PROBLEMS IN IMPLEMENTING AND OBSERVING THE LAW OF WAR IN THE CENTRAL CAUCASUS

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Introduction

The breakup of the U.S.S.R. was a process marked by conflicts for all countries of the Central Caucasus. Many experts have tried to define these conflicts as ethnic, regional, separatist, national liberation, terrorist, etc. But they are probably agreed on one point: all these conflicts are rooted in the geopolitical struggle for spheres of influence. The nature of the conflict in each particular case was determined by the "scenario" of its emergence and development. That is why, despite common features, there are significant distinctions between the conflicts in Georgia and Azerbaijan. First of all, the conflicts in Georgia are formally internal, being initiated by the "home-grown" separatist forces of Abkhazia and South Ossetia, whereas the Nagorno-Karabakh conflict is an interstate conflict, which broke out as a result of Armenia's aggression against Azerbaijan and was carried out under cover of the separatist ideas of some circles in Nagorno-Karabakh. The conflicts in Georgia did not entail an invasion of the country by foreign armed forces, whereas the Nagorno-Karabakh conflict has resulted in the occupation of 20 percent of Azerbaijan's territory by the armed forces of Armenia. Consequently, there are conflicts in two of the three Central Caucasian states (Georgia and Azerbaijan), while the third state (Armenia) is involved in one of these conflicts in the role of an aggressor occupying Azerbaijani territories.[1] In light of the above, the problems of implementation and observance of international humanitarian law (IHL) are of particular importance to the region.

[1] See: The Conflict over the Nagorno-Karabakh Region Dealt with by the OSCE Minsk Conference. Parliamentary Assembly of the Council of Europe Resolution No. 1416 (2005) [http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta05/ERES1416.htm], 14 April, 2005.

International Humanitarian Law and Its Violations in Nagorno-Karabakh and Adjacent Territories of Azerbaijan

International humanitarian law ("the law of war") is a code of rules whose main sources are the Geneva Conventions of 1949 and their two Additional Protocols of 1977, intended to protect persons

who do not take part or have ceased to take part in hostilities, and also to limit the means and methods of warfare in order to alleviate and prevent human suffering in time of war. Hence the importance and urgency of the problem of compliance with IHL rules in the Central Caucasus, whose population has long suffered from numerous armed conflicts.

IHL rules should be observed by any armed forces or other groupings of all the parties to the conflict. But an analysis of the situation in the region reveals a great many violations of international humanitarian law. For example, the frozen Nagorno-Karabakh conflict has resulted in the occupation of Azerbaijani territories by the Republic of Armenia, which has lasted for many years. In IHL, these matters are governed by the 1907 Hague Regulations, the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention),[2] and some provisions of Additional Protocol 1 to the Geneva Conventions.[3] As it follows from the provisions of these legal sources, a territory is considered occupied when it is actually placed under the authority of a hostile foreign power that has gained full or partial control of this territory.

This definition is undeniably an accurate description of the general features of the events in Nagorno-Karabakh, whose territory is now under the authority of the aggressors from the Republic of Armenia. International humanitarian law is applicable in such cases regardless of whether the occupation is legal or illegal (as in the above example). The occupation regime imposes obligations on the occupying power while granting it certain rights, but this regime should not violate the sovereignty of the occupied territory. As soon as authority over a given territory passes into the hands of the occupying power, the latter becomes responsible for restoring and ensuring, as far as possible, public order and safety. But current events in the territory of Azerbaijan's Nagorno-Karabakh, far from fitting into the framework of IHL rules, flagrantly violate these rules. The lawlessness perpetrated in this territory, which started with ethnic cleansing and has turned Nagorno-Karabakh into an "uncontrolled area," can hardly be described as maintenance of public order and safety. In addition to the rules established by IHL, it is necessary to apply national legislation and human rights law. Their provisions are also violated in the Armenian-occupied territories of Azerbaijan, whose national legislation is totally ignored. Instead of that, these territories are under a military regime established by the occupiers. In Nagorno-Karabakh with a population of around 100 thousand, there are 15-20 thousand military personnel, 316 tanks, 324 armored personnel carriers (APC) and armored infantry fighting vehicles (AIFV), and 322 artillery systems.[4] Naturally, such conditions are conducive to numerous violations of human rights, whose observance is the duty of any state even under the conditions of an ethnic armed conflict.

Art 4 of the Fourth Geneva Convention prohibits violence to life and person, and also outrages upon personal dignity in relation to people falling into the category of "civilian persons."[5] Acts committed by members of Armenia's armed forces as they occupied Azerbaijani territories violate all the basic rules of humanitarian law regarding the protection of civilian persons. The tragic events in the Azerbaijan city of Khojaly, where Armenian formations (jointly with Russia's 366th Motorized Rifle Regiment) perpetrated a bloody massacre of civilians, are a case in point. Specialists say that these actions bear all the signs of genocide. Today one could list up to 20 proven cases of violations (during the period of active combat operations alone) of IHL rules committed by the Armenian invaders against the wounded, prisoners of war and civilian persons

[2] See: Geneva Conventions of 12 August 1949 and Their Additional Protocols [http://www.unhchr.ch/html/menu3/b/92.htm], [http://www.unhchr.ch/html/menu3/b/93.htm].

[3] See: Ibidem.

[4] See: *The Military Balance*, 2003-2004, IISS, Oxford, 2003, pp. 66, 73; *Nezavisimoe voennoe obozrenie*, 19 October, 2000, p. 2; *Kommersant*, 16 April, 2002, p. 11.

[5] See: Geneva Conventions of 12 August, 1949...

protected by the Geneva Conventions and their Additional Protocols. But this list is only the tip of the iceberg, and one can only guess how many such crimes have already been committed and will be committed in the future.

In our opinion, in the situation that has taken shape in Nagorno-Karabakh special attention should be paid to the provisions set forth in Part III, Section III of the Fourth Geneva Convention. These provisions deal with occupied territories or, more precisely, regulate the behavior of the "occupying power," that is, the state occupying the territory of another state. These provisions are of great importance in the conditions of an armed conflict involving seizure and occupation of territory. They establish the rights of persons protected by the Convention and the duties of the occupying power toward these persons. Compliance with at least one of these provisions in the occupied territories of the Azerbaijan Republic is out of the question. This is largely because almost the entire protected population, which consisted of ethnic Azeris living in Nagorno-Karabakh and seven adjacent areas, was expelled from its place of residence. In other words, the Armenian occupiers carried out ethnic cleansing. In our view, it is difficult to protect the rights of a population protected by the given Convention if this population has been forcibly transferred from the occupied territories.

Conflicts in Georgia and IHL

In August 1992, the Abkhaz separatists unleashed an armed conflict with the participation, among others, of groups of mercenaries from the Northern Caucasus, including an Armenian battalion named after Marshal Bagramian. The bloody clashes were brought to a halt only on 27 September, 1993, when a ceasefire was finally achieved after several unsuccessful attempts. By that time, however, the mercenaries had already occupied almost the entire territory of Abkhazia.[6] In 1992, the U.N. Security Council became involved in the solution of this problem at Georgia's request. It recognized the territorial integrity of Georgia, which by that time had already become a member of the United Nations.[7] The U.N. sponsored Geneva process designed to resolve the conflict started in 1993 with the active participation of the OSCE (as an observer) and Russia (as a protecting power).[8] In 1998, the process was joined by Britain, Germany and France. After the signing of an Agreement on a Ceasefire and Separation of Forces, Russia sent its peacekeepers to the Inguri River area (in order to separate the adversaries), and the United Nations extended the mandate of its observers stationed in Abkhazia from 1992.[9] Since then, 200 thousand ethnic Georgians and 100 thousand Georgian citizens of other nationalities expelled from this region have been unable to return to their homes, and the conflict remains frozen.[10] In this situation, there have obviously been repeated violations of the rules of international humanitarian law and human rights. Thus, in the Gali District of Georgia (since the introduction of peacekeepers into this district) about 1,700 local Georgians have died at the hands of Abkhaz separatists. These facts, which are evidence of ethnic cleansing (that is, of a crime against humanity), were condemned by the OSCE's Budapest (1994) and Lisbon (1996) summits.[11]

[6] See: L. Aleksidze, Propaganda separatistov nakhodit otklik v Moskve [http://www.abkhazeti.ru/pub /smi/93_99_99/], 9 November, 2005.
[7] See: Ibidem.
[8] See: Ibidem.
[9] See: Ibidem.
[10] See: Ibidem.
[11] See: Ibidem.

According to various estimates, the separatists in Abkhazia have 3 to 5 thousand men under arms, 35-50 tanks, 70-86 APC/AIFV and 80-100 artillery systems.[12]

The situation in Georgia is a graphic example of violations of IHL, but in contrast to the situation in Azerbaijan the armed conflict in Georgia is not of an international character. Such situations are regulated by Art 3 of the Fourth Geneva Convention.[13] And although these provisions in point of fact differ little from the general context of the other provisions of this Convention, they nevertheless envisage a special mechanism for regulating armed conflicts of this kind.

The South Ossetian Autonomous Region was established in the territory of Georgia in 1922. In 1989, its Soviet of People's Deputies (at that time the highest representative body of the region) took a decision to raise the region's status to the level of an autonomous republic. Naturally, the Supreme Soviet of the Georgian SSR declared this decision to be unconstitutional, whereupon Tskhinvali, the administrative center of South Ossetia, was blockaded for several months.[14] In 1990, the local parliament proclaimed a Republic of South Ossetia, in response to which the Supreme Soviet of the Georgian S.S.R. abolished the South Ossetian autonomy altogether and divided its territory among the country's other provinces. A state of emergency was declared in the administrative center and in some other parts of South Ossetia. In 1991, South Ossetia was the scene of periodic armed clashes, resulting in a flow of refugees to North Ossetia (Russian Federation). Volunteers from North Ossetia and Cossacks began arriving in South Ossetia.[15] Georgia's armed forces controlled the commanding heights around Tskhinvali and shelled the city, which resulted in heavy casualties and destruction.[16] The signing of the Dagomys Agreements between Russia and Georgia and the entry of peacekeeping forces (consisting of three battalions: Russian, Georgian and Ossetian) into the conflict zone in 1992 put an end to the hostilities.[17] From December 1990 to July 1992, a total of 2 to 4 thousand people lost their lives as a result of the conflict in South Ossetia. At present, the Ossetian armed forces proper number 2,000 men, 5-10 tanks, 30 APC/AIFV and 25 artillery systems.[18]

In 1992-2004, an uneasy truce was maintained in the region, with the territory in question controlled by armed units subordinate to the government of the unrecognized Republic of South Ossetia, and with peace between Ossetian and Georgian population centers maintained by peacekeeping forces under the command of a Russian general.[19]

Another source of tension—this time for the Russian side—was that refugees from South Ossetia settled in North Ossetia began to lay claim to lands in the republic's Prigorodniy District, which prior to the deportation of the Ingush in 1944 had belonged to Ingushetia. That led to the Ossetian-Ingush armed conflict in the territory of Russia.[20]

In this case we also find an armed conflict not of an international character. Evidently, the situation here is also conducive to the development of an environment rife with lawlessness and war crimes. The rules to be applied in Abkhazia and South Ossetia are those of Art 3 of the Fourth Geneva Convention, which lists the necessary minimum of provisions to be applied by states in the case of an armed

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[12] See: *The Military Balance*, 2003-2004, pp. 66, 73; *Nezavisimoe voennoe obozrenie*, 19 October, 2000, p. 2; *Kommersant*, 16 April, 2002, p. 11.

[13] See: Geneva Conventions of 12 August, 1949...

[14] See: South Caucasus Regional Security Institute, Research Center for the Development of Georgian-Ossetian Relations [http://www.scirs.org/ru/geos/article_details.php?id=101&cat=History], 9 November, 2005.

[15] See: Ibidem.

[16] See: Ibidem.

[17] See: Ibidem.

[18] See: *The Military Balance*, 2003-2004, pp. 66, 73; *Nezavisimoe voennoe obozrenie*, 19 October, 2000, p. 2; *Kommersant*, 16 April, 2002, p. 11.

[19] See: South Caucasus Regional Security Institute...

[20] See: Ibidem.

conflict not of an international character. These include prohibition of violence to life and person, hostage taking, outrages upon personal dignity, etc. However, all these provisions have been repeatedly violated by separatists both in Abkhazia and in South Ossetia. Their armed forces are more like armed gangs than liberation forces. This is manifested in attacks on civilians, terrorist acts and other violence. In this case, references to the fact that these "troops" do not belong to any participating state are invalid, because the Convention says that these provisions must be applied by "each Party to the conflict."[21]

How to Put IHL Rules into Effect in Conflict Zones

An analysis of the situation in the Central Caucasus inevitably leads to the question of what should be done to improve the situation in areas of armed conflict. In our opinion, the approach to resolving this question should be holistic and should consist of the following measures: implementation of IHL rules in the national legislations of states parties to the conflicts; inspection of conflict zones by appropriate international organizations, primarily the International Committee of the Red Cross (ICRC); and accession of the Central Caucasian states to the Rome Statute of the International Criminal Court or the creation of a special judicial body to deal with crimes in the region.

Implementation of IHL Rules in National Legislations

The first thing to note here is probably the importance of implementing the rules of international humanitarian law in the legislation of these countries, their criminal legislation above all. After all, violations of the Conventions are war crimes and should thus be regulated, in the first place, by the rules of criminal law. In the above-mentioned countries of the Central Caucasus, some IHL rules have already been implemented in criminal legislation. But analysis shows a great many flaws and inaccuracies, and sometimes even discrepancies with the Conventions. All of this has a negative effect on the quality of regulation of the given legal relations. However, even partial implementation of these rules in the Central Caucasian countries is undoubtedly a positive factor.

The next step to be taken is to bring the implemented rules into operation, to create appropriate mechanisms that would guarantee the application of these rules in certain situations. These mechanisms should include a system of state agencies, officials and their powers in the field of application of the implemented rules of international humanitarian law. After that it is necessary to specify the subjects responsible for their application, because otherwise the implementation as such will prove to be senseless, and the rules "dead." If these mechanisms can be made to work in accordance with international standards, we will obtain an excellent system for regulating relations in the field of international humanitarian law.

The first of the above measures will not be particularly difficult for the states, because the rules of international humanitarian law are systematized and clearly formulated in the Geneva Conventions

[21] See: Geneva Conventions of 12 August 1949...

and their Additional Protocols. The difficulty lies in translating them into practice. The weak point of international humanitarian law is that it does not provide for an institution of responsibility for the violation of these rules. It turns out that once the states parties to the Conventions implement these rules in their national legislation, they are entitled to regulate responsibility for their observance as they see fit. This naturally complicates their realization, because without a unified institution of responsibility it is impossible to ensure strict compliance with IHL rules. On the other hand, even in the absence of such a unified institution the states can, given a certain amount of effort, put these rules into effect through their own national legislations. For example, based on world experience, an important step to be taken by the states parties to the Conventions is to revise their military doctrines. Thus, Germany has revised its field manuals, and Belgium has set up a law of war department at the general staff of its armed forces, with employees of this department assigned as legal advisers to the main headquarters of the three armed services, the medical service and large formations. As an integral part of the general staff, these officers are entitled to advise commanders on the application of the law of war and on the planning and conduct of operations, and also help disseminate knowledge about international humanitarian law. Such specialists have been trained at special law of war courses at the Royal Defense College since 1988.

At the same time, some European scholars believe that in order to carry out the provisions of Art 82 of Protocol 1 it is enough to have military commanders with a deep knowledge of the law of war.[22] In addition, according to N.G. Aliev, compliance with the Conventions would be promoted by efforts to acquaint the population with their content, and also by a study of humanitarian law at military and civilian educational institutions.[23] In Switzerland, for example, a number of manuals and instructions have been developed for the command staff of the armed forces based on a law adopted in 1987, and a program has been approved for training the country's servicemen in the law of war.[24]

ICRC Activities in Conflict Zones

Among the international organizations operating in areas of conflict in the Central Caucasus, one could single out the OSCE, the Office of the U.N. High Commissioner for Refugees and the International Committee of the Red Cross. As regards the ICRC, it has been working in Azerbaijan in connection with the Nagorno-Karabakh conflict since 1992, focusing on the problems of missing persons, persons detained in relation to the conflict, and vulnerable groups of detainees.[25] For these purposes, ICRC representatives make inspection tours of Armenian-occupied Azerbaijani territories, assist the authorities in fighting tuberculosis in places of detention, and promote the implementation of IHL at the national level and its integration into the training of the armed and security forces and into university and school curricula.[26] Of historical importance was the ICRC's assistance in organizing the first ever translation and publication (in 1999) in Azerbaijani of the 1949 Geneva Conventions

[22] See: D.Guillemet, "Yuridicheskie sovetniki v vooruzhonnykh silakh," in: Yuridicheskie sovetniki v vooruzhonnykh silakh, MKKK, Moscow, 1999, pp. 7-37.

[23] See: N.G. Aliev, *Problemy voiennogo prava Azerbaidzhana*, Azerneshr, Baku, 1999, p. 147.

[24] See: Iu.Iu. Sokovykh, "Realizatsia mezhdunarodnogo gumanitarnogo prava v natsional'nom zakonodatel'stve Rossii," *Gosudarstvo i pravo*, No. 9, 1997, p. 10.

[25] See: "MKKK v Azerbaidzhane" [http://www.icrc.org/Web%5Crus%5Csiterus0.nsf/htmlall/azerbaijan?OpenDocument&style=custo_morenews], 9 November, 2005.

[26] See: Ibidem.

and their two Additional Protocols.[27] The ICRC also assists the country's health care agencies (in providing prosthetic services). In the Nagorno-Karabakh region of the Azerbaijan Republic, it supports institutions providing primary medical care and builds safe playgrounds for children free of mines and unexploded ordnance.[28]

In Georgia, where the ICRC has also been operating since 1992, it seeks to protect and help internally displaced persons, the needy in Western Georgia, and also socially unprotected groups of the population in Abkhazia.[29] In the Gali District, where the danger of a conflict still exists, the ICRC assists emergency surgical and blood transfusion services.[30] Throughout the country's territory, ICRC representatives visit detainees and cooperate with the authorities in fighting tuberculosis in detention centers. In order to ensure constant access to medical services in the sphere of physical rehabilitation, ICRC employees jointly with local partners have been working to hand over the management of the Tbilisi prosthetic/orthotic center to an independent local foundation.[31] In Abkhazia, ICRC representatives help the local authorities to ensure the operation of a prosthetic/orthotic facility in Gagra, to implement international humanitarian law at the national level, and to incorporate it into programs for training armed and security forces and into university and secondary school curricula.[32]

In spite of the ICRC's efforts over many years to improve the situation in the Central Caucasus, far from all of the set goals have been achieved. Thus, there are numerous problems relating to violations of IHL rules and organization of visits to conflict zones. In particular, the issue of bringing to justice those who violate IHL rules is high on the agenda. And this brings us to the topic of the Rome Statute of the International Criminal Court.

Accession of the Central Caucasian Countries to the Rome Statute of the International Criminal Court or Establishment of a Special Judicial Body to Deal with Crimes in the Region

The Statute of the International Criminal Court (Rome Statute) is a unique international legal act which established this international body and determined the range of crimes within its jurisdiction, the procedures for their investigation, criminal prosecution and trial, for appeal and review of its decisions, etc.

The importance of getting the Central Caucasian states to sign and ratify this document is hard to overestimate. When the International Criminal Court begins to operate in the Central Caucasus, this will provide a real opportunity for putting into effect the rules of international humanitarian law in the region, because under Art 8 of the Rome Statute its jurisdiction extends to war crimes (including grave breaches of the 1949 Geneva Conventions). This will make it possible to remedy the major shortcoming of the Geneva Conventions: the extreme difficulty of translating their provisions into practice.

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[27] See: *1949-su il 12 avgust tarikhli Senevria Konvensiialary via onlara Yalavia Protokollar*. Introduction by Namiq Яliyev, Baku, 1999, 392 pp.
[28] See: "MKKK v Azerbaidzhane."
[29] See: "MKKK v Gruzii" [http://www.icrc.org/Web/rus/siterus0.nsf/htmlall/georgia], 9 November, 2005.
[30] See: Ibidem.
[31] See: Ibidem.
[32] See: Ibidem.

At the same time, it is not easy to get the states to accede to the Rome Statute and to bring it into force in their territories. Its national implementation is considerably complicated by possible conflicts with the national legislations of these states. In particular, Art 120 of the Rome Statute is "conducive" to such a state of affairs, since it rules out the possibility of the Statute's implementation in part and not in full or of excluding some provisions ("No reservation may be made to this Statute"). In principle this is right, because otherwise this document would lose its significance, cancelling out all the strenuous efforts to reach a compromise between states that finally resulted in the Rome Statute.

Concrete problems relate to the following aspects: immunity of persons holding official positions; the states' obligation to surrender their citizens to the Court at its request; the possibility of the Court passing life sentences; use of the prerogative of pardon; compliance with requests made by the Court's prosecutor; amnesties declared in accordance with national law or in view of the existence of a national statute of limitations; the fact that persons appearing before the Court will be tried by a panel of three judges and not by a jury, etc.

That is why, in our opinion, the optimal way to implement the provisions of the Rome Statute in national legislation would be as follows: to ensure the existence of all substantive and procedural rules required to implement the Statute; to adopt a single normative act covering all the problems of implementation; and to adapt national legislation for implementation of the Statute to the maximum extent (make the necessary amendments, review the general legal doctrine, etc.).

On the other hand, it will take a long time to create all the necessary conditions for ratifying and implementing the Rome Statute in the Central Caucasus. That is why, in our opinion, it would make sense to create in the Central Caucasus (however incredible this may seem) a judicial body alternative to the Rome Statute that would be vested with powers similar to those of the International Criminal Court, but with jurisdiction only over the countries of the region. Such a body should be created based on the experience of the Rome Statute and should be ratified by all the states of the Central Caucasus. Naturally, it should be a temporary body, operating only until all the conflicts in the region are resolved (and there is no longer any need for it) or until the Rome Statute is ratified by these states and enters into force in their territories (since two bodies with the same powers cannot exist parallel to each other).

Conclusion

As we see from the above, the effect of IHL rules for the Central Caucasus countries is difficult to overestimate. What is necessary here is full and accurate implementation of these rules in national legislation followed by efforts to put them into effect in these countries. This will alleviate the sufferings of the population involved in the aforesaid conflicts, limit the possibility of arbitrary rule in conflict areas and promote a peaceful resolution of these conflicts, so helping to restore justice in the region.