THE HUMAN RIGHT TO PEACE: THE NEED FOR CONSOLIDATION

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Abstract: The article is devoted to the theoretical justification for enshrining the human right to peace in normative acts. Due to society's threats, international law cannot regulate conflicts that are becoming increasingly large-scale daily. In this regard, the entire architecture of international law, including the international human rights system, requires urgent restructuring. The article aims to substantiate the need to enshrine every individual's right to peace and to determine the possibility of adapting such enshrinement to modern realities and normative transformations. The article describes the right to peace within the system of moral values, intellectual and philosophical appeals, and theories; characterises the right to peace in Ukrainian and international law; analyses court cases to establish the interconnection between the right to peace and human rights; and highlights the legal mechanisms for guaranteeing the right to peace. A list of declarations that enshrine the right to peace is provided. Due to their declarative nature, these declarations cannot implement the provisions enshrined within them. Examples from judicial practice are analysed in the context of national judicial proceedings and the European Court of Human Rights, where violations of the right to peace have been established. It is emphasised that the normative enshrinement of this right at both the international and national levels will contribute to developing the human rights protection mechanism and elevate it to a qualitatively new level. A separate section of the study concerns the legal guarantees for the realisation of the right to peace, and it is highlighted that the actual guarantee of this right primarily depends on political factors within society. The requirements each state should adhere to when determining the content and forms of guarantees in modern conditions are noted.

Keywords: International law, International human rights system, Collective rights, Legal guarantees, Regional conflict, Russian-Ukrainian war, General human rights doctrine.

1 Introduction

In connection with the continuous development of social relations, issues related to the mechanism of protection and the peculiarities of the realisation of human rights and freedoms in the scientific dimension are the most studied. However, regional conflicts, particularly the Russian-Ukrainian war, have revealed gaps in the current human rights system. This concerns the human right to peace, upon which other fundamental rights, including the right to life, depend. Moreover, although this right is enshrined in several international documents, it is essentially purely declarative given today's realities.

The human rights system in its current form was established after World War II. Furthermore, it cannot be said that it did not fulfil its functions or was ineffective during its creation and for some time afterwards. However, the outbreak of regional conflicts and the concerns of world leaders about the possible start of World War III led to the urgent need to restructure the architecture of the existing international law, including the international human rights system (Lacatus, 2024; Kovtunyk et al., 2023).

Indeed, if we refer to the definitive definition, where human rights are interpreted as the opportunities guaranteed by a democratic society for every individual to achieve a decent standard of living, an effective socio-legal system of protection against state arbitrariness, by norms established by international and national standards and procedures (Modern mechanisms for the protection of human rights, 2020), the question arises, the answer to which is obvious: is it possible to ensure them without peace? Only by observing and maintaining peace, both in each state and the world as a whole, will it be possible to improve living standards, gradually develop human rights, and provide more effective protection (Cahill-Ripley, 2016). This is why the human right to peace is in a stage of active development, and its study is highly relevant to the development of the general human rights doctrine.

If we refer to doctrinal sources, the right to peace can be characterised as an international collective right, which is based on ensuring the prerequisites for the safe, stable, and dignified life of human societies away from the dangers and calamities of wars as well as the consequences and dangers of armed conflicts, in light of the basic requirements stemming from the idea of ensuring the security of human rights, renouncing violence, achieving development, protecting the environment, and other elements that cannot be separated from the right to peace (Byelov & Sukhan, 2023; Korolchuk et al., 2023). The peaceful coexistence of citizens in the state is a prerequisite for developing mechanisms to ensure and protect other human rights and freedoms. It is worth recalling the opinion of Sands (2017), who considered it impossible to justify the killing of millions of people by the principle of state sovereignty.

The article aims to substantiate the necessity of enshrining every individual's right to peace and to determine the possibility of adapting such enshrinement to modern realities and normative transformations.

The authors of this article set the following research tasks, which were resolved during the analysis process: to describe the human right to peace within the system of moral values, intellectual and philosophical appeals, and theories; to characterise the human right to peace in Ukrainian and international law; to describe the declarative enshrinement of the right to peace at the international level in declarations; to analyse court cases to establish the interconnection between the right to peace and human rights; and to highlight the legal mechanisms for guaranteeing the human right to peace.

The problem of war and peace has always been an exciting subject of research for scholars around the world, given the philosophical aspect of the issue. However, in recent years, particularly after the full-scale invasion of the Russian Federation into Ukraine, the issue of peace has moved from a general theoretical dimension to a practical reality. Ukrainian legal doctrine is currently actively engaged in the theoretical development of this issue. Among the researchers in this field, D. Bielova, N. Onishchenko, I. Peresha, S. Suniehina, I. Sukhana, and others should be highlighted.

European researchers emphasise verbalising the human right to peace and its codification in normative legal acts (Parlevliet, 2017; Bell, 2017). Some researchers consider the right to peace fundamental, upon which other rights depend, such as life and health. As scholars Perry et al. (2015) point out, the right to health depends on other rights; therefore, conditions such as life, food, housing, and dignity are necessary to achieve health. However, many of these are destroyed by violent conflict. Thus, to protect these critical human needs and realise the right to health, it is essential to prevent armed conflicts and ensure the human right to peace. Violence has devastating consequences for people's health, affecting both combatants and civilians (Waldman, 2005; Lopatynskyi et al., 2023).

There is a determinism between the right to peace and the right to life. Some international courts consider the right to life as having achieved the status of jus cogens in international law (Yamin, 2003). The rights to life, health, and peace are interconnected. According to these principles, Article 1 of the draft Declaration on the Right to Life in Peace states: “Every human being has the right to the promotion, protection, and respect of all human rights and fundamental freedoms, particularly the right to life, in the context of the full realisation of all human rights, peace, and development” (United Nations Human Rights Council, 2014).

Researchers Guzman and Ali (2008) and Kryshtal (2023) rightly point out that peace education should be about freedom of the law. A person needs to learn how to use their freedom peacefully. In Kofi A. report, expanding the concept of freedom leads to freedom from poverty, fear, and dignity (Kofi Annan, 2005). The human rights movement's experience, particularly in

the West, has focused on opposing one-party states in Eastern Europe and military regimes in Latin America (Manikkalingam, 2008).

The scholar Turan (2023) conducted a critical analysis of the Declaration on the Right to Peace, as the liberal and positive elements of peace and the frameworks outlined in the Declaration are insufficient to eliminate horizontal inequality between all relevant identity groups as groups, which is necessary for establishing sustainable peace. The researcher also proposes guidelines for diagnosing and combating inequality between collectives, complementing the individualistic human rights approach.

Richmond (2006) examines the development of liberal peace, identifying its internal components and the tension between them, which is often overlooked. According to this researcher, the main components of liberal peace – democratisation, the rule of law, human rights, free and globalised markets, and neoliberal developmentare increasingly subject to criticism from various perspectives. This criticism has focused on the incompatibility of certain stages of democratisation and economic reforms, the possible incompatibility of post-conflict justice with stabilising society and human rights, the problem of crime and corruption in economic and political reforms, and the establishment of the rule of law (Richmond, 2006).

According to Rakesh Kumar Singh (2020), the essence of human rights jurisprudence is human dignity, which can only be realised in peaceful times. Peace is necessary for human development, human survival, and human happiness. The right to peace must be enshrined at the global, regional, and national levels. Upadhyaya (2018), speaking metaphorically, notes that an umbilical cord connects human rights and peace, and their interrelationship is an example of a two-way street. There is no peace if human rights are denied, and human rights cannot be realised without peace. The mere absence of armed conflict does not constitute peace if there is no healthy respect for human rights. The combination of peace and security with human rights and development emphasises the critical role of human rights in the UN's approach to peace.

The theoretical justification for the need to enshrine the individual's right to peace and its adaptation to modern normative transformations has so far remained outside the attention of scholars, which determines the relevance of our research.

2 Material and methods

The study material comprised normative legal documents, declarations, and the European Convention on Human Rights.

In the course of the research, the following methods were applied:

- the method of analysis and the method of synthesis – for conducting a critical review of scientific literature and analysing court cases in the practice of the European Court of Human Rights and Ukrainian judiciary;
- the descriptive method – for describing the verbal enshrinement of the human right to peace in various international declarations and the European Convention on Human Rights, in which this right is acknowledged but, due to their declarative nature, these instruments cannot implement the provisions enshrined within them;
- the comparative method – for comparing the legal enshrinement of the human right to peace in Ukrainian and international law;
- the structural-classification method – for distinguishing the components of legal guarantees, the requirements that each state must adhere to under modern conditions when determining the content and forms of legal guarantees;
- the method of generalisation – for formulating the scientific-theoretical conclusions of the research.

3 Results and discussion

The main problem of the human world has always been, and remains, the issue of war and peace. Wars of various scales have been continuously waged since the emergence of human society. The entire history of our civilisation can be quite rightly called the history of warsjust in the last century, humanity had to endure two world wars, and local armed conflicts continue to erupt in various parts of the planet. According to sources, from 3500 B.C. until now, humanity on Earth has lived only 292 years without wars, while 15,513 major and minor wars have claimed 3.64 billion human lives (Valiullina, 2017). International law itself received its first division into the law of war and peace from Hugo Grotius. However, as is evident from the previous thesis, the state of war has historically been much more prolonged than the state of peace.

Human rights are typically divided into three generations according to their historical development and institutional formation at the foundation of modern global architecture. According to this classification, the right to peace belongs to the third generation of rights (the rights of communities and groups). Analysing local conflicts, the escalation of which is increasingly alarming global proportions–including the Russian-Ukrainian war – we believe human rights have already surpassed the boundaries of collective rights and require additional enshrinement, particularly the separation of the right to peace for each individual. Such enshrinement is essential at the national (constitutional) and international levels, as it will enable each individual to protect their right by legislative norms. We will attempt to illustrate these dimensions (international and national) in the context of enshrining the individual's right to peace.

It should be noted that the right to peace itself emerged from the realm of intellectual conceptions and philosophical theses, which represent ideas and notions of peace as a legal category and a necessary guarantee and goal that must be respected. Therefore, this right moved from the sphere of moral values, intellectual and philosophical appeals, and theories into the domain of legal protection and normative regulation through the recognition of this right in numerous international charters and statutes of various international organisations, which confirmed the existence of this right and its legal basis, as well as called upon states to respect and preserve it (Al Saadi, 2022).

At the international level, the right to peace has found its enshrinement in documents such as the Declaration on the Promotion Among Youth of the Ideals of Peace, Mutual Respect, and Understanding Between Peoples (1965), the Declaration on the Preparation of Societies for Life in Peace (1978), the Declaration on the Right of Peoples to Peace (1984), the Declaration on the Establishment of Facts by the United Nations in the Field of the Maintenance of International Peace and Security (1991), the Declaration on Strengthening Cooperation Between the United Nations and Regional Organisations in the Maintenance of International Peace and Security (1994), the Declaration and Programme of Action on a Culture of Peace (1999), and the Declaration on the Right to Peace (2016). However, it should be reiterated that such enshrinement is, firstly, collective and, secondly, purely declarative, and, therefore, considering the realities of today, it requires modernisation. This modernisation should primarily encompass responsibility for violating the human right to peace and creating an appropriate mechanism for holding violators (aggressors) accountable for this right. In this context, it is necessary to mention the activities of the International Criminal Court, which operates based on the Rome Statute and deals with war crimes and crimes against humanity. Considering the specifics of its activities, the International Criminal Court may consider cases related to the violation of the right to peace, as when we talk about the violation of this right, in most cases, we are referring to war and armed conflicts.

In protecting the human right to peace, it is appropriate to mention the European Convention on Human Rights, in which the right to peace is not explicitly enshrined. However, when examining certain cases related to effective control over territory and some inter-state complaints, one can conclude that the court recognises that human rights violations may result from violating the right to peace. In order to gain a deeper insight, it is essential to examine several cases to establish the interconnection between the right to peace and human rights. For example, in "Al-Skeini and Others vs the United Kingdom", the Court recognised a violation of the procedural aspect of the right to life (Article 2). The applicants argued that their relatives, at the time of their deaths in Iraq, were under the jurisdiction of the United Kingdom and that due to the violation of Article 2 of the ECHR, there had been no effective investigation into the circumstances of their deaths. In order to gain an understanding of the international legal aspects of this case, it is essential to note that the coalition for the disarmament of Iraq, in which the United Kingdom participated, was established by United Nations Security Council Resolution 1441 of November 8 2002. Thus, the United Kingdom, whose representatives were in Iraq with the permission of the UN Security Council, is responsible for the violation of the right to life of Iraqi citizens on Iraqi territory. The conflict gained international significance due to violating the human right to peace, which led to violating other human rights.

The opinion of Peresh and Barna (2022) seems essential, as they, analysing the practice of the ECHR, traced a clear trend in the use of Convention tools for protection not directly contained in the Convention itself, including the right to peace. As an example, the scholars cite the Chechen cases. As of March 2009, Russia had been held accountable in 60 cases related to forced disappearances, 22 cases of extrajudicial executions, four cases of indiscriminate attacks, four cases of torture, one case of death due to negligence, and the destruction of property (in some cases for more than one violation). The Court also found that in many cases, the family members of the victims suffered inhumane treatment due to government actions or inaction in response to violations. In each case, the European Court recognised that Russia had not conducted an adequate investigation. Most of these cases concern torture, forced disappearances, and extrajudicial executions, which were used in Russian counteroffensive actions in the North Caucasus.

In considering the characterisation of the human right to peace in the context of Ukraine, it is essential to recognise that such a right is unlikely to be enshrined in law until the war's conclusion. It is also important to emphasise that such enshrinement is not a whim of scholars or individuals but a necessity in light of the challenges faced by Ukrainian society.

Despite the direct absence of such enshrinement in Ukrainian legislation, there are already isolated cases of national court decisions recognising the violation of the human right to peace. For example, on February 28, 2024, the Khmelnytskyi Regional Court ruled in favour of a plaintiff in a civil case for compensation for moral damages caused by the violation of her rights due to the military aggression and occupation of part of Ukraine's territory by the Russian Federation, the violation of her rights to peace, and the lawful, good-faith, and qualified activities of the Ukrainian state authorities concerning good faith (Decision of the Slavutsky City District Court of the Khmelnytskyi Region dated February 28, 2024). A similar decision occurred a few days earlier, on February 20, 2024, where the plaintiff sought compensation for moral damages, explicitly requesting that 1,200,000 UAH be recovered from the Russian Federation for moral damages caused by the violation of his rights due to armed aggression and the occupation of part of Ukraine's territory, as well as 1 UAH from the state of Ukraine for moral damages caused by the violation of his rights to peace and the lawful, good-faith, and qualified activities of the Ukrainian state authorities concerning good faith (Resolution of the Khmelnytskyi Court of Appeal dated February 20, 2024).

As we can see, legal precedents for protecting the human right to peace exist even though this right is not yet enshrined at the Ukrainian or international levels. Courts proceed from the interpretation that the right to peace is the most important legal institution around which all other human rights and freedoms are united. This further demonstrates the need for the direct enshrinement of such a right.

Based on this, we believe that ensuring every individual's right to peace at the international and national levels will "trigger" the overall renewal of the entire human rights system and further development of international law to establish peace as the highest value. The institutional establishment of such a right for each individual will in no way affect the already established right of humanity to peace at the level of declarations, except perhaps to complement it. The right to peace has a collective and individual character, as it is vital to the observance of all human rights. At the national level, such enshrinement can, or more accurately should, become the foundation of post-war legislation. It is important to stress that such enshrinement of the human right to peace will not yield the desired result and will be of little effect without the appropriate legal guarantees for its provision.

Indeed, any human right requires provision. One of the most important human rights guarantees is legal, carried out by the state. The state is the subject of society that has the most effective means for ensuring human rights. The set of legal means (guarantees) to realise, protect, and defend human rights constitutes the legal mechanism for ensuring human rights. In other words, legal guarantees (means) are the foundation of the legal mechanism for ensuring human rights. In order to comprehend the essence of legal safeguards about rights and freedoms, it is imperative to acknowledge that they facilitate the inter-relationship and interconnection between the individual and the state. In these relationships, the state acts as the obligated party, whose legal nature is manifested through the category of responsibility, which can only be legal. Therefore, the object of the legal guarantee mechanism is the realisation of human rights and freedoms and the obligations of the state.

We propose three components of legal guarantees:

1. Institutional guarantees;
2. Procedural guarantees;
3. Material guarantees.

However, it is essential to emphasise that the actual provision of such a right primarily depends on societal and political factors. After all, if every given guarantee were fulfilled, society would be peaceful and safe, our legal system would be fair and provide equal protection, and political processes would serve the people's interests and be transparent and democratic.

The main requirements that each state should adhere to in modern conditions when determining the content and forms of guarantees are as follows:

1. taking measures within the limits of available material and other resources that contribute to the fullest possible realisation of all human rights and freedoms;
2. ensuring the rights and freedoms of the individual without any discrimination;
3. establishing a minimum of restrictions, solely based on law and only to promote the general welfare and order in a democratic society;
4. adhering to fundamental principles and minimum standards in the field of human rights protection and defence;
5. utilising procedures that most effectively "work" towards the realisation of individual rights and freedoms;
6. creating control mechanisms to ensure compliance with the rights and freedoms of individuals;
7. holding governments accountable for implementing agreed-upon and signed international obligations in human rights

and freedoms (Modern mechanisms for protecting human rights: a collective monograph, 2020).

We agree with Hillert's opinion that improving synergy between human rights and peacebuilding institutions in Geneva and New York is crucial for bridging the overall gap between human rights and peacebuilding – both in policy and practice (Hillert, 2024).

It is also essential to consider that there is some tension between the realities and discourse of human rights and the discourse of peacebuilding at the international level. These discourses are expressed in different ways and different contexts. In some situations, it is easier to encourage the observance of human rights through peacebuilding. In contrast, in others, it is easier to do so through human rights discourse (for example, referring to international humanitarian law) (Kantowitz, 2020).

4 Conclusions

Thus, the following conclusions can be drawn:

1. With the Russian Federation's invasion of Ukraine, the issue of securing the right of every individual to peace has become more urgent, as its violation leads to the infringement of all other fundamental rights. The insufficient regulation of this right and the lack of adequate legal guarantees for its observance have resulted in gross violations of international law and, therefore, require revision.
2. The institutional establishment of the right of every individual to peace in both international and national dimensions appears justified for the following reasons: First, in a world where general democratic values are actively developing, peace is, of course, the foundation for all individuals and each person to engage in certain activities; second, the right of an individual to peace, provided there is political will and proper philosophical and legal justification, can be ensured on a global level; third, the enshrinement of such a right will activate a legal mechanism to address violations of an individual's right to peace.

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