

LEGAL INSTRUMENTS AND GLOBAL AGREEMENTS CONCERNING TEMPORARILY OCCUPIED TERRITORIES

Yuliia Dankevych

Candidate of Philological Sciences, Associate Professor, V. I. Vernadsky
Taurida National University, Ukraine

e-mail: dankevych.yuliia@tnu.edu.ua, orcid.org/0000-0002-6518-7078

Summary

The purpose of the article is to analyze the legal mechanisms and international agreements regulating the issue of temporarily occupied territories in the context of modern international conflicts and the full-scale russian-Ukrainian war. The relevance of the study is due to the growing number of territorial disputes that violate the principles of international law, in particular, sovereignty, territorial integrity and human rights. National legal acts of Ukraine determining the status of temporarily occupied territories, as well as international documents, such as the Geneva Conventions, the Rome Statute and UN resolutions, are considered in the work. The role of international judicial bodies, in particular the European Court of Human Rights, in protecting the rights of injured citizens is analyzed. Special attention is paid to the mechanisms of sanctions and their impact on Russia as an aggressor state.

The novelty of the research lies in a comprehensive approach to the study of the issue, in particular, in proposals for improving law enforcement practice. The results of the work are aimed at improving the effectiveness of international and national legal mechanisms, promoting the de-occupation of the Autonomous Republic of Crimea, Luhansk and Donetsk regions, and protecting the rights of the population in the occupied territories. Also, the article is part of the research topic «Consequences of the occupation policy in the activities of information institutions in the temporarily occupied territories».

Key words: regulatory documents, territorial integrity, consequences of the occupation policy, de-occupation, international cooperation.

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1. Introduction

The novelty of the topic and the relevance of the scientific solutions of the article are due to the increase in the number of conflicts associated with temporarily occupied territories. Today, we have a real threat to the international legal order, the sovereignty of states and violations of the rights of the civilian population. The insufficient efficiency of the current international legal mechanisms will be analyzed using the example of Ukraine. The need to disclose the topic consists in a comprehensive analysis of modern legal instruments, their impact on the restoration of territorial integrity and strengthening of international cooperation.

Special attention was paid in the study to the implementation of international humanitarian law in modern conditions and the interaction of national and international legal systems. The article also suggests ways to improve existing mechanisms, which makes it relevant both for legal scholars and international institutions. Analyzing the Ukrainian experience, the work indicates the possibility of applying the developed approaches in other conflicts. Therefore, the research has both practical and theoretical significance for the modern study of legal documents related to temporarily occupied territories.

The purpose of the study is a comprehensive analysis of legal mechanisms and international agreements regulating the issue of temporarily occupied territories, in order to develop effective approaches to their application. The study is aimed at identifying the key problems of the implementation of international law in cases of occupation, particularly on the example of Ukraine.

2. National Legal Instruments

The state system is established by the main legal acts of Ukraine. Thus, Article 2 of the Constitution of Ukraine defines that «Ukraine is a unitary state. The territory of Ukraine within the existing border is integral and inviolable» (*Constitution of Ukraine, 1996*). That is, the Constitution of Ukraine defines the main principles on which territorial integrity is based. The precedents that led to the emergence of new documents were the events of September 2023, when the Russian Federation announced its intention to hold elections in the temporarily occupied territories.

The Central Election Commission of Ukraine adopted a legal act condemning such illegal actions. It is about the Resolution «On the invalidity of pseudo-elections in the temporarily occupied territories of Ukraine» No. 59 of September 14, 2023 (*About the invalidity of pseudo-elections in the temporarily occupied territories of Ukraine, 2023*). The text of the Resolution calls on citizens who remained in the «temporarily occupied territories of Ukraine to refrain from participating in any activities aimed at organizing the preparation and holding of illegitimate elections to the occupying authorities of the aggressor state, and foreign states, their election administration bodies and international organizations - to condemn the actions and decisions of the bodies of the Russian Federation and its occupation administrations regarding the implementation of such measures» (*About the invalidity of pseudo-elections in the temporarily occupied territories of Ukraine, 2023*).

Also, the Resolution once again emphasizes that such elections are evidence of encroachment on the integrity of the territory of Ukraine, our state system, which is enshrined in the aforementioned Article 2 of the Constitution of Ukraine. In turn, Article 133 of the Basic Law of Ukraine declares that «the Autonomous Republic of Crimea, Donetsk, Zaporizhzhya, Luhansk and Kherson regions, the city of Sevastopol are constituent parts of the territory of Ukraine» (*Constitution of Ukraine, 1996*). That is, the Resolution at the legal level not only indicates the violation of all legal national and international norms regarding the inadmissibility of such elections, emphasizing that «from February 24, 2022, a legal regime of martial law was introduced in Ukraine, the effect of which was repeatedly extended and continues to this day, under which the holding of any elections is prohibited (Article 19 of the Law of Ukraine «On the Legal Regime of Martial Law», Article 20 of the Election Code of Ukraine)» (*About the legal regime of martial law, 2015*).

In general, further analysis of the main laws regulating the status of temporarily occupied territories should be started from 2014, when the Verkhovna Rada of Ukraine adopts the Law «On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine», in which it is said that contrary to all national and international legal norms, the Russian Federation temporarily occupied part of the territories of Ukraine. The main articles of the Law define the status of territories, features of management, the state and duties of the civilian population.

Article 1. The legal status of the temporarily occupied territory of Ukraine determines, what «the date of the beginning of the temporary occupation is 20 February 2014» (*On ensuring*

the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine, 2014). Later, Article 3. Temporarily occupied territory substantiates which territories of Ukraine are considered temporarily occupied from the specified period, in particular: «the temporarily occupied territory is defined as: land territory of the Autonomous Republic of Crimea and the city of Sevastopol, the internal waters of these territories of Ukraine; internal sea waters and territorial sea of Ukraine around the Crimean Peninsula, the territory of the exclusive (maritime) economic zone of Ukraine along the coast of the Crimean Peninsula and adjacent to the coast of the continental shelf of Ukraine, which fall under the jurisdiction of government authorities of Ukraine under the norms of international law, the Constitution and laws of Ukraine; subsurface resources under the territories specified in clauses 1 and 2 of this part, and airspace over these territories» (*On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine, 2014*).

On April 21, 2022, the Law of Ukraine «On Amendments to Certain Laws of Ukraine Regarding Regulation of the Legal Regime in the Temporarily Occupied Territory of Ukraine» was adopted. The document elaborated both the legal status of the temporarily occupied territory and the legal regime. In addition, the Law «On Amendments to Certain Laws of Ukraine Regarding the Regulation of the Legal Regime in the Temporarily Occupied Territory of Ukraine» in Article 4, as in the previous Law «On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine», determined the priority goals of state policy in the temporarily occupied territories. These goals are: «deoccupation of the temporarily occupied territory; ensuring the protection of the rights, freedoms and legitimate interests of individuals and legal entities to the extent prescribed by law; ensuring the independence, unity and territorial integrity of Ukraine» (*On Amendments to Certain Laws of Ukraine Regarding Regulation of the Legal Regime in the Temporarily Occupied Territory of Ukraine, 2022*).

Articles of normative legal acts are strengthened by the Law of Ukraine «On Sanctions», the first edition of which was adopted in August 2014. The Law analyzed by us actually helps to limit the economic and political activity of the aggressor, in particular, in the occupied territories. Article 5 of the Law defines the grounds used for imposing sanctions. In accordance with the armed aggression of the Russian Federation, sanctions are extended to «participation in decision-making regarding the creation, as well as in the creation, state financing and logistical support by the aggressor state of self-proclaimed bodies under its control, who usurped the performance of power functions in the temporarily occupied territories of Ukraine» (*On Sanctions, 2017*). Also, the law establishes the sanctioning of those persons who justify the invasion and seizure of Ukrainian lands. We are talking about the so-called glorification, that is, «glorification, glorification of someone or something» (*On Sanctions, 2017*).

We must emphasize that the Criminal Code of Ukraine provides for the responsibility of persons for glorifying the above-mentioned persons, starting from 2014. For the actions «responsibility in the form of correctional works for a term of up to 2 years or arrest for a term of up to 6 months, or imprisonment for a term of up to 3 years is provided (part 1 of Article 436-2 of the Criminal Code of Ukraine)». That is, today there is a valid legal framework that at one time contributed to the formation of the state's strategy regarding the temporarily occupied territories, legitimizes Ukraine's actions, and is based on the principles of protecting sovereignty and the return of territories.

3. International Agreements and Legal Frameworks

In addition to national, international law itself, at least through normative legal acts, regulates and determines the status of temporarily occupied territories. One of the central documents ensuring the protection of the rights of individuals in such territories is the Geneva Conventions of 1949. In August 1949, the Geneva Convention for the Protection of the Civilian Population in Time of War was signed. The then Ukrainian SSR ratified the Convention in 1954. The document establishes a legal framework for the conduct of the occupying forces, defines the rights of civilians and obligations towards the participating states. In particular, Article 6 states that «the Convention shall apply from the beginning of any conflict or occupation referred to in Article 2», which refers to cases of partial or total occupation.

One of the Geneva Conventions analyzed by us has a number of articles that deal with the protection of the rights of the civilian population under conditions of occupation (yes, Part III of the Convention contains provisions on the territories of the parties to the conflict and the occupied territories). Section III (Articles 47-78) is devoted to the occupied territories separately (*Geneva Convention for the Protection of the Civilian Population in Time of War, 1949*). Unfortunately, the practical application of the provisions of the Convention faces numerous difficulties. Russia, as an occupying power, evades its obligations by using legal or political loopholes. For example, in the modern context of the temporarily occupied territories of Ukraine, the Russian Federation is systematically ignoring the norms of international humanitarian law. Russia denies the very fact of occupation, calling it «inclusion into the state», which complicates the application of sanctions and legal measures at the international level.

In addition to the Geneva Conventions, it is worth paying attention to other international documents and institutions that play an important role in the issues of temporarily occupied territories. For example, the European Court of Human Rights hears cases related to violations in the occupied territories. In particular, the court has already considered a number of complaints against Russia for violating the rights of Ukrainian citizens in Crimea and Donbas. For example, cases «Ukraine and the Netherlands v. Russia» under No. 8019/16, No. 43800/14, No. 28525/20 (*Cases «Ukraine and the Netherlands v. Russia», 2022*). The complaints refer to "violation by Russia in the occupied territories of Donetsk and Luhansk oblasts of the rights of citizens guaranteed by the following articles of the Convention: 2 (Right to life), 3 (Prohibition of torture), 5 (Right to freedom and personal integrity), 6 (Right to fair court), 8 (Right to respect for private and family life), 9 (Freedom of thought, conscience and religion), 10 (Freedom of expression), 11 (Freedom of assembly and association), 14 (Prohibition of discrimination) in conjunction with 3 articles 3, 8, 9, 10, 11 of the Convention and article 1 (Protection of property rights) of the First Protocol to the Convention, Article 2 (Freedom of Movement) of Protocol No. 4 to the Convention. On November 8, 2019, the Government of Ukraine submitted a written position to the ECtHR for oral hearings in the case «Ukraine v. Russia (regarding eastern Ukraine)» under No. 8019/16 (*Cases «Ukraine and the Netherlands v. Russia», 2022*).

According to information provided in official sources, in June 2024, the Grand Chamber of the European Court of Human Rights published a decision on the interstate case «Ukraine v. Russia (regarding Crimea)». The case dealt with two applications submitted by Ukraine: Application No. 20958/14 related to numerous human rights violations that, according to Ukraine, took place in Crimea after its illegal annexation by Russia in 2014; Application No. 38334/18 concerned the imprisonment and other human rights violations of Crimean Tatars and other ethnic minorities who opposed the Russian occupation. Ilona Mylostiva, lawyer and advocate, in the article «The decision of the ECtHR on Crimea: what it means for Ukraine» of the

publication «Yuridychna gazeta online», rightly notes that «according to Article 33 of the Convention, the Court defines two main categories of interstate applications: one of the categories covers cases, when the applicant state complains about a violation by another contracting party of the fundamental human rights of one or more clearly defined or identified persons (individual), another category concerns cases raising general issues raised for the purpose of protecting public order in Europe (interstate). In light of the position of the Ukrainian side, the ECtHR decided that the claims in the applications clearly fall under the second category of interstate cases» (*Mylostiva I, 2024*).

Another important document is the Rome Statute of the International Criminal Court, which defines war crimes, crimes against humanity and genocide. Ukraine is not a full member of this statute, but cooperates with the International Criminal Court, providing evidence of crimes committed on its occupied territories. This makes it possible to prosecute those responsible for war crimes. In addition, the role of international arbitration, such as the Permanent Chamber of International Justice, is to settle disputes between states, although their decisions are often advisory in nature and not always implemented in practice.

Of course, it is necessary to emphasize the role of the United Nations Organization regarding the consequences of the temporary occupation. The United Nations is the leading international body responsible for maintaining peace and security. However, its role in settling the issues of temporarily occupied territories, such as Ukrainian Crimea and Donbas, in our opinion, causes ambiguous assessments. On the one hand, UN General Assembly Resolution 68/262 confirmed the territorial integrity of Ukraine, pointing out the illegality of the annexation of Crimea. On the other hand, the effectiveness of UN actions is often limited by the right of veto in the Security Council.

That is why the problems related to the activities of the UN can be characterized as structural. For example, Russia, as a permanent member of the Security Council, blocks any resolutions condemning its actions. This creates a situation where the international organization, designed to ensure compliance with international law, becomes hostage to the political interests of individual states. This state of affairs calls into question the ability of the UN to respond effectively to situations of occupation. Despite the existence of a significant number of international agreements and mechanisms, their effectiveness in matters of temporarily occupied territories is limited. The main reasons for this are the politicization of international organizations. As already mentioned, the right of veto in the UN significantly limits the opportunities for decision-making. Insufficient implementation of norms of international law. Many provisions of the Geneva Conventions remain declarative due to the lack of effective enforcement mechanisms. Weak interaction between international and national institutions. Governments of states whose territories are under occupation often face problems in using international legal instruments due to domestic political or legal constraints.

4. Harmonization of National and International Law

Temporarily occupied territories pose a difficult challenge for modern international law and national legal systems. Ukraine, faced with the illegal occupation of part of its territories, was forced not only to adapt domestic legislation, but also to strengthen cooperation with the international community. Now it allows more effective resistance to violations, as well as to ensure the rights of its citizens remaining under the conditions of occupation. Ukraine has actively adapted its legislation to solve problems related to the occupation. Thus, the Law of Ukraine «On ensuring the rights and freedoms of citizens and the legal regime in the temporarily

occupied territory of Ukraine» (2014) defines the legal regime of the occupied territories and guarantees for citizens living there (*On Ensuring Civil Rights and Freedoms, and the Legal Regime on the Temporarily Occupied Territory of Ukraine, 2014*).

Changes have been made to the regulatory legal system regarding criminal liability for collaborationism, violation of the legal regime, and support for occupation administrations. The Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding Establishing Criminal Liability for Collaborative Activities» defines punishment for those persons who voluntarily began to cooperate with the occupation regime. In general, collaborative activity is punishable by «deprivation of the right to hold certain positions or engage in certain activities for a period of ten to fifteen years» or «is punished by deprivation of the right to hold certain positions or engage in certain activities for a period of ten to fifteen years with or without confiscation of property» (*On amendments to some laws of Ukraine regarding the regulation of the legal regime in the temporarily occupied territory of Ukraine, 2022*).

The Constitutional Court of Ukraine has repeatedly confirmed the inadmissibility of changes in the status of territories without the will of the people of Ukraine. Ukraine effectively integrates international principles into its own legal system, cooperates with international organizations to document war crimes. This allows the use of international mechanisms to protect the rights of affected citizens. Ukraine initiated and supports international sanctions against Russia aimed at putting pressure on the aggressor to restore territorial integrity, actively uses the platforms of the UN, the Council of Europe, and the OSCE to draw attention to violations of international law.

Temporarily occupied territories remain a challenge to the international legal order, because their existence indicates non-compliance with key principles of international law. To overcome these violations, it is necessary not only to increase international pressure and sanctions, but also to develop more effective mechanisms to restore the sovereignty of the affected states and ensure legal protection of the civilian population in these territories. As we wrote above, in 2014 the Russian Federation illegally annexed Crimea and also contributed to the creation of separatist groups in the east of Ukraine. This became a flagrant violation of the norms of international law, in particular the UN Charter (Article 2), the Final Act of the 1975 Helsinki Conference and the 1994 Budapest Memorandum. Ukraine has adopted a number of legal acts regulating the status of these territories.

The West Bank, including East Jerusalem, are considered occupied territories under United Nations resolutions. Violation of humanitarian law, enshrined in the Fourth Geneva Convention of 1949, remains a major problem, especially in the construction of Israeli settlements. The conflict between Azerbaijan and Armenia regarding Nagorno-Karabakh is accompanied by the long-term occupation of part of Azerbaijan's territory. The UN Security Council has passed several resolutions (eg #822, 853, 874, 884) demanding the withdrawal of the Armenian armed forces from the occupied territories. After the military conflict in 2008, the Russian Federation actually occupied these regions, recognizing their independence, which contradicts the resolutions of the UN General Assembly on supporting the territorial integrity of Georgia.

International agreements and resolutions provide a legal basis for countering violations in temporarily occupied territories. Thus, Article 2 of the UN Charter enshrines the principle of sovereign equality of states and the prohibition of the use of force to seize territories. The annexation of Crimea, in particular, was condemned in UN General Assembly resolution No. 68/262 (2014). Geneva Convention IV (1949) regulates the protection of the civilian population during occupation, prohibiting deportation, forced resettlement, and changing the demographic structure of territories. The seizure of territory by aggression is a war crime under the

Rome Statute, which allows those responsible to be prosecuted. In the cases of Abkhazia and South Ossetia, as well as other occupied territories, Security Council resolutions emphasize the need to withdraw the occupying forces and restore the sovereignty of the affected states.

5. Conclusions

The issue of temporarily occupied territories remains one of the key challenges of modern international law and national legal systems. On the example of Ukraine, which underwent the illegal annexation of Crimea and the occupation of part of the territories of the Donetsk and Luhansk regions, we have a violation of international legal norms that pose a threat to the sovereignty and territorial integrity of our state. National legal acts, in particular the Constitution of Ukraine, legislation on the legal regime of temporarily occupied territories and sanctioning mechanisms, create a legal basis for fighting the occupation. The documents are primarily aimed at protecting the rights of citizens, ensuring territorial integrity and de-occupation of captured lands. At the same time, international law provides a universal framework for countering the occupation, in particular through the Geneva Conventions, the Rome Statute, as well as UN resolutions condemning violations of human rights and territorial integrity.

We must emphasize that the effectiveness of legal mechanisms remains limited due to insufficient implementation of international norms and the influence of political factors, for example, the right of veto in the UN Security Council. Despite considerable efforts, occupying regimes evade responsibility by using legal loopholes or denying the very fact of occupation. It is necessary to emphasize the importance of strengthening international cooperation, adaptation of national legislation to modern challenges and active use of international legal instruments. This requires the development of new mechanisms for holding the occupying regimes accountable, in particular through international judicial institutions, increased sanctions pressure, and monitoring of the implementation of the decisions of international bodies.

Therefore, an exclusively comprehensive approach, which includes the harmonization of national and international law, as well as the activation of the efforts of the international community, is capable of ensuring the restoration of the sovereignty of the affected states and the legal protection of their population. Ukrainian experience in fighting the occupation can be a useful example for other countries facing similar challenges. In turn, the prospects of further research in the field of legal mechanisms and international agreements regarding the temporarily occupied territories open wide opportunities for analysis and development of effective approaches to solving these problems. First, it is advisable to deepen the study of national legal instruments used to oppose the occupation and evaluate their effectiveness in different countries. Secondly, it is important to investigate the mechanisms of implementation of international humanitarian law in the context of modern conflicts, especially taking into account the practical difficulties of its application.

Further research could focus on improving international sanctions instruments aimed at stopping occupation actions, as well as on creating new legal mechanisms to strengthen the accountability of aggressor states. It is also important to study the role of international judicial institutions, such as the International Criminal Court and the European Court of Human Rights, in ensuring justice for aggrieved states and citizens. Particular attention should be paid to issues of information security and countering propaganda, which play an important role in strengthening occupation regimes. The analysis of Ukraine's experience in overcoming the occupation and the development of relevant legal norms can be a valuable contribution to the development of global practice.

Also, studies of the legal status of natural resources in the occupied territories and mechanisms of their protection are promising. An equally important direction is the study of the impact of occupation on human rights and the development of legal mechanisms for their restoration after de-occupation. In general, further research in this direction will contribute to the development of the international legal order, increasing the effectiveness of legal mechanisms for the protection of territorial integrity and the rights of citizens.

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