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THE MEANING ROLE OF THE PACTA SUNT SERVANDA PRINCIPLE IN INTERNATIONAL LAW: IDENTIFYING CHALLENGES TO THE LEGITIMACY OF PEACE AND WAR

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Annotation. *This study examines the principle of pacta sunt servanda and its components, namely consent, continuity, and good faith. It reveals the inconsistent application and declining authority of these principles in the implementation of international obligations, particularly in the fields of human rights and humanitarian law. Despite their crucial role in promoting peace, justice, and human dignity, these principles are often disregarded, prioritizing the interests of individual state parties over their international legal obligations. This trend undermines the core purpose of the UN system and poses significant challenges in holding states accountable for breaching their commitments in the field of human rights and humanitarian law.*

In the author's opinion, the interpretative function the principle of pacta sunt servanda holds particular importance and untapped potential in the context of human rights and humanitarian law. The author hypothesizes that the international community must reaffirm its principles and apply them in a strong and accountable manner. The principle of pacta sunt servanda inherited from previous legal systems, has proven its fundamental meaning and worth. Moreover, it will enhance the realization of the axiological principles of the UN Charter, which were established to ensure peace, security, human rights, and justice, and need to be restored and observed at both the international and national levels.

The research underscores the need for the international community as a whole to reaffirm its purpose by robustly and responsibly upholding and applying the generally accepted principles across all international bodies, including judicial and quasi-judicial entities.

Keywords: *Pacta sunt servanda, Consent, Continuity, Good faith, human rights, peace, humanitarian law.*

Introduction

Recently, the Parliament of the Russian Federation (RF) announced its withdrawal from the Treaty on Conventional Armed Forces in Europe, which continued other denunciations of international agreements in the field of maintaining peace and security. In 2019, both the United States and Russia suspended their obligations under the Intermediate-Range Nuclear Forces (INF) Treaty, which had been in effect since 1987. In May 2020, Russia announced its withdrawal from the Open Skies Treaty, which permitted unarmed flights over participating countries' territories.

This negative trend of terminating international treaties aimed at preventing armed conflicts is further exacerbated by the facts of massive violations of fundamental human rights, as well as States´ obligations in humanitarian law or Jus in Bello, particularly in situations of armed conflict (UN GA Resolution 2675 (XXV) 1970).

The European region is currently experiencing a large-scale armed conflict, in spite the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1951) has been designed to serve to fundamental freedoms as the foundation of justice and peace (ECHR, Preamble). The RF withdrew from the ECHR following its engagement in a war with Ukraine, a State Party to the ECHR. The Belarusian government, against which there are serious allegations of serious abuse of jus cogence against its own population after Presidential election in 2020, has tried to get away from international judicial control, announcing its withdrawal

from the universal international mechanism for considering individual complaints of violations of human rights.

Does this occurrence happen as a consequence of the failure to uphold the fundamental values proclaimed in the post-World War II documents?

When scholars proposed the classification of peace into 'positive peace' and 'negative peace' several decades ago (Ipsen, 1984), they defined the boundary between the two categories as active efforts to address the root causes of conflicts and solve them through conventional/contractual obligations. It was unforeseen that 'positive peace' characterized by strong friendly relations between nations and a commitment to universally recognized principles and treaties´ obligations, would undergo such a notable transition into 'negative peace'.

Considering the extensive violations of fundamental human rights, as well as the breach of the prohibition on the use of force and other United Nations principles, which result in widespread and systematic infringement upon individual rights and humanitarian law obligations, a crucial legal question arises: Can the principle of *pacta sunt servanda (PSS)*, along with other generally recognized principles, still be considered a legitimate tool in regulating interstate relations within the framework of international human rights and humanitarian law?

The purpose of the study is: 1) to reveal the meaning and role of the *PSS* principle in international law in interpreting the legitimacy of peace and war; 2) to contribute to the state of knowledge and encourage application of the generally recognized principle of *PSS* and its components, including *consent, continuity, and the notion of good faith* for interpretation of legal provisions and States´ practice in the field of regulation of war and peace.

The focus of this article will primarily be on the provisions of international human rights (IHRL) and humanitarian law (IHL), referred to as "law in peace." The interdependence between peace and conflicts will also be emphasized by providing examples and analyzing the consequences of non-compliance with international treaties.

In order to address the research question, an innovative method has been developed. The principle *PSS* will be analyzed through the synthesis of three interconnected notions of international law, enhancing the possibilities for their interpretation together and separately with a synergistic effect.

The notion of legitimacy will be applied as a broad concept that characterizes not only legality (so called “legitimacy’s legal” or “procedural component”) but also the adequacy of the legal activity of the legislative body and other agencies and institutions from the perspective of reflecting public opinion, including the position of civil society, the population, and so on. This concept has been well analyzed by scholars from the East-European region (Dzehtsiarou, 2011; Zavershinskii, 2001) as well as academics from American and Western-European institutions (Clark, 2008, O’Connor, 2009, **Wiharta,** 2009).

The author posits the principle of *PSS* as a legitimate tool for assessing interstate relations within IHRL and IHL. The legitimacy of this principle is based on three interconnected elements: political consensus, legality, and moral authority. The interpretation of legal norms in accordance with fundamental principles is outlined not only in national constitutions but also in international treaties, such as the Vienna Convention on the Law of Treaties (VCLT, 1969, Art. 26). In the author's opinion, the interpretative function the principle of *PSS* holds particular importance and untapped potential in the context of IHRL and IHL. The author hypothesizes that the international community must reaffirm its principles and apply them in a strong and accountable manner. The principle of *PSS* inherited from previous legal systems, has proven its fundamental meaning and worth. Moreover, it will enhance the realization of the axiological

principles of the UN Charter, which were established to ensure peace, security, human rights, and justice, and need to be restored and observed at both the international and national levels.

Part 1. Pacta sunt servanda (PSS) principal: general and specific in international law

1.1. IL Perspectives: Key Characteristics of the principle of *PSS*. The principle of *PSS* is widely recognized as a fundamental principle of international treaty relations (Binder, 2020). Dating back to Roman times, the principle was also addressed in the Declaration of London of 1871, which stated that no contracting party could modify any provisions of a treaty without the onsent of the other contracting parties (UN Conference on the Law of Treaties, 1968). The principle is of utmost importance in general international law, where it is regarded as the "basic norm of international law" (Kelsen, 1966) and is seen as a binding principle that extends beyond treaty obligations (Lauterpacht, 1958). Lukashuk emphasized that both principles – "pacta sunt servanda" and "good faith" play an important role in preventing arbitrariness and chaos, and serve as a kind of guide in assessing the behavior of a state party in the context of its obligations under the UN Charter (Lukashuk, 1983).

The *PSS* is universally recognized and has legal authority as a source of international law, according to Article 38 of the UN Statute on the ICJ (UN Statute ICJ). It is explicitly included in the Preamble of the VCLT, as well as in Article 26 of the Convention itself (VCLT, 1969). The modern wording of the principle *PSS* states that every treaty in force is binding upon the parties and must be performed by them in good faith.

Not all agree on the universal applicability of *PSS*, however. In the context of Belarus' practice, an example illustrates the stance of the Ministry of Foreign Affairs regarding the legitimacy of the principle of *PSS* as an exception to state sovereignty when considering the state's obligations. Officials rejected the obligation to enforce decisions of human rights judicial bodies, arguing that the principle is obligatory only when a state has clearly and unambiguously consented to be bound by an international treaty that establishes the binding nature of decisions made by the international bodies. They cited the example of the Security Council of the UN as an "obligatory" entity (Ulyashyna, 2014, p. 30). Thus, the government illustrates a misperception of international treaties as being different in terms of their binding force, despite the clear meaning of the provisions of the Vienna Convention on the Law of Treaties (VCLT), which have universal coverage for all written international treaties.

Another example rejecting the general character of the principle of PSS is the conclusion drawn by a scientist from national university of Singapore Zhifeng. After analyzing legislation, verbal and behavioral communication, as well as empirical reports from numerous countries, Zhifeng argues that if a country or a jurisdiction lacks the necessary legal system and economic stability to enforce contracts, PSS lacks efficacy. He believes that *PSS* can only be respected and given effect in a system that provides for legal and economic stability (Zhifeng, 2022). The arguments address the challenges posed by objective criteria that could impede the effective fulfillment of international obligations. However, another component of the principle, namely good faith, enables us to differentiate between situations in which a State Party faces unfortunate circumstances but still acts in accordance with good faith, and cases that demonstrate a deliberate and harmful disregard for international commitments.

1.2. *PSS* in Human Rights Law. As for the human rights monitoring bodies, like the UN HR Committee, in its General Comments and Concluding Observations, they often refer to the obligations of states parties to the ICCPR under the principle of PSS: for example, the HR Committee reminded that pursuant to the principle articulated in Article 26 of the VCLT, States Parties are required to give effect to the obligations under the Covenant in "good faith" (UN

HRC GC 31, p.3). Moreover, when the HR Committee, in its General Comments devoted to the "public emergency" clause (Article 4 of the ICCPR), it called on States parties to duly consider the developments within international law as to human rights standards applicable in emergency situations. Moreover, it reminded that the State party's other obligations under international law, particularly the rules of international humanitarian law, shall be applied to ensure compliance with measures undertaken while derogating from the provisions of the ICCPR (UN HRC GC 29, pp.3, 9).

Conversely, the ICJ applies concepts that regulate the rights and obligations of individuals, particularly in the field of IHL, IHRL and international criminal law (ICL). In the report prepared by the Committee on International Human Right Law and Practice Commission in 2008, numerous facts of such adaptation have been presented. For example, in the case of the Bosnian Genocide, the ICJ applied the concept of "positive obligations of states," which is characteristic of human rights law, rather than general international law. In its reasoning, the Court states that a state is culpable not only when it commits genocide (negative obligations, which means "refraining from intervention"), but also when it fails to take actions to prevent genocide (or fulfil positive actions) and does not cooperate with the International Criminal Tribunal for the former Yugoslavia in bringing the accused Ratko Mladic to trial (Application of the Convention on the Prevention and Punishment of the Crime of Genocide, 1997).

While international IHL and IHRL have historically developed separately, some recent treaties include provisions from both bodies of law. Examples of such treaties are the 1989 Convention on the Rights of the Child, particularly its 2000 Optional Protocol on the involvement of children in armed conflict, the 1998 Rome Statute of the International Criminal Court (ICC), and the 2006 Convention on the Protection of All Persons from Enforced Disappearance.

1.3. Humanitarian Law and *PSS.* Contractual humanitarian law being a part of the general international law applies the *PSS.* For the Geneva Conventions and their Additional Protocols which form the core framework of international humanitarian law, this principle is crucial in ensuring compliance with these treaties. States are expected to uphold their obligations and commitments outlined in these humanitarian law treaties. Additionally, there are norms of customary international law which have been established before conventions were adopted. According to the International Committee of the Red Cross (ICRC)' report published the results of a comprehensive study on customary international humanitarian law, there are at list 161 norms that regulate armed conflicts. The vast majority of these norms are applicable during both international and non-international armed conflicts.

The four Geneva Conventions have been ratified by all States and the fact demonstrates the universal approval of the obligations surrounding the conduct occurring during an armed conflict. By analysing the nature of international obligations within the international humanitarian law a Belarusian scientist Kalugin has directly referred to the principle *PSS* while considering the matters and challenges of national implementation (Kalugin, 2000). Meanwhile a German scientist Bothe, avoids using the full connotation of the principle but rather describe the role of national law in the implementation of international humanitarian law perusing the idea that "the operation of international humanitarian law thus depends to a large extend on domestic action" (Bothe, 1984).

Meanwhile, the texts of all Geneva Conventions stipulate in their Article 1 that 'the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.' The wording is somewhat similar, albeit with a broader scope that addresses individuals as the ultimate beneficiaries, compared to the ICCPR. Each State Party to the ICCPR 'undertakes to ensure to all individuals within its territory and subject to its jurisdiction

the rights recognized in the present Covenant and/or undertakes to take the necessary steps... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant' (ICCPR, 1966, Art. 2). So, even if not explicitly mentioned *PSS,* which existed only as a customary rule at the time when the humanitarian treaties were adopted, the spirit of the principle is present in both - human rights law treaties and in the treaties regulating relations in times of war.

Summing up each participating State in international agreements governing the State parties' human rights obligations as well as protection of war victims and the limitation of means and methods of warfare, in accordance with the principle of PSS, is obliged to faithfully fulfill the obligations it has undertaken under these agreements.

Part 2. Consent, continuity, good faith

This part explores certain concepts that are specifically related to the integral components of the PSS principle that reiterates: 'every treaty in force is binding upon the parties and must be performed by them in good faith'.

Concepts "consent", "continuity", "good faith" are specifically related to the following wordings: --"every treaty in force," which is interconnected with the concepts of consent and continuity, since each treaty is formed by states and requires careful observance for maintaining stable international relations;

--"binding upon the parties," which also involves consent and continuity, as it implies the expressed agreement of all parties to the treaty and highlights its importance for all; and

--"must be performed by them in good faith," which directly references the concept of good faith and conveys a strong sense of obligation through the use of the passive voice.

2.1. State consent: An Overview of the VCLT Provisions. Consent from a state in question is a necessary element throughout most stages of norm formation, development, and enforcement proceedings within the "treaty law" (VCLT, Articles 2, 7, 9, 11, 14, 16, 18, 19, 23, 46 etc.).

The consent means an act of expression of a State party to a treaty by constituting, acceptance approval or accession, or by any other means if so agreed by parties. Researchers highlight the following features when approaching the nature and effect of the concept of 'consent': according to Fitzmaurice, it has a legitimizing effect resulting from a state's expressed consent to be bound by a treaty (Fitzmaurice, 1956). Friedl argues that there are norms under customary international law and general principles of international law to which a state does not explicitly give its consent (Friedl, 2017). Indeed, the 'classical' view of consent requires deeper analysis when it comes to obligations that encompass components related to common values, such as faith in fundamental human rights, the dignity and worth of the human person, the equal rights of men and women, the equal rights of nations, both large and small, as well as the promotion of international peace and security through the acceptance of principles serving common interests (as stated in paragraphs 3 and 9 of the Preamble of the UN Charter).

2.1. 1. Consent of a State in light of obligations owed to the international community as a whole

Perspectives from the "international community of states as a whole" and the "obligations owned to the international community as a whole" (obligations *erga omnes*) have been applied in assessing states' obligations arising in international human rights and humanitarian law. These perspectives have been established not only in treaties but also in other sources of law.

The UDHR is of particular interest in this respect. As an instrument of "soft law", it has been recognized as applicable to all nations due to the *opinio juris* of the international

community as a whole. The significance of the recognition of the UDHR lies in the fact that it remains a single normative catalogue that includes the most of fundamental individual rights and freedoms at the global level. The acceptance of the UDHR also assumes that the international community as a whole accepts common values and objectives of human rights commitments by specific treaties and other commitments.

The relevance of such a conclusion to human rights treaties is significant because the UDHR is an example of states' deed that acted as the international community as a whole by transforming the Declaration into a "Grundnorm" of international human rights law. Another example when a State's consent might be put aside is related to a human rights treaty, when a state may find itself in a situation where its reservation is declared impermissible (HR Committee, GC 24, para 18). While consent by an individual state is no longer an absolute limit to state obligations under human rights treaties (Sheinin, 2008), it is important to note that state consent is still a key factor in treaty law. However, in certain cases where human rights obligations are considered peremptory norms, state consent would be pushed aside by an objectively binding constitution (Merrills, 2005).

Although the principle of invoking a State's responsibility for a breach of a peremptory norm of general international law (jus cogens) as one of the *erga omnes* obligations is recognized as an available mechanism, it has not been effectively utilized by any State party, particularly in reference to the ICCPR. Despite calls from UN bodies, such as the 2012 UN HR Council Resolution with respect to Belarus (UN HR Council Resolution, 2012, p. 1 and beyond), no States have expressed solidarity through this means to fight against violations related to common values and interests, as seen in the case of Belarus. This lack of action has continued in the following years. Meanwhile the HR Committee in its General Comments reminded that the 'rules concerning the basic rights of the human person' are *erga omnes* obligations and that there is a UN Charter obligation to promote universal respect for, and observance of, human rights and fundamental freedoms. Furthermore, the contractual dimension of the treaty involves any State Party to a treaty being obligated to every other State Party to comply with its undertakings under the treaty. To draw attention to possible breaches of Covenant obligations by other States Parties and to call on them to comply with their Covenant obligations should, far from being regarded as an unfriendly act, be considered as a reflection of legitimate community interest (UN HRC, 2004).

The concept of collective action is derived from the UN Charter which in Article 1 calls for states to "take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of peace". Moreover, with regard to international humanitarian law, the ICJ has stated in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, that "a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and 'elementary considerations of humanity' . . .", that they are "to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law" (ICJ Reports 1996 (I).

It is worth reminding that traditional scholars of international law viewed human rights law as a special mode that emerged under international law to transition from the former "law of coexistence" to a different type of law known as the "law of cooperation" (Vasak, 1982; Friedman, 1984). Unfortunately, the legal mechanism of the responsibility of states to ensure collective human rights, namely the obligation to implement the *erga omnes* principle, does not always work. Sceptics' predictions have proved true: "Human rights law, which began its

development as a regime of a special nature, has stalled without ever challenging the state-centered structure of international law" (Christoffersen, 2009; Friedmann, 1984).

In summary, the research shows that while the concept of 'consent' is a necessary element of treaty law, states must also accept its limits in the regulation of common values, including the protection of human rights and humanitarian law obligations. Despite setbacks in the international community's intention to create a society of cooperation, there is a need for continued efforts to comprehend and accept the certain limitations of an individual state's consent in interpreting the common interest as is stipulated in the UN Charter.

2.2. The continuity or stability of international relations. *The continuity or stability of international relations* requires states to abide by their obligations under valid treaties and implement the relevant obligations. The principle continuity of international obligations is established by the UN Charter, which stipulates that the UN must establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained. Additionally, the UN members must maintain international peace and security, and to that end, take collective measures in conformity with the principles of justice and international law to promote universal respect for and observance of human rights and fundamental freedoms (UN Charter, Preamble para 4, art. 1 part 1 and 3). The concept of continuity has been further elaborated in UN documents and earlier works by legal scholars such as Lauterpacht and Hahn. Lauterpacht pointed out that continuity is in itself an element of legal justice, while Hahn emphasized that continuity must be ensured beyond changes in objectives, jurisdiction, institutional structure, or even the extinction of the organization originally entrusted with those tasks. (Lauterpacht, 1958; Hahn, 1962).

The principle of the continuity of a treaty, not only in its literal sense but also in terms of the values of international obligations, forms the foundation of the entire international system established by the UN Charter. This system is designed to maintain international peace and security, and to that end, to take collective measures *"for the prevention and removal of threats to the peace"* and *"to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of peace"* as stated in Article 1, parts 1 and 3 of the UN Statute.

2.2.1. Continuity vs withdrawal. *Erga omnes.* IHRL has contributed to the development of the general notion of continuity in international law, as demonstrated by specific documents such as the UNHCR Sub-Commission resolution "Continuing of obligations under international human rights treaties" (UNHCR Resolution, 1999) in 1999 and the UNHCR General Comment 24 in 1997(UNHCR General Comment 24, 1997). In 1997, considering the case of the notification submitted by the Democratic People's Republic of Korea, the UN bodies stated a general prohibition of withdrawal due to the main characteristics of human rights treaties (HRTs), which …*do not establish reciprocal rights among States or protect their interests, but establish obligations toward individuals under their jurisdiction whose violations can be claimed by them or by the community of States Parties"*; "express *universal axiological principles, withdrawal from which should not be permitted"* (UN Aide Memoire, 1997, para 7).

Scholars have reflected on the application of the concept of continuity to human rights and humanitarian law, with Pocar emphasizing that a state cannot deny the protection of the rights of its population and that international institutions have enforced these obligations, leading to the continuity of international human rights and humanitarian law treaties. (Pocar, 2011).

The principle of continuity in international human rights law shall in practice mean that the rights enshrined in the Covenant belong to the people living in the territory of the State

party. Indeed, the HR Committee has consistently taken the view, as evidenced by its long-standing practice, that once the people are accorded the protection of rights under the Covenant, such protection devolves with the territory and continues to belong to them, notwithstanding a change in government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the ICCPR (HR Committee, General Comment No. 26).

Despite this, there are inconsistencies in the element of continuity in the VCLT provisions. While the VCLT rules that, according to *PSS*, a State may not refer to provisions of internal law to justify its failure to perform a treaty, certain provisions of the VCLT such as those relating to the suspension and termination of treaties (articles 56-60) or invoking grounds for impossibility to perform or fundamental change of circumstances (articles 61-62) protect State interests. However, the VCLT does not provide specific provisions for non-reciprocal treaties, such as humanitarian and human rights treaties, to ensure continuity. While the principles of the UN Charter and most human rights treaties declare zero possibility for withdrawal or include termination clauses, and demonstrate the willingness to protect common values and the final beneficiaries - people - via continuity of treaties, the termination clauses and provisions of human rights treaties remain a common place.

Despite the obvious contradiction to jus cogens violations, the UN bodies approved the Belarusian government's submission by acting in compliance with formal provisions. As a result, the withdrawal of the Belarusian government from the Optional Protocol prevents Belarusians from submitting individual communications to the only available body for Belarusians capable of acting as an international tribunal in cases of torture (UN, Press-releases of treaty bodies, 2022).

The Belarusian case marks the fifth withdrawal from the OP. This case happened at a time when the Russian Federation started the war from the soil of Belarus against Ukraine, and this aggression was committed with illegal support from the Belarusian government or high officials. So far, the international community has failed to take notice of this dramatic act of withdrawal, which has devastating effects for the Belarusian people and others who might have become victims of human rights or humanitarian law violations from February 24, 2023, up to now. There is no doubt that the very fact of withdrawal undermines the values and principles of the UN. It is clear that in cases where a state seeks to evade international judicial scrutiny by exploiting gaps in the VCLT and the failures of singular human rights treaties to ensure the continuity principle, a mechanism must be established to ensure that dissenting opinions highlighting violations within that country can be heard at the international level.

Another closely related concept to the continuity of non-reciprocal treaties is "collective actions," which is derived from Article 1 of the UN Charter. This article calls for "effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about, by peaceful means, and in conformity with the principles of justice and international law".

Unfortunately, nowadays we observe that legal mechanism of "collective" human rights responsibility of states, namely the obligation to implement the *erga omnes* principle does not work. Indeed, while the non-observance of obligations of State Parties towards individuals as right-holders under a human rights treaty is a matter of every State Party's legal interest in the performance of obligations by every other State Party, the States hesitate to take legal actions in that regard. The ICCPR has designed a special procedure (ICCPR, Article 41, 1966), and the HRC has explained that the 'rules concerning the basic rights of the human person' are *erga omnes* obligations. As indicated in the fourth preambular paragraph of the ICCPR, there is a UN Charter obligation to promote universal respect for, and observance of, human rights and

fundamental freedoms. Moreover, the HR Committee has recommended that States Parties should pay attention to violations of ICCPR rights by any State Party. "*Drawing attention to possible breaches of Covenant obligations by other States Parties and calling on them to comply with their Covenant obligations should not be regarded as an unfriendly act, but rather as a reflection of legitimate community interest."* (GC 31, para 2).

On the contrary, the procedural mechanism of individual complaints to international bodies, which was and still viewed as a secondary (subsidiary) one in relation to domestic remedies, has seen rapid development. For example, since its ratification, OP to the ICCPR has resulted in more than 175 Belarusians receiving decisions from the Committee, while around 300 complaints have been pending (Institute for war and peace reporting (IWPR, 2022). Even more impressive is the statistic that characterizes the number of complaints filed annually to the European Court of Human Rights by Russian citizens. In March 2022, Russia was expelled from the Council of Europe, but the European Court of Human Rights retains jurisdiction over cases related to Russia that occurred before September 2022. According the data, on August 2022 - around 16,750 applications from Russia have been pending. It is the highest case-count country (ECHR, Annual Report, 2022).

This explains the decision by the governments of both Belarus and the Russian Federation to withdraw from human rights treaties. However, the international community as a whole must ask whether a state wishing to avoid the attention of an international body in cases where victims report torture shall have the opportunity to do so simply by formally invoking the existing clause on withdrawal from the OP (OMCT, 2020) or the CoE Statute and the ECHR (Magliveras, 2022). In author's opinion the situation and established practice are worrying and call into question the principle of continuity/stability of human rights treaties.

In summary, the continuity of treaties is highly relevant to the sense of *pacta sunt servanda* and can be broadly applied to revise human rights treaties for the benefit of their ultimate beneficiaries. Withdrawal from human rights treaties should be considered a breach of the UN's purposes.

2.3. Good Faith in International Law. *Good faith* is another crucial element of the *pacta sunt servanda*, as it implies that states should act in good faith when entering into and performing their obligations under a treaty (VCLT, Article 26). It also stands as a generally recognized principle of international law with multifaceted meanings and functions. Moreover, it is also a way of interpreting treaties regulated by the Article 31 of the VCLT. Thus, treaties provisions shall be implemented in good faith, in accordance with ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

The term and the concept have been of interest to both practitioners and scholars analyzing the meaning and role of the doctrine in legal discourse in domestic and international trials. While practitioners underline that it is difficult to define "in absolute terms" (Jacobellis v State of Ohio, Tetley, 2004), scholars agree with the complexity of the definition but still believe that it is crucial to comprehend its nature since it is a fundamental principle that applies to all aspects of international law (Reinhold, 2015). It has a guiding role in the decision-making process (Dworkin R, 1977) and ensures international order while preventing arbitrary behavior and chaos (Lukashuk, 1989). Russo calls the principle *good faith* a "general interpretive parameter" that requires states to consider the interests of other contracting parties, including international cooperation and the legitimate expectations of individuals as the ultimate beneficiaries of the human rights treaty regime (Russo, 2014). Binder and Hofbauen share the opinion that *good faith* is an integral part of the *pacta sunt servanda* and conclude that while the latter contains the *formal order* to comply with treaty obligations, the principle of *good faith* determines the *specific content* of such compliance (Binder and Hofbauen, 2019).

2.4. Good Faith in Human Rights Law. The wording of the principle of *good faith* is more precise and clear within the human rights treaties framework: "The State Party is expected to collaborate *sincerely and effectively* in the realisation of the aim of the Council" (Statute of the Council of Europa, 1949, Article 3), or each State Party to the ICCPR "…*undertakes to ensure* to all individuals within its territory and subjects to its jurisdiction the rights recognized in the present Covenant and/or *undertakes to take the necessary steps* …to adopt such legislative or other measures as may be *necessary to give effect to the rights* recognized in the present Covenant" (ICCPR, 1966, Art 2).

The principle of *good faith* entails ethical dimensions and requires the exclusion of deceit, concealment, and attempts to mislead. It can be used as a benchmark to evaluate the level of compliance with the implementation of obligations assumed by the parties.

As examples of the application of the good faith principle in human rights treaties, it is worth presenting several provisions from human rights treaties that serve to prevent actions that abuse the protected rights and freedoms:

Thus, the following provisions warn that nothing may be interpreted as implying any rights for any state, group, or individual to engage in activities or perform acts aimed at destroying any of the protected rights or limiting them to a greater extent than what is provided in the treaty (e.g., Article 5 of the ICCPR, Articles 17 and 18 of the ECHR).

The next passage discusses the application of the general rule of treaty interpretation to the Optional Protocol of the ICCPR, which lacks explicit provisions or language regarding the conduct of parties during performance and withdrawal from the OP. The author argues that the good faith principle, as stated in Article 31 of the VCLT, should be followed, requiring the parties to respect and fulfill their treaty obligations in good faith and consider the goals and purposes of the treaty. The Preamble of the Optional Protocol is mentioned as a factor that should be considered when evaluating withdrawal from the treaty.

Lastly, Article 103 of the UN Charter states that in the event of a conflict between the obligations of the Members of the Organization under the Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail. In conclusion of this part, it would be appropriate to draw a comparison between the withdrawal from the Optional Protocol (OP) to the ICCPR and a withdrawal from the Non-Proliferation Treaty, which has been examined by Coppen. Coppen's analysis suggests that while a unilateral withdrawal from a multilateral treaty, undertaken with the aim of avoiding supervisory or jurisdictional mechanisms, may be legally justifiable under the principle of good faith, the actual legal consequences of such a withdrawal should be evaluated in terms of its impact on international security and stability (Coppen, 2014, pp. 21-33).

Conclusions

A study of the principle of *pacta sunt servanda* and its components - consent, continuity and good faith - revealed:

The axiological principles of the UN Charter established to support peace, security, human rights and justice cannot be effectively restored and sustained at both the international and national levels without a concerted collective effort.

The inconsistent application and declining authority of the generally recognized principles of *pacta sunt servanda* and *good faith* in the implementation of international obligations in the field of human rights and humanitarian law. Despite their critical role in promoting peace, justice, and human dignity, these principles are often set aside, prioritizing the interests of individual state parties over their obligations under international law. This trend

undermines the very purpose of the UN system and poses significant challenges for holding states accountable for their breaches of commitments. To address these challenges, it is essential to uphold the relevance and authority of generally recognized principles in international law, strengthen their enforcement mechanisms, and promote greater awareness of their importance.

The *pacta sunt servanda*, inherited from previous legal systems, has proven its fundamental meaning and worth to be recalled. The principle as it is as well as its elements, including *good faith, consent,* and *continuity*, represent critically important legal and ethical commitments for human rights. These principles also have independent content that allows separate applications. They have been introduced and applied in normative provisions of general international law and human rights law, as well as in academic research and selected practice.

Neglecting the application of generally recognized principles by individual states and their role as representatives of the international community as a whole in upholding common goals leads to a weakening of the entire international humanitarian law and human rights system, ultimately affecting its beneficiaries. Overall, international bodies have faced significant challenges in holding states accountable for breaching good faith in the process of fulfilling their obligations, resulting in violations of jus cogens norms, the erosion of rights and freedoms, and even alleged international crimes.

The research also proves that the international community as a whole needs to reaffirm its purposes by strongly and accountably holding and applying the generally accepted principles in the work of all international bodies, including judicial and quasi-judicial bodies.

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