International law and support for Ukraine – between "responsibility to protect" obligation and collective self-defense right

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Abstract

The purpose of the study is to explore public international law norms authorizing international actors to support sovereignty of Ukraine and the rights of its citizens. It examines the international community's rights and obligations according to the "responsibility to protect" obligation and collective self-defense norm.

The thesis of the author is that in the event of aggression against a sovereign state, any international community's military response (either as an exercise of the "responsibility to protect" or on the grounds of collective self-defense) is not conditioned by a preliminary decision of the UN Security Council.

The study proposes a legal model of the interaction between the protection of human rights and state sovereignty in a situation of armed aggression against an independent state.

The study is a novelty from the point of view of the analysis of the specific case in international relations – the Russian invasion of Ukraine in 2022 and reveals both the importance and limitations of international law in the protection of sovereignty and human rights.

The study focuses on legal and due and permissible legal conduct, without prejudice to the extent to which this conduct of the international community would be perceived as correct by strategic analysis.

Key words: Ukraine, Russian, invasion, war.

Introduction

Russia's military invasion in Ukraine in 2022 and the indiscriminate use of force by the Russian forces brought the question about the conceivable reaction of the international community and the compliance of such reaction with public international law norms.

Today human rights and state sovereignty are deemed as the two fundamental principles upon which both human and international relations are regulated. In their interaction, they construct both national and international legal order.

In this respect, public international law represents a system of legal norms regulating international relations in various fields. Given the fact that international law is constructed either by international treaty or by generally accepted customary rule, the existence of its legal norms is determined either by their incorporation into an international treaty or by recognition of those norms between all states concerned. Due to this feature public international law contains many gaps in areas where states have not reached agreement or did not accept common customary practice.

Despite this regulatory deficiency of public international law, it provides enough guarantees for the protection of principles of human rights and sovereignty. In the event of grave violation of those principles, international law allows the use of military force as a last resort.

Such military means are permissible for the protection of human rights, in accordance with the concept of "responsibility to protect", adopted in some official documents of the international community. "Responsibility to protect" is not just a principle applicable to the military intervention,

but rather a preventive principle aiming to protect the population against serious human rights violations. This paper examines the content, legal nature and possible applications of the principle of "responsibility to protect" in the context of the situation in Ukraine.

As for the protection of state sovereignty, i.e. of the territorial inviolability of a state, art. Article 51 of the UN Charter provides for (or more precisely confirms the existing) "irrevocable" rights of self-defense and collective self-defense. Unlike the principle of "responsibility to protect", whose legal nature is to some extent disputable, the right to collective self-defense is recognized in accordance with the norm of Art. 51 of the UN Charter as an irrevocable (i.e. jus cogens) norm of international law.

This paper examines the actions of the international community in response to Russia's intervention in Ukraine in terms of the rights and obligations that international law provides for the protection of human rights and the sovereignty of the Ukrainian state.

In addition, the study identifies the limited opportunities that 2022 Russian invasion in Ukraine war poses to the exercise of these rights and the fulfillment of the obligations of the international community. Those are mostly related to the deterrent role played by Russia's nuclear weapons.

The role of the UN Security Council in preserving international peace and security and its powers in connection with the cessation of war are also reviewed. The authorization procedure for legitimate use of force, which includes a UN Security Council decision sometimes is cited as a possible restriction on the exercise of the rights and obligations of the international community (Barber, 2022). The thesis of the present study is that in the case of aggression against a sovereign state, any international community's military response (either as an exercise of the "responsibility to protect" or on the grounds of collective self-defense) is not conditioned by a preliminary decision of the Security Council.

Results and Discussion

Origin and content of the principle "Responsibility to protect"

After the end of the Cold War in 1989, it turned out to be a problematic that international public law had not established an adequate model of the international community's due response in strong moral cases like gross violation of human rights. The genocides in Rwanda in 1994 and in Srebrenica in 1995 illustrated that such legal vacuum was intolerable.

In addition, NATO's military intervention in Yugoslavia (1999) described it as "illegal but legitimate" (The Kosovo Report, 2000, p. 4) raised the issue of finding an adequate moral reasoning and a legal justification to address the security and human rights challenges.

In 2000 these considerations provoked the initiative of the Canadian government to establish an independent commission, called International Commission on Intervention and State Sovereignty, chaired by Gareth Evans and Mohamed Sahnoun.

The purpose of this commission was to answer the question formulated by then Secretary-General of the UN Kofi Annan at the UN General Assembly in 1999: *"If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?"*.

In fulfilling its mandate, the Commission published a report in 2001 (The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty) concluding that, in cases of grave violations of human rights, humanitarian intervention was not only lawful conduct but it represents an obligation of the international community. In other words, the Commission has come up with a proposal to formulate an obligation for the international community and each country to protect people from serious human rights violations, referring to this obligation as "responsibility to protect".

According to the doctrine of "responsibility to protect", the international community and states have a duty to protect people from serious human rights violations, such as genocide, war crimes, ethnic cleansing and crimes against humanity, and to undertake all measures to prevent and prosecute those crimes. According to this doctrine, the international community has a duty, if necessary, to use military force in order to protect people at risk of such brutal and systematic human rights violations.

Although the concept of "responsibility to protect" is not incorporated into existing international treaty, this does not preclude its normative significance, which we will clarify in the next section.

Before the legal analysis of this concept, it should be noted that a number of official documents of UN General Assembly and the UN Security Council refer to the concept of "responsibility to protect".

Perhaps the most important document that summarizes the international community's understanding of the concept of "responsibility to protect" is the Resolution of the Summit, held at the 60th session of the UN General Assembly in 2005 resolution (United Nations A/RES/60/1, 25 November 2005), paragraphs 138, 139 and 140 are entitled "Responsibility to protect the population from genocide, war crimes, ethnic cleansing and crimes against humanity". This resolution determines the common understanding that the concept "responsibility to protect" consists of three pillars as follows:

1. Each State has a responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. This obligation includes the obligation to prevent such crimes and to incite them, i.e. the state has an active responsibility to prevent possible actions – whether they are taken by government or military representatives or, for example, by third parties.

2. The international community has an obligation to encourage and assist States in fulfilling these obligations.

3. In the event that a state fails to protect its population, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter, including through the measures of Chapter VII, i.e. including measures permitted by the Security Council – those not involving the use of force, according to Art. 41 of the UN Charter, as well as measures in accordance with Art. 42 of the UN Charter, involving the use of force.

In addition, the "responsibility to protect" doctrine is subject of several references in UN Security Council resolutions. The Security Council's first official reference to the concept is contained in Resolution 1674 (2006) of 28.04.2006 (S/RES/1674 (2006)) item 4, which confirms the principle of responsibility of states to protect their populations from serious human rights violations.

Subsequently, the UN Security Council referred to the concept in the case of Côte d'Ivoire in 2011, in accordance with Resolution 1975 (2011) (S/RES/197 5 (2011)), where the Security Council reiterated the obligation of states to protect the lives of people.

In 2011, the Security Council was faced with the choice of taking action within the meaning of Art. 42 of the UN Charter (imposition of a no-fly zone in Libyan airspace). It was on the basis of the principle of "responsibility to protect" that the decision was made to impose a no-fly zone, pursuant to Security Council Resolution 1973 (2011) (S/RES/1973 (2011)), in order to protect the Libyan population from the atrocities of Muammar Ghaddafi's regime.

Legal nature of "responsibility to protect"

Reference to the "responsibility to protect" exists in a number of documents with different legal effect. While the General Assembly resolution represents itself political declaration, it is an expression of the international community's interpretation on their obligations under the international law.

Additionally, resolutions of the Security Council cited above, which are based on the principle of "responsibility to protect", while not being international norms, are binding under Art. 25 of the UN Charter provides for the decisions of the Security Council.

The adoption of a consistent and unchallenged decisions by the two most important UN bodies, in practice grants to the principle "responsibility to protect" legitimacy, which makes it an emerging or even existing norm, outlining the behavior adopted by the international community

(Dorr. 2008, pp. 189-207, Hehir, 2019, Evans, 2015, Thakur and Maley, pp. 16-37). However, the three-pillar structure of the principle, formulated in the UN Assembly resolution cannot be found within the framework of an international treaty.

This does not imply that the three-pillar structure do not constitute a norm of international law. Obviously, the obligation of states to protect human rights and protect the population from serious crimes against humanity exist both in the domestic law of each state and in many international treaties such as universal and regional international human rights treaties, including obligations to prevent and punish war crimes and genocide. It is also out of doubt the existence of obligation of the international community and states to actively pursue grave human rights violations, such as International Covenant on Civil and Political Rights, Statute of the International Court of Justice, Convention on the Prevention and Punishment of the Crime of Genocide, and many others.

The principle "responsibility to protect" does not expand existing obligations of states and the international community under art. 42 of the United Nations Charter as a last resort, as the genocide, military crimes, crimes against humanity and ethnic cleansing were a matter of international peace and security and thus – a subject of decisions of Security Council under art. 42 of UN Charter.

Although there is a general consensus that "responsibility to protect" summarizes existing norms with regard to the hypotheses set out in the first and second pillars, the wording of the third pillar of the concept is to some extend ambiguous.

Problematic is the interpretation the obligation of the international community to act in the event of serious human rights violations, specifically whether it is not intended to legitimize the use of military force without the permission of the Security Council.

From a substantive point of view, the aim of the "responsibility to protect" concept is to bridge the gap in international law regarding the interpretation of the grounds that justify permissible use of force. The significance of the formulated principle of "responsibility for protect" is in the establishment of a common understanding of the international community, i.e. bridging the gap in two directions.

The first direction is to confirm the understanding of what constitutes a threat to peace and security and, accordingly, what event would be grounds for authorizing action under Chapter VII of the UN Charter. This represents wide acceptance of the principle, that was not shared in the period of the Cold War – that human rights violations in a country are not just a sovereign issue of that country, but an issue on which states are accountable to each other, given the universal nature human rights and the many international treaties where they have committed themselves to respecting those rights.

The second direction is to confirm the understanding that even in cases of serious human rights violations (regardless of other threats to peace and security) taking action (including, if necessary, intervention) is not right (as is the classical understanding since Hugo Grotius (Grotius, 2021 p. 247) of the international community, and its obligation. This rule is not something new – Art. 24, para. Article 1 of the UN Charter explicitly states that the Security Council has the primary responsibility for international peace and security.

This principle dates back to the cited work of Grotius (Grotius, 2001, 247), where he recognizes the right vested into human society to remove the tyrant, imposing atrocities upon his subjects.

As an expression of this right of human society the UN from its first years set out in UN General Assembly Resolution 377/1950 (the Uniting for Peace resolution), adopted on November 3, 1950. This resolution seeks to outline so called "reserve" powers of the General Assembly, which according to the resolution should take responsibility for taking the necessary measures, given that the Council for security, due to a veto imposed by a permanent member, fails to exercise the responsibility required by it for the protection of international peace and security. This resolution enjoys rather political than legal effect.

Thus, the concept of "responsibility to protect" from a legal point of view, in view of its universal perception has legal significance in formulating the international community's duty to undertake action to end serious human rights violations and to confirm that grave human rights

violations pose a threat to international peace and security, even if they take place within the territorial boundaries of a single state.

The concept of "responsibility to protect" provides states with a new basis for the international community to take action in connection with the use of force in international relations – either in the form of self-defense (Article 51 of the UN Charter, which is indisputable) or under the form of collective self-defense (Article 51 of the UN Charter, whether in the form of a treaty or ad hoc, as a result of an attack on a state), as well as within the meaning of Chapter VII of the UN Charter.

In the case of actions within the meaning of Chapter VII or more precisely – of Art. 42 of the UN Charter, the concept of "responsibility to protect" does not bypass the decision-making procedure of the Security Council (by a corresponding majority – 9 out of 15 member states of the Security Council, on which decision none of the permanent member states, has not vetoed).

On the other hand, the "responsibility to protect" indicates that an inaction by the international community in cases of war crimes, genocide, ethnic cleansing and crimes against humanity is also a violation of international law. From this point of view, the question remains as to how the two understandings could be reconciled, in cases where the Security Council cannot decide but is obliged to do so. The resolution of the conflict between the indisputable norm of Art. 42 of the UN Charter and the disputed normative existence of the principle of "responsibility to protect" depends on the application of the principle and its enforcement in the framework of international practice.

As for the case of Ukraine, the issue of the Security Council's sanction can be interpreted in two ways.

On the one hand, it is clear that such consent cannot be obtained due to opposition from Russia, which is a permanent member of the Security Council.

On the other hand, requesting such consent from the Security Council is not required in practice, as Ukraine's sovereign right is to invite states to conduct a humanitarian operation on its territory. This, of course, does not preclude the possibility of the Security Council deciding on the action taken (which is unlikely to happen due to the confrontation between the permanent member states of the Security Council), but the intervention itself at the invitation of Ukraine will not violation of international law if conducted on Ukrainian territory.

Limitations in the application of the principle of "responsibility to protect"

The second decade of the XXI century provided the international community with a number of cases that called into question the future of the "responsibility to protect" principle. The obligation to protect was confronted with society's comfort zone in cases like Syria and Myanmar thus illustrating the unwillingness of the international community to perform its "responsibility to protect" obligations.

This unwillingness, combined with the controversial results of Libya intervention, which in practice dismantled the existing state, questioned the applicability of "responsibility to protect" concept in practice.

For this reason, during next humanitarian crisis, in Syria, it has become impossible to adopt a Security Council resolution providing for measures under Chapter VII (Security Council, SC/10403, 04 October 2011). Even worse was the international reaction in the case of Myanmar, where, despite the active role of the UN and the warnings addressed to the Myanmar government (S/PRST/2017/22) regarding its obligation to respect the rights of its citizens, the international community didn't take any steps to limit the effects of ethnic cleansing of Rohingya people.

Thus, the practical implementation of "responsibility to protect" doctrine was paralyzed for several reasons.

First of all, because of the controversial results of the international community's intervention in Libya.

Secondly, due to the fears that the implementation of the third pillar of the concept, in accordance with the UN General Assembly resolution of 2005, addresses issues other than the protection of people in need and the measures taken serve and disguise other, strategic interests of the participating countries.

Last but not least, the fulfillment of the obligation of the international community is a function of public support for one or another action – and this public support is a function of the geographical and cultural proximity of the suffering people.

In this line, the case of Ukraine is an indisputable moral case in which there is a clear understanding of the international community of Russia's actions, shared even by countries that are considered as having close ties with Russia and even states that are its allies.

But the case of Russia's aggression against Ukraine reveals another limitation in the implementation of "responsibility to protect" obligations. It is related to the practical impossibility of implementing the full protection provided for in 2005 resolution of the UN General Assembly, in the events where the international community is facing an infringer with formidable military power.

The right to collective self-defense

As stated above, the international community's "responsibility to protect" obligation is aimed at protecting human rights.

With regard to the protection of state sovereignty and territorial integrity of an attacked state, the actions of the international community in aid of Ukraine can be carried out on the basis of the principle of collective self-defense.

International law allows the use of military force in cases of self-defense (as carried out by the Armed Forces of Ukraine), as well as in cases of collective self-defense, i.e. carrying out military response by not attacked third countries in defense of the attacked country.

The right to collective self-defense is mentioned briefly in Art. 51 of the UN Charter. This article determines that the right to collective self-defense could be exercised only in the event of an armed attack on a state. It is not conditioned by a previous decision of the Security Council, but the Security Council has the right at any time to take a decision including measures necessary to maintain international peace and security. Of course, between "right" and "there is a possibility", the difference is huge, which is why, in the case of Ukraine, the possibility of adopting a resolution undertaking taking such measures is not feasible at the moment (28.04.2022).

The most serious guarantee for the implementation of collective self-defense is the participation of a state in a system of collective security. This was exactly the Ukrainian government priority. Two months after the beginning of the war Ukraine's accession to NATO is a problem with very vague prospects and is likely to remain so.

The non-participation of a state in a system ensuring collective self-defense means that there are no states that have committed themselves to the obligation to support it if it is attacked.

However, this doesn't mean that such assistance cannot be provided by other states and that if it is provided, it would be a violation of international law. The exercise of collective self-defense is not conditioned by the previous participation of the attacked state in such a system of collective security. The UN Charter does not presuppose the prior participation of the state in an international treaty, which is a condition for the exercise of the right to collective self-defense. This fact has been clarified in the case law of the International Court of Justice in the case of Nicaragua, where it is stated that, among other conditions (armed attack, necessity, proportionality, notification to the UN Security Council), the attacked state should declare itself a victim of an armed attack and ask for military assistance in response to the attack ([1986] ICJ Rep. 14, para. 195-199).

Therefore, collective defense, i.e. the involvement of Member States in a possible conflict between Ukraine and Russia would not be a violation of international law.

Of course, in this particular case, not considerations of compliance with international law, but considerations related to the strategic uncertainty on the possible use of nuclear weapons by Russia is the main deterrent to undertaking measures related to the use of force. An example of this is the refusal of NATO member states to comply with a request by Ukrainian President Volodymyr Zelensky to impose a no-fly zone over the Ukrainian sky. This request is in accordance with international law, insofar as it is an expression of Ukraine's sovereignty over its airspace, it is valid as in terms of Art. 51 of the UN Charter, and in accordance with the principle of "responsibility to

protect", but the reasons for the refusal are precisely related to the stated strategic uncertainty of Russia's response.

Russia's invasion of Ukraine in 2022 and the implementation of the "responsibility to protect" obligation and the right to collective self-defense

Russia's invasion of Ukraine in 2022 reveals several legal issues in terms of the application of the principles of "responsibility to protect" and collective self-defense right.

The first important issue is the role of the Security Council and the measures that the Security Council is obliged to take in the framework of its obligations under Chapter VII of the UN Charter.

Second issue concerns the relationship and the distinction between the right to collective self-defense and the principle of "responsibility to protect".

In terms of possible application, it is important to explore the scope of the Member States' obligation to support Ukraine, based on the application of the "responsibility to protect" principle.

The role of the Security Council

According to Art. 24, para. 1 of the UN Charter, the Security Council has the primary responsibility for international peace and security.

The decisions of the Security Council, as is well known, shall be adopted by a majority of 9 out of 15 Member States, and according to the practice based on Art. 27, para. 3 of the UN Charter, proposed resolution should not have been opposed by any permanent member of the Security Council (China, France, Russia, United Kingdom and United States).

In a lot of events right on veto of the permanent Member States effectively dismissed this obligation of the Security Council. While the norm of art. 24, para 1 in connection with art. 27, para. Article 3 of the UN Charter states that the Security Council has the responsibility to maintain peace and security, the permanent member-states have virtually the right to waive this obligation, usually when it comes to an area of their strategic interest. Given the fact that Russia is a permanent member of the UN Security Council, the obligation of latter is in fact enervated by a permanent member state (See Security Council Press release SC/14808 on 25.02.2022 Security Council Meeting).

According to the ICSS report in any case of military intervention, one of the guiding principles (principle of "right authority") states that the intervention should be based on a Security Council resolution. However, the report also proposes that if such agreement cannot be found, it should be sought by the UN General Assembly on the basis of the 1950 resolution "Uniting for Peace", which, although not a legal norm, is able to endorse political legitimacy of such actions. If this option also proves impossible, then the assistance of a regional or sub-regional organization should be sought, according to ICISS Report.

The last two options described in the report are not in compliance with the international law as they introduce new procedures for the authorization of legitimate use of force, that are not provided in the UN Charter. Provision of such justifications is forbidden under the norm of art. 103 of the UN Charter, which sets the prevalence of Charter's norms over all other international obligations of the states.

However, in the case of Ukraine, if the hypothetical intervention takes place within the territory of Ukraine, the consent of the Security Council shall not be required, insofar as it is the sovereign right of the Ukrainian state to authorize the conduct of a humanitarian operation on its territory. Due to this, the reason for humanitarian intervention to prevent victims of aggression can be undertaken at the request of the Ukrainian government, as such requests have been repeatedly addressed.

This doesn't preclude the exclusive competence of the Security Council to adopt measures regarding restoration of the peace. However, in the event of Russia-Ukraine war of 2022 it is unlikely to expect any kind of resolution of the Security Council due to Russia's opposition.

The broader concept of "intervention by invitation"

In the case of Ukraine, as we have seen, two principles concerning the permissible use of force in international relations can be fairly applied – the principle of "responsibility to protect", according

to which the international community has a duty to support the suffering Ukrainian people gives the right (not the obligation) of the states to take military action to repel the aggressor.

In other words, while the issue of collective self-defense, due to the lack of commitment, is the right of the countries supporting Ukraine, it is their duty to take action to protect the population of Ukraine.

However, the practical distinction between these two hypotheses are to the large extend blurred.

Both of them may be processed based on the principle "intervention by invitation", as intervention performed at the invitation of the government of the attacked state. This concept covers both the collective self-defense and "responsibility to protect" measures.

The scope of the Member States' obligation to support Ukraine under the "Responsibility to protect" principle

As mentioned above, the principle of "responsibility to protect", although intertwined with the principle of collective self-defense, has a different scope.

It applies to the protection of civilians from genocide, war crimes, ethnic cleansing and other serious human rights violations. In other words, the intervention of a state within the meaning of Art. Article 51 of the UN Charter aims to restore the sovereign power of the attacked state over its territory and population. This attack may not be accompanied by the need to protect the civilian population.

In the case of Russia's aggression against Ukraine, there is evidence that the Russian army is attacking the civilian population, carrying out massacres like the one in Borodyanka, Bucha and Mariupol.

However, it would be wrong to define the principle of "responsibility to protect" only as a principle justifying possible military participation. The principle of "responsibility to protect" is broader in scope than the doctrine of humanitarian intervention. While the idea of humanitarian intervention is the performance of military intervention in a third country undertaken to end gross human rights violations, war crimes or genocide, the principle of "responsibility to protect" is a preventive principle, a broader obligation to protect people against genocide, ethnic cleansing, war crimes and crimes against humanity, including an obligation for the international community to take a number of different measures to stop war crimes and genocide, including through humanitarian intervention.

The Commission's 2001 report also provides guidance on when military intervention in the case of "responsibility to protect" should take place. It must be taken as a last resort, respecting the principle of reasonable prospects.

The principle of reasonable prospects means that such intervention should be undertaken only if there is a reasonable chance of success in stopping or preventing suffering, i.e. the consequences of actions are not worse than the consequences of inaction.

If such an intervention (whether humanitarian intervention or collective self-defense of the territory of Ukraine) could lead to a nuclear escalation, as could be the case with Ukraine, the intervention would not be justified, provided that it could causes a greater suffering than the existing one.

Although this principle is applicable to humanitarian intervention, common sense suggests that it has its application and in assessing the extent to which it is possible to take action in Ukraine's collective self-defense.

On the other hand, the principle of reasonable prospects cannot be assessed in advance both in the events of humanitarian intervention or in the case of collective defense. The uncertainty regarding Russia' s response cannot answer the question of whether the intervention would not lead to devastating consequences resulting from a response by the aggressor with nuclear weapons.

The assessment of the nuclear threat should not be made solely on the basis of Russia's military doctrinal documents. In addition, there are other classified documents relevant to Russia's decision-making process on the use of nuclear weapons. But even if these processes were clear, there is no reasonable guarantee that Russia will act according to those plans. Doctrines are a model of optimal behavior that management has adopted, but whether it will be implemented as such in practice is a separate issue.

It is for this reason that, in the present case, at the present stage (26 April 2022), the obligation of the Member States under the principle of "responsibility to protect" is implemented in the limited scope of all other measures taken and required by the international community. to undertake, with a view to protecting the civilian population (Humphreys and Paegļkalna, 2022).

These include, in the first instance, the provision of humanitarian aid, financial support to the Ukrainian government and citizens, the imposition of restrictive measures (sanctions) against Russia and its representatives, and the provision of support to refugees.

Pursuant to the principle of "responsibility to protect", the maximum possible military assistance to Ukraine should be implemented so that it can strengthen the protection of its civilian population and its territory in general. This military assistance is an obligation of the international community, which is a consequence of the impossibility of implementing measures of higher intensity, such as direct intervention, given the threat of the use of nuclear weapons by Russia.

Obviously, these measures are important but insufficient of deterring Russian aggression. However, the inability to assess the risk to global security from direct intervention paralyzes the international community and makes it incapable of making decisions due to the risk of grave consequences caused by such response. In this situation the lack of authoritative international body with the ability to resolve the conflict also contributes to the chaotic security environment.

Conclusions

Russia's invasion of Ukraine has revived the principle of "responsibility to protect", formulated in 2001 by the International Commission on Intervention and State Sovereignty and subsequently adopted by the international community, following resolutions adopted by the General Assembly and the Security Council. of the United Nations and aimed at protecting the civilian population from serious human rights violations.

In this event, the principle of "responsibility to protect", which imposes the obligation of assistance from the international community, interacts with the principle of collective self-defense, which is a jus cogens norm of international law protecting the sovereignty and territorial integrity of states.

The actions of the states in aid of Ukraine taken in implementation of these norms would be in accordance with international law, and their decision does not require a decision of the UN Security Council. Although such prior authorization/authorization is not required, this does not invalidate the Security Council's right at any time to take a decision by taking measures that are binding on all states within the meaning of Art. 25 of the UN Charter. Given the way the Security Council takes decisions (majority plus non-opposition to the decision by a permanent member of the Security Council), such a decision would be difficult to take.

Notwithstanding these considerations, the study of the various legal institutions of international law conferring either a right or an obligation to intervene illustrates, in this particular case, the weaknesses of the peace and security system.

First of all, there are criticisms of the Security Council's decision-making procedure, in which each permanent member state has the right to veto. In this case, although the decision of the Security Council is not a prerequisite for action by the international community, the veto power of the permanent members impedes the possibility of subsequent decisions, within the meaning of Art. 51 of the UN Charter.

Secondly, in addition to being ineffective, the UN Security Council is not a sufficiently representative body through which the international community can assume its responsibility for the preservation of international peace and security. The system, created at the end of the Second World War and reflecting the balance of power at the time, is completely unjustified to continue to exist in this way, as it demonstrates an inability to deal with existing political and military threats.

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