germany, England, Italy, France and Belgium on October 16, 1925 [3, p.397], and on the abovementioned Briand-Kellogg Pact on August 27, 1928. 63 states joined to multilateral pact Briand-Kellogg in 1939, which prohibits the use of force as interstate law principle. [4, p.460]

For the first time in international law, the prohibition of the use of force as an agreement was made possible by the United Nations Charter. This principle which is of exceptional importance for modern international law, has found its direct expression in paragraph 4 of Article 2 of the Charter of the United Nations. It was noted there that, 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. [10]. At the same time, among the documents which is prescribed this principle it should be emphasized in particular the Resolution of the UN General Assembly, Definition of Aggression, dated 1974 and the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, on 18 November 1987, as an annex to resolution 42/22 adopted by UN General Assembly. The Principle of Refraining from the Threat or Use of Force in International Relations for its philosophical and legal nature first of all prohibits the aggression. In accordance with the resolution on Definition of aggression the use of armed force by the government, first of all, which is considered an international crime and can be assessed as a war of aggression, and in turn, it creates the international

law responsibility for states and criminal liability for accused persons. [13] Acts of the aggressors are made legal assessment as an international crime in the statutes of Nuremberg and Tokyo international military tribunals and at the post-war years the obligation on States to refrain from propaganda war of aggression is also included to the content of this principle [8, p.101].

First of all, it should be interpreted the concept of "power" for clarify the Principle of Refraining from the Threat or Use of Force. According to the UN Charter, "power" means the military, the armed forces. [10.] However, considering the realities of the modern information society, it would be appropriate to add some points to this definition. It can also be possible to concern the opportunities of information and communication technologies (ICT) to the definition of "Power".

Thus, considering close relationship the Principle of Refraining from the Threat or Use of Force with aggression, it should be noted that, according to international treaties the following actions are considered illegal: to violate the borders another State or to solve international disputes, including territorial or border disputes with the use of force the threat of force; reprisals pressure measures by armed force; to blockade the ports of another state by armed forces of one state; the organization of irregular forces or armed gang or to support the organization; organization the civil war in the territory of another state or terrorist acts, or to help them and to take a direct part in them; the illegally occupation of other country's territory by applying the force; to seize the territory of another state by force or threatening to use force; the committing violent acts which deprives the peoples of their right to self-determination, freedom and independence. It should be emphasized that, the most effective fighting against crime of aggression in international law is to universally respect by the states the Principle of Refraining from the Threat or Use of Force.

The directly focused object of the crime of aggression constitutes territorial integrity of states. In this sense, there is an exceptional importance the researching mutual relationship between aggression and the principle of territorial integrity and inviolability of states as one of the main principles of international law.

This principle indirectly reflected in paragraph 4 of Article 2 of the UN Charter, as well as in Helsinki Final Act of 1975 and the main content of this principle is the fact that states must respect each other's territorial integrity and refrain to violate the territorial integrity. [2, p.307]

The universal tendency is that generally accepted in international law, the state territory should not be the object of military occupation as a result of unlawful use of force and each state has the exceptional sovereign power within its territory. It should be noted that the authority of the state which called "territorial leadership" or "territorial superiority" is considered a major component of the country's sovereignty.

Considering the close interaction with crime of aggression (because one of the objects of this crime is territorial integrity of state), in the first place it is necessary to clarify three terms which includes the context of the principle - "territory", "integrity" and "inviolability". Because of the definition and the initial statement of aggression their practical importance is undeniable.

According to international law the "territory" means of the earth, water, land, land, which consists of the airspace required for physical presence in every state, shall be regarded as the most important condition. The state territory is that areas where they under the sovereign authority and establishes their legal status of a particular country's laws and international legal agreements. The terms "Territorial integrity" and "territorial inviolability" are controversial issue in international law.

"Territorial integrity" by this sense, is considered wider concept than “territorial inviolability”. PhD in Law R. Karayev justified notes that, the definition of territorial inviolability of the state constitutes the elements of the concept of territorial integrity of states, and these concepts are part of an integrated whole. [6, p.20]

Professor S.B.Chernichenko is associated mismatch between these terms with style of expression of this concept relates to wording in English and Russian texts of UN Charter. According to him, this term was expressed in Russian the term "territorial inviolability" ("territorialnoy neprikosnovennosti"), and in English the "territorial integrity". [9, p.187]

Certainly, confirming the mentioned statements it should be emphasized that, this term which expressed on Article 2, paragraph 4, of UN Charter (the English text) and Article 1 (a) of the Helsinki Final Act as a separate principle ("the territorial integrity of state"), is more acceptable this concept in the broad sense. And the expression "inviolability" is clarified stated above on Article 1 (a) of the Helsinki Final Act and this special principle (third principle) has been identified there as "inviolability of frontiers".

Thus, according to international law documents, the term territorial integrity is the broader sense than the concept of territorial inviolability and both these concepts is better to be considered as part of an integrated whole. At the same time, territorial integrity as a very important principle of international law was directly related to both a form of aggression - "direct" and "indirect" aggression may be violated by supporting the separatist regimes on the territory of another state, as well as through the use of military force directly against the state.

The principle of equal rights and self-determination of peoples which has great importance of the mutual relationship with aggression is considered a specific legal meaning in international law. Indeed, international law practice proves that the aggressor states try to justify its criminal actions only through this principle differentiating this principle than other jus cogens principles of international law, PhD in law V. Ibayev wrote that "subject of this principle is not a state, but it is a people. That is as for this feature of the same principle is politically more acute controversy and complex legal issues." [2, p.320]

For clarifying the content of the above-mentioned principle it should be paying special attention to two concepts - "people" and "self-determination". In the context of the above-mentioned principles and as for international law, "people" as a rule, cannot understand the ethnic sense. As an international law concept "people" does not means of any national or ethnic group, but means just the entire population of country (or state, illegally deprived of their territory). In general, according to the modern international law, the "people" is understood as a concept which includes itself a specific territory and a government. In other words, "the people" does not understood as an ethnicity, but understood as demos. Due to the modern international relations, the term "people" (or "nation"), is related to "country" or "sovereign state".

Another controversial issue in international law within the meaning of this principle is related to the terms "people" and "nationality". However, according to Ph.D. V. Ibayev, the lack of a common concept does not be an obstacle for the appointment of the subject of the right to self-determination and the issue of self-determination should be resolved by expression of the will of all the people which living in any particular territory-state. [2, p.327] In this sense, we consider that as a subject of right to self-determination does not the nation which manifested is of national character and features, as well as the cultural identity of the nation, but is the society-people, who is consist of different nationalities and has the same rights.

According to international law, people may have the right to self-determination as a whole, but its part, including the national minorities is unacceptable that such a right. At the same time, despite the fact that historically the liberation wars, the great powers sometimes are hesitant to recognize and not receive unequivocally the right of peoples to self-determination and to establish their state the cost of some territories.

Self-determination became the subject of debate at Paris peace conference in 1919, but this right failed recognition as a norm of international law. The issue, as 5th principle of US President Woodrow Wilson's "14 Article", was identified by the provision the "impartial settlement of colonial issues". [14] Meanwhile, this right which are not intended in any provision of the document on rights of colonial and dependent people, considered as a factor that has more poli-

tical shade. Therefore, the US Secretary of State Lansing called political dynamite the right to self-determination of peoples. And the position on the factor of self-determination of officials of the UK, Italy and France was the same. Thus, the principle of self-determination does not be accepted as a norm of international law at the Paris Peace Conference and instead of this mandate system has been applied. And the essence of this system was not something else and not differs from the goals of the aggression and means the "legalization" of new territory and colonies.

After World War II, the new geopolitical factors had allowed this right to appear in international law normative system. The principle of equal rights and self-determination of peoples, as an official term for the first time found its expression in Article 1 of the UN Charter. [10] In the broader sense, the normative content of the principle explained in Declaration on the Principles of International Law, in 1970 and noted there that, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. [7, p.142]

According to the 1970 Declaration all states, respecting the free will of the people, have to duty to refrain from any aggressive action which deprived nation's right to self-determination. The declaration also states that the defending of the principle of self-determination does not be encouraged the separation and dissection of country and this principle can and should be solved within the concrete conditions - under the principles of inviolability of frontiers and territorial integrity of states. Taking into account the possibility of using as an excuse right to self-determination of peoples by any government to use force against another state or to undermine the integrity of the community, the Declaration notes that supporting of this principle should not create a basis for aggression: "Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country". [11]

In order to avoid speculation on the principle of self-determination of the peoples United Nations General Assembly adopted the Resolution A / RES / 47/135 on 18 December 1992, of Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. [12] The principle of self-determination interconnecting to the principle of territorial integrity at The Helsinki Final Act noted that, this principle cannot be regarded as a right of national minorities. This is already officially reflected in the name choice of the principle. [7, p.156] This principle is called at the Final Act "equal rights and the right to dispose of their own destiny of peoples". Apparently, the term "self-determination" has been replaced with the term "peoples' right to dispose of their own destiny", and it means according to generally accepted norms of international law and the logic of modern international relations system, national minorities not using the right to self-determination of within a particular state, but have the right to dispose freely of their own destinies by maintaining their national mentality, culture, language, religion and so on. The final act was determined that the member states should respect this principle "due to the purposes and principles of the UN Charter and relevant norms of international law, including the rules relating to the territorial integrity of states".

As you can see, all of these documents approaches to the principle of self-determination in the context of the principle of territorial integrity and as concepts of sovereignty, territorial integrity and political independence are not only considered the main indicators at the UN Charter, Declaration on the Principles of International Law in 1970 and the Helsinki Final Act, but also other international legal norms. European Convention on Human Rights in 1950 directly noted that the implementation in a democratic society of freedoms prescribed in Convention can be limited by law in condition of "national security, territorial integrity and interests of social stability ...". In this document, as well as paying special attention to the factor of "territorial integrity", it shall be prevailed in the context of the rights and freedoms prescribed in the Convention. In other words, the rights and freedoms protected by the Convention in respect of the

territorial integrity could be limited and this is a document that has adopted the primate of principle of territorial integrity.

Thus, it should be necessary considered to approach in the context of the principle right equality and self-determination of peoples and other important principles of international law, in particular principle of territorial integrity of states. This right not belongs to the nationalities and ethnicities but belong to whole population or people who have its historical territory and legal unity. At the same time, as protection of national minorities, human rights and freedoms, globalization, European integration, legal and geopolitical factors in contemporary international law can justify the violation of territorial integrity of states under no circumstances. Indeed, the loss of balance between these principles can result by the violation peace and security, including by appearing the elements of aggression in the modern world.

The next important principle of international law is the principle of respect for human rights which has a close cooperation with aggression and sometimes observed with attempts to justify this crime. Regardless of the nature of the armed and non-armed, this situation shall be applied to international treaties on human rights. At the same time, this directly linked as a matter of international humanitarian law. In this respect there is an inverse proportionality between the "protection of human rights" and the "protection of territorial integrity, political independence and sovereignty of state".

Of course, according to international law any violation of human rights accompanied by the use of armed force is unacceptable. In this sense N.B.Krılov noted that, "if an attack to citizens on the territory of the country has the military character, it shall be understood as an attack on the territory of another state, and it provides the basis for the use of force by using of the right to self-defense". However, he stresses that the armed protection of its citizens in the territory of another state is not limitless. In other words, this method can be considered acceptable for the government first, if there is a real threat to the life of its citizens, and secondly, the protection of its citizens in the event that the country does not or is unable to defend it, and finally the third, when it is impossible to control the situation through peaceful means. The state cannot conduct military operations for protection its citizens in the territory of another state, because it has violated the country's territorial integrity and political independence. Therefore, military operations which intended for this purpose should comply with the scale of the attack or threat of attack and military forces must leave the territory of that country after completion of their mission. Supporting the ideas of the author it should be noted that, it is unacceptable any military operations in the territory of another state by violation of the territorial integrity and political independence of state and under the name of the protection of civilians.

It should be noted that the main goal of the 44-day counter-attack operations of Azerbaijan in 2020 was to restore the territorial integrity of Azerbaijan and force Armenia to make peace based on other principles of international law. Today, aggression, the principles of international law, counter-attack operations, victory, compensation and other concepts will be presented in a different way.

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