

MODERN ARMED CONFLICTS: COMPLIANCE WITH THE STANDARDS OF INTERNATIONAL HUMANITARIAN LAW

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The article examines the current state of development of international humanitarian law (IHL) and identifies the main challenges facing its implementation in the context of modern armed conflicts. The authors outline the problems of adapting IHL to modern challenges, such as hybrid conflicts, the increasing role of non-state actors, the use of new technologies, and the politicisation of international justice.

Special attention is paid to the role of states, international organisations, non-state armed groups and individuals in ensuring the effectiveness of IHL. Particular attention is paid to the role of non-state actors, in particular armed groups, separatist groups and terrorist organisations, which are increasingly involved in modern conflicts. It is noted that such actors often violate the fundamental principles of IHL. The authors analyse examples of gross violations of IHL, in particular, in Syria, Yemen, the Central African Republic, and the Sahel region.

Asymmetric conflicts characterised by inequality between the parties pose additional challenges to IHL. The use of terrorist methods, guerrilla tactics and information operations makes it difficult to comply with the principles of humanity and distinction. In addition, the authors draw attention to the problem of identifying the subjects of cyber threats, which complicates the application of relevant IHL rules in the context of modern technologies.

The article suggests ways to improve IHL in view of the new realities of war. The main measures include the development of specialised rules to regulate the behaviour of non-state actors, adaptation of humanitarian law provisions to the specifics of the latest technologies, including unmanned aerial vehicles and cyber weapons, and the creation of international and regional mechanisms for the prosecution of violators. Of particular importance is the expansion of the jurisdiction of international judicial bodies, such as the International Criminal Court, and the establishment of regional tribunals.

It is concluded that ensuring the effectiveness of IHL in the current environment requires the adaptation of its norms to modern challenges and close cooperation of the international community. Only a comprehensive approach combining the improvement of legal mechanisms and strengthening of international cooperation can ensure the relevance and effectiveness of humanitarian law in the context of modern conflicts.

Key words: international humanitarian law, armed conflicts, non-state actors, international responsibility, adaptation of norms prisoners of war, civilians, military aggression.

Царенко О.М., Цапюк Р.В. Сучасні збройні конфлікти: дотримання норм міжнародного гуманітарного права.

У статті досліджується сучасний стан опрацювання проблематики міжнародного гуманітарного права (МГП) та визначаються основні виклики, що постають перед його реалізацією в умовах су-

часних збройних конфліктів. Окреслено проблеми адаптації норм МГП до сучасних викликів, таких як гібридні конфлікти, збільшення ролі недержавних суб'єктів, використання новітніх технологій, а також політизація міжнародного правосуддя.

Проаналізовано значення держав, міжнародних організацій, недержавних збройних формувань та окремих осіб у забезпеченні ефективності МГП. Особливу увагу звернено на роль недержавних суб'єктів, зокрема збройних формувань, сепаратистських угруповань і терористичних організацій, які дедалі частіше беруть участь у сучасних конфліктах. Відзначено, що такі суб'єкти нерідко порушують основоположні принципи МГП. Проаналізовано приклади грубих порушень МГП, зокрема в Сирії, Ємені, Центральноафриканській Республіці, а також у регіоні Сахелю.

Асиметричні конфлікти, що характеризуються нерівністю між сторонами, створюють додаткові виклики для МГП. Використання терористичних методів, партизанської тактики та інформаційних операцій ускладнює дотримання принципів гуманності й розрізнення. Крім того, автори звертають увагу на проблему ідентифікації суб'єктів кіберзагроз, що ускладнює застосування відповідних норм МГП у контексті сучасних технологій.

У статті запропоновано шляхи вдосконалення МГП з урахуванням нових реалій війни. Серед основних заходів – розробка спеціалізованих норм для регулювання поведінки недержавних суб'єктів, адаптація положень гуманітарного права до специфіки новітніх технологій, зокрема безпілотних літальних апаратів і кіберзброї, а також створення міжнародних і регіональних механізмів переслідування порушників. Особливе значення має розширення юрисдикції міжнародних судових органів, таких як Міжнародний кримінальний суд, і створення регіональних трибуналів.

Підсумовується, що забезпечення ефективності МГП у сучасних умовах вимагає адаптації його норм до сучасних викликів і тісної співпраці міжнародної спільноти. Лише комплексний підхід, що поєднує вдосконалення правових механізмів і посилення міжнародного співробітництва, здатний забезпечити актуальність і дієвість гуманітарного права в умовах сучасних конфліктів.

Ключові слова: міжнародне гуманітарне право, збройні конфлікти, недержавні суб'єкти, міжнародна відповідальність, адаптація норм військовополонені, цивільне населення, військова агресія.

Statement of the problem. Modern armed conflicts are one of the most important and complex threats to international law, peace and security. They are characterised by the widespread use of high-tech weapons, the asymmetric nature of hostilities, and a significant negative impact on the civilian population. At the same time, international humanitarian law (hereinafter - IHL), which is designed to regulate the behaviour of parties in armed conflicts, is facing new challenges that require both updating legal norms and developing effective mechanisms for their implementation. Over the past decades, humanity has experienced numerous wars that have caused irreparable losses to the population of our planet. Death and destruction, as constant companions of war, have left a deep mark on the history of civilisation and have caused an urgent need to create mechanisms to reduce the consequences of armed conflicts.

Today, the global community faces numerous challenges in the field of international security. These include combating the proliferation of weapons of mass destruction, resolving regional conflicts, countering terrorism, fighting organised crime, including drug trafficking, and ensuring nuclear and radiation safety. Therefore, in the modern world, the need to comply with international law is becoming critically important. The armed conflicts (in Ukraine, Syria, Yemen, etc.) not only demonstrate repeated violations of IHL, but also reveal an urgent need to reform this area of law.

The purpose of the study. The purpose of the article is to analyse compliance with IHL in modern armed conflicts, identify problematic aspects, develop recommendations for improving legal regulation and find effective mechanisms to ensure compliance with IHL.

The state of the art. IHL is widely covered in Ukrainian legal scholarship. IHL issues have been considered in the works of such scholars as V. Bazovyi, A. Korynevych, M. Hnatovskyi, V. Gutnyk, A. Korynevych, T. Korotkyi, V. Lysyk, V. Repetskyi, O. Senatorova, H. Yarmaki, and others. The issue of compliance with IHL is also the subject of research by V. Pylypenko, V. Dyachenko, L. Pashynna, O. Sokyrynska, I. Kovalchuk, O. Husar, D. Zhabchyk, M. Hrushko and others, who cover the situation that has developed as a result of the Russian Federation's war against Ukraine. In particular, O. Tsarenko, B. Tychna, T. Fedchuk analysed the mechanisms of responsibility for violations of the rights of prisoners of war [1]. However, the mechanism of implementation of IHL into the national legal system requires a deeper analysis due to the difficulties of ensuring compliance with IHL in the context of modern conflicts.

Summary of the main material. IHL is an important branch of modern international law aimed at regulating armed conflicts, protecting persons not involved in hostilities, and limiting the methods and means of warfare. Its main objective is to minimise suffering in conflict situations by protecting the rights of civilians, the wounded, sick, prisoners of war and other persons affected by war.

The subjects of IHL play a key role in ensuring the implementation of its norms aimed at humanising armed conflicts. Defining the actors, their rights, duties and responsibilities is important for ensuring the effectiveness of IHL. As is well known, the main actors include states, international organisations, non-state armed groups and individuals. However, current challenges, in particular the growing number of non-state actors in conflicts, complicate the practical application of the law.

States are the key actors in IHL, responsible for the development, conclusion and implementation of international treaties, as well as for ensuring compliance with their provisions in the context of armed conflicts. The main obligations of states include ensuring compliance with IHL, protecting civilians from the effects of hostilities, and integrating international humanitarian law into national legislation. For example, Switzerland serves as the depositary state of the Geneva Conventions, playing an important role in coordinating international efforts to ensure effective compliance with IHL [2, p. 116-117].

International organisations, in particular the United Nations and the International Committee of the Red Cross (hereinafter – ICRC), play a key role in ensuring compliance with IHL, providing humanitarian assistance and improving legal norms. As a neutral mediator in armed conflicts, the ICRC monitors compliance with IHL and coordinates the provision of assistance to victims. For example, during the humanitarian crisis caused by the war in Yemen, the ICRC actively promoted access to medical services and distribution of humanitarian aid to the civilian population, fulfilling its humanitarian mission in accordance with international standards [3, p. 188].

In the context of non-international armed conflicts, non-state actors play an important role, including guerrilla movements, separatist groups and terrorist organisations. Despite the fact that these non-state armed groups are not parties to international treaties, they are obliged to comply with IHL. However, in practice, there are often cases of ignoring these norms or cynically using them to achieve their own goals. In particular, in the Syrian conflict, numerous groups, such as the Islamic State, have grossly violated IHL by attacking civilian infrastructure, carrying out mass executions and other acts that contravene the principles of humanity and distinction [4, p. 50]. These actions pose significant challenges to ensuring compliance with IHL in modern armed conflicts.

IHL provides for individual responsibility for war crimes, crimes against humanity and acts of genocide. Perpetrators of such violations can be held accountable by both national and international judicial bodies, including the International Criminal Court. A striking example of the implementation of the principle of individual responsibility is the case of Slobodan Milosevic, considered by the International Criminal Tribunal for the former Yugoslavia, which became a landmark in the practice of prosecuting violations of IHL [5, p. 405].

Non-state armed groups are often not covered by the jurisdiction of international law, which greatly complicates the process of bringing them to justice for violations of IHL. For example, during the armed conflict in the Central African Republic, numerous groups refused to cooperate with international organisations, which called into question the possibility of ensuring compliance with IHL [6, p. 312]. In addition, political influence on international judicial bodies creates obstacles to the effective prosecution of war crimes. The refusal of certain states, such as the United States of America, to ratify the Rome Statute governing the International Criminal Court significantly complicates the process of bringing to justice those responsible for violations of humanitarian law.

Modern realities include the development of new technologies, such as the use of unmanned aerial vehicles (UAVs), cyber weapons and autonomous weapons systems, which creates new challenges for identifying responsible actors. For example, in cases of cyber-attacks, the identification of the perpetrator is often extremely difficult, making it impossible to effectively apply IHL. In addition, a significant number of states do not recognise the jurisdiction of international courts or do not participate in international treaties governing compliance with IHL. In particular, the conflicts in South Sudan indicate serious problems in the functioning of mechanisms for punishing violators, which undermines the overall effectiveness of the international humanitarian law system [7, p. 55-57].

Thus, the subjects of IHL form the basis for its effective application. States, international organisations, non-state armed groups and individuals play different but interrelated roles. Problematic issues related to the responsibility of non-state actors, politicisation of justice and contemporary challenges require new approaches to improving IHL. Ensuring the effectiveness of IHL is possible only if it is adapted to modern realities and international cooperation is strengthened.

Modern armed conflicts are increasingly characterised by the involvement of non-state actors such as terrorist organisations, guerrilla movements and other armed groups. These conflicts, usually asymmetrical in nature, are marked by significant inequalities between the parties, which pose serious challenges to IHL, which was largely developed to regulate traditional interstate conflicts. Non-state actors often fail to recognise the Geneva Conventions, ignore IHL and engage in practices that contravene its principles, such as the use of terrorist methods or the use of civilians as shields. Asymmetric

conflicts combine traditional forms of warfare with the use of terrorist methods, guerrilla tactics and information operations. A striking example of this type of warfare is the conflict in Afghanistan between NATO coalition forces and the Taliban movement, which widely used guerrilla strategy and attacked civilian infrastructure, creating significant humanitarian challenges [8, p. 7–10].

Non-state actors, including insurgent groups, terrorist organisations and criminal syndicates, are gaining importance in asymmetric conflicts. Their flexible organisational structure allows them to avoid accountability, making it difficult to identify and prosecute violations, and they use terror as the main means to achieve their goals. Non-state actors often ignore the fundamental principles of IHL, including the principle of distinction between combatants and civilians, as well as the prohibition of attacks on civilian infrastructure. For example, during the Syrian Civil War, certain armed groups used schools and hospitals as locations for combat operations, which is a gross violation of the principle of humanity and international norms [9, p. 102].

The use of terrorist methods, such as attacks on civilians and subversive activities, poses a significant challenge to IHL, as its norms are mainly aimed at regulating armed conflicts, not terrorist acts. For example, the terrorist attack of 11.09.2001, which became a prerequisite for the declaration of a global 'war on terrorism', led to a revision of approaches to IHL [10, p. 93-94]. However, the issue of the legal definition and classification of terrorism within the framework of international humanitarian law still remains unresolved, which creates a legal vacuum in this area.

The identification of non-state actors in armed conflicts poses a significant challenge due to their decentralised structure and the difficulty of establishing clear jurisdiction. Lack of coordination between states and unwillingness to cooperate in the prosecution of violators of international humanitarian law further complicate the accountability process. In particular, the conflicts in the Sahel region (Mali, Niger) demonstrate this problem: numerous terrorist groups operating in border areas take advantage of the weakness of local governments, avoiding responsibility for their actions [11, p. 60–65].

Non-state actors are increasingly using modern technologies, including UAVs, social media for propaganda, and cyber weapons. This poses new challenges for IHL, which does not yet contain clearly defined rules to regulate such means of warfare. In particular, the use of UAVs by armed groups in Nagorno-Karabakh during recent clashes has led to situations where civilian infrastructure has been targeted, contrary to the basic principles of IHL [12].

Comprehensive measures should be taken to improve IHL, taking into account the specifics of asymmetric conflicts and the role of non-state actors. An important area is the development of legal acts that will regulate the behaviour of such actors, as well as the expansion of the jurisdiction of international courts, in particular the International Criminal Court, to ensure accountability for violators. In addition, it is advisable to establish regional tribunals, modelled on the special tribunals for crimes in Rwanda and the former Yugoslavia, which have demonstrated effectiveness in building regional justice mechanisms.

Another important area is to intensify the efforts of international organisations, such as the ICRC, to disseminate IHL among non-state actors. In addition, it is important to develop specialised rules to regulate the use of new technologies, such as UAVs, cyber weapons and information warfare, which require special legal regulation in the current context of armed conflicts.

Thus, asymmetric warfare and the active participation of non-state actors in modern conflicts pose a number of new challenges to IHL, which require updating existing rules and creating effective accountability mechanisms. Given that non-state actors are increasingly playing a key role in conflicts, the international community must find an optimal balance between ensuring humanity and the effectiveness of legal mechanisms in the context of the new realities of war. Integration of modern technologies, strengthening of international cooperation and adaptation of IHL to new forms of warfare are necessary measures to ensure its relevance and effectiveness.

To address the legal challenges associated with the use of robotic systems and cyberweapons, a number of comprehensive measures need to be implemented. First, an important step is the adoption of universal standards for the regulation of these technologies, which can be implemented through the creation of additional protocols to the Geneva Conventions. Secondly, it is necessary to define clear responsibility for the actions of autonomous systems, including both technical developers and users of such technologies. Establishing specialised international courts, in particular to deal with cyberattacks, would provide an effective mechanism for holding accountable for violations. In addition, the integration of norms that take into account the technical features of drones, robots and cyber weapons will allow IHL to be adapted to modern realities. It is advisable to create an international database for collecting evidence of IHL violations that can be used by international courts and tribunals.

The main challenges faced by IHL in the context of Russia's armed aggression against Ukraine include the systematic nature of violations, the ineffectiveness of international justice mechanisms,

the impact of new technologies and a large-scale humanitarian crisis. The armed conflict in Ukraine demonstrates widespread and coordinated violations of IHL used as part of the tactics of war.

Conclusions. The urgent problems associated with violations of IHL require the implementation of comprehensive measures aimed at reforming existing international mechanisms and creating new legal instruments. The key areas of reform include: improving the work of the UN Security Council, strengthening the role of the International Criminal Court, developing new monitoring mechanisms, effective regulation of non-state actors, adapting legal norms to the challenges of modern technologies in armed conflicts, and strengthening regional control mechanisms. These measures will help to increase the effectiveness of international law in ensuring compliance with IHL in modern conflicts.

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