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A DOKTORANDOV
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z medzinárodnej študentskej vedeckej konferencie
PRO-LEGAL Deň študentov práva a doktorandov
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PECULIARITIES OF FULFILING OBLIGATIONS UNDER THE MARTIAL LAW

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Abstract

This document evaluates the shift from rigid contractual compliance to adaptive legal mechanism forced by Martial Law with a motive to alleviate the substantial change of circumstances and impossibility of performance. Obligation Law has constantly been the central cornerstone of the civil commerce's stability and legal relations, strongly connected to any developed legal system. Governed by the main principle pacta sunt servanda - the agreement must be followed, it helped civilians to interact with each other and resolve a dispute diplomatically. However, with times of armed conflicts's commence around the world, Law of Obligation has undergone significant changes during each cataclysm in human history. By assessing the Hardship mechanism's case this research exhibits influence of total warfare on the work of Obligation Law through Russo-Ukrainian war, World War I and World War II.

Key words: *Obligation Law. Russo-Ukrainian war. World War I. World War II. Hardship mechanism. Martial Law.*

Introduction

In our modern reality it is quite useful to comprehend how does the main principle of Obligation Law - pacta sunt servanda functions. Because if you know your rights and responsibilities, it is more facile to mitigate legal risks, is not it?

World War I and II have already been examining this fundamental tenet. But with the onset of armed conflict in the 21st century, in the centre of Europe - Ukraine, this ancient and resilient principle has being introduced to unprecedented "stress test". In this article will be provided a detailed analyze about the evolution of Obligation Law in the course of different convulsion stages in the global community.

The following section will exhibit the contrasting case studies by exploring the distinctive historical and contemporary applications of pacta sunt servanda through the prism of the First and Second World Wars, as well as present-day Ukrainian experience.

Usage of Obligation Law during historical timeline - World War First and Second

World War First was a period of the legal transformation, national and international relations have been subjected to certain modifications. Pacta sunt servanda, the ancient principle of Obligation Law was reinterpreted by global actors on the international arena. Great Britain,

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become one of the first states to officially launch an act, which forbade the fulfilment of any obligations in favour of the enemy's side - "Trading with the Enemy Act (1914, UK)". According to this normative legal document chapter 87, clause 1, subclauses a & b said next: *"Any person who during the present war trades or has, since the fourth day of August nineteen hundred and trading with fourteen, traded with the enemy within the meaning of this Act shall be guilty of a misdemeanour, and shall – (a) on conviction under the Summary Jurisdiction Acts, be liable to imprisonment with or without hard labour for a term not exceeding twelve months, or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine ; or (b) on conviction on indictment, be liable to penal servitude for a term not exceeding seven or less than three years or to imprisonment with or without hard labour for a term not exceeding two years, or to a fine, or to both such penal servitude or imprisonment and fine ; and the court may in any case order that any goods or money, in respect of which the offence has been committed, be forfeited"* [1]. This normative legal act is considered as an example how obligations in the form of not signing any trade treaties, which include adversary of England, must be followed, and what were the consequences of its negligence. Indeed, it is a good illustration of the then-war's influence on the image of the enemy and formation of their perception among British people. Anyone who would breach an agreement had had to receive a punishment, there were two procedures depended on what and how law was violated, a summary jurisdiction and indictment. A punishment for the summary jurisdiction involved imprisonment with or without hard labour for a term not exceeding twelve months; a fine not exceeding five hundred pounds. or a liability to both such imprisonment and fine. Instead, indictment concluded penal servitude for a term not exceeding seven or less than three years; imprisonment with or without hard labour for a term not exceeding two years; a fine; liability to both such penal servitude or imprisonment and fine.

However, there were certain responsibilities created during the World War First between international subjects, the most recognisable contracts with the *pacta sunt servanda* were "Treaty of Versailles (1919)"[2], "Treaty of Saint-Germain-en-Laye (1919)"[3], "Metropolitan Water Board v Dick, Kerr and Co Ltd (1918)"[3]. "Treaty of Versailles" was approved in the Paris Peace Conference through a complex diplomatic process, which began in January 1919 and engaged in months of intense negotiations among the Allied powers. League of Nations played a key role in the elaboration of the international legal draft. This agreement was signed by the the Allied and associated powers, Germany, France and Britain. Interestingly, this international contract was called "The Diktat" by Germany (from deutsch Das Diktat) due to German delegation was not allowed to participate in the negotiations – finished text was

established to them as a fact for signing under the threat of renewing the war. Moreover, famous economist John Maynard Keynes popularised the term “The Carthaginian Peace” and named this international treaty “appeasing moderation” he compared the “Treaty of Versailles”(1919) with the complete defeat of Carthage by Rome, emphasizing the excessive cruelty of the conditions towards Germany. [5]. Despite above information, by reading this international legal agreement it can be easy to spot the obligations which were imposed on Germany for a mandatory execution. Practically, every article begins with the words: “Germany undertakes”, “Germany agrees that” etc. For instance: article 275 of “Versailles Treaty 1919” claims that: *“Germany undertakes on condition that reciprocity is accorded in these matters to respect any law, or any administrative or judicial decision given in conformity with such law, in force in any Allied or Associated State and duly communicated to her by the proper authorities, defining or regulating the right to any regional appellation in respect of wine or spirits produced in the State to which the region belongs, or the conditions under which the use of any such appellation may be permitted; and the importation, exportation, manufacture, distribution, sale or offering for sale of products or articles bearing regional appellations inconsistent with such law or order shall be prohibited by the German Government and repressed by the measures prescribed in the preceding Article”* [2] .

Beyond “Versailles Treaty 1919”, it is worth considering a “Treaty of Saint-Germain-en-Laye” (1919) due to the presence of the principle binding force of treaties and the obligations. “Treaty of Saint-Germain-en-Laye” was signed on September 10th, 1919 and came into force on July 16th, 1920, it officially recorded the collapse of the Austro-Hungarian Empire. But this treaty is noteworthy because of the presence of a compelling article which reveals the impact of the situation on Obligation Law in the international field. Article 14 of the agreement shows the side of legal responsibilities that were imposed on Czecho-Slovakia: “Czecho-Slovakia agrees that the stipulations of Chapters I and II so far as they affect persons belonging to racial, religious or linguistic minorities constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations” [3]. This document resembles in certain moments the “Versailles Treaty (1919)”, but in that one there were Austria and allies with fixation of succession instead of Germany and allies, which had to pay reparations, albeit both of the countries were tight to the Law of Obligation under Martial Law.

world war Second was quite opposite to the world war First not only because of the availability of weapons of mass destruction but attitudes towards the belligerent parties. Hardship mechanism has demonstrated the devastation of human kind, total destruction of cities and international law violations. Global leaders suddenly grasped the implications of the disastrous situation, after that European Recovery Program or Marshall Plan was created [6]. The importance of the program lies in the fact that it had elements of Law of Obligation, especially conditional liabilities, bilateral agreement, counterpart funds. Furthermore, there were obligations that did not arise in view of guilt - tort, but due to a contract - voluntary consent. Plan of Marshall was a multi-stage process of legal and economic engineering, formal legal establishment was on April 3, 1949. The United States of America did not just give money but has signed contracts with each European country that fostered mutual commitments, the USA had to deliver resources and European states had to comply with concrete economical reforms. It was one of the principle of law of agreement: *do ut des* (from latin – I give in order that you may give). According to the information which was established in the contract between France and the United States - №302 Economic Cooperation Agreement (with annex). Signed at Paris, on 28 June 1948, article 4, clause 2 “Local currency” stipulated next: “ 2. *The Government of France will establish a special account in the Bank of France in the name of the Credit National (hereinafter called the Special Account) and will make deposits in francs to this account as follows: a) The unencumbered balance at the close of business on the day of the signature of this Agreement in the Special Account in the Bank of France in the name of the Credit National established pursuant to the Agreement between the Government of the United States of America and the Government of France made on January 2, 1948, and any further sums which may, from time to time, be required by such agreement to be deposited in the Special Account. It is understood that subsection (e) of Section 114 of the Economic Cooperation Act of 1948 constitutes the approval and determination of the Government of the United States of America with respect to the disposition of such balance, referred to in that Agreement. b) The unencumbered balances of the deposits made by the Government of France pursuant to the exchange of notes between the two Governments dated April 22, 1948. c) Amounts commensurate with the indicated dollar cost to the Government of the United States of America of commodities, services and technical information (including any costs of processing, storing, transporting, repairing or other services incident there to made available to France on a grant basis by any means authorized under the Economic Cooperation Act of 1948 less, however, the amount of the deposits made pursuant to the exchange of notes referred to in subparagraph (b). The Government of the United States of America shall from time to time notify the Government*

of France of the indicated dollar cost of any such commodities, services and technical information, and the Government of France will thereupon deposit in the Special Account a commensurate amount of francs computed at a rate of exchange which shall be the par value agreed at such time with the International Monetary Fund provided that this agreed value is the single rate applicable to the purchase of dollars for imports into France. If at the time of notification a par value for the franc is agreed with the Fund and there are one or more other rates legally available in France for the purchase of dollars, or, if at the time of notification no par value for the franc is agreed with the Fund, the rate or rates for this particular purpose shall be mutually agreed upon between the Government of France and the Government of the United States of America, each of which rates shall be an actual or average rate currently available in France at the time of notification, in accordance with French laws and regulations. The Government of France may at any time make advance deposits in the Special Account which shall be credited against subsequent notifications pursuant to this paragraph”[7]. There was a clear and observable trajectory: the mutual obligations illustrated here evidence of the historical shift from punitive liability to contractual commitment.

Along with above agreement, on October 24, 1945 was founded a fundamental source of international law, to which all international players, diplomats, lawyer continue to refer even now - the United Nations Charter. Pursuant to article 102, clause 1 of the UN Charter: “Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it” [8]. This provision demonstrates how undertaking in the form of drawing up any contract after signing the UN Charter must be registered with the Secretariat and publicized immediately. Furthermore, seven out of ten basic principles of international law are included in the UN Charter, which are served as a good example of necessary obligations to the international subjects. These standards sounds next: “1. *The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations* 1) *Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.* 2) *A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.* 3) *In accordance with the purposes and principles of*

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States... 2. The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered 1) Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered. 2) States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute. 3) The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them...4. The duty of States to co-operate with one another in accordance with the Charter 1) States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences...5. The principle of equal rights and self-determination of peoples 1) By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter...6. The principle of sovereign equality of States 1) All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature...7. The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter:- 1) Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations. 2) Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law... "[11].

The United Nations Charter is modeled to maintain international peace and security, save succeeding generations from the scourge of war, and establish a framework for

governmental and non-governmental organizations a list of actions what they must do and which principles must be followed.

Pacta sunt servanda in the context of Russo-Ukrainian war

From the information above it is evident that contractual framework imposes reciprocal obligations on both parties. But does historical conventions, international methods work as well as they are written? On 20th of February, 2014 the world had an opportunity to observe war in the heart of Europe, with silence and no consequences for aggressor, which evidenced the international law obligations lack the capacity to uphold the security and safety among the globe. In the first months of armed aggression from the Russia's side Ukraine appealed to the international allies about breach of agreement - Budapest Memorandum, 1994 and violation of the principle - pacta sunt servanda [9]. It was mere instrument but a Memorandum on security assurances in connection with Ukraine's accession to the treaty on the non-proliferation of nuclear weapons which set forth obligations for the "allies": *"...Ukraine, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, Welcoming the Accession of Ukraine to the Treaty on the Non-Proliferation of Nuclear Weapons as a non-nuclear-weapon state, Taking into account the commitment of Ukraine to eliminate all nuclear weapons from its territory within a specified period of time, Noting the changes in the world-wide security situation, including the end of the Cold War, which have brought about conditions for deep reductions in nuclear forces, Confirm the following:*

1. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirm their commitment to Ukraine, in accordance with the principles of the CSCE Final Act, to respect the independence and sovereignty and the existing borders of Ukraine.

2. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations.

3. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirm their commitment to Ukraine, in accordance with the Principles of the CSCE Final Act, to refrain from economic coercion designed to subordinate

to secure advantages of any kind.

4. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirm their commitment to seek immediate United Nations Security Council action to provide assistance to Ukraine, as a non-nuclear-weapon state party to the Treaty on the Non-Proliferation of Nuclear Weapons, if Ukraine should become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used.

5. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirm, in the case of Ukraine, their commitment not to use nuclear weapons against any non-nuclear-weapon state party to the Treaty on the Non-Proliferation of Nuclear Weapons, except in the case of an attack on themselves, their territories or dependent territories, their armed forces, or their allies, by such a state in association or alliance with a nuclear weapon state.

6. Ukraine, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America will consult in the event a situation arises which raises a question concerning these commitments..."

Indeed, it was perfectly composed, everything was as democratic, Ukraine-oriented as, unfortunately, false. Ukraine has ended up in the attack from one of the allies in 2014, commence of full-scale invasion in 2022 and occupation of the Crimean People's Republic. After that there was raised a question about not only of non-fulfilment of Obligation Law, principles of international law, but international law's effectiveness as an instrument of solving certain disputes connected to the aggressors.

In addition, Ukraine has complied with all of the international contract to which has been connected, especially the Geneva Conventions of 1949 [10] as well as they could. Regardless that, Russian's soldiers who even got out of Ukrainian's captivity were healthier looking than the way they were captured. Opposite to that Ukrainians prisoners in the enemy's captivity were tortured, beaten, raped, mentally devastated and starved to death. However, other allies such as the United Kingdom of Great Britain and Northern Ireland, and the United States of America, European Union, and even particular countries from Asian's side - Taiwan have supported Ukraine during this hard times. None of the agreements from the Russian Federation were followed. Olenivka prisoner massacre was a horrible tragedy: a war crime by the Russian Federation that occurred on the night of July 29, 2022 in the occupied Donetsk region. In correctional colony No. 120, an explosion occurred in a barracks where Ukrainian prisoners of war were held, including defenders of Azovstal. More than 50 defenders were killed, more than

torturing Ukrainian soldiers because they were Ukrainians and loved their Motherland – Ukraine.

Russo-Ukrainian war illustrated that no diplomatic obligations with aggressor works, only sanctions, unity with the European Union, highly developed countries, people around the world who cares about Ukrainian nation can stop this armed conflict which occurred in the 21st century.

Conclusion

Obligation Law is an ancient branch of private law that governs the legal necessity for one party (the debtor) to perform a specific act or service for another party (the creditor). During different timelines it had evolved via various mechanisms, World War First showed that obligations were created through guilt, albeit World War Second that most of them were made because of contract performance. Each of the time periods demonstrated the usage and constitution of the principle - *pacta sunt servanda* which is considered to be the main one in the binding commitments.

However, in the contemporary reality the obligation law on the experience of Russo-Ukrainian war substantiate its lack of effectiveness linked to international law. Legal nature of security assurances remains a complex issue within the Law of Obligations. The analysis of the Budapest Memorandum, in pertaining with Russia's full-scale invasion in Ukraine's territory, reveals a significant gap between ostensibly democratic rhetoric and enforceable legal guarantees.

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