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UN PRACTICE IN PROTECTING HUMAN RIGHTS DURING ARMED CONFLICTS

Volodymyr Lysyk¹, PhD in Law; Khrystyna Shperun²

¹ Ivan Franko National University of Lviv, Lviv, Ukraine

² Kherson State University, Ukraine

Corresponding author: Volodymyr Lysyk; volodymyr.lysyk@lnu.edu.ua

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Abstract

This article examines the critical role of the United Nations (UN) in shaping the mechanisms for protecting human rights during armed conflicts, focusing on three interconnected aspects. First, it explores the UN's influence on the evolution of international legal frameworks, particularly the development of International Humanitarian Law (IHL) and International Human Rights Law (IHRL). These frameworks have been crucial in addressing the complexities of human rights protection amidst the chaos of warfare. The UN's involvement has not only helped establish these norms but also promoted their implementation in various conflict scenarios, thereby contributing to a more humane conduct of hostilities. On the other hand, the UN's approach to this issue has given rise to a number of problems and raised questions that have not been resolved to date.

The article also pays considerable attention to examining UN practice on the issue of the interrelation between IHL and IHRL. It analyzes the ongoing debate regarding the applicability and precedence of these legal frameworks in UN practice. The article as well discusses the differing views on whether IHL, as the *lex specialis*, should override IHRL during armed conflicts, or whether both should be applied complementarily. This discussion highlights the challenges in ensuring that human rights are upheld even in the dire circumstances of war, where the balance between military necessity and humanitarian considerations is constantly tested.

In addition, the article addresses the responsibility of armed groups that commit massive human rights violations during armed conflicts, particularly when these groups are under the control of a state. It examines the legal implications of state responsibility for the actions of such groups, as outlined by the International Court of Justice (ICJ) and other bodies of UN. The article also considers the challenges in holding states accountable, given the complex nature of modern armed conflicts where non-state actors play a significant role.

Focusing on these three aspects, the authors argue that in recent decades there has been a clear trend of convergence between IHL and IHRL in the field of human rights protection during armed conflicts, and this has been largely facilitated by the practice of the UN and especially the International Court of Justice.

Keywords: International Human Rights Law, IHRL, International Humanitarian Law, IHL, human rights, armed conflict, International Court of Justice, strict control, effective control.

Introduction

The twentieth century was marked not only by the rapid growth of international legal and national human rights protection systems, but also by unprecedented international crimes that affected millions of people around the world. As history shows, massive human rights violations are most often accompanied by armed conflicts that occur even in contravention of the principle of the prohibition of the use of force

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or threat of force, which in the post-war period became the cornerstone on which the entire existing system of international relations is built. The inability of mankind to abandon armed conflicts has necessitated making them more humane. As a result, this led to the active development of IHL. The ancient Roman rule that "when weapons speak, laws are silent" no longer applied. An additional factor that led to the active development of IHL is the fact that a significant number of states that actively participated in the process of developing such norms did not expect to be forced to apply them at some point. However, after that, there were quite serious changes in the "paradigm of international relations" and the most democratic states with fairly effective national mechanisms for the protection of human rights were forced to use IHL, including on their own territory.

At the same time, in the second half of the twentieth century, quite a few acts were adopted to regulate the protection of human rights in peacetime, and a number of both universal and regional institutions were created to monitor the implementation of such international legal documents, which generally led to the emergence of IHRL. With that, the developers of such acts, taking into account the existing principle of "prohibition of force and threat of force", did not always foresee the specifics of their application during armed conflicts.

Equally important is the fact that the very nature of armed conflicts has changed significantly in the post-war period. Previously, wars between states prevailed. However, in the post-war world, most armed conflicts are non-international. At the same time, the legal regulation of such conflicts is complicated by, for example, foreign military intervention by another state. The participation of private military companies, non-state armed groups, terrorist organizations, etc. in the conflict has become a significant problem. All of the above once again emphasizes the importance of studying the issue of human rights protection during armed conflicts.

The institutional basis of the modern legal order is the UN, so it is not surprising that it is the practice of this organization in a particular area that is crucial for determining the main approaches to solving most of the current problems of international law. This article is devoted to the analysis of the UN approaches to the problem of human rights protection during armed conflicts.

It is clear that it is impossible to cover all aspects of this problem in this article. Therefore, we will try to focus on its three main aspects: 1) to analyse the history of the development of legal regulation in this area; 2) to characterize the main approaches of UN bodies to the problem of correlation between IHL and IHRL; 3) to reveal the practice of the International Court of Justice regarding the responsibility of states for actions committed by groups under state control.

Materials and Methods

The issue of human rights protection during armed conflicts is widely covered in modern studies. Most authors focus on the correlation between IHL and IHRL (Droege, 2008; Todeschini, 2018; Schäfer, 2006). Another group of sources includes studies aimed at studying the history of the formation and development of IHL (Islam, 2018; Pictet, 1984), as well as the impact of international institutions, such as the ICRC (Lysyk, 2012), the ECHR (Reidy, 1998) and some others on the development of IHL. However, the role of the UN in the process of implementation of international law regulating the protection of human rights during armed conflicts is often overlooked by researchers. This makes us pose the question of how the UN practice influenced the formation and development of international legal regulation on human rights protection during armed conflicts, and the role of each branch in this process.

The subject of the analysis was primarily the international treaties that are the sources of IHL and IHRL, as well as the practice of their application by UN bodies, General Assembly and Security Council resolutions, as well as decisions of other UN bodies. Particular attention is paid to the analysis of Judgments and Advisory Opinions of the International Court of Justice and some other judicial and quasi-judicial institutions.

The History of the Formation and Development of International Humanitarian Law and International Human Rights Law

Questions about war and peace have followed the development of humanity since ancient times. Undoubtedly, the norms on this issue were among the priorities for regulation at that time. Therefore, it is not surprising that the first references to the protection of human rights during armed conflicts date back more than three thousand years BC (Miche, 1956, p. 313-348) in fact, to the emergence of the first "proto-states" (Yasuaki, 2000, p. 2) or even in the pre-state period (Parry, 1975, p. 8-17). Subsequently, these

norms evolved along with the development of human society, reaching a peculiar milestone in the late Middle Ages, when they were embodied in the laws of chivalry and military morality. Modern scholars attribute the emergence of more modern rules of warfare to these phenomena. However, when it comes to treaty regulation, the Geneva Convention of 1864 (International Committee of the Red Cross, 1864) should undoubtedly be considered the first universal treaty in this area. Although the scope of this document was quite narrow, it is from this document that the whole branch of International law – "International humanitarian law" emerged, which until recently was called "Laws of War", "Laws and Customs of War" or "Law of Armed Conflicts".

Since the adoption of the Geneva Convention of 1864, the development of international legal regulation of human rights protection during armed conflicts has significantly accelerated. By the end of the nineteenth century, a number of documents were adopted, including the Saint Petersburg Declaration of 1868, as well as a number of Hague Declarations and Conventions of 1899.

Of particular note is the Hague Convention (II) relative to the laws and customs of war on land (International Peace Conference, 1899). It is also important that the preamble to this Convention contained the "Martens' Clause". It stated: "Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience." This provision had a significant impact on the development of legal culture, as it promoted humanism in the most "inhumane situation - during war."

On the eve of the First World War, in 1907, the Second Hague Peace Conference was held, which approved more than a dozen treaties, among which the IV Convention and its annex, the Regulations concerning the Laws and Customs of War on Land, should be particularly noted. This document became the basis for the protection of human rights during armed conflicts for the next half century.

The First World War gave a significant impetus to the development of human rights norms. In fact, it was the first conflict where most of the belligerents were bound by humanitarian law. After the war, several important events took place. First, the Treaty of Versailles of 1919 provided for the establishment of a court for Kaiser Wilhelm II, who was accused of violating the laws and customs of war, among other things. Secondly, the use of certain types of weapons, including chemical weapons, was prohibited, which in turn significantly contributed to the protection of human rights during armed conflicts. At the same time, the Geneva Convention relative to the Rights of Prisoners of War of 1929 was adopted.

At the same time, norms intended to protect individual human rights began to develop, such as the Slavery Convention 1926, the Harvard Draft Convention on Piracy of 1932, etc.

In 1939, the Second World War began, with more than 100 million victims, according to various estimates. During this conflict, human rights violations of unprecedented scale and brutality were committed. At the same time, unlike in previous conflicts, most of the victims are civilians, i.e. those who did not take direct part in the armed conflict. The scale of these violations was such that it was necessary to immediately revise the existing rules governing the behaviour of the belligerents, especially with regard to the protection of civilians during armed conflicts. As a result, four Geneva Conventions were adopted in 1949. The IV Geneva Convention relative to the Protection of Civilian Persons should be particularly noted. For the first time in history, this document extended the protection provided during an armed conflict to all categories of civilians (in fact, to all those who were not protected by the I-III Conventions of 1949), which was a rather revolutionary decision at the time. Moreover, all Geneva Conventions of 1949 did not apply the rule of reciprocity. That is, a contracting party is obliged to apply these documents regardless of whether the other parties to the armed conflict are parties to them.

It is noteworthy that a year earlier, the Universal Declaration of Human Rights was adopted, and this marked the beginning of a new branch of international law - International Human Rights Law. The Universal Declaration was the first universal document to provide a minimum list of human and civil rights, freedoms and obligations (although it was not legally binding).

Subsequently, in 1966, two extremely important documents were adopted: The Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The first is particularly important because it guarantees the rights of the first generation, which are undoubtedly part of the so-called "minimum humanitarian standard". It should be noted that this document does not mention war or armed conflict, only the state of emergency. It is the absence of such a reference that is often used as an argument in favour of the fact that the Covenant on Civil and Political Rights continues to apply during all types of armed

conflicts. However, if we analyse the history of the creation of this document, a completely different explanation for this fact becomes apparent. The fact is that the UN bodies initially decided not to take into account the ideas related to the law of war in their activities. They proceeded from the fact that by dealing with this branch of law, they would jeopardize the authority of the *jus contra bellum* proclaimed in the UN Charter, which could call into question the Organization's ability to maintain peace. Although, in fairness, it should be mentioned that in the process of discussing the draft of this document, the issue of armed conflicts was raised several times.

In 1977, two Additional Protocols to the Geneva Conventions of 1949 were adopted at a diplomatic conference in Geneva. Additional Protocol II was an attempt to regulate non-international armed conflicts, which until then had been essentially regulated exclusively by Article 3 (common to all) of the Geneva Conventions of 1949. However, the parties were so careful in defining the scope of application of this document that most modern non-international armed conflicts are still exclusively regulated by the mentioned above Article 3 of the Geneva Conventions 1949.

In addition, in the post-war period, in parallel with the development of the universal human rights protection mechanism, identical phenomena occurred at the regional level. As a result, three regional human rights instruments were adopted: the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the American Convention on Human Rights of 1969, and the African Charter on Human and Peoples' Rights of 1981.

After that, several more documents related to the protection of human rights in peacetime were adopted (e.g., the Convention on the Rights of the Child, 1989, and a number of others). However, at that time, the system of documents in the field of human rights protection was already formed and it still exists today. And as can be seen from the previous analysis, the international community has actually formed two parallel systems: one designed to protect human rights in peacetime, the other - during armed conflicts.

This division was formed historically and largely depended on the position of the UN, which took a twofold position when drafting the Universal Declaration of Human Rights in 1948. On the one hand, the Universal Declaration, as well as the 1966 Covenants, did not include a provision on the possibility of derogation from the provisions of these acts in the event of armed conflicts, which from a formal point of view can be perceived as a confirmation of the possibility of their application in such a situation (Fortin, 2012, p. 1440-1444). An additional argument in favor of this position is that during the drafting of the 1948 Universal Declaration, there were proposals to include such provisions (Pilloud, 1949, p. 254). Also, the General Assembly and the Security Council have repeatedly appealed to parties to armed conflicts to respect both IHL and IHRL. Such statements were made in relation to the conflicts in Guinea-Bissau (United Nations Security Council, 1998), Sudan (United Nations General Assembly, 1999), Côte d'Ivoire (United Nations Security Council, 2003), Democratic Republic of the Congo (United Nations Security Council, 2000a) and others, and called on the parties to stop violating the norms of these fields (United Nations Security Council, 2004, Para. 8; United Nations Security Council, 2008, Para. 11; United Nations Security Council, 2011, Para. 14). On the other hand, as mentioned above, the UN did not want to call into question the principle of *jus contra bellum*, which is the cornerstone on which all the organization's activities are based, by mentioning IHL.

This dual approach applied by the UN has given rise to several theories of interrelation between IHL and IHRL. Although there are dozens of theories in the literature, an in-depth analysis of their provisions suggests that there are only two main approaches to the problem of the interrelation between IHL and IHRL. The supporters of the first one argue that IHL is *lex specialis* in relation to IHRL. The other approach, often called complementary, argues that the norms of each branch organically complement each other. The most interesting thing is that the authors use the same facts and decisions to substantiate their truth. Let us try to analyse each approach in more detail.

The Concept of *Lex Specialis*

Proponents of this theory, while recognizing the possibility of applying IHL in armed conflicts, proceed from the impossibility of simultaneous application of both branches of international law, pointing to the character of IHL as a whole as *lex specialis* as the central argument (Draper, 1971, p. 191-192; Kolb, 1998, p. 409-420; Suter, 1976, p. 406-410).

The main arguments put forward in support of this position are usually that these two branches have completely different origins, different principles, objectives, essence, content, use their own implementation mechanisms, etc. (Meyrowitz, 1972, p. 1059-1104). Among these differences, two aspects

are particularly noteworthy. First, there is a fundamental difference in the content of the rights protected by each branch. A detailed analysis allows us to conclude that the list of such rights and their scope is significantly different. At the same time, in the case of the IHRL, it will be larger in both cases. Although, in fairness, it should be noted that IHL does not allow for cases of restriction of rights, as is often done in IHRL. On the other hand, this is logical, since IHL norms should protect the most basic rights to the extent necessary for survival in emergency conditions - a situation of armed conflict. That is, in essence, the task of IHL is to find a balance between humanism and military necessity. In this regard, a logical question may arise as to whether the parallel use of the norms of both branches will not expand the list and scope of these rights too widely, making it impossible for the parties to the conflict to comply with them. Second, each of the branches has its own implementation mechanism. While for the IHRL it is a series of judicial and "quasi-judicial" committees, the effectiveness of which primarily depends on the actions of the person whose rights have been violated, the situation in IHL is completely opposite. The main role is assigned to special monitoring bodies – the Protecting States and their substitutes, the International Committee of the Red Cross, the Fact-Finding Commission, etc. Furthermore, the primary objective of IHRL is to protect individuals from abuses, primarily by the state itself, whereas IHL aims to protect individuals from the enemy. There is also a certain peculiarity in the formulation of the norms of each branch, which sometimes complicates their simultaneous application. For instance, IHRL establishes a list of individual rights that a state is obliged to guarantee to every person under its jurisdiction, while IHL establishes the obligations of belligerent parties. From the point of view of legal theory, this approach to the formulation of rights means that the rights provided for in IHL cannot be subject to disputes, for the same reasons that impede the exercise of economic and social rights. Consequently, the balance between military necessity and humanitarian requirements remains the basis of humanitarian law, and states are well aware of this when concluding treaties that are acceptable to their military.

In addition, there is a phenomenon in IHRL that is not typical of IHL, namely the simultaneous and parallel existence of universal and regional treaties, and the fact that most of these treaties distinguish between "civil and political rights" on the one hand and "economic, social and cultural rights" on the other. The difference between them in the legal context is that the first group of treaties requires immediate respect for the rights listed in their provisions, while treaties relating to economic, social and cultural rights require the state to take appropriate measures to ensure the consistent realization of these rights. In other words, this group of rights is conditioned by the appropriate economic development of the state. There is no such division in IHL. In fact, the state under whose authority the person is located is obliged to provide the person with the full range of rights provided for by the relevant norms IHL in a given situation.

In criticizing this theory, one should first of all argue that the use of the *lex specialis* principle at the level of entire branches of international law is incorrect and contradictory to legal logic. It is generally accepted to use this principle primarily when it is necessary to resolve legal conflicts. In addition, it can be used in the interpretation of norms, to determine the meaning. In general, this theory is usually supported by states that are often at war. The position of these states can generally be summarized in two arguments: 1) simultaneous application of IHRL and IHL is impossible, i.e., the norms of the first branch are valid in peacetime, the second - during armed conflicts; 2) universal and regional human rights bodies do not have jurisdiction to apply IHL. An example is the situation with detainees in Guantanamo Bay. Thus, after the events of September 11, 2001, the United States launched the "war on terrorism", within the framework of which quite a few people were detained, some of whom were placed at the Guantanamo Bay military base. At the same time, the United States has consistently defended the position that this is a war, and therefore IHL, not IHRL, should be applied. This automatically means that the Inter-American Commission on Human Rights has no jurisdiction in this matter. However, the Commission disagreed with the US arguments (United States, 2002, p. 1015; United States, 2006, par. IV-VI). In general, this situation is similar to the one that previously arose in the case of *Coard v. the United States*, in which the United States denied the applicability of the Inter-American Declaration of Human Rights and Duties to the situation that arose in connection with the military operation in Grenada (Inter-American Commission on Human Rights, 1999, par. 35), The UK (United Kingdom House of Lords, 2007), Israel (United Nations Human Rights Committee, 2010) and Russia (European Court of Human Rights, 2011) also took a similar position. The latter, in particular, has consistently denied the jurisdiction of the ECHR to consider the case of *Georgia v. Russia*, arguing that since this armed conflict was international, the norms of the Geneva Conventions of 1949 should be applied, not the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (European Court of Human Rights, 2011).

As we can see, although this theory was the first and for a long time the only one to emerge, it has a number of significant drawbacks, which eventually led to the search for other alternative solutions to the problem of the correlation between IHL and IHRL.

The Theory of Complementarity

It should be noted that the concept underlying the theory of complementarity was established in the mid-1970s, and this is usually associated with the Tehran Conference of 1968, during which the UN member states discussed issues related to the protection of human rights in armed conflicts. As a result, the UN General Assembly adopted a Resolution entitled “Respect for Human Rights in Armed Conflicts”, which contained references to both IHRL and IHL. At the same time, the decisive role in this document was assigned to IHL, in particular, it emphasized the need “to follow principles for observance by all governmental and other authorities responsible for action in armed conflicts: (a) That the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited; (b) That it is prohibited to launch attacks against the civilian populations as such; (c) That distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible» (United Nations General Assembly, 1968). However, in the very next Resolution on this issue, the UN General Assembly included a revolutionary wording for this period: “Fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situations of armed conflict” (United Nations General Assembly, 1970). It was after this document that UN bodies, when analysing the human rights situation in a particular state, referred not only to the norms of the IHRL, but also to the norms of IHL. Among the first such documents are the Report of the Commission on Human Rights on the situation in Afghanistan (United Nations Commission on Human Rights, 1987) and the UN General Assembly Resolution on the situation of human rights in occupied Kuwait (United Nations General Assembly, 1990). Subsequently, this practice was extended to other UN bodies, including the Security Council (United Nations Security Council, 1995).

In general, most branches of international law, including IHL and IHRL, recognize the fact that they should not operate in a legal “vacuum” but in parallel with other norms. This conclusion is confirmed by the main treaties in this area. For example, Article 4 of the 1966 Covenant on Civil and Political Rights states that in times of public emergency, states may derogate from their obligations “provided that such measures are not incompatible with their other obligations under international law”. The identical provision is contained in Article 15 of the ECHR, which states that “such measures are not inconsistent with its other obligations under international law”. Article 27 of the American Convention on Human Rights of 1969 also contains a similar wording. It follows that the main IHRL treaties explicitly provide for the possibility that states have obligations arising from other rules of international law, and non-compliance with these obligations (including those arising from IHL) should be considered a violation of the relevant human rights obligations (Henckaerts, 2005, p. 37). An additional argument in favour of the fact that IHRL applies during armed conflicts is the direct mention in the last two documents of “war” as a ground on which a party to the Convention may derogate from certain obligations. It is clearly emphasized that the war itself is not a sufficient ground for “derogation”. The state must make a corresponding declaration. If it does not make such a declaration, the provisions of the relevant documents should in fact be applied in full.

As for the basic IHL treaties, none of them states that only the rules of this field apply during armed conflicts. A detailed study of IHL rules allows us to conclude that their application does not in any way affect the validity of other obligations for the parties arising from international law, in particular in the area regulated by IHRL. Thus, in particular, the preamble of the 1977 Protocol II provides: “Recalling that the international instruments relating to human rights provide fundamental protection to the human person”. That is, there is a direct reference to the provisions of the IHRL. In addition, part 8 of Article 75 of Protocol I of 1977 states: “No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1”. In other words, this means that IHL not only does not limit the possibility of applying the rules of other branches of international law, but also directly indicates the need to guarantee the rights provided for in such documents if they provide for greater protection “under any applicable rules of international law”. Thus, if before the adoption of the 1977 Additional Protocols there could still be doubts about the admissibility of parallel operation of IHL and IHRL, after that there is a clear reference to the need to use all the norms governing the protection of human rights.

In general, the position on the complementarity of IHRL and IHL is supported by most bodies within the human rights protection system. Thus, back in 2001, in its General Comment No. 29: Article 4: Derogations during a State of Emergency (United Nations Human Rights Committee, 2001) the Committee noted that during «...international or non-international, rules of international humanitarian law become applicable and help, in addition to the provisions in article 4 and article 5, paragraph 1, of the Covenant, to prevent the abuse of a State's emergency powers. The Covenant requires that even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation». And later, in 2004, in General Comment No. 31, (United Nations Human Rights Committee, 2004) the Committee added that while more specific IHL rules may be appropriate in relation to certain rights enshrined in the Covenant, both areas of law are complementary, not mutually exclusive.

Thus, as can be seen from the above, in the second half of the twentieth century most treaties and enforcement bodies moved away from the *lex specialis* principle and gradually began to apply a complementary approach to the question of the interrelation between IHL and IHRL.

It should be noted that our analysis of practice would not be complete without an analysis of the practice of the Court of Justice, which has also had a significant impact on the resolution of this issue.

The Problem of Interaction in the Practice of the International Court of Justice

In fact, since the late 90s of the twentieth century, there have been precedents for the parallel application of IHRL and IHL in the practice of judicial and quasi-judicial bodies.

Two cases of the Court of Justice had a particular impact on this issue, namely the 1996 Advisory Opinions on the Legality of the Threat or Use of Nuclear Weapons and the 2004 Advisory Opinions on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.

In the first case - the 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons - the Court stated: "...the protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself" (International Court of Justice, 1996, par. 25).

A similar opinion was expressed by the International Court of Justice in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory of 2004. Israel objected to the application of international human rights treaties, including the 1966 Covenant, arguing that humanitarian law provides protection in situations of conflict, which is the situation in the West Bank and Gaza Strip, while international treaties within the scope of IHRL were created to protect citizens from their own government. In particular, the Court stated: "...generally... ..the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights". Moreover, the court directly indicated the relationship between the IHRL and IHL: "As regards: the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question, put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law." (International Court of Justice, 2004, par. 106).

In addition to the aforementioned advisory opinions of the Court of Justice, these issues were considered in the case of Democratic Republic of the Congo v. Uganda, in which the Court stated that "Uganda violated ... provisions of the international humanitarian law and international human rights law instruments, to which both Uganda and the DRC are parties..." (International Court of Justice, 2005, par. 219). In other words, the Court not only confirmed the applicability of IHL and IHRL to this situation, but also stressed the need for their parallel application. In another case, Georgia v. Russia, the Court ruled

that the 1965 Convention on the Elimination of All Forms of Racial Discrimination (which is one of the core treaties in the field of IHRL) should be applied during armed conflict (International Court of Justice, 2011).

Thus, the practice of the Court of Justice has evolved from the use of the *lex specialis* principle to confirmation of the parallel use of the rules of both branches of international law, i.e. to the theory of complementarity.

State Responsibility for Human Rights Violations Committed during Armed Conflicts

Another equally important aspect related to the protection of human rights during armed conflict is the issue of state responsibility for actions that violate its obligations in this area. Of course, the state is responsible for the actions of its bodies and officials, including the armed forces. However, very often, in order to avoid accusations of violating the principle of prohibition of force or threat of force, as well as massive human rights violations during armed conflicts, states do not use their armed forces directly, but often use so-called "proxies" - national liberation movements and other paramilitary organizations. It is the use of such actors that is associated with the majority of massive human rights violations in the second half of the twentieth century. Therefore, it is not surprising that the UN, as the main institution called upon to ensure international peace and security, as well as to counter gross violations of international law, including the prevention of mass human rights violations both in peacetime and during armed conflicts, was forced to respond to this situation. Within the framework of the International Law Commission, the Responsibility of States for Internationally Wrongful Acts was developed and approved by the General Assembly in 2001 (United Nations General Assembly, 2001). This document, namely Article 8, provides that "The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct".

However, prior to the adoption of this document, the UN practice repeatedly raised the question of whether a state was responsible for massive human rights violations committed by anti-government groups or other non-state groups. This issue has become particularly acute in connection with the activities of the Contras in Nicaragua. This situation was the subject of consideration by the International Court of Justice in 1986 in the case of *Military and Paramilitary Activities in and Against Nicaragua* (International Court of Justice, 1986). In this case, the court identified two possible concepts of control, namely strict and effective.

Strict control. This concept implies that the state fully controls a certain organisation (in this case, a separatist entity), which is completely dependent on it. In this case, the object of control is all aspects of the organisation's activities, i.e. the organisation itself. In fact, in this case, for legal purposes, such an organisation can be considered a *de facto* body of the state and the state is responsible for all its actions. We should agree with the opinion of S. Talmon, who argued that in fact this "means *de facto* annexation of the group, which will only deepen the state of complete dependence" (Talmon, 2009).

In order to establish the existence of strict control, three facts must be proved:

1) A certain organisation (entity) must be completely dependent on the state, and such dependence is absolute and does not provide for any actual autonomy. Ideally, it should be proved that a certain state initiated the creation of such a group, and without it, it would not exist.

2) The organisation's dependence on the state applies to all areas and is absolute and permanent.

3) The state must use this dependence to the fullest extent. This criterion usually implies that the state not only has the ability but actually uses such dependence (The International Criminal Tribunal for the former Yugoslavia, 1999).

However, it is virtually impossible to prove the existence of these criteria, and the Court was therefore forced to turn to a different concept.

Effective control. Unlike the previous case, this concept implies that there is a certain dependence of the organisation on the state, but such dependence does not mean full integration of this entity into the state mechanism, but only provides for financial support, payment for the work of its members, military assistance, exchange of intelligence information, assistance in logistics and a number of other issues. In addition, the state may sometimes appoint the leadership of separatist groups. However, in this case, the Organization retains its autonomy, and the object of control is not the entire operational activity of such an entity, but only certain military operations. At the same time, it is important that the state has a sufficient level of influence on such an organisation to control the preparation, execution and completion of the operation (Yong, 2013).

In general, the concept of effective control largely reflects customary international law and coincides with the standards developed by the International Law Commission in Article 8 of the Draft Articles on State Responsibility. As is well known, this article explains the conduct of a state by persons or groups of persons acting "at the direction of" or "under the direction of" or "under the control of" the state. These three features are not cumulative, but disjunctive, i.e. it is enough to prove the presence of one of them.

Thus, the main difference between strict and effective control is that the former gives grounds to consider the organization a de facto body of the state due to its partial or complete integration into the state apparatus, while in the latter case, we are dealing with cooperation between two subjects in order to achieve a certain goal. That is why, in the case of effective control, the state is responsible not for all, but only for certain actions of such an entity.

It should be noted that although these approaches are somewhat outdated, as they are not used in their pure form in the practice of other judicial and quasi-judicial bodies, they have become the foundation on which all other more modern approaches are built.

Conclusions

Thus, it can be stated that the UN plays a key role in the development and implementation of international law governing the protection of human rights during armed conflicts. However, the short-sighted policy of the UN in the first decades of its existence, in particular, the unwillingness to recognise the fact that armed conflicts continue to exist despite the prohibition of force and the threat of force, has largely contributed to the fragmentation of human rights protection during armed conflicts. It was only in the 1970s that there was a gradual change in the organisation's approaches, which is primarily reflected in the activities of the International Court of Justice, which in the process of resolving cases expressed its opinion on important aspects of this issue.

First of all, it is worth noting the Court's practice regarding the interrelation between IHL and IHRL, in which the Court initially rejected the idea of parallel application of the rules of both branches (referring to the concept of *lex specialis*), but later moved away from it in favour of a more progressive concept of complementarity. This allowed for more comprehensive protection of victims of armed conflict. Another important development was the Court's practice of determining responsibility for massive human rights violations committed by groups under state control. It is the UN practice that has become the foundation on which the entire system of human rights protection in armed conflict is built today.

In general, judging by the UN practice, the process of convergence of IHL and IHRL has been taking place for 50 years, which can be considered a positive trend that will help to create a more effective mechanism for the protection of human rights in peacetime and during armed conflicts in the future.

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