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INTERNATIONAL LEGAL PROTECTION OF THE ENVIRONMENT AND OBJECTS OF CULTURAL HERITAGE (CULTURAL PROPERTY) DURING ARMED CONFLICTS

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ABSTRACT

This article discusses topical issues and the content of international legal protection of the natural environment and cultural heritage during armed conflicts. The article subjected to a legal analysis of the current international legal acts containing norms on the protection of the natural environment and cultural heritage during armed conflicts and, on the basis of this, an objective analysis of the existing legal conflicts in these areas is given. The article contains the author's conclusions and proposals for improving the international legal protection of the natural environment and cultural heritage during armed conflicts.

KEYWORDS

Environment, natural environment, cultural heritage, cultural values, habitat, protocol, additional protocol, convention, ICRC, The Hague.

INTRODUCTION

Modern international law is developing in several directions. First of all, the emergence of new branches, such as international cultural law, international human rights law, international environmental law, the second trend is the increasing connection and intertwining between different branches of international law. In this regard, domestic international lawyer B.E. Ochilov

notes that “the development of the law of armed conflict in the last 20 years proves that not only persons, but also the environment fall within the sphere of influence of the law of armed conflict” [1], as well as objects of cultural heritage, we add. As F. Antoine notes, international legal environmental protection is not only a separate branch of public

international law, in view of the complexity of regulated legal relations, but is also an integral part of the modern law of armed conflict [2].

The current state of our planet is cause for serious concern, to say the least. As stated by Gro Harlem Brundtland, former Prime Minister of Norway and Chair of the International Commission on Environment and Development, “we are living in a historic period of transition, when awareness of the conflict between human activities and the natural environment is becoming almost universal. [3].

The protection of the natural environment during armed conflicts is guaranteed by Art. 55 and Art. 35 par 3 of Protocol I. This type of protection was first proposed on 21 March 1972 at the ICRC-organized Conference of Governmental Experts on the Reaffirmation and Development of the Law of Armed Conflict Applicable in Times of Armed Conflict.

The following versions of the articles were put up for discussion:

"It is prohibited to use weapons, shells or other means and methods of warfare that disturb the existing conditions of life on Earth and worsen the ecological situation".

"It is forbidden to use means and methods of warfare that destroy the natural habitat of man." [4].

The International Red Cross and Red Crescent Movement at about the same time also addressed this problem. In particular, at the XXII International Conference of the Red Cross it was stated: “As for the facilities necessary for the survival of the civilian population, special importance was attached to the protection of the natural environment” [5].

Although the proposal put forward by the ICRC at the 1974-1977 Diplomatic Conference did not contain any provisions specifically aimed at protecting the natural environment, many of the conditions it proposed implied the careful management of natural resources, especially those essential to the survival of the civilian population.

Article 55 of Additional Protocol I was created on the basis of this article, renumbered 48 bis and adopted by consensus.

THE MAIN FINDINGS AND RESULTS

The second trend can be traced in the joint proposal put forward by the delegations of the former three socialist countries, Czechoslovakia, Hungary and the GDR. This proposal did not focus on the survival and well-being of the civilian population, but on protecting the natural environment by limiting the methods and means of warfare used. The second trend, which was a direct consequence of the enormous damage done to the environment during the Vietnam War, led to the adoption of article 35, paragraph 3, of Protocol I, entitled “Basic norms”.

One of the most difficult issues has been the establishment of a critical threshold for determining serious environmental damage.

Although Article 35 par. 3 of Article 35 and Article 55(1) of Protocol I have different purposes, the consistency of their prohibition is ensured by the use of a common criterion of “extensive, long-term and serious harm”.

It is interesting to compare this wording with the wording of Article 1(1) of the ENMOD Convention*, which refers to means of “impact on the natural environment that have widespread, long-lasting or serious consequences”.

*The use of different alliances - and/or - in the two instruments means that while Protocol I prohibits only methods or means of warfare that simultaneously violate all three conditions mentioned above, the ENMOD Convention prohibits all those methods and means that violate at least one of these conditions. Therefore, the Convention has a broader scope of application.

In addition, the Protocol focuses on the protection of the natural environment regardless of the weapons used, while the Convention is specifically aimed at preventing the hostile use of means to affect the natural environment.

It should also be noted that the prohibition contained in the Protocol applies only during armed conflict, while the provisions of the Convention apply both during armed conflict and in peacetime.

In addition, the two documents have different understandings of some terms. According to the agreement on the interpretation of the text of the ENMOD Convention, the term “broad” should be understood as extending to the territory of several hundred square kilometers, the term “long-term” means a period of several months (about three), and the term “serious” means a significant disruption of the normal course of human life, significant damage to natural economic resources or other assets [6].

It is much more difficult to define precisely the terms used in the Protocol, since its provisions aim to protect the natural environment in general and are therefore less specific. However, it is universally recognized that “extensive” means an area of less than a few hundred square kilometers, “long-term” means ten years or more, and “severe” means “damage which, over a long period of time, endangers the survival of the civilian

population or is likely to cause serious health problems”.

However, the two documents should not be seen as addressing the same issues, but rather as complementary, with one referring to geophysical warfare and the other to environmental warfare.

Additional Protocol I.

Additional Protocol I [7] contains a number of provisions that, although not primarily aimed at preventing attacks directly on the natural environment, nevertheless provide indirect protection of the natural environment in various ways.

Article 51, for example, prohibits indiscriminate attacks (paras. 4 and 5), attacks that “employ methods or means of warfare the effects of which cannot be limited as required under this Protocol” (para. 4c), and bombing attacks that “treat a series of distinctly separate and distinguishable military objectives as a single military objective” (para. 5a). The Article also reaffirms the principle of proportionality (para. 5b).

Under Article 52, which deals with the general protection of civilian objects, attacks must be strictly limited to military objectives (paras. 1 and 2).

Article 54 provides for the protection of objects necessary for the survival of the civilian population, such as “food supplies, food-producing agricultural areas, crops, livestock, drinking water facilities and supplies, and irrigation facilities” (para. 2).

Article 56 refers to the protection of installations and structures containing dangerous forces, namely “dams, dikes and nuclear power plants ...”.

Article 57 lists a number of precautions to be taken during military operations as well as during their preparation.

Article 58 sets out various precautions to be taken by belligerents on their own territory in order, among other things, to ensure the protection of civilian objects.

Additional Protocol II [7, P.297-309].

Commission III had proposed many provisions similar to those contained in Protocol I, but they had not subsequently been adopted by the Plenary. The desire to simplify the text, which guided the authors of Protocol II, explains the fact that

Article 14 (“Protection of facilities necessary for the survival of the civilian population”) and Article 15 (“Protection of installations and structures containing dangerous forces”) are the only ones that contain provisions relating to indirect protection of the environment.

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (October 10, 1980) and its three Protocols [7, C.196-214].

Additional Protocols I and II of 1977 prohibit the indiscriminate use of weapons, but not the weapons themselves; nor do they specify which weapons are covered by this prohibition. In an attempt to resolve this problem, the ICRC held two conferences of experts, one in Lucerne in 1974 and one in Lugano in 1976. In addition, Resolution 22 of the Diplomatic Conference recommended that a conference of governmental experts on these issues be held no later than 1979.

In implementation of this recommendation, conferences were held in September 1979 and September 1980 and led to the adoption of the Convention on Prohibitions or Restrictions on the Use of Nuclear Weapons on October 10, 1980. The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects and its three Protocols: Protocol I on Non-Detectable Fragments, Protocol II on Mines, Booby Traps and Other Devices and Protocol III on Incendiary Weapons.

With regard to environmental damage caused by the use of various methods and means of warfare, it is regrettable that the 1980 Convention is silent on explosive munitions [8].

Protocol I on Non-Detectable Fragments has virtually no relevance to the issue of environmental damage caused by the use of certain weapons.

Protocol II on mines, booby traps and other devices prohibits or restricts the use of these weapons, which were used extensively during the Second World War, the Indochina War, the Arab-Israeli Wars and, more recently, in Afghanistan.

While the use of these weapons may not cause widespread, long-lasting and severe damage to the natural environment, they do have the potential to cause some form of damage. In addition to causing accidents that kill or injure people and animals, the use of these weapons significantly impedes the recovery of agriculture and other economic sectors, as well as spoiling the appearance of the area by leaving craters in the ground and the ruined hulks of mined vehicles, barbed wire and other signs of war in large areas.

Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons is of particular interest.

With regard to environmental damage, the 1973 United Nations report on the use of incendiary weapons concludes: “We do not know enough about the effects that such extensive fires may cause in such circumstances, but it is feared that they are accompanied by irreversible ecological changes with serious long-term consequences totally incommensurate with the results intended. Although we are unable to predict the severity of this threat, it is disturbing to see the massive use of incendiary munitions in rural areas” [9].

Do the existing legal norms provide effective and sufficient environmental protection in case of armed conflict?

Some authors, such as G. Herceg, believe that “all types of environmental warfare are already prohibited” [10]. However, some conflicts, such as the Iran-Iraq war, the Persian Gulf War and the bombing of Yugoslavia have clearly shown that the existing provisions on the protection of the natural environment are not free from various shortcomings in terms of their practical application.

Both the environment and other peaceful objects, especially cultural property, require special international legal protection in times of armed conflict.

The Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at an international conference in The Hague on May 14, 1954. [11], provides for the following measures:

a) prohibition of the use of these values, structures for their protection, as well as the immediately adjacent

areas for purposes that may lead to the destruction or damage of these values in the event of armed conflict;

b) the prohibition, prevention and suppression of any act of theft, robbery or misappropriation of cultural property in any form, as well as any act of vandalism against such property;

c) prohibition of requisition and any repressive measures against cultural property.

As rightly noted by I.E. Martynenko, “while giving high marks to the legal technique used in the development of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, nevertheless, it should be noted that there is no proper mechanism for its observance, as evidenced by violations of this important international legal instrument in the course of the ongoing and ongoing armed conflicts” [12].

The First Additional Protocol of 1977 therefore prohibits any hostile act directed against those historical monuments, works of art or places of worship that constitute the cultural or spiritual heritage of peoples. The Protocol supplements the system of guarantees for the protection of cultural property introduced by the 1954 Hague Convention.

The most important cultural property is taken under special protection and included in the International Register of Cultural Property, which is maintained by the Director-General of UNESCO; a copy of the Register is kept by the Secretary-General of the United Nations and by each party to a military conflict. Once inscribed on the International Register, the property is granted military immunity and the belligerents are obliged to refrain from any hostile act directed against it.

Cultural property under special protection during armed conflicts must be marked with a distinctive

emblem. The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property lists acts resulting directly or indirectly from the occupation of a country by a foreign power.

With regard to the protection of cultural property during armed conflicts, it is obvious that UNESCO alone cannot guarantee compliance with the provisions of the 1954 Convention. We believe that it would be preferable to entrust not only the Director-General of UNESCO but also the Secretary-General of the United Nations with this responsibility. The general and special protection of cultural property enshrined in the 1954 Convention is not supported by adequate provisions on liability in case of violation of the provisions of the Convention.

Ideally, the natural environment should be fully and unconditionally protected. However, this will not happen until awareness of the value of our natural heritage becomes truly universal [13].

CONCLUSION

We therefore believe that the best way to enhance environmental protection is through more effective measures to enforce already existing agreements, as well as by extending the scope of some provisions by "demilitarizing", for example, protected natural areas. This would represent a significant achievement in the field of international political-legal protection of the environment during armed conflicts.

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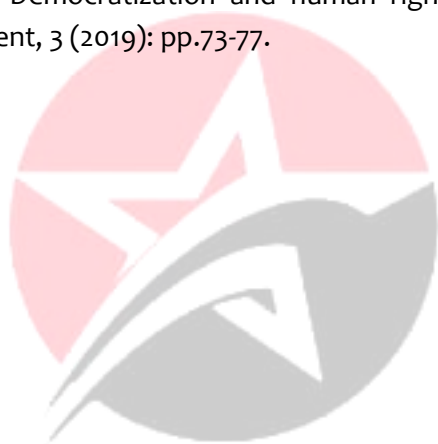
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