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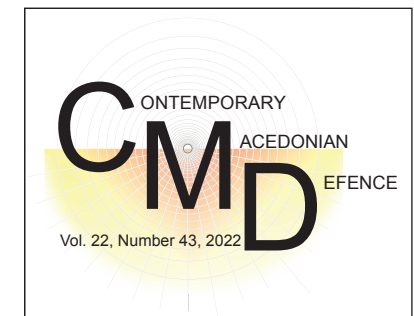
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43

IVONA LADJEVAC , TONI MILESKI
MITKO ARNAUDOV
NIKOLA MANEV, ELENIOR NIKOLOV
ANKICA TOMIC
BILJANA KAROVSKA ANDONOVSKA
IGOR GJORESKI
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МЕЃУНАРОДНО НАУЧНО СПИСАНИЕ НА
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CONTENTS:

Ivona LADJEVAC

Toni MILESKI

CRITICAL INFRASTRUCTURE IN THE CHANGING GEOPOLITICAL AND SECURITY LANDSCAPE: A CASE STUDY OF THE REPUBLIC OF NORTH MACEDONIA.....9

Mitko ARNAUDOV

A CONTEMPORARY SECURITY THREAT TO NORTH MACEDONIA: SECURITIZATION OF EMIGRATION AND THE CORRUPTION IN PUBLIC INSTITUTIONS25

Nikola MANEV

Elenior NIKOLOV

THE EUROPEAN GREEN DEAL AND EU'S ENERGY TRANSITION IN THE WAKE OF THE WAR IN UKRAINE.....37

Ankica TOMIC

FEMINIST APPROACHES TO SECURITY47

Biljana KAROVSKA ANDONOVSKA

HUMAN RIGHTS IN CONTEMPORARY ARMED CONFLICTS.....59

Igor GJORESKI

ANALYSIS OF THE STRATEGIC PROVISIONS OF THE EU STRATEGIC COMPASS FOR SECURITY AND DEFENCE.....69

Nena NENOVSKA GJORGJEVSKA

THE INFLUENCE OF THE ARMED CONFLICTS ON THE REFUGEE CRISES IN THE MIDDLE EAST COUNTRIES89

Mario AMPOV

Drage PETRESKI

UNMANNED AERIAL VEHICLES USED FOR MILITARY OPERATIONS AND THEIR APPLICATION IN THE REGION.....103

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HUMAN RIGHTS IN CONTEMPORARY ARMED CONFLICTS

Biljana KAROVSKA ANDONOVSKA¹

Abstract: *In the brutal armed conflicts which take place even in the 21st century, without a basic observance of the rules of war, serious violations of the basic human rights are almost always present. Some of the recent armed conflicts have been so cruel that they have violated everything that has been adopted so far as standards of human behavior in war conditions. In most contemporary armed conflicts, civilians are often deliberately targeted through the use of illegal means and methods of warfare. Almost all contemporary armed conflicts cause serious violations of children's rights, forced displacement, damage to civilian infrastructure, sexual assaults, even using the humanitarian aid as a weapon of war. On many occasions, violations constitute war crimes, crimes against humanity and crimes against international law. Unfortunately, the international community sometimes only witnesses these developments without significant results in their prevention. Human rights violations are often accompanied by impunity for the perpetrators, which in some ways undermines the basic idea of international human rights law and international humanitarian law. For these reasons, one of the conclusions in this paper is that the United Nations as a global international organization is most called upon to act effectively to prevent such crimes, as well as to locate responsibility if war crimes have taken place. Hence, the aim of this paper is to contribute to the debate on impermissible violation of international standards established with the International Human Rights Law and the International Humanitarian Law.*

The paper provides an overview of the treatment of basic human rights in contemporary armed conflicts, with a special focus on conflicts that have taken place in the past two decades and those that are currently ongoing.

Key words: *International human rights law, international humanitarian law, contemporary armed conflicts, violations of human rights.*

Introduction

After World War II, the idea of respecting human rights was developed as a value system, accepted by almost all, or most countries and cultures. The International Human Rights Law (IHRL) gives some basic human rights a special status as peremptory norms (jus cogens). It sets forth the standard for the absoluteness of certain personal rights, such as the right to life, the right to respect of personal integrity (prohibition of torture, inhuman or degrading treatment and punishment), legal certainty of criminal offenses and penalties, freedom of conscience, thought and beliefs. These rights and freedoms cannot be reduced and must be respected regardless of the circumstances, because they prevail as universal values. Derogation of these rights is

¹ Associate Professor at the Military Academy «General Mihailo Apostolski» - Skopje

not admissible even in wartime and in time of other emergencies. Although there is general agreement that the challenge lies in ensuring the conditions for respecting these rights, yet despite the indispensable step forward in the protection of the individuals, in reality there is still suffering of individuals in situations of armed conflicts (Gillard, 2003). The open wars between the armies of nation-states are not like in the previous centuries, however, thousands of lives are lost each year as a result of these wars. Although it was believed that in this century humanity would be a globalized post conflict society moving in deterministic concept toward collective peace and prosperity, instead, terrorism, ethnic conflict, civil wars, and hybrid and special operations warfare (techniques used by developed nations to harass or destabilize opponents through nontraditional means) accounted for the bulk of non-state, intrastate, and interstate violence (Ray, 2022). Not only the right to personal security, but also many other basic human rights and freedoms have been violated, whether in domestic or international conflicts. Summary execution without the possibility for a fair trial, arbitrary arrest, enforced disappearance, torture, violations of children's rights, involvement of children in armed conflict, systematic imposition of sieges, forced displacement, damage to civilian infrastructure, gang rape, using women as human shields, often with their children, the use of chemical weapons, sexual assaults in refugee camps, even using the humanitarian aid as a weapon of warfare, are not presumed imaginary acts of violence. These violations have been noted in many contemporary and ongoing armed conflicts and are part of the official reports of a number of relevant international organizations, including the United Nations (UN). Some of the recent armed conflicts have been so cruel that they have violated everything that has been adopted so far as standards of human behavior in war conditions. The violations often constitute genocide, war crimes, or crimes against humanity. Considering the inhumane treatment of fundamental rights, some relevant questions arise in relation to modern armed conflicts, the most significant of which are the following - Why does the international community often have no significant results in preventing violations of International Humanitarian Law (IHL)? Why does the international community sometimes remain only a witness to the terrible human suffering and tolerate impunity in many cases? Some of the other relevant questions are as follows: Is the United Nations protection system effective enough to ensure the respect for basic human rights in the context of an armed conflict? Does the International Human Rights Law hold the responsibility to protect human rights in times of armed conflicts as well?

The human rights treatment in recent armed conflicts

In the past several decades, complex armed conflicts have taken place on the territory of different countries, followed by war crimes, gross violations of the rules of war, and a massive migrant crisis. The entire world public has witnessed humanitarian catastrophes, particularly in internal conflicts which are fraught with widespread violations. For example, in the Second War in Congo (1998-2003), although estimates vary widely, the death toll reached nearly three million people. In long-running tensions in the Darfur region of Western Sudan, which began in 2003 and escalated into what the United States described as genocide, at least 300,000 people have been killed and nearly three million have been displaced (Sikainga, 2009). In the Iraqi War, which started in 2003, more than 4,700 coalition troops had been killed and at least 85,000 Iraqi civilians, but some estimates place that total much higher (Ray, 2022). In the Afghanistan war, between 2001 and 2016, an estimated 30,000 Afghan

troops and police and 31,000 Afghan civilians were killed. More than 3,500 troops from the NATO-led coalition were killed during that time, and 29 countries had their casualties (Ray, 2022). In Nigeria during the conflict of the Nigerian government and the militant group Boko Haram some 20,000 civilians, including an undetermined number of women and children, have been shot, beheaded, stoned, drowned, burned, and bombed by Boko Haram (UN Report, 2015). The war in Yemen, which is entering its eighth year, has killed tens of thousands of people, and displaced about 4 million civilians. In the Ukrainian conflict in 2014, through events in the town square Maidan, Crimea and the Donetsk and Luhansk regions, the majority of killed were also civilians. From today's perspective, it seems that each next war is crueler than the previous. For example, the recently ended war in Syria was followed by such a terrible inhuman suffering and human rights violations that is almost unprecedented in modern time. Various commissions, NGOs and news agencies have documented those violations since the start of the civil war in 2011 and throughout the years, the violations escalated dramatically and lasted for one decade in front of the eyes of the entire international community. The reports of the Independent International Commission of Inquiry established by the UN Human Rights Council Commission documented cases of summary execution, arbitrary arrest, enforced disappearance, torture, including sexual violence, as well as violations of children's rights (HRC S-17 2 Add.1, 2011). In the following years, the Commission noted systematic imposition of sieges, the use of chemical agents, and cases of forced displacement (HRC 23 58, 2013), recruiting children in armed operations (HRC 24 46, 2013), more than 250,000 people besieged and subjected to relentless shelling and bombing, as well as unsuccessful attempts to deliver humanitarian aid in food and funds for other basic needs (HRC 25 65, 2014), suffering of groups and communities specifically targeted on the basis of their gender, age, ethnicity, religion and profession (HRC 30 48, 2015), civilians and wounded fighters taken hostage, tortured and subjected to sexual violence (HRC 33 55, 2016), hundreds of men and boys separated from their families and forcibly recruited by the Syrian army following the occupation of eastern Aleppo by pro-government forces (HRC 34 64, 2017), damage to civilian infrastructure such as medical facilities, schools, etc. (HRC 44 61, 2020).

Unfortunately, testimonies like those in Syria and other above-mentioned regions are also expected from the current war taking place on the territory of Ukraine. It is disappointing that even after the tragic experiences of the wars so far, now again in Ukraine, which is in the focus of the entire world public, there is still such terrible human suffering and flagrant violation of human rights. The casualties on both sides are already in the thousands, while millions of Ukrainians have been displaced and huge material damage has been caused on the territory of Ukraine.

Challenges in protecting human rights in contemporary armed conflicts

The changing nature of the armed conflicts in the 21st century poses a multitude of challenges in protecting human rights in wartime. A transformation of the traditional concept of war indicates that conflict is no longer predominately characterized by a classical, state-centered paradigm in which battle is fought between soldiers as agents of the State, but rather by the 'intermixing of other means' leading to complex and ambiguous situations of violence with less clear-cut distinctions (Morgan, 2013). In most of the contemporary armed conflicts, civilians were often deliberately targeted through the use of illegal means and methods of warfare. On the other hand, non-State actors which spectrum is broad, actively play an increasingly substantial role in contemporary violent conflicts. Various sorts of non-State actors include groups classified as: organized armed groups, transnational corporations, private military and security companies, paramilitary forces, urban gangs, militias and a huge variety of trans-national criminal entities-including so-called terrorist groups and pirates. These are certainly the greatest challenges in protecting human rights in contemporary armed conflicts. Here we can actually find one of the reasons why it seems that the international community in many cases had a lack of sufficient decisive action in resolving the difficult situations regarding human rights treatment in contemporary armed conflicts. The situation is probably aggravated by the fact that internal armed conflicts, especially those based on religious, ethnic or other grounds, are dominant in modern times. However, there is no justification or legal norm for treating perpetrators of crimes in internal conflicts more leniently than those who have acted in the same way in international armed conflicts. For example, the above-mentioned UN Commission of Inquiry for Syrian war, stressed on many occasions the urgent need for international action to end serious human rights violations and to end the unsolvable cycle of impunity. Two years after the start of the civil war, Ann Harrison, Amnesty International Deputy Director for the Middle East and North Africa, legitimately asked: How many more civilians must die before the UN Security Council refers the situation to the Prosecutor of the International Criminal Court so that there can be accountability for these horrendous crimes? (South China Morning Post, 2013). On the other hand, the recommendations contained in the Commission's reports - to the Syrian government, anti-government armed groups, the international community, the Human Rights Council, and the Security Council, also serve to emphasize the need to counter the growing culture of impunity by referring to justice nationally and internationally. However, the main paradox here is that Syria is not a state signatory of the Rome Statute, the document that established the International Criminal Court in Hague. Because of this, since the beginning of the civil war it was clear that the UN Security Council should refer to the International Criminal Court the war crime cases committed by both sides in Syria. This is important because unless the Syrian government ratifies the treaty or accepts the jurisdiction of the Court through a declaration, the Court could only obtain

jurisdiction if the Security Council refers the situation to the Court. The Security Council, with what is called an “International Criminal Court referral,” could give the Court jurisdiction stretching back to the day the Rome Statute entered into force, on 1 July, 2002. However, some UN attempts to resolve this situation were not only delayed, but completely unsuccessful. Resolutions and other legal documents generally remain unclear or unimplemented. The flagrant violation of human rights and the rules of humanitarian law continued at an unabated pace. The reasons for this are complex. According to Morgan Kelley, non-compliance by parties to the actual armed conflict due to subsequent practices of negative reciprocity, are the most significant challenges for IHL and for the *jus in bello* doctrine in contemporary warfare which represent a vicious cycle that is most detrimental to its purpose of reducing human suffering. According to Kelly, IHL should be revised to better reflect the 21st century conflict and this challenge can only be overcome by: 1) an increased awareness for respecting the existing international humanitarian law on the part of non-State actors; 2) the realization of the benefits of positive reciprocity by both States and non-State actors; and 3) increased willingness of States to engage in nonexclusive dialogue on behalf of all parties involved (Kelly, 2013). However, the impression remains that in both recent and ongoing wars, the UN, and its bodies, most notably the International Criminal Court and the Security Council, have not achieved significant results in locating the responsibility for non-compliance with international rules and in many cases the entire international community has witnessed impunity for human rights violations. In those circumstances, according to the author of this paper, the principle of Universal Jurisdiction which provides for a state’s jurisdiction over crimes against international law even when the crimes did not occur on that state’s territory, and neither the victim nor the perpetrator is a national of that state, seems to be an effective and proportionate tool to pursue accountability for the worst international crimes. Namely, this principle allows national courts in third countries to deal with war crimes that occur outside their country, to bring the alleged perpetrators to justice and to prevent impunity. Relying on this principle, human rights organizations in Germany, France and Sweden have filed criminal charges, on behalf of and together with the survivors of Guta, where the largest chemical weapons (sarin) attacks took place during the Syrian war, which resulted in mass victims, including hundreds of children (South China Morning Post, 2013). It is encouraging that criminal investigations into these allegations have been opened in all three countries, as well as, the fact that the Syrian Center for Media and Freedom of Expression, the Syrian Archive, the Open Society Justice Initiative, and Civil Rights Defenders are filing additional evidence to the investigative and prosecutorial authorities in these countries (Civil Rights Defenders, 2022). It is also encouraging that the first criminal case against a senior former Syrian official for torture during the Syrian war ended with a verdict handed down by a national court in Germany. Namely, Anwar Raslan has been found guilty of murder, torture, and sexual assault since he oversaw the notorious Damascus prison in 2011 and 2012. The verdict was

hailed as a revolutionary step towards justice for the heinous crimes committed in Syria and as a significant moment for civilians who have survived torture and sexual abuse in Syrian prisons (Human Rights Watch, Germany, 2022). However, on the other hand, it is discouraging that nowadays another bloody conflict is unfolding before the eyes of the whole world. This time it happens again in Ukraine, which is just another in a series of wars that the international community has failed to prevent. Neither the Russian Federation nor Ukraine is a signatory to the Rome Statute of the International Criminal Court. Ukraine has twice declared that it accepts the jurisdiction of the Court for crimes committed within its territory. The latest of the two declarations was registered in the Court in 2015 after Ukraine's Parliament adopted a resolution distinctly accepting the Court's jurisdiction indefinitely from 20 February 2014 onward. Having this in mind, we will see whether and how the individual allegedly war crimes cases will be prosecuted before the International Criminal Court, or the principle of Universal Jurisdiction will apply. In this context, law and justice are facing a new test, perhaps the most difficult in the past several decades.

Applicability of international human rights law in armed conflicts

In the context of challenges to the protection of human rights in military conflicts, the question of applicability of international human rights law against international humanitarian law necessarily arises. The applicability of the IHRL in armed conflict has been the subject of extensive discussion over the past few decades, focusing primarily on whether the IHRL continues to be applied once it enters the realm of armed conflict. In certain areas it is clear how and why humanitarian law and human rights law could complement and reinforce each other while in other spheres there are some challenges in application (Lubell, 2005). Personal human rights are inherent rights of all human beings, whatever their nationality, ethnic origin, gender, color, religion, language, or any other status. These rights are guaranteed by legal norms, in the form of treaties, customary international law, general principles and other sources of international law. IHRL is a legal branch focused on the individuals, on their innate personal rights and other fundamental human freedoms and rights. On the other hand, IHL is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. IHL protects persons who are not or are no longer participating in the hostilities. Both legal regimes, IHRL and IHL, strive to protect the lives, the health, and the dignity of individuals, although from different angles. For years, it was held that the difference was that the IHRL applied in times of peace and IHL in situations of an armed conflict. Nevertheless, we can see a growing trend in covering IHL issues within the framework of a joint IHL and IHRL perspective. This concept for human rights law applicable not only in peacetime, but also in situations of armed conflict or in times of occupation, is now widely accepted. Today, the support for continued applicability of IHRL during armed conflicts can be found in every direction, including the academia, while the opposite position finds very limited support (Siatitsa, Titberidze). Besides that, overlaps

between the two branches of law serve to reinforce and complement the protection for individuals or groups during a war. Although at the time when the UN Universal Declaration of Human Rights was adopted, there were probably no assumptions that the question of respecting human rights is also relevant in situations of armed conflicts, this question later became a topic that the UN referred to. A doctrine of non-derogable human rights, which remain applicable in cases of armed conflict and other situations of emergency, was developed (Kolb, 2012). This is important, inter alia, because violating IHL means violating human rights at the same time, while respecting IHL rules does not necessarily ensure the respect for all human rights. Hence, both regimes of law can be applied in armed conflicts to achieve the greatest possible protection. In addition, nothing in human rights treaties indicates that they would not be applicable in times of armed conflict (UN Human Rights High Commissioner, 2011). In addition, according to the General comment on Article 4 of the UN International Covenant on Civil and Political Rights, regarding the derogations during a State of Emergency, the Human Rights Committee explains that during an armed conflict, whether international or non-international, the IHRL rules are 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, as well as, that the Covenant applies also in situations of armed conflict to which the rules of IHL are applicable (General comment 29, 2001). In any event, the most important practical influence of this relationship is the possibility to enforce the International Human Rights Law as a legal regime in times of armed conflicts and there is an increasing trend towards applying international human rights principles more stringently to situations of war although stronger enforcement mechanisms are required (Democratic Progress Institute, 2014).

Conclusion

Since the purpose of this paper is not only to open some relevant questions, but also to offer appropriate conclusions, several concluding remarks regarding the treatment of human rights in contemporary armed conflicts are presented below. Unfortunately, armed conflicts are part of world history even after the establishment of the United Nations whose purpose was to prevent them. Civilians are almost always under attack, which is a prevalent problem in modern warfare. The UN efforts for building sustainable peace and protecting future generations have not always been successful. The impression is that delayed reactions, or sometimes inert actions, are the result of a discrepancy in which the organization is often set in dealing with challenges. On the one hand, the obligation to respect state sovereignty and the principle of non-interference in the internal affairs of the member states puts pressure. On the other hand, there is the need to take measures against a state or states where flagrant human rights violations are evident. In the context of armed conflicts, this dilemma is dominant whether it is about international or non-international conflicts. However, the normative framework of the international law provides the UN with a solid basis for resolving contentious issues between member states, which if left unresolved, could even lead to an armed conflict. At the same time, the protection of human rights not only shares a common philosophy with humanitarian law, but can also be used to compensate the gaps in its legal basis. International Human Rights Law

is applicable in all circumstances, albeit in a modified way, due to the specifics arising from different types of armed conflicts. Hence, both regimes of law should apply in armed conflicts to achieve the greatest possible protection, since the international community should no longer tolerate gaps in protection, especially in situations where civilians are under attack. Why then is the UN considered insufficiently effective in achieving its most important mission? There is probably no right or wrong answer to this question, but only facts and different views in the interpretation of those facts. The problem is complex and not only from a legal aspect. It seems that instead of law, politics, geopolitics, and state interests prevail in this context. Most will probably agree that the UN should act more effectively to prevent risk situations when the danger of committing war crimes, crimes against humanity and crimes against international law is expected. The UN should also act more effectively in situations where there is evidence that those crimes have taken place. However, the lack of sufficient decisive action and serious efforts to resolve difficult situations is just one side of the coin. The other is not locating responsibility, as well as the practice of impunity. This practice should be stopped immediately, because the UN has enough mechanisms to do so. It should only act indiscriminately, ignoring the interests of influential state actors and the wider geopolitical interests. The only interest must remain within the framework of humanity and established international standards. In situations where the International Criminal Court is still unable to act because the alleged perpetrators are nationals of countries that have not ratified the Rome Statute, then what can break the chain of impunity is the application of the principle of Universal Jurisdiction. The effectiveness of prosecuting and punishing inhumane treatment, especially when it comes to war crimes, genocide, and crimes against humanity, should send a strong message that impunity will not be tolerated.

In this sense, a revolutionary step towards justice is the above-mentioned verdict passed by a court in Germany, by which a former Syrian officer was found guilty for committing crimes against humanity during the Syrian war.

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