

International Legal Norms, Providing Indirect Environmental Protection Due to the Military Activity of States

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Abstract: This study discusses the basic international instruments that provide indirect protection of the environment due to the military activities. Geneva convention about the protection of civilians during the time of war in 1949 and a number of other important declarations and conventions adopted at different times are among these instruments. Currently, contemporary international law developed the system of rules governing the prohibition and limitation of liability for environmental damage. This study focuses on the study of international legal instruments relating to the protection of the environment in relation to the military activities of states.

Key words: Environment, the military activities of states, the methods and means of warfare, the legal protection of environment, remnants of war, nuclear weapons test

INTRODUCTION

An uncontrolled development of technology, particularly in the military field may cause irreparable negative consequences, especially for environment. In particular, the damage caused to flora and fauna by terrestrial nuclear explosions is a great one. According to a special committee data that studied the effects of nuclear weapons testing at the site in Nevada State Desert (USA), each of the nuclear explosions, according to its power destroyed completely the life on the area from 73-204 ha (Timerbayev, 1999).

The greatest damage to the environment is applied, of course, by wars, during which flora and fauna is destroyed everywhere. An example of this is Indochina where the deliberate and systematic actions of the US armed forces destroyed much of the flora and fauna and this makes an adverse impact on the economies of Indochina today. To minimize the consequences of the military industry on the environment a number of international acts was developed and adopted. UN general assembly resolution about the historical responsibility of states concerning the conservation of nature on Earth for present and future generations should be mentioned among these documents. The resolution was adopted at the XXXVIth session in 1981, on the initiative of the Soviet Union as well as the World Charter for Nature proclaimed at the XXXVIIth session of the UN general assembly in 1982 (Anonymous, 1982). For the first time in the practice of international relations, they demonstrate an organic relation between the preservation of the environment, the preservation of peace in the world and the reduction of the arms race.

MATERIALS AND METHODS

International legal acts regulating environmental protection: The fundamental international act providing an indirect protection of the environment due to the military activity of the states Geneva convention about the protection of civilians during the war of 1949 (hereinafter Convention IV). It contains the rules concerning protected persons, the citizens located on an occupied territory, interned persons and the places of internment. According to the convention IVth, the places of internment will not be located in the areas particularly exposed to the military danger (Article 83). In order to ensure the necessary protection in all places of internment under the threat of air raids and other hazards of war, properly built shelters shall be provided in sufficient quantity (Article 88) and all appropriate fire prevention measures shall be adopted (Article 88). Thus, the environment of the specified places will also be safe and it will be protected. Note that the Additional Protocol II of 1977 to Geneva conventions contains the provisions relating to the protection of objects necessary for the survival of civilian population, namely, "agricultural areas producing food, crops, livestock, the facilities for drinking water and its supplies and also irrigation works" (Article 14). The statement about the protection of units and structures containing dangerous forces, namely dams, dikes and nuclear power plants (Article 15). In this case, we believe that environmental protection does not depend on the nature of an armed conflict.

The feature of MPOS is a prominent role of international instruments which are often named as soft law. These guidance documents (declarations, strategies, guidelines, conduct principles, etc.) serve as a subsidiary source of international law. The Stockholm Declaration of the United Nations on the environmental issues in 1972, which identified the approaches to environmental problems solution and which affects the legislative process is the typical one in this respect. Since, the rules on mutual environmental safety, the protection of the marine environment from pollution and a number of other rules received a further confirmation and the development in the international legal practice of states. In particular, the document of the UN Conference on the Environment and Development (1992), Declaration of Rio de Janeiro recorded a number of principles for the transition to sustainable development and emphasized that people are entitled to a healthy and an active life in harmony with nature.

Antoine (1995) noted rightly in the Additional Protocols I and II of 1977 to Geneva conventions the nonselective use of weapons is also prohibited. To solve the problems, the ICRC convened two conferences in Lucerne (1974) and Luganov (1976). Besides, the resolution no. 22 of the diplomatic conference on the issue of confirmation and development of international humanitarian law applicable in armed conflicts of 1974-1977, keeps the recommendations that the conference of government experts dedicated to these issues would held in September 1979. In September 1980, the convention on the prohibition or restriction of certain conventional weapons use which may be deemed to be excessively injurious or which have indiscriminate effects as well as the protocol. The Protocol I on non-detectable fragments, Protocol II on the prohibition or restriction of mines, booby-traps and other devices use and the Protocol III about the prohibition or restriction concerning the use of incendiary weapons which indirectly contributes to the protection of environment.

RESULTS AND DISCUSSION

International legal regulation of damage caused by military actions: Regarding the damage caused to environment during the application of different methods and means of warfare, the convention of 1980 does not mention any the explosives. An example of this is the war in Vietnam, where the USA used >14 million tons of shells (SIPRI, 1978). And, no one knows how many shells were left in the ground. In this regard, in 2003, recognizing the serious post-conflict problems caused by explosive remnants of war and understanding the need of a protocol

conclusion on post-conflict general remedial measures in order to minimize the risks of explosive remnants of war influences (Anonymous, 2003) the protocol on explosive remnants of war (Protocol V) was adopted. According to this protocol, an unexploded ammunition means explosive ammunition that was initiated, fused, armed or otherwise prepared for use and used in an armed conflict and no one knows the level of damage for people and environment.

Thus, Protocol II prohibited or restricted the use of mines, booby-traps and other devices, prohibits or restricts the use of this type of weapon that was used during the Second World War, the war in Indochina, in the Arab-Israeli wars and in Afghanistan and may even cause the environmental damage in the future, result in the death of people and animals and would impede the restoration of agriculture and other sectors of economy (Mosin, 2015).

Protocol III on the prohibition or restriction of incendiary weapon use is one of the most important documents. In Vietnam, during the military operations >100 000 tons of napalm were used which was the part of devastation strategy carried out by American armed forces and led to the deformation of forests and plantations, the destroying of rice fields, the bombing using incendiary weapons, the erasure of entire territories from the Earth by fires and bulldozers (Anonymous, 1973). In this case, the example of Vietnam is a clear confirmation.

The seriousness of the environmental threat at the use of such weapons is emphasized in the final part of the the United Nations Report (1973). There is an emphasis on the irreversibility of environmental changes, entailing serious consequences of long-term nature that are not comparable with the initial results which were planned to receive. Despite the fact that we are not able to predict the severity of this threat, it could not cause the concern regarding the mass use of incendiary weapons in rural areas (Mosin, 2015).

It is very important to note that the Protocol III has the provisions which refer to the prohibition to attack the civilian population as such individual persons or civilian objects by incendiary weapons at any events (Article 2, Paragraph 1). Here, we see the confirmation of Articles 51 and 52 provisions concerning the additional Protocol I of 1977. The convention on the prohibition of development, production and stockpiling of bacteriological (Biological) toxic weapons and on its destruction (Anonymous, 1999) was adopted on 16 December 1971. The text of the Convention Preamble (1971) reflects the provisions that recognize the importance of the protocol on the prohibition of asphyxiating, poisonous or other gases and bacteriological weapon use during a war, signed at

Geneva on 17 June 1925 as well as the contribution made by the specified protocol and it continues to mitigate the horrors of war, confirming its adherence to the principles and objectives of that protocol and calling upon all states to its strict compliance, recalling that the General Assembly of the United Nations repeatedly condemned all actions contrary to the principles and objectives of the Geneva Protocol issued on June 17, 1925 (Anonymous, 1982), wishing to contribute to the strengthening of confidence between peoples and to the general improvement of the international atmosphere.

It should be noted that Russia, in accordance with its international obligations provides an annual information in the United Nations under the agreed confidence making measures in the biological sphere which contributes to greater openness in this area. In 90s, Russia adopted a series of laws and regulations, the purpose of which was to exclude the very possibility of carrying out the activities which violate it. Among them is the presidential decree, according to which the development and implementation of biological programs violating BTWC is not allowed within the Russian Federation territory and the monitoring of convention requirements compliance is performed. The criminal code was added by the supplements providing for liability (including imprisonment) for the activities contrary to the convention. The appropriate additions are introduced into the Customs Code of the Customs Union.

The convention on the prohibition of military or any other hostile use of the means which damage the environment (Anonymous, 1976). The states acting as the parties to this convention agreed that the use of means influencing environment for peaceful purposes could lead to the improvement of interaction between a man and nature and contribute to the preservation and the improvement of the natural environment for the benefit of present and future generations that military or any other hostile use of such means could be extremely detrimental to the welfare of people. In particular, the convention emphasizes that the member states to the convention undertake not to engage in military or any other hostile use of environmental modification means which have widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other member state. At the same time, they undertake not to assist, encourage or induce any state, group of states or an international organization to carry out the activities contrary to the provisions of the conventions.

A special role in the environmental protection is played by the agreements aimed to limit the arms race between states. We note in particular the Moscow treaty prohibiting nuclear weapons tests in the atmosphere,

outer space and under water (Anonymous, 1963a, b). This agreement emphasizes the prohibition and prevention of any nuclear weapon test explosions and other nuclear explosions by member states in any place under their jurisdiction or control, including on the ground and under the ground, in the atmosphere, in outer space, under water, in a sea, in another environment if such an explosion causes the nuclear precipitation outside the territorial borders of a state. At that the member states are obliged to refrain from causing, encouraging or any participation in the carrying out of any nuclear weapon test explosions or any other nuclear explosions.

The second contract was the contract about the non-distribution of nuclear weapons (Timerbayev, 1999). This agreement embodied the provisions of the Moscow treaty of 1963. The treaty on nuclear weapons non-distribution detailed the provisions on prohibition, nuclear testing performance in the atmosphere, in space and under water and thus, hampers the development of a military nuclear program which may bring irreparable consequences for the environment.

The treaty on the prohibition of nuclear weapon and other weapons of mass destruction placement on seabeds and ocean floors and the subsoil thereof. The feature of this agreement is that the participants are not entitled to set and to place on a seabed and ocean floor the subsoils thereof beyond the outer limit of a seabed area any nuclear weapons or any other weapons of mass destruction as well as structures, launchers and any other devices specifically designed for keeping, testing or using such weapons. The adoption of this agreement allowed to maintain the ecological environment of the world ocean from nuclear weapons and prevented many conflicts related to the use of its continental shelf by this or that country and excluded a vast area of the planet from the scope of the arms race the seabed and ocean floor and the subsoils thereof.

In 1994, ICRC sent to the United Nations the document entitled "The guidelines for military manuals and instructions on the protection of the environment during the periods of armed conflict" for review. This document was not approved officially but the United Nations General Assembly offered all states to "to consider properly the possibility of their (the guidelines) inclusion in their military manuals and other instructions for the armed forces members" at its 49th session (Anonymous, 1994). "The guiding principles" contain the general principles of International Law that protect the environment during the period of armed conflicts. They (general principles) draw the line between the environment and the military objectives that may be attacked. Along with the general principles of

International Law, this document has specific environmental safety standards. The environmental safety is provided by the prohibition to destroy civilian objects, except for the cases when such a destruction is justified by military necessity. In particular, the states should take all necessary measures, provided by international law, in order to avoid:

- The conversion of forests and other kinds of plant cover into the object of attack using incendiary weapons except for the cases of military objects hiding within these areas
- The attacks on civilian objects necessary for the survival of civilian population (food product reserves, agricultural areas, the structures and objects of drinking water supply)
- The attacks on potentially dangerous units and structures (dams, nuclear power plants, dikes, etc.) even if they are military objects, if such an attack may cause severe losses among the civilian population and when such units and structures are subject to special protection in accordance with the Additional Protocol I to the Geneva conventions
- The attacks on historic monuments, works of art or the places of worship which constitute the cultural and spiritual heritage of peoples

In accordance with the guidelines the nonselective installation of land, sea and remote mines is prohibited without the mechanism of self neutralization. The very location of minefields must be recorded.

The damage to the environment by the way of reprisals (Additional Protocol I to Geneva conventions) is also prohibited for the states. In this regard, states are encouraged to conclude further agreements between each other in order to provide additional protection of the environment during the periods of armed conflicts. At the same time, the states are obliged to bring the guidelines the military officers, the civilian population include them in educational programs. In the case of an armed conflict, states also shall maintain, protect and not hinder the work of impartial organizations contributing to the prevention or elimination of the environmental damage. In case of these rules violation, the activity contributing to their violation, stops. The competent authorities are informed about an incident and guilty persons. If some serious violations take place, the perpetrators must be brought to justice.

Summary: The development of science and technology especially in the military field may lead to irreversible negative consequences for the environment. The fundamental international instruments providing indirect protection of the environment, in particular the Geneva

convention concerning the Protection of Civilian Persons during the period of War (1949) and a number of important declarations and conventions adopted at different times, formed a system of rules governing the prohibition and limitation of liability for environmental damage. After the study of international legal instruments relating to the protection of the environment due to the military activities of a state, we identified the following trends. The mandatory application of international standards in the field of environmental protection is closely related to the prohibition or restriction of weapons and ammunition use in the course of military actions, the prohibition of non-selective use of weapons, the prohibition of mass destruction weapons use in the atmosphere, water and under it, on the ground and in space. The international instruments emphasize the idea of taking all measures to prevent the destruction of forests and an ecosystem, civilians and civilian objects, the objects bearing potential danger to the population and the attack on the objects constituting the cultural and spiritual heritage of peoples.

CONCLUSION

Thus, the study considers the basics of international legal regulation of prohibition, restriction and liability for the damage to the environment due to the military activities of states. Currently, this system is characterized by the following:

Firstly, the international community developed and implemented an effective system of international norms restraining the arms race and reducing the negative impact on the environment. It is encouraging that the majority of countries, the UN members adopted and ratified these legal provisions protecting the environment. The system stated the obligation of states to take all feasible precautions in order to avoid environmental damage or to reduce it to a minimum and the fact that the states are obliged to apply the rules of International Humanitarian and Ecological Law during armed conflicts.

Secondly, the system of norms providing an indirect protection has its own disadvantages. During hostilities, not all states are governed by the system of international legal norms. In their speeches, at the International Court of Justice concerning the case of nuclear weapons, many states emphasized that international law recognizes the importance of environmental protection during the periods of armed conflicts and did not limit themselves by treaty requirements, applied to armed conflicts. The recent developments at the sector of Gaza in January 2009 showed that Israel ignores the provisions for the environmental protection, arguing that it is fighting with Palestinian terrorists.

Thirdly, the system of international legal norms, providing an indirect protection of the environment does

not have sufficiently developed measures increasing the responsibility of States for the consequences of environmental pollution as the result of military actions.

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