

WATER AS AN OBJECT OF INTERNATIONAL LEGAL PROTECTION IN THE CASE OF ARMED CONFLICT

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The relevance of the problem investigated is connected with the necessity to improve the international legal protection of the environment, water sources. The leading approach to the problem is the approach, which has enabled optimal selection and structuring of the basic components of international humanitarian law and made it possible to consider the problem under different points of view: on the one hand, water is the subject of negotiations, on the other hand, water is the cause of war. During the period of armed conflict, water becomes either a means of livelihood for population or a weapon in its destruction. International law standards are to protect water sources and populations from the consequences of armed conflict. There are the structure and contents of a number of standards of international law and international humanitarian law concerning the regulation of rules of war, protection of population, environment and in particular water sources in the article. It is established that the absence of a clear perception of the environment and water sources as objects of international legal protection leads to the fact that states - parties of an armed conflict to bring enormous harm to civilian population, the environment and water sources.

Keywords: history; water sources, armed conflict, protection of the environment, international humanitarian organizations.

INTRODUCTION

Unlike the laws during the peace time the laws during armed conflicts do not regulate the issues related to protection of the aquatic environment, except for some rare international humanitarian law standards (Ameur, 1998). So, let us dwell on the consequences that armed conflicts lead to contamination of water sources. The experience of contemporary wars shows that population and its property might be endangered as a result of military action. In some situations drought becomes the strongest weapon. In the first part of our article we will focus on the analysis of the standards of international humanitarian law on protection of water sources in a period of war; in the second part of the article we will examine the provisions related to the right to initiate the armed conflict associated with the right to use water sources (Report of the International Law Commission on the work of its forty-sixth session, 1994).

Also we will consider the activities and role of the International Committee of the Red Cross and other departments of the International Red Cross and Red Crescent Movement on protection of water sources. It is known that the rules of international and domestic law to protect the rights and freedom of people and their property.

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Natural water sources are the least protected object. But the effects arising from hostile encounters also spread on water sources. Water is an element necessary to satisfy basic needs of living beings. In this regard, strict compliance with Protocol I of the Geneva Convention of 1949 is important for protection of civilian population rights to enjoy favorable environment and consumption of water sources for life during armed conflicts has a strict compliance of Protocol I to the Geneva Conventions of 1949. Water sources cannot be extracted from the ecosystem, as they must be appropriate protected, including indirect activities (Convention on prohibition of development, production, stockpiling and use of chemical weapons and on their destruction, 1993).

METHODS

The methodology of research approaches allows us to see the main trends in the development of international humanitarian law governing the methods and means of protecting the infrastructure of civilian population. One of the methods of such protection includes protection of international watercourses and related systems, facilities and other structures, protected during international and non-international armed conflicts (Convention on the Law of Non-navigational Use of International Watercourses, 1997). Also there are four main methods that can protect water resources, in particular:

- prohibition to use poisons as a means of war;
- prohibition of destruction of the enemy's property;
- prohibition of the destruction of the materials necessary to defend the lives of civilian population;
- prohibition of attacks on institutions that pose a risk to water sources (Protocol Additional to the Geneva Conventions of 12 August, 1949).

The theoretical and methodological basis of the research are grounded on the conceptual status of scientific research in the field of problems of international humanitarian law concerning any military actions (as well as starvation), protection of vital facilities for local population, the introduction and abolition of immunity relating to vital infrastructure.

The systematical and structural approach provided an opportunity of comprehensive consideration of the cases when the warring parties must refrain from any actions that may cause dangerous consequences. Speaking about the systems and facilities containing dangerous forces, humanitarian law mentions dikes, dams and nuclear power stations. If they are military objects, attacking them is prohibited, because such attacks can cause the release of dangerous forces and cause serious consequences for civilian population (prohibition also applies to other military facilities located the systems and facilities mentioned above or located close to them).

Water sources in international humanitarian law are: waters of the hydrosphere, i.e. water of rivers, lakes, canals, reservoirs, seas and oceans, groundwater, soil moisture, water (ice) mountain and polar glaciers, water vapour in the atmosphere, streams and artificial water objects or water objects with a permanent or temporary movement of waters in channels, such as springs, streams, ducts, barriers, barrages and dams. Due to the risk of actions that could result in substantial harm to health of people and their property during attacks, both protocols of 1977 prohibit such attacks, even if it is not connected with any military purposes.

International law does not contain any definitions of constructions, except for three types: barriers, dams and levees, nuclear power stations. The specific way of protection of the mentioned objects, the inviolability of these items for military actions, and their protection, in case if there are war actions not far from them, are highlighted, which in its turn can be seen as one of the ways to protect civilian population (Sironneau, 1993, Bagis (ed.), 1994).

The standards of international human rights law aim to provide, at least, a minimum of favorable conditions for life to those people, who need protection. The first vital need of a man is water. Saving the wounded or sick cannot be imagined without water. Its presence is necessary for all medical organizations and health agencies.

The dialectical method is very important. It allows us to trace the mutual relations between the phenomena of international humanitarian law and the prohibition of the use of poisons and poisonous weapons (Sironneau, 1993, Bagis (ed.), 1994, Klötzli, 1994). In the Code Lieber (Lieber Code), adopted in 1863 and designed for the U.S. army, it is said about military necessity (Sandoz, & Swinarski, 1987). The text itself contains no indications of water or any water sources, but the prohibition clearly extends to this vital element. Moreover, the prohibition is of a general character and does not end with the use of weapons.

RESULTS

In the case of armed conflict it is prohibited for the warring parties to poison or otherwise damage water sourced which are vital to health and survival of civilian population. (Manual du Mouvement International de la Croix-Rouge et du Croissant-Rouge, 1988) It is also enshrined in article 23 (a) of the Annex to the IV Hague Convention respecting the laws and customs of war on land of 1907.

Its subject matter is based on laws of formation and development of international law, especially the prohibition of action regardless of the motives and goals which would deprive population of water sources and guarantee of human rights on satisfaction of vital needs.

It means:

- 1) The parties involved in the conflict, for military purposes or as reprisals do not destroy or divert waters, or do not destroy any water facilities, if such actions could cause disproportionate damage to civilian population.

- 2) Under no circumstances the parties involved can attack, destroy or render inoperable water that is vital to health and survival of civilian population, if the result of such action, civilians may remain without any water sources, which can cause death or involuntary resettlement.
- 3) Any standard of international humanitarian law does not provide the absolute prohibition of legislative means in all other respects, the means of warfare exclusively because of the possible collateral damage caused to civilian population and objects. For example, damaging or diverting of the direction of the rivers in order to ensure the movement of troops cannot automatically be considered illegal because of possible harm done to civilians. The criteria for prohibition should be the damage which civilian population suffers from, that is disproportionate to the military superiority (Sironneau, 1993, Bagis (ed.), 1994, Klötzli, 1994).
- 4) Water can be a part of the public ownership or private ownership. The Lieber code, article 23 (paragraph 7) provides that “the destruction or confiscation of the enemy’s property is not imputed to the necessity of war, the forfeiture or destruction of property.” Article 147 of the Convention concerning the laws and customs of war on land provides that “the destruction of the property and its seizure does not justify the need for the military intervention and the illegal use of violence” that entails serious violations of the rules and humanitarian law as a war crime. There are other standards that prove the rule as the prohibition on confiscating personal property and the prohibition of its robbery (Sironneau, 1993, Bagis (ed.), 1994, Klötzli, 1994). Provisions of Protocol I of 1977 contain no prohibition on the destruction of vital population elements of the natural environment, one of which is water, which has recently been given a lot of attention by international law. As for specific actions, involving damage to property, they are mentioned in all cases and situations (prohibiting the attack or destruction and damage of property). In this particular case, we specify the pollution of reservoirs by chemical or other actions. The formality was kept in article 14 of Protocol II, where property, drinking water businesses and irrigation are given as examples (Report 26th International Conference of the Red Cross and Red Crescent, 1995). The inviolability of property is violated only if it is used to supply armed forces or in direct support of military activities. Even in this situation, it can be observed that warring parties should refuse binding waiver of starving the population and depriving them of drinking water (Sironneau, 1993, Bagis (ed.), 1994, Klötzli, 1994). It is also prohibited to turn the property into a target for military actions. It is regrettable that the Second Protocol does not contain such a prohibition, which refers to the protection of victims of armed non-governmental conflicts.

- 5) If the prohibition of international law on the use of poisons is respected, the water could still become contaminated as a result of military actions, destroying water facilities and structures. Indeed, the destruction or disabling of even a part of the water system can sometimes paralyze the whole system. If repairs are not made on time due to the ongoing hostilities, or for some other reasons, such as the lack of spare parts or poor service, there is an obvious and highly probable danger of infection and lack of water, or the emergence of the epidemic. (Report of the International Law Commission on the work of its forty-sixth session, 1995).

DISCUSSION AND CONCLUSION

The problem discussed in the article has been considered in works of Sironneau (1993), Bagis (1994), Klötzli (1994), the authors have studied the vectors of the development of international humanitarian legislation concerning protection of the environment. In particular, there is pointed high danger of military intervention and illegal use of violence in the works of the authors. The authors Sandoz (1987) and Swinarski (1987) highlighted necessary conditions to control armed conflicts and possibilities to cause acceptable damage to the environment.

According to the reports nearly 1 billion people do not have basic access to reliable source of water, by which we mean a source that could provide one person with 20 liters of water per day at the distance of 1000 meters.

The United Nations are solving problems of the global crisis caused by the increasing demand on global water sources aimed to meet domestic, commercial and agricultural needs as well as the needs of basic sanitation in the area.

The analysis showed that the lack of water is caused by its inefficient use, low water quality is caused by pollution, excessive use of groundwater reserves. Measures are needed to ensure more rational use of the limited freshwater sources, and priority should be given to issues such as supply and demand, quality and quantity.

In connection with the facts which have been mentioned above, the role of the International Committee of the Red Cross and other international organizations and movements is growing. The International Committee of the Red Cross by using the standards of the international humanitarian law takes proactive measures for the good of man and thereby fulfills its humanitarian mission. The goal of any business is to protect natural resources for the citizens of any state in the event of armed conflict. The goal of any business is to protect natural resources for the citizens of any state during armed conflicts. If the warring parties adhere and protect reservoirs, as it is prescribed by the international law, the International Committee makes every effort to fulfill its mission during the war. For example, in 1994 the activities of the International Committee of the Red Cross in Bosnia and

Herzegovina helped to resolve the problem with water sources and solve problems of the civil population connected with drinking water reserves. The cooperation of national societies and the International Committee of the Red Cross and other organizations helped to implement programs for water purification (Report of the International Law Commission on the work of its forty-sixth session, 1994). However, in practice there are cases of opposition from the belligerents in carrying out maintenance works.

The problem connected with the existence of such actions on the part of the belligerents lies in the fact that there are obstacles in the application of international acts. It happens primarily due to the fact that water is considered as a part of environment and is of a fuzzy nature from the point of view of protection.

The second problem is that the 1977 Protocols have not been ratified by all states (e.g. the USA).

The third problem is that new phenomena such as terrorism and internal civil conflicts do not fall under the scope of the international humanitarian law.

The fourth problem is that there is no effective international authority to apply these laws. The establishment of a permanent International Criminal Court (ICC) gives some hope. However, it is not supported by the United States that may significantly weaken its effectiveness.

RECOMMENDATIONS

The article is can be interesting for specialists in the field of international humanitarian law, dealing with issues of environmental protection, the protection of civilian population. The practical significance of this study is determined by the fact that its results allow to develop directions of international policy concerning the legal definition and further description of subjects of protection which are environment and water sources, which are under international legal protection during armed conflict. Basing on the program and data received during the study practical recommendations on further improvement of international humanitarian law have been developed and prepared.

Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University

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