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Nataliia Kaminska – Doctor of Law, Professor, Professor of the Department of Humanities and General Legal Disciplines of the National Academy of Internal Affairs;

Nick Patricha – Student of Faculty № 2 of the National Academy of Internal Affairs

PROTECTION OF THE HUMAN RIGHTS IN ARMED CONFLICT

This article is devoted to the implementation of the analysis of the status of the participants of armed conflict, the peculiarities of realization of their rights, the protection of violated rights and freedoms. Special attention should be concentrated on the problems of abuse of the law in this area, as well as the conformity of the national legislation on the protection of the human rights during armed conflict, the existing international standards.

Keywords: armed conflict; combatants; non-combatants; prisoner of war; human rights.

The nature of warfare has changed dramatically in the last century. Developments in technology ranging from modern combat aircraft to advances in infantry weapons have altered how war is conducted, increasing both its reach and its lethality. Global political developments have changed both where war is waged and who its most active participants are.

The purpose of this paper to define the implementation of thorough analysis of the status of the participants armed conflict, the peculiarities of realization of their rights, the protection of violated rights and freedoms. Special attention should be paid to the problems of abuse of the law in this area, as well as the conformity of the national legislation on the protection of the human rights during armed conflict, the existing international standards.

The issue of human rights during armed conflicts has become the subject of research scientists of constitutional law, international law, etc. But this problems requires a system of complex analysis.

Growth in urbanization makes it increasingly likely that belligerents will engage each other inside populated areas rather than on remote fields of battle, while the rise of armed non-state actors multiplies the number of potential sources violence.

One of the most disturbing side effects of these changes in warfare is the deleterious effect that war has had on non-combatants. For certain, innocents have always suffered since the dawn of war. Yet the extent of civilian harm arguably reached unprecedented proportions in the twentieth century. Harm to civilians in warfare and its aftermath takes largely two forms. The first, and most obvious, are civilians who suffer death or serious injury as a direct result of combat, either accidentally or deliberately. The second are those who suffer other assaults on their dignity (such as sexual assault, ethnic violence, etc.) as a result of the breakdown of law and order, resulting in a security vacuum in which such violations run rife. Such assaults often violate the letter, if not the spirit, of human rights norms designed to protect civilians.

This disturbing trend demands attention for at least two reasons. First, the international community has demonstrated the normative importance of protecting civilians and other non-combatants in time of war and in its aftermath. It has done so through the ratification of legal treaties that delineate the rights of civilians, through speeches and other statements by governmental officials condemning the suffering of non-combatants, and through the provision of material support to the victims of conflict. Second, states have increasingly come to recognize the strategic value of minimizing harm to civilians in war. In an age of instantaneous global media, the inadvertent death of civilians during warfare can undermine domestic and international support for the responsible party. This is even truer if such deaths are deliberate. Furthermore, human rights abuses that occur during or after conflict can both indicate and foment political instability that is generally counter to the interests of sovereign states [1].

Nowadays, three areas of modern international law attempt to provide protection to victims of war: human rights law, refugee law and International humanitarian law. While these fields are closely linked, they need to be distinguished systematically.

International humanitarian law applies in armed conflict, restricting the actions of warring parties, providing for protection and humane treatment of persons who are not taking part or can no longer take part in the hostilities. Like international human rights law, international humanitarian law protects the lives and dignity of individuals, prohibiting torture or cruel treatment, prescribing rights for persons subject to a criminal justice procedure, prohibiting discrimination and setting out provisions for the protection of women and children. In addition, international humanitarian law deals with the conduct of hostilities, combatant and prisoner of war status and the protection of the Red Cross, Red Crescent and Red Crystal emblems.

A distinction is generally made between the law designed to protect military and civilian victims of armed conflicts on the one hand, and the laws governing the way war is waged, on the other.

The international law of armed conflicts, of which international humanitarian law is a part, was formulated much earlier than international human rights law. Important phases in the development of the international humanitarian law of armed conflicts were the (diplomatic) Conferences of Paris (1856), Geneva (1864), St. Petersburg (1868), Brussels (1874), The Hague (1899, 1907) and Geneva (1949 and 1977).

The international law instruments adopted at these conferences form the basis of modern Human Rights and Armed Conflict international humanitarian law, the most relevant being the four Geneva Conventions (1949) and their two Additional Protocols (1977). The principal purpose of the four Geneva Conventions was to set out humanitarian rules to be followed in international armed conflict. The Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) lists a number of actions which the parties must refrain from in all circumstances. These include actions that are recognized as violating the most basic human rights, such as violence endangering life, torture and physical or moral coercion, as well as non-compliance with many due process rights. The Convention

forbids in the strongest terms the utilization of human shields. It also provides that civilians may not be compelled to work for an occupying power unless certain strict conditions are met (Article 51). The Additional Protocols to the Geneva Conventions, which were adopted by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (1977), are major developments in this context.

The International Committee of the Red Cross (ICRC) monitors compliance with the Geneva Conventions and the Protocols by, inter alia, visiting places of detention, receiving complaints of breaches of international humanitarian law and addressing concerns to governments.

In recent years humanitarian intervention, the maintenance of peace and the protection of collective security, as well as the protection of cultural property, have received increased attention in relation to humanitarian and human rights law. The last mentioned issue has a place in Additional Protocol I to the Geneva Conventions in Chapter III dealing with civilian objects.

Other recent international efforts to lessen human suffering resulting from conflict is the fight against the widespread use of anti-personnel mines and small arms and the efforts to curb easy funding such as the trade in 'conflict diamonds' and the use of drug revenues to finance conflicts.

The rules and principles of International Humanitarian Law (IHL) are universally recognized legal rules, not just moral or philosophical precepts or social custom. The corollary of the legal nature of these rules is, of course, the existence of a detailed regime of rights and obligations imposed upon the different parties to an armed conflict. Individuals who do not respect the rules of IHL will be brought to justice.

International humanitarian law must be understood and analyzed as a distinct part of a more comprehensive framework: the rules and principles regulating coordination and cooperation between the members of the international community, i.e. Public International Law.

In striving to limit the suffering and the damage caused by armed conflict, IHL may be said to protect the «hard core» of human

rights in times of conflict. This includes the right to life, the prohibition of slavery, the prohibition of torture and inhuman treatment, and the prohibition of any retroactive application of the law. Unlike other rights (such as freedom of speech, of movement and of association), which may be derogated in times of national emergencies, the core protection afforded by IHL can never be suspended. Since IHL applies precisely to the exceptional situations that constitute armed conflicts, the content of the «hard core» of human rights tends to converge with the fundamental and legal guarantees provided by humanitarian law. While IHL, as the «lexspecialis» regulates situations of armed conflict, whereas human rights are made for peacetime, international human rights law continues to apply during armed conflicts, and IHL and human rights law complement each other in protecting the life and dignity of those caught in armed conflict.

Here are some of the ways in which IHL protects fundamental human rights in armed conflicts:

The protection accorded to victims of war must be without any discrimination;

A great deal of humanitarian law is devoted to the protection of life, especially the life of civilians and people not involved in the conflict; IHL also restricts the imposition of the death penalty;

IHL goes beyond the traditional civil right to life by protecting the means necessary for life, a right that might be categorized as ‘economic and social’ under human rights law;

IHL absolutely prohibits torture and inhuman treatment;

IHL specifically prohibits slavery: prisoners of war are not to be seen as the property of those who captured them;

Judicial guarantees are codified in the Geneva Conventions and the Additional Protocols;

The protection of children and family life is clearly emphasized in IHL: examples include rules on the conditions of internment of children and rules against separating family members;

The respect for religion is taken into account in the rules concerning prisoners of war as well as in customs of burial [2].

The relationship between human rights law and the law of armed conflicts

The level of protection afforded by human rights law is the highest in 'normal' situations, i.e., in times of peace, and may diminish during times of non-international armed conflict or international conflict.

International humanitarian law is only applicable when there is a non-international armed conflict (common Article 3 to the Geneva Conventions and Protocol II apply) and an international armed conflict (the four Geneva Conventions and Protocol I apply).

International humanitarian law is specifically designed to regulate the conduct of parties to an armed conflict. Its provisions already take into account the principles of humanity, military necessity and proportionality and therefore do not allow for derogation. These norms that apply in all circumstances are spelled out in the common Article 3, included in each of the Geneva Conventions, which reads:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

Taking of hostages;

Outrages upon personal dignity, in particular humiliating and degrading treatment;

The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted

court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. While human rights law provides for derogation of some rights in times of emergency, it is important to note that several human rights may not be derogated from under any circumstance [4].

International humanitarian law is based on three key principles.

Distinction. All sides must distinguish between military targets and civilians. Any deliberate attack on a civilian or civilian building – such as homes, medical facilities, schools or government buildings – is a war crime (providing the building has not been taken over for military use). If there is any doubt as to whether a target is civilian or military, then it must be presumed to be civilian.

Proportionality. Civilian casualties and damage to civilian buildings must not be excessive in relation to the expected military gain.

Precaution. All sides must take precautions to protect civilians, including:

Taking into account the timing of an attack to minimize civilian casualties.

Making sure that whenever possible civilians are given advance warning of an attack.

Stopping an attack if it becomes apparent that the target is civilian or the impact on civilians is disproportionate.

If munitions, such as artillery or mortars, cannot be precisely aimed, they should not be used on a military target in a densely populated residential area.

Military buildings and equipment, such as ammunition stores, should not be situated in densely populated areas [5].

International human rights law and international humanitarian law are bodies of law in permanent evolution. Warfare is a phenomenon in constant change and, thus, international human rights law and international humanitarian law are required to adjust constantly to avoid gaps in the protection they provide. Changes in the law stem essentially from the practice of the different organs that

supervise compliance with the system. Jurisprudence by judicial organs, but also by treaty bodies, is a significant source of interpretation and is fundamental for the development of the system. But applying the rules correctly and, most importantly, providing adequate protection to populations at risk require a thorough understanding of how these different norms interact and how they complete and complement each other to afford the highest standard of protection possible.

The discussion on their interaction is certainly part of a broader legal debate on the fragmentation and unity of international law. As a result, recent legal debates have concentrated on developing mechanisms to ensure maximum protection for the individual. For instance, in a number of cases, one body of law requires a referral to another body of law, as is the case of common article 3 of the Geneva Conventions, which uses concepts developed in more detail in human rights instruments, including in the Universal Declaration of Human Rights. Similarly, on certain occasions human rights law needs to be interpreted in the context of international humanitarian law, as done by the International Court of Justice in its advisory opinion on the Legality of the Threat or Use of Nuclear Weapons.

Concerning their complementarity, both human rights law and international humanitarian law inform each other in a number of ways. In the context of the Human Rights Council's discussions on this subject, different experts have highlighted that in certain complex situations some type of test may be necessary to assess the most adequate legal framework to be applied in a particular situation.

As a result of efforts to ensure effective protection for the rights of all persons in situations of armed conflict, a number of United Nations bodies and organizations, human rights special mechanisms, as well as international and regional courts, have in practice increasingly applied obligations of international human rights law and international humanitarian law in a complementary and mutually reinforcing manner.

In any case, it should be recalled that, as stated by the High Commissioner for Human Rights, «international human rights law and international humanitarian law share the common goal of preserving the dignity and humanity of all. Over the years, the General Assembly, the

Commission on Human Rights and more recently the Human Rights Council, have considered that, in situations of armed conflict, parties to the conflict have legally binding obligations concerning the rights of persons affected by conflict» [3].

In this respect, both international human rights law and international humanitarian law provide extensive protections and guarantees for the rights of persons not actively or no longer participating in hostilities, including civilians. The application of both bodies of law should be carried out in a complementary and mutually reinforcing manner. Doing so prevents gaps in protection and could facilitate a dialogue with the parties to the conflict concerning the extent of courts, regional human rights courts, treaty bodies and the Human Rights Council's special procedures clearly shows that their complementarity and mutually reinforcing character have contributed to the establishment of a solid set of legal obligations extensively protecting the rights of all persons affected by armed conflict. While conflicts of norms are inevitable – hence the importance of the principle of *lex specialis* – they are the exception, rather than the rule.

Future developments could include decisions by the International Court of Justice, which increasingly deals with the application of human rights treaties, as well as further decisions from regional human rights courts, resolutions from the Security Council and the Human Rights Council, and the work of treaty bodies and special rapporteurs. All these developments need to be seen as a whole and should be understood as an effort of the international community to further strengthen the protection of all persons in armed conflict. Their legal obligations. Moreover, the complementary application of both bodies of law will also provide the necessary elements for triggering national or international accountability mechanisms for violations committed in the conflict. Finally, both legal regimes also provide the necessary mechanisms to ensure that victims can exercise their right to a remedy and to reparation.

Conclusion. The problem of human rights protection in armed conflict is both complex and urgent. Millions of people suffer from abuses in the context of warfare every year.

International human rights law and international humanitarian law highlights the complexities of adequately understanding the legal

regime applicable to armed conflicts. In general, the national legislation in this field corresponds to the existing international legal standards, but the practice of their implementation demonstrates the need for timely amend men's and additions in case of threats to peace and security, the territorial in target of the State. Also crucial are effective mechanisms foren suring and protecting the rights and freedoms of all categories of participants in armed conflicts.

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Камінська Н. В. – доктор юридичних наук, професор, професор кафедри гуманітарних та загальноправових дисциплін Національної академії внутрішніх справ;

Патріча М. В. – студент 2-го курсу факультету № 2 Національної академії внутрішніх справ

Захист прав людини під час збройних конфліктів

Проаналізовано статус учасників збройних конфліктів, особливості реалізації їхніх прав, захист порушених прав і свобод. Досліджено проблему відповідності національного законодавства у цій сфері чинним міжнародно-правовим стандартам.

Ключові слова: збройні конфлікти; комбатанти; некомбатанти; військовополонені; права людини.

Каминская Н. В. – доктор юридических наук, профессор, профессор кафедры гуманитарных и общеправовых дисциплин Национальной академии внутренних дел;

Патрича М. В. – студент 2-го курса факультета № 2 Национальной академии внутренних дел

Защита прав человека во время вооруженных конфликтов

Проанализирован статус участников вооруженных конфликтов, особенности реализации их прав, защиты нарушенных прав и свобод. Исследована проблема соответствия национального законодательства в этой сфере действующим международно-правовым стандартам.

Ключевые слова: вооруженные конфликты; комбатанты; некомбатанты; военнопленные; права человека.