Armed Conflict in the Fight against Terrorism

Violeta Vasiliauskienė*

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1. Introduction

After the events of 11 September 2001 the President of the United States of America G. Bush stated that the US would begin the ‘war on terror’. In his address to a joint session of Congress and the American people on 20 September 2001 he stated: “Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped, and defeated.”1 The US National Security Strategy states that the US is fighting “a war against terrorists of global reach” and that the enemy is not a political regime or person or religion or ideology. The enemy is terrorism – premeditated, politically-motivated violence perpetrated against innocents.2

What do such statements mean in the context of international law? War in international law, in international humanitarian law (IHL) has a special meaning – it means that an armed conflict that is named by its parties as war is taking place, and

* PhD student at the Faculty of Law, Vilnius University, Lithuania.
that IHL, or the so-called ‘laws of war’, is applied during such conflict. This branch of law includes different rules than those applied in time of peace. If we state that the US is at war (in armed conflict) with all existing international terrorist groups, it means that its armed forces have the right to kill enemy combatants (i.e. suspected terrorists) in any part of the world without any warning, even if they do not pose any direct danger to the US. Do the US statements really mean such wide powers? The article analyses also the practice of other States in the fight against terrorists.

The aim of this article is to analyse the relationship between the armed conflict and terrorist actions. The article analyses when the threshold of IHL is crossed, and when other branches of law (firstly human rights law) are applied. Only the main characteristics of armed conflict will be analysed – that is, the intensity and organisation. These are the first criteria to establish when distinguishing between the situations of armed conflict and peace. Other questions that arise would be, for example, the type of armed conflict in the fight against terrorists and terrorist organisations, the beginning and end of an armed conflict, the territorial scope of an armed conflict and other aspects, but they are an object of a later study.

To answer this question the sources of international law are analysed, i.e. international treaties and customs, the jurisprudence of international courts and tribunals, as well as the doctrine of international lawyers. This aspect of analysis is developed by the Use of Force Committee of the International Law Association in its Final Report on the Meaning of Armed Conflict in International Law; so the article seeks to dwell on these aspects as applied in the case of terrorist acts.

There are no special IHL norms which would be applied in the case of terrorism, and therefore the article analyses the general concept of armed conflict and its application in the case of terrorist actions.

2. The Concept of Armed Conflict

2.1. Armed Conflict – The Threshold of IHL

It is important to distinguish between the situations of armed conflict and peace because the existence of armed conflict invokes the application of IHL. The existence of armed conflict may cause an impact on treaty obligations, on asylum rights and duties, on arms control obligations, and on the law of neutrality, amongst others. The most important consequence is that States may only claim belligerent rights during an armed conflict. If a State claims such rights outside the situations of armed conflict there is a risk that fundamental human rights that prevail in peacetime would be violated.

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4 Ibid., p. 33.