

INTERACTION OF IHRL AND IHL IN THE FIELD HUMAN RIGHTS PROMOTION: INTERNATIONAL STANDARDS AND NATIONAL DIMENSION

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Abstract

The urgency of the research is conditioned by the actual status of the governmental and legal reality of Ukraine which is in conditions of the armed conflict seventh year in a row resulting in the need to ensure both state sovereignty and guarantee and protection of human rights. In this regard, the article is aimed at studying the interaction of international human rights law and international humanitarian law, as well as their implementation in the legislation of Ukraine in conditions of an armed conflict. Scientific methods of research of the declared problems are the system method by means of which the international human rights law and the international humanitarian law are considered as two systems of more difficult complex – the international law. Using the structural-functional method, the structure and mechanisms of functional interaction of these systems on the legal regulation in the field of human rights in specific conditions are studied. The article analyzes the legal basis of international human rights law and international humanitarian law, as well as their possible simultaneous application in the context of the armed conflict in eastern Ukraine. Emphasis is placed on the need to ensure compliance with the principles of international humanitarian law and to bring to justice those guilty of violating the rules of the IHRL and IHL. The research results can be used in the educational process and further research.

Keywords: human rights, international human rights law, international humanitarian law, right to life, international human rights standards.

I. INTRODUCTION

Human rights, which are based on freedom and equality of opportunity, self-identity, social protection and legal mechanisms for ensuring and guaranteeing, are the basis for the balanced development of the individual, society and the state. In countries with developed democracies, human rights and mechanisms for their

implementation and protection are constantly in the spotlight of politicians, sociologists, experts, human rights organizations, as well as the object of scientific research. Modern constitutions of the world, enshrining the legal status of the individual, are based on the achievements of international law in the field of human and civil rights and freedoms, which, in fact, is quite

natural and objective, as international law as a special normative system has developed basic regulations and mechanisms in the field of human rights.

These include the Universal Declaration of Human Rights /1/, the International Covenant on Civil and Political Rights /2/, the International Covenant on Economic, Social and Cultural Rights /3/, the Convention for the Protection of Human Rights and Fundamental Freedoms /4/, which and became the civilizational heritage of the world community of the XX century. Specifically, it was after the development of international human rights standards that the fundamental principles of human rights were enshrined in the constitutions of the states all around the world, including the principles of humanism, justice, respect and guarantee of human rights and freedoms, equality, inalienability and birthright. Having identified human rights as the core of a meaningful democracy - and over the last few revolutionary decades, humanity has learned an important lesson that without the protection of human rights, there can be neither democracy nor any justification for democracy /5/.

The beginning of the XXI century marked by the need to deepen the humanistic dimension of the legal status of the individual in modern societies and states, and hence deepen the attention of researchers who argue that in the new millennium will deserve special attention two areas of international law, namely international human rights law and international humanitarian law, their interaction and complementarity. Thus, the purpose of the article is to investigate the interaction of international human rights law (hereinafter –IHRL) and international humanitarian law (hereinafter – IHL) and their implementation in the national legal system, in particular the scope and problems of application of these areas in specific cases.

The specificity and complexity of scientific research is that human rights are studied from different angles by different sciences, including

philosophy, political science, law, sociology, and so on. Human rights have become the object of study of many domestic scientists, including M. Antonovych /6/, S. Golovaty /7/, O. Zadorozhnyi /8/, A. Korinevich and O. Martynenko /9/, V. Mytsyk /10/, O. Pavlyshyn /11/, V. Yarmaki /12/ and others. However, even today it does not lose the relevance of further research in this direction.

II. IHL AND IHRL AS ONE OF THE MECHANISMS OF GUARANTYING AND PROMOTION OF HUMAN RIGHTS

According to scholars, human rights can be considered as a holistic symbolic structure at three main levels - as the idea of human rights, a legal institution expressed in a set of specific legal norms established at the international and interstate and national levels, as well as a system of special human relations, which was formed on the basis of many subjective rights and responsibilities of social actors /13/.

In our opinion, when studying IHRL and IHL in modern conditions, first, we should apply a systematic method of scientific research and, in fact, consider these two areas as certain systems that are part of a broader complex, namely international law. This will make it possible to identify certain structural elements that are characteristic of IHRL and IHL and to clarify the nature of the links between them. Secondly, with the help of structural-functional analysis to identify the mechanisms of their interaction and interpenetration.

First of all, within the framework of our research we want to draw attention to the current problems of realization, promotion and guarantee of human and civil rights and freedoms in Ukraine, as for the seventh year in a row Ukraine is in a state of military armed conflict. In fact, the fact that with the independence of Ukraine in 1991, the state of human and civil rights and freedoms has undergone radical democratic transformations will not be denied. Evidence of this is the adoption of the Constitution of Ukraine /14/, in which Section II "Rights, freedoms and

responsibilities of man and citizen" enshrines fundamental international principles and standards, as well as a catalog of human and civil rights and freedoms.

However, according to scientists, in the current conditions of international cooperation and interaction, as well as in light of events within the Ukrainian state of the last decade, which, in turn, radically affect and change legal awareness and understanding, the constitutional status of man and citizen should be based on synthesized concept of the individual, which combines the fundamental rights, freedoms and responsibilities in all their dimensions and manifestations, as well as in the interdependent relationship of individual – state – society. This convinces that the proper legal provision of the mechanism for the implementation and guarantee of human and civil rights and freedoms in Ukraine at the present stage should become fundamental in the field of any reforms. After all, in countries with developed democracies, human rights and freedoms are a necessary condition for the implementation of the principle of the rule of law, constitutionality and legality /15/.

In the current conditions of the state and legal reality of Ukraine, the establishment, guarantee and promotion of human rights require the state to create effective mechanisms and solve systemic problems in this area. On the one hand, Ukraine as a subject of international law and an equal member of universal and regional international organizations sets and establishes mechanisms for the protection of human rights and freedoms, and on the other hand, in conditions of the armed conflict in eastern Ukraine, there is a need to ensure and guarantee fundamental human rights, and hence the use of IHL.

Such systemic problems, in our opinion, are the promotion and guarantee of fundamental human rights, namely the right to life, personal security and inviolability, the protection of civilians in armed conflict, the rights of internally displaced persons, and so on. According to foreign

researchers, human rights are involved in the formation of democratic, legal and social states, reducing social and national tensions, spreading the idea of morality, tolerance, expanding demographic and socio-economic problems, protection during armed conflicts, etc. /16/.

It should be noted that at the beginning of the XXI century modern international law as a right of international cooperation and coexistence has faced problems and challenges that humanity must overcome and solve. As O. Zadorozhnyi /17/ noted, in the XXI century the world is facing a whole range of new complex problems, including: poverty, armed conflict, terrorism, environmental degradation, and drug trafficking. The solution of these problems dictates the need to create a world order based on a high level of cooperation in the name of ensuring the national and international interests of states. The new world order must ensure the survival and further progress of mankind. One of the main trends in the development of modern international law is the growing importance of the principle of respect for human rights. Constitution of Ukraine (Article 9) defining international treaties as part of national legislation, thus established a general strategic course of Ukraine on the path of civilization through the perception of universal values and principles, including in the field of human rights and freedoms.

According to scholars, during a long period of time the prevailing view in the modern science of international law is that IHL and IHRL are complementary, meaning being supplemental. This position was recently enshrined in General Comment № 36 (2018), adopted by the UN Human Rights Committee to the Art. 6 ICCPR on the right to life /18/. There are different opinions and approaches to terminology in the doctrine of international law. In particular, a distinction is made between international human rights law and international humanitarian law, as areas that have their own subject of legal regulation and a certain field of applicability. Although there are other views.

Some scholars consider international law human rights protection and fundamental freedoms as an institution of humanitarian law. As for the definition of concepts, it should be noted that international human rights law is a branch of international law formed by a system of norms and principles of international law that regulate and ensure the international protection of human rights and freedoms in peacetime. International humanitarian law is a branch of international law formed by a system of international conventional and customary principles and norms governing relations between belligerent states, which consist of rules of war, laws and customs of war, or the prohibition or restriction of the use of certain weapons. The norms of international humanitarian law are intended to humanize the means and methods of warfare, to protect the rights of combatants and civilians during international and non-international military conflicts /19/.

Thus, it can be stated that there are two systems of modern international law in international law as an integral complex: international human rights law – International Human Rights Law and international humanitarian law – International Humanitarian Law, which is called the law of armed conflict (Humanitarian Law in Armed Conflict). However, according to scholars, the problem of correlation of these two branches of international law in modern conflicts is complicated by the fact that states can resort to manipulation of these legal regimes. Thus, in the fight against terrorism is often referred to IHL with the aim to lower the threshold and start applying military force by the virtual absence of armed conflict and, conversely, in the context of armed conflict, when to indent (derogation) from certain obligations on human rights, such a derogation is often used to reduce the level of protection of the rights of prisoners /20/.

III. INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW AS A

CONSEQUENCE OF THE SECOND WORLD WAR

The world (international) community, which has survived two world wars and suffered global human losses in half a century, is faced with the need to develop international human rights standards and mechanisms for their implementation. The origins of the need to develop international human rights standards are actually initiated in the UN Charter /21/, in particular in the introductory part, which states: "We, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom".

In fact, the intent of the peoples of the United Nations were implemented exactly in the period from 1946 to 1966 by developing and adopting international principles, norms and mechanisms that found their formal expression in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These international documents have acquired a special status as a supranational system of legal norms in the field of human and civil rights and freedoms, as well as formed the basis of national constitutional laws of the states parties to these international agreements.

The term international humanitarian law was officially introduced in the middle of the last century, in particular by using it in the terminology of the Geneva Conventions, as well as in the law enforcement practice of the International Court of Justice. In fact, the unity of scientific thought within the framework of

international law is still not observed, as the term international law of armed conflict is also applicable. According to scientists, the relationship between the concepts of "war" and "international law" is one of the main problems of the science of international law. The study of this relationship is a combination of military requirements with the necessary measures of humanity /22/.

After the Second World War, the Geneva Conventions were adopted in 1949, in particular: the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces /23/ (GC I), the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked composition of the armed forces at sea /24/ (GC II), the Geneva Convention relative to the Treatment of Prisoners of War /25/ (GC III), the Geneva Convention relative to the Protection of Civilian Persons in Time of War /26/ (GC IV) and the Additional Protocols, which and formed the modern international humanitarian law, which is called "Geneva law". Ukraine is a party to the Geneva Conventions.

It should be emphasized that for Ukraine as a party to international treaties of universal and regional nature in the field of human rights, the problems of promotion fundamental human rights, among which the right to life, honor, dignity, freedom and personal integrity have become especially relevant since 2014, namely with the beginning of the conflict in the Donetsk and Luhansk regions. In almost seven years of conflict in Ukraine, the Office of the UN High Commissioner for Human Rights estimates that the number of casualties is 42,000-44,000: 13,100-13300 dead (at least 3375 civilians, approximately 4150 Ukrainian military) and 29500-33500 wounded (7000-9000 civilians) persons, 9700-10700 Ukrainian military). In fact, under such conditions, the issue of compliance with international humanitarian law in the context of the armed conflict in the east is especially relevant for Ukraine, as under international humanitarian law, the responsibility for compliance is primarily borne by the state party to the conflict.

However, as it is stated in researches, violations of international humanitarian law occur not because its rules are poor, but rather because of a reluctance to comply with them, an ineffective law enforcement mechanism, and because in some cases it is not entirely clear how they should be applied, and finally, due to ignorance of these norms by political leaders, combatants and population generally /27/. Examining the problem of interaction between IHRL and IHL, it should be emphasized that in general the mechanism of promotion, guaranteeing and protecting human rights is a rather complicated legal complex, which in modern international law and interaction includes both international regulatory and institutional systems and national means. In fact, international legal acts that establish mechanisms for ensuring human rights not only regulate human rights and freedoms, but also establish the obligation of states to implement these mechanisms and ensure their practical implementation.

It should be noted that the IHRL and IHL are based on fundamental basic ideas, principles that are characterized, on the one hand, by universality, and on the other hand, reflect the essence and the most important provisions of these branches of international law. The principles of IHRL as an imperative of universal character, recognized by the world community, developed and enshrined in international documents of universal character. These include:

- 1) the principle of humanism;
- 2) the principle of universality and inalienability of human rights (Article 55 of the UN Charter, according to which national laws guarantee equality of human rights and freedoms regardless of race, sex, nationality, language, origin, etc.;
- 3) the principle of equality of people in their dignity and rights (Article 1 of the UDHR, as a fundamental value in modern democracies). Human equality will be the basis for other rights, including equality before the law and the courts, non-discrimination) etc.;

4) the principle of guaranteeing human rights as a system of legal mechanisms for the protection of human rights.

The analysis of experts' opinions on the list of the system of IHL principles makes it possible to single out among the most important and significant the following sectoral principles: the principle of humanization of armed conflicts is a fundamental principle; the principle of limiting the warriors in the choice of means and methods of warfare; the principle of not causing unnecessary suffering; the principle of honesty and integrity in the choice of means and methods of hostilities; the principle of environmental safety or protection of the environment during armed conflict; the principle of distinguishing between combatants and non-combatants; the principle of respect for human rights; the principle of protection of the civilian population and objects, victims of war; the principle of responsibility for violating the norms and principles of international humanitarian law /28/.

In the context of the above, it should be emphasized that principles such as humanity and respect for human rights, protection and liability in the event of a violation are common to both the IHRL and IHL. However, as noted in scientific papers, international humanitarian law imposes certain restrictions on the means of warfare, when it comes to bringing them to military facilities. However, when hit in military facilities, participants in hostilities are not required to guarantee their lives. However, the requirements are to prohibit chaotic (excessive) and excessive use of fire when the target is civilian objects. The only strict limitation on this requirement is that military action must be definitive and ratable (meaning proportionate) and not cause excessive suffering /29/.

IV. ARMED CONFLICT IN EASTERN UKRAINE AND VIOLATIONS OF THE IHRL AND IHL NORMS

Since gaining sovereign statehood in 1991, Ukraine, which has been subjected to military

aggression by the Russian Federation since February 2014, has faced the need to directly apply and enforce international humanitarian law. In this regard, there is an urgent need to disseminate and clarify knowledge about IHL, first of all among the participants of the anti-terrorist operation, and later among the participants of the operation of united forces. In fact, the Order of the Ministry of Defense of Ukraine approved the Instruction on the procedure for implementing the norms of international humanitarian law in the Armed Forces of Ukraine /30/.

It contains the basic provisions and legal structures in the field of international humanitarian law applicable in armed conflict, according to which international humanitarian law (law of armed conflict) is a system of internationally recognized legal norms and principles applicable in armed conflicts, establish rights and obligations of subjects of international law to prohibit or restrict the use of certain means and methods of armed struggle, to ensure the protection of victims of conflict and determine the responsibility for violating these norms /31/.

Currently, in Section 4 "Peculiarities of the application of IHL norms in non-international (internal) armed conflicts (non-international armed conflicts) and human rights laws applicable in situations of internal order violations and internal tensions, such as riots, separate and sporadic acts of violence" states that, in respect of international human rights law, military personnel must be guided by the requirements of the Universal Declaration of Human Rights, the International Covenant on Civil And Political Rights, the Convention for The Protection of Human Rights and Fundamental Freedoms, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the International Convention for the Protection of all Persons from Enforced Disappearance.

Herewith, the basic principles of international human rights law are: the right to life, liberty and

security of all people; prohibition of torture and ill-treatment; prohibition of unauthorized arrest and detention; the right to a fair trial; the right to humane treatment of persons deprived of their liberty; the right to protection from unlawful interference with private and family life, encroachment on the inviolability of the home, secrecy of correspondence; the right to freedom of thoughts and expression, freedom of assembly and association.

Analyzing the Instruction in terms of liability for violations of IHL, it should be emphasized that not all war crimes are reflected in the Rome Statute of the International Criminal Court. In particular, Art. 8 of the Rome Statute classifies war crimes as those related to international military conflicts and internal military conflicts. Subject to ratification of the Rome Statute, Ukraine would expand its capacity to investigate and prosecute those guilty of serious violations of the rules of the IHRL and IHL in the occupied territories of eastern Ukraine. However, despite the fact that Ukraine signed the Rome Statute of the International Criminal Court in January 2020, its further ratification did not take place, as the Constitutional Court of Ukraine ruled that some of its provisions were unconstitutional.

In fact, given that the Rome Statute gives the right to appeal to the International Criminal Court to a state that has signed it and Ukraine has already used it, subject to its ratification, the state would not only have international obligations but also acquire the rights of a full participant in the Rome Statute of the International Criminal Court. There is no doubt that the effectiveness of the national implementation mechanism largely affects the image of the state, the effectiveness of the legal system, the ability to protect human rights in armed conflicts, including warfare, both international and non-international /32/.

As the O.V. Vasylenko /33/ notices, despite the fact that the international community is trying to resolve armed conflicts by creating rules of law and international institutions that would regulate the issue of responsibility for international armed

aggression, at the beginning of the XXI century armed conflicts pose a great threat to peace and law and order. It should be borne in mind that in many regions of the planet, where hostilities have ceased, a situation of truce, "smoldering" conflict, rather than lasting peace has appeared.

It should be noted that the close correlation between the IHRL and IHL can be traced in the protection of civilians during armed conflicts. Hence, accordingly, to Art. 4 of the International Covenant on Civil and Political Rights, which states that in a state of emergency in a state in which the life of the nation is endangered and officially declared, States parties to the Covenant may take measures to derogate from their obligations only to the extent that it is dictated by the severity of the situation, provided that such measures are incompatible with their other obligations under international law and do not result in discrimination solely on the basis of race, color, sex, language, religion or social origin.

This provision cannot be the basis for any derogations from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18. That is, this provision is the basis of human rights. In fact, the rights referred to in article 4 of the Covenant, namely the right to life, the right to the prohibition of torture or ill-treatment, the prohibition of slavery, the slave trade, slavery, the right to unlawful deprivation of liberty and others, cannot be alienated under any circumstances. That is, the rules of IHRL and IHL are actually superimposed on each other and form the basis of human rights.

The right to life as one of the fundamental human rights has been enshrined at the level of international and European standards. In particular, Art. 3 of the Universal Declaration of Human Rights establishes that everyone has the right to life, liberty and security of person. International Covenant on Civil and Political Rights in Art. 6 establishes an imperative norm, in particular the right to life is an inalienable right of every person. This right is protected by law. No one can be arbitrarily deprived of life. Moreover, the Second Optional Protocol to the International

Covenant on Civil and Political Rights, ratified by Ukraine, established in Art. 1 imperative that no person under the jurisdiction of a State Party to this Protocol shall be executed. In fact, under this Protocol, States that have undertaken these obligations cannot in any way deviate from them.

In the conditions of the armed conflict in Ukraine, issues of protection of the civilian population need to be ensured by establishing certain mechanisms and means at the national level. Regarding state policy in this area, it should be noted that the National Strategy for Human Rights developed and approved by the Decree of the President of Ukraine No. 119/2021 /34/ recognizes the problems of protection of human rights and freedoms in the context of armed aggression of the Russian Federation against Ukraine.

One of the strategic directions of the strategy is to ensure the right to life by deciding on and solving the following problems: "ineffective investigation of criminal offenses that caused death; violation of the right to life as a result of armed aggression of the Russian Federation, actions of armed formations of the Russian Federation and illegal armed formations created, subordinated, managed and financed by it, as well as actions of the occupation administration of the Russian Federation in temporarily occupied territories in Donetsk and Luhansk regions. However, the draft National Strategy for the Protection of Civilians in Armed Conflict until 2030, which has been publicly discussed with the participation of public organizations, experts, etc., needs to be approved.

In parallel with international humanitarian law, international human rights law remains in force, from the vast array of which for Ukraine in the current situation comes to the fore the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the practice of applying its provisions, being in state of armed conflict, by European Court of Human Rights. The latter shows that the ECHR requires states, in essence, to comply with basic norms of

international humanitarian law aimed at protecting the life and dignity of the individual. European Convention for the Protection of Human Rights and Fundamental Freedoms in Art. 2 establishes that the right to life is protected by law. No one shall be deprived of his life intentionally save in the execution of a death sentence of a court following his conviction of a crime punishable by law.

However, with the expansion of the international aspect of human rights protection, on the one hand, and the extension of IHL norms to non-international armed conflicts, on the other hand, the problem of correlation of legal regimes provided by these two branches of international law has become acute. Although there are numerous cases where international humanitarian law and international human rights law complement or refer to each other, the most typical option for the relationship between the norms of the two industries is their parallel application /35/.

In fact, based on the doctrine of international law, IHRL is a system of norms (regulations) that determine the rights of individuals (individuals, people) and establish the obligations of the state to implement these opportunities, as well as a system of guarantees and mechanisms to protect them in case of violation. S. Golovaty /36/ in his work "On Human Rights" notes that the concept of "human rights law" is a form of public international law that contains rights for the individual and formulates responsibilities for the state, as well as creates a legal framework for international and national means of protection against violations of individual rights and non-performance of duties by the state.

In fact, the problem of international legal responsibility, as a kind of social responsibility, will be directly related to the functioning of international law, the essence of which is determined by the concerted will of sovereign states /37/. In turn, the principle of sovereign equality of states is inextricably linked with the principle of respect for human rights.

International legal responsibility for the commission of crimes can be borne not only by states but also by individuals /38, 39/. However, it should be noted that the practice of prosecution applied by Ukraine indicates the lack of ensuring the effectiveness of criminal penalties for violations of IHL.

V. CONCLUSIONS

Summarizing, it should be stated that Ukraine faced new challenges and problems at the beginning of the XXI century, namely the need to preserve and ensure state sovereignty in general, and as a consequence the need to guarantee human rights and freedoms. Human rights as a universal value today more than ever require effective mechanisms for implementation and protection, active action by government agencies and structures, as well as the participation in this process of international organizations to which Ukraine is a participant.

For today, in the conditions of existence of the armed conflict in the east of Ukraine, realization of the constitutional requirement of Art. 3 of the Constitution, requires the state to take immediate action to fulfill its obligations, as the second part of Art. 3 directly indicates that human rights and freedoms and their guarantees determine the content and direction of the state. The state is accountable to man for his activities. The establishment and protection of human rights and freedoms is the main duty of the state. In fact, based on the essence and content of the right to life as a fundamental human right and an international mechanism for promotion of it, the Ukrainian state must fulfill its obligations in this area.

The problem of observance of the principles of IHRL and IHL in particular, the principle of respect for human rights, the principle of protection of civil infliction and objects, the principle of responsibility for violating the norms and principles of IHL, becomes especially relevant in the armed conflict in eastern Ukraine. The need to refrain from shelling settlements, which in general threatens the lives of civilians,

requires active action and decisions by state institutions. It should be noted that human rights, which belong to him and which he is endowed by nature, must be realized in everyday life, regardless of the state (armed conflict, state of emergency, etc.).

The interaction of IHRL and IHL is especially traced in Art. 4 of the International Covenant on Civil and Political Rights, according to which the withdrawal of states from their obligations may not affect the right to life, as well as other fundamental human rights and freedoms, even in a state of emergency. However, it should be emphasized that the implementation of international humanitarian law is based on the obligations of states. In fact, IHRL and IHL as industries complement each other during armed conflict and are generally part of the international human rights system.

In the context of the protracted armed conflict in eastern Ukraine, the need to ratify the Rome Statute of the International Criminal Court becomes necessary, as such conditions would give Ukraine rights as a full participant, which in turn would increase the possibility of prosecuting perpetrators of war crimes.

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