

Artículo de investigación**Prohibited means and methods of armed conflicts****Заборонені засоби і методи ведення збройних конфліктів****Medios y métodos prohibidos de conflictos armados**

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The goal of this article is to analyze prohibited means and methods of armed conflicts under the International Humanitarian Law (IHL). Technological progress, the transformation of the nature of armed conflicts and the idea of the war based on terror are the main reasons why the list of prohibited means and methods of armed conflicts should be constantly updated.

The main text of this article consists of three thematic blocks. The first block represents an excursion into the history and development of IHL. It outlines its division into two branches, the Geneva and Hague law. The second part consists of definitions and characteristics of basic terms such as means and methods of armed conflicts. Under the means of warfare it is understood weapons, military equipment and other means used to cause harm and defeat the enemy. Methods of warfare are the procedures for using certain means to suppress the troops of the opposing side and inflict losses on it at the very minimum acceptable level. The third part of the study is devoted to new methods and means of warfare, among which the author analyzes such phenomena as hybrid wars, cyberwar and the involvement of private military and security companies in military operations.

Hybrid wars, widespread in the 21st century, raise very complex issues related to the classification of a conflict, as the line between the state of war and peace is blurring. Most often, information

Анотація

Метою даної роботи є аналіз заборонених засобів і методів ведення збройних конфліктів відповідно до міжнародного гуманітарного права. Технічний прогрес, трансформація характеру збройних конфліктів і ідея терористичних війн є основними причинами, чому перелік заборонених засобів і методів ведення збройних конфліктів повинен постійно оновлюватися.

Основний текст цієї статті складається з трьох тематичних блоків. Перший блок є екскурсом в історію і розвиток міжнародного гуманітарного права та містить характеристику двох його напрямів - Женевського і Гаазького права. Друга частина складається з визначень і характеристик основних термінів, таких як засоби і методи збройних конфліктів. Засоби ведення війни визначені як зброя, військова техніка, озброєння та інші засоби, що застосовуються для нанесення шкоди і поразки противнику, а методи ведення війни як порядок використання певних засобів з метою подолання військ противника і нанесення йому втрат на самому мінімальному допустимому рівні. Третя частина дослідження присвячена новим методам і засобам ведення війни, серед яких проаналізовані такі явища, як гібридні війни, кібервійни та залучення приватних

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about the nature of third-party intervention is kept secret. Moreover, such a third party refuses to acknowledge its participation in hostilities. It is concluded that parties to hybrid wars are required to comply with international standards that limit the methods and means of warfare and protect their victims.

The article examines the concepts of cyber war, identifies the main characteristics of this type of war. The main conclusion was made about the need of formation of new restrictive approaches regarding the prohibition of the use of cyber weapons.

Another trend related to modern armed conflicts is the process of delegating the performance of traditional state functions by states in favor of private military and security companies. The conclusion is drawn on the need to develop international legal standards for the activities of private military and security companies within the UN.

Keywords: Armed conflicts, biological weapon, chemical weapon, combatants, cyberwar, hybrid warfare, International Humanitarian law (IHL), mines, nuclear weapon, Unmanned Air Vehicles, warfare, weapon.

військових і охоронних компаній у військовій дії.

Гібридні війни, які отримали широке поширення у ХХІ ст., викликали дуже складні питання, пов'язані з класифікацією того чи іншого конфлікту, оскільки ускладнили встановлення меж між станом війни і миру. Найчастіше інформація про характер втручання третьої сторони у військові дії міститься у таємниці. Більш того, така третя сторона на практиці відмовляється визнавати свою участь у бойових діях. Зроблено висновок, що сторони в гібридних війнах зобов'язані дотримуватися міжнародних норм, що обмежують засоби ведення бойових дій і захищають жертв війни.

У статті досліджено поняття кібер-війни, визначено основні характеристики цього типу війни. Основний висновок зроблено про необхідність формування нових обмежувальних підходів щодо заборони використання кіберзброї.

Ще однією тенденцією, пов'язаною із сучасними збройними конфліктами, є процес делегування виконання традиційних державних функцій державами на користь приватних військових і охоронних компаній. Зроблено висновок про необхідність розробки міжнародно-правових стандартів діяльності приватних військових і охоронних компаній в рамках ООН.

Ключові слова: біологічна зброя, війна, гібридна війна, дрони, збройні конфлікти, зброя, кібервійна, комбатанти, міни, міжнародне гуманітарне право (МГП), хімічна зброя, ядерна зброя.

Resumen

El objetivo de este artículo es analizar los medios y métodos prohibidos de los conflictos armados en virtud del derecho internacional humanitario. El progreso tecnológico, la transformación de la naturaleza de los conflictos armados y la idea de la guerra contra el terrorismo son las principales razones por las cuales los medios y métodos de los conflictos armados deben actualizarse constantemente.

El texto principal de este artículo consta de tres bloques temáticos principales. El primer bloque representa una excursión a la historia y el desarrollo del derecho internacional humanitario. Describe su división en dos ramas, la ley de Ginebra y la de Haaga. La segunda parte consiste en definiciones y características de términos básicos como medios y métodos de conflictos armados.

Bajo los medios de guerra se entiende armas, equipo militar, armas y otros medios utilizados para causar daño y derrotar al enemigo. Según los métodos de guerra: el procedimiento para usar ciertos medios para suprimir a las tropas del lado opuesto e infligirle pérdidas al nivel mínimo aceptable. La tercera parte del estudio está dedicada a nuevos métodos y medios de guerra, de guerra cibernética, entre los cuales el autor analiza fenómenos tales como guerras híbridas y la participación de compañías militares y de seguridad privadas en operaciones militares.

Las guerras híbridas, generalizadas en el siglo XXI, plantean cuestiones muy complejas relacionadas con la clasificación de un conflicto, ya que la línea entre el estado de guerra y la paz se está desdibujando. Muy a menudo, la información sobre la naturaleza de la intervención de terceros se mantiene en secreto. Además,

dicho tercero en la práctica se niega a reconocer su participación en las hostilidades. Se concluye que las partes en guerras híbridas deben cumplir con los estándares internacionales que limitan los métodos de guerra y protegen a sus víctimas.

El artículo examina los conceptos de guerra cibernética, identifica las características principales de este tipo de guerra. La principal conclusión se hizo sobre la necesidad de la formación de nuevos enfoques restrictivos con respecto a la prohibición del uso de armas cibernéticas.

Otra tendencia relacionada con los conflictos armados modernos es el proceso de delegar el desempeño de las funciones estatales tradicionales por parte de los estados a favor de las empresas militares y de seguridad privadas. La conclusión se basa en la necesidad de desarrollar estándares legales internacionales para las actividades de las empresas militares y de seguridad privadas dentro de la ONU.

Palabras clave: Armas, armas químicas, armas biológicas, armas nucleares, combatientes, conflictos armados, Derecho internacional humanitario (DIH), guerra, guerra híbrida, guerra cibernética, minas, vehículos aéreos no tripulados.

Introduction

International humanitarian law (IHL) has as its main object the protection of participants, victims of war and civilian facilities during armed conflicts. In armed conflicts the parties seek to achieve victory over the enemy using modern methods and means of warfare, which under the influence of scientific and technological progress are constantly developing and improving (Klimchuk, 2001). However, IHL prohibits belligerents from using weapons, shells, substances and methods of warfare that could cause superfluous injury or unnecessary suffering to combatants and civilian in the field of military operations (Jinks, 2014).

World history suggests that the prohibition of a particular type of weapon, causing massive loss of civilian population and the destruction of civilian objects, was often undertaken only after the use of such weapons for military purposes (for example, chemical and biological weapons). Therefore, the world community must be ahead of time and introduce new restrictions on the methods and means of warfare in advance.

The relevance of the study is also dictated by the features of modern armed conflicts, when states transfer the right to use force to private military and security companies. As a result of such participation, the composition of the opposing forces in armed conflicts is complicated, which creates problems of determining their status from the point of view of IHL. Also, hybrid wars, widespread in the 21st century, raise very complex issues related to the classification of a conflict, as the line between the state of war and peace is blurring.

The main purpose of the article is to conduct a comprehensive international legal study of the prohibited means and methods of warfare in accordance with IHL.

The object of the study in the article is international legal relations during the period of armed conflicts, concerning the restriction and prohibition of the use of methods and means of warfare.

Theoretical framework

The article used the scientific development of dissertation researches on IHL which relate to the topic of this study, namely: Bisultanov (Bisultanov, 2016), Gluhenskiy (Gluhenkiy, 2011), Medeiko (Medeiko, 2012), Rakhimov (Rakhimov, 2010), Rusinova (Rusinova, 2016), Smirnov (Smirnov, 2007), Smirnova (Smirnova, 2017), Syrkhaev (Syrkhaev, 2013) and others.

In the preparation of the article, the works of such scientists were also used: Abashidze (Abashidze, 2005), Kalshoven and Zegveld (Kalshoven and Zegveld, 2011), Boothby (Boothby, 2009), Clark (Clark, 2009), Greenwood (Greenwood, 1998) and others.

It should be mentioned that dynamic process of changing of modern armed conflicts cannot be adequately and comprehensively reflected in scientific works, which makes the study of the topic extremely relevant.

Methodology

The methodological basis of the study is a system of scientific techniques (general, private and special), as well as various logical techniques and tools that contribute to the knowledge of the problematic of investigation. The study was

carried out based on the dialectical method of cognition using historical, comparative-legal, formal-logical methods.

The historical-legal method made it possible to analyze the issue of the formation of international humanitarian law, to identify trends in its development. The comparative-legal method made it possible to identify differences in approaches to regulating factors that determine the development of trends in modern international humanitarian law, based on an analysis of international law and national law of individual states. The formal-logical method was used to analyze official documents, legal acts and court decisions. The application of these methods in the aggregate allowed us to study the issues under consideration in their holistic relationship.

Results and discussion

The history and development of International Humanitarian law (IHL). Since the mid-19th century, the international community has adopted international legal acts that describe in more detail prohibited remedies of war, as well as developed a norm that the right of parties to a conflict to choose methods or means of warfare is not unlimited. The laws and customs of war (the so-called, Hague law) were signed in The Hague (including the Conventions of 1899 and 1907) on the basis of the St. Petersburg Declaration of 1868, as well as the Brussels Conference of 1874. There were no differences between unlawful methods and means of armed conflicts at that time (Bisultanov, 2016). Later, at the First (1899) and Second (1907) Peace Conferences, the fact of the insufficiency of a simple list of prohibited means of warfare in connection with the creation of new types of weapons and their use by the existing armies was emphasized.

During the Second World War large legal gaps and shortcomings in the law of armed conflict related to the protection of war victims were found out. To eliminate them, the Diplomatic Conference was held on April 21 - August 12, 1949, at which the Geneva Conventions on the Protection of War Victims were adopted. These documents significantly expanded not only the status of victims of the war, but also the whole scope of IHL. Art. 3 was a real breakthrough in this area, as it extended the principles of the Geneva Conventions to non-international armed conflicts. Thus, Geneva law (Conventions of 1864, 1906, 1929 and 1949) provides protection for war victims and aims to provide guarantees to the wounded and sick from the military and

persons not participating in hostilities (Pustogarov, 1997).

At the Diplomatic Conference of 1974-1977 Additional Protocols I, II to the Geneva Conventions of 1949 were approved and the Conference 1979-1980 was specifically designed to solve the issue of the prohibition or limitation of certain types of weapons. The humanitarian norms worked out at these conferences were a significant achievement in the progressive development of IHL on methods and means of warfare.

The Convention on the Rights of the Child (1989) and its Optional Protocol (2000), adopted under the auspices of the United Nations, formulated a new prohibited method of warfare during international armed conflicts and non-international armed conflicts. Thus, the use in hostilities of persons under the age of 18 is qualified by the Rome Statute of the International Criminal Court of 1998 as a war crime (Art. 8 b XXVI, 8 e VII).

The rules that prohibit the use of certain means and methods of war with the enemy during armed conflicts are also contained in the Hague Convention for the Protection of Cultural Property in the event of an armed conflict of 1954; The Treaty on the Prohibition of Placing on the Bottom of the Seas and Oceans and in their bowels of nuclear weapons and other weapons of mass destruction of 1971; The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Impact Means of 1977.

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 (1980) also establishes prohibitions and restrictions on certain types of weapon.

Definitions and characteristic of means and methods of armed conflicts. Under the means of warfare it is understood weapons, military equipment and other means used to cause harm and defeat the enemy. Under the methods of warfare - the procedure for using certain means to suppress the troops of the opposing side and inflict losses on it at the very minimum acceptable level.

The parties to a conflict have restricted right to choose remedies of warfare. It is prohibited to use indiscriminate or that cause superfluous injury, or unnecessary suffering means and methods of warfare (Art. 35 of Additional

Protocol I to the 1949 Geneva Conventions). Prohibited means and methods of warfare (weapons) have been derived from these principles.

Means of warfare. A specific weapon in warfare can be considered unlawful and its use completely prohibited (e.g. anti-personnel mines, laser weapons specifically designed to cause permanent blindness, cluster munitions, chemical and biological weapons). At the same time, the use of weapon may be restricted in some situations (e.g. napalm bombs and flame throwers, unexploded and abandoned ordnance).

It is forbidden for States to use, develop, produce, stockpile or transfer anti-personnel mines or help anyone else to do so (the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997)).

In accordance with 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 (1980), the use of any weapon, the primary effect of which is to injure by fragments that are not detectable in the human body by X-rays, is prohibited.

It is illegal to use incendiary weapons, mines, as well as mine traps and similar devices against the civilian population and non-military objects, resembling children's toys, medical supplies, etc.

According to Additional Protocol I to the 1949 Geneva Conventions, it is forbidden to use weapons, shells, substances and methods of warfare that could cause unnecessary damage or suffering, as well as extensive, long-term and serious damage to the natural environment.

Of great importance in the law of armed conflict is the protection of civilian objects. Article 25 of the IV Hague Convention of 1907 prohibits "attacking or bombing in any way unprotected cities, villages, dwellings or buildings". According to Additional Protocol I, "civilian objects should not be the object of attack or reprisal". The Protocol (Art. 52) refers to the military objects, "which, by virtue of their nature, location, purpose or use, make an effective contribution to military operations and the complete or partial destruction, the capture or

neutralization of which under current circumstances gives a clear military advantage". Objects that do not fall within the above definition should be considered civilian.

In 1977, the Convention on the Prohibition of Military or any Other Hostile Use of Environmental Impacts was adopted. In accordance with this convention, each state party, on the one hand, undertakes not to resort to military or any other hostile use of means of environmental impact, and on the other hand, they undertake not to help, encourage any state, group of states or an international organization to carry out the above activities.

Modern international law prohibits the use of weapons of mass destruction, such as chemical and bacteriological, in armed conflicts. Even in ancient times, Roman lawyers proclaimed the rule according to which war is waged by weapons, not poison. For the first time, the question of the legal prohibition of chemical and bacteriological weapons was raised at the Hague Conference of 1899. A specially adopted declaration stated that the contracting sides undertake not to use shells having the sole purpose of distributing asphyxiating or harmful gases. The provisions of this declaration were subsequently further developed and enshrined in the IV Hague Convention on the Laws and Customs of the Land War of 1907, as well as in the Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare in 1925.

The prohibited mean of warfare is bacteriological (biological) weapons, the action of which is based on the use of the pathogenic properties of microorganisms that can cause epidemics of dangerous diseases such as plague, cholera, typhoid, etc. The legal basis for prohibiting the use of this type of weapon of mass destruction is the Biological Weapons Convention (1972) and the Chemical Weapons Convention (1993).

There is no universally recognized norm in international law that prohibits the use of nuclear weapons. Only a number of international legal acts are aimed at limiting its quantity and further qualitative improvement, at narrowing the scope of its spatial distribution. The Nuclear Non-Proliferation Treaty of 1968 has the aim to prevent the spread of nuclear weapons and to advance the goal of nuclear disarmament. The International Court of Justice in an advisory opinion (1996) determined that IHL applies to nuclear weapons on the principle of distinction

and the prohibition against causing unnecessary suffering.

There are also no universal norms that exclude the possibility of using of so-called new types of weapons of mass destruction (radiological, infrasound, radiation, etc.).

Methods of warfare. Some methods of warfare are specifically prohibited under IHL. Such methods of warfare as issuing the order “not to leave anyone alive”, illegal use of the distinctive emblems of the Red Cross, the United Nations, as well as flags, emblems, uniforms of neutral countries or states that are not involved in the conflict are prohibited. It is forbidden to kill, inflict wounds or to capture the enemy, by resort to perfidy. Perfidy is actions aimed at inviting the confidence of an adversary to lead him to believe that he has the right to defense in accordance with international law. At the same time, international law does not prohibit the use of military cunning to mislead the enemy, to induce him to act recklessly, for example, through disguise, false operations and misinformation.

The discovery of new physical phenomena constantly gives rise to the emergence of new means of warfare. Technical progress in the field of weapons development leads to the fact that decisions on the use of force on the battlefield can increasingly be made by machines operating without human intervention (e.g. Unmanned Air Vehicles (UAVs), which poses a serious security threat to states. Unmanned Air Vehicles (UAVs) themselves are not prohibited means of warfare, but their use may lead a breach of law of armed conflicts.

Along with the development of traditional types of weapons (ammunition of volume explosion, known as vacuum bombs), high-precision weapons (HPW or precision-guided munitions) in many states, much attention is paid to the creation of non-traditional weapons based on new physical principles. The basis for the creation of such weapons is physical processes and phenomena that were not previously used in conventional weapons (cold, firearms) or in weapons of mass destruction (nuclear, chemical, bacteriological). It includes, for example, laser, infrasound, geophysical (atmospheric, lithospheric, hydrospheric), genetic (as well as racial) and psychophysical weapons.

The rapid development of information technology and the introduction of computer systems in almost all spheres of our life significantly expanded the concept of a “war

zone” and gave rise to new types and methods of warfare. So, for example, the so-called “cyber warfare” (Kamchatnij, 2017) has appeared, the means of destruction of which include trojan programs, spyware, computer viruses.

The question of the applicability of IHL to “cyber attacks” remains controversial and causes a lot of discussion among scholars in many countries. In this regard, the urgent problem is the development by states of a special document relating to the settlement of the use of computer attacks during armed conflicts, as well as containing a definition of such concepts as “cyber war”, “cyber attack”, “cyber attack” and “cyber weapon” (Smirnova, 2017). Thus, the international community should consider banning a new method of warfare - the information one.

In IHL in the 21 century the new term “hybrid wars” has appeared to define war using military and non-military tools aimed at achieving surprise, seizing initiative and gaining psychological advantages; large-scale and rapid information, electronic and cyber operations; cover and concealment of military and intelligence operations, combined with economic pressure.

Thus, this term implies “combining” the traditional means and methods of using armed force and the actions accompanying its use, and the use of political, diplomatic, economic and information tools by the conflicting parties, as well as carrying out subversive activities in the territory of the enemy with the aim of rendering unarmed pressure and the formation of public opinion, providing a psychological advantage over the enemy and international support.

Another trend related to modern armed conflicts is the process of delegating the performance of traditional state functions by states in favor of private military and security companies. International legal status of private military and security companies by IHL does not defined. The activities of such companies should be tightly regulated and limited both at the national and international legal levels.

Conclusions

A study of prohibited means and methods of armed conflict conducted within the framework of this article allows us to conclude that the laws and customs of war have been developing from ancient times to the present. In the second half of the 19 century there is a tendency for the

development of international humanitarian law, in which the main focus is on acceptable means of harming the enemy on the battlefield (the so-called Hague law). With the adoption of the Geneva Conventions of 1949 (the so-called Geneva Law) regarding the protection of victims armed conflicts, the international community has reached basic agreements on the prohibited means and methods of armed conflict.

The fundamental principle of the Hague law is the restriction of the right of parties to a conflict to choose methods or means of warfare. IHL prohibits the use of means and methods of warfare that are indiscriminate or that cause superfluous injury or unnecessary suffering. The general orientation of IHL places certain categories of persons and objects under the protection of international law: civilians and civilian objects; victims of war (prisoners of war, wounded, sick, shipwrecked); medical staff and facilities; cultural values. A distinction should be made between combatants and civilians (military and civilian objects) so that the latter remain outside the scope of hostilities (the principle of distinction). In addition, IHL protects human rights in times of armed conflict.

A serious problem in the creation of weapons and military equipment is that states cannot come to a common understanding of the excessiveness of the harm done by a specific means of warfare, and therefore, classification them as unlawful, as well as the development of universal standards in this area.

International society should be focused to prohibit all the weapons including future inventions.

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