The issue of crisis phenomena within specific branches of international law escalating into a crisis of the international legal system*

A. A. Dorskaia[1], A. Yu. Dorskii[2]

[1] North-Western Branch of the Russian State University of Justice,
5, Alexandrovsky Park, St. Petersburg, 197046, Russian Federation
[2] St. Petersburg State University,
7–9, Universitetskaya nab., St. Petersburg, 199034, Russian Federation

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The article examines the correlation between crisis phenomena in specific branches of international law and crises of the international legal system by utilizing both historical and contemporary examples. It is shown that the topic of crises holds a prominent position in international legal research in Russia and abroad, focusing on their causes, manifestations and strategies for resolution. The growth of crisis phenomena is illustrated by the international treaty law, one of the oldest branches of international law, and the law of international organizations, which began to develop in the 19th century and now plays a crucial role in international legal affairs. Some signs of crisis phenomena in these international law branches have been identified and it is shown that non-compliance with the principles and norms of international law, developed by coordinating the will of participants in international relations, ignoring the negative trends in the world community's life, adopting untimely measures to eliminate them can lead to a crisis of the entire international legal system, as happened during the World War II. It is concluded that there are mechanisms allowing crisis phenomena in one or more branches of international law not to escalate into a crisis of the international legal system, however, the interaction of branches of international law with common institutions of law can provoke a global crisis. Historically proven ways to prevent and overcome crisis phenomena in international law entail: ensuring that all actors adhere to international law principles, synchronizing theoretical advancements in international law with practical experiences of international legal interactions, codifying different branches of international law to prevent fragmentation, and making timely amendments to the statutory documents of international organizations.

Keywords: international legal system, crisis, branches of international law, international treaty law, law of international organizations, science of international law, League of Nations, United Nations.

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1. Introduction

The issue of crisis phenomena in international law is a long-standing one. Throughout the latter half of the 19th century, lawyers have consistently debated the notion of an ongoing crisis, yet they have arrived at divergent conclusions. Some have discredited international law as a legal phenomenon, associating it with international morality, while others have sought ways to resolve it.

The modern era is no different, with clear signs of crisis in certain branches of international law, but also marked by significant progress and a shift towards a new level of international legal regulation.

Studies on crisis phenomena in international legal regulation can be divided into five major groups.

Firstly, these are works that address the causes and signs of crises (Kotliarevskii 1922; Shumilov 2009; Musaelian 2014; Ignat'eva 2021; Kreiger, Püschmann 2021; Tolstykh 2022).

Secondly, the focus of studies is on how individual crises, both observed and experienced by the global community, affect the condition of the international legal system (Nazariia 2004; Gus'kova 2020).

Thirdly, there are works that explore the relationship between domestic and international law and examine how crises in national legal systems impact legal regulation on the international stage (Goloskokov 2016; Zamir, Kielsgard 2020).

Fourthly, the focus of the studies can lie in examining the crisis phenomena in international law resulting from the emergence of supranational entities and the ongoing debate surrounding the legal nature of supranational law (Habermas 2012; Stepashin 2022).

Fifthly, research has been conducted on crisis phenomena within specific branches of international law (Matchanova 2021; Cherniad'eva 2023).

In this particular domain, studies on crisis phenomena in branches of international law, like international treaty law and law of international organizations, are particularly noteworthy.

The delineation of these branches is influenced by a multitude of factors, including their classification as leading branches and their direct connection to international treaties, which are a fundamental source of international law, the principle of conscientiously fulfilling international obligations, which has been present since the Middle ages and is exemplified by the application of the Latin maxim *pacta sunt servanda*; it was within the framework of the activities of international organizations that the international treaty law has been codified; currently, there is an effort to reform existing international organizations, while simultaneously witnessing the active emergence of new ones, which is evident in the field of international treaties; international organizations monitor the implementation of international treaties to identify the violations committed by member states and to restore violated rights, etc. (for instance, in case of the Eurasian Economic Union (EAEU), this monitoring is carried out by the Eurasian Economic Commission).

International treaty law is among the oldest branches of international law, which was formally codified in the 20th century. However, the researchers acknowledge that there are currently indications of crisis in this branch, particularly concerning the interpretation of international treaties by international judicial authorities (Crawford, Keene 2019), the application of bilateral legal assistance treaties (Kostin, Kuraksa 2023), the absence of a comprehensive collection of global treaties that tackle crucial matters of human survival,

like healthcare (Kates, Katz 2011), the poorly predicted consequences of the adoption of some treaties, particularly the Council of Europe Framework Convention on Artificial Intelligence and human rights, democracy and the rule of law[1], which has been open for signature in September 2024 (Kolfschooten, Shachar 2023).

Conversely, the law of international organizations is a branch of international law, with its development commencing in the 19th century (the idea that ancient civilizations had international organizations in the form of alliances is not entirely substantiated) (Potemkin 1941). In a mere century, humanity has progressed to the point of establishing global organizations. Currently, there are over 4000 international organizations that play a vital role in international law. Nonetheless, even in this context, experts acknowledge the presence of certain symptoms that are typical of a crisis state. With the mounting contradictions in the modern world, international organizations are gradually gravitating towards centralizing decision-making processes, thereby compromising their independence (Olsson, Verbeek 2018). Amidst the ongoing competition between them, international organizations face a complex challenge in their management structure, these organizations were originally designed as exclusive clubs for the chosen ones, but now they are undergoing expansion that could completely transform the membership experience (Anghel, Jones 2024). Some international organizations are struggling to survive, leading them to adopt unconventional strategies to ensure their ongoing existence (Schuette 2023). The topic of insufficient funding for international organizations' activities, which has had a negative impact on their work in the past and present (Hirschmann 2023), and conflicts in determining their status as a financial entity (Popova 2019), is closely related to this issue.

The relevance of this study topic is that amidst the growing crisis in international relations and international legal regulation, a threat of a global crisis of the international legal system has arisen. By drawing upon historical experience, one can gain insight into present-day challenges and identify potential solutions to counteract these unfavorable trends.

This article aims to conduct a retrospective analysis of crisis phenomena in the branches of international law, specifically focusing on the international treaty law and the law of international organizations, to evaluate the potential risks of these crisis phenomena escalating into a broader international legal system crisis.

2. Basic research

Despite the fact that international treaty law dates back to the Ancient World, the regulation of treaty conclusion was primarily governed by international customs until the 1920s.

The League of Nations brought up the matter of norm codification in this domain and delegated it to the Committee of Experts for the Progressive Codification of International Law, which was founded on September 22, 1924. Following the completion of the work, a report was compiled for the Council of the League of Nations, expressing a disapproving stance towards the development of a draft Convention that would enforce regulations on

[1] "The Framework Convention on Artificial Intelligence". *The Council of Europe*. Accessed March 13, 2025. https://www.coe.int/en/web/artificial-intelligence/the-framework-convention-on-artificial-intelligence.

the conclusion of international treaties[2] (Valeev 2009, 137). The work of the Conference of American States was even more successful when they manage to adopt the Convention on Treaties in 1928[3]. Nevertheless, it failed to come into effect due to the lack of necessary number of ratifications from participating nations.

Further, the Convention on International Treaties was developed by the United Nations International Law Commission (UN ILC), which managed to develop its draft by 1966, it was then considered at the Vienna Conference on the Law of Treaties in 1968–1969. The process of codification led to the adoption of the Vienna Convention on the Law of Treaties[4] in 1969. This convention came into force in 1980 and currently has 116 participating states, including the Russian Federation.

The Vienna Convention on Succession of States in respect of Treaties[5] was adopted on August 23, 1978, leading to extensive debate and controversy before finally coming into effect through ratification by 15 states.

On May 21, 1986, the signing of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations[6] took place, which had been prepared by the UN ILC. However, the entry into force of this convention was subsequently delayed. Notwithstanding this, the endeavor to codify the law of treaties pressed forward. Hence, in 1993, the UN ILC agenda was broadened with the issue of "Law and practice relating to reservations to treaties", and in 2004 — with that of "Effects of armed conflicts on treaties".

Despite the undeniable achievements in the advancement of the law of treaties, one can still observe the existence of crisis phenomena in the current state of this branch of international law. The following demonstrates this.

Firstly, there is a level of specificity involved in the conclusion and implementation of particular categories of international treaties. This, the UN Convention on the Use of Electronic Communications in International Contracts[7], officially adopted on November 23, 2005, came into force on March 1, 2013. One of its key objectives is to address barriers resulting from the provisions of diverse international trade agreements. By taking into consideration the unique characteristics of diverse international treaties, one can facilitate the progress of the international rule of law; however, this approach also poses the risk of destabilizing the unity of the system.

Secondly, numerous unresolved matters pertain to the interpretation of international treaties. Specifically, in 2014, the UN ILC deliberated on two subjects pertaining to

[2] "Report by the Committee of Experts, June 1928, on the questions which appear ripe for international regulation". *UN Library & Archives Geneva*. Accessed March 13, 2025. https://archives.ungeneva.org/6ac6-9573-5bkr.

[3] "Convention on Treaties adopted by the Sixth International Conference of American States at Havana, February 20, 1928". *The American Journal of International Law* (1935) 29 (1): 1205–1207. Accessed March 13, 2025. https://www.jstor.org/stable/2213703.

[4] "Vienna Convention on the Law of Treaties (1969)". *UN ILC*. Accessed March 13, 2025. https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[5] "Vienna Convention on Succession of States in respect of Treaties (1978)". *UN ILC*. Accessed March 13, 2025. https://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf.

[6] "Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986)". *UN ILC*. Accessed March 13, 2025. https://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf.

[7] "UN Convention on the Use of Electronic Communications in International Contracts". *UNCITRAL*. Accessed March 13, 2025. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-57452_ebook.pdf.

international treaty law, namely "Subsequent agreements and subsequent practice in relation to the interpretation of treaties" and "Provisional application of treaties". Two distinct methods of interpreting international treaties were recognized — the contemporaneous (or static) one, which entails interpreting a treaty under the circumstances prevailing at the time of its conclusion, and the evolutive (evolutionary or dynamic) one, which involves interpreting a treaty in light of the circumstances prevailing at the time of its application. One such instance was the "Costa Rica v. Nicaragua" case[8], which was presented before the UN International Court of Justice from 2010 to 2015. During this case, Nicaragua contended that the term "comercio" (trade) in the treaty and for the long period of time was exclusively interpreted to encompass goods, but not services (Vashchenkov 2016). Consequently, experts pose the question regarding the necessity to anticipate the future interpretation and application of the provisions of an international treaty during its development (Shushaeva 2015).

Furthermore, the inquiry arises as to whether the practice of international treaty interpretation is considered not only by States parties, but also by international organizations (Adzhiev 2021, 279).

Thirdly, despite the codification of international treaty law, the lack of sufficient attention given to reservations and unilateral statements in international treaties has led to significant disparities in their utilization by states.

Fourthly, concerns arise regarding the incorporation of the 1969 Vienna Convention on the Law of Treaties into domestic legislation. As an illustration, researchers expressed dissatisfaction when the Republic of Kazakhstan adopted the Law No. 54 on International Treaties dated 30 May 2005[9], as it failed to encompass all the provisions outlined in the Convention (with only 32 articles included instead of the original 85) (Sarsembaev 2017, 15).

Fifthly, uncertainties persist in the regulation of the exercise of the right to denounce an international treaty, leading to scholarly debate and arbitrary state actions in this regard. After analyzing international judicial practice, the researchers have reached the conclusion that the state denouncing a treaty, before the denunciation entered into force, is obligated, under all circumstances, to adhere to the court's decision and provide a report on both the implementation of the court's decision and any interim measures taken (Gu 2023). Additionally, the issue of denunciation is regulated both internationally and domestically, therefore, two models for resolving this issue at the national level have arisen: either the termination and suspension of international treaties are carried out in the same manner as their conclusion (Russia, Vietnam), or they are considered as the prerogative of the executive authorities, even if the treaty was concluded with the consent of parliament (Germany, Norway, Switzerland) (Osminin 2019, 116).

Sixthly, an examination of the impact of certain provisions in the 1969 Vienna Convention on the Law of Treaties reveals that they are not applicable in reality, and alternative customary rules have emerged instead. A. S. Ispolinov highlights the fact that states typically establish their own grounds and procedures for terminating treaties (Ispolinov 2022, 75).

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[8] "Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)". *UN ICJ*. Accessed March 13, 2025. https://www.icj-cij.org/case/150.

[9] "The Law of the Republic of Kazakhstan No. 54 on International Treaties of the Republic of Kazakhstan dated 30 May 2005". *Information and legal system of the regulatory legal acts of the Republic of Kazakhstan*. Accessed March 13, 2025. https://adilet.zan.kz/rus/docs/Z050000054_. (In Russian)

Consequently, despite the considerable achievements in the advancement of the international treaty law, it can be inferred that there are crisis phenomena in this branch at the current stage, evident by following indicators: failure to comply with certain provisions of the basic conventions on the international treaty law, adoption of specific international agreements on certain types of international treaties, non-entry into force of a part of international instruments due to the shortfall in the required number of ratifications by states, lack of uniformity in the interpretation of international treaties and in the procedure for their denunciation, inconsistency of national legislation on international treaties with basic conventions, etc.

The development of the law of international organizations significantly diverges from the evolution of the international treaty law.

In the first half of the 19th century, the establishment of international organizations predominantly revolved around the objective of preserving peace in Europe and collaboratively addressing the revolutionary movement. It is sufficient to remember the Holy Alliance of Russia, Austria, and Prussia in 1815, as well as the Pentarchy, which was formed at the Congress of Aix-la-Chapelle (Aachen, Germany) in 1818, consisting of Austria, Great Britain, Prussia, Russia, and France. Hence, international organizations were perceived as a means to address the crisis in international relations that emerged during the Napoleonic Wars. It is important to acknowledge that this approach is still partially maintained up to the present. As an illustration, contemporary scholars emphasize the significant role played by negotiations carried out by different international organizations during the 1960s and 1980s in formulating unified stances in the fight against terrorism (Blumenau, Müller 2021), the crucial role of international organizations in overcoming the crisis caused by the COVID-19 pandemic (Ulybina, Ferrer, Alasuutari 2023).

Firstly, during the second half of the 19th century, the notion of international integration organizations came into existence. In 1889, the Pan-American Union was established, serving as the foundation for the establishment of the Organization of American States in 1948. Scientists and politicians have initiated discussions regarding the feasibility of establishing a pan-European federation. Secondly, the emergence of international non-governmental organizations can be attributed to the efforts of the International Committee of the Red Cross, even though it did not entirely align with the defining characteristics of such organizations.

Nevertheless, the theoretical understanding of the law of international organizations in the 19th century significantly fell behind their practical advancements. As an illustration, the Code of International Law by the distinguished scholar of international legal science Johann Bluntschli (1808–1881) does not employ the term "international organization", instead referring solely to "systems of states" (Bluntschli 1876, 113). Furthermore, if such a delay during the formation period can be attributed to objective factors, its continued occurrence would indicate the existence of crisis phenomena within this branch of international law.

The development of the law of international organizations entered a new phase in 1919, marked by the establishment of the League of Nations and the International Labor Organization (ILO), following the devastation of the World War I. This phase persisted until the end of World War II.

The first organization had a universal scope and belonged to the realm of politics, as its objective was to avert future conflicts.

It was during this particular period that international organizations established their status as subjects of international law, which states should take into account when shaping their stance. The initial experience emerged, which is relevant to the contemporary era. The initiators of the new international organization face challenges in determining the direction, goals, and composition. Invited states must assess the benefits and risks of participation and the potential for excessive obligations. Uninvited states must decide whether to pursue membership, seek allies or establish an alternative organization (Khormach 2008, 52). The increasing military danger and the gradual collapse of the Versailles system, which the League of Nations was tasked with upholding, demonstrated a significant crisis within this international organization. This ultimately resulted in its official dissolution in 1946, although, practically, its functionality ceased with the onset of World War II.

The activities of the League of Nations have given rise to a new trend in the development of law of international organizations, which is still persists. This is the creation of judicial bodies at international organizations.

Similar to the League of Nations, the ILO was established in 1919 under the provisions of the Treaty of Versailles[10] and initially functioned as a subordinate entity. The primary objective was to enhance working conditions, and due to the pervasive nature of this issue across all stages of global development, the ILO has remained operational as the specialized UN agency since 1946. During the first year of its functioning, the organization swiftly implemented six conventions addressing various labor issues. These included setting limits on the workday (8 hours) and workweek (48 hours), combatting unemployment, promoting maternal health, restricting nighttime labor for women and adolescents, and establishing a minimum age for employment (Iashkina 2019). The fact that the ILO includes 187 member states underscores the importance of addressing labor relations on an international scale.

The next phase in the advancement of the law of international organizations commenced in 1945 and persists to the present time. The primary features include the United Nations assuming a central role in global politics, significant progress in the growth of international integration organizations such as the European Union and African Union, and the emergence of a vast number of international non-governmental organizations.

Although there have been undeniable achievements in the advancement of this branch of international law in recent decades, crisis phenomena are also evident in it.

Consequently, the failure of participating states to adhere to the "standards" established by international organizations erodes the credibility of the latter and hinders future progress.

The charters of not all international intergovernmental organizations determine the procedure for withdrawing from them (WHO, UNESCO), therefore, so far there is only the practice that has developed when from 1949 to 1950 the countries of Eastern Europe notified the WHO of their withdrawal from the organization, in late 1952 — early 1953 Czechoslovakia, Poland and Hungary announced the termination of membership in UNESCO. Interestingly, for example, WHO did not recognize this withdrawal, and until 1956, these states were designated as "inactive members" in this international organization.

Experts argue that certain international organizations' activities contribute to the fragmentation of international law. In November 2020, the Organization of Islamic Cooperation

[10] "Treaty of Versailles (June 28, 1919)". *The Avalon Project. Documents in Law, History and Diplomacy*. Accessed March 13, 2025. https://avalon.law.yale.edu/subject_menus/versailles_menu.asp.

(OIC) adopted a revised version of the Cairo Declaration on Human Rights in Islam from 1990, known as the OIC Declaration on Human Rights[11]. It considers the concept of human rights in Islam as the basis of Islamic international law for the protection and promotion of human rights, which is one of the branches of Islamic international law (Ivanov, Pchelintseva 2021, 14, 17). However, it is worth noting that not all of the 57 member states of the OIC acceded to the 1966 International Covenant on Civil and Political Rights[12] as well as the 1966 International Covenant on Economic, Social and Cultural Rights[13].

Over the past few years, international organizations have faced accusations from the world community regarding their failure to carry out their responsibilities and engaging in falsifications. As an illustration, in December 2009, a renowned German doctor W. Wodarg, who chaired the Health Committee of the Parliamentary Assembly of the Council of Europe, along with a team of prominent doctors from various countries, put forth a proposal titled "Fake pandemics — a threat to health"[14] as a draft recommendation for PACE. This proposal received the signatures of 13 delegates from the Assembly. The authors of the project called for an investigation of these pandemics (Safronova 2023, 157). Resolution No. 1749, adopted in 2010, highlights significant deficiencies in decision-making processes, undisclosed lobbying by pharmaceutical companies, and a decline in trust towards WHO institutions[15].

Certain procedures outlined in the legal documents of international organizations also face criticism. Specifically, the United Nations conducted peace enforcement operations in 1991 to reinstate Kuwait's sovereignty, in 1992 to assist Somalia, in 1994 to restore the Government of Haiti, in 1999 to establish security in East Timor, and so on, given that the UN Charter[16] and the Provisional Rules of Procedure of the Security Council[17] do not explicitly outline the procedure for deploying troops into conflicting states, these operations necessitate substantial economic and military resources. It is worth noting that member states making decisions in the Security Council may have vested interests in the region (Gabbasova 2018), etc.

The lagging behind of the theory of international law in comparison to emerging practice is another manifestation of crisis phenomena. Within the realm of international legal science, the regulations and practices pertaining to states as the primary subjects of international law are universally acknowledged as standard provisions in the international treaty law. However, the increase in the number of international regional organizations raises the question of the need to apply a diversified approach to the application of the norms of the international treaty law depending on the subject of the relevant relations, since, for example, in relation to such organizations, the principle of *pacta tertiis nec*

[11] "The Cairo Declaration of the Organization of Islamic Cooperation on Human Rights". *OIC*. Accessed March 13, 2025. https://www.oic-oci.org/upload/pages/conventions/en/CDHRI_2021_ENG.pdf.

[12] "International Covenant on Civil and Political Rights (1966)". *UN Treaties*. Accessed March 13, 2025. https://treaties.un.org/doc/treaties/1976/03/19760323 %2006-17 %20am/ch_iv_04.pdf.

[13] "International Covenant on Economic, Social and Cultural Rights (1966)". *UN Treaties*. Accessed March 13, 2025. https://treaties.un.org/doc/treaties/1976/01/19760103 %2009-57 %20pm/ch_iv_03.pdf.

[14] "Faked Pandemics — a threat for health". *PACE*. Accessed March 13, 2025. https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12720&lang=en.

[15] "PACE Resolution No. 1749 'Handling of the H1N1 pandemic: more transparency needed'". *PACE*. Accessed March 13, 2025. https://pace.coe.int/en/files/17889.

[16] "UN Charter (1945)". *UN*. Accessed March 13, 2025. https://www.un.org/en/about-us/un-charter.

[17] "Provisional Rules of Procedure (S/96/Rev.7) of the Security Council". *UN*. Accessed March 13, 2025. https://main.un.org/securitycouncil/en/content/provisional-rules-procedure.

nocent nec prosunt (a treaty binds the parties and only the parties; it does not create obligations for a third state) cannot be fully applied (Bal'khaeva 2023).

Hence, the progressive advancement of the law of international organizations, which commenced in the latter part of the 20th century and remains ongoing, is accompanied by a surge in crisis phenomena that demand a fitting response and resolution.

On the example of the history of such two branches of international law as the international treaty law and the law of international organizations, one can conclude that non-compliance with the principles and norms of international law, developed by coordinating the will of participants in international relations, ignoring the presence of negative trends in the life of the world community, adopting untimely measures to eliminate them can lead to a crisis of the entire international legal system, as happened, for example, during the World War II.

3. Conclusions

Crises in branches of international law are inevitable, since from time to time there is a need either to change the legal regulation in connection with the transformation of social relations or simply to eliminate the mistakes made in previous documents, related to insufficient forecasting of the consequences of the introduction of certain norms, either in resolving new issues that have never been on the agenda before or in bringing norms in line with established practice.

Generally, there are mechanisms in place to prevent crisis phenomena in certain branches of international law from becoming a crisis for the entire international legal system, as many institutions of international law are shared across different areas. For instance, if a complex challenge cannot be overcome by an international organization, it may be necessary to address the issue at an international conference to develop a consensus. Moreover, every branch of international law has its own level of resilience. Additionally, each branch of international law has its own level of resilience. For instance, a crisis in political intergovernmental organizations may not necessarily lead to a crisis in international economic organizations. Nonetheless, the causes, duration and stage of the crisis play a crucial role. Conversely, the interdependence of various branches of international law serves as the foundation for the emergence of crisis phenomena in other branches, which ultimately could lead to a crisis of the entire international legal system.

Historically proven ways to prevent and overcome crisis phenomena in the international legal sphere are: ensuring that all actors adhere to international law principles, synchronizing theoretical advancements in the field of international law with practical experiences of international legal interactions, codifying different branches of international law to prevent fragmentation, and making timely amendments to the statutory documents of international organizations.

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Authors' information:

Aleksandra A. Dorskaia — Dr. Sci. in Law, Professor; https://orcid.org/0000-0002-8723-8673, adorskaya@yandex.ru
Andrei Yu. Dorskii — Dr. Sci. in Philosophy, Professor; https://orcid.org/0000-0002-0991-2941, dorski@yandex.ru