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Asymmetric Warfare in Syria: a Challenge to the International Humanitarian Law

The article examines the application of the International Humanitarian Law (IHL) to the modern warfare, in particular, to the asymmetric conflicts. The purpose of the article is to find out what are the main challenges, which are faced by the IHL in the conditions of the modern warfare. The ongoing conflict in Syria, which started in 2011, is used as a case study. It shows the real challenges to the IHL and undermines its effective application during the armed conflicts. Thus, the IHL should be developed and modified in the scopes of new types of warfare.

Keywords: *Asymmetric warfare, International Humanitarian Law, modern warfare, Syrian conflict, United Nations, ISIS, Noninternational Armed Conflict.*

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Асиметрична війна в Сирії: виклик міжнародному гуманітарному праву

У статті досліджується застосування Міжнародного гуманітарного права (МГП) до сучасної війни, зокрема до випадків асиметричних конфліктів. Метою дослідження є з'ясування того, які основні виклики стоять перед МГП у сучасних умовах війни. Триваючий конфлікт у Сирії, який розпочався у 2011 році, використовується як приклад дослідження. Події у Сирії показують реальні виклики МГП і підривають його ефективне застосування під час збройних конфліктів. Основним висновком є те, що МГП слід розробляти та змінювати в рамках нових типів бойових дій.

Ключові слова: *асиметрична війна, Міжнародне гуманітарне право, сучасна війна, Сирійський конфлікт, Організація Об'єднаних Націй, ІДІЛ, збройний конфлікт неміжнародного характеру.*

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Асимметрическая война в Сирии: вызов международному гуманитарному праву

В статье исследуется применение Международного гуманитарного права (МГП) современной войны, в частности к случаям асимметричных конфликтов. Целью исследования является выяснение того, какие основные вызовы стоят перед МГП в современных условиях войны. Продолжающийся конфликт в Сирии, который начался в 2011 году, используется в качестве примера исследования. События в Сирии показывают реальные вызовы МГП и подрывают его эффективное применение во время вооруженных конфликтов. Основным выводом является то, что МГП следует разрабатывать и менять в рамках новых типов вооруженных конфликтов.

Ключевые слова: асимметричная война, Международное гуманитарное право, современная война, Сирийский конфликт, Организация Объединенных Наций, ИГИЛ, вооруженный конфликт немеждународного характера.

Challenge problem

The modern warfare, especially asymmetric conflicts, have challenged the effective application of the IHL. The main reason behind it is that the system of IHL was created as a response to the classical warfare, while there is a huge need for the IHL to evolve together with the realities of the modern armed conflicts. The main research question of the article is if the IHL is relevant to the conditions of the asymmetric warfare. The Syrian conflict, which started in 2011 as a part of the Arab Spring is used as a case study. It presents the practical challenges to the IHL and shows its efficiency in the ongoing conflicts.

A review of recent studies and papers

The conceptual framework is based on the books of Red Thornton *Asymmetric warfare: threat and response in the twenty-first century* (2007) and *New battlefields old laws: critical debates on asymmetric warfare* (2011) by William Banks. The latter is one of the most powerful critiques of IHL in the context of contemporary warfare. William Banks argues that the IHL and its legal basis no longer ac-

count for non-states groups. The main point of the book is that the asymmetric warfare challenge the existing principles of IHL. The gaps in the international law prevent the international community to respond efficiently to the ongoing conflicts. Red Thornton, also argues that the nature of warfare and overall conflict have changed. The new conflicts are unexpected and unregulated. The book put the emphasis on the fact that asymmetric warfare is a new threat especially to the powerful states of the western world.

Remaining challenges

The nature of war in the 21st century has faced the complex changes. The end of the Cold War and the collapse of the bipolar system in the world politics created the conditions for the redefinition of war in the context of the new international environment. Asymmetric warfare is defined as the nontraditional or irregular warfare between militarily superior power and one or more inferior powers. The asymmetries are used by the inferior powers as a tool to win. The spread of the asymmetric conflicts has challenged the relevance of the current application of the In-

ternational Humanitarian Law to the modern armed conflicts. The article examines the application of the IHL to the modern warfare, in particular to the asymmetric conflicts. It gives the classification to the ongoing Syrian conflict and distinguishes the right IHL regime. Moreover, the article analyses the main challenges to the IHL in the scopes of modern warfare.

Draw the objectives of research

The purpose of the article is to find out what are the main challenges, which are faced by the IHL in the conditions of the modern warfare. The ongoing conflict in Syria, which started in 2011, is used as a case study. It shows the real challenges to the IHL and undermines its effective application during the armed conflicts. Thus, the IHL should be developed and modified in the scopes of new types of warfare.

Discussion

The asymmetric warfare can be defined as ‘population-centric nontraditional warfare waged between a militarily superior power and one or more inferior powers, which encompasses all the following aspects: evaluating and defeating asymmetric threat, conducting asymmetric operations, understanding cultural asymmetry and evaluating asymmetric cost’ [1, p. 24]. Another definition is given by professor Wolff Heintschel von Heinegg, who applies it to the armed hostilities, in which one party to the conflict ‘endeavors to compensate for its military, economic or other deficiencies by resorting to the use of methods or means of warfare that are not in accordance with the law of armed conflict’ [4, p. 464].

International Humanitarian Law seeks to limit the scale of casualties and victims of armed conflict and regulate the way the war is conducted. The main aim of it is to limit the harm, which is created by the armed conflict. It is also called the law of war or the law of armed conflicts, in Latin – *ius in bello*. IHL is a branch of international public law. It governs the relations between the states during the armed conflicts and is also applied to the hostilities, which occur within the borders of one state. The IHL is defined by the Interna-

tional Committee of the Red Cross (ICRC) as a range of rules, which are created with the intention to limit the effects of any armed confrontations [11].

Asymmetric warfare as well as any other type of war should be regulated by the norms of IHL. Modern asymmetric wars refer mainly to the armed conflicts of non-international character (NIAC). NIACs are regulated by the Article 3 common to all four Geneva Conventions. Another legal source for NIACs is the 1977 Additional Protocol II relating to the protection of victims of non-international armed conflicts. NIACs are also regulated by the norms of international customary law. One of the main questions today is the issue of effective use of the IHL in the conditions of the modern conflict and the compliance of the fighters with the IHL during the armed conflict.

Syrian civil war is an ongoing internal conflict in the Middle East, which involve the governmental forces and opposition with the several fractions. It emerged in 2011 as a wave of the Arab Spring. In contrast to the other states in the region, the conflict in Syria has been already lasting for 5 years. Starting from Tunisia, the crisis spread through the Middle East region, including Syria [3, p.1].

In 2012 the Independent International Commission of Inquiry on the Syrian Arab Republic issued a report in which it stressed the escalation of the humanitarian crisis in the context of NIAC that emerged on the territory of Syrian Republic [5, p. 25]. At the same time, the UNSC has expressed its concerns about the deteriorating situation in Syria and called the Syrian government to bring the medical and humanitarian assistance to the population based on the international law and main principles of the IHL [7]. Thus, the application of the IHL in Syria is needed as a ground for the humanitarian assistance for the victims of the conflict. The emergence of the armed conflict and its recognition as NIAC are the preconditions for the IHL application in Syria. Syria has signed and ratified Geneva Conventions and Additional Protocol I but is not party to the AP II. The IHL should be applied not only to Syrian governmental forces but also by the other parties of the conflict.

Each party should follow and respect the general rules of the IHL. Even though, the non-state armed groups are not the parties to the Geneva Conventions, they are still the parties to the conflict. As the equal parties to the conflict, they have the rights and obligations according to the IHL. Although the IHL norms should be followed in this particular NIAC, Syrian conflict has become a huge challenge for the IHL. It created the debates about the IHL efficiency in case of NIAC and showed the white spots in the international public law concerning the armed conflicts. Firstly, the case of Syria has shown the disrespect of the parties to the norms of the IHL. The states, as well as non-state actors, do not provide protection for the civilians. The parties ignore the principles of proportionality and necessity in their actions. Thus, the Syrian conflict put under the question the enforcement mechanisms of the IHL and its efficiency.

The principle of distinction is severely undermined in the Syrian conflict by all parties. There was an evidence of use of bombing on the regions with the huge civilian population by the Assad's forces and his Russian allies [8, p. 349]. The civilians and their property are the victims of the indiscriminate attacks by the opposition armed forces, including Islamic States, which 'besieged civilians, carried out direct attacks on civilians and indiscriminate attacks, sometimes reportedly using chemical agents, perpetrated numerous unlawful killings, and subjected thousands of women and girls to sexual slavery and other abuses' [8, p. 349]. According to the UN Report 2011, the governmental forces are also responsible for the collective punishment, destruction of property, denial of food and water and tortures of civilians According to the UN Independent International Commission of Inquiry Free Syrian Army and other opposition forces are accused of unlawful killings, kidnapping, torture, sexual abuses and use of children for as the fighters [5].

Civilians are not the only victims of the Syrian conflict. Humanitarian personnel are also the target of the state and non-state armed forces. The directed and intentional attacks against buildings, material, medical units and transport, and personnel using the

distinctive emblems of the Geneva Conventions in conformity with international law are prohibited by the ICC Statute and considered as a war crime.

Both state and non-state armed forces neglect the rules relating to the human treatment of the detainees. According to the report of the Human Rights Watch Syrian government has over 20 different methods to torture the detainees. All of them are held in the inhuman conditions and denied the medical assistance. The non-state armed forces use the videos with the cruel killings of the Syrian soldier as a tools to threaten the government and civilians.

In order to limit the sufferings caused by the armed conflict, IHL restricts the use of certain weapons. Unconventional weapons refer to the weapons of mass destruction (WMD), including the nuclear, biological, and chemical. The use of chemical weapons is prohibited by the 1993 Chemical Weapons Convention (CWC) [9, p. 3]. In 2013 about 1000 people were killed in the Ghouta chemical attack launched by the Syrian state forces. The Final UN Mission report stated that there is the evidence of use of the chemical weapons in the Ghouta on 21 August [2]. The attack was followed by the UNSC resolution 2118, which condemned the use of chemical weapons in Syria, in particular the attack on 21 August 2013 [10, p. 2] and endorsed the decision of the OPCW Executive Council from 27 September 2013 about the destruction of chemical arsenals in the fastest and safest ways. Syria was acceded as a party of the CWC and expressed its intention to destroy all arsenal of the chemical weapons.

The case of Syria has revealed the weaknesses of the IHL in terms of new war. Firstly, the criteria for the classification of the armed conflict is too narrow. It is not clear how the intervention of the external forces influence the conflict or when the conflict is internationalized to the level of IAC. Turkey and the US are leading their own wars on the territory of Syria. The only question remains about the latest US strikes against the Syrian air field. If the US led coalition uses the force against Assad government, the conflict can reach the level of international armed conflict. There-

fore, the enhanced criteria for the classification of the conflict is needed in the IHL. Beside the classification, IHL typology of the armed conflicts cannot describe the full complexity of the modern wars. The modern conflicts cannot be defined in the narrow scopes of IAC or NIAC. The latter has a tendency to become internationalized by the involvement of the external forces. The scope of norms concerning the conduct during NIAC is very limited. The IHL does not give any legal status of combatants to the fighters of the non-state armed groups and the civilians, which participate in the hostilities. There is no notion of the prisoner of war in NIAC.

Conclusions

Thus, the fighters of the armed forces do not receive the same level of protection as soldiers in the international armed conflict. The example of Syria also showed that there are no efficient enforcement mechanisms of the IHL. The parties to the conflict show the full disrespect to the norms and general principles of the IHL. The international commu-

nity cannot stabilize the situation and create a ground for the talks between the opposition and the government. The involvement of the non-state armed forces, which are leading their own wars in the Syrian conflict is another challenge for the implementation of the IHL principles and norms there. ISIS and extremist Islamic groups use the unconventional methods to gain control of the territory. Thus, they neglect the minimum level of the human treatment.

Thus, the current IHL is inefficient in the conditions of the modern warfare, it is still needed to regulate the future hostilities. The current IHL cannot adequately respond to the conditions of the modern conflicts. It needs to be reaffirmed and clarified. One of the most important development in terms of asymmetric 61 conflicts is the recognition of the non-state armed groups as equal parties and creating the regulations, which are binding for them. Thus, it should be development and modified according to the new international environment and challenges created by the new types of war.

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