

HUMAN RIGHTS INFRINGEMENT IN UKRAINE-RUSSIA ARMED CONFLICT

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The article analyzes the state of observance of human rights during the Ukrainian-Russian armed conflict. It is proved that the armed conflict in the East of Ukraine is international in nature, therefore the problem is considered in the context of international law. The contents of international humanitarian law and international human rights law are revealed. Their analysis was carried out in the part of ensuring human rights in the conditions of the Ukrainian-Russian armed conflict. It was stated that international humanitarian law and international human rights law serve as a fundamental foundation among the military, politicians, diplomats, activists, demonstrators and journalists in resolving armed conflicts. The distinctive features of international legal norms regarding the delimitation of human rights violations during armed conflicts from the legal restrictions on the exercise of certain rights are singled out.

Key words: human rights, Ukrainian-Russian armed conflict, international humanitarian law, international human rights law, United Nations, UN General Assembly, UN Security Council, UN Human Rights Committee.

У статті проаналізовано стан дотримання прав людини під час україно-російського збройного конфлікту. Доведено, що збройний конфлікт на Сході України має міжнародний характер, тому проблему розглянуто в контексті міжнародного права. Розкрито зміст міжнародного гуманітарного права та міжнародного права прав людини. Проведено їх аналіз в частині забезпечення прав людини в умовах україно-російського збройного конфлікту. Констатовано, що міжнародне гуманітарне право та міжнародне право прав людини виступають у якості основоположного фундаменту серед військових, політиків, дипломатів, активістів, учасників демонстрацій та журналістів під час вирішення збройних конфліктів. Виокремлено характерні ознаки міжнародно-правових норм стосовно відмежування порушень прав людини під час збройних конфліктів від законних обмежень щодо здійснення деяких прав.

Ключові слова: права людини, україно-російський збройний конфлікт, міжнародне гуманітарне право, міжнародне право прав людини, Організація об'єднаних націй, Генеральна Асамблея ООН, Рада безпеки ООН, Комітет з прав людини ООН.

Topicality of the research. Cooperation in the field of human rights protection is one of the priority directions of international cooperation of the states in the modern world. The main differences between the new international legal doctrines in the field of human rights protection in comparison with the classical

doctrines of international law are in the determination of primarily a person whose legal personality is mainly aimed at the protection of personal rights and legitimate interests as the subject of international legal relations. Accordingly, the stereotype of the primacy of the state

in international legal relations established for many decades has been set aside.

Modern international law in the field of human rights requires states which are parties to the relevant treaties to assume unilateral commitments to ensure human rights. Moreover, the issue of ensuring and protection of human rights is no longer considered by the international community as an internal affair of the state.

It is crucially important to understand the need to ensure human rights in any circumstances. The most important direction of inter-governmental cooperation is ensuring human rights in the context of international and non-international armed conflicts. Indeed, despite the fact that contemporary international law condemns wars, armed conflicts, any aggression in general and forbids aggressive wars, this does not mean that the sources that give rise to tension in inter-state relations that lead to the potential for the emergence of armed conflicts of different nature disappear. Unfortunately, wars and armed conflicts are an objective reality of the modern stage of human development.

Regardless of its social nature (international wars, national liberation wars, internal armed conflicts), legality or illegality (aggressive wars or defensive wars, armed acts of separatists within the country or the actions of government forces to protect the constitutional order), these armed conflicts jeopardize the realization of most of the basic human rights and freedoms, including the most important natural human right - the right to life.

State of research. Over the past few years, the problems of ensuring the rights of citizens, including internally displaced persons, during the armed conflict in the East of Ukraine have received considerable attention of many domestic scholars from different fields of law, as well as by practitioners, in particular: O.I. Amosha, V.M. Heiets, L.L. Denysova, Yu.L. Zviahivskiy, O. Ivanova, O.A. Kokorieva, A.M. Kolot, H.M. Nemyria, E.M. Libanova, O.B. Petriaeva, U.Ya. Sadova, H.B. Tuka, H. Khrystova, V.O. Cherenysh, L.V. Shaulska.

At the same time, the issues of international legal regulation of issues concerning ensuring

the rights of persons during the Ukrainian-Russian armed conflict need further study.

The research objective is to analyze the rules of current and international legislation in the field of the protection of rights and fundamental freedoms and to develop scientifically grounded suggestions for improving the rights of citizens in the Ukrainian-Russian armed conflict.

Research findings. For several decades, armed conflicts have taken lives of millions of people, both civilians and military. Moreover, serious violations of the international humanitarian law and international human right law became a widespread practice in many of them. Under certain conditions, some of these violations can even be classified as acts of genocide, war crimes or crimes against humanity.

International humanitarian law and human rights serve as a fundamental foundation among the military, politicians, diplomats, activists, demonstrators and journalists during armed conflicts. This branch of law plays a key role in the outlined area of public relations and serves as a reference to numerous resolutions of the United Nations Security Council, discussions at the UN Human Rights Council, political speeches of opposition movements, reports of non-governmental organizations, training of servicemen and diplomatic negotiations. Today, international human rights law and international humanitarian law are important factors for many military leaders who receive legal assistance from qualified specialists in the field of law. In addition, the rules of these areas of law are used by lawyers and prosecutors in international and - to a limited extent so far - national courts, where they serve as the basis for well-argued sentences.

In accordance with Article 7 of the Law of Ukraine "On the Peculiarities of State Policy on Ensuring State Sovereignty of Ukraine in Temporarily Occupied Territories in the Donetsk and Luhansk Regions"¹, Ukraine hold the Rus-

¹ About the Peculiarities of the State Policy on Ensuring the State Sovereignty of Ukraine in Temporarily Occupied Territories in the Donetsk and Luhansk Regions: Law of Ukraine No. 2268-19 dated January 18, 2018 [Electronic resource]. – Available at: <http://zakon2.rada.gov.ua/laws/show/2268-19?nreg=2268-19&find=1&text=%E2%B3%E9%ED&x=11&y=7>.

sian Federation as an invading state responsible for violating the protection of the rights of civilians.

Regarding the issue of violation of human rights under the conditions of armed conflict, it seems quite appropriate for the author to analyze international legal acts, taking into account the international nature of the conflict between Russia and Ukraine. This is also confirmed by the conclusion of the International Criminal Court on the classification of the conflict in the East of Ukraine, which specifies additional information that "indicates the existence of a direct military confrontation between the armed forces of the Russian Federation and Ukraine, which implies that from July 14, 2014 at the latest, along with a non-international conflict, there is an international armed conflict in the East of Ukraine"².

Currently, there is an increase in the number of international treaties and protocols on specific issues, as well as numerous regional treaties on the protection of human rights and fundamental freedoms. Despite the fact that the basic guidelines for the rules and standards in the field of human rights are not legally binding (with the exception of the customary rules of international law), they play a key role in clarifying, updating and adopting domestic law on ensuring human rights in the process of armed conflicts. Moreover, the resolutions adopted by the General Assembly, the Security Council and the Human Rights Council, the decisions of the treaty bodies on specific cases and the reports of the human rights special procedures, declarations, guidelines and other "soft law" instruments are aimed at preventing further violations of such rights³.

The list of human rights contained in the rules of international human rights law is not

limited to the rights enumerated in international treaties, but also covers the rights and freedoms that have become part of customary international law binding on all states, including those which are not parties to any particular international treaty. The universal nature of these rights is also mentioned in the Universal Declaration of Human Rights⁴, the rules of which have a special imperative status of customary international law. This fact means the inadmissibility of any deviations under any circumstances and their prevalence, in particular, over other international obligations. The prohibition of torture, slavery, genocide, racial discrimination and crimes against humanity, as well as the right to self-determination, are recognized as imperative rules, as evidenced by the articles of the International Law Commission on the Responsibility of States⁵. In addition, the Human Rights Committee has noted that the provisions of the International Covenant on Civil and Political Rights, which constitute ordinary international law, cannot be the subject of a dispute⁶.

In article 14, the Committee on Human Rights has emphasized the prohibition of the consolidation of the jurisdictional powers of any state to engage in slavery, torture, cruel, inhuman or degrading treatment, to deprive people of their lives, to arrest and detain them at their own discretion, to deny the freedom of thought, conscience and religion, to hold a man guilty until he proves his innocence, to endure pregnant women or children, to allow the propaganda of a national, racial or religious hatred, to deny marriage-age people the right to marry or to deny minorities to use their own culture, to profess their religion or to use their own language."

² The Results of the Crimea Investigation were Published in the Hague [Electronic resource]. – Available at: <http://www.unn.com.ua/en/news/1702586-gaazkiy-tribunal-opublikuvav-rezultati-rozsliduvannya-schodo-krimu>.

³ Resolution HA 60/147 Basic Principles and Guidelines on the Right to Legal Protection and Indemnification for Victims of Serious Violations of International Human Rights Laws and Serious Violations of International Humanitarian Law [Electronic resource]. – Available at: <http://undocs.org/en/A/RES/60/147>.

⁴ General Comment No. 24 (1994) of the Human Rights Committee. [Electronic resource]. – Available at: http://www2.ohchr.org/english/bodies/icm-mc/docs/8th/HRI.GEN.1.Rev9_en.pdf.

⁵ Yearbook of the International Law Commission for 2001, Volume II, Part Two [Electronic resource]. – Available at: http://legal.un.org/ilc/publications/yearbooks/russian/ilc_2001_v2_p2.pdf

⁶ General Comment No. 24 (1994) of the Human Rights Committee. [Electronic resource]. – Available at: http://www2.ohchr.org/english/bodies/icm-mc/docs/8th/HRI.GEN.1.Rev9_en.pdf.

In addition, the Committee established the imperative and prohibition of arbitrary treatment of a number of rules for the protection of fundamental rights and freedoms, namely: Article 6 (right to life), Article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), as well as medical or scientific experiments without consent), Article 8, paragraphs 1 and 2 (prohibition of slavery, slave trade and detention), Article 11 (prohibition of imprisonment as a result of inability to fulfill its contractual obligation), Article 15 (principle of legality in the field of criminal law: criminal liability and punishment should be determined by clear and precise provisions of only the law that was in force and applied at the time of the commission of the act, except in those cases when later adopted legislation introduced a lighter punishment), Article 16 (recognition of legal personality of each person) and Article 18 (freedom of thought, conscience and religion)⁷.

The legal consolidation of the duty of states to respect human rights in conditions of armed conflict is also reflected in the decisions of the International Court of Justice, which serve as additional means for determining the rules of law^{8, 9, 10}. The said decisions clarify certain issues related to the continued application of the rules of international human rights law in situations of armed conflict.

The Human Rights Committee and the Committee on Economic, Social and Cultural Rights are the bodies established in accordance with international human rights treaties to monitor the implementation of key human rights treaties. The content and functional orientation of their activities consists in the regular reception of general remarks, which interpret and clarify the content and scope of the specific

rules, principles and obligations enshrined in the relevant conventions on human rights.

At the same time, international law delimits human rights infringement during armed conflicts from legal restrictions on the exercise of certain rights.

In accordance with the International Covenant on Civil and Political Rights¹¹, certain articles determining specific human rights, including the right to freedom of religion, movement, expression, peaceful meetings and associations, also establish conditions for limiting the extent to which it is possible to use a specific right. The International Covenant on Economic, Social and Cultural Rights recognizes the possibility of restrictions on the rights guaranteed by the Covenant as a whole (Article 4). Such restrictions can be introduced during armed conflicts, as well as in other circumstances. The ability to introduce restrictions depends on the following conditions:

- The restrictions should be necessary and provided for by law: states are limited by the wording of the treaty provisions themselves. Thus, for example, paragraph 3 of Article 18 of the International Covenant on Civil and Political Rights provides that "the freedom to practice religion or belief is subject only to such restrictions as are prescribed by law and necessary for the protection of public safety, order, health and morals, as well as fundamental rights and freedoms of other persons." Paragraph 3 of Article 12 on freedom of movement contains a similar provision;

- The restrictions must be compatible with the law itself and should contribute to general well-being: for example, Article 4 of the International Covenant on Economic, Social and Cultural Rights states that "the state may only impose the restrictions on these rights of the Covenant as are prescribed by law, and only to the extent that it is compatible with the nature of the rights in question, and solely for the purpose of contributing to the general well-being of a democratic society";

⁷ General Comment No. 29 (2001), para. 7. [Electronic resource]. – Available at: http://www2.ohchr.org/english/bodies/icm-mc/docs/8th/HRI.GEN.1.Rev9_en.pdf.

⁸ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226

⁹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 136

¹⁰ Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 168

¹¹ International Covenant on Civil and Political Rights, ratified on 19.10.1973 №2148-08 [Electronic resource]. – Retrieved from: http://zakon5.rada.gov.ua/laws/show/995_043.

- The restrictions should be proportionate and as less "restrictive" as possible: international practice and court decisions emphasized the fact that human rights constraints should be consistent with the principle of proportionality and should, to the maximum extent possible, limit their consequences for the use of other rights.

Recalling the General Comment No. 27 (1999) on freedom of movement adopted by the Human Rights Committee¹², the International Court of Justice noted that the restrictions on human rights "must comply with the principle of proportionality" and "should be the least restrictive of those by which the desired result can be achieved"

As for international humanitarian law, some rules provide, under certain circumstances, for the possibility of derogations from ordinary obligations. Sometimes, any measure is permissible if it is necessary for security reasons or "when the extraordinary circumstances create a prepared threat to the security of the occupying power"¹³.

It should be noted that the situation with the protection of human rights, in connection with the Ukraine-Russia armed conflict, remains tense. According to the results of the 21st report, the Office of the United Nations High Commissioner for Human Rights (short for OHCHR) on the situation with human rights in Ukraine, prepared on the basis of the results of the work of the UN Human Rights Monitoring Mission in Ukraine, covers the period from November 16, 2017 to February 15, 2018¹⁴.

According to its results, it was stated that during the reporting period, OHCHR documented 205 cases of violations of the right to life, imprisonment, forced disappearances, torture and ill-treatment, sexual violence, viola-

tions of the right to a fair trial, fundamental freedoms, economic and social rights. In 66 of these 205 cases, alleged violations occurred in the reporting period; the Government of Ukraine was responsible for 38 of these cases, armed groups - in 28 cases. The general tendency to continuation of violations of human rights from which the civilian population of the conflict zone, the Crimea and all Ukraine is suffering, emphasizes the combined effect and human costs of a continuing conflict¹⁵.

Conclusions. Thus, in the process of studying the Ukraine-Russia armed conflict, when comparing the rules of international human rights law and international humanitarian law, it becomes apparent that the latter protect only certain human rights and only to the extent that they are faced with a particular threat resulting from armed conflicts, its rules are compatible with the very existence of an armed conflict. The right to social security, the right to free elections, freedom of thought or the right to self-determination are not covered by international humanitarian law. In a number of situations, its norms can be more adapted to specific problems that arise during armed conflicts.

Moreover, although the rules of international humanitarian law governing the treatment of persons under the control of the enemy can be understood as exercising their human rights, taking into account military necessity and the peculiarities of armed conflict, some rules concerning the conduct of hostilities relate to issues not covered by human rights, such as issues about who can directly participate in hostilities, and how such persons should be differentiated from the civilian population, what are the rights and identification of medical personnel, etc.

Probably the most significant difference between international humanitarian law and international human rights law is that the material legal protection enjoyed by a person in accordance with international human rights law depends on the category to which this person

¹² General Comment No. 27 (1999) on Freedom of Movement [Electronic resource]. – Available at: http://www2.ohchr.org/english/bodies/icm-mc/docs/8th/HRI.GEN.1.Rev9_en.pdf.

¹³ Convention on the Protection of Civilian Persons in Time of War [Electronic Resource]. – Available at: http://zakon3.rada.gov.ua/laws/show/995_154/page

¹⁴ Report on the Situation with Human Rights in Ukraine from November 16, 2017 to February 15, 2018 [Electronic resource]. – Available at: https://www.ohchr.org/Documents/Countries/UA/ReportUkraineNov2017-Feb2018_UKR.pdf.

¹⁵ Report on the Situation with Human Rights in Ukraine from November 16, 2017 to February 15, 2018 [Electronic resource]. – Available at: https://www.ohchr.org/Documents/Countries/UA/ReportUkraineNov2017-Feb2018_UKR.pdf.

belongs, and in accordance with international humanitarian law, all individuals enjoy all human rights, although a number of human rights treaties establish and protect the specific rights of particular categories of persons, such as children, people with disabilities or migrants. In addition, in international humanitarian law, the protection of civilians is different from the protection of the military. This difference is particularly evident in the conduct of hostilities: there is a major difference between civilians and military, as well as between military targets and civilian facilities. In other words, the attack on the military is legalized until they have fallen into captivity or otherwise have not stopped the fight, and civilians can become targets if and when they are directly involved in hostilities, and the principles of proportionality and precaution provide them with protection against adverse effects of attacks on military targets.

This difference also influences the protection of individuals who are under the control of the enemy. The protection of captured military who turn into prisoners of war provided for in the Third Geneva Convention is different from the protection of civilians provided for in the Fourth Geneva Convention. Thus, the former cannot be interned without undergoing any individual procedure, and civilians who are subject to protection may be deprived of their liberty only in the criminal proceedings or by a special decision caused by imperative security considerations. Among civilians under the authority of one of the parties to the international armed conflict, international humanitarian law also distinguishes between those that are to be protected by civilians (that is, those who have, as a rule, the citizenship of the enemy) and other civilians who use only more limited basic guarantees.

In addition, the protection of civilians in the territory of one of the belligerent parties is more limited than protection in the occupied territory. International human rights law does not provide for significant differences for the rights of each category of persons. It rather adapts the rights of everyone to the specific needs of these categories, that is, children, women, people

with disabilities, migrants, indigenous people, human rights defenders, etc.

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