

Ukraine, Russia, and International Law: Occupation, Armed Conflict and Human Rights

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Abstract. Ukraine is in an acute phase of military conflict with Russia, which causes changes in the economic, social, and political life of our country, as well as in the legal sphere of our country, in the light of those changes that are currently taking place in international law doubts. The study aims to study the causal links between military conflict, occupation, human rights, and freedoms in the context of Russia's armed aggression against Ukraine and analyze the experience of military conflicts in foreign countries. The author also examines the question of how military conflicts taking place in the world at the present stage cause changes in international law. In particular, the author considered the need to reform the international principle of prohibition of the use of force or threat of force in the context of increasing states' powers in self-defence. Furthermore, the study focused on the international responsibility of the entire world community if a country is subjected to armed aggression by another state. The author stressed the importance of compliance with international law on the laws and customs of war in times of military conflict and human and civil rights and freedoms, especially during the occupation affected by armed aggression or part of its territory. The study used general scientific and special legal methods. The investigation resulted in the provision that the current international legal acts in the field of international humanitarian law need to be reformed following the political, social and economic changes that are taking place at the present stage. The need for such reform is due to the requirements of the civilized world to strengthen the protection of human rights and freedoms during the internal military conflict and interstate military conflict associated with the occupation.

Keywords: development, resources, region, water management, assessment, analysis, territory, river.

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1. INTRODUCTION

Humanity in the twentieth century is experiencing a new era full of challenges and unpredictable circumstances: unstoppable climate change, the pandemic spread of new, previously unknown diseases, and armed clashes of a national and interstate nature arising on political, economic, religious, and social grounds. Under such circumstances, there is a rethinking of human values, an understanding of the value of human beings, their rights, and legitimate interests. Preserving human life and health, as well as ensuring their whole existence as a social individual, is the priority of any democratic state in the world. This phenomenon is international because, in a world consumed by globalization, no country can be in the form of isolation to carry out its activities separately without taking into account the geopolitical and socio-economic interests of other states. Therefore, preserving those fundamental human rights and freedoms that already exist and will arise in the future is only possible with the joint efforts of the world community. We are talking primarily about the rights to life, health, freedom and dignity, and the prohibition of their violation.

Equally important, as the practice of two World Wars and several interstate and intrastate conflicts has shown, is the observance of human rights and freedoms in conditions of military conflict. A war conflict of this nature is not only a violation of the norms of international law concerning the peaceful coexistence of states and the resolution of disputes without the use of force but also a direct violation of the livelihood of the country's population subjected to aggression. We are talking primarily about the military occupation by the aggressor country in military conflicts of an interstate character. We observe such a situation concerning Ukraine in the context of the armed aggression of Russia. Since 2014 it includes all signs of military occupation, in particular, non-permanent status (change of military advantages of opposing parties) and presence of parties in a state of military conflict. The current situation of military occupation is the evolution of the previous hybrid war, evidenced by the presence of the sphere of international law enforcement and recognition by the international community.

This study used general scientific methods to find the cause-effect relationship between the emergence and escalation of military conflict of interstate nature.

2. RESULTS

The issues of legal regulation of international armed conflicts and occupation, as well as the observance of human rights and freedoms in the languages of martial law, are enshrined in dozens of declarations and conventions. Moreover, at the end of each of the world wars or armed conflict of one state with another, which entailed the violation of interests of the entire world community, either a new international normative legal act was adopted, or the existing one was amended, regulating the issues of the legal protection of war victims, both among the military and civilian population, legal methods of restriction of means of conducting war, creation of international institutions and control instruments to reduce and minimize the consequences of armed conflict. Particular attention in these normative legal acts was paid to the legal regulation of the occupation.

Military occupation is a temporary occupation of an enemy's territory and a complete temporary change of his authority due to an armed conflict of international character, which is accompanied by the fact that the aggressor country assumes control over part or all of the territory of the state, acting as an aggrieved party in an armed conflict. The cause of military occupation may be internal factors due to non-compliance with minority rights or other social, economic, political, and human rights in a country, as well as external factors due to any military conflict between two or more countries, regardless of its scale and intensity, even if one party to the conflict does not recognize it as a war.

According to modern international criminal law, the occupation can occur both at the end of hostilities and during the active phase of the war. In the first case, there is the post-war occupation, at the end of military conflict, of all hostile territory or a certain part of it, which is a specific guarantee of obligations of the country lost in the military conflict. The second case deals with the occupation by the aggressor country when carrying out active hostilities in an armed conflict of all hostile

territory or a certain part thereof. However, in no case does the sovereignty of the occupied territory belong to the occupying side of the enemy, even though the occupier's power includes the immediate restoration of public order in the territory. The means of such authority of the occupier is the publication of various administrative acts, not retroactive and printed in the language of the people living in the occupied territory while maintaining the system of existing legislation of the occupied State.

In the context of Russia's armed aggression against Ukraine, the importance of compliance with the regime of military occupation and neutrality as one of the most essential tasks of the conflicting parties in the protection of human rights and freedoms was clarified. In particular, we are talking about the application in practice of those international legal acts related to the protection of medical facilities, which provide assistance to anyone in need of medical care and treatment, as well as the preservation and ensuring the functioning of other important infrastructure objects: power plants, railway stations, bridges, dams that provide the normal provision of minimum living needs of the population, compliance with the status of special zones with the status of sanitary zones by parties to the conflict,

The major violations of human rights and freedoms in the context of Russia's armed aggression against Ukraine and under conditions of occupation of part of its territory were also such war crimes as forcing by the occupant party the population to military service by the aggressor country, illegal taking of people as hostages and application of cruel treatment and torture to them to obtain information about the home country, its military forces, quantity and power of weapons, and location of armed forces.

War crimes committed in conditions of occupation have their own specific composition, so it is necessary to legislate punishment for them in the international and Ukrainian legislation. It is essential to pay more attention to and strengthen responsibility for such war crimes as the use of torture and torture, biological, chemical, and medical experiments, murder, mass shootings, persecution of the population on linguistic,

religious, and racial grounds, and political convictions during the occupation during the armed conflict.

In today's rapidly changing world, only the highest social values of humankind remain unchanged: peace, security, and respect for human and civil rights and freedoms. Thus, one of the most important principles of international law, the principle of non-use of force or threat of force, is a fundamental guarantee of peace and security in the world. This principle is enshrined in the UN Charter, the 1970 Declaration on Principles of International Law, and the 1975 Helsinki Final Act of the Conference on Security and Cooperation in Europe. In an ideal peace paradigm, all countries participating in the UN adhere to this and other principles of international law, such as equal rights and peaceful settlement of disputes of an international character, the sovereign equality of states and territorial integrity, and respect for human rights. However, this situation is too ideal for a multinational and multicultural world. Some states violate these principles of international law against other states for social, economic, or political reasons, "conflict results from competition for scarce resources, status, power, and values" (Oberschall, (2015). Moreover, violating states usually do not recognise themselves as guilty of illegal behaviour, explaining their armed aggression against another country by specific humanitarian ideas and peacekeeping missions.

An example of such unlawful state behaviour is Russia in the context of armed aggression against Ukraine. After allowing a full-scale war on the territory of our state, Russia explained the nature of such actions by carrying out a special operation to protect the civilians of the Luhansk and Donetsk regions from the "dictatorial regime of the Ukrainian government". For example, Dananjaya & Dhananjaya emphasised, Vladimir Putin acts sound like aiming to protect the personal and collective environment of life for people in the "DPR" and "LPR" (Dananjaya & Dhananjaya, 2022). However, the ruins of Ukrainian cities and villages evidence the opposite.

Indeed, "individuals and collective political actors seek recognition of certain qualities, positive characteristics, competencies,

achievements, or their status within specific groups of people, social, political system, or the international political realm" (Geis, 2015). Still, the consequences of seeking such recognition can be disastrous not only for a particular territory of the country and its population, as witnessed by events in 2014, but for the whole country and world community, as confirmed by the tragedy of full-scale war for Ukraine, which began in 2022.

A military conflict taking place at the international level is accompanied exclusively by an invasion of the territory of another state or an invasion of another state's territory coupled with its occupation. At present, the law of military occupation is one of the most important institutions of international humanitarian law. The occupation regime was legislated in the Hague Conventions of 1899 and 1907, the 1907 Convention respecting the Laws and Customs of War, and the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.

However, the principles of international law enshrined in these normative legal acts and others existing in the modern world need to be rethought. Thus, "without the end of World War Two and formation of UN, the nature of warfare has changed with many wars being 'intra-state' wars, or wars of secession" (Coleman, 2014). As recent armed conflicts, such as the Lebanese-Israeli conflict, the invasion of Iraq, and Ethiopia's intervention in Somalia, have demonstrated, the tenor of the coexistence of states in the world requires updating, and the UN security system is in deep crisis. This is evidenced by the refusal of states, as proposed by the UN, to amend existing legal instruments containing provisions on countries' rights to self-defence. This proposal was voiced primarily with the rise of international terrorist organizations such as al-Qaida and the Taliban. However, states only supported the provision that "this is related to the 'responsibility to protect' in cases of genocide or massive violations of human rights" (Gray, 2018).

The reason for states hesitancy to change international principles in this way is primarily due to states' national interests. Thus "Soviet debate on the reorganization of relations among nations drove nationalist mobilization from the early stages of glasnost' up until the

dissolution of the Soviet Union in 1991" (Coppieters, 2018). International law, in close connection with humanitarian and military law, is changing, trying to adapt to the new realities of the world community. Still, these reforms are not seen as possible due to the lack of many states to join them. It is necessary to remember that not only a state that uses force or the threat of force against another state is a violator of the norms and principles of international law, "it is common in international practice that several states and/or international organizations contribute together to the indivisible injury of a third party" (Paddeu, 2021). A state doesn't need to be directly involved in an international military conflict between two countries. As an accomplice of the aggressor country, inaction or indecisive behaviour is enough when it comes to change, namely, to increase responsibility for violating the guiding principles that ensure the peaceful coexistence of the world's countries. According to this, those states that demonstrate passive behaviour in dealing with important issues of an international character are also responsible for the consequences of military conflict, the material damage suffered by the state acting as an injured party, and the consequences of occupying a certain part or all of its territory, causing significant violations of the rights and freedoms of the civilian population residing therein.

In addition, if we examine the causal relationship between the military conflict and the occupation, as well as international relations, we can note the influence of the political aspect, especially after the end of the military conflict. Thus, for example, "for the installation, a certain determination of Kosovo's independence that Kosovo was a special, sui generis case had to be reframed before the Court to be truly persuasive, while the territorial integrity and self-determination principles proved to be of little relevance" (Milanovic, 2015), would not be exceptional in changing political attitudes of states in the world and after the case in the UN International Criminal Court of Ukraine against Russia. The main subject is, first of all, numerous human rights violations taking place in Russia's armed aggression against Ukraine. The court must be independent and impartial (Sopilnyk et al., 2021). In this case, an exceptionally objective

decision of the UN International Criminal Court would help achieve justice, adhere to the rule of law, and testify to whether the crisis has been overcome in the structure of UN preservation.

One of the problems of the modern world is that military conflicts, both intra-state and international, have engulfed virtually all countries at one time or another in their historical development, and some continue to exist at the present stage. This issue has been particularly acute in the last decades of the twentieth century. Modern technologies, which are being introduced in all spheres of human life, have not bypassed the sphere of military conflicts: new types of wars, such as, for example, media warfare, are appearing since (Wolfsfeld & Yarchi, 2016). Moreover, new military techniques are being introduced, and new weapons are being used.

Nevertheless, the problem of compliance with the laws and rules of war in times of military conflict in the context of respect for human rights and freedoms remains relevant. Even countries with an established democratic system violate these international norms, such as Great Britain, "... the early 2000s..." (Gearty, 2020). Thus, the issue of violation of human rights and freedoms in a military conflict always includes a political component. The "issue of human rights and freedoms in a military conflict always has a political component" (Coundouriotis, 2021). Still, in terms of humanitarian international law, these are violations; therefore, the aggressor state must bear international responsibility for its culpable acts.

Interstate military conflicts are destructive forces on states' economic and social development and prevent strengthening their political influence on the world stage and full international cooperation with other states. For example, "not another divorce impedes the development of the entire Caucasus region as vehemently as the Georgian-Abkhazian conflict, going far beyond the clash of two extreme positions - self-determination v. territorial integrity" (Harzl, 2016). But the most damaging consequences for a country experiencing armed aggression are, of course, civilian casualties, as well as violations of human and civil rights and freedoms. For

example, the invasion of Iraq resulted in "a shift from counterterrorism to counterinsurgency increased US sensitivity to civilian casualties and the operational consequences of detainee abuse" (Evangelista & Tannenwald, 2017). Furthermore, "war is often an amalgamation of objectives and occupation of realization of one core objective, that is, the suppression of identity of occupied populations" (Bleibleh & Awad, 2020). Therefore, it is seen that compliance with the Geneva Convention remains necessary in times of war conflict, as "the Geneva Convention extends protections from the consequences of war to civilian populations and noncombatants" (Klein et al., 2022). Still, the need to revise its provisions also remains relevant.

The number of violations of human and civil rights and freedoms is increasing, and their recording for further investigation of war crimes is more difficult under the conditions of occupation. This is evidenced by the experience of Ukraine regarding its temporarily occupied territories when it comes to the lack of the population located there, deprivation of the opportunity to realize the most fundamental rights that ensure the natural existence of man: the right to life, health and a safe environment. In the context of occupation, discrimination against the population has its characteristics, "in the context of public occupation, or the main distinguishing character is their extra-territorial reach" (Hraníková, 2016).

Thus, we can conclude that in the case of occupation of the territory or part of the territory of one country by another, which takes place in an international military conflict, the aggressor state has additional obligations to protect the civilian population located on this territory. However, as the humanitarian tragedy of Mariupol that took place this year in the context of armed aggression of Ukraine showed, under occupation, the aggressor country violated all possible norms of international law to protect civilians during the war: they were subjected to cruel tortures, deprived of medicine, food, and water. Such a situation is unacceptable in a civilized world and must not be repeated in any country in the future. Therefore, it is essential to search for alternative ways to resolve the military conflict between Russia and Ukraine, "it focuses

attention on the relief of suffering; diverse forms of nonviolent resistance and creation of ripe conditions for a ceasefire and negotiated settlement" (Clements, 2022). Furthermore, it is unacceptable to escalate this military conflict further geographically and politically, "conflict escalation occurs when a conflict grows in severity or intensity" (Miller, 2015), as this escalation would be the beginning of World War III and the end of the human.

It is clear that military conflict, regardless of whether it has a national character and takes place in one state, takes place between several states because of a social, political, or economic dispute between them and has an interstate character, first of all, this destructive phenomenon destroys the human resource that makes up the population of the aggressed country. "When the personalized person is the development of military actions associated with this party, the in-depth risk of physical harm, and the unsustainable threat associated with their slenderness to their physical health" (Bøg et al., 2018). The military conflict is even more harmful to civilians, especially women and children, as the most vulnerable social category, as evidenced by the events that occurred in Russia's armed aggression against Ukraine in Irpen and Bucha. "The effects of exposure to prolonged cracks put to children by struggle and armed conflict should be calculated without World War II" (Oberge et al., 2022), "...it is clear that women and children are more than their victims" (Kaufman, 2016), in addition, unlike the military with appropriate practical training to carry out life activities in a state of war, the civilian population, especially women and children in conditions of military conflict and

occupation become victims of war crimes more often. Also, under conditions of military occupation, there is a certain "split" of the community on whose territory it extends), and its social and political consequences after the liberation of a certain territory after the occupation are difficult to overcome.

3. CONCLUSIONS

The modern world is changing rapidly and brings about changes in international law, in particular humanitarian law, as a fundamental right of human rights and freedoms. A number of normative legal international acts in force and regulating certain issues require rethinking in accordance with the present challenges, first of all, we are talking about updating that international legislation, which regulates the issues of war: human rights and freedoms in conditions of military conflict and occupation, prohibition of torture, cruel treatment, the responsibility of aggressor country for committed war crimes in conditions of occupation and responsibility for them. The fact that military conflicts of intrastate and interstate nature continue to occur in the world shows the need to strengthen penalties and sanctions for those states that do not comply with the laws and customs of war.

The preservation of human life and physical and mental health, observance of human rights and freedoms in conditions of military conflict, is the primary task for the country subjected to aggression, and for the countries of the world, community to monitor compliance with the customs of war by the aggressor country and to apply sanctions to it in case of their violation.

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