

Святецька Е.,

здобувач ступеня вищої освіти бакалавра
Національної академії внутрішніх справ

Консультант з мови: Могилевська В.

LAW ENFORCEMENT AND THE REFUGEE PROTECTION UNDER INTERNATIONAL HUMANITARIAN LAW

It is often during armed conflicts that human rights are infringed upon the most. Therefore, over the years, experts have focused much attention on the formulation of instruments aimed at alleviating human suffering during war and conflict. Today, three areas of modern international law attempt to provide protection to victims of war: human rights law, refugee law and humanitarian law. While these fields are closely linked, they need to be distinguished systematically.

There is a conceptual parallel between international refugee law and international humanitarian law. Both originated in the need to address the protection of persons in the hands of a State of which they are not nationals. By contrast, international human rights law was developed to protect persons against abuses by their own State. International humanitarian law and human rights law have grown closer over the years. International humanitarian law has extended its reach into non-international armed conflicts, and human rights law has been recognized as applying to all individuals within the territory or jurisdiction of a State, even if only temporarily, including during times of armed conflict (though some restrictions can be applied to non-nationals and also during times of armed conflict or similar emergency). Similar developments are beginning to happen in relation to refugee law, but a radical rethinking is needed.

The most important legal challenge that the international community has to face actually can be resumed in the search of new laws to stop violence preserving the existing laws on protection provided by the International Law. Reaching a balance between the unavoidable obligation of the State of guaranteeing its security and the security of its citizens without damaging the protective legate in human rights is the fundamental landmark of the preceding XX century.

It is clear that in some situations international humanitarian law provides protections that are either stronger than or complementary to those of international refugee law. In contemporary international legal thinking (which often stands at odds with international political thinking), it is becoming increasingly clear that no international legal framework can or should be seen in isolation. Although the development in human rights law may not by itself be determinative of the interpretation of elements of the 1951 Refugee Convention, the law on human rights that has emerged as an essential part of the international legal order must be taken into account for purposes of interpretation. In the same way, it is useful to draw on the protections afforded to internees under international humanitarian law, and to extrapolate from these with regard to detention under international

refugee law. In addition, where circumstances of refugee flight are conducive to the direct application of international humanitarian law, it may bring considerable clarity to practices and principles which directly affect refugees and asylum-seekers. This is likely to be particularly so in situations of mass influx and expulsion. It is important to recall here, as with human rights law, that there is no reason why refugee law and international humanitarian law should not run in parallel. The fundamental point raised here is that although the linkage and relative strengths (and weaknesses) of human rights law in relation to both refugees and situations of armed conflict are being increasingly recognized and applied, the same is not yet the case with international humanitarian law and refugee law. Rather than beginning with the law and presuming which situations it does or does not apply to, the better approach is to examine the situation and then consider which law provides the best protection, or whether a combination (or application by analogy) is a better option. In the same way, if some persons fall outside the scope of the law - e.g. those deemed not to be eligible for refugee status for one reason or another - the question of what happens to them and whether they are protected by international humanitarian law, as well as human rights law, should not be forgotten. Such consideration should apply not only to the standards, but also to the body mandated to act in relation to those standards: in some circumstances, the International Committee of the Red Cross (ICRC) may be better placed than the UN Refugee Agency (UNHCR) to provide protection. Finally, both refugee law and international humanitarian law share the strengths and weaknesses of having a field-based protection and assistance agency. The experience of the ICRC could be used to improve UNHCR's practice in some respects, but both streams of law would benefit from enhanced treaty monitoring and implementation procedures. The question of developing these procedures in relation to refugee law is under discussion as part of the UNHCR Global Consultations on Refugee Protection.

Список використаних джерел

1. Rachel Brett and Eve Lester, Refugee law and international humanitarian law: parallels, lessons and looking ahead, *International Review of the Red Cross*, Vol. 83, No. 843, Geneva: ICRC, 2001.
2. Lubell, Noam. (2005). Challenges in Applying Human Rights Law to Armed Conflict. *Int Rev Red Cross*. 87. 10.1017/S1816383100184541.
3. UNHCR, Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions, 2 December 2016, URL: <http://www.refworld.org/docid/583595ff4.html>. 5 August 2019.