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CUSTOMARY INTERNATIONAL LAW AND OSCE DOCUMENTS: THE POTENTIAL FOR MUTUAL INFLUENCE

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Ahmadov E.M. Customary international law and OSCE documents: the potential for mutual influence.

Despite the fact that theoretical concepts about the nature, essence, and significance of customary norms, and their place among the sources of international law, are well studied in academic circles, there are still very few scientific works dedicated to specific issues concerning customary norms. Today, there is growing distrust of customary norms, especially in countries with the Romano-Germanic legal system, and there are even doubts about the practical significance of customary norms as a source of contemporary international law. These doubts arise, in particular, from the fact that subjects of international law, when applying various legal norms in international relations, often forget about the true origin of these norms. For example, in the doctrine of international law, attention is often drawn to the "binding legal force" of non-ratified treaties because they codify customary norms of international law. This fact, at a minimum, indicates that customary norms of international law can underlie the actions of subjects of international law when it may seem to them that they are following norms from "other" sources of international law, bypassing customary norms, although, in reality, their relations are governed by customary norms of international law. Such a connection between customary norms can be established not only with non-ratified international treaties but also with political commitments established within various international organizations.

Frequent instances of violations of political commitments established within the OSCE framework increase the interest of scholars, particularly international lawyers, in studying the possible consequences of these violations by OSCE participating states. Specifically, the question arises as to whether the political commitments outlined in OSCE documents are connected to any legal obligations, as it is quite possible that some political commitments originate from customary norms and have a specific customary norm as their root. In other words, these commitments may reflect a more specialized application of a particular customary norm in relation to a specific narrow circle of international relations within the OSCE area.

The purpose of this work is, on the one hand, to analyze the customary norms of international law and identify the characteristics of their emergence and development, and on the other hand, to ascertain the essence of documents adopted on behalf of the OSCE as a whole and their influence on the development of customary international law. The results of the research lead to the conclusion that OSCE documents indeed play a significant role in the evolution of customary norms. Through more targeted and intensive research of OSCE documents, and the creation of special mechanisms within the OSCE for this purpose, we believe it will be possible to reveal not only the explicit but also the latent connection between customary norms of international law and the political commitments established in OSCE documents.

Key words: universal customary norms, particular customary norms, opinio juris, International Court of Justice, norms of international treaties, OSCE documents, public statements of states, political commitments, OSCE executive structures, norms of jus cogens, International Law Commission, persistent objector doctrine.

Ахмедов Е.М. Звичайне міжнародне право і документи ОБСЄ: потенціал взаємного впливу.
Незважаючи на те, що в наукових колах теоретичні уявлення про поняття, сутність і значення звичайних норм, і їх місце серед джерел міжнародного права, досить добре вивчені, проте, дуже мало наукових робіт, присвячених спеціальним питанням, що стосуються звичайних норм. Сьогодні зростає недовіра звичайним нормам особливо в державах романо-германської правової системи і навіть висловлюються сумніви про практичну значимість звичайних норм як джерела сучасного міжнародного права. Подібні сумніви випливають, зокрема, з того, що суб'єкти міжнародного права, застосовуючи різні правові норми в міжнародних відносинах, найчастіше, забувають про справжнє походження цих норм. Наприклад, в доктрині міжнародного права часто звертають увагу на «обов'язкову юридичну силу» нератифікованих договорів в силу того, що в них кодифіковані звичайні норми міжнародного права. Цей факт, як мінімум, свідчить про те, що звичайні норми міжнародного права можуть виступати підгрунтям дій суб'єктів міжнародного права, коли їм може здатися, що вони слідують нормам «інших» джерел міжнародного права, минаючи звичайні норми, хоча, насправді, їх відносини регулюються звичайними нормами міжнародного права. Подібний зв'язок звичайних норм можна встановити не тільки з нератифікованими міжнародними договорами, а й з політичними зобов'язаннями, встановленими в рамках різних міжнародних організацій.

Часті випадки порушення політичних зобов'язань, встановлених в рамках ОБСЄ, посилюють інтерес вчених, особливо юристів-міжнародників, до вивчення можливих наслідків порушення цих зобов'язань державами-учасницями ОБСЄ. Зокрема, виникає питання про те, чи пов'язані політичні зобов'язання, передбачені в документах ОБСЄ, з будь-якими юридичними зобов'язаннями, адже цілком можливо, що деякі політичні зобов'язання виходять від звичайних норм і мають в якості кореня певну звичайну норму. Іншими словами, ці зобов'язання можуть відображати більш спеціальне застосування тієї чи іншої звичайної норми по відношенню до конкретного вузького кола міжнародних відносин, що мають місце на просторі ОБСЄ.

Метою роботи є, з одного боку, аналіз звичайних норм міжнародного права і виявлення особливостей їх виникнення і розвитку, з іншого боку, з'ясування сутності документів, прийнятих від імені ОБСЄ в цілому, і їх впливу на розвиток звичайного міжнародного права. З результатів дослідження випливає висновок про те, що документи ОБСЄ, дійсно, відіграють значну роль в еволюції звичайних норм. Завдяки більш цілеспрямованому і інтенсивному дослідженню документів ОБСЄ, і створенню для цього спеціальних механізмів в рамках ОБСЄ, на нашу думку, вдасться виявити не тільки явну, але і латентний зв'язок між звичайними нормами міжнародного права і політичними зобов'язаннями, встановленими в документах ОБСЄ.

Ключові слова: універсальні звичайні норми, партикулярні звичайні норми, opinio juris, Міжнародний суд ООН, норми міжнародних договорів, документи ОБСЄ, публічні заяви держав, політичні зобов'язання, виконавчі структури ОБСЄ, норми jus cogens, Комісія міжнародного права, доктрина про наполегливе заперечення.

Problem statement. Various aspects of the application of customary international law have always sparked great interest among scholars in the field of international law from around the world. A sufficient number of in-depth professional academic works in this area have been published thanks to the painstaking and meticulous efforts of these legal scholars. The study of customary international law continues today as well. However, there is a noticeable shortage of scientific works that study the manifestations of customary norms in the official documents of various regional organizations among the overall body of academic works dedicated to customary norms of international law.

Our choice of OSCE documents as the object of research is explained by the overall share of OSCE's participation in the totality of contemporary international relations and the significant contribution of the organization's activities to international practice compared to the activities of other similar regional organizations. Indeed, the OSCE is a unique organization, both in terms of the number of states it covers and the scope of international relations it addresses. As a result, the potential of OSCE's activities to have a large-scale, comprehensive, and multifaceted impact on customary international law significantly exceeds the potential of most regional organizations.

It should also be noted that not only does the OSCE have the potential to impact customary international law, but customary norms can also affect the activities of the OSCE by establishing boundaries for international relations within the framework of the OSCE. In turn, OSCE documents

often clarify and refine the content of certain customary norms. It is sufficient to mention the fact that the quasi-constitutional document of the OSCE – the Helsinki Final Act of 1975 – for the first time separately highlighted, clarified, and supplemented the content of such universal customary norms as the principle of territorial integrity and the principle of the inviolability of borders [1, pp. 88–90].

Main material. *The essence of customary international law.*

Bulgarian professor of international law Alexander Dragiev notes that customary norms arise as a result of the natural evolution of international relations, which explains the spontaneous and emergent nature of their formation [2, p. 22].

Polish professor of international law Karol Wolfke emphasizes that the adaptability and flexibility of customary norms in constantly changing circumstances in international life predetermine their dominant role in the regulation of international relations. According to the Polish author, such tendencies are particularly strengthened by the increase in the number of international organizations, which facilitate more intensive, comprehensive, and multifaceted relationships between subjects of international law. Moreover, there are often areas of international relations that are very difficult to regulate through treaty norms of international law. In all these cases, customary international law serves as an indispensable legal tool [3, p. 10].

Bulgarian professor Alexander Dragiev draws attention to the distrustful attitude of states belonging to the Romano-Germanic legal system towards customary norms of international law. This is explained by the fact that in the continental legal system, sources of law are generally written, which is why politicians and legal scholars in these states prefer international treaty norms, often neglecting customary norms due to their unwritten nature.

It is worth remembering that for several centuries, customary norms formed the foundation of international law, and international law as such emerged based on legal customs. Specifically, diplomatic, maritime, and treaty law existed for a long time within the framework of customary international law. Even today, some branches of modern international law arise and develop based on customary norms [2, p. 19].

American professor of international law Anthony D'Amato notes that the claims of some authors that the behavior of great powers is more significant in the formation of customary norms compared to the actions of small states, though somewhat true, do not fully reflect the reason why states have different levels of influence in this process. In his view, the authority of states in the formation of customary norms is determined not by the size of the territory they occupy on the map, nor by military power, but by their level of professionalism in international law, both doctrinally and practically [4, p. 96].

Polish professor Karol Wolfke notes that the conditions for the formation of customary norms in contemporary international law have significantly changed, which is explained by general progressive changes in the nature of international relations. In particular, the previously dominant opinion over several centuries that a long period is necessary for the emergence of a legal custom is now universally refuted. As examples, K. Wolfke cites the following: the recognition of state sovereignty over their airspace before the start of World War I occurred in a very short period; the prohibition of extending any national jurisdiction into outer space; the ban on nuclear weapon tests in the open sea was established after just a few such tests in the Pacific Ocean; and so on.

The development of mass media and the ability to quickly exchange information about practice has greatly accelerated the process of forming customary norms. In modern conditions, states can instantly learn each other's positions regarding certain practices, which facilitates the establishment of opinio juris.

Moreover, with the acceleration of the rhythm of international life, the frequency of various actions has sharply increased, which also contributes to the establishment of certain practices over a short period. As noted by K. Wolfke, if in the past only one vessel passed through the territorial waters of a particular state per week, now hundreds and even thousands of vessels pass through the territorial waters of states in a single day. Accordingly, it is now possible to learn, in a very short period, in particular, the attitude of states towards the peaceful passage of foreign vessels through their maritime territories [3, pp. 67-8].

Subparagraph b, paragraph 1, article 38 of the Statute of the International Court of Justice gives the following definition of customary norms of international law: "international custom, as evidence of a general practice accepted as law" [5].

The content of article 38 implies two constitutive elements necessary for the emergence of a legal custom. The first constitutive element is general practice. The second constitutive element, implied in

the phrase “accepted as law,” is known as opinio juris sive necessitatis, which translates from Latin as “opinion of law or necessity,” but the shortened version of this expression – opinio juris – is often used [2, p. 20].

General practice is usually considered an objective, material, or quantitative element, while opinio juris is considered a subjective, psychological, or qualitative element of customary norms of international law [6, p. 710].

Russian professors of international law Alexander Vylegzhanin and Ruben Kalamkaryan note that the concept of legal custom contained in article 38 of the Statute of the International Court of Justice is accepted as an axiom because, according to article 92 of the UN Charter, this Statute is an integral part of it. Nevertheless, despite the existence of a generally recognized definition of customary international law norms, interpretations and comments on this definition in the doctrine of international law vary greatly [7, p. 8].

Scottish lawyer Ian MacGibbon notes that the adherence of subjects of international law to a certain practice means, at the very least, that the actions constituting this practice do not contradict the norms of international law. Moreover, the repeated performance of the same actions indicates the convenience and desirability of a certain practice for the relevant subjects. However, this is not sufficient for a certain set of actions to become a legal custom. Therefore, an initially convenient practice exists in the form of usage, as there is still a lack of opinio juris, that is, the belief that the general practice is legally binding. Ian MacGibbon emphasizes that practice only becomes a legal custom when the subjects of international law treat this practice as their right and simultaneously recognize such a right of other subjects, as well as acknowledge the international legal obligation associated with this right [8, pp. 117-118].

According to Professor Karol Wolfke, the most reliable information about the existence of customary norms is contained in the publications of the International Court of Justice (ICJ). This can be explained by several reasons. First, the parties involved in a case put maximum effort into substantiating or refuting the fact of the existence of a certain customary norm, and they are the ones who may possess the most detailed data on the existence of a specific legal custom between them. Second, the extensive information about the existence of a customary norm obtained during the trial is supplemented and analyzed by several ICJ judges, who subsequently express their own opinions. Therefore, the opinion of one expert-professional or a group of such experts regarding the existence of a customary norm usually cannot surpass in quality and authority the decisions of the ICJ [3, pp. 84-85].

American legal scholar Professor Andrew T. Guzman notes that the International Court of Justice (ICJ), when making decisions related to the establishment of customary norms, unfortunately, often does not delve deeply into the question of which parties should possess the psychological element, namely opinio juris. However, by analyzing the Court’s practice, the American author concludes that in its decisions, the Court evidently refers to states as a group. That is, the psychological element of a customary norm should not be fixed individually for each state but rather for all interested states as a whole. Therefore, the establishment of the psychological element for any interested state should be as important as the opinio juris of the violating state [9, p. 142].

As noted by Polish professor Karol Wolfke, the indirect contribution of international courts to the development of customary international law is significantly broader and deeper than their formal role, which is limited to making decisions binding only on the parties to the specific case. The informal role of the courts, especially in the development of customary international law, is quite substantial. It is important to emphasize that the decisions of international courts establishing customary norms cannot have any consequences for third parties.

When making any decisions, international courts collect and analyze numerous facts that confirm or refute the existence of a particular practice. Nevertheless, the judicial analysis of a specific legal custom cannot, in principle, cover all aspects of the existence and operation of that custom, as this is an unrealistic task. Therefore, judicial decisions regarding a particular legal custom inevitably contain a degree of subjectivity.

International courts often establish the existence of customary norms of international law, which is essentially a specific form of lawmaking. However, there are instances when a customary norm has already been established by a specific judicial decision and needs to be applied to another similar case. Even in such instances, international judicial bodies engage in lawmaking by applying the general customary norm established in a previous judicial decision to subsequent similar cases in a more specific form, taking into account all the specifics of these cases.

The decisions of international courts have a considerable impact on the overall dynamics of the development of customary norms. For instance, if a judicial decision states that there are insufficient grounds to recognize a certain practice as a legal custom, the transformation of this practice into a legal custom may be paralyzed for a long time. Conversely, if a judicial decision confirms the existence of a certain practice, the process of transforming this practice into a legal custom can be significantly accelerated.

It should also be noted that not only international courts can participate in the formation of customary norms of international law, but also decisions of national courts addressing international legal issues can play a significant role in this process. The importance of such decisions of national courts lies in the fact that they reflect the position of the state to which the court belongs regarding a particular practice, which is a necessary fact in the establishment of customary norms of international law.

Just as the International Court of Justice of the United Nations holds the highest authority at the international level compared to other international courts, the authority of national courts and, consequently, their influence on the formation of legal customs is not uniform. The level of influence on the development of customary norms of international law of a particular national judicial body depends on the reputation and respect that this body has earned at the international level through its professional and objective decisions [3, pp. 71–73].

Polish jurist Paweł Marcisz notes that an absolutely precise interpretation of legal customs is almost an impossible task because, unlike other norms of international law, which have textual or symbolic expressions, legal customs reflect the behavior patterns of subjects of international law. Considering that legal customs are expressed in a certain set of actions, known as "general practice," any interpretation of customary norms cannot comprehensively reflect the essence of a particular legal custom.

As Paweł Marcisz points out, a full definition of customary norms is not necessary since, in international practice, it is sufficient to identify those parts or elements of a particular legal custom that are necessary for resolving a specific legal issue [10, pp. 148-149].

American author Gerald J. Postema notes that for the existence of legal customs, the primary importance lies not in theoretical concepts explaining the phenomenon of the emergence of customary norms, and not even in the opinions of international subjects on what they should do in a particular situation, but in the very fact of the existence of certain practices and what participants in international relations actually do. General practice can be called a holistic system from which international subjects draw knowledge and experience. At the same time, each of these subjects contributes to the development and improvement of the practice [6, p. 728].

International agreements and treaties play an important role in the development of customary international law. It should be emphasized that international treaties cannot in any way affect the position of third parties, which directly follows from the content of one of the fundamental principles of international law – the principle of pacta tertiis nec nocent nec prosunt. In other words, the provisions of international agreements cannot by themselves create customary norms of international law that would automatically apply to third parties who are not parties to these agreements. At the same time, states that are not parties to a particular international treaty may fully or partially comply with its provisions in their actions as binding, which is equivalent to their recognition of the corresponding practice reflected in this treaty.

Polish professor Karol Wolfke notes that following the practice reflected in an international treaty is sui generis adherence to the treaty through legal custom. As a result, a certain treaty may become binding for other states that are not parties to it. Such cases of treaty norms becoming binding for third parties through their transformation into customary norms are quite common in international legal practice. However, it is important to distinguish this process from the codification of long-existing customary norms in international treaties. In particular, the UN Charter, which codified old customary norms, can serve as an example of this [3, pp. 77-78].

Professor of international law Y.S. Romashev draws attention to the similarity between legal customs and international treaties. In his opinion, the similar characteristics of these sources of international law are particularly expressed in the following ways: a) a local customary norm that arises between two states can also extend to third states if they recognize this norm – the accession of third states to open bilateral treaties occurs in a similar manner; b) the consensual nature of the creation of customary norms allows third states to exclude the application of a customary norm to themselves through objections or protests – accession to international treaties also occurs on a voluntary basis; c) finally, as in international

treaties, in relation to a certain customary norm, there is a certain circle of participants who are subject to the binding force of this norm [11, pp. 31-32].

Polish professor Karol Wolfke draws attention to an important difference between customary and treaty (conventional) norms of international law, which is manifested in the nature of the expression of will by participants during their creation and the object of regulation of the newly emerging norm. The difference in the nature of the expression of will is that treaty norms are created through the clearly expressed consent of participants in international relations, whereas customary norms are often created through the tacit consent of participants. The difference in the object of regulation is that treaty norms aim to establish relations that did not exist between the treaty participants before the creation of the corresponding treaty norms, while customary norms aim to legally regulate practices that already existed before the creation of the legal custom [3, p. 102].

Serbian legal scholars of international law B. Milisavljević and B. Čučković note that legal customs in international law are closely interconnected with the norms of international treaties. This interconnection is evident in the fact that customary norms are often codified and formalized in written form within international treaties. The crystallization within international treaties clarifies and supplements the content of customary norms, and also serves as a reliable source proving the very existence of certain legal customs. In turn, customary norms often ensure the universal application of the international treaty in which they are enshrined. In other words, thanks to customary norms, certain important provisions of international treaties can be observed even by states that are not parties to these treaties [12, pp. 36-37]. It should also be noted that in international legal practice, it is quite common for provisions of unratified international treaties to be observed as legally binding norms. This occurs not due to the authority or political influence of certain unratified international treaties, but because the provisions of these treaties contain norms of customary international law.

Polish professor Karol Wolfke notes that international organizations typically rely on their charters, which consist of conventional norms, in their activities. However, because international organizations facilitate the expansion of relations between states and the intensification of international practices, the legal norms of these charters often prove insufficient to regulate the entire array of international relations between the member states of the organization. Moreover, amending the charters of international organizations often involves significant challenges.

Therefore, within international organizations, customary norms become an indispensable legal tool for the flexible and comprehensive regulation of relations between the participants of the organizations. These unwritten customary norms and practices that are implied by these norms are often materially embodied in the form of the organizations' recommendatory acts, particularly in the form of resolutions.

As Professor K. Wolfke notes, customary international law becomes a regulator of relations not only between the member states of the international organization but also between its institutions or between the staff and the institutions of the organization. Thus, customary norms make a significant contribution to the so-called internal law of international organizations [3, pp. 82–84].

Polish lawyer Paweł Marcisz notes that the minimal condition for the emergence of a customary norm is cooperation between the relevant subjects. Specifically, within the framework of the European Union, a legal custom that is binding only on the respective EU institutions can arise through the cooperation of these institutions. Through the cooperation of EU member states, a customary norm binding only on the member states of the organization can emerge. Of course, it is also possible for a legal custom regulating the relations between the EU institutions and the member states to arise, naturally under the condition of close cooperation between these subjects [10, p. 154].

Polish professor Karol Wolfke notes that the doctrine of international law recognizes the possibility of the existence of customary norms that are binding only between two states [3, p. 167]. Thus, a small number of participants does not hinder the transformation of a certain practice into a customary norm.

Bulgarian professor Alexander Dragiev points out the impossibility of precisely determining the moment when the two constitutive elements necessary for the creation of a customary norm are fully ready for the creation of a legal custom. In other words, it is impossible to determine the moment when non-binding practices in the form of usages or habits in behavior end and binding practices associated with the emergence of a customary norm of international law begin [2, p. 23].

Professor Karol Wolfke indicates the futility of any attempts aimed at codifying customary norms of international law due to the fact that these norms are in constant development. Similar to the continuous development of international relations, the development of customary norms also does not cease.

Therefore, the maximum that can be done is to establish the content and scope of application of a specific customary norm for its application to a particular case. K. Wolfke also notes that the process of the evolution of customary norms of international law is not endless, as customary norms after prolonged development can simply fade and completely disappear. However, it is practically impossible to precisely determine the moment of the disappearance of customary norms of international law, just as it is impossible to determine the moment of their emergence [3, p. 61].

Professor Alexander Dragiev notes that due to the impossibility of establishing the exact moment of the emergence of a specific customary norm, subjects of international law generally recognize judicial and arbitral decisions confirming the existence of a customary norm as solid evidence [2, p. 24].

The activities of the International Law Commission play a key role in the development of customary international law. Throughout its existence, the Commission has established itself as an institution of great professionalism in the field of international law. Through its deep and detailed analysis of international legal issues, the Commission has earned the respect, trust, and recognition of the entire international community.

Professor Y.S. Romashev notes that the authority of the International Law Commission in the formation of customary norms is partly explained by its unique mandate as a special auxiliary organ of the UN General Assembly. The value of the Commission's conclusions in the development of customary norms has been repeatedly confirmed in the decisions of the International Court of Justice.

The thoroughness and objectivity of the Commission's procedures in identifying customary norms and establishing their content are ensured through extensive research of general practice and opinio juris, close cooperation with states, and obtaining their oral and written comments on issues of significant importance in the study of customary norms. Sometimes, the General Assembly assigns the Commission to develop a draft of articles containing customary norms for their codification or clarification of their content. Such draft articles are usually issued in the form of UN General Assembly resolutions [13, p. 136].

Fundamental rules in the field of customary international law formulated by the International Law Commission.

To conduct the most objective and comprehensive investigation of the essence of customary norms for the purposes of this academic work, it is also necessary to refer directly to the materials of the International Law Commission. Below, we will highlight and examine important provisions reflected in the Commission's annual reports for 2018 and 2019. It should be noted that the provisions listed below were taken from the Commentaries to the Conclusions contained in the 2018 and 2019 Reports; both the Conclusions and the Commentaries on them are included in these Reports. Next to each provision, we will indicate the specific Commentary and its corresponding paragraph from which we derived the relevant provision. We will conventionally label the provisions as Provision No. 1, 2, 3, 4, and so on, to make them easier to reference.

Thus, among the most important provisions contained in the Annual Reports of the International Law Commission for 2018 and 2019, we highlight the following:

Provision No. 1. The creation of a customary norm requires the simultaneous presence of two constitutive elements. Any practice without the presence of opinio juris can at most become a non-binding usage, while any presence of opinio juris without practice can be considered merely an aspiration (paragraph 4 of the Commentary to Conclusion 2, Chapter V of the 2018 ILC Report).

Provision No. 2. When establishing customary norms related to the activities of international organizations, it is necessary to distinguish between the practice of the international organization itself and the practice of states within or in connection with international organizations. In other words, the fact that an international organization serves as a forum or catalyst for intensive inter-state relations does not mean that the practice of states within a particular organization becomes the practice of the organization itself (paragraph 4 of the Commentary to Conclusion 4, Chapter V of the 2018 ILC Report).

Provisions No. 3. The practice of an international organization, given the presence of opinio juris within that organization, can indicate the existence of or give rise to a customary norm only if the actions envisaged by this practice directly correspond to the mandate of the international organization (paragraph 5 of the Commentary to Conclusion 4, Chapter V of the 2018 ILC Report).

Provision No. 4. The role of a particular practice of international organizations in forming customary norms is not uniform and depends on the following factors: a) the extent to which the actions of the international organization constituting the practice are approved and supported by its member states;

b) the number of member states of the international organization and, in general, the authority of the organization at the international level; c) the extent to which the actions of the international organization or its relevant body constituting the practice correspond to the mandate of the organization and whether these actions are not ultra vires (paragraph 7 of the Commentary to Conclusion 4, Chapter V of the 2018 ILC Report).

Provision No. 5. The practice of states, which may lead to the formation of a customary norm of international law, can consist of actions not only by representatives of the executive branch, such as presidents, foreign ministers, and others, but also by representatives of the legislative and judicial branches, particularly parliamentarians, judges, and others (paragraph 1 of the Commentary to Conclusion 5, Chapter V of the 2018 ILC Report).

Provision No. 6. There may also be practices consisting of written or oral verbal acts, i.e., expressed solely in words, such as diplomatic protests. Such practices, therefore, can also lead to the formation of a customary norm of international law, provided there is opinio juris (paragraph 2 of the Commentary to Conclusion 6, Chapter V of the 2018 ILC Report).

Provision No. 7. When determining the existence of a specific practice, it is crucial to ascertain the degree and nature of participation in this practice by so-called specially affected states, that is, states that particularly actively and regularly engage in actions prescribed by the given practice. For example, it is impossible to objectively establish the content of a customary norm regarding the use of state maritime spaces without examining the practices of coastal states and the states of the flag of maritime vessels (paragraph 4 of the Commentary to Conclusion 8, Chapter V of the 2018 ILC Report).

Provision No. 8. The clearest evidence of the presence or absence of opinio juris is the public statements of states. Through public statements, the position of states regarding an established practice is determined quite effectively. Even simultaneous statements by states regarding the absence of a specific customary norm can nullify all consequences of existing practice. Public statements can be individual or collective. Public statements are quite often encountered during multilateral negotiations, in the course of judicial or arbitral proceedings, and in other instances (paragraph 4 of the Commentary to Conclusion 10, Chapter V of the 2018 ILC Report).

Provision No. 9. Resolutions of intergovernmental conferences or international organizations that describe a potential customary norm cannot by themselves create a customary norm. For the final creation of a customary norm, more authoritative confirmation of the existence of both practice and opinio juris, as provided for in the proposed customary norm, is necessary (paragraph 4 of the Commentary to Conclusion 12, Chapter V of the 2018 ILC Report).

Provision No. 10. Although resolutions of intergovernmental conferences or international organizations cannot directly create a customary norm, this does not at all exclude the important role that such resolutions can play in the establishment of customary norms. The significance of resolutions and their contribution to the development of customary international law mainly lies in the fact that they can serve as evidence of the existence of a customary norm and as an important auxiliary document for accurately determining the content of such a norm. Nevertheless, not all resolutions equally influence the formation of customary norms. The potential impact of a resolution on the formation of a customary norm is determined by the position of the participants in the intergovernmental conference or international organization when adopting the resolution, i.e., the ratio of the number of votes of states supporting, abstaining, and opposing the adoption of the resolution is of significant importance in this matter (paragraph 5 of the Commentary to Conclusion 12, Chapter V of the 2018 ILC Report).

Provision No. 11. It should be noted that the provisions mentioned above regarding the resolutions of international organizations or intergovernmental conferences also apply to other documents of such organizations or conferences regardless of the name of such documents or whether they are legally binding (paragraph 2 of the Commentary to Conclusion 12, Chapter V of the 2018 ILC Report).

Provision No. 12. Resolutions of intergovernmental conferences, unlike resolutions of international organizations that are adopted on behalf of the organization, are adopted on behalf of the member states of the conference. Although the resolutions of international organizations are issued by the organization itself, these documents can, of course, reflect the collective opinion or position of the member states of the organization, with particular value being attributed to those resolutions that directly or indirectly address legal issues (paragraph 3 of the Commentary to Conclusion 12, Chapter V of the 2018 ILC Report).

Provision No. 13. Due to the predominance of political elements in the content of most resolutions, the identification of "recognition of practice as a legal norm," i.e., opinio juris, should be carried out with utmost caution. At the same time, in periodically adopted resolutions, one can often observe the evolution of opinio juris, which can gradually reach a level where a certain resolution can serve as sufficient evidence of the presence of opinio juris (paragraph 6 of the Commentary to Conclusion 12, Chapter V of the 2018 ILC Report).

Provision No. 14. Due to the fact that customary norms have binding legal force, no state can refuse to comply with these norms. Nevertheless, in customary international law, there exists the doctrine of the "persistent objector." According to this doctrine, the binding force of a customary norm does not apply to a state that, prior to the final establishment of the customary norm, began to persistently object to the creation of this norm. Persistent objections by a state that began only after the moment of the official establishment of the new customary norm cannot exclude the binding legal force of this norm with respect to the late objecting state. Moreover, the state must persistently object not only during the process of forming the customary norm but also after the norm has been created. In other words, the objection must be continuous, because if the objection ceases, the customary norm may extend its effect even to the state that, for several decades, by continuing to persistently object, withheld the application of the created customary norm to itself (paragraph 1 of the Commentary to Conclusion 15, Chapter V of the 2018 ILC Report).

Provision No. 15. Given the difficulties in determining the exact moment of the creation of a customary norm, the earlier a state begins to object, the easier it will be for it to prove the applicability of the doctrine of persistent objection to itself (paragraph 5 of the Commentary to Conclusion 15, Chapter V of the 2018 ILC Report).

Provision No. 16. In the doctrine of international law, the possibility of the existence of particular norms of customary international law is not in doubt. The International Court of Justice, in its decisions, has repeatedly confirmed the existence of particular customary norms that have binding legal force exclusively for African, Latin American, or other regional states (paragraph 1 of the Commentary to Conclusion 16, Chapter V of the 2018 ILC Report).

Provision No. 17. Particular customary norms often arise between states of the same region or subregion, that is, those in geographical proximity. Such norms can arise and function effectively exclusively between two states. Particular customary norms govern interstate relations, for example, related to: a) the production of electricity on a border river between two states or the conduct of fishing on such rivers; b) ensuring free and unhindered access to enclaves on the territory of a foreign state; c) the exercise of joint rights of several states over historic waters; and other issues (paragraph 4 of the Commentary to Conclusion 16, Chapter V of the 2018 ILC Report).

Provision No. 18. Despite the fact that particular customary norms often have a regional or local character, nothing prevents such customary norms from arising between states located at a very great geographical distance, on different continents. These particular customary norms very often arise between states that are connected by a common cause, particularly a mutually beneficial economic partnership (paragraph 5 of the Commentary to Conclusion 16, Chapter V of the 2018 ILC Report).

Provision No. 19. Unlike universal or general customary norms, particular customary norms have binding legal force only for the states affected by this norm. Here, the question arises as to whether the practice provided for by particular customary norms is "general practice," which is one of the two constitutive elements of any customary norm. Nevertheless, there are no contradictions, as it might seem at first glance, because by "generality" of practice is meant not the prevalence or recognition of this practice by all the states of the world, but the adherence to this practice and its recognition as a legal norm only by those states that are, in one way or another, affected by the action of this practice (paragraph 7 of the Commentary to Conclusion 16, Chapter V of the 2018 ILC Report) [14].

Provision No. 20. The majority of the entire body of peremptory norms of general international law (jus cogens) consists of norms of customary international law. This follows from the nature of customary norms, namely from the fact that general practice, which is one of the two constitutive elements of any customary norm, can most flexibly and promptly spread among states from all continents. To recognize general practice as a legal norm, it is sufficient for states to tacitly follow this practice. The situation is different with legal norms enshrined in international treaties. Naturally, the norms of international treaties cannot turn into jus cogens norms by merely signing the text of the treaty and, therefore, the minimum necessary requirement for this is the ratification of the treaty by the majority of the states of

the world, which usually takes a long period of time. In turn, the spread of the binding legal force of customary norms generally does not require numerous formal conditions, as is the case with the norms of international treaties. For these reasons, customary norms constitute the bulk of jus cogens norms.

In the practice of many states, especially in the practice of their highest judicial bodies, it is recognized that the basis of jus cogens norms is customary international law norms. The following examples can be cited: a) The Supreme Court of the Philippines in its decision in Bayan Muna against Alberto Romulo emphasized that jus cogens norms are a group of norms that occupy the highest rung in the hierarchy of customary international law norms; b) The Supreme Court of Canada in the case Kazemi Estate against the Islamic Republic of Iran noted that jus cogens norms are a "higher form" of customary international law norms; c) The U.S. Ninth Circuit Court of Appeals in its decision in Siderman de Blake against the Republic of Argentina called jus cogens norms an "elite subgroup" of customary international law norms and noted that, unlike other ordinary customary norms that may apply to a limited number of states, jus cogens norms always apply to all states of the world simultaneously and without exceptions (paragraph 4 of the Commentary to Conclusion 5, Chapter V of the 2019 ILC Report).

Provision No. 21. It is known that the persistent objector doctrine allows states to exclude the application of a customary norm to them. However, this doctrine is limited by the influence and authority of jus cogens norms. This is not surprising, as jus cogens norms occupy the highest rank in the hierarchy of international law norms (paragraph 9 of the Commentary to Conclusion 14, Chapter V of the 2019 ILC Report).

Provision No. 22. The binding legal force of a customary norm does not extend to persistent objector states as long as they continue to persistently object to the customary norm. However, once a customary norm transforms into a jus cogens norm, the persistent objector doctrine ceases to apply and cannot grant persistent objector states "immunity" from the binding legal force of jus cogens norms. For greater clarity, it should be noted that the persistent objector doctrine can be applied to exclude the application of both particular customary norms of a regional or subregional nature and ordinary universal or general customary norms. However, jus cogens norms, which are special and extraordinary types of universal customary norms, take precedence over the legal concept of the persistent objector doctrine and completely negate its legal consequences (paragraph 10 of the Commentary to Conclusion 14, Chapter V of the 2019 ILC Report).

Provision No. 23. Undoubtedly, for the formation of universal or general norms of international law, including jus cogens norms, the recognition of such norms by all states of the world is not required to the last state, and this is hardly achievable, as there will always be at least one objecting state. At the same time, for a universal norm to become a jus cogens norm, it must be recognized by a "very large majority" of states. This requirement for the formation of jus cogens norms is stricter compared to the requirement for the formation of ordinary universal or general norms of international law, which can be formed through their recognition and application by a simple majority of states. In any case, despite the fact that all universal customary norms, including their special type—jus cogens norms—are usually created based on the consent of the majority of states rather than absolutely all states, the binding legal force of these norms generally applies to all states in the world.

A parallel question arises as to how persistent objections can affect the process of forming customary norms, especially the process of transforming ordinary universal customary norms into jus cogens norms. Given that the formation of jus cogens norms requires the recognition of these norms by a "very large majority" of states, the persistent objection of several states may be a sufficient factor to prevent the transformation of an ordinary universal customary norm into a jus cogens norm. However, the persistent objection of these states may be insufficient to prevent the formation of ordinary universal customary norms themselves, although their objections, in accordance with the persistent objector doctrine, may exclude the application of these norms to them (paragraph 11 of the Commentary to Conclusion 14, Chapter V of the 2019 ILC Report) [15].

Application of the above Provisions to OSCE documents.

Given Provision No. 2, only the activities of the OSCE itself, i.e., its Decision-making bodies, can be considered the practice of the OSCE. Although the intensive activities of participating States become possible thanks to the unique platform for negotiations and communication provided by the OSCE, the activities of individual participating States within this organization constitute only state practice, not the practice of the OSCE itself. This raises the question of whether decisions in the OSCE's Decision-making bodies are not made on behalf of all OSCE participating States on a consensus basis. Therefore,

if the decisions of the Decision-making bodies are considered OSCE decisions, then, consequently, statements on behalf of a group of participating States during the work of the OSCE's Decision-making bodies should also seemingly be considered OSCE practice. However, this is a mistaken opinion, because, to be considered an OSCE document, a document must come from the OSCE as a whole, that is, from the collective or community of OSCE participating States. In some organizations, decisions can be made by a qualified majority of 2/3 of the member States' votes, but within all OSCE Decision-making bodies, decisions are made exclusively on a consensus basis. Therefore, statements made during meetings of Decision-making bodies, even if they come from almost all OSCE participating States, except for one or two States, still cannot be considered OSCE documents, as these statements will not meet the requirements that OSCE documents must meet.

In addition, the practice of the OSCE does not include the activities of other OSCE bodies and institutions, that is, all other structures of the organization besides the Decision-making bodies of the OSCE. It seems incorrect to exclude the practice of the organization's institutions and bodies from the practice of the OSCE itself, since the mandate of all OSCE institutions and bodies is usually approved based on the consensus of OSCE participating States, and even the names of these bodies and institutions mention the abbreviation "OSCE." Nevertheless, the reason why the practice of these institutions and bodies is not considered OSCE practice is quite specific. The reason is that actions constituting the practice of OSCE institutions and bodies often face protests and objections from OSCE participating States, meaning that support for their actions is not often accompanied by consensus in the OSCE's Decision-making bodies. In other words, the approval of the mandate of various bodies and institutions on a consensus basis is not identical to constant consensus on the actions of these bodies and institutions throughout their further activities.

Based on Provision No. 3, it can be concluded that only those provisions of OSCE documents that do not go beyond the mandate of the OSCE and the corresponding Decision-making body can testify to the existence of a certain customary norm of international law. Given the fact that the OSCE's mandate, consisting of "three baskets," covers a rather extensive range of international relations, OSCE practice can potentially testify to the existence of quite diverse customary norms of international law.

Given Provision No. 4, the following advantages of the OSCE can be highlighted: 1. OSCE documents are generally adopted based on consensus, thus ipso facto reflecting the support and approval of all OSCE participating States without exception in the adoption of these documents; 2. The OSCE's influence on international relations is quite significant due to its impartiality and objectivity, as well as the fact that more than 50 states are participating in the organization. These qualities of the OSCE predetermine the sufficient potential of OSCE practice to exert a solid impact on the development of customary international law.

Based on the analysis of Provision No. 7, applied to the OSCE, the following conclusion can be made: when determining the existence of a specific customary norm of international law based on OSCE documents, special attention should be paid to the provisions of the relevant OSCE documents that reflect the practice of "particularly affected States." For example, the most objective study of a potential customary norm related to frozen conflicts is impossible without examining the practice of states that are parties to such conflicts. Therefore, in determining the existence of a customary norm related to frozen conflicts, those OSCE documents and their relevant provisions that directly reflect the practice of such states will be of particular importance.

According to Provision No. 8, public statements by states are the most reliable evidence of the existence or absence of opinio juris. Such statements during the work of the OSCE Decision-making bodies are quite common. Of course, public statements by one or a group of OSCE participating States are not OSCE documents and cannot testify to particular customary norms that are legally binding on all OSCE participating States. Nevertheless, such statements can indicate the existence of subregional or local customary norms that are binding between a limited number of OSCE participating States, or even customary norms binding only between two participating States of the organization. Therefore, public statements by OSCE participating States can be significant in the development of customary international law.

Considering Provision No. 10, it can be asserted that OSCE documents, like acts of other international organizations, cannot serve as a law-creating factor concerning customary norms of international law, meaning these documents cannot directly create customary norms. However, the fact that OSCE documents cannot directly create customary norms does not mean that their role is absent or insignificant.

OSCE documents play a significant role in the development of customary international law, but their role lies not in the direct creation of customary norms, but in clarifying and expanding the content of existing customary norms, adapting and aligning customary norms with contemporary international relations. The more specific role of OSCE documents is that they serve as authoritative evidence of the existence of certain regional practices and often reflect the stance of all OSCE participating States and simultaneously the OSCE itself towards the relevant practice. Although it may sometimes be difficult to establish opinio juris regarding a particular practice solely based on OSCE documents, as political judgments often prevail over legal ones in their content, even in such cases, OSCE documents can play a key role in the overall process of establishing opinio juris.

Based on the analysis of Provision No. 13, it can be noted that some OSCE documents indeed often address the same issues but in more detailed terms, taking new circumstances into account. Therefore, it is quite reasonable to assume that such OSCE documents can show the evolution of states' opinio juris regarding certain practices. In particular, during the annual meetings of the OSCE Ministerial Council, documents are often adopted on issues for which identical documents have already been adopted in previous meetings. If attention is paid to the later "versions" of such documents, a more conscious and decisive approach to resolving the corresponding problem can be noticed compared to their earlier versions, and potentially more evidence of the presence of opinio juris can be observed.

Considering Provision No. 16, according to which the doctrine of international law allows the existence of particular customary norms of international law binding on states in a specific region, the existence of customary norms that may have binding legal force exclusively in the area "from Vancouver to Vladivostok" also does not contradict international law.

Classification of documents adopted within the framework of the OSCE and their value for the development of customary norms.

For a more detailed study of the nature of OSCE documents, it is essential to refer to the OSCE Rules of Procedure of November 1, 2006. It should be noted that the OSCE Rules of Procedure themselves are also included in the list of OSCE documents, and this document takes precedence in case of contradictions with other OSCE documents (Paragraph 1, Section VII of the Rules of Procedure).

Among the provisions of the OSCE Rules of Procedure 2006 related to OSCE documents, the following can be highlighted:

1. The official (formal) bodies of the OSCE are only the Decision-making bodies of the OSCE. The OSCE Decision-making bodies are such working bodies established by the OSCE participating States that can adopt documents and decisions of a politically binding nature or containing agreed opinions of all participating States of the organization. Other OSCE bodies that do not have such powers are unofficial (informal) bodies of the organization (Paragraph 1, Part A, Section II);

2. All types of documents, such as statements, decisions, declarations, letters, reports, and other similar documents adopted by the OSCE Decision-making bodies based on consensus, are considered OSCE documents or OSCE decisions. These documents or decisions are politically binding or, at a minimum, contain agreed positions of all OSCE participating States (Paragraph 3, Part A, Section II);

3. There are only four OSCE Decision-making bodies: the Meeting of Heads of State or Government (OSCE Summits) of the OSCE participating States; the OSCE Ministerial Council; the OSCE Permanent Council; the Forum for Security Cooperation (Part B, Section II);

4. Documents issued by the chairpersons of the OSCE Decision-making bodies or by the OSCE executive structures are not considered OSCE documents, and, accordingly, the consent of all participating States of the organization is not required for the adoption of such documents (Paragraph 4, Part A, Section II);

5. The term of the OSCE executive structures refers to field operations and their heads, various institutions, the Secretariat, special representatives, and others. Executive structures are generally established by relevant decisions of the OSCE Decision-making bodies to carry out tasks that have been established by all OSCE participating States based on consensus (Paragraph 13, Part A, Section II).

6. Alongside meetings of representatives of participating States within the OSCE's Decision-making bodies, separate OSCE meetings can also be held in the form of conferences, seminars, and workshops. These OSCE meetings are generally held with the consent of all OSCE participating States and can be regular or special in nature, as well as conducted jointly with other international organizations (paragraph 11, part A, section II).

The documents and decisions made during seminars, conferences, workshops, and other similar OSCE meetings cannot be politically binding and are not considered OSCE documents. This distinguishes them from similar documents and decisions made during meetings within the OSCE's Decision-making bodies, which are considered OSCE documents. Regular informal meetings within the OSCE may be conducted in the form of Review Conferences, Annual Implementation Assessment Meetings, Economic and Environmental Forums, and other forms (part A, section VI) [16].

Considering the above provisions, the following conclusions can be made: 1. only documents originating from the OSCE's Decision-making bodies can be considered OSCE documents, as only such documents reflect the agreed opinion of all participating States of the organization and can establish political commitments for them; 2. documents issued by the Secretariat, heads of OSCE missions, acting chairpersons or their special representatives providing mediation services, and other OSCE structures are not considered OSCE documents.

Since the establishment of political commitments and the expression of the agreed opinion of OSCE participating States are the exclusive prerogatives of OSCE documents, only such documents can play the most significant role in the development of customary international law.

Polish professor Karol Wolfke notes that the impact of a resolution of an international organization, which is of a recommendatory nature, on the formation of customary norms directly depends on the will, behavior, and actions of the member states of the organization in the process of adopting the resolution, as well as the number of member states that voted for or against the adoption of this document [3, p. 114].

Therefore, the impact of OSCE documents on the development of customary norms can be considered significant due to the fact that they are adopted on the basis of consensus, which means they express the approval of all OSCE member states.

Bulgarian professor Alexander Dragiev notes that the opinio juris of subjects of international law can be expressed not only in tacit consent and following practice but also explicitly in the form of oral or written statements about it. Moreover, according to the Bulgarian author, explicit and unambiguous consent in verbal form is more desirable to minimize cases of misinterpretation of intentions, which often occur when interpreting tacit consent based on non-verbal behavior and adherence to practice. The most reliable way of explicitly expressing consent is through the issuance of written declarations or statements of a recommendatory nature. In the presence of a certain practice, opinio juris, expressed in such recommendatory acts, can quickly lead to the final creation of corresponding legal customs [2, pp. 24-25].

Polish professor of international law Karol Wolfke confirms that declarations and statements of states cannot by themselves create legal customs. However, K. Wolfke also emphasizes that the fact that statements and declarations cannot directly create legal customs does not mean that such acts by states have no significance in the complex process of forming customs. The point is that statements and declarations of states can potentially play a key role in the formation of customary norms only when there is already a certain practice. In other words, without the presence of practice, statements and declarations cannot have any significance in the process of forming legal customs. However, in the presence of practice, statements and declarations of states can testify to opinio juris, which is one of the two constitutive elements of any customary norm. Thus, without the existence of the practice itself, any opinions that this practice is a legal norm have no practical value in the formation of customary international law [3, pp. 78-79].

When discussing written declarations or statements within the framework of the OSCE, it should be noted that three types of these documents can exist within this organization: 1. declarations or statements issued by the OSCE itself, meaning those published by the Decision-making bodies of the organization; 2. declarations or statements adopted by the executive structures of the organization, such as the OSCE Chairperson, heads of field operations, the OSCE Secretary General, and others; 3. and declarations or statements adopted by one or more OSCE participating states. It should be emphasized that only the first of these three groups of declarations or statements adopted within the OSCE are considered OSCE documents.

At first glance, it may seem that only documents issued by the OSCE Decision-making bodies are important for the emergence and formation of customary norms of international law, and documents originating from the executive structures, such as the Secretariat, heads of field operations, and special representatives of the current Chairperson, do not have any significance for the evolution of customary

norms. However, this is not the case because the documents of the OSCE Decision-making bodies often express the position of the OSCE participating states regarding the activities of all OSCE institutions or structures, and their activities often receive support from the overwhelming majority of the OSCE participating states. In other words, even if the documents of the executive structures are not considered OSCE documents and do not directly reflect the agreed position of the OSCE participating states, the activities of these structures are often indirectly supported by the OSCE Decision-making bodies. Consequently, the practice carried out by the OSCE executive structures can serve as a basis for a potential customary norm of international law.

Attention should also be drawn to various individual and collective statements made by states during meetings of the OSCE Decision-making bodies. Such statements are especially common during the annual meetings of the OSCE Ministerial Council and are included in the final documents of these meetings. However, it should be emphasized that although the Ministerial Council is one of the OSCE's Decision-making bodies and, therefore, the documents it issues are OSCE documents, the statements of the OSCE participating states, despite being included in the final document of the Ministerial Council meetings, are not OSCE documents. This is because these statements are not issued on behalf of the Ministerial Council and are not adopted by it on a consensus basis, but rather reflect only the position of one or several OSCE participating states. Thus, statements by states are not OSCE documents and cannot serve as evidence of any practice of the OSCE as a whole.

Although statements by the OSCE participating states cannot testify to the practice of the OSCE, they can indicate certain practices among the states that made such joint statements. Therefore, the OSCE can directly contribute to the development of customary norms through documents issued on behalf of its Decision-making bodies, and indirectly, by serving as a forum or platform for negotiations, it can contribute to the development of customary norms through individual or collective statements of its participating states, as well as through statements originating from the organization's executive structures.

Lev Voronkov and Victoria Kovaleva note that OSCE documents generally do not undergo ratification in the legislative bodies of the OSCE participating States and, therefore, cannot directly impose legal obligations on them [17, p. 57].

Nevertheless, within the OSCE framework, there are exceptional documents that can be legally binding. Notably, the OSCE Convention on Conciliation and Arbitration, which, as of January 2021, has been ratified by 34 OSCE participating States [18, p. 37]. For the States that have ratified the Convention, its provisions are legally binding.

The fact that not all OSCE participating States have joined the Convention does not prevent it from being an OSCE document. To clarify this point, it should be remembered that the essential characteristics of OSCE documents are: firstly, their adoption by the OSCE Decision-making bodies; and secondly, these documents must either be politically binding or reflect the agreed opinion of all OSCE participating States.

In turn, the Convention on Conciliation and Arbitration was adopted by the OSCE Ministerial Council, one of the OSCE's Decision-making bodies, and reflects the agreed opinion of all OSCE participating States. Although the Convention does not have a politically binding character, its adoption by consensus of all OSCE participating States allows it to be confidently classified as an OSCE document. Thus, the Convention has been an OSCE document since its adoption in 1992 and, for the states that have ratified it, a legally binding document as well [19, p. 43].

Conclusion. If we judge solely by the consequences of states violating political commitments outlined in OSCE documents, there can be no discussion of responsibility under international law. However, the situation is not that simple. The political commitments enshrined in OSCE documents, unlike similar commitments within other regional organizations, have a more universal and global character, and a significant part of these commitments greatly influence the development and clarification of the content of certain customary norms of international law.

It can be unequivocally stated that the political commitments recorded in OSCE documents often intertwine with customary norms of international law in practice. Therefore, very often, the violation of a political commitment is simultaneously considered a violation of customary international law. This occurs not because political commitments directly create customary norms of international law, but because OSCE political commitments are often based on the interpretation of customary norms. Moreover, these commitments reflect an attempt to clarify and expand the content of customary norms

concerning the developing international relations, considering the specificity and uniqueness of each narrow group of international relations that have evolved or recently emerged due to the deepening of international connections.

If we compare OSCE documents with unratified treaties, a significant portion of the norms of which are adhered to by states because they contain customary norms of international law, it turns out that there are more logical grounds for complying with the provisions of OSCE documents. Some provisions of OSCE documents, like unratified international treaties, may be based on customary norms. However, unlike unratified treaties, which generally do not impose any obligations on states that have merely initialed the text of such treaties, OSCE documents often provide at least political commitments for OSCE participating states. Thus, the customary norms contained in OSCE documents are reinforced by political commitments, which gives them "double strength" and confirms the necessity of their observance.

Among international lawyers, there are often opinions that without the adoption of an "OSCE Charter," this organization cannot effectively regulate the relations of its participating states. Such documents, like the "OSCE Charter," by their nature, contain conventional norms. But the question arises whether conventional norms can flexibly and promptly regulate international relations within the OSCE framework. Of course, they cannot. In conventional norms, as a rule, the adaptive mechanism does not work with changing realities in international relations, and these norms are unable to consider the full complexity of these relations.

The relations within the OSCE, according to the authors of the Helsinki Final Act of 1975, were intended to be regulated based on flexible mechanisms, which is observed and confirmed by all subsequent OSCE documents adopted to date. Moreover, attempting to "squeeze" or "cram" the vast array of international relations within the OSCE into the narrow and limited normative space of conventional norms hardly seems a realistic or pragmatic step. Given the characteristics of the OSCE, the most appropriate and feasible tool for legally regulating relations within this organization is customary international law. The adoption of an "OSCE Charter" is neither a promising initiative in theoretical and practical terms, nor is it free from numerous problems.

The study has demonstrated the unfoundedness and error of the position held by some lawyers who categorically prefer treaty norms over legal customs, based on the fact that the foundation of modern international law is precisely customary norms. Moreover, the predominant majority of jus cogens norms are customary international law by origin. Unlike international treaties, which states can sometimes denounce, states cannot voluntarily refuse to observe jus cogens norms.

Of course, some treaty norms can also serve as the basis for jus cogens norms, but theoretically, such international treaties can still be denounced. However, even in such cases, the jus cogens norms that emerged thanks to certain treaty norms will not lose their force, because they will automatically rely on customary international law. These features of customary norms serve as an additional argument in favor of using customary international law as the regulator of relations within the OSCE.

To strengthen the influence of political commitments enshrined in OSCE documents, it is advisable for the organization to engage in active efforts aimed at establishing and clarifying the content of various customary norms that are directly or indirectly related to the political commitments of OSCE participating states. Naturally, such activities cannot be sufficiently effective without the involvement of international courts and arbitration. Given the significant factual role of international judicial bodies in the development and application of customary norms, the first fundamental step in the intensive application of customary norms within the OSCE is the creation of an OSCE judicial body as the main mechanism for fixing and clarifying the content of customary norms.

The OSCE currently has a Court of Conciliation and Arbitration that can conduct arbitration procedures. However, the powers of this body are quite limited, and it does not operate on a permanent basis, being essentially an arbitration body.

Therefore, it is necessary to establish a judicial body within the OSCE similar to the International Court of Justice, which could play a key role in compensating for the lack of legal force of OSCE documents by balanced activities aimed at establishing legal "nodes or connectors" for directly attaching or connecting political commitments to the system of customary international law. Unlike the International Court of Justice, which can potentially examine only a small portion of OSCE documents, the new regional judicial body of the OSCE would undoubtedly have far greater opportunities for in-depth analysis of OSCE documents.

Additionally, the continuous operation of the new OSCE judicial body would ensure the gradual accumulation of detailed professional knowledge about the general patterns of development of the practice and opinio juris of OSCE participating states. The active work of various OSCE bodies, institutions, and field missions could serve as a multiplier for the effectiveness of the new OSCE judicial body, particularly by providing it with numerous reliable facts and information on the various aspects of the issues it considers.

Through the official establishment of a direct connection between political commitments and customary norms by the new OSCE judicial body, the frequent cases of arbitrary violations of political commitments by OSCE participating states, in our view, should significantly decrease. The high probability of this outcome can be explained by the fact that formalizing political commitments in legal form ipso facto implies a stricter nature of obligations compared to classic political commitments, which some states perceive with less seriousness due to the possibility of violating them "without legal consequences."

In conclusion, it should be noted that any group of international relations is, in one way or another, connected with customary norms of international law. However, to effectively and clearly reveal this connection in each specific case, it is necessary to expand the general international efforts aimed at refining and perfecting modern international law. OSCE documents cover a large array of international relations and make a significant contribution to the development of customary international law. Moreover, the factual contribution of the OSCE is not limited to the actions reflected in OSCE documents, because any activity inspired by the efforts of this organization can rightfully be attributed to the OSCE's achievements in the development of international law.

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