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# The role of the international institutions in the protection of human rights and freedoms in the sphere of national security

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## Abstract

The need for qualitative changes in the field of national security also requires the transformation of international institutions responsible for the protection of human rights and freedoms. Therefore, the aim of the article was to identify the role of international institutions in the protection of human rights and freedoms in the field of national security. The main methodological tools were the observational method and the comparative legal method. There is currently a dynamic increase in the number of international treaties ratified in the field of human rights. International institutions are making many efforts to achieve the highest level of efficiency of adequate protection mechanisms. The authorization of an illegal war exposes states to prosecution in international courts. Everything leads to the conclusion that the competence capacity of institutions seems to be limited in the face of increasing violations of human rights in many regions of the world, which leads to the need to reform international legal instruments and relevant procedures for the protection of human rights and freedoms in the field of national security.

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**Keywords:** security ecosystem; supranational bodies; security crisis; cross-border threats; political consensus.

## El papel de las instituciones internacionales en la protección de los derechos humanos y las libertades en el ámbito de la seguridad nacional

### Resumen

La necesidad de cambios cualitativos en el ámbito de la seguridad nacional exige también la transformación de las instituciones internacionales encargadas de la protección de los derechos humanos y las libertades. Por tanto, el objetivo del artículo fue identificar el papel de las instituciones internacionales en la protección de los derechos humanos y las libertades en el ámbito de la seguridad nacional. Las principales herramientas metodológicas fueron el método de observación y el método jurídico comparado. Actualmente existe un aumento dinámico en el número de tratados internacionales ratificados en el ámbito de los derechos humanos. Las instituciones internacionales están haciendo muchos esfuerzos para lograr el más alto nivel de eficiencia de los mecanismos de protección adecuados. La autorización de una guerra ilegal expone a los Estados a ser procesados en tribunales internacionales. Todo permite concluir que la capacidad competencial de las instituciones parece estar limitada ante el aumento de las violaciones de los derechos humanos en muchas regiones del mundo, lo que lleva a la necesidad de reformar los instrumentos jurídicos internacionales y los procedimientos pertinentes para la protección de los derechos humanos y las libertades en el ámbito de la seguridad nacional.

**Palabras clave:** ecosistema de seguridad; organismos supranacionales; crisis de seguridad; amenazas transfronterizas; consenso político.

### Introduction

In the last decade, there has been an increase in geopolitical disagreements around the world, conflicts are becoming global in nature with the involvement of regional and world “participating countries”. Tensions and social unrest are increasing, as well as the threat of militarized conflicts, extremism, and terrorism. A new type of terrorism – cyberterrorism – is spreading, which is the convergence of terrorism and cyberspace. The fears of bioterrorism and the risks of mutating pathogens have increased due to

international mobility, which leads to the need to introduce the necessary national and supranational means of prevention/limitation of the spread of diseases with pandemic potential and other cross-border threats to health (Bengtsson and Rhinard, 2019).

Global geopolitical transformations also produce an increase in the number of information threats. The development of information and communication technologies has exacerbated the problems of national security for the states. Disinformation has become more widespread, according to which unfriendly countries use military and diplomatic means in combination with activities in the information space to achieve the desired results. For example, the COVID-19 pandemic has come to be seen as an infodemic, where a lot of credible but misleading information spread rapidly over the Internet (Sługocki and Sowa, 2021). As a result, maintaining global security has become a top priority for all countries (UN Secretary-General, 2022a).

Modern international threats require states to strengthen their national security policy aimed at the protection of the individual, society, and the state against internal and external threats, which ensure the realization of the constitutional rights and freedoms of citizens, decent quality and standard of living, sovereignty, independence, state, and territorial integrity (Alwan, 2020). Governments around the world have adopted national security policies to address a growing range of risks and vulnerabilities, including climate change, cybercrime, terrorism, and threats to infrastructure, industry, and the media (Heath, 2020).

However, to preserve national security, it is necessary not to deviate from the universal values of human rights and fundamental freedoms (Hill, 2020). In the modern world, the opposite trends have become characteristic of the international protection of human rights and freedoms (Peters and Askin, 2020). There is an increase in the number of ratifications of human rights treaties, international legal instruments, and relevant procedures. There is also an increase in human rights violations around the world. The space for the exercise of basic freedoms is significantly narrowing. In 2021, only 3.1% of the world's population lived in countries with "open" civic space (CIVICUS Monitor, 2021).

In democratic countries, national law is based on international laws. This testifies to the international legal basis of national security, which determines the regulation and protection of state and national values and interests. However, at the international level, there is no universal single document that could establish standards for the protection of human rights and freedoms in the sphere of national security (Chizhov, 2022). Also, the effective implementation of the decisions of international human rights bodies remains a serious problem (Sandoval *et al.*, 2020).

Considering the above, the purpose of the article is to examine the current role of international institutions in the protection of human rights and freedoms in the sphere of national security. Considering the outlined goal, the following research tasks were set: 1) to summarize the main types of international institutions and the corresponding mechanisms for the protection of human rights and freedoms in the sphere of national security; 2) to reveal the current effectiveness of the mechanism for the protection of human rights and freedoms in the sphere of national security in Ukraine given the activities of international institutions.

### **1. Literature Review**

The work of Mantu (2019), dedicated to the overview of key international and regional human rights institutions, global and regional treaties, as well as political agreements and documents that do not have binding force, became the basis for the article. The work of Chizhov (2022) also influenced the formation of the author's position on the researched topic, as the scholar conducted a comprehensive analysis of the theoretical and legal foundations of the implementation of international standards for ensuring human rights in the sphere of national security.

The article by Morris (2020) established the relationship between national security and human rights by considering some practical implications of public policy. The study has considered the works of Morton and Maeselin (2020), dedicated to the main principles of modern international law aimed at strengthening international security regimes and scientific works of Alwan (2020) on the systematization of scientific approaches to the concept of "national security" and Gilder (2021) on the conceptual basis of human security, the possibility of responding to a changing world, and the corresponding reorientation of international rights.

The scientific works of Hill (2020), Drobotov (2020) emphasize the need to balance civil liberties and national security with the help of international institutions.

Particularly noteworthy are the scientific studies by Sandoval *et al.* (2020), Peters and Askin (2020), which emphasize the need to introduce innovative means of monitoring and promotion of dialogue by supranational human rights bodies.

An active study of the relevant problem confirms the fact that special attention should be paid to the current state and further development of international institutions in the mechanism of protection of human rights and freedoms in the sphere of national security. Therefore, conducting the research according to these new criteria is state-of-the-art and relevant.

## 2. Methods

As shown in Figure 1, the article used such modern methods of cognition, as formal-logical, historical, systemic, comparative, analytical, statistical, and concrete-sociological (research documents). It should be emphasized that 40 sources were reflected in the work.

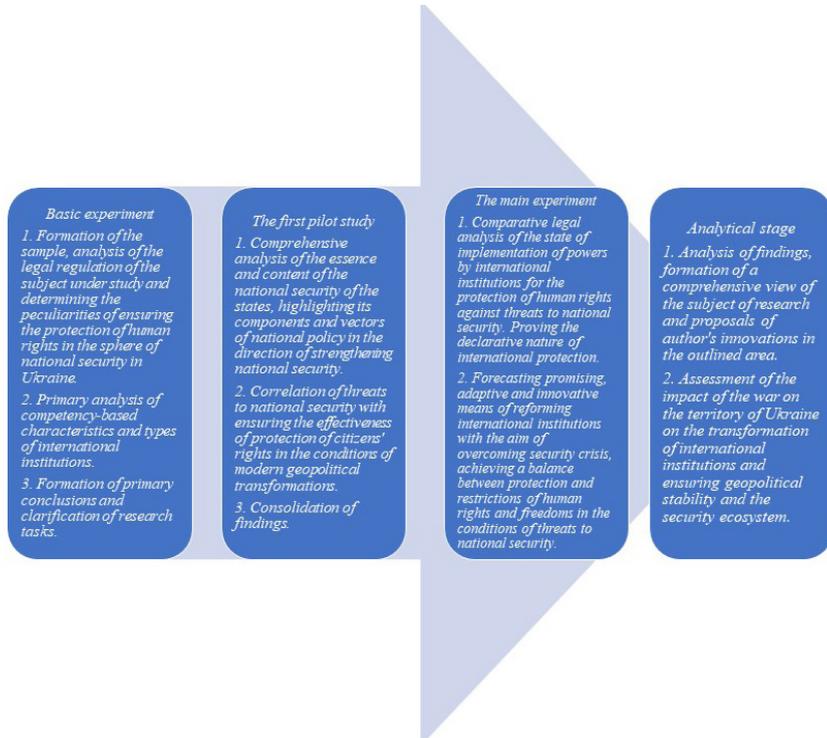


Figure 1. The structure of the phased research. Source: Own elaboration.

The methodological base of the study is represented by the dialectical method, which allowed comprehensive and objective consideration of the problems of legal relations of international institutions and states regarding the protection of the citizens' rights from threats to national security.

The main research method, used in the study, was the observation method, which helped to reveal the author's perception of the essence and content of legal relations between the studied international institutions and to analyses the protection of citizens' rights in the sphere of national security in Ukraine. The comparative legal method made it possible to

reveal the inability of international institutions to influence the protection of human rights and freedoms in the sphere of national security and to confirm the need to reform the entire ecosystem of international security and protection against armed aggression.

The following methods were also used: legal modeling (modeling the development of legal relations of states and international institutions), observation (study of modern trends in the development of current international and national legislation in the sphere of national security, and the activities of legal entities), formal logic (different theories and hypotheses of the further building relationships between states, international institutions, and their partnerships were singled out), hypothetical-deductive (can be seen throughout the article and in the conclusions), etc.

### **3. Results**

The protection of human rights was recognized as the goal and task of the United Nations in the UN Charter of 1945 (United Nations, 1945). In December 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly resolution (UN General Assembly, 1948). In December 1966, the UN General Assembly adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) and the International Covenant on Civil and Political Rights (ICCPR, 1966). At the same time, the UDHR and these two Covenants became known as the International Bill of Human Rights.

The UN human rights mechanism consists of many components, the purpose of which is to protect human rights around the world. There are relevant contractual and statutory mechanisms. Statutory bodies assess compliance by all UN member states with their obligations in the sphere of human rights by the UN Charter. Treaty bodies monitor the implementation of the core international human rights treaties by the State parties. The composition of treaty committees on human rights includes independent experts who monitor compliance with the obligations imposed by the main international treaties on human rights.

These committees include Committee on the Elimination of Racial Discrimination, Committee on Economic, Social and Cultural rights, Human Rights Committee, Committee on the Elimination of Discrimination against Women, Committee against Torture, Committee on the Rights of the Child, Committee on Migrant Workers, Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Committee on the Rights of Persons with Disabilities, Committee on Enforced Disappearances.

All committees carry out periodic inspections of states' compliance with the provisions by the procedure based on the periodic submission by the State parties of a report with a detailed description of all measures taken during the reporting period to fulfill the obligations contained in the treaty. After reviewing the report, the relevant committee issues its "Concluding Observations": a set of recommendations aimed at improving the implementation of these obligations.

Confidential investigations, which can only be conducted concerning State parties that have recognized the competence of the relevant committee in this regard, should be initiated upon receipt of reliable information on any serious or systematic violation of the rights guaranteed by the treaties they are monitoring. General comments or recommendations are interpretations by committees of provisions of human rights treaties, specific topics, or methods of their work.

Regarding the statutory mechanisms, the UN adopts resolutions on various issues related to this goal, as well as establishes and monitors the work of various auxiliary mechanisms. These include the Universal Periodic Review (UPR) process and special procedures of the UN Human Rights Council. The UPR is a mechanism through which human rights provisions in all UN member states are reviewed every five years.

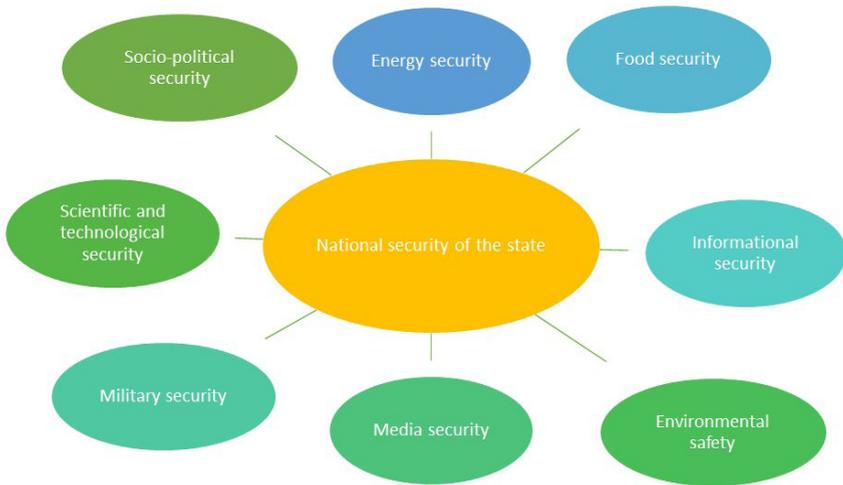
Special procedures may have thematic or geographic mandates. Mandate holders are special rapporteurs, independent experts, or working groups consisting of five members appointed by the Human Rights Council. They can receive information about specific claims of human rights violations and send urgent appeals or letters of accusation. The Office of the UN High Commissioner for Human Rights (OHCHR) is responsible for coordinating efforts to promote and protect human rights. It provides research, technical expertise, and logistical support to facilitate the work of the Human Rights Council and other statutory bodies.

This universal human rights system coexists with regional systems: African, Inter-American, and European human rights protection systems. Relevant judicial bodies (for example, the African Court on Human and Peoples' Rights, the Inter-American Court of Human Rights, the European Court of Human Rights (2022) are constantly operating in specific regions. Although the same rights are often protected by one or more universal treaties and regional treaties, the victims cannot simultaneously or sequentially seek protection from more than one mechanism concerning the same human rights violation.

An example of this is Article 35.2. (b) of the ECHR (European Court of human rights, 1950), according to which an application, which is essentially the same as a case that has already been referred to another procedure of international investigation or settlement procedure and does not contain

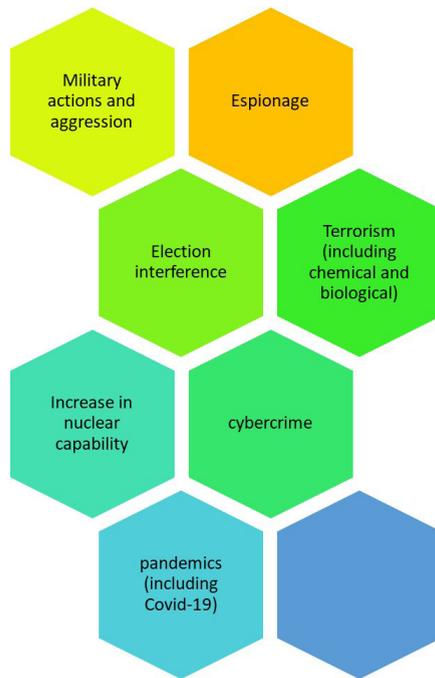
new information, will be considered inadmissible by the European Court of Human Rights.

The international documents on security, developed under the leadership of the European Union, the Council of Europe, the OSCE, the United Nations, and the IAEA contain relevant standards. Control over their implementation is carried out by the Committee of Ministers of the Council of Europe, which monitors the implementation of the decisions of the European Court of Human Rights under the provisions of the European Convention on Human Rights (Article 46(2) of the Convention) (European Court of human rights, 1950).



**Figure 2. Components of the national security of the state (developed by the authors as a result of observation).**

Currently, we can talk about variable components of national security (Figure 2) and, accordingly, variable threats (Figure 3).



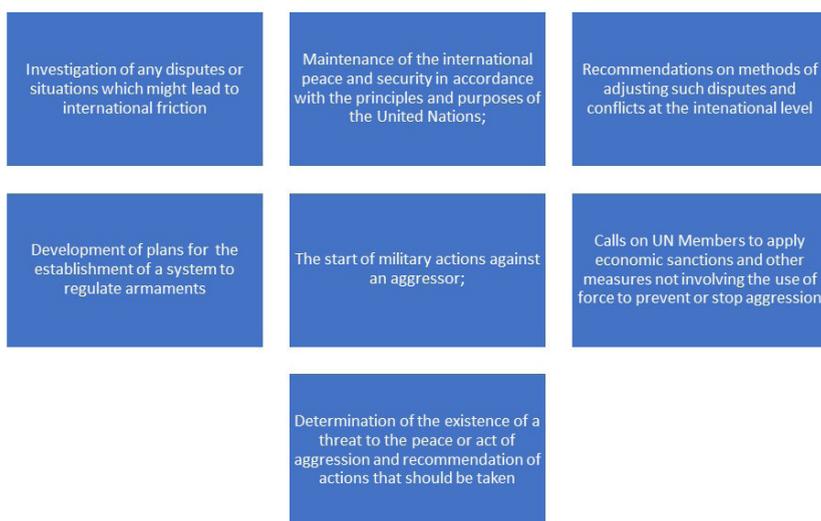
**Figure 3. The main threats to national security in the context of globalization (in the authors' point of view).**

Threats to national security can come from foreign governments with hostile intentions, such as direct military actions and aggression, espionage, and election interference. Countries may also face the threat of terrorism, including biological terrorism. Activities of an “enemy State” to accumulate chemical weapons stockpiles, develop nuclear potential, or otherwise increase its destructive capabilities are qualified as a threat to national security. In modern conditions, cybercrime is especially dangerous for national security, as it is aimed at hacking the websites of economic institutions, and governmental or energy infrastructures. For example, in Ukraine, as of June 30, 2022, 796 cyber-attacks were carried out (Government portal of Ukraine, 2022a).

The main sectors, targeted by hackers, are Government and local authorities – 179, the security and defense sector – 104, the financial sector – 55, commercial organizations – 54, the energy sector – 54, and others – 350. The most common methods include collecting information by the attacker, malware code, and intervention. An important threat to national security is a transnational crime, uncontrolled migration, ethnic

and religious conflicts, pandemics, and climate change (it can also be considered a threat to national security, as the corresponding long-term effects can lead to environmental disasters).

In turn, a universal system of collective security was created within the framework of the United Nations. The UN Security Council is currently responsible for maintaining international peace and security and takes all appropriate actions for both protection of human rights and the prevention of their violation (Figure 4).



**Figure 4. Functions and powers of the UN Security Council regarding the protection of human rights in the sphere of national security.**

An example is the developed recommendations on international behaviour related to international and national security, namely the resolutions on the Threats to International Peace and Security Caused by Terrorist Acts, Non-proliferation of nuclear weapons and Nuclear Disarmament, Crimes of Piracy and Armed Robbery Against Ships, Human Rights and Preventing and Countering Violent Extremism.

The UN General Assembly has developed 15 draft resolutions and decisions in the field of disarmament, including 2 decisions on cyberspace security (UN. First Committee, 2020). The COVID-19 pandemic revealed the need for intensification of work in the field of economic, social, and cultural rights to effectively assist all countries in their promotion and protection and to address inequalities in the recovery from the COVID-19 pandemic (UN Secretary-General, 2022).

International standards for the protection of human rights in the sphere of national security consist of mandatory and recommendatory components. Mandatory standards are enshrined in ratified universal international treaties and take precedence over the norms of national legislation and must be applied by state courts in case of contradictions between them. Based on the resolutions, countries have developed appropriate national plans for national security. Thus, in 2020, the European Commission developed the EU Security Union Strategy (European Commission, 2020) to protect EU citizens and promote the European way of life.

The strategy covers the period from 2020 to 2025 and focuses on four strategic priorities and key actions in which the EU can help member states to strengthen security by adhering to European values and principles: a future-proof security environment, tackling evolving threats, protecting Europeans from terrorism and organized crime and a strong European security ecosystem. The NATO military-political bloc remains the guarantor of national sovereignty and the power of EU member states to resist external threats.

Currently, the national security of Ukraine, legally established at the national level (Verkhovna Rada of Ukraine, 2018), has acquired a special significance. Modern state policy in the sphere of national security and defense is aimed at protecting the people and citizens, their life and dignity, constitutional rights and freedoms, and safe living conditions. The main principles determining the formation of state policy in the sphere of national security and defense include the rule of law, accountability, legality, transparency, and compliance with the principles of democratic civilian control over the security and defense sector, compliance with the norms of international law, participation in international efforts to support peace and security, etc. The priority of the security policy and the foreign policy of Ukraine now is integration into the European Union in the context of entering the established security system in the region.

On June 23, 2022, the leaders of 27 EU member states decided to grant Ukraine EU candidate status (Government Portal of Ukraine, 2022b). Further preparation for membership will involve the completion of transformation in the country, which will adjust living conditions in Ukraine according to the principles of the EU and its laws aimed at the protection of the rights and freedoms of every citizen (Official journal of the European Union, 2012).

Representatives of international institutions, to ensure the mechanism of protection of human rights and freedoms in the sphere of national security, monitor the situation in the states that have signed and ratified them. The main purpose of such actions is the observance of rights and freedoms, the provision of consultative, organizational, and judicial protection of human rights and freedoms. The situation in Ukraine can serve as an example of

law enforcement practice: on February 25, 2022, the UN Security Council failed to adopt a draft resolution on ending the Ukraine crisis, as Russia vetoed the resolution.

On March 2, 2022, the UN General Assembly overwhelmingly adopted a resolution demanding that the Russian Federation immediately end its invasion of Ukraine and withdraw all troops (UN. General Assembly, 2022). The text contains a call for an immediate peaceful settlement of the conflict through political dialogue, negotiations, mediation, and other peaceful means. At the same time, such a resolution turned out to be declarative and confirmed the urgent need to revise the concepts of international security protection.

The UN Human Rights Monitoring Mission in Ukraine (HRMMU) has been active since 2014 at the invitation of the government of Ukraine. Special attention was paid to the situation in the conflict zone with the Russian Federation in the east of Ukraine and the Autonomous Republic of Crimea. On February 24, 2022, the Russian Federation announced the start of a military special operation in Ukraine, despite the actual waging of the aggressive war. The HRMMU continues to monitor the impact of this situation on human rights throughout the country. As of 24:00 00:00 on July 3, 2022 (local time), the Office of the United Nations High Commissioner for Human Rights (OHCHR) recorded 11,152 civilian casualties in the country: 4,889 killed and 6,263 wounded (OHCHR, 2022).

Most recorded civilian casualties resulted from the use of explosive weapons with wide area effects, including heavy artillery shelling and MLRS raids, as well as missile and air strikes. Heavy fighting and large-scale hostilities led to mass displacement of the civilian population, which had serious consequences for the exercise of their rights, particularly economic and social ones. The Office of the United Nations High Commissioner for Refugees reported that more than 4.81 million people had left the country by June 10, and the International Organization for Migration indicated that more than 7 million people had been internally displaced (IOM, 2022).

The OSCE launched its special monitoring mission for Ukraine in March 2014 at the request of the Ukrainian government and by consensus decision of all 57 OSCE participating States. The mandate of the OSCE Special Monitoring Mission expired on March 31, 2022, and consensus regarding its extension was not reached due to the position of the Russian Federation.

Four nuclear power plants in Ukraine (Zaporizhzhya NPP, Rivne NPP, South-Ukraine NPP, and Khmelnytska NPP) have 15 operating reactors. Accordingly, the IAEA has developed a comprehensive assistance program to reduce the risk of a major nuclear accident (IAEA, 2022) and sent to Ukraine three integrated missions on security, physical security, and safeguards data. The IAEA continues technical attempts to resume the

transmission of remote safeguards data to the IAEA headquarters from the Zaporizhzhya NPP, which ceased on May 30, 2022.

On February 28, 2022, the ECtHR received a request from the government of Ukraine to take protective measures regarding the inter-state complaint. As a result, the Court instructed the Government of the Russian Federation to refrain from military attacks on the civilian population and civilian objects, including with the use of any types of prohibited weapons, to immediately ensure the safety of medical institutions and emergency rescue services within the territories attacked or surrounded by Russian troops.

Also, by its obligations under the Convention, especially concerning Articles 2, 3, and 8 (European Court of human rights, 1950), the Russian Federation must ensure unhindered access of the civilian population to safe evacuation routes, medical assistance, food, and other basic needs, quick and unhindered passage of humanitarian aid. The Russian Federation ignores completely ECtHR decisions.

On March 16, 2022, the UN International Court of Justice issued a ruling on taking temporary measures in the case *Ukraine v. Russia* (International Court of Justice, 2022). In filing the case, Ukraine stated that the Russian invasion of Ukraine is based on a false claim of genocide. Given the lack of evidence of Russia's accusations of genocide and the principle that any action to prevent genocide must be taken in good faith and under international law, the Court ordered Russia to immediately cease hostilities.

The question of Russia's participation in the proceedings is still open. The International Court of Justice has set the following deadlines for the submission of written documents: September 23, 2022, for Ukraine's memorial; March 23, 2023, for the counter-memorial of the Russian Federation (UN. Secretary-General, 2022b).

On March 16, 2022, the Council of Europe decided to exclude Russia from the Council of Europe with immediate entry into force (Council of Europe, 2022). The Russian Federation will cease to be a High Contracting Party to the ECHR on September 16, 2022 (ECtHR Decision, March 22, 2022). In turn, the ECtHR is considering the Interstate Case "Ukraine v. Russia" (X) (application No. 11055/22) (ECtHR, 2022), which concerns the statements of the Government of Ukraine about massive and gross violations of human rights committed by the Russian Federation during armed aggression on the territory of Ukraine from February 24, 2022.

On June 23, 2022, the ECtHR received a completed complaint form in the case. The case alleges that the Russian Federation illegally invaded Ukraine and that its invasion and occupation of Ukraine continues. According to the Ukrainian government, the Russian Federation is responsible for numerous violations of the ECHR (European Court of human rights, 1950) and

carried out targeted, non-selective and groundless attacks on civilians and their property throughout the territory of Ukraine, violating all norms of international law. Currently, the ECtHR is considering five more interstate complaints of Ukraine against the Russian Federation and about 8,500 individual complaints related to the events in Crimea, eastern Ukraine, and the Sea of Azov.

The given examples of the implementation of mechanisms for the protection of human rights and freedoms in the sphere of national security in the example of Ukraine testify to the declarative nature of the international institutions. The described situation requires an urgent reform of both international institutions themselves and approaches to ensuring the national security of States.

#### **4. Discussion**

The growth of international communication between countries remains the key to the development of international institutions governed by laws and rules (Mantu, 2019). The institutional structure of supranational human rights bodies and the characteristics of the respondent states are key variables influencing the results (Hillebrecht, 2017). In the conditions of the gradual weakening of the regulatory hegemony of the State, international judicial institutions go beyond their limited function of a simple dispute settlement mechanism and become law-making bodies (Torbisco-Casals, 2022).

The right to national security confirms its social value as a regulator of social relations, and strategic communications for the protection of national interests while fulfilling the State's international obligations, ensuring the protection of human rights and fundamental freedoms (Bogutsky, 2020). However, there must be a compromise between human rights and legitimate collective goals, such as the survival of the community and its security from external or internal threats (Torbisco-Casals, 2022).

Interference with human rights and freedoms must be provided for by law, pursue a legitimate goal, and be necessary for society (Binder, 2018). But where national security intersects with human rights abuses at the national level, international human rights law is weak (Morris, 2020). Human rights and freedoms are the highest priority for the development of a democratic state, but they can be limited in the interests of national security (Drobotov, 2020).

Cross-border threats of violence, encroachment on health, and environmental crises are challenges to national security, which can affect people's daily lives (Gilder, 2021). National legal systems of different

nature led to differences in the actual results of the implementation of the same international requirements, as a result of which the international platform for responding to security challenges has not been implemented yet (Chizhov, 2022).

There are many shortcomings in the work of international institutions in the mechanism of protection of human rights and freedoms (Sandoval *et al.*, 2020). First, some monitoring tools (such as questions during status reports) are used inconsistently in practice. Secondly, there is constant non-compliance by states with various procedures. Treaty bodies often require the State concerned to provide a written report on the implementation of the recommendations within a specified period – usually within six months of notification of the recommendations by the treaty body.

However, States do not always adhere to these agreements. Third, supranational bodies are not provided with sufficient human and financial resources to monitor and facilitate the implementation of their decisions (Sandoval *et al.*, 2020). Also, international institutions should act more actively than react to the protection of human rights. There must be a well-thought-out and sound policy for the prevention of human rights violations (Mantu, 2019).

The willingness of some states to use force indicates that the legal prohibition on the use of force may be weakening which makes it necessary to develop more supranational provisions on human rights in the sphere of national security, as well as to expand the opportunities to bring violators to justice (Morton and Maeselin, 2020). However, the search for an alternative to the UN Security Council will not take place shortly (Subramanian, 2022).

## Conclusion

The doctrines of human rights and freedoms influenced international law and became an impetus for the creation of global and regional institutions. The development of new technologies and communication networks removes barriers, but it also leads to the emergence of new problems, risks, and threats. By helping to improve the international system of human rights, the relevant international institutions act as multi-level and complex structures. Regional systems are the main elements of international protection of human rights.

One of the most important principles of national security in every modern democratic state is the rule of law. The main vector should be aimed at balancing the guarantees of observance of human and citizen rights and freedoms in the national security system in general.

As a result of the invasion of the Russian Federation on February 24, 2022, millions of Ukrainians were deprived of their basic rights and freedoms: the right to decide their fate, freely choose their political status, and engage in their economic, social, and cultural development. International organizations make a lot of efforts to protect human rights and freedoms in the sphere of national security, but the readiness of some states to use force against other states indicates a weakening of the legal prohibition of the use of force.

The implementation of international mechanisms for the protection of human rights and freedoms in the sphere of national security by international institutions is hindered by the sovereignty of the modern state, which makes international law advisory, not mandatory. Increasingly, the decisions of international institutions are becoming declarative, which confirms the lack of effective protection of rights and requires further reform of the global security ecosystem of states with the consolidation of effective mechanisms for the protection of human rights and freedoms.

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