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THE CORRELATION OF HUMAN RIGHTS AND STATE INTERESTS IN INTERNATIONAL LAW

It takes place a disbalance of interests between a state and human since the international law exists. The supremecy of a state sovereignty or human rights is a perennial issue, which pertains to all global community. Today there is a common tendency of restriction of a state sovereignty by the way of imposing of human rights primacy. Nevertheless, there is a state of necessity to resolve these legal collisions both in international public as international private law. These legal issues were considered by the International Commission on Intervention and State Sovereignty, established in 2000 under the aegis of the United Nations. Namely, in its report «The Responsibility to Protect», the International Commission on Intervention and State Sovereignty pointed out the important issues for the international community. There is no consensus concerning the range of sanctions that are applied by one state to another beginning from the individual coercive measures to the sanctions of international organizations, but sometimes the armed interventions take place. The rights and interests both the states, as the persons enshrined in international law. All exceptions on the basis of which States legally violate their international obligations and as a consequence human rights, make the international law unefficient. Even the legal rules contain a conflict of interest of the states and individuals. So, practice confirmes, despite the Convention and institutional mechanisms on human rights protection, according to which the states have obligations, balance of interests of the state prevails over the human rights.

The problem of systematic human rights violation is a lack of universal mechanisms for their protection. The effective judicial protection does not exist in the framework of the universal system of human rights protection. Thus, in the era of globalization and convergence of legal systems it is necessary to abandon from a dogmatic postulate on the role of the state in international relations. This approach should be replaced and completed by new, which will represent the priority of human rights as the basis of civil society, democratic state and law in general.

Keywords: human rights, state sovereignty, a balance of interests, humanitarian interventions, the International Commission on Intervention and State Sovereignty.

The current problem of international law is a conflict of interests between the state and individual. The state realizing their interests ignores human rights by the way of violation both international law as their national legislations. Systematic human rights violation occurs at all levels: universal, regional, national.

The legal nihilism leads to loss of public confidence in any legal mechanisms which protect human rights. The system is in decline, which is a standard element in the development cycle of international relations. Certainly, the balance of interests mechanisms of the state and individual are not framed and unlikely they will be created in the future, but there are the ways of bringing the states to responsibility for their illegal actions.

Even the most authoritative universal international instruments contain the legal collisions. Thus, the UN Charter, on the one hand, proclaims human rights (Art. 1 p. 3), and on the other hand, confirms the absolute state sovereignty. In practice, these rules create a conflict in the law. Resolving of this conflict lies in the legal capacity of the state and individuals.

The individuals possess the primary natural juridical personality and all other entities are secondary, in particular the state. The state is a legal fiction created by law and beyond law does not exist, and as a result the sovereignty, which gave the state broad power, is limited by human rights.

In recent years it has been occurred a re-thinking of the basic concepts of international law. First of all the concept of sovereignty has been changed which reduced the rights of the states. The transformation of national sovereignty was primarily caused by: 1) increasing of the states interdependence and 2) cross-border threats to the states international security and public safety, global peace and stability. The scope of the state sovereignty is not clearly defined and its volume depends on the events in the country and abroad, and also on the level of the states threat to the worldwide order. Also, the sovereignty borders depend on the stabilizing or destabilizing state impact on the international relations.

In addition, the state is limited by exclusive sovereignty by its own nation who fall under its jurisdiction. As a result of globalization the state ceases to be the sole representative of its citizens. The governmental organizations assume an essential part of these functions. As a result individuals are deemed as members of the global community, not only as residents of a particular state. This situation is also justified by international law, development of which after World War II significantly reduced an amount of authority that the states use ex gratia. The establishment of international systems of human rights protection by the way of imposing the obligations on the states to provide their protection restricts the states freedom. This approach has been repeatedly confirmed in many documents of international law, including the countries participating in the OSCE.

One way to solve the problem between the sovereignty of the states and the obligation to respect human rights outlined in the report « Responsibility to protect» of the International Commission on Intervention and State Sovereignty, established in 2000 under the aegis of the UN. In its report «The Responsibility to Protect», the International Commission on Intervention and State Sovereignty points out the important issues for the international community to take on. The Commission on has, for its part, contributed to defining the responsibility to protect as an ability to prevent mass violations of human rights, and to react to them and reconstruct when they occur. Also, it indicated that the responsibility of the states to protect their citizens involves an accompanying «responsibility to prevent», i.e., to address the root and direct causes of internal conflict and other man-made crises that put populations at risk. Finally, at the international level, the report of the International Commission on Intervention and State Sovereignty has articulated a set of principles and guidelines that allow international interventions when a state fails to protect the rights of its own citizens.

Trying to define the boundaries of sovereignty, the Commission paraphrase the question: what the state is entitled within its borders, the question that it has no right to do, and logically came to the conclusion – based on the intentions of the states, which expressed in the International Conventions on Human Rights, the states have no right to violate the rights and dignity of the citizens. This means that sovereignty implies a dual obligation: a) external – to respect the sovereignty of other states and b) internal – to respect the rights and dignity of people under the jurisdiction of a particular state.

Gareth Evans, co-chair of the Commission, noted that this understanding of sovereignty «has strengthened significantly looking at growing influence of international standards on human rights and the growing influence of the concept of human security in the international discourse»[1].

The obligation to protect the state sovereignty and the principle of non-interference, which was considered as the protection of strategic security of the national and international order, was extremely strong arguments during the cold war. However, after its coming to the end the significant changes are especially noticeable in the decisions of the UN Security Council. The Security Council, escaped from the need to balance between two blocks, became more sensitive react to cases of mass rough violations of the human rights and initiate actions aimed to protect the civilian population. The evolution of the Security Council after the end of the cold war led to the recognition of the legitimacy of restrictions of the principle of non-interference with respect of the principle of protection of human rights. In the early 90s of XX century the Security Council by the way of making decisions related to the protection of civilians, justified them by the international consequences of internal conflicts in the form of, in particular, mass movements of refugees which destabilized the situation in a certain region. Thus, the Security Council has avoided the charges concerning the unreasonable interference in the internal affairs of the states. The resolution on Somalia (No. 794/92), adopted by the Security Council in 1992, was a revolutionary breakout, in which the decision was made to intervene in the internal conflict, without addressing to the international consequences of the conflict. Similarly was done in Rwanda and Haiti in 1994 (resolution No.

[1] *Bankovic and others v. Belgium and other 16 States* [GS], no. 52207/99, §28, ECHR 1999-X

929/94 and 940/94). So, the Security Council came to the conclusion that it is enough to prove an existence of the serious and massive human rights violations to justify the violation of the principle of non-interference. Thus, the Security Council ipso facto changed the gradation of the principles of international law. The Security Council confirmed its interpretation in the resolution № 1296 in 2000, in which it determined that the attacks on civilians committed during the armed conflict, are a real threat to international peace and security, and consequently it authorizes the Security Council to take appropriate actions.

The relevant questions arise in the context of the weakening of the principle of non-interference in the internal affairs of the states to protect human rights: a) if all members of the international community can demand that the states fulfill its obligations to respect human rights and b) if all authorized such actions? There is no doubt that the answer to the first question is "Yes". The second question is very controversial especially in the context of NATO's military intervention in Kosovo in 1999.

Also, it is necessary to consider whether the separate state have a right to interference in internal affairs under international law independently of the UN? Essential for the answer to this question is the development of the principle of state responsibility for violations of the international law. The codification of this area, despite the significant work of the International Law Commission, is very slowly. According to the doctrine the international responsibility of the states arises at the moment when the state violates obligations arising in the framework of international law, in particular treaty, customary law and general principles of international law and decisions of international organizations, including the unanimous resolutions of the UN General Assembly, which develop and maintain the general legal rules. In the concept of the «responsible protection» the main focus is on the non-military methods of intervention, on prevention human rights violations» [1]. The principle of state responsibility for violation of the law is a norm of general international law. But the breached treaty countries have a right to intervene. Regarding the situation in Chechnya in 1994, the former Minister of foreign Affairs of Poland K. Skubiszewski noted that the countries that are the parties of the Geneva Conventions and the Additional Protocols thereto which concerns victims of non-international conflict, on the basis of reciprocity can achieve from Russia an observance in Chechnya of human rights and humanitarian law.[2] According to the Code of Responsibility, created by the International Law Commission, if the state undertakes an obligation, recognized by all global community, any state may require to fulfill their obligations.

There is no consensus concerning the range of sanctions that are applied by one state to another beginning from the individual coercive measures to the sanctions of international organizations, but sometimes the armed interventions take place.

The rights and interests both the states, as the persons enshrined in international law. Among the documents of the universal nature that protect human rights are:

1. The Universal Declaration on Human Rights;
2. The International Covenant on Economic, Social and Cultural Rights;
3. The International Covenant on Civil and Political Rights;
4. The optional Protocol to the International Covenant on civil and political rights;
5. The Second Optional Protocol to the International Covenant on Civil and Political Rights.

In addition to these agreements there are a number of international legal instruments aimed to protect fundamental rights and freedoms of individuals, including regulating the legal status of certain groups of people and focused on protecting rights of individuals and groups in situations of armed conflict. Among them are:

1. The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Acting Armies of 12 August 1949;
2. The Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949;
3. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949;
4. The Convention on the Political Rights of Women of 20 December 1952;

[1] *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nikaragua v. United States of America) ICJ Report 1986* <http://www.icj-cij.org/docket/index.php?sum=367&p1=3&p2=3&case=70&p3=5&lang=en>

[2] Столяров, А.А. (2015). *Влияние исторической памяти в польско-российских отношениях 1989-2009.* Санкт-Петербург, 390

5. The Convention on the Rights of the Child of 20 November 1989;
6. The Convention Relating to the Status of Refugees of 28 July 1951;
7. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 18 December 1990;
8. The Convention Concerning Indigenous and Tribal Peoples in Independent Countries of 27 June 1989;

Many of the conventions are approved by the International Labour Organization (ILO).

In accordance with the provisions of international treaties there is a relevant system of inter-state bodies with functions of international control in the sphere of human rights protection. The appropriate authority on behalf of the UN implements ECOSOC, under the leadership of which acts the Commission on Human Rights.

The structure of the UN Secretariat consists with the Centre for Human Rights. In December 1993, the General Assembly adopted a resolution on the establishment of the post of the UN High Commissioner on Human Rights. Then conventions provide for the establishment of special bodies empowered in the area of human rights. It includes the Committee on Human Rights on the basis of the Covenant on Civil and Political Rights; the Committee against torture under the Convention against torture and other cruel, inhuman or such that the degrading, inhuman or degrading treatment or punishment; the Committee on the rights of the child on the basis of the Convention on the rights of the child etc.

Only the international covenants and optional protocols, which subject to ratification, are legally binding, but there is an exception. States, by signing the international agreements, without further ratification, become legally bound by the preamble of this agreement. This indicates that the signing of the contract demonstrates the strong intention of the state to follow the provisions of the treaty.

In addition, specified in the treaties human rights are typically incorporated into national legislation, which gives grounds to point the primacy of human rights over the interests of the state. But there are the instances when the states establish a non-democratic political regime in the country and do not recognize human rights as the highest value. In this case, the state is always guided solely by national interest, which leads to further violation of human rights. Paradoxically that, for example, sometimes in totalitarian states, citizens may be deprived of certain political and cultural rights, but inalienable rights such as the right to life, security are guaranteed and implemented better than in countries with a democratic regime.

All other acts with more details are legally non-binding and only declare the intentions, enshrined in the international treaties. However, we cannot deny their importance because of their optionality, as they are as close as possible to the ideal form of human rights.

Moreover, the doctrinal thought of G. A. Mullerson indicates that the treaties on human rights «sets out the obligations of the states not only to states parties but also to their citizens». And V. A. Kartashkin noted that «by concluding international agreements on human rights, the states voluntarily waive of their sovereign rights and transfer them to international bodies which are authorized to interfere in their internal affairs».

Today the international legal frameworks that ensure the interests of the states, are more effective. The elements of this mechanism are:

1. The chapter VII of the UN Charter, which regulates an order of taking measures in case of threat to the peace, breach of the peace and acts of aggression.
2. The creation of a separate body, namely the Security Council, whose decisions are binding to all states.
3. The rights of the states to individual and collective self-defence (article 51 of the UN Charter).
4. The existence of regional agreements and organizations, which deal with the issues related to the maintenance of peace and security (article 52 of the UN Charter, the statutory documents of the North Atlantic Treaty Organization (NATO), the Organization of American States, Organization for Security and Cooperation in Europe.
5. The existence of bilateral and multilateral agreements regulating the issues of joint activity of the states.
6. The states have unconditional right to self-defence.

The human rights violation is systematic and comprehensive, and worst of all, when this violation relates to international humanitarian law. The states apply countermeasures against the violators of its international obligations, but the imposition of sanctions against the government lead to violation of human rights.

The individual in most cases is deprived of right to self-defence. The implementation by the states of their own interest often leads to massive violation of human rights. The military sanctions are one of the examples.

The sanctions have two kinds of coercion for violation of international law. The first method is implemented by non-military means (embargo on weapons, oil, freezing accounts abroad, the economic blockade). It is proved by practice that any coercion by the state leads to negative consequences such as mass migration, famine, and infectious diseases.

In the case of the use of military force, the consequences are more significant. It is often when the most vulnerable populations who usually have no connect to the actions of the government and are not guilty before the international community, suffer the most. According to the memoirs of the Soviet ambassador Tarasov, who has been working between 1950 and 1988 in Korea, China, Somalia and Kenya, «American planes destroyed the area of Sengur, all died, the land remained maimed».[1] The government officials usually do not suffer from the consequences of their activities.

The civil society in armed conflicts suffers from a lot of problems as a result of the taking military measures. These are the medical problems, and an inability to obtain education, the use of children for military service, the continuous migration of the population.

Even the use of non-military sanctions leads to an increase of mortality rate in the state. So, the economic sanctions against Iraq included baby milk, because there was the possibility of its use in the production of weapons of mass destruction. According to the data of WHO, the infant mortality rate after these events has increased in 25 times. Also, the Iraqi representative of UNICEF Philip Herrick says that « in Iraq, about 4,500 children under 5 years dying each month from hunger and disease».

In General, the war of Iraq against Iran (1980-1988), the Gulf war in 1991 and sanctions has led to the suffering of 10 million Iraqi children.

Any armed conflict leads to population migration. In the early 80s there were 5.7 million refugees in the world there. In the latest 80s this number had risen to 14.8 million and currently reaches 27.4 million people. According to the UN data, the number of persons who changed their place of residence within their country in connection with armed conflict is 30 million people.

Almost half of refugees and displaced people are children. During the migration millions of children have lost their families.

The sanctions often lead to a shortage of resources, unfair distribution. Iraq in 1990s has undergone probably the most stringent regime of sanctions that have ever been applied. In order to ease an impact on the health, the Security Council adopted Resolutions 706 (1991) on the use of frozen Iraqi accounts for the purchase of food and medicine, and said that these goods should be distributed under the supervision of the UN.

The Iraqi government considered these conditions unacceptable and began to discuss it only in 1995. Meanwhile, the situation was continuing to deteriorate. Over the next 5 years, child mortality has tripled. The program «Oil in exchange for food», as proposed in Resolution 986 (1995) of the Security Council, provided an opportunity to mitigate the negative impact of sanctions on children. Under this programme, all proceeds from the sale of oil was to be spend on humanitarian and social purposes.

Today, the most effective means of the protection of human rights is the European Court of Human Rights, the legal nature of the decisions of which has complementary reference nature that does not allow to make it a mechanism for balancing interests and a deterrent that will prevent the violation of human rights.

The case «Bankovic and others *v* Belgium, Great Britain, Greece, Denmark, Iceland, Spain, Italy, Luxembourg, the Netherlands, Germany, Norway, Poland, Portugal, Turkey, Hungary, France, Czech Republic» was declared unacceptable, despite the existing order and procedures established by the Rules of the European Court of Human Rights.

On 29 April 1999, the citizens of Serbia file a lawsuit in the ECHR in relation to the bombing by NATO forces, citing on the following provisions of the European Convention on Human Rights 1950: right to life (article 2), freedom of expression (article 10), the right to an effective remedy (article 13).[2] The decision of this case remains controversial, because if there are clear violations of the Convention, the Court declares the complaint inadmissible for lack of jurisdiction for the recognition of breach of these

[1] Тарасов, В.А. (1997). *Советская дипломатия в период Карейской войны (1950-1953).* Москва: Научна книга, 134-150.

[2] *Bankovic and others v. Belgium and other 16 States* [GS], no. 52207/99, §28, ECHR 1999-X

rights. Therefore, the ECHR requires an upgrading, namely: extension of jurisdiction in time of armed conflict.

The European Convention on human rights also contains the contradictions. Article 2 of the Convention guarantees the right to life, and article 15 provides that

«1. In the event of war or the existence of a state of emergency threatening the life of the nation any High Contracting party may take measures derogating from its international obligations under the Convention to the extent to which this is due to the state of emergency, provided that these measures are not inconsistent with its other obligations under international law.

2. This provision cannot be the basis for derogation from the provisions of article 2, with the exception of cases of deaths as a result of legitimate military action [...]».[1]

That is why, all exceptions on the basis of which States legally violate their international obligations and as a consequence human rights, make the international law inefficient. Even the legal rules contain a conflict of interest of the states and individuals. So, practice confirms, despite the Convention and institutional mechanisms on human rights protection, according to which the states have obligations, balance of interests of the state prevails over the human rights.

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Thus, in the era of globalization and convergence of legal systems it is necessary to abandon from a dogmatic postulate on the role of the state in international relations. This approach should be replaced and completed by new, which will represent the priority of human rights as the basis of civil society, democratic state and law in general.

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5. *The European Convention on human rights* (adopted on 4 November 1950, entered into force on 1 June 2010) (ECHR) art 2. <http://www.echr.coe.int/Documents/Convention_ENG.pdf> [in English]

[1] *The European Convention on human rights* (adopted on 4 November 1950, entered into force on 1 June 2010) (ECHR) art 2. <http://www.echr.coe.int/Documents/Convention_ENG.pdf>