

Секция «Английский язык и право (на английском языке)»

Human rights in non-international armed conflicts

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The correlation between the International Human Rights Law (further IHRL) and the International Humanitarian Law (further IHL) has for a long time been a topic to discuss. Traditionally, IHRL and IHL have been regarded as two distinct bodies of law with different subject matters, but this situation changes nowadays[1]. In general, IHRL has a purpose to protect people in peace time, and IHL, which is also sometimes called “law of war” or “law of the armed conflict”, has a purpose to protect people during armed conflicts of an international or non-international character. IHL is intended to alleviate the effects of armed conflict by protecting those not, or no longer, taking part in it and by regulating the means and the methods of warfare. IHRL itself is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain behavior or benefits from governments[2]. Human rights are inherent entitlements which belong to every person as a consequence of being human, but from some human rights certain derogations are permitted. The aim of the further research is to compare IHRL and IHL and describe the existing approaches defining relations between them to point out the most favorable to my point of view. The International Court of Justice in its Wall Advisory Opinion[3] produced the following observation:

"As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law[4]".

The question, raised in this work, is whether the International Human Rights Law can be applicable in parallel with the International Humanitarian Law during internal armed conflicts or not, and if yes - at what extend. This question seems to be very relevant, because of the rising number of internal conflicts and also because of the usefulness of clarification of the scope of obligations of actors during armed conflicts. To find out the answer to this question it is needed to examine different sources of the IHRL and the IHL as well as sources of the Public International Law in general. Various international treaties and international customs will be compared with each other and different correlations might be pointed out. Moreover, the case law of the International Court of Justice, the International Criminal Court, the European Court of Human Rights, the Inter-American Court of Human Rights and Inter-American Commission on Human Rights, Reports and Resolutions of the UN bodies and also doctrine in this area will represent as full picture of this issue as possible. One more issue to be viewed further is related to possible consequences of not respecting law during non-international armed conflicts and responsibility for violations of it. This responsibility may occur at the national level or at the international one. Alleged violators may be brought before the national courts, the International Criminal Court or the International Human Rights Bodies.

The legal approaches which will be used in this work are two types of research: descriptive and analytical ones. The descriptive research includes such methods as comparative and correlational, and also fact-finding of different kinds. While doing an analytical research, the author

will use found facts or information already available and make her analysis to make a critical evaluation of the material.

Источники и литература

- 1) Cordula Droege, “Elective affinities? Human rights and humanitarian law”, *International Review of the Red Cross*, Vol. 90, Number 871, Sep. 2008, p. 501.
- 2) ICRC Advisory Service on International Humanitarian Law, *International Humanitarian Law and International Human Rights Law, Similarities and differences*. URL: <https://www.icrc.org/en/download/file/1402/ihl-and-ihrl.pdf>
- 3) *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion [2004] ICJ Reports 136.
- 4) *Ibid*, para 106.