МИРОТВОРЧЕСКИЕ ОПЕРАЦИИ

Зверев П.Г.
DOI: 10.7256/2305-560X.2015.3.15500

THE PROBLEM OF STATUS OF UN PERSONNEL UNDER INTERNATIONAL HUMANITARIAN LAW

Review: *The article is devoted to the legal position of the personnel of peacekeeping operations of the United Nations under the angle of international humanitarian law. The purpose of this study is a political and legal analysis of the impact of the rules of IHL on the status of all three components (military, police and civilian) of modern UN peacekeeping and peace enforcement operations. Special attention is paid to the norms of the Geneva Conventions of 1949 and their Additional Protocols of 1977. The analysis revealed specific characteristics of UN peacekeepers as combatants and non-combatants. The study was conducted through a combination of specific historical, comparative-legal, formal-legal and political-legal methods. The novelty of this research lies in the fact that it is the first English presentation of the position of the Russian doctrine of international law in comparison with foreign doctrines on the question of determining the legal status of the UN peacekeeping forces in the event of their participation in armed conflict.*
Ключевые слова: *ООН, миротворческие операции, международное гуманитарное право, применимость, право на жизнь, комбатанты, некомбатанты, Женевские конвенции, Дополнительные протоколы, вооруженный конфликт*
Аннотация. *Статья рассматривает правовой статус участников миротворческих операций ООН с точки зрения международного гуманитарного права. Целью исследования является политический и правовой анализ влияния положений международного гуманитарного права на все три компонента (военный, полицейский и гражданский) современных миротворческих операций и операций по принуждению к миру. Особое внимание уделяется положениям Женевских конвенций 1949 года и дополнительных протоколов к ним 1977 года. Анализ выявил отличительные черты миротворцев ООН как комбатантов и некомбатантов. При проведении исследования использовался комплекс методов, включающих специальные исторические методы, сравнительно-правовой, формально-правовой и политико-правовой методы. Новизна исследования заключается в том, что данная работа – первое англоязычное сравнение позиции российской доктрины международного права и иностранных доктрин по вопросу правового статуса миротворческих сил ООН в случае их участия в вооруженных конфликтах.*
Keywords: *Geneva Conventions, non-combatants, combatants, right to life, applicability, international humanitarian law, peacekeeping operations, UN, Additional Protocols, armed conflict.*

In the modern conditions, it is impossible not to pay attention to collisions in the international humanitarian law arising in relation to the presumption of human rights. In this case it is about the main right of an individual involved in armed conflict – the right to life.

The right to life is the «core» human right. Despite the fact that the scopes of application of international humanitarian law and human rights law are different, the right to life holds a key place in the framework of the international humanitarian law. In this respect Hans-Peter Gasser notes that «the treaties of humanitarian law protect vulnerable individuals from abuse of power by the state. However, unlike agreements on human rights, containing generally applicable in all circumstances provisions, safety rules and mechanisms of international humanitarian law apply only during the war, that is in exceptional circumstances. In this sense we can say that international humanitarian law is that part of human rights law, which applies in times of armed conflict. But in contrast to agreements of peacetime on human rights, humanitarian law does not permit any derogation from its provisions, under no circumstances, as these provisions are specially designed for military time» [3, 28].

Since the right to life of a person cannot be discriminated for any considerations of political, economic, religious, racial, etc. nature, it is also invaluable in situations of armed conflict. This is due to the minimum guarantee of individual rights in times of armed conflict and securing them in the main sources of international humanitarian law – the Geneva Conventions

of 1949 and their Additional Protocols of 1977, which form an absolute law in every sense of the word.

For example, article 3, common to the four Geneva Conventions of 1949, states that the individuals, who do not directly participate in hostilities, including those members of armed forces who have laid down their arms and those who did not participate in hostilities for any reason, are restricted to act as follows:

«a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

b) Taking of hostages;

c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples».

In relation to the protection of human life of a combatant, it seems obvious that the implementation of the right to life during an armed confrontation in full extent is impossible. This relates directly to the nature of armed struggle, which implies a possibility of violence. «However, humanitarian law is not silent in this case, because the provision prohibiting the use of weapons causing superfluous injury or unnecessary suffering, partly intended to outlaw weapons that cause extremely high mortality rate among the soldiers» [6, 16]. Hans-Peter Gasser writes that «it is not enough to help the victims of hostilities. It is more important that the law imposes restrictions on the hostilities themselves to be subjected to less suffering and damage» [3, 31].

Prohibition on the use of weapons that could cause unnecessary suffering was clearly formulated in the St. Petersburg Declaration of 1868: «the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy; […] the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable, would be contrary to the laws of humanity» [17].

Subsequently, this provision was enshrined in article 22 of the Hague Regulations concerning the laws and customs of war on land of 1907: «Combatants do not enjoy an unlimited right in the choice of means of injuring the enemy» [15].

Additional Protocol I (1977) finally confirmed this provision as one of the principles of humanitarian law: «In any armed conflict the right of the parties to the conflict to choose methods or means of warfare is not unlimited» (art. 35(1)) [20].

Article 23 of the Regulations on the laws and customs of war on land stipulates that warring is prohibited:

- To declare that no one will have mercy;
- Treacherously killing or wounding of individuals belonging to the population or troops of the enemy;
- To kill or wound an enemy who, having laid down arms, or having no longer means of defense, unconditionally surrendered;
- To declare void, suspended or deprived of judicial protection of the rights and claims of citizens of the opposing party.

Article 40 of Additional Protocol relating to the protection of victims of international armed conflicts defines this provision more clearly: «It is prohibited to order that there shall be no survivors, to threaten this adversary or to conduct hostilities on this basis». Article 41 of Protocol I in addition to this principle prohibits «exposing to attack a person who is recognized or who, in the circumstances, should be recognized as the person who failed».

Failed is considered to be any person who is in the power of an adverse party, clearly expresses an intention to surrender, is unconscious or incapacitated due to armed conflict and therefore unable to defend himself, provided that in any such case, that person abstains from any hostile actions and not trying to escape.

Therefore, an order based on this international legal norm and given to a combatant during the armed conflict of indiscriminate destruction of the other party to the conflict is a direct violation of the provisions of international humanitarian law. A similar situation often occurs in the period of special operations aimed at the destruction of the military leaders of organized armed groups. (Similar plans existed during the operation «Desert Storm» (1991) on the elimination of Saddam Hussein; in Yugoslavia (1999) on the elimination of Slobodan Milosevic; in the Russian Federation (1999) on the elimination of Shamil Basayev, Salman Raduyev and other terrorists leaders). Despite the fact that article 41(3) of Protocol I obliges to indemnify the persons entitled to protection as prisoners of war, who «get to the power of an adverse party under unusual conditions of combat, which make it impossible to their evacuation» and to take all possible precautions to ensure their safety. The introduction of such prohibition in international humanitarian law is due to the fact that the war should not be an end in itself, aimed only at destroying of human resources. The issuance of the order of one of the parties on termination will lead to the fact that the other party will be guided in its hostilities the same rules. It is unacceptable to allow the development

DOI: 10.7256/2305-560X.2015.3.15500

of the situation in this direction. This would mean to question the basic goals and objectives of the international humanitarian law, as «international humanitarian law aims to force compliance of the law the situation of existing violence» [11, 13].

Right to life of civilians is enshrined in the instruments of international humanitarian law to a much greater extent than combatant's right to life. International humanitarian law follows the principle to respect, as far as possible, the lives of civilians. The balance between considerations of military necessity and humanitarian imperatives continues to be the basis of humanitarian law. Understanding of this by the states that participated in the development of the Additional Protocol I of 1977 became the confirmation of the idea that only military aims could be attacked (art. 48 and 52).

Besides, according to paragraph 5 «b» of article 51 of Protocol I such an attack is allowed, «which which may be expected to cause incidental loss of civilian life» but only in compliance with the principle of proportionality. Probably, this legal provision makes lawyers, specializing in human rights, worrisome and not only because it practically allows for the killing of civilians, but also because to determine whether or not the attack can cause excessive «incidental» losses among the civilians and whether it's as a result invalid, should the military command that prepares this attack. Along with this, the Protocol I expands the traditional right to life of civilians. Within the obvious achievements of this international legal instrument in the protection of human life are the following:

- Protocol I sets out measures that increase the chances of population survival, for example by creating a special demilitarized zones, free from military facilities, and therefore, these areas cannot be targeted (art. 59, 60 of Protocol I, and art. 14, 15 of the Geneva Convention IV of 1949);
- Protocol I prohibits the use of starvation of civilians as a method of warfare and, therefore, prohibits the destruction necessary for the population's livelihood (art. 54);
- The Geneva conventions of 1949 and their Additional Protocols establish the rules, stipulating that the wounded should be selected and, if necessary, to provide them with medical care;
- The Geneva conventions of 1949 and their Additional Protocols define in detail the physical conditions necessary to sustain life in so far as this is possible in situations of armed conflict. For example, Geneva Convention III describes the conditions that should be guaranteed to prisoners of war, and Convention IV provides for similar requirements in respect of civilians interned in occupied territory. Article 69 of Protocol I in addition to listed in article 55 of Geneva Convention IV duties obliges the occupying power to ensure the civilian population «to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship»;
- The Geneva Conventions of 1949 and their Additional Protocols include the rules governing the provision of humanitarian assistance to the population of the parties to the conflict (art. 70 of Protocol I and art. 23 of Geneva Convention IV 1949).

In addition, international humanitarian law establishes a limit on the imposition of the death penalty, requiring, in particular, a minimum six-month postponement of the execution of such judgments; providing for oversight mechanisms, as well as prohibiting the imposition of the death penalty to persons under the age of eighteen, or their execution in relation to pregnant women or mothers with underage children (art. 68 and 75 of the Geneva Convention IV of 1949).

Article 8 of the Rome Statute of the International Criminal Court refers in the context of the issue in question to war crimes the following grave breaches of the Geneva Conventions of 12 August 1949, namely:

1) Applying to international armed conflicts:
a) Willful killing (art. 8(2) (a) (i));
b) Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion (art. 8(2) (b) (vi));
c) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated (art. 8(2) (b) (iv));
d) Killing or wounding treacherously individuals belonging to the hostile nation or army (art. 8(2) (b) (xi);
e) Declaring that no quarter will be given (art. 8 (2) (b) (xii)).
2) Applying to internal armed conflicts:
a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture (art. 8(2) (c) (i));

DOI: 10.7256/2305-560X.2015.3.15500

b) Killing or wounding treacherously a combatant adversary (art. 8(2) (e) (ix)).

The above elements of war crimes, included in the Rome Statute, invariably confirm a greater concern of the international community in the protection of fundamental rights and freedoms in times of armed conflict. International Criminal Court should become one of the guarantors of implementation of standards of human rights and international humanitarian law in such an emergency for the society as war [10, 25]. Achievement of the Statute was to expand the scope of the concept of war crimes to internal armed conflicts, while in classical international law it was limited to armed conflicts of an international character. Though, according to David Schaeffer regarding the inclusion in the Statute of certain provisions of Additional Protocol II to the Geneva Conventions of 1949 concerning armed conflicts not of an international character, as well as of nuclear weapons in the list of prohibited weapons, caused some special difficulties [20, 29-30]. Moreover, according to Eric David, «article 8(2) extends the concept of internal armed conflict: in accordance with the Additional Protocol II of 1977 to the Geneva Conventions of 1949, internal armed conflicts must reach the minimum intensity for humanitarian law to be applied; to qualify for the protection offered by the Protocol, the insurgents should, in particular, control part of the territory. In article 8, paragraph 2 «f» there is no more guidance on the criteria of territoriality and the confrontation between government forces and rebels. This is an important achievement, as the offence applies to situations that have a broader definition than the situation in which only a corresponding prohibition is applied» [4, 62-63].

Many researchers believe that the Rome Statute is far from perfect. For instance, Alfia Kayumova notes that «certain provisions of the Rome Statute concerning war crimes, seem to be somewhat contradictory. However, only the beginning of functioning and subsequent practice of the Court will be able to show how fully this very important international legal instrument meets the realities of the time» [11, 68]. Many difficult issues remain unresolved on the question of monitoring the implementation of international law in time of armed conflict. According to Revol Valeev, «monitoring mechanism of the Geneva Conventions was developed at a fairly low level. Same judgment was made by members of the Independent Commission on International Humanitarian Issues. The lack of a control mechanism is primarily in the fact that the control is entirely dependent on the consent of the conflicting parties. Meanwhile, an international monitoring mechanism could also be elaborated for the implementation of the provisions of the Hague and Geneva Conventions, Protocols I and II, which would take into account the prerogative of the international importance of the protection of basic rights and freedoms in all situations» [2, 115].

Of particular interest is inseparably connected with the human right to life the functional security of life and health of persons involved in armed conflict on the side of international intergovernmental organizations, primarily the United Nations.

The institute of functional protection began its developing in the second half of the 20th century, although its origin could be considered the appearance of first international agencies. It also justifies its existence because the State parties to the international intergovernmental organizations commit themselves to respect the privileges of international officials and to assist them in the work in so far as privileges and immunities, the special status of the members of the staff of such organization is not in their own interests but in the interests of the organization itself, or rather, in the interests of effective and timely execution of its constitutional objectives.

Functional protection is understood both in a broad and narrow sense. In a broad sense, it represents the joint action of international organization and member States to ensure compliance with special legal status of international civil servant acting in an official capacity. International organization and its employees, acting in the interests of member States, should have a status that allows them to effectively exercise their powers. Protection can be provided by conducting joint activities of international organization and the founding States, because they determine the competence of the organization, articulating its goals and objectives.

The personnel, involved in peacekeeping and humanitarian missions, are not only the employees of international organizations, but also the citizens of respective States, and therefore the responsibility for their safety lies with both the international organization and the host state as well as on the state – contingent contributor for this kind of operations. They have the responsibility for the suppression of crimes against persons enjoying international protection, and punishment of perpetrators of such crimes.

UN Secretary-General noted in his report that the responsibility of the state, acting as host party, for the security and protection of personnel of international organizations «is derived from normal and inherent to any state tasks to ensure law and order and protect the people within its jurisdiction. In regard to international organizations, their officials and property it is consid-

DOI: 10.7256/2305-560X.2015.3.15500

ered that the government has a special responsibility in accordance with the United Nations Charter or its agreements with individual organizations» [22].

The main types of measures on functional protection of international organizations personnel are legal and organizational. The term «legal activities» refers to the conclusion of treaties by member States of international intergovernmental organizations which devoted to the privileges and immunities of the international organization and its employees, the physical protection and security of the organization's staff, as well as international agreements between the organization (or member States) with the host country of its headquarters or conducting of a peacekeeping or humanitarian operation.

When planning operations to restore or maintain peace, status of forces agreement are usually concluded, and they provide all necessary privileges and immunities, rights and benefits of members of military and civilian personnel.

The host party commits to respect the international character of the functions of employees and to prevent the commission of crimes against persons enjoying international protection. In relation to the conflict a host party, taking on international commitments, may be the government of the state and those groups which accepted during the civil war the presence of peacekeepers on the territories under their control.

Legal measures include the initiation of resolution of disputes involving the application and interpretation of provisions of international agreements, which relate to the legal status of personnel security and protection and being resolved in the negotiation process through consultation or in court. According to founding documents of some UN specialized agencies, such disputes may be referred to the plenary organ of the organization. If parties are unable to reach agreement on the substance of a dispute, it may be referred to the International court of justice, whose advisory opinion on the matter is obligatory for the parties of dispute.

As an example, article 13 of the Convention on the prevention and punishment of crimes against persons enjoying international protection, including diplomatic agents, provides: «Any dispute between two or more State parties concerning the interpretation or application of this Convention which is not settled by negotiation will, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration, the parties are unable to reach agreement on the question of the organization of the arbitration, at the request of either party, the dispute may be referred to the International court of justice in accordance with the Statute of the Court» [16].

The mandate of operation is also of type of the legal measures for the protection of personnel, in which the responsibility of the host state to ensure safety, freedom of movement and access to refugees and internally displaced persons of peacekeepers and humanitarian personnel became recently a general rule obligation.

Thus, in accordance with the Declaration on ensuring an effective role of the Security Council in maintaining international peace and security, adopted in September 7, 2000 it is necessary to include in the mandates of peacekeeping operations effective measures to ensure the security and safety of the UN personnel and to assist the Organization to obtain trained and properly equipped personnel for such operations. Of great importance is the coordination of military, civilian and police components of the operation [8]; general settings of such cooperation are also expedient to prescribe in the mandates.

Organizational activities include practical measures to ensure the protection and safety of the employees of international intergovernmental organizations guaranteed by the international treaties. This can be educational programs for the training of staff orienteering in a new environment of the host country; psychological training that allows staff of the organization to adapt to new surroundings, activities, etc.; training courses; courses in new disciplines, such as international humanitarian law, the protection of cultural property during armed conflicts, international criminal law. Other organizational activities include timely and appropriate acquisition with all necessary of the personnel of international intergovernmental organizations, necessary funding of peacekeeping and humanitarian operations and other measures.

In 2002 the two UN Secretary General's reports were concentrated on the organizational aspects of providing functional protection for the UN personnel. They revealed in some detail the content of the security system, which operates in every state where the Organization is present regardless of the situation in the country.

As a Chairman of the coordinating board of senior executives of international organizations of the UN system the Secretary-General is personally responsible for the efficiency and effectiveness of the security system. Senior officials of international organizations, funds and programs are responsible for the safety and security of all employees; ensure that employees in their agencies are not subjected to an undue risk missions; take practical measures for the implementation of security plans specifically designed for each location of

DOI: 10.7256/2305-560X.2015.3.15500

UN officials; conduct necessary consultations with the host state headquarters to ensure the safety and protection of life, health and freedom of employees and their families; supervise the activities of heads of territorial and regional offices; work closely with the of the UN Coordinator on security issues.

It was decided to include on a permanent basis in the agenda of the High level committee on management issues the reviews of all aspects of safety. While considering this issue the Committee relies on the inter-agency network for safety aspects, which is composed of senior managers of each agency of the UN system. The Coordinator on security issues takes part in annual meetings of the inter-agency network. In its turn, the inter-agency network makes recommendations on all components of the security system and submits its reports to the High level Committee.

A separate category of officials responsible for security activities is comprised of employees of the UN agencies, which provide practical assistance to representatives of the Organization. Typically these are professionals with the experience in the Office of the High Commissioner for Refugees, UN Children's Fund, World Health Organization, the UN Development Programme, the Office of the High Commissioner for Human Rights, i.e. in those organizations, funds, programs and agencies, whose personnel is engaged in the provision of humanitarian assistance in hot spots around the world. Employees of international organizations are also responsible for the safety. It should be noted that this does not relieve the organization of the duty to exercise functional protection of its employees.

In the narrow sense functional protection is the set of actions of any international organization to enforce the privileges and immunities of the international employee, his rights and freedoms. Within the UN, this issue is usually addressed from the perspective of those reciprocal actions that could be undertaken by member States and UN bodies and international organizations of the UN system. During the discussion in the UN Security Council the need to establish of an effective and comprehensive system of personnel safety has been repeatedly stated, as well as the inadmissibility of any action that endangers the life, health and safety of humanitarian personnel. It was emphasized that «the receiving party and other parties concerned shall take all appropriate measures to ensure the safety and security of personnel and premises of the United Nations» and that «in implementing the mandates of the United Nations operations nothing can do without the cooperation of all stakeholders», which are required full respect for the status of the UN personnel and associated personnel». The inclusion of special provisions on security of UN personnel into the Security Council resolutions on Iraq, Bosnia and Herzegovina, East Timor, Sierra Leone and Afghanistan became a rule. So, regarding the situation in Bosnia and Herzegovina, the Security Council usually «authorizes member States to adopt, at the request of SFOR, all necessary measures either in defense of SFOR or to give them assistance in carrying out its mission and recognizes the right of the Force to take all necessary measures to defend itself from attack or threat of attack» and also «demands that the parties respect the security and freedom of movement of SFOR and other international personnel».

The theoretically reviewed international legal institutions help us comprehensively cover such concepts as the status of UN personnel involved in various peacekeeping operations. These concepts are the basic pillars that enable the investigation of the applicability of international humanitarian law both in peacekeeping and peace enforcement operations. Human rights and international humanitarian law in the modern world are two dynamically developing branches of international law, which are supposed to be not so opposite, as interdependent and complementary. It would be logical to conclude that the separation of the two bodies of law is generally accepted, but they need to be considered as a source of aggregate protection in situations of internal or international armed conflict [19, 26-27].

The basis of all of the provisions of the Geneva Conventions of 1949 and their Additional Protocols are two key concepts – «combatant» and «the person under protection». However, it should be clearly understood that these concepts are not necessarily opposed or mutually exclusive. A combatant can easily become a person under protection (being captured or giving up as a result of the injury) without losing combatant status [3, 33-34]. The status of UN personnel depends on the type of operations in which it participates and staff category to which it belongs – military, civilian or police. Actually, to put a question about the classification of entities within the UN forces and participating in armed conflict, in accordance with article 42 of the UN Charter, to the category of combatants is equivalent as to give this situation certain subjectivity. The use of force as such, and hence granting a member of military mission on the side of the Organization with this status will totally depend on the decision of the UN Security Council. This problem occurs in relation with the recent increase of cases of the use of force in the UN peacekeeping operations (UNMIK, UNOSOM, etc.), in which the personnel of the Organization in most

DOI: 10.7256/2305-560X.2015.3.15500

cases are not combatants and enjoy the protection of international humanitarian law in full along with civilians. This situation in our opinion is the most logical position from the point of view of application of international humanitarian law in practice, but in theory of law, such approach is ambiguous. In this case, there is the question on the inclusion of provisions regarding the status of UN personnel in the code of rules of the international humanitarian law, which until this time did not regulate the situation of participation of the UN peacekeeping force in armed conflict.

According to one of the principles of international humanitarian law any discrimination in respect of parties to armed conflict is unacceptable. One of many examples is article 27 of the Geneva Convention IV of 1949: «All protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion». This is true in respect of the persons directly participating in armed conflicts. This principle does not deny giving certain categories of persons involved in armed conflict special protection for the execution of their duties. A good example of this is a specific legal regulation of the status of medical and religious personnel (non-combatants) on the battlefield.

In connection with the exclusive mission of UN peacekeeping forces similar legal regulation can probably be extended to the UN forces involved in peace enforcement operations. Thus the members of these UN military actions will be combatants, but will have specific legal regime of protection.

For a more detailed definition of the status of the UN personnel in various situations of its application, the concept of «combatant» shall be considered, especially given that since its initial inclusion in the Hague Convention of 1907 it has undergone significant changes.

In the modern international humanitarian law the notion of «combatant» (*français «combattant»*) is included in several international legal instruments. It is the necessary basis without which the existence of the armed conflict is impossible to imagine. From the beginning of 20th century the concept evolved in the process of codification of the international humanitarian law, gradually expanding the category of persons covered by its definition.

Originally the term «combatant» was not found in any international instrument. Article 3 of the Annex to Hague Convention IV respecting the Laws and Customs of War on Land of 1907 divides the armed forces of the warring parties to «fighting» and «non-fighting».

The Convention relates to «fighting»:

- Army (art. 1 of the Annex);
- Militia (art. 1 of the Annex);
- Volunteer corps (art. 1 of the Annex);
- The inhabitants of an unoccupied territory, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops, without having had time to organize themselves in accordance with article 1, if they carry arms openly and if they respect the laws and customs of war (art. 2 of the Annex).

The above categories, recognized as belligerents, in accordance with the provisions of the Convention must satisfy certain conditions, namely:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed distinctive emblem recognizable at a distance;
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war.

Only when these conditions are met, the opposing parties can enjoy all the rights enshrined in the legal norms of the Convention. In this case, it is appropriate to talk about the status of combatant (fighting), which refers to the set of rights and duties available under international law to all participants of combat and which must be respected by all belligerents.

The Geneva Conventions of 1949 have greatly expanded and detailed the list of the «fighting» of the parties. Among them they mentioned:

1) Members of regular armed forces;
2) Members of militias or volunteer corps, both being part or not of the regular armed forces;
3) Members of organized resistance movements and partisans (in this case they need to meet the following conditions: be commanded by a person responsible for his subordinates; have a fixed distinctive emblem recognizable at a distance; carry arms openly and conduct their operations in accordance with the laws and customs of war);
4) Individuals who follow the armed forces, but not serving in them directly, including civilians, who are members of the crews of military aircrafts, military correspondents, suppliers, personnel of working teams or services that are responsible for the domestic service of the armed forces, as long as they have received authorization from the armed forces which they accompany;
5) Members of the crews of merchant vessels and civil aircrafts that provide direct aid to combatants;
6) The inhabitants of an unoccupied territory, who,

DOI: 10.7256/2305-560X.2015.3.15500

on the approach of the enemy, spontaneously take up arms to resist the invading troops, if they carry arms openly and if they respect the laws and customs of war (art. 13 of Geneva Conventions I and II, art. 4 of Geneva Convention III).

Fritz Kalshoven, while highlighting the persons enjoying the protection of the Geneva Conventions I-III, divides them into two groups: «All persons, who belong to categories 1-3, are «combatants» in the proper sense of the word; hence, they have the right to participate directly in hostilities and, in the power of the enemy, as a rule, to be held in captivity until the end of hostilities. Those who are included in the categories listed in paragraphs 4 and 5, in contrast, are civilians; however, they are captured under circumstances indicating their close (but in principle not bearing the nature of participation in hostilities) cooperation with the enemy armed forces or their contribution to military efforts» [9, 52].

It should be specially noted that the term «combatant», although being mentioned in article 15 of the Geneva Convention IV of 1949, received its legal definition only in subsequent international legal instruments.

Article 43(2) of the Additional Protocol I of 8 June 1977 to the Geneva Conventions of 12 August 1949 defines «combatants» as «members of the armed forces of a Party to a conflict (other than medical personnel and chaplains)», i.e. persons who have the right to participate directly in hostilities. Article 1 of the Protocol I gives a broader interpretation of the term «armed forces» in comparison with early-existing sources of law, which consists of all organized armed forces, groups and units commanded by a person responsible to that party for the conduct of its subordinates, even if that party is represented by a government or an authority not recognized by an adverse party. Such armed forces are subject to an internal disciplinary system which, inter alia, ensure observance of the rules of international law applicable in armed conflicts.

In summary, we'll highlight the general criteria that characterize «combatant»:

- Direct participation in hostilities;
- Being a part of organized armed groups;
- Being under the command of a person responsible for the conduct of their subordinates (the acknowledgement of the other side doesn't matter);
- Open carrying of weapons;
- Having a specific and distinguishable from a distance distinctive sign;
- Respect of the international humanitarian law norms.

Some authors point to the legal transformation of some traditional conditions that must be met for the term «combatant». Sergey Egorov writes that «the conditions have become much more flexible. In lieu of the requirement to have a certain distinguishing mark it was prescribed that combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation, which is preparing an attack» [7, 207].

The same is true to note in relation to the duties of a combatant to openly carry weapons. Article 44(3) of Additional Protocol I provides that «due to the fact that during the armed conflict there are situations when because of the nature of hostilities an armed combatant cannot distinguish himself from the civilians, he retains the status of a combatant, provided that, in such situations, he openly carry his weapons: a) during each military confrontation; and b) at the time when he is in sight of the enemy during deployment in battle order before commencing the attack, in which he should participate».

This provision was recorded in connection with the problem, when the population of the occupied territory takes up arms to fight against the occupying power. In such cases, the population generally does not distinguish itself in the accepted way from the total mass of the civilians, therefore, its actions entail the danger that the occupying power may suspect all civilians in the conduct of hostilities and deal with them accordingly. The performing by a party to armed conflict of the minimum requirements listed in article 44(3) of Protocol I, allows to solve this problem and to save for the resistance fighters the status of combatants.

From the nature of article 45 of Additional Protocol I it also becomes obvious that in case of doubt as to the status of combatant on the basis of those criteria that were identified above, the person will retain his status «until it will be determined by the competent judicial authority», i.e. the status of combatant is presumed. The definition of «combatant», in the form it is shown in Additional Protocol I, is not always convenient to apply in practice, because it does not consider a whole category of persons who are not directly involved in armed confrontation, but being part of armed forces, have a significant impact on the outcome of the armed struggle. In this respect, Professor Ivan Artsibasov wrote that «even from the terminological point of view, the division of armed forces into combatants and non-combatants is unlikely to be reasonable and correct. On the basis of legal status, it would be better to separate armed forces to fighting (combatants) and non-fighting. The second group (non-fighting) includes

DOI: 10.7256/2305-560X.2015.3.15500

members personnel, that legally belongs to armed forces of a belligerent and provides it comprehensive assistance in achieving success in combat operations, but does not take a direct part in these actions. This group of individuals, on the one hand, cannot be the direct object of military action of the enemy; on the other hand, have the right to protection in case they will be in the hands of the enemy» [1, 109]. Further explaining his point, he noted that the use of weapons by non-fighting participants of armed struggle should be seen as an act of self-defense and protection of the property entrusted to them, as well as persons retired from the armed struggle, – the wounded and sick, but not as an act of military violence.

It should also be marked that combatant is not only a subject to hostilities, but a direct object of military action of the enemy as well. Given this, the highest measure of military violence in warfare – physical destruction – is applicable to him. This is an exception to a fundamental human right – the right to life.

The sources of international humanitarian law do not give a clear answer about the situations in which UN personnel should be considered as combatants or non-combatants. The analysis of the Geneva Conventions of 1949 and their Additional Protocols of 1977 with the use of supplementary means of interpretation allows us to judge that UN military personnel can be granted the status of both combatant and non-combatant. Article 37(1)(«d») of Protocol I prohibits such type of perfidy as «the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict».

The Commentary to the Additional Protocols points out that misuse of UN paraphernalia «would be an act of perfidy in those cases when United Nations personnel has a status of neutral or protected persons, but not in the situations when members of UN armed forces intervene in the conflict as combatants, even if this occurs in order to maintain peace» [14, 439]. Consequently, the status of combatant can occur for individuals from the UN military contingent not only in peace enforcement operations, but also during the conduct of peacekeeping operations.

Most international lawyers share the point of view, according to which UN personnel involved in peace enforcement operations under Chapter VII of the UN Charter, acquires the status of combatants. Eric David writes: «members of the UN forces must be equal to civilians, if these forces are not involved in the operations authorized by the Security Council as an enforcement action in accordance with the provisions of Chapter VII of the UN Charter. Therefore, if these forces are involved in peacekeeping, monitoring the observance of ceasefire agreements and of the border regime or demarcation line, disengaging the warring parties, monitoring elections etc., they are not treated as combatants and enjoy the same inviolability as civilians do» [5, 190].

It is worth noting that the author uses the expression «disengaging the warring parties», thereby emphasizing the neutral and impartial nature of the UN peacekeeping missions, when the Organization is not a party to the conflict under the Geneva Conventions of 1949 and their Additional Protocols.

Bakhtiyar Tuzmukhamedov, adhering to a similar position, notes: «The military peace operations are operations with a military component, established by the authorized UN body, usually the Security Council, acting under Chapter VI and / or VII of the UN Charter, and held under the overall command and operational management of the Organization, represented by the Security Council and the UN Secretary-General. Such operations shall not include the use of military force on the decision of the UN Security Council in case of breach of peace or act of aggression, when the armed forces acting on behalf of and under the authority of the UN, get the status of combatants» [13, 54].

The 1994 Convention on the safety of UN personnel also confirms this concept. Article 2(2) of the Convention states that «this Convention does not apply to the operation of the United Nations, authorized by the Security Council as an enforcement action under Chapter VII of the United Nations Charter, in which any personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies». Thus, the provisions of the Convention presume the status of UN personnel as combatants since the beginning of hostilities, provided that they are conducted with the authorization of the Security Council under Chapter VII of the UN Charter, and, consequently, the UN armed forces can be considered as one of the parties involved in the conflict [18, 87-88].

It should be emphasized that this provision of the Convention has secured a long-existing need for recognition of the application of all totality of international humanitarian law in UN peace enforcement operations regardless of the type of resolved armed conflict. In fact, it was the confirmation of the international community's position regarding the process of internationalization of internal conflicts thru the intervention of the United Nations. However, the 1994 Convention provided additional assurances to UN personnel and associated personnel involved in peacekeeping missions of the Organization as non-combatants in com-

DOI: 10.7256/2305-560X.2015.3.15500

parison with the norms of international humanitarian law protecting civilians, which became the next step in ensuring international peace and security.

Thus, the following conclusion can be made: combatants should include the persons belonging to the UN armed forces, and participating in enforcement operations authorized by the Security Council under Chapter VII of the UN Charter. In case of the Organizations multidimensional peacekeeping operations, in which unlike traditional UN peacekeeping operations the clear criteria of engagement are not formulated, it is necessary to follow two perspectives in the determination of the UN personnel status. If during the peace support or restoration operations the use of weapons by UN personnel does not go beyond the cases of self-defense or the intensity of the armed struggle is extremely low, limited to short-term and episodic cases of engagement, then the UN personnel, including military component, should be classified as non-combatants. This situation is characterized by the most of contemporary UN peacekeeping actions. If during UN operations violent actions, authorized by the UN Security Council, acquire long-term and large-scale character (as it was in UNMIK and UNOSOM), members of UN military component should be classified as combatants. Members of civilian police and civilian components retain the status of non-combatants. An example of this situation can be the events in Eastern Slavonia in 1996-1997, where heavily armed UN forces (Russian and Belgian military contingents) complemented the efforts of the leadership of Organizations transit administration for the demilitarization and reintegration of the territory held by the Serbs with the support of NATO. As a general comment, it would be useful to specify that in case of classifying entities within the UN forces, to the category of combatants, they must meet the minimum criteria, which were discussed above, for the purpose of separating them from the civilians and unambiguous definition of the legal status of parties to an armed conflict.

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