

CZU: 341.1/.2

[https://doi.org/10.52277/1857-2405.2025.1\(72\).02](https://doi.org/10.52277/1857-2405.2025.1(72).02)

WHITE ANGELS OF THE RIGHT TO PEACE: IN SEARCH OF BROKEN WINGS



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SUMMARY

There are very few international legal instruments that directly contain norms about the right to peace. In other words, not every international organization recognizes the existence of the right to peace as an individual human right. Some scholars also consider the right to peace not as an individual right, but as one of the basic preconditions for other human rights. However, the UN Charter and a number of other fundamental international legal instruments contain hints at the existence of the right to peace. We can argue that the field of international criminal law or the field of international humanitarian law was created to protect and to provide the right to peace.

In other words, the right to peace is important for the entire world population, exhausted by world wars and suffering from armed conflicts. The right to peace can also be considered as a cornerstone for a separate field of law – the law of peace and security. In this sense, the right to peace is also of great importance as a guarantee for all other rights and freedoms. All other rights and freedoms are usually less violated in peacetime, while rights and freedoms are violated more often in non-peaceful conditions. The right to peace is also included in the basic principles and peremptory norms (*ius cogens*) of international law.

Nevertheless, in modern times, a number of states, in disrespect of international legal obligations arising from the right to peace, willingly initiate aggressive wars with other states, wage wars for many years, and violate the rights of all people in the region to peaceful coexistence. International organizations, however, are unable to impose the necessary punishment on such states and violators of the right to peace in practice, but are content with criticism.

Such situations once again encourage us to conduct research on the importance of the right to peace, to identify its main elements and the obligations arising from the right to peace.

Key-words: *right to peace, international law, human rights, legal obligations, international organizations, peremptory norms, legal principles.*

INGERI ALBI AI DREPTULUI LA PACE: ÎN CĂUTAREA ARIPILOR FRÂNTE

SUMAR

Există foarte puține instrumente juridice internaționale care conțin direct norme privind dreptul la pace. Cu alte cuvinte, nu orice organizație internațională recunoaște existența dreptului la pace ca drept individual al omului. Unii savanți consideră, de asemenea, dreptul la pace nu ca un drept individual, ci ca una dintre condițiile prealabile de bază pentru alte drepturi ale omului. Cu toate acestea, Carta ONU și o serie de alte instrumente juridice internaționale fundamentale conțin indicii cu privire la existența dreptului la pace.

Putem susține că domeniul dreptului penal internațional sau domeniul dreptului internațional umanitar au fost create pentru a proteja și pentru a asigura dreptul la pace. Dreptul la pace este important pentru întreaga populație mondială, epuizată de războaie mondiale și suferind de conflicte armate. Dreptul la pace poate fi considerat ca o piatră de temelie pentru un domeniu separat al dreptului – legea păcii și securității. În acest sens, dreptul la pace este, de asemenea, de mare importanță pentru garantarea tuturor celorlalte drepturi și libertăți. Toate celelalte drepturi și libertăți sunt de obicei încălcate mai puțin în timp de pace, dar ele sunt încălcate mai des în condiții non-pășnice. Dreptul la pace este inclus și în principiile de bază și normele imperative (*ius cogens*) ale dreptului internațional.

Cu toate acestea, în vremurile moderne, o serie de state, fără a ține cont de obligațiile legale internaționale care decurg din dreptul la pace, inițiază războaie de agresiune cu alte state după bunul lor plac, duc războaie de mulți ani și încălcă drepturile tuturor oamenilor din regiune la conviețuire pașnică. Organizațiile internaționale, totuși, nu sunt în măsură să impună pedeapsa necesară unor astfel de state și celor care încălcă dreptul la pace în practică, dar se mulțumesc cu critici.

Astfel de situații ne încurajează încă o dată să facem cercetări asupra importanței dreptului la pace, să identificăm principalele elemente ale acestuia și obligațiile care decurg din dreptul la pace.

Cuvinte-cheie: *dreptul la pace, dreptul internațional, drepturile omului, obligațiile legale, organizațiile internaționale, norme imperative, principii juridice.*



Target setting

The wave of ensuring peace and security, protecting human rights has begun all over the world after WW2. In modern period wars, political cataclysms, economic and political conflicts, polarization have necessitated the recognition of the guarantee of peace and the right of people to live in safety. Of course, the dynamics of the development of the mechanisms for ensuring these rights and the related legal trends in the history of international law have gradually formed and have begun to be established, mainly depending on the political situation. The most important legal provisions in this direction were enshrined in the UN Statute, 1948 Universal Declaration of Human Rights, the 1950 European Convention on the Protection of Human Rights, the 1966 Covenants on Civil and Political Rights and on Social, Economic and Cultural Rights, and in other international legal documents. These documents, as well as other regional conventions, generally declared civil and political rights, first-generation rights defined by the national constitutional norms of the United States and other Western countries, and "second-generation" rights, which include economic and social rights related to the establishment of a welfare state. Yet, the right to peace is not directly enshrined in every and each international human rights document as well as national constitutions. Moreover, research and studies on the right to peace are less than enough to claim that systematic scientific work has already been done in this sphere. The right to peace, its elements, relevance to international law principles, customary law and *ius cogens* norms may introduce a new perspective on this right which is the subject of the current article.

Relevance of the research topic

In accordance with the development of international law, a new generation of rights, which humanity felt a social need for, began to enter the international and national legal arena. These rights began to be defined in various literatures with approximately the same terms - solidarity rights (solidarity rights) or collective rights. These rights included the right to peace, the right to development, the right to health or medicine, the right to permanent ownership of natural resources, and other rights of a general mass nature. The philosophical and legal essence of the above-mentioned rights is that sometimes human society can overcome problems that it cannot resolve individually in the context of ensuring the highest possible realization of the rights of each person through collective efforts or by demonstrating solidarity. For this reason, American professor Diane F. Orentlicher noted that in general, these additional generations of rights are required not for individuality, but for

individuals as members of society or other groups, of these societies and groups [3, p. 90]. That is, in fact, the philosophical and legal essence of these rights: they are not directly aimed to protect individuals, but societies, as a whole. There are rights that an individual cannot possess alone, but together with other members of the society. That is why this category of rights is called solidarity rights. Of these rights, the right to peace is more often attributed to the circle of collective rights.

Regarding the right to a safe life, the issue is not accepted unambiguously in legal science and practice. This is more often considered one of the rights that belongs to the sphere of personal rights. However, both rights have such important characteristics that it is possible to balance and find common points between them. For this reason, in this research work, we will try to determine the scientific and practical similarities and differences between the right to peace and the right to a safe life, and to conduct a comparative legal analysis of these two human rights in the context of national and international law. Since modern international law is multifaceted, while conducting a scientific and practical analysis of the right to peace and the right to a safe life, we will determine the circumstances that undermine peace and security, including international crimes, as well as the mutual relations of other human rights and freedoms with these rights.

The relevance of the topic is conditioned by the fact that today, the wars, aggressive interventions and territorial claims, terrorist threats, and the increase in various forms of epidemics that are not far behind them, which concern the whole world, have made it necessary to preserve peace and tranquility among people, as well as to ensure the right to a safe life for each individual. It should be especially noted that in connection with the wars that are currently shaking the whole world, the issues of ensuring the right to peace and the right to a safe life demonstrate their relevance once again and prove the importance of international regulation in this area.

Conducted research level

The meaning, scope and overall examination of the right to peace has not been an individual topic for scholarly writings for a long time. Some fragmentary studies were conducted by Roche Douglas, Cecilia M. Bailliet, Kazanskiy P.E., A. Cassese, S. Macedo, L. Huseynov, R.K. Mammadov and others in the area of post-Soviets and Europe. Nevertheless, the current academic investigation is dedicated to the particular specifics of the right to peace, its distinctive conceptual features and links with the right to development, right to sustainable security and the law of peace and security.

Research objectives

The system of human rights and freedoms in modern international law is a multifaceted and complex system in terms of its hierarchy and mechanisms of provision, as well as technologies of international legal regulation. The essence, elements of the right to peace, which constitutes an important element of collective rights, and the position, place and role of this right in the human rights system have historically been considered one of the fundamental problems that have troubled humanity. Within societies or between states, ensuring peace and tranquility, and even the security of individuals, has always been directly related to the internal claims of states, tendencies towards violence and aggression, as well as aggressive intentions.

The efforts made by states from time to time to establish peace, their search for compromise options, ultimately resulted in the establishment of the right to peace as a fundamental right in international law. It is also necessary to emphasize a special point here that in fact, the right to peace, like other rights and freedoms included in the human rights system, was a product of domestic law. Its philosophical and legal essence was first conceptually approached in national legal systems.

Main content

In the international legal context, the provisions related to the law of peace date back to the period after World War II. Peace and tranquility among states derive their normative legal basis from the 1945 Charter of the United Nations. The preamble to the UN Charter, based on the main issues of saving succeeding generations from the scourge of war, which has twice in our lifetime brought untold suffering to mankind, and reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, of nations large and small, and uniting our efforts to maintain international peace and security, states in Article 1 of this important document: „to maintain international peace and security and, to this end, to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression and other breaches of the peace, and to achieve by peaceful means, in accordance with the principles of justice and international law, adjustment or settlement of international disputes and situations which might lead to a breach of the peace”. Thus, it has been defined as one of the main purposes of the UN.

Professor Louis Henkin noted that under international law, public rights for the sake of peace are not intended to protect state power, but to ensure the deepest values of its society and its in-

habitants, of course, human dignity ensures that individuals are not subjected to atrocities and war [1, p.499]. Sharing the professor's views, we must note that international law has included the right to peace in the human rights system so that not states, but society directly and, indirectly, individuals, benefit from this right. Therefore, we must be aware of how broad, comprehensive and necessary the role and importance of the right to peace in the human rights system is. As can be seen, the existence of the right to peace acts as an important condition for the protection of human dignity and the real guarantee of human rights in society. In fact, if we approach the essence of the right to peace from the point of view of international law, without this right, without the formation of the normative basis of this right, the guarantee of other human rights - civil and political rights and freedoms - is impossible. If the international system in the broad sense cannot ensure the right to peace, individual human rights will certainly seem useless and meaningless. That's why, Article 28 of the 1948 Universal Declaration of Human Rights states that everyone has the right to full participation in society and in the international community, within the framework of the rights and freedoms set forth in this Declaration.

In the human rights system, the right to peace is considered one of the “third generation” rights. As mentioned above, the first generation rights are political and civil rights, the second generation rights are economic, social and cultural rights, and the third generation or “other generation rights” are conventionally divided into the right to peace, the right to development, etc. However, in this paragraph of the book, we will try to clarify the essence and role of the right to peace, which is included in the third generation rights in the human rights system. First of all, it should be noted that the right to peace is a universal and solidary right. This means that the provision of this right can be possible with the active intervention of all humanity in the process. Even if a state alone implements this right, it will not have any international significance and the result will not be effective. It is for this reason that the right to peace is classified as a solidary right, that is, a solidarity right. The right to peace is considered one of the basic rights in the hierarchy of human rights. Because, without achieving the guarantee of the right to peace, there can be no talk of guaranteeing individual rights such as the right to life, the right to freedom, and the right not to be subjected to torture. Therefore, it can be said with complete certainty that the right to peace plays an important role in the human rights system and this right can be considered one of the key rights.

Also, if we approach this issue from the opposite side, it should be noted that individual rights



cannot be sacrificed for the sake of peace. That is, the state cannot deny human values such as human rights and freedoms, human dignity in order to establish general peace. In many cases, there is a possibility of confrontation between collective rights and individual rights in the human rights system. For example, it may not be easy to reach an unambiguous position on the issues of the rights of people to self-determination or development of society and the right to peace, as well as the provision of individual rights with each of the above-mentioned rights. Therefore, it can be firmly said that understanding the essence of the right to peace in the human rights system will primarily depend on the beneficiaries of this right. The benefit of the right to peace is actually indirectly aimed at individuals. In this sense, it is impossible not to see the common features of the right to peace as a right in solidarity with the concept of individual human rights.

The dilemma of the right to peace of individuals and peoples is one of the problems that worries modern international law. This issue was discussed in the draft Declaration on the Right to Peace prepared by the Advisory Committee of the UN Human Rights Council, and later became the subject of progressive negotiations aimed at achieving the adoption of the UN Declaration on the Right to Peace. Although there were still serious differences between them up to this point, states generally agreed on common positions to promote peace. From an international legal perspective, first of all, Article 14 of the Draft emerged as one of the most controversial issues. It stated that individuals and peoples have the right to peace. That is, this document expressed the desire to extend the same right to both individuals and peoples, and of course this was achieved. In this regard, it is natural that disputes continue in both scientific and political-legal circles regarding the concept and essence of the right to peace. The President of the Human Rights Council, Remigius Achilles Henzel, stated that there is no consensus on the concept of the right to peace as a separate right, and several provisions of the Draft Declaration will be the subject of intense discussions and negotiations [4].

It should be noted that this document, adopted by the UN General Assembly in 2017, can be considered one of the important documents that have determined the role of the right to peace in the human rights system in recent years. The scope of the document is wide, in particular, it includes the prohibition of the use or threat of force; conscientious objection to military service; the right to demonstrate for peace; accountability of military personnel; peacekeeping; the right to development; the right to a safe, clean and peaceful environment and the rights of victims. At the same time, this document also addresses illegal acts that undermine the

realization of the right to peace. The declaration requires states to “ensure serious and transparent control over the arms trade, as well as to actively participate in the fight against the illicit arms trade.” In addition, the aforementioned document places special emphasis on the process of educating and educating about the right to peace. Thus, it states that everyone has the right to full education about peace and human rights, to protest and oppose colonial regimes, foreign occupation or dictatorial rule. One of the provisions of the document, covering private military and security companies, requires states to “transfer military and security functions, in particular, to private contractors”. When explaining the essence of the right to peace in the human rights system, it is important to pay special attention to the issue of human security, the protection of victims of violence, including the protection of women’s rights. International legal experts consider human security to be one of the important positive elements of the right to peace, which in itself includes freedom from structural violence, fear and need. The issue of the right to peace in the human rights system also draws attention in terms of gender equality and women rights. In our modern world, women are also the main victims of violence, and the above-mentioned document emphasizes that “women should be equal partners in the struggle for the right to peace” [5].

The right to peace is essentially a right that excludes war and any use of force and violence. Therefore, experts assess the Declaration on the Right to Peace as a golden opportunity not only to “prevent wars and various forms of violence, armed conflicts, but also to eliminate structural violence”. Alfred-Maurice de Zayas, an independent expert on the promotion of a democratic and just international order, notes that today there is nothing more important than ensuring local, regional and international peace and diverting budgets from military spending and towards the protection of civil, political, economic, social and cultural rights. In his statement at the first meeting of the Working Group, the Independent Expert acknowledged that some States doubted that the human right to peace had a legal basis [2]. At the same time, all the components of human rights necessary for peace have already been codified in the UN Charter and the Universal Declaration of Human Rights. At the same time, one of the important issues considered as a threat to the right to peace in the human rights system and the modern security system is armed aggression and other negative situations that undermine peace. In this sense, we believe that the implementation of international justice in relation to aggression is one of the most important means in ensuring the right to peace. Therefore, the International Criminal Court should have full jurisdiction over the crime of aggression.

In our opinion, by achieving the progressive development of appropriate mechanisms for the promotion of peace, human rights and, in particular, the end of impunity for acts of aggression and other threats to peace, States will contribute to the development of the law of peace both in the human rights system and in the importance and role of international law. It is noteworthy that, with regard to the development of the law of peace, the International Day of Peace was established by the UN in 1981 and the first day of peace was celebrated in September 1981. Since then, the International Day of Peace has been celebrated every third Tuesday of September. However, in 2002, the UN established the exact date of September 21 for the Day of Peace and declared this day a global ceasefire day. Currently, each year, the International Day of Peace begins with the ringing of the "Peace Bell" located at the UN Headquarters in New York. This bell, a gift from the Japanese Parliament, bears the words "Long Live Absolute World Peace". The importance of the International Day of Peace, which was unanimously adopted as a landmark day by the countries of the world, is becoming more and more apparent as conflicts flare up. Although the activities carried out for the sake of peace are of vital importance, unfortunately, they are not protected or defended everywhere, national conflicts in the world are increasing, and their physical geography is expanding. Indeed, the right to peace is still inaccessible to countless people living in different parts of the world. The right to peace is an opportunity to strengthen relations not only between nations, but also in families, society, and public, and to strengthen the fight against violence. In this regard, it should be noted that the "Peace Month" traditionally held in different countries every year also makes significant contributions to the legal education of the population, forming positive experience in the field of human rights in the country. The regular holding of the Peace Month also has an impact on the development of the right to peace.

As for the elements of the right to peace in international law, international legal sources mention three main components of the right to peace as a fundamental human right: the right to life, the right to dignity, and the right to order that allows for the effective realization of rights. It is noted that these three rights are an integral part of the 1948 Universal Declaration of Human Rights. At the same time, the right to peace as a special individual right has been gaining relevance since the early 2000s. The elements of the right to peace are also clarified in the normative legal sense in Article 2 of the above-mentioned UN Santiago Declaration on the Human Right to Peace of 2017, entitled "Elements":

- 1) The constituent elements of the right to peace are already provided for in the Charter of the United Nations, in the relevant provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
- 2) Individuals can protect various elements of the human right to peace by filing complaints with the UN human rights treaty bodies, regional human rights courts and relevant special procedures of the Human Rights Council.
- 3) All individuals, peoples and minority groups who have been subjected to acts of aggression, genocide, racism, racial discrimination, xenophobia and other related forms of intolerance, as well as apartheid, colonialism, neo-colonialism and other international crimes, deserve special attention as victims of violations of the human right to peace.

Conclusion and recommendations

Thus, in conclusion, regarding the essence and elements of the right to peace, it should be noted that, firstly, the right to peace, constituting an important element of solidarity rights, the position, place and role of this right in the human rights system is considered one of the fundamental problems that have historically troubled humanity. Second, the right to peace, constituting an important element of public relations and interstate relations in a broad sense, and of individual relations in a narrow sense, is always inversely proportional to the internal claims, aggressive tendencies and aggressive intentions of states as a guarantee of international peace and security. Thirdly, the efforts made by states from time to time and their search for compromise options have ultimately resulted in the establishment of the right to peace as a fundamental right in international law. As for the position of the right to peace in the human rights system, it should be noted that the right to peace, like other rights and freedoms included in the human rights system, is a product of domestic law and has been further developed by the legal systems of the world, religious norms and principles, as well as the norms of modern international law. Without achieving the guarantee of the right to peace in modern international law, there can be no talk of guaranteeing other fundamental human rights, including the right to life, the right to freedom, the right not to be subjected to torture, and the rights of women and children. Therefore, the right to peace should be considered one of the key rights, playing an important role in the human rights system.



It should be emphasized once again that for unclear reasons, very few individual and independent studies have been conducted on the right to peace. Although the existence of the right to peace has been recognized by UN bodies for many years, UN officials rarely mention the right to peace when talking about wars, terrorism and international crimes. However, the right to peace is one of the first human rights violated during international crimes and wars. The right to peace is very closely and inextricably linked to other human rights and institutions of international law. In this sense, the following conclusions can be drawn regarding the study and provision of the right to peace:

- Research on the theoretical foundations, conceptual essence and main elements, subjects of the right to peace should be further increased. Compared to other human rights, the right to peace is somewhat younger and was recognized as a separate right by international organizations somewhat later. Therefore, it is necessary to develop the theoretical foundations of the right to peace.
- International documents, organizations and especially international courts have not fully defined the obligations and duties arising from the right to peace. In other words, there is a need to clearly define the international substantive obligations and international procedural obligations arising from the right to peace. The UN declarations on the right to peace also do not fully define the obligations of states and non-state actors. However, the obligations arising from the right to peace should be sought in the universally binding norms of international law, the principles of international law (sovereign equality of states, territorial integrity of the state, inviolability of state borders, peaceful settlement of disputes, etc.), and the norms of international customary law.
- The right to peace is both an individual and a collective right. That is, the right to peace applies to both individual people and to the society. At present, the right to peace should be examined more in a collective sense. When the right to peace is violated, the right to peace of an individual person is not violated, but the general right to peace of an entire society, the people, and the population as a whole is violated. Violation of the right to peace always include the violation of other rights and freedoms. In this sense, the right to peace is both a prerequisite for other rights and a means of assisting other rights.
- The right to peace is currently closely related to the right to development. Thus, for development, peaceful conditions are necessary, and for peace, the behavior of people and states must

change, the culture of peaceful dispute resolution must develop, and the states and peoples of the world as a whole must develop. In this sense, the relationship of the right to peace with the right to development is also consistent with the concept of sustainable development.

- The right to peace is closely related to another concept that is young in legal theory – the concept of global citizenship. Thus, a global citizen is not a citizen of any state, but a citizen of the whole world. The rights and freedoms of a global citizen must be protected in every corner of the world. For this, peace must be ensured throughout the world.
- From a philosophical and psychological point of view, peace includes harmony, tranquility, peaceful coexistence with the environment and other beings for the world's population and humanity. In this sense, the right to peace can be studied not only through the concept of law, but also by other social sciences. The obligations to promote the right to peace necessitate the creation of separate academic subjects in this direction. We believe that a separate subject on the right to peace can be included as a separate course in master's programs in international humanitarian law, international general law, human rights and other specialties.

What has been said about the importance and basic obligations of the right to peace proves that all the UN goals set out in the UN Charter, which is the constitution of international law, are based on peace. In order to achieve these goals, the perception of peace by states and non-state actors must change. Peace is no longer a subject matter of some political, diplomatic discussion, a peace treaty. Peace is now a human right, a separate area of international law – the subject of the law of international peace and security.

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