

PHILOSOPHY OF CORRELATION OF INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW

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Annotation. *The article is devoted to clarifying why in a given situation it is necessary to apply the rules of international humanitarian law, which has *lex specialis* in relation to international human rights law. At the same time, an important task of the work is to analyze the parallel application of these branches of international law. Thus, it is determined that while the IHRL is a universal branch in the protection of human rights, the norms of international humanitarian law are applied exclusively in moments of armed conflict, but in case of contradiction of some provisions to others, here we are already talking about the aforementioned *lex specialis* and the preemptive right to apply the norms of IHL. Thus, the main purpose of the article is the question of determining the correlation between IHL and IHRL in the context of protection of persons during armed conflict.*

In the course of writing scientific work, I used the theoretical method in the form of analysis and synthesis, deduction and induction, as well as the historical method by which I was able to conduct a study of the chosen topic on a historical basis, and formally logical, which contributed to the implementation of research and the formation of conclusions based on a logical combination of theoretical material and practical aspects and, as a result, the formation of a single comprehensive conclusion on the questions that arose during the study of the topic I chose.

Results. *Armed conflict is an important area that has a devastating impact on all spheres of life, and especially on human rights, because they are the most threatened during the conduct of hostilities. This is what necessitates an in-depth analysis of the correlation between international humanitarian law and international human rights law.*

Conclusions. *The article provides an analysis of the impact of armed conflicts on the relationship between international humanitarian law and international human rights law. These two branches of international law seem complementary, but the IHRL is more universal and applicable at any time, while IHL takes place only in the presence of armed conflict. At the same time, it is important to apply the principle of *lex specialis*, which has international humanitarian law, if both IHL and IHRL apply.*

Key words: *international humanitarian law, international human rights law, armed conflict, correlation.*

1. Introduction.

Throughout the existence of mankind, the problem of war and peace has occupied one of the leading positions: armed conflicts were and remains, and Kant's idea of «eternal peace» never became a reality. Scientists from Wesleyan College estimate that over the past five thousand years, society has undergone about 15,000 wars, in which more than five billion people died. Only as a result of the two terrible world wars of the 20th century, about 70 million people died. According to estimates by the Peace Research Institute Oslo and Uppsala University, after World War II, the world undergone more than 256 armed conflicts, each of which mercilessly claimed more than one life. History shows us a number of examples of deaths of wounded on the battlefield, torture and executions of prisoners of war, killings of civilians, children, women. In recent decades, armed conflicts have ruined the lives of millions of innocent people.

Serious violations of international humanitarian law and human rights law are common in many armed conflicts. Under certain circumstances, some of these violations may even constitute genocide, war crimes or crimes against humanity.

2. Analysis of scientific publications.

The methodological basis of the work was the materials of leading humanitarian and research institutions, primarily the International Committee of the Red Cross, international legal treaties, in particular, the Geneva Conventions of 1949. and Additional protocols to them, as well as the practice of the Court of Justice.

An important place in the development of science of international humanitarian law and the IHRL is the work of the following scientists: N.Meltser, M. Sassoli, Laura M. Olson, M. Gnatovskyy, A. Korynevych, T. Korotky, A. Senatorova, Th. Meron and others.

3. The aim of the work.

The aim of this research is to deepen the level of knowledge and competence on issues of international humanitarian law, namely, first of all, to identify distinctive and similar elements in the application of international humanitarian law and international human rights law and the main aspects of their correlation.

4. Review and discussion.

The question of the correlation between international humanitarian law and international human rights law is one of the most urgent, discussed and, at the same time, uncertain. The separate development of these two branches of international law has always limited the influence they have had on each other. However, their rapprochement in recent years makes it possible to establish a closer connection between these two legal spheres. In this context, important are the provisions of Article 3, common to all four Geneva Conventions. Thus, general Article 3 establishes the basic rules that states must adhere to when facing armed groups on their territory. Thus, the provisions of this article depart from the traditional approach to international humanitarian, which, in principle, does not apply to relations between a state and its citizens, such a provision is more logically associated with human rights.

In general, the correlation between international human rights law and international humanitarian law aroused considerable interest and became the subject of lively debate in the scientific community with the adoption of the Universal Declaration of Human Rights in 1948. and the Geneva Conventions in 1949. The development of legal protection of human rights after World War II greatly influenced the development of international law related to the protection of victims of war and the conduct of war. The adoption of important international documents in the field of human rights, such as the Universal Declaration of Human Rights, the European Convention on Human Rights (1950) and the International Covenant on Civil and Political Rights (1966), contributed to the idea that everyone has the right for the realization and protection of human rights, regardless of whether it occurs in peacetime or in a period of armed conflict. However, the real turning point when the IHL and the IHRL began to converge took place in 1968 during the International Conference on Human Rights in Tehran, at which the UN first considered the issue of the application of human rights in armed conflicts. The convergence that began in 1968, slowly continued over the years, continues today. The texts of human rights documents increasingly express ideas and concepts that characterize international humanitarian law. In turn, IHL also enshrines the provisions provided for by international human rights law. For example, the subject and formulation of Article 75 of the Additional Protocol (I) - "Fundamental guarantees" - directly reflect the provisions of basic human rights instruments, establishing the principle of non-discrimination, basic prohibitions on the physical and mental health of a person, the prohibition of arbitrary detention, etc.

IHL is an important branch of public international law, the development of which – along with the development of the IHRL – marked the tendency to humanize modern international law [1]. Thus, it is very logical to conclude that international humanitarian law and international human rights law are two different but complementary fields of law. Although IHL and IHRL together seek to protect life, health, dignity and other fundamental human rights, the history of their formation, principles, scope and mechanisms of protection differ significantly.

First of all, IHL arose as a branch of classical international law that protects the rights of entire categories of persons during an armed conflict, while the IHRL moved from purely national to international, formulating the subjective rights of individuals.

International humanitarian law applies in situations of armed conflict, whereas the IHRL aims to protect the human being at all times, regardless of whether there is war or peace. It is also important in this context to note the fact that some human rights treaties allow governments to derogate from certain rights in cases of emergency state situations. Under humanitarian law, no derogations are allowed, since it is directly developed for emergency situations, namely armed conflicts. At the same time, in addition to simple complementarity, between these two branches of international law there is a mutual influence at the structural and substantive levels [2].

At the structural level, the convergence of international humanitarian law and international human rights law in the second half of the twentieth century allowed to expand the scope and improve the implementation of these two areas of international law. At the substantive level, it seems that consistent and optimal protection of persons in armed conflict is possible only if international humanitarian law and human rights law are taken into account in combination. Therefore, we can talk about the parallel application of these two branches of international law, when each of them applies to a certain situation, assessing it in accordance with its own provisions and rules, as well as in cases of application of the rules of one of them when applying the norms of the other (for example, the content of the right to life provided for by international human rights instruments in case of armed conflict will be interpreted in accordance with IHL norms). This is the opinion reached by the International Court of Justice in cases on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian territory in 2004 [3] and Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) 2005 [4].

The issues of simultaneous application of international humanitarian law and international human rights law, as well as taking into account the principle of *lex specialis*, are important in the context of analyzing the correlation of these two branches. So, it is necessary to begin with the fact that simultaneous application (or dual applicability) is called the complementary application of two legal regimes. In the context of international human rights law and international humanitarian law, this means that both legal regimes are applicable during armed conflict.

Important on this issue are the conclusions of the Human Rights Committee, which noted that the obligations of human rights enshrined in the International Covenant on Civil and Political Rights «also apply in situations of armed conflict to which the norms of international humanitarian law apply». The Committee also stated that even if it may be appropriate to apply a more specific norm of international humanitarian law for the overall interpretation of the rights enshrined in the Covenant, these two legal areas are complementary and not mutually exclusive [5]. The Committee also expressed similar views in many general comments on situations in individual countries.

The Human Rights Committee in General comment No. 36 (2018) has repeatedly pointed out that the IHRL and IHL are complementary. Thus, in paragraph 64 of General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, which enshrines the right to life, the Committee noted: «Like the rest of the Covenant, article 6 continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable, including to the conduct of hostilities. While rules of international humanitarian law may be relevant for the interpretation and application of article 6 when the situation calls for their application, both spheres of law are complementary, not mutually exclusive» [6].

In the context of the simultaneous application of international humanitarian law and international human rights law, Marco Sassoli expressed the opinion that in most cases there is not much difference between IHL and IHRL and these two branches are aimed at the same result. First of all, when it comes to torture, rape and

intentional murder of people, the only difference is that a particular branch provides more details about the nature of the violation and additional protection mechanisms. O. Senatorova also holds a similar opinion and notes that in the case of simultaneous application of IHL and IHRL to one situation, their respective provisions will not significantly contradict, on the contrary, they will strengthen each other [7].

Confirmation of international recognition of the simultaneous application of IHL and IHRL can be found, for example, in the Convention on the Rights of the Child: the provisions of this international treaty clearly provide for its applicability both in peacetime and during armed conflict. Article 38 of the Convention stipulates that «State shall take all feasible measures to protect and care for children affected by armed conflict», what means that States parties are obliged to respect the norms of international humanitarian law applicable to them in case of armed conflicts and related to children and to ensure their observance [8]. Similarly, the Convention on the Rights of Persons with Disabilities provides that States Parties “shall take, in accordance with their obligations under international law, in particular international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, in particular in armed conflicts, humanitarian emergencies and natural disasters [9].

In turn, the International Court of Justice has made three interrelated statements, from which three interrelated provisions can be identified:

- 1) firstly, IHRL remains applicable even in times of armed conflict;
- 2) secondly, IHRL is used in conflict situations if there is no partial derogation;
- 3) thirdly, if both IHL and IHRL apply, in this case international humanitarian law is *lex specialis* [10].

In the advisory opinion of 2004 The Court found that there were three possible situations with regard to the correlation between international humanitarian law and international human rights law: some rights may be exclusively matters of international humanitarian law; others may be solely issues of human rights standards; still others may be matters defined by both of these branches of international law [3].

Also, the complementary role of IHL and IHRL is determined by the International Committee of the Red Cross, which noted that treaties, documents and legal precedents relating to human rights law support, consolidate and clarify similar principles of international humanitarian law [11].

Thus, we can observe both at the theoretical level and in practice the similarity and guarantees of protection provided by both international human rights law and international humanitarian law in connection with their simultaneous use in armed conflicts. Nevertheless, despite such complementarity of norms and a certain symbiosis of the two branches of law in relation to the same sphere of application, there are situations when IHRL and IHL regulate the same situation in different ways, which leads to different consequences. A striking example is the issue of protection of combatants and civilians who are directly involved in hostilities. Thus, IHL does not provide protection to these categories of persons, while IHRL provides protection for all persons without exception, despite their status in accordance with IHL.

In the case of such conflicting norms, international practice provides for the application of the *lex specialis* principle, which embodies a right that is more specifically designed for the situation that has arisen and has precedence over the common law (*lex generalis*) [7].

As noted above, in case of a collision between the IHL and IHRL norms, it is the IHL that will *lex specialis derogat legi generali*. The essence of this principle is quite fully formulated in the fundamental article by M. Sassoli and L. Olson, who note that *lex specialis* is a kind of «objective standard that sets the priority of two norms that apply to one problem, but regulate it differently» [12].

5. Conclusions.

In conditions of armed conflict, the most common and complex problem is ensuring respect for fundamental human rights. Thus, the inalienable rights of people, such as the right to life, health, personal integrity, the prohibition of slavery, the prohibition of torture, are under threat. However, it is worth taking



into account the fact that human rights are also valid during an armed conflict, which, in turn, cannot restrict or abolish them in a certain way.

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