Muradova V.Kh.♦

DOI: 10.25108/2304-1730-1749.iolr.2018.54.132-150

Legal resolution of international conflicts as principle of ensuring of global security

Abstract: It is studied a triune complex of international and legal norms that directed to resolution of conflicts, threatening the maintenance of international peace and security.

In conditions of permanent political turbulence of world politics and growth of military and power aspect in policy of many states the international and legal mechanism of ensuring of global security should be adequate to resolution of international conflicts with peaceful means. Contemporary international law provides the states with opportunity of a wide choice of the means to resolve conflicts, however namely a peaceful settlement is an integral part of the commitments of the subjects of international law.

It is proved that legal basis of application of peaceful means of settlement of international conflicts includes the norms of control, norms of commitments of the subjects and the norms of regulation means. There is considered an increasing the degree of institutionalization of legal instruments of conflicts resolution: negotiations, surveys, mediation, conciliation, good services, investigative procedures, arbitration, court proceedings, and appeal to regional bodies.

Keywords: challenges; threats; experience; prospects; global security; architecture; international cooperation; globalization.

♦ **Muradova Vusala Khagani qizi** – a dissertator of the Institute of Law and Human Rights of National Academy of Science of Azerbaijan (Azerbaijan). E-mail: lala-axmedova@mail.ru

Despite increasing international crisis and conflicts the globalizing world, nevertheless, becomes more interlinked, interdependent and indivisible. According to primacy of law (the Rule of Law) in international relationships, a sovereign state possesses with freedom of actions in the frames of commonly recognized legal principles and norms. However, an aggravation of interstate contradictions and deepening a gap between the levels of well-being of different countries, which caused with uneven development as result of globalization processes, intensify a vulnerability whole international community to conflicts and crises the both in the world arena and domestic one. The vulnerability produces a crisis of supremacy of law and can destroy existing international law and order, in which international law is recognised as dominating factor of interstate relationships [11, p. 328].

Dynamics of development of modern policy demonstrates a threatening gap between existing international law and the needs for a proportionate legal regulation of international conflicts. To ensure supremacy of law as a global challenge on resolution international conflicts it is necessary functioning of real guarantees the both a formation and realization the norms of international law. Application to international conflicts coordinated by international law guarantees is the only possible way to resolve them. Peaceful settlement of international contradictions, disputes and conflicts is one of the kinds of international legal guarantees maintaining an international security in conditions of globalization.

In conditions of permanent political turbulence of world politics and growth of military and power aspect in policy of many states the international and legal mechanism of ensuring of global security should be adequate to resolution of international conflicts with peaceful means. In modern international law under armed conflict is understood “state of war or conflict conjugated with military actions, which by virtue of its nature or scales may affect an operation of the treaties between countries-parties of armed conflict and third states independently on an official declaration of war or other declaration by some party or all parties of

armed conflict" [4]. This definition is based on formulation, which proposed in 1985 by the Institute of International Law in Article 6 of Resolution II "On consequences of armed conflicts for international treaties".

In 1999 International Tribunal on former Yugoslavia on case of Tadic identified situations of existing of armed conflict like a state, "when it takes place application of armed force between states or during long period are committed armed acts of violations between state bodies and organized groups or between these groups within the state" [12]. Unlike Resolution "On consequences of armed conflicts for international treaties" the Article presented in decision of International Tribunal "Prosecutor v. Dusko Tadic, IT-94-1-A" have a greater scope of conflict situations and are disseminated on occupation and blockade, and also include the situations of internal support by third parties with providing arms and funds to one of the parties.

Specifics of modern armed conflicts like threats to a system of global security is manifested in erosion of traditional distinctions, between international and internal armed conflicts, which, according to UN Commission on International Law, are more often phenomena in statistical relation [3]. However, defining a concept "armed conflict", the Commission does not give direct links to "international" or "internal" armed conflict in order to avoid a risk to create contrary interpretations [10, p. 205].

New order of post-bipolar world puts forward as a priority problems of international justice strengthening more fruitful and active cooperation of national states and international structures on resolution of international conflicts that threaten global security. "Namely by eliminating of the reasons of conflicts with legal and fair pathways, - declared UN General Secretary K. Annan, - international community may assist to ensure that in future it does not recur" [1].

Complication in the context of globalization of international legal relations and their subject composition produces necessity of improving of legal regulation

of peaceful means settlement of conflicts and implementation of UN decisions and other international organisations. Application or non-use of armed force by subjects of contraction is legal indicators its determination like international armed conflict and international non-armed conflict. To manage with resolution of conflicts is possible only in base of principles and norms of international law at terms of coordination of joint efforts all subjects of international relationships. "In frames of international legal environment is formed the factors of international order determining, in its turn, conditions of stabilization, ordering and consistent transformation of the processes of international security" [9, p. 378].

Triune complex of international legal norms directed to resolution of conflict, which threatens supporting of international peace and security, is the most important instrument of global security. Legal basis of application of peaceful means of settlement of international conflicts presents itself a complex of the norms of international law, which includes the norms of control, norms of commitments of the subjects and norms of regulation means. However an ambiguity of use in international law a concept 'international conflict' creates significant complexities. UN Charter does not contain a concept 'international conflict', and appearing between states contradictions, mutual claims and aggravation of relations determine through colliding with this concept such terms like international disputes and international situations. All Articles of Chapter VI of UN Charter "Peaceful resolution of disputes" discloses the legal nature of regulation of relations, "continuation of which could be threaten supporting of international peace and security" [8]. In this connection we should note that the more accuracy and detailed developed the norm of legal regulation the more effective mechanism its realization. In particular, Article 34 of UN Charter authorises the Security Council to investigate any dispute or any situation to determine the fact that whether continuation of this dispute or situation may

threaten to the maintenance of international peace and security [8], that is already in primary stage of conflict regulation demands special investigation.

Norms determine the commitments of subjects of international law to resolve the disputes with other participants. Legal content of the principle of resolution of international disputes charges the states not to refuse peaceful settlement of disputes and timely to resolve mutual disputes the both menacing and non-menacing to international peace and security, exceptionally with peaceful means. In particular, the norms that determine commitments of the subjects of international law impose an obligation them not only resolve existing disputes but also preventing their emergence, prevention of potential conflicts [6, p. 273].

Negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements are referred by Article 33 of UN Charter to the norms that determine the instruments by which the subjects of international law may resolve their disputes [8]. Global processes intensify pluralism of new actors of world policy and accordingly involve new relationship in international and legal regulation. Analysis of legal means, which regulate resolution of conflicts, demonstrate a trend their progressive development in side of increasing the degree of institutionalization. Particular, doctrine of international law allows, by mutual consent of the disputing subjects, to appeal to "other peaceful means on their choice" [2], using of indicated means in various combinations under conditions their conformity to common international law.

In complex of above analysed means that declared by UN Charter create a unified legal structure of peaceful settlement of conflicts. However, functioning of 193 internationally recognised states-subjects of international law, which differ not only with size of territories, political regime, economic and scientific and technical development but also with level of political influence in the world arena, make complicated international and legal regulation of armed and non-armed conflicts. Unlawful behaviour of some states reduces significantly an effectiveness of

structure of peaceful settlement of conflicts declared by UN Charter legal regime of international security and actual guarantees of realization of the norms of international law. “The more guarantees of real implementation of law are existed the stronger the law” - wrote L. Oppenheim, distinguished international legal scholar [13, p. 23].

Modern international law provides the states an opportunity of a wide choice of conflicts’ settlement means, however namely pacific settlement is an integral part of commitments of the subjects of international law.

Mandatory nature of resolution of international disputes by peaceful manner is declared by UN Charter as legal means to prevent threats to peace. “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered” (Article 2, par. 3). Since the fundamental aim of United Nations is to ensure international peace and security then consolidation of the principle of peaceful settlement of disputes and conflicts has cogent nature and acts as “imperative norm of common international law, deviation of which is inadmissible” [2].

International Law Commission recognised in UN 66 General Assembly resolution of international conflicts by peaceful manner as a vivid example of the norms of international law, which is jus cogens [4]. Legal force of this norm is determined by a will of whole international community, but some subject of international law. Being as imperative norm, the principle of peaceful settlement of disputes and conflicts obliges all subjects of international law to resolve arising contradictions without the use of force. An actual problem is to determine the scope of obligations of subjects of international law that generated by this principle in order to implement the principle of peaceful settlement. Article 6 of Resolution II “On consequences of armed conflicts for international treaties” the International Law Institute gives legal basis between aggressor and victim. It recommends to United Nations to refer in different ways to a state-aggressor and a state, which

performances its right to self-defence in accordance with United Nations Charter [7]. Aggression as internationally unlawful action cannot be justified. President of Azerbaijan Ilham Aliyev at the opening of 72 Session of UN General Assembly put question "how can this corrupt, failed state ruled by despotic, medieval regime afford to violate international law for so many years and ignore the resolutions of UN Security Council and statements of the leading countries of the world? And the answer is double standards. There is no international pressure on aggressor, no international sanctions imposed on Armenian dictatorship" [5]. Thus, the precedent set by Armenian aggression and occupation of 20 per cent of Azerbaijani lands demonstrates the violation by Armenia a peremptory norm of international law. Actions of Armenia significantly reduced effectiveness of structure for settlement of conflicts that recognised by international community

References

1. Gospodstvo prava i pravosudiye perekhodnogo perioda v konfliktnykh i post konfliktnykh obschestvakh. Doklad General'nogo Sekretarya OON na zasedanii SB. 23 avgusta 2004 [Supremacy of law and justice of transitional period in conflict and post-conflict societies. Report of UN General Secretary at Council of Security session. 23 August 2004]. Available at: http://www.refworld.org.ru/ publisher

2. Deklaratsiya o printsipakh mezhdunarodnogo prava, kasayuschikhsya druzhestvennykh otnosheniyi i sotrudnichestva mezhdu gosudarstvami v sootvetstvii c Ustavom Organizatsii Ob'edinennykh Natsiyi. Prinayata rezolutsieyi 2625 (XXV) General'noy Assambleyi OON. 24 oktyabrya 1970 [Declaration on the principles of international law referring friendly relations and cooperation between states in accordance with UN Charter. Adopted by Resolution 2625

(XXV) of UN General Assembly. 2 October 1970]. Available at: http://www.un.org/ru/documents/ decl_conv/declarations/intlaw_principles.shtml

3. Doklad Komissii mezdunarodnogo prava. Shestidesyataya sessiya (5 maya-6 iyunya i 7 iyulya-8 avgusta 2008 goda). General'naya Assambleya. Ofitsial'nye otchety. Shest'desyat tret'ya sessiya. Dopolneniya no. 10(A/63/10) [Report of UN International Law Commission at sixtieth session (5 May to 6 June and 7 July to 8 August 2008). Sixty third session. Supplement no. 10 (A/63/10)]. Available at: www.un.org/ru/documents//armed _ conflicts_effects.

4. Doklad komissiyi mezhdunarodnogo prava. Shest'desyat shestaya sessiya OON. A.69\10 [Report of UN International Law Commission at sixty sixth session. A.69\10]. Available at: Режим доступа: legal.un.org/ilc/ reports/2014/ russian/annex.pdf

5. Ilham Aliyev. Vystupleniye Prezidenta Azerbaijana na otkrytii 72 sessii General'noyi Assamblei OON. 20 sentyabrya 2017 [Ilham Aliyev. Speech of President of Azerbaijan at 72 Session of UN General Assembly. 20 September 2017]. Available at: http://ru.president.az/articles/25289/

6. Lukashuk I.I. Mezhdunarodnoye pravo. Obschaya chast' [International Law. General Part]. Moscow, 2005, 262 p.

7. Rezolutsiya II Instituta mezhdunarodnogo prava 1985. "O posledstviyakh vooruzhennykh konfliktov dlya mezdunarodnykh dogovorov" [Resolution of International Law Institute. 1985 "On consequences of armed conflicts for international treaties"]. Available at: www.idi-iil.org/fr/

8. Ustav OON [UN Charter]. Available at: www.un.org/ru/ documents/charter

9. Khonin V. Sreda i pole mezhdunarodnykh interaktsiyi [Environment and field of international interactions]. Kiev, Gileya no. 103, 2015, 374-381 pp.

10. A. McNair and A.D. Watts. The Legal Effects of War, Cambridge. Cambridge Un.Press, 1966.

11. Constitutionalism, international law and global government/ Dunoff J., Trachtman J. Cambridge: Cambridge, Cambridge Un. Press 2009

12. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. Prosecutor v. Dusko Tadić, IT-94-1-A 72, 15 July 1999. Available at: /www.icty.org/x/cases/tadic/acjug/en/tad-a

13. Oppenheim's International Law: Volume 1 Peace: Peace v. by Robert Jennings (Editor), Arthur Watts KCMG QC (Editor) OUP Oxford; 19 Jun. 2008.