

## Modern norms of international humanitarian law in armed conflicts

**Resume.** The article examines contemporary international humanitarian law (IHL) and its adaptation to the conditions of modern armed conflicts. The author examines the main principles and sources of IHL, in particular the Geneva Conventions and their Additional Protocols, which establish legal norms and principles for the protection of persons who are not involved in hostilities or have ceased to participate in them.

**Keywords:** international humanitarian law, Geneva Conventions, hybrid warfare, cyber warfare, armed conflict.

**Statement of the problem.** International humanitarian law is one of the most important branches of international law which is designed to protect victims of armed conflicts and to limit the methods and means of warfare. In the context of modern armed conflicts, which are characterized by the emergence of new forms and methods of warfare, in particular, "hybrid wars", the issue of efficiency and effectiveness of international humanitarian law is of particular relevance.

Armed conflicts remain one of the most serious problems in the modern world. Despite numerous international agreements and commitments, violations of international humanitarian law are ubiquitous. The main challenge is to ensure compliance with these norms by all parties to the conflict, especially in cases where the conflict is asymmetrical or involves non-state armed groups.

**Analysis of recent publications.** Recent studies in the field of international humanitarian law point to a number of key challenges. In particular, they focus on the difficulty of applying traditional IHL rules to new types of conflicts, such as cyberwarfare, conflicts involving private military companies and non-state actors. In particular, S. Denysenko highlighted the current problems of international humanitarian law in the context of modern armed conflicts [3]; M. Hrushko studied the sources of international humanitarian law and domestic law [2]; V. Pylypenko analysed the application of international humanitarian law to armed conflicts of international and non-international character in the context of war crimes [17]; I. Zharovska studied the effectiveness of the rules of warfare and international humanitarian law [7]; O. Tsarenko and co-authors highlighted the issue of violations of international humanitarian law in the context of Russian armed aggression [20]; N. Mamedov analysed the scope of application of international humanitarian law during armed conflicts [12]. However, despite the available

works, modern norms of international humanitarian law in armed conflicts remain unexplored.

**The purpose of the article** is to analyse the current norms of international humanitarian law and their adaptation to the conditions of modern armed conflicts.

**Summary of the main research material.** International humanitarian law (IHL) is a branch of public international law that is applied during armed conflicts to limit the means and methods of warfare [ 14]. It has deep historical roots dating back to the first written laws of war. At the same time, the development of international humanitarian law is closely linked to the evolution of armed conflicts. The Geneva Conventions of 1949 and their Additional Protocols of 1977 laid the foundation for modern humanitarian law by defining the basic principles of protecting war victims and limiting the means and methods of warfare [4; 5; 6; 11].

In other words, IHL regulates relations between states regarding the protection of war victims and establishes rules for the conduct of armed conflicts, both international and non-international [16].

As noted by the authors of the manual "International Humanitarian Law", in particular R. Aliyev, M. Anufriev, V. Bortnyak, T. Hrytsai, O. Drozd, O. Dubenko, and according to the Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, IHL (the law of armed conflict) is a system of internationally recognised legal norms and principles applicable during armed conflicts. It establishes the rights and obligations of subjects of international law to prohibit or restrict the use of certain means and methods of armed struggle, provides protection for victims of conflict and determines responsibility for violations of these norms [13].

In general, international humanitarian law (IHL) is applied during armed conflicts to limit the means and methods of warfare and to protect victims of conflict.

The main task of international humanitarian law is to ensure the maximum possible protection of all persons who do not participate in hostilities or have ceased to participate (due to capture, voluntary refusal, illness or injury) during an armed conflict [15, p. 15].

Having analysed the opinions of experts on the system of international humanitarian law principles, V.H. Yarmaki identified a number of key sectoral principles, among which the most important are:

the principle of humanisation of armed conflicts is a fundamental principle of IHL;

the principle of limiting the means and methods of warfare (norm 70), which imposes restrictions on the parties to the conflict;

the principle of avoidance of unnecessary suffering, which prohibits the use of weapons or tactics that cause unnecessary suffering (norm 14);

the principle of honesty and good faith in the choice of means and methods of warfare;

the principle of environmental security, which provides for the protection of the environment during armed conflicts;

the principle of distinction (rules 1-24) between combatants and non-combatants, which obliges the parties to distinguish between civilians and military personnel;

the principle of respect for human rights, which remains relevant even during armed conflicts;

the principle of protection of civilians and objects, as well as victims of war, which provides humanitarian protection to those who are not involved in hostilities;

the principle of liability for violation of the norms and principles of IHL, which provides for prosecution for violations of international humanitarian law [21, p. 97].

Although international humanitarian law is based on a number of key principles, there is no stable, officially defined list. Principles such as humanity, proportionality, distinction between civilians and combatants, etc. are derived from the core provisions of the Geneva Conventions and other international treaties, but their specific wording may vary depending on the context and legal sources.

Thus, most rules of international humanitarian law (IHL) are derived from basic principles based on moral foundations, such as

humanity, mercy and compassion, and are interpreted in the context of war. These qualities are an integral part of human nature, and their loss leads to a loss of purpose and meaning in any activity, including defeating the enemy.

Each rule of international humanitarian law is the result of the specification of the general principle of humanity and its derivatives adapted to the conditions of armed conflict, such as the principles of distinction, proportionality, taking precautions during an attack, and the prohibition of causing excessive injury and unnecessary suffering.

In this context, it should be noted that the sources of IHL are international treaties and customary international law. The main treaty sources of IHL are:

The Hague Conventions of 1899 and 1907, which regulate the rights and obligations of belligerents in the course of hostilities, limit the means of warfare;

The Geneva Conventions of 1949 for the Protection of War Victims, namely:

Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I);

Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention II);

Convention relative to the Treatment of Prisoners of War (Geneva Convention III);

Convention relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV);

Additional Protocols to the Geneva Conventions of 1977, supplementary to the rules for the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts, and relating to the adoption of an additional distinctive emblem (Protocol III) [4; 5; 6].

In addition to the Geneva Conventions, which regulate the protection of victims of armed conflicts and are referred to as the so-called "Geneva law", international humanitarian law includes other treaty sources. In particular, the "Hague Law", which restricts the methods and means of warfare, includes such international treaties as the Chemical Weapons Convention of 1993 [10], the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction of 1997 [9], etc. Thus, the "Hague law" is focused on the regulation of armed struggle, while the "Geneva law" is focused on the protection of those who suffer as a result of conflicts.

Almost all states of the world are parties to the Geneva Conventions relative to the Protection of War Victims of August 12, 1949 [16]. These documents, together with the Additional Protocols of 1977, form the basis of modern treaty-based IHL.

According to M. Hrushko, custom is an extremely effective regulator of relations between various actors in the field of international humanitarian law. Its importance is reinforced by historical and political factors of the development of international legal relations. However, it should be emphasised that the issue of consolidation of customary international humanitarian law remains unresolved, and the process of its codification is ongoing within the international community. This is due, in particular, to the development of new types of weapons and modern methods of armed conflict. Thus, customary norms remain an important source of protection in situations not provided for by international treaties or when the parties to the conflict are not parties to them [2].

O. V. Senatorova notes that customary international humanitarian law consists of the practice of states, which is perceived as a legal norm (*opinio juris*) [19]. Customary rules of IHL continue to play an important role alongside treaty norms. In 2005, the International Committee of the Red Cross (ICRC) published a study in which it systematised 161 rules of customary international humanitarian law. This study is based on an analysis of state practice in applying these norms and recognising their binding effect on parties to armed conflicts [8].

We can state that modern international humanitarian law is based on a strong treaty and customary basis. Its principles and norms are aimed at humanising armed conflicts, protecting victims of war, and limiting the means and methods of warfare. Compliance with IHL is the responsibility of all states and other parties to armed conflicts. Violations of IHL are considered war crimes and entail individual criminal liability.

At the same time, N. N. Mamedov emphasises that the application of international humanitarian law is conditioned by the existence of objective conditions and does not depend on how the belligerents describe the situation [12]. That is, if an armed conflict arises between two or more states, even if the parties themselves do not recognise the state of war, such a conflict is characterised as international and the Geneva Conventions and Additional Protocol I apply to it [4].

Thus, for the application of IHL, the key is the actual existence of an armed conflict, not the

formal declaration of war or its recognition by the parties. An armed conflict is considered international as soon as one state uses armed forces against another, regardless of the intensity or duration of the confrontation [1].

Accordingly, IHL distinguishes between two main types of armed conflict:

1. International armed conflicts are confrontations between states with the use of armed forces. The Geneva Conventions and Additional Protocol I apply to them.

2. Non-international (internal) armed conflicts are situations where clearly defined military clashes between government forces and organised armed groups or between such groups occur within the territory of one state [14]. They are subject to Article 3 common to the Geneva Conventions and Additional Protocol II.

Multilateral conflicts involving various states and groups are mostly regional in scope. They can be classified as international or non-international depending on the composition of the parties.

The following main criteria are used to determine the existence of a non-international armed conflict and the applicability of international humanitarian law (IHL), in particular under Protocol II to the Geneva Conventions:

- intensity of the armed conflict - systematic use of armed violence, not individual incidents. It takes into account the duration, frequency of clashes, and the forces and means involved;

- the level of organisation of the parties to the conflict - the existence of a command structure, the ability to plan and carry out coordinated military operations. For non-international conflicts, this criterion is crucial, as it indicates the existence of a clear internal organisation of non-state armed groups;

- control over the territory - the ability of non-state armed groups to control a certain territory, which allows them to conduct continuous and coordinated military operations [5].

These criteria allow us to distinguish non-international armed conflicts covered by Protocol II to the Geneva Conventions from internal disturbances, acts of terrorism or isolated incidents. Only if there is sufficient intensity and organisation of the opposing forces can a situation be qualified as a non-international armed conflict, which implies the application of the relevant rules of international humanitarian law.

Thus, the concept of armed conflict is key to defining the scope of international humanitarian law (IHL). IHL applies to both

international and non-international armed conflicts based on objective criteria of confrontation and the level of organisation of the parties, regardless of the formal recognition of a state of war. It is particularly important to note that in non-international armed conflicts, the provisions of Protocol II to the Geneva Conventions apply only when the conflict reaches a certain level of intensity and non-state armed groups are sufficiently organised to conduct concerted military operations. This ensures the protection of victims and limits the means and methods of warfare in situations of actual armed conflict.

International humanitarian law (IHL) is designed to limit the means and methods of warfare and to protect civilians and victims of armed conflict. However, in practice, IHL is often violated by parties to conflicts. This leads to numerous civilian casualties, destruction of civilian infrastructure, and suffering of the wounded and prisoners of war.

Thus, the armed aggression of the Russian Federation against Ukraine, which began in 2014 with the occupation of Crimea and part of Donbas, and escalated into a full-scale invasion on February 24, 2022, clearly demonstrates the imperfection of the existing mechanisms of international humanitarian law and the need to adapt them to modern realities. The events of 2022-2024 revealed a new scale and severity of violations of IHL. In particular, during the full-scale invasion, numerous cases of systematic violations were recorded, including:

- indiscriminate shelling of civilian objects, including residential buildings, schools, hospitals, in direct violation of the principle of distinction between civilian and military targets enshrined in the Geneva Conventions. The most tragic examples of such attacks are the shelling of Mariupol, Kharkiv, Chernihiv, Kyiv and other cities of Ukraine;

- the use of prohibited weapons, such as cluster munitions and incendiaries, which causes massive civilian casualties and persistent contamination of areas, in violation of the prohibition on the use of weapons that cause excessive suffering;

- targeted attacks on civilian infrastructure, including energy facilities, water and heat supply, endangering the lives of millions of civilians and violating the principles of proportionality and humanity;

- crimes against civilians - mass killings, torture, enforced disappearances and deportations of Ukrainian citizens. Mass graves were discovered in cities such as Bucha, Irpin and

- Mariupol, which demonstrate systematic violations of IHL and crimes against humanity;

- misuse of symbols of protection - cases of using white flags or Red Cross symbols to deceive and conceal military operations, which is a direct violation of the Geneva Conventions.

According to S. Denysenko, the evidence that the Russian Federation is using unconventional methods of warfare against Ukraine includes: sending armed mercenaries and saboteurs to the territory of Ukraine to destabilise society, organising terrorist acts against numerous targets to intimidate the civilian population, spreading false information about Ukraine in the Russian media, and exerting political and economic pressure on Ukraine [3].

In this context, scholars unanimously declare the vulnerability and violation of international humanitarian law. Thus, O. M. Tsarenko, B. M. Tychna, and T. Y. Fedchuk in their study stated that Russia's armed aggression against Ukraine revealed the lack of effective mechanisms to monitor compliance with the Geneva Conventions, which leads to their systematic violations, and the international community's response to such violations remains insufficient. At this stage, international humanitarian law, according to scholars, needs to be updated and improved to ensure its proper implementation by all subjects of international law. In the context of the Russian aggression and full-scale invasion of Ukraine, the lack of norms that would ensure effective international coercion against the aggressor or violating state is particularly acute [20].

The aforementioned S. I. Denysenko also notes that the legal acts of international humanitarian law are outdated, which makes it difficult to apply them to regulate modern armed conflicts [3].

Accordingly, the current realities of the war in Ukraine highlight the need to update and strengthen existing IHL mechanisms to ensure more effective protection of civilians and accountability for violations.

Thus, the following are the main violations of IHL observed in modern armed conflicts:

- indiscriminate attacks on civilian objects, including residential areas, schools, hospitals;

- use of prohibited weapons (cluster munitions, chemical weapons, etc.);

- torture and cruel treatment of prisoners of war;

- sexual violence against civilians;

- denying access of humanitarian aid to the victims.

The reasons for non-compliance with IHL vary from deliberate violations to lack of awareness of the law by combatants. However, the result is always massive suffering and human rights violations.

In addition to the practice of application, there are gaps in the treaty-based regulation of international humanitarian law (IHL). The 1949 Geneva Conventions and their Additional Protocols do not cover all aspects of modern armed conflicts. In particular, the issue of prisoner exchange remains insufficiently regulated, which manifests itself in several key aspects:

lack of clear procedures and mechanisms for exchange. Although the Geneva Conventions provide general rules for the humane treatment of prisoners of war, they do not establish detailed procedures for the exchange of prisoners, especially in the context of contemporary non-international armed conflicts. This leaves considerable room for interpretation and allows parties to the conflict to use the issue of exchange for political purposes, delaying the process or refusing to implement agreements;

the difficulty of exchanging prisoners involved in war crimes. According to IHL, prisoners of war who may be involved in war crimes are not entitled to absolute immunity from prosecution. This creates additional obstacles to exchanges, as the parties may bring war crimes charges to detain certain individuals, making it difficult to agree on exchange lists;

problems with confirming the status and conditions of detention of prisoners of war. The lack of access to places of detention for independent organisations, such as the International Committee of the Red Cross (ICRC), often makes it impossible to verify the number of prisoners, their identity and health status. It also hinders a transparent and humane exchange process, violating prisoners' rights to humane treatment and family contact;

the role of third parties and international mediators. Although the ICRC has traditionally played the role of mediator in prisoner exchanges, modern conflicts often require the involvement of other international actors or states for mediation. At the same time, the absence of a single international mechanism to regulate the exchange poses risks to a fair and humane process;

politicisation of prisoner exchange. In modern conflicts, such as the war in Ukraine, prisoner exchange often becomes a tool of political pressure and trade. This violates the principles of IHL, which require humane

treatment of prisoners and prohibit their use as hostages.

Thus, the existing gaps in the treaty-based regulation of prisoner exchange require the development of more detailed international mechanisms and procedures that would ensure a transparent, efficient and humane process of returning prisoners to their homes.

Gaps in contract law must be filled by customary international law. However, its rules are not always clear and unambiguous. Therefore, it is imperative to further codify and progressively develop IHL to meet the challenges of today.

Another problem is the insufficient implementation of IHL at the national level. According to the Geneva Conventions, states are obliged to criminalise serious violations of IHL [11]. However, not all countries have properly fulfilled this obligation. Often, the penalties for war crimes are inadequate or non-existent.

There are also gaps in the implementation of IHL in Ukraine. The Criminal Code of Ukraine does not sufficiently detail the elements of war crimes and crimes against humanity in accordance with the Rome Statute of the International Criminal Court. The state bodies responsible for implementing IHL do not always have sufficient capacity to effectively investigate violations in accordance with international standards.

In addition, the rapid development of military technology and the emergence of new forms of armed conflict, such as “hybrid warfare”, pose new challenges to international humanitarian law.

For example, one of the main challenges for modern IHL is adapting to new types of armed conflict. Cyberwarfare, for example, raises the question of the applicability of traditional IHL rules to virtual space. Conflicts involving private military companies and non-state actors also create legal vacuums, as these groups are not always covered by existing international agreements.

To ensure the effectiveness of and strengthen compliance with international humanitarian law, a number of measures need to be taken at both the international and national levels. This includes:

ratification by all states of the main IHL treaties and development of the treaty base;

effective international mechanisms for monitoring and prosecuting violations of IHL;

proper implementation of IHL in national legislation and practice;

systematic dissemination of knowledge about IHL among the military, law enforcement and civil servants;

cooperation of states with the ICRC and other humanitarian organisations. International organisations, such as the Red Cross and the UN, play a key role in monitoring compliance with IHL and providing humanitarian assistance to victims.

Thus, only a comprehensive approach will ensure the real implementation of IHL and protect the victims of war. This is a shared responsibility of the entire international community. The lives and dignity of millions of people in armed conflict zones depend on it.

**Conclusions and prospects for further research.** International humanitarian law plays a key role in protecting victims of armed conflicts and limiting the means and methods of warfare. As the experience of modern conflicts shows, IHL norms are often violated, resulting in numerous civilian casualties and massive suffering.

The main problems with IHL compliance are deliberate violations of its norms by parties to conflicts, gaps in the treaty regulation of certain aspects, and insufficient implementation of IHL at the national level. The mere existence of IHL is not enough for its effective application - effective mechanisms for monitoring and prosecuting serious violations are needed.

Prospects for the development of IHL are associated with further codification of its norms and filling in gaps in regulation, in particular, on the exchange of prisoners, environmental protection, cyber warfare, etc. Another important area is to strengthen customary IHL, which complements treaty law.

At the national level, states must ensure the full implementation of IHL by criminalising war crimes and establishing effective mechanisms for investigating violations. In Ukraine, this involves aligning the provisions of the Criminal Code with the Rome Statute and strengthening the capacity of the relevant authorities.

Equally important is the dissemination of knowledge about IHL among the military, law enforcement, civil servants and the general public. Only by understanding the rules of warfare parties to conflicts will be able to comply with them. Therefore, educational work should be an integral part of IHL implementation.

The international community must strongly condemn any violations of IHL and take all possible measures to punish those responsible. Only the inevitability of accountability for war

crimes can serve as a deterrent to potential violators.

Compliance with IHL is a shared responsibility of all states and non-state actors. Respect for human dignity, even in times of war, is a sign of civilisation. Therefore, promoting the values of IHL and ensuring its implementation should be a priority for all of humanity.

Armed conflicts, unfortunately, remain a reality of the modern world. However, it is the rules of IHL that can limit violence and protect those who are not involved in hostilities. Therefore, strengthening and strict adherence to IHL is a moral and legal imperative of our time. The lives and fate of millions of people in conflict zones around the world depend on it.

Prospects for further research include the development of a new legal framework to regulate modern types of armed conflict, such as cyberwarfare and the involvement of private military companies. In addition, more in-depth research is needed on the mechanisms for ensuring compliance with IHL, including the issue of prosecution for violations.

Thus, international humanitarian law must constantly evolve in order to remain effective in protecting human rights and freedoms during armed conflicts.

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## Сучасні норми міжнародного гуманітарного права в збройних конфліктах

### Анотація

У статті досліджується сучасне міжнародне гуманітарне право та його адаптація до умов сучасних збройних конфліктів. Вивчаються основні принципи та джерела міжнародного гуманітарного права, зокрема Женевські конвенції та їхні Додаткові протоколи, які встановлюють правові норми та принципи для захисту осіб, які не беруть участь у бойових діях або припинили свою участь у них. Особлива увага приділяється ефективності та дієвості норм міжнародного гуманітарного права в умовах нових форм ведення бойових дій, таких як "гібридні війни". Проведено аналіз основних викликів, з якими стикається міжнародне гуманітарне право у сучасних умовах, та проблеми дотримання його норм.

Розглянуто порушення міжнародного гуманітарного права в умовах російської агресії проти України, підкреслено необхідність подальшої кодифікації міжнародного звичаєвого права для адекватного реагування на ці виклики. Обґрунтована важливість забезпечення максимально можливого захисту всіх осіб, які не беруть участь у бойових діях або припинили свою участь у них, включаючи захоплених у полон, тих, що добровільно відмовилися, хворих або поранених.

Акцентовано на вдосконаленні правової системи та впровадження нових правових заходів для посилення захисту жертв збройних конфліктів. Запропоновано рекомендації щодо підвищення ефективності міжнародного гуманітарного права та посилення відповідальності за його порушення.

**Ключові слова:** міжнародне гуманітарне право; Женевські конвенції; гібридна війна; кібервійна; збройний конфлікт.