Issues in Implementing “Non-Use of Force” Principle in International Law

Durmishkhan G. Afkhazava¹, Lenaris H. Mingazov², Sofio N. Karcivadze³

^{1, 2}Kazan (Volga Region) Federal University

³Batumi Shota Rustaveli State University

Email: durmishkhan.afkhazava@gmail.com, Contact: + 7 927 44 40 805

Received: 21st October 2017 Accepted: 16th November 2017, Published: 31st December 2017

Abstract

The security of the world community at the present stage of development of international law is directly related to its general principles. These principles form the core of international security law and serve as a guiding light for international rulemaking.

The very essence of international law and the belief in its efficiency depend on the implementation of these principles.

In this paper, an attempt will be made to analyze the situation in the South Caucasus from the point of view of implementing the principle of non-use of force.

The efficiency of norms and principles of international law has many criteria and factors; the paper will be an attempt to highlight key issues and their comparison with the situation in reality.

This conflict is firstly studied and examined from the point of view of international law; in our opinion, only a detailed study of such conflicts and an assessment of the degree of international principles implementation serve as a basis for determining the efficiency of international law.

The studies carried out and reflected in this paper give us grounds to conclude that the conflict took place, and the non-use of force principle was directly implemented. We consider it important to note the positive trend which is manifested in the growth of the efficiency degree for the norms of international law.

Keywords: The Non-Use of Force Principle, International Law, Efficiency, Georgia.

Introduction

In the second millennium, after the experience of wars and conflicts obtained by mankind, it would seem unnecessary to remind that the use of armed force by one state against another state is prohibited and is an international crime, so much an aggression if it is not self-defense measures in response to an armed attack or participation in sanctions by the decision of the UN Security Council. [1]

Meanwhile, modern international relations certainly show that, despite the recognition of an aggressive war as an international crime, the most developed and

leading states often resort to the use of armed force for the sake of their own interests. A great public response was sparked by events in Yugoslavia and Iraq. [2]

The problem of implementing the norms of international law in terms of assessing efficiency is expedient to study from the position of activity and lawful behavior of states. Lawful behavior is the closest indicator of the international law efficiency. Hence, the study of causal links between the behavior of subjects of law and international law seems to be one of the important directions in the study of the efficiency of international law. [3] Among the many links of the causal relationship between the norms and principles of international law and the behavior of its subjects, the following are of great importance: an international legal position, value systems, positive responsibility, needs and interests as liaisons between norms of law and behavior, international legal awareness, and reciprocity.

The level of efficiency of international legal norms depends critically on the level of their implementation. States do not accidentally associate efficiency with the faithful fulfillment of obligations, with the achievement of legal and social results provided for by the rule of international law. For achievement of the efficiency of international law, it is important not only to implement its norms, but also to ensure optimal level of their implementation. The criterion for assessing this level is indicators reflecting the social and legal result of the norms of law enforcement, namely:

- Compliance of the international law subjects behavior with the requirements of the norms of law (lawful behavior);
- Completeness and accuracy of the implementation of the rights and obligations contained in the norms of law;
- Degree of achievement of immediate social goals with regard to the norms of law and their implementation in accordance with their goals and object.

Social efficiency of the norms of international law is an achievement of the impact of a legal norm on subjects of international law that are as close as possible to what is planned for the purposes of a socially useful regulatory norm. Being a form of social relations, law does not in itself generate any particular benefits, or practical results. Legal norms are only an expression of

the possibility and obligation in relation to the actual behavior of the subjects. Therefore, the real content of their regulatory properties can only be manifested through the process of their implementation. In other words, efficiency is a characteristic of operation of the norms of law. This does not mean, however, that a social effect is not caused by the norms of law, but only by the actions of the actors in implementing them. In fact, the possibility of achieving a social result is laid in every norms of law. Moreover, norms of law play an organizing role in achievement of a social effect, since they oblige, and prescribe the most acceptable variant of behavior.

The efficiency of a norm depends on its internal perfection, social value, optimality, and other its qualities which largely predetermine the success and efficiency of a legal impact, the ability of the norm to influence regulated relations. The existence of such ability is beyond doubts since law as a super structure phenomenon cannot but affect the basis. The problem of the norms of international law efficiency turns out to be connected not only with the identification of the social results of their action, but also with the study of their qualitative properties, and those social conditions that caused this norm, and its social task.

In the paper, for the first time in science, an attempt will be made to analyze the implementation of the "non-use of force" principle in international law on the basis of an armed conflict between Georgia and Abkhazia (Batumi phenomenon). [4]

Was there realization of the principle here? For this, we need to analyze and provide answers to several questions. Was there a conflict? Was there an armed conflict? Was there an international or internal armed conflict? Answers to the questions posed together will enable us to draw certain conclusions about the operation of the principle.

Methods

As is known, the choice of the investigation method is not arbitrary. It is determined primarily by the content of the object of study itself. The problem of efficiency includes a wide range of theoretical and practical issues related to the actual functioning of international norms and institutions. A theoretical approach is necessary for development of the initial problems of efficiency categories: concepts, criteria, indicators, conditions of efficiency, etc.

The study of the norms of law efficiency is, first of all, applied in nature. It is conducted for the sake of finding out, whether (and to what extent) there are achieved the social objectives which were meant for upon issuing the relevant norm. In real life, the real existence of legal norms is manifested, first of all, in acts of behavior, in the social actions of subjects. Moreover, the impact of the law on behavior of subjects is not one-sided, where the law only prescribes certain behavior, and the subject passively executes the injunction. This also applies to the subjects of international law, which activities are purposeful, and consciously oriented.

Therefore, the analysis of goals, motives, values, interests and other elements of the subjective side of the behavior of subjects is essential for understanding the implementation process and the efficiency of international legal norms. Since the object of analysis here are the actions of subjects of international law, and the mechanism of lawful (or illegal) behavior, and then sociological and legal methods will be main for their study. In addition to concrete sociological analysis, a significant role here can be played by the use of system analysis and the methods of social psychology. The possibility of applying the information approach in the study of efficiency is due to the fact that international law itself is a kind of social information. The efficiency of international law and its norms depends on the quality and quantity of information contained in them. Therefore, the improvement of the norms of international law in the information sphere can be considered as one of the means of increasing their efficiency.

Discussion

To begin with, we would like to mention the very principle of non-use of force and its dependence on the status and qualification of an armed conflict. If guided only by logic, it becomes obvious that the principle of non-use of force is directly related to the possibility of using force.

The use of force is a violent act that contradicts the principle of prohibiting the use of force and the threat of force and violates the UN Charter, the principles of territorial integrity or political independence of the state, as well as committed in some other way incompatible with the purposes of the United Nations. The use of force means, first of all, the use of armed force by one state against another, regardless of the declaration of war; and also it means an aggression in the sense of article 1 "On Definition of aggression" of 1948. [5] Along with this, many states, especially developing ones, proceed from the concept that the use of force includes not only actions of an armed nature, but also measures of economic, political and other violence. With a progressive focus, this concept is linked to the principle of non-interference, which prohibits a much wider range of actions including of unarmed nature. Another interpretation of the use of force, which has been recognized in the practice of the UN General Assembly after adoption in 1960 of the Declaration on the Granting of Independence to Colonial Countries and Peoples, proceeds from the premise that the actions of a state are also meant by the prohibited use of force if they would be expressed in the forcible denial of a people to the right to self-determination (colonialism) [6], as well as such types of gross and massive violations of human rights and fundamental freedoms as genocide, racism and apartheid.

For our own study, we are interested in a second interpretation in which there is no need to qualify the existence of two states for the applicability of the non-

use of force principle. [7] The main qualifying feature is the existence of two specific, independent forces, the collision of which can lead to destabilization of the situation, both domestic and international. We think that the process of globalization payoff and affects not only international relations, but also domestic ones.

Was there a conflict between Georgia and Adjara, and if so, of what nature was it? The question of the existence of a political conflict is not controversial. This conclusion can be drawn from numerous papers and news from the distant 2004. [8] Adjara in 2004 was an autonomous republic, with its own constitution, parliament, and president. We can talk about the significant decentralization of power in Georgia for this period. After the change of power in Georgia, political differences between the center and the autonomous republic have taken shape. However, for our study, it is important to determine whether the conflict, i. e. confrontation of opposing points of view? We must not forget that those subjects were in a hierarchical relationship to each other, i.e. relationship between a subordinated and subordinating entity in accordance with the constitution of Georgia. Based on these realities, can we talk about the theoretical possibility of confrontation? And can we talk about the conflict as a whole? Is this situation a violation of the Georgian Constitution and the fact of separatism? In our opinion, no, it was not a violation of the constitution or separatism. We draw this conclusion, based on a weighty and important criterion. In this case, there was no goal violating the constitution, i.e. Adzharia was not attuned, or did not pursue the goal of illegally seceding from Georgia or had not other purposes of separatism (the nature of the negotiations, the implementation of agreements, and the phased rapprochement). The confrontation was centered on a different issue. For our study, further classification of political confrontation is considered unnecessary. We would like to focus on another important point, namely the classification of armed or unarmed conflict. Armed conflict can be recognized as all cases of declared war or any other armed conflict that may arise between two or more states, even if the war status is not recognized by one of these states. [9] Armed conflict occurs where armed forces are used between countries, or where there is prolonged armed violence between the authorities and armed organized groups, or between similar groups within the state. [10]

Proceeding from that was said earlier, there is no question of the presence of two independent forces. Analyzing the situation that happened in 2004, it is possible to recognize the conflict as an armed internal one. The armed forces of Georgia were put into combat readiness, and the forces of Adjara were mobilized. In our opinion, the presence of violence and the use of force are not the most important criteria for recognizing any conflict as armed or not. There is no need to wait for the moment of violence or military action first to characterize the conflict as a war due to the nature of the non-use of force principle. Only the availability of

the use of force possibility, i.e. the actual military confrontation, in which the possibility of violence and a clash of forces is not in doubt, one must speak of an armed conflict, i.e. talk about the need to comply with the non-use of force principle. The nature of the non-use of force principle reflects the direction, i.e. the goal of maintaining peace and order.

Summary

An analysis of the effects of the law, and their relationship to the objectives of a norm of law is important for characterizing the efficiency of the norms. Concluding international agreements, states expect to achieve very specific results useful for themselves. The ability to determine with a high degree of accuracy the future result is one of the main elements of effective regulation. In general terms, the results of the implementation of law are disclosed, on the one hand, in interests satisfied with the help of law, and materialized in the practical behavior of the subjects, and on the other hand, in the form of regulation and order in the system of public relations. With this in mind, it is necessary to distinguish between the general social results of the law and the results, which reflect the legal purpose of the law itself. We would like to return to the situation in 2004, namely, the confrontation of the two forces, Adjara and Georgia. There is no doubt about the internal nature of this armed conflict, based not on the notion that Adzharia is not a sovereign state, but on the notion of Adjara's goals and the non-participation of another foreign state. If the aim of the confrontation and actions of Adjara was initially to raise the issue of self-determination or separation, we could characterize this conflict as international, since international law characterizes the subjects of peoples fighting for self-determination (The situation in Kosovo). [11] Thus, one can come to the assertion that the conflict was internal and armed.

Conclusion

Side effects of operation of law do not have a connection with the objectives of legal norms. Therefore, their evaluation should be made not from the point of view of efficiency, but from the point of view of the combined utility of the result obtained [12]. Thus, when we evaluate a result of operation of an international law norm, then certainly and above all, we mean a positive (useful) result. It is with such a result that it is necessary to link the achievement of socially significant goals of activity and, ultimately, its efficiency. Now let us turn to the culmination of the research: proceeding from what realities, it can be talked about the principle of non-use of force in this case?

Based on historical and factual material, it is possible to judge the full implementation of this principle by the example of the clash between Adzharia and Georgia, i.e. the possibility of using force was obvious and clear, there was a clear confrontation of forces, and it is also

worth remembering the existence of deplorable experience (Abkhazia and Ossetia) in Georgia's history. Thus, it is safe to say that the actions of the parties to the conflict, namely, the actions of the president of Adjara Aslan Abashidze, were an implementation form for the non-use of force principle.

Acknowledgment

The work is carried out according to the Russian Government Program of Competitive Growth of Kazan Federal University.

References

- [1] United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, available at: <http://www.refworld.org/docid/3ae6b3930.html> [accessed 13 July 2017]
- [2] Hmoud, Mahmoud (2003) "Use of Force against Iraq: Occupation and Security Council Resolution 1483, The, "Cornell International Law Journal: Vol. 36: Iss. 3, Article 2 Available at: <http://scholarship.law.cornell.edu/cilj/vol36/iss3/2>
- [3] International Law: A Textbook for Bachelors / Executive editors: R.M. Valeev, G. I. Kurdyukov. - Moscow: Statute, 2017. -P. 319
- [4] Eurasia Net, Ajaria declares state of emergency, Georgian leadership urges regional inhabitants to disobey curfew, 26 April 2004, available at: <http://www.refworld.org/docid/46a484e5b.html> [accessed 13 July 2017]
- [5] UN General Assembly, Definition of Aggression, 14 December 1974, A/RES/3314, available at: <http://www.refworld.org/docid/3b00f1c57c.html> [accessed 13 July 2017]
- [6] UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960, A/RES/1514(XV), available at: <http://www.refworld.org/docid/3b00f06e2f.html> [accessed 13 July 2017]
- [7] Amnesty International, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 2015, available at: <http://www.refworld.org/docid/55efec2f4.html> [accessed 13 July 2017]
- [8] The Adjarian lion snarled [Digital source] // URL:<https://lenta.ru/papers/2003/11/25/adzaria/> (accessed date: July 13, 2017).
- [9] International Committee of the Red Cross (ICRC), Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 August 1949, 75 UNTS 31, available at: <http://www.refworld.org/docid/3ae6b3694.html> [accessed 13 July 2017]
- [10] Prosecutor v. DuskoTadic aka "Dule" (Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction), IT-94-1, International Criminal Tribunal for the former Yugoslavia (ICTY), 2 October 1995,

- available at: <http://www.refworld.org/cases,ICTY,47fdfb520.html> [accessed 13 July 2017]
- [11] International Crisis Group (ICG), Kosovo: No Good Alternatives to the Ahtisaari Plan, 14 May 2007, Europe Report N°182, available at: <http://www.refworld.org/docid/464969da2.html> [accessed 14 July 2017]
- [12] Efficiency of legal norms / Glazyrin V.V., Kudryavtsev V.N., Nikitinsky V.I., Samoshchenko I.S. - Moscow: Juridical Literature, 1980. - P. 48