

Protection of the Human Right to Food in Peacetime and During Armed Conflicts

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Introduction

Modern society focuses on achieving “high” goals and results on the ground of general respect for human rights and basic freedoms. Human rights have priority in public international law, which enshrines them in various sources. Even declarative acts, such as the Universal Declaration of Human Rights, have acquired the force of international custom due to the development of human rights activities at the supranational level, and are therefore binding.

In the Universal Declaration of Human Rights mentioned above, one of the basic rights is the human right to a standard of living, including access to food necessary for a healthy lifestyle and an adequate level of well-being¹. We pay special attention to rights that satisfy basic human needs. Despite significant progress in the field of human rights protection, there are still issues related to the protection of the human right to food and ensuring food security at various levels. The international community recognizes the state’s obligation to protect this right to food, given that some countries may not have sufficient resources to do so.

In 2021, the level of hunger in the world is alarming significantly exceeded all previous indicators. Approximately 193 million people are acutely undernourished and need immediate assistance in 53 countries. This represents an increase of almost 40 million hungry people compared to previous figures².

A report on food security, prepared by Food and Agriculture Organization of the United Nations (FAO), indicates that more than half of the world’s hungry people live

¹ Universal Declaration of Human Rights: adopted and proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A). URL: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (date of request: May, the 2nd, 2023)

² WFP. 2021. Global Report on Food Crises – 2022. Rome, FAO. URL: https://docs.wfp.org/api/documents/WFP-0000138913/download/?_ga=2.97951135.1016653398.1655109526-405841335.1655109526 (date of request: May, the 2nd, 2022)

in Africa and Asia³. It is obvious that physical availability and sufficiency is the main priority for ensuring the right to food in these regions. At the same time, other regions focus on other tasks. EU countries and US are focusing more efforts on regulating and ensuring the right to safe and quality food, given the average standard of living in these countries. Of course, the problem has become even more complex due to the Covid-19 pandemic. This is noted in the aforementioned report, which notes that the prevalence of undernutrition increased by 1.5 percentage points in 2020 after a five-year period of stability⁴.

Over the last decade, world society has demonstrated a growing awareness of the need for a responsible attitude to the natural environment in the context of sustainable development. One of the most actively discussed issues in this context is climate change, which affects a wide range of interests and spheres of society. Again, food security is tied to these changes and trends.

Unfortunately, the current events provoked by the armed aggression of the Russian Federation against Ukraine, which began in 2014 and especially escalated with the beginning of a full-scale invasion after February 24, 2022, demonstrate the ineffectiveness of the world community in responding to threats to food security even in this context. The lack of international institutions with real influence and, if necessary, coercion, as well as the imperfection of the norms of public international law prevent the realization of the right to food not only by citizens of Ukraine, but also by citizens of states dependent on the Ukrainian food import.

The absence of a specific norm of public international law, which would definitely prohibit war in general (that is, the principle of non-use of force or the peaceful settlement of conflicts do not contain such a prohibition), sets before the world community the task of clearly observing the rules of behavior that fall under its definition. The requirements for the treatment of wounded and sick soldiers, prisoners

³ FAO, IFAD, UNICEF, WFP and WHO. 2021. In Brief to The State of Food Security and Nutrition in the World 2021. Transforming food systems for food security, improved nutrition and affordable healthy diets for all. Rome, FAO. URL: <http://www.fao.org/documents/card/en/c/cb5409en> (date of request: May, the 2nd, 2023)

⁴ FAO, IFAD, UNICEF, WFP and WHO. 2021. In Brief to The State of Food Security and Nutrition in the World 2021. Transforming food systems for food security, improved nutrition and affordable healthy diets for all. Rome, FAO. URL: <http://www.fao.org/documents/card/en/c/cb5409en> (date of request: May, the 2nd, 2023)

of war and the protection of the civilian population during a military conflict are reflected in the Geneva Conventions, which establish the basic norms of international humanitarian law. The main goal of applying such norms is to minimize all possible negative consequences of war, especially for the civilian population.

The norms of international humanitarian law become more specific during international armed conflicts. That indicates their importance compared to the norms of international law related to human rights. Therefore, it is possible to make a conclusion about the importance of qualifying the civil population's obstruction in the exercise of human rights as a crime within the framework of international armed conflicts. Some basic human rights are not directly reflected in the norms of international law, for example, the right to food is not separately specified in the Geneva Conventions. However, actions aimed at depriving the population of access to humanitarian aid, including food, or using food blockades or other methods leading to shortages of food, water or medicine, are considered violations of international humanitarian law.

The results of food security problems' research, related (among other things) to the international legal protection of the right to food, are studied by scientists at the intersection of economic and legal interests, scientific interests in the field of public administration, international law and other fields. The multi-vector nature of the problem has caused a sufficient prevalence of studies that are described in the works of Ya. Aliksieiev, V Ambroso, A. Babenko, M. Babych, Yu. Bilyk, M. Buhriia, V. Vlasov, M. Hrebenuk, V. Yermolenko, B. Danylyshyn, V. Zhmudenko, P. Kleis, B. Kovaliuk, T. Lozynska, I. Lukinova, S. Lushpaieva, R. Mudrak, M. Plotnikova, H. Prokhazko, O. Skydan, O. Surilov, S. Frison, A. Frolov, O. Shevchuk, O. Shpychak. Existing studies are mostly devoted to issues of food security of the state. Only certain works concern the right to food. We propose to determine the international legal regulation of the protection of the right to individual food security, including during armed conflicts.

The range of outlined problems requires efforts not only at the national, but also at the supranational level. In particular, we need supranational institutions that would

take care of the problems of ensuring the right of every person to food. The provisions of international law regulating food security and the right to food of every person have a well-founded basis. Our focus is on recognizing the uniqueness of this right, not only on the state's maintenance of an adequate level of food security.

1. The Conceptual Apparatus of International Legal Regulation of the Right to Food

We emphasized in our previous research, that a large number of theoretical issues, in particular the consolidation and protection of the right to food in public international law, remain insufficiently⁵. We believe that this is a significant gap, since these international documents are the main guidelines for the formation of national policies in this area.

Article 25 of the Universal Declaration of Human Rights contains the following: “everyone has the right to such a standard of living, including food..., as is necessary for the maintenance of health and well-being...”⁶. Thus, the right to food is an integral part of the group of basic human rights. The state is obliged to respect, protect, promote and ensure these rights, which involves the creation of appropriate instruments and institutions to monitor their observance. The International Covenant on Economic, Social and Cultural Rights (Article 11) defines the obligations of states not only to ensure the population's access to sufficient food, but also to promote international cooperation in the field of production, storage, distribution of food, agrarian reforms, resource distribution and international trade⁷.

We adhere to the idea of defining the right to food through the concept of the right to access food. This means for person being able to have a sufficient level of individual food security. This does not mean an unconditional obligation of states or

⁵ Волченко Н. В. Захист права людини на продовольство у міжнародному публічному праві. *Актуальні проблеми вітчизняної юриспруденції*. 2021. № 6. С. 120 – 124. URL: http://apnl.dnu.in.ua/6_2021/20.pdf

⁶ Universal Declaration of Human Rights: adopted and proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A). URL: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (date of request: May, the 2nd, 2023)

⁷ International Covenant on Economic, Social and Cultural Rights: adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 (entry into force 3 January 1976, in accordance with article 27). URL: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (date of request: May, the 22nd, 2023)

supranational structures to provide a certain amount of food to every person. Instead, the right to food involves the creation of conditions under which a person can provide himself with food⁸. Under limited circumstances, which may include armed conflicts, natural disasters and other negative events, the state can intervene and provide food to certain categories of the people.

The right to food is of great importance not only for ensuring the physical existence of people, but also for their development and progress. The same can be said about society. Therefore, the simple provision of basic needs will not be enough to fully define the term “human right to food”. Some researchers emphasize the importance of the right to development, recognizing the right to food as its important component⁹.

The right to food in Ukrainian can also be translated as the right to food or nutrition. However, even in different translations, it is defined in the same way: as an internationally recognized human right that entitles individuals to access to sufficient food and resources necessary for sustainable food security¹⁰. According to the principles of the United Nations, the right to food, like all other human rights, must be respected, promoted and ensured. According to Article 55 of Chapter IX of the UN Charter, states undertake to universally respect and ensure all human rights and fundamental freedoms without any exceptions, with the aim of creating stable and prosperous conditions for all¹¹.

Back in 2004 Guidelines were approved within the framework of the work of FAO to support the implementation of the right to food in the context of national food security systems. Accordingly, the text of the principle states that the gradual

⁸ Волченко Н. В. Міжнародно-правове регулювання захисту права на індивідуальну продовольчу безпеку в рамках ФАО. *Юридичний науковий електронний журнал* – електронне наукове фахове видання юридичного факультету Запорізького національного університету. 2022. № 1. 308-311. URL: http://lsej.org.ua/1_2022/77.pdf

⁹ Кушніренко О. Г. Міжнародно-правові стандарти права людини на достатній рівень життя та їх імплементація в соціальній політиці України. *Право і суспільство*. 2019. № 6. С. 44 – 50. URL: http://pravoisuspilstvo.org.ua/archive/2019/6_2019/part_1/10.pdf (дата звернення: 12 травня 2023)

¹⁰ Право на достатнє харчування. Виклад фактів № 34 / ГО “Харківська правозахисна група”. Харків, 2020. 60 с.

¹¹ Charter of the United Nations. Signed at San Francisco, 1945. Entered into force Oct. 24, 1945 // United Nations – Treaty Series. 1945. URL: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> (date of request: June, the 6th, 2023)

realization of the right to food requires the state to fulfill the relevant human rights obligations stipulated by the norms of international law¹².

Factors that affect the features of ensuring the right to food lie in the plane of specificity of categories of persons and regional features. It is obvious that the existing fully formed regional human rights protection systems will have specific characteristics of the human right to food. We have researched such sources of international public law as the Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, the Convention on the Prevention of the Crime of Genocide and its Punishment, the European Convention on the Protection of Human Rights and Fundamental Freedoms, Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social and Cultural Rights (San Salvador Protocol), the African Charter on Human and Peoples' Rights, the African Charter on the Rights of Women in Africa.

Considering the fact that the implementation of the right to food requires special attention to specific groups of people (for example, children, the poor, people with limited physical capabilities, the disabled, and others), it is possible to identify sources of international law that establish norms regarding the right to food for these categories. In previous works¹³, when formulating the definition of food security, it was indicated that one of the negative factors is the potential vulnerability of certain groups of citizens. Accordingly, we summarized the main provisions regarding the right to food for certain categories of persons (Table 1).

Table 1

Basic Provisions Regarding the Right to Food for Certain Categories of People

| Categories of People | Reasoning for Additional Protection | Provisions on the Right to Food | Source |
|----------------------|-------------------------------------|---------------------------------|--------|
|----------------------|-------------------------------------|---------------------------------|--------|

¹² Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. Adopted by the 127th session of the FAO Council, 22-27 November 2004. URL: <https://www.fao.org/documents/card/en/c/cceef08f-0627-5ec9-a8e2-63d7c0b608c2>. (date of request: June, the 6th, 2023)

¹³ Волченко Н. В. Продовольча безпека: теоретичні аспекти та реалії сьогодення. Система національного менеджменту в контексті інтеграційного виміру: монографія. Суми, 2014. С. 38 – 57

| | | | |
|---------------------------|--|--|---|
| Children | Age ¹⁴ , which prevents the realization of the right of access to food and places of its distribution, the inability to produce it and make it suitable for consumption. A child needs a special diet | - there is a special need to combat child malnutrition by providing a sufficient amount of nutritious food, as a measure to realize the child's right to use the most advanced services of the health care system; - the state has an obligation to provide assistance, if necessary, to those who take care of children. | Convention on the Rights of the Child ¹⁵ |
| Special groups of people | According to their nationality, belonging to a certain ethnicity, race, or religion | - "deliberately creating for any group such living conditions that are calculated for its complete or partial physical destruction", which can be considered genocide (destruction is possible when access to food is restricted) | Convention on the Prevention and Punishment of the Crime of Genocide ¹⁶ |
| Women | Facts of discrimination and certain specific situations (pregnancy, feeding, care of minors and children, etc.) | - "in impoverished conditions, women have least access to food", which requires to additionally guarantee them the exercise and enjoyment of human rights and fundamental freedoms; - states parties provide women with adequate nutrition during pregnancy and lactation | The UN Convention on the Elimination of All Forms of Discrimination against Women ¹⁷ |
| Persons with disabilities | Physical disabilities that prevent the realization of the right of access to food, the inability to produce it, special dietary needs | - "states parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate nutrition" | Convention on the Rights of Persons with Disabilities ¹⁸ |

¹⁴ Прохазка Г. А. Право на достатнє харчування дитини. *Науковий вісник Ужгородського національного університету*. Серія: Право. 2016. Випуск 39 (2). С. 141-144

¹⁵ Convention on the Rights of the Child: adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (entry into force 2 September 1990, in accordance with article 49). URL: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (date of request: May, the 20th, 2023)

¹⁶ Convention on the Prevention and Punishment of the Crime of Genocide: approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 (entry into force: 12 January 1951, in accordance with article XIII). URL: <https://ihl-databases.icrc.org/ihl/INTRO/357> (date of request: May, the 27th, 2023)

¹⁷ Convention on the Elimination of All Forms of Discrimination against Women: approved and proposed for signature and ratification or accession by General Assembly resolution, 18 December 1979: (entry into force: 3 September 1981, in accordance with article 27(1)). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (date of request: June, the 17th, 2023)

¹⁸ Convention on the Rights of Persons with Disabilities: approved and proposed for signature and ratification on 13 December 2006 (entry into force: 3 May 2008, after the Convention received its 20th ratification, and the Optional Protocol 10 ratifications). URL: <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd> (date of request: June, the 7th, 2023)

Foreign researchers¹⁹ clearly define that the right to food should be distinguished from the concepts of “food security” and “food sovereignty”. With regard to food security, the definition proposed by the results of the World Food Summit in 1996 is generally recognized: “Food security at the individual level, the level of the economy, the state, the region or the world is achieved when all people at any time have physical and affordable access to sufficient safe and nutritious food to meet their dietary needs and preferences to lead an active and healthy lifestyle”²⁰. The first part of the definition defines individual food security as the realization of the right of each person to food.

An alternative term to the concept of “food security” is “food sovereignty”, which was proposed by the organization “La Via Campesina” at the Forum of Civil Society Organizations in Rome²¹. In the Declaration adopted at the Forum on Food Sovereignty in Nyelle, food sovereignty is defined as the right of peoples to healthy and adequate food produced by environmentally safe and sustainable methods, as well as their right to determine their own food and agricultural systems²². The concept of food security focuses mainly on the supranational level and solving the issue of providing all people with food, food sovereignty is an internal issue that recognizes the right of each state to independently solve these issues without external interference. Compliance with public international law norms regarding the right to food is a voluntary decision of each individual state. It is important that each country has the domestic capacity to meet its own food needs. This is confirmed in the official text of the Report of the Special Rapporteur on the Right to Food, Olivier de Schutter (2014)²³, which calls food sovereignty a condition for full food security.

¹⁹ Frison C., Claeys P. Right to Food in International Law. In: Thompson P., Kaplan D. (eds) Encyclopedia of Food and Agricultural Ethics. Springer, Dordrecht. https://doi.org/10.1007/978-94-007-6167-4_323-1. URL:

https://www.researchgate.net/publication/272356673_The_right_to_food_in_international_law (date of request: May, the 3rd, 2023)

²⁰ Trade Reforms and Food Security: Conceptualizing the Linkages / Commodity Policy and Projections Service, Commodities and Trade Division Food and Agriculture organization of the United Nations. Rome, 2003. 315 p.

²¹ Продовольчий суверенітет зараз. Посібник з продовольчого суверенітету / ГО “Центр екологічних ініціатив “Екодія”. Київ, 2018. 32 с. URL: https://www.eurovia.org/wp-content/uploads/2018/02/food_souverenity_now_ua.pdf (дата звернення: 18 травня 2023)

²² Declaration of Nyéléni. Nyéléni village, Sélingué, Mali, 27th of February 2007 URL: <https://nyeleni.org/IMG/pdf/DeclNyeleni-en.pdf> (date of request: May, the 3rd, 2023)

²³ Final report: The transformative potential of the right to food / Report of the Special Rapporteur on the right to food, Olivier De Schutter. Human Rights Council Twenty-fifth session. UN General Assembly, 24th of January 2014. URL:

Thus, within the framework of the establishment of the powers of the UN Special Rapporteur on the right to food, the right to food is defined as the right to regular, permanent and unlimited access to sufficient food that meets the qualitative and quantitative needs of people and ensures their physical and mental, individual and collective, a full and dignified life. This includes the cultural traditions of the people to which the consumers belong and ensuring their food security without fear of shortage. The UN recognizes the importance of securing this right for all people and seeks to promote its realization at the national and international levels²⁴.

2. Protection the Individual Right to Food in International Systems of Human Rights Protection

The control over compliance with the norms regulating the right to food in a global dimension is delegated by the UN to specialized institutions. They perform various tasks. In the field of ensuring food security and access to food, the main institution is FAO. The Preamble to the FAO Constitution affirms that “the nations adopting this Constitution are determined to promote the general welfare by promoting individual and collective action on their part to: raise the standard of nutrition and the standard of living... and thereby... secure freedom humanity from hunger; ...”²⁵ Respecting and ensuring the human right to food is an important component of achieving the sustainable development goals set by the United Nations until 2030. These goals, known as the Sustainable Development Goals, include ensuring adequate health and well-being, combating climate change, ensuring sustainable rural development and achieving social justice. FAO and other UN organizations are actively working to address food security issues and promote the realization of the right to food within these global goals.

http://www.srfood.org/images/stories/pdf/officialreports/20140310_finalreport_en.pdf (date of request: May, the 25th, 2023)

²⁴ About the right to food and human rights. Special Rapporteur on the right to food / The Office of the High Commissioner for Human Rights. URL: <https://www.ohchr.org/en/special-procedures/sr-food/about-right-food-and-human-rights> (date of request: June, the 3rd, 2023)

²⁵ Constitution of the United Nations Food and Agriculture Organization (FAO). Signed at Quebec, 1945-10-16. URL: <https://www.jus.uio.no/english/services/library/treaties/14/14-01/food-organization.xml> (date of request: June, the 6th, 2023)

The developers of the new FAO agenda pay great attention to the fight against hunger and poverty, as well as the conservation of resources for agriculture and reducing the impact of climate change²⁶. This underscores the need to protect the right to food within FAO as a food and agriculture organization.

In some documents, the right to food is determined indirectly, through the provision of basic needs. However, its priority is undeniable. General Comment No. 12 of the UN Committee on Economic, Social and Cultural Rights confirms and defines the content of this right, and describes how the state can realize this right. The content of the right to food consists of the so-called “3A”: accessibility, availability and adequacy²⁷. These three aspects mean that everyone should have physical and economic access to safe, nutritious and adequate food that meets their cultural needs. This requires the creation of conditions such as access to food, availability of quality products, access to sufficient nutrition and ability to meet dietary needs.

The right to adequate food is realized when every man, woman and child, individually or jointly with others, at all times has physical and economic access to adequate food or the means to get it²⁸ – explained in the Commentary. Adequacy reveals content in the context of quality and nutritional value. Ensuring adequacy means that food must be of adequate quality, safe, nutritious and meet the dietary needs of the person. Accessibility has two components: physical accessibility and economic accessibility. Physical accessibility means the availability of infrastructure, supply networks and opportunities to obtain the necessary nutrition. Economic accessibility, on the other hand, implies the availability of financial resources for the purchase of necessary food products.

²⁶ Draft resolution referred to the United Nations summit for the adoption of the post-2015 development agenda by the General Assembly at its sixty-ninth session. Transforming our world: the 2030 Agenda for Sustainable Development. 18 September 2015. URL: https://www.un.org/ga/search/view_doc.asp?symbol=A/70/L.1&Lang=E (date of request: June 16th, 2023)

²⁷ Frison C., Claeys P. Right to Food in International Law. In: Thompson P., Kaplan D. (eds) Encyclopedia of Food and Agricultural Ethics. Springer, Dordrecht. https://doi.org/10.1007/978-94-007-6167-4_323-1. URL: https://www.researchgate.net/publication/272356673_The_right_to_food_in_international_law (date of request: May, the 3rd, 2023)

²⁸ CESCR General Comment No. 12: The Right to Adequate Food (Art. 11). Adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999 (Contained in Document E/C.12/1999/5). URL: <https://www.refworld.org/pdfid/4538838c11.pdf> (date of request: June, the 4th, 2023)

The state must ensure access to food and prevent any measures that limit this access. This can be achieved through the formation of a legislative framework and the implementation of appropriate policies in the field of social security. The protection of the right to food against violations by third parties usually includes not only direct protection against restrictions on access or destruction of food, but also the establishment of quality and safety standards, the observance of market laws in the formation of prices, and the protection of special categories of persons. The implementation of this will require active actions on the part of the state to implement the planned policies in the field of food and social security. This can also include compliance with international norms by entering into relevant contractual obligations or compliance with generally accepted norms of international law.

Practice shows the logic of supranational coordination of efforts in this area, as well as problems associated with the globalization of food markets, for example, food prices depend not only on domestic demand and supply, but also on the situation on world food markets. Within the framework of the three-level system of realization of any human rights, including the right to food, special attention is paid to the level of protection. Individuals or groups whose rights have been violated should have access to legal remedies, including at the international level.

Yu. Bysaga defines that the international mechanism for the protection of human rights is a system of international bodies and organizations that act to implement international standards of human rights or restore them in case of violation²⁹. This system provides remedies for the right to food, including judicial and other legal remedies. Victims of violations are entitled to redress, which may include restitution (restoration to the condition before the violation), compensation (material compensation), satisfaction (appointment of moral satisfaction) and guarantees of non-repetition.

Many human rights systems require that victims first exhaust domestic remedies before turning to international bodies. This provision aims to stimulate national justice

²⁹ Бисага Ю. М., Палінчак М. М., Белов Д. М., Данканич М. М. Міжнародні засоби захисту прав та свобод людини і громадянина. Ужгород, 2003. 57 с.

systems to effectively protect human rights and is considered universally recognized in regional and international human rights protection systems. Thus, the means of protection of the right to food include legal remedies, as well as the possibility of obtaining compensation for victims of violations. It is important that such safeguards are available and effective to ensure that the human right to food is respected.

The means of protection ensure a sufficient level of independence from the state, as there are independent experts in the judicial bodies who represent themselves personally, and not the state. The mechanisms for implementing judicial protection are the consideration of a court case, and the extrajudicial – complaints and reporting procedures.

Today, three human rights courts are part of their regional systems: the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court of Justice and Human Rights³⁰. The right to food is not enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, and therefore cannot be defended in the European Court of Human Rights. The Inter-American Court of Human Rights protects this right by considering complaints about certain related rights. For example, it is logical that the right to life can be violated when the right to food is violated.

This is confirmed by the materials of the 2006 Case, according to which Uruguay violated the right to life of the indigenous population of Savhoyamax by not giving them access to lands that belonged to their community and were a means of ensuring their existence. The court determined that it is necessary not only to provide access to these lands, but also to provide food in the necessary quantity and quality until the community receives its lands³¹. So, we have an example of the application of a means of protecting the right to food, which is absent in the American Convention on Human Rights.

³⁰ Брандер П., Де Вітте Л., Гані Г., Гомеш Р. та ін. Компас. Посібник з освіти з прав людини за участю молоді / 2-ге видання, переглянуте у 2020 році / За ред.: Брандер П., Кін Е., Юхаж В., Шнайдер А. Страсбург, 2012. 490 с.

³¹ Право на достатнє харчування. Виклад фактів № 34 / ГО “Харківська правозахисна група”. Харків, 2020. 60 с.

However, the Additional Protocol to the American Convention on Human Rights in the field of Economic, Social and Cultural Rights (San Salvador Protocol) contains a special Article 12, which enshrines the right to food. This article defines the right of every person to adequate nutrition and the obligation of states to promote its implementation through the eradication of malnutrition, improvement of methods of food production, supply and distribution, and promotion of international cooperation in this area. Separately, it concerns the protection of the right to food of elderly people who cannot provide it for themselves (Article 17)³²

The African Charter of Human and Peoples' Rights does not contain direct provisions regarding the protection of the right to food, although indirectly, it can be said about it in accordance with the provisions of Article 16, which is about the right to achieve the best state of physical health, which is impossible without a balanced food supply³³. The African Charter on the Rights and Welfare of the Child (Article 14) enshrines the right to food for target groups, including children. The signatory states undertake to fight against diseases and malnutrition among children³⁴. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, in particular in Article 15 entitled "The Right to Food Security", clearly states that participating States shall ensure women's right to adequate and sufficient food³⁵. So, these two documents in Africa enshrine the right to food for children and women.

It can be assumed that the International Criminal Court can become an institution that implements the protection of the right to food within the framework of consideration of cases related to, for example, genocide. After all, Article 2 of the Convention on the Prevention of the Crime of Genocide and its Punishment contains

³² Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), 16 November 1999, A-52. URL: <https://www.refworld.org/docid/3ae6b3b90.html> (date of request: May, the 27th, 2023)

³³ African (Banjul) Charter on Human and Peoples' Rights: adopted 27 June 1981. (entered into force 21 October 1986). URL: <https://www.achpr.org/legalinstruments/detail?id=49> (date of request: May, the 27th, 2023)

³⁴ African Charter on the Rights and Welfare of the Child: adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU. Addis Ababa, Ethiopia – July 1990. (entered into force on 29 November, 1999). URL: https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf (date of request: May, the 27th, 2023)

³⁵ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa: adopted by the 2nd Ordinary Session of the Assembly of the Union. Maputo, Mozambique – 11th July 2003. (entry into Force 25th November 2005). URL: https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf (date of request: May, the 28th, 2023)

provisions on “intentionally creating for any group such living conditions that are calculated for its complete or partial physical destruction”³⁶.

In our research ³⁷we have already determined that the use of this mechanism is also possible through the means of this international court. By analogy, the same can be said about the UN International Court of Justice, which, in addition to settling international disputes, can provide advisory opinions on various legal issues.

In addition to judicial bodies, the institutions that protect the right to food can include treaty bodies created to oversee the implementation of the main treaties in the UN system: the Committee on Economic, Social and Cultural Rights (within the provisions of the International Covenant on Economic, Social and Cultural Rights), Committee on Human Rights (International Covenant on Civil and Political Rights), Committee on the Elimination of Racial Discrimination (International Convention on the Elimination of All Forms of Racial Discrimination), Committee on the Elimination of Discrimination against Women (Convention on the Elimination of All Forms of Discrimination against Women), Committee on the rights of the child (Convention on the Rights of the Child), Committee against Torture (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

Countries that have ratified the relevant treaties are required to submit reports to the relevant Committees. At the same time, non-governmental human rights organizations are preparing their own reports. It is important to note that the content of these reports may differ from official state reports, as a state may pursue its own interests, which may not always coincide with the interests of the people or groups whose rights are violated. The complaints mechanism even provides for the possibility of individual complaints (in some cases, additional protocols to the Conventions provide for this). Complaints about the right to food are usually considered in the context of a violation of the right to life or the right to be free from cruel or inhuman

³⁶ Convention on the Prevention and Punishment of the Crime of Genocide: approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 (entry into force: 12 January 1951, in accordance with article XIII). URL: <https://ihl-databases.icrc.org/ihl/INTRO/357> (date of request: May, the 27th, 2023)

³⁷ Волченко Н. В., Курило О. М. Міжнародно-правові засоби захисту права на продовольство та їх релевантність за поточних кліматичних змін. Юридичний науковий електронний журнал. 2022. № 2. С. 183-186. URL: http://lsej.org.ua/2_2022/40.pdf

treatment. In addition, the committees have the ability to independently initiate investigations in cases where they receive reliable information about violations of the right to food in a country that has recognized them as competent for such cases.

In connection with the Covid-19 pandemic (March, the 1st, 2020 – May, the 5th, 2023), the problem of protecting the right to food gains additional urgency. Researchers³⁸ point to additional factors (that need to be taken into account in the formation of international legal mechanisms) to minimize threats to food security and may negatively affect the realization of human rights to food. In particular, these factors include a decrease in people mobility, a decrease in demand for certain products, an increase in food prices, instability in the operation of supply chains, and others³⁹. Taking these aspects into account is important to ensure effective protection of human rights to food.

The system of ensuring individual food security was formulated by us in previous studies. It is presented in fig. 1

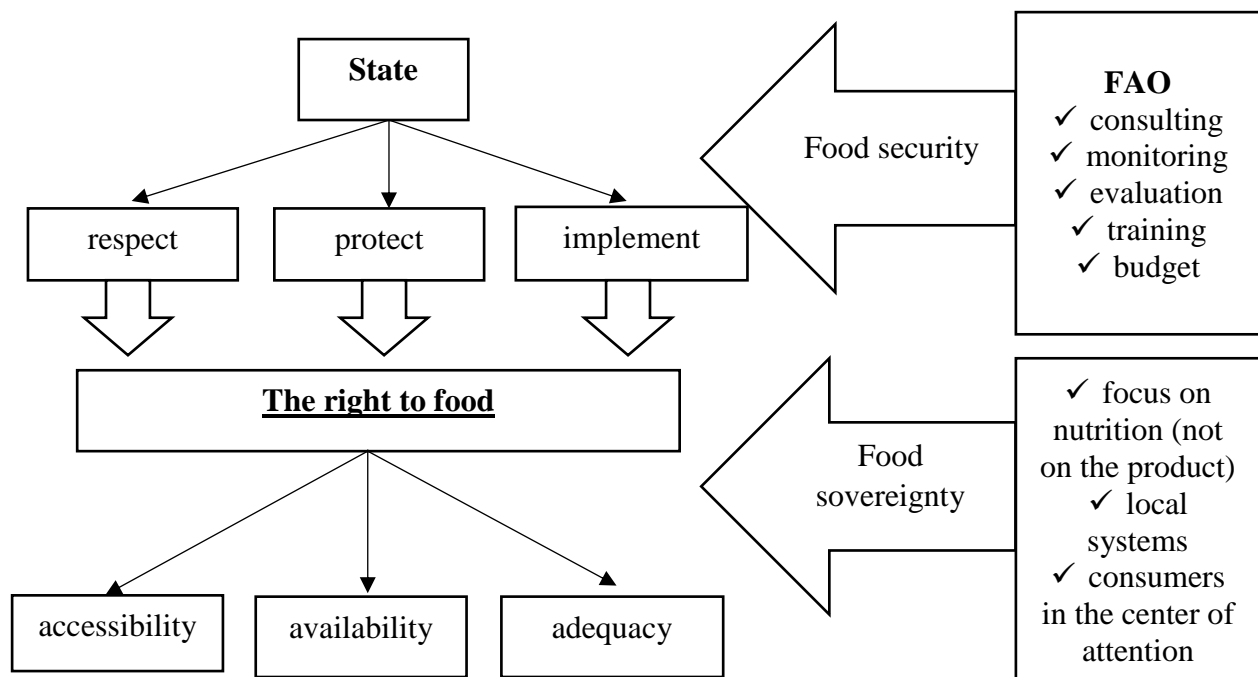


Fig. 1. The System of Ensuring Individual Food Security ⁴⁰

³⁸ Сурілова О. О. Продовольча безпека в умовах пандемії. *Наукові праці Національного університету «Одеська юридична академія»*. Т. 28. НУ «ОЮА». Одеса: Видавничий дім «Гельветика», 2021. С. 117 – 123.

³⁹ Жмуденко В. О. Теоретичні аспекти формування продовольчої безпеки в умовах пандемії. *Матеріали XIII Міжн. наук.-практ. конф. [Сучасні проблеми глобалізаційних процесів в світовій економіці]*, (м. Київ, НАУ 18 березня 2021 р.). С. 153 – 155.

⁴⁰ Волченко Н. В. Міжнародно-правове регулювання захисту права на індивідуальну продовольчу безпеку в рамках ФАО. *Юридичний науковий електронний журнал – електронне наукове фахове видання юридичного факультету Запорізького національного університету*. 2022. № 1. 308-311. URL: http://lsej.org.ua/1_2022/77.pdf

It is obvious that the obligations of states in the field of protection of the right to food can be determined according to the classical principles of human rights protection. However, the specificity of this right often leads to an ambiguous understanding of it. In addition, significant dependence on the economic development of the state, the character of the region, the political regime and other internal and external factors complicates and makes ambiguous the ability of the state to realize these obligations.

3. Protection of the Right to Food by the Norms of International Humanitarian Law

Summarizing previous research ⁴¹ we can assert that the indirect recognition of the right to food for the civilian population during armed conflicts is enshrined in Geneva Convention IV on the Protection of the Civilian Persons in Time of War. In this document the international community recognized the right to food for the civilian persons during armed conflicts. The parties agreed not to take any action against persons who do not take an active part in hostilities, including persons who have laid down their arms, as well as persons hors de combat; such acts may qualify as violence against life and person, such as murder, mutilation, ill-treatment and torture⁴². Technically, depriving a person of the opportunity to obtain food is a form of violence against life that can lead to death, so it should be prohibited.

Geneva Convention IV also contains direct instructions on the protection of the right to food. For example, in Article 15 provides for the possibility of creating neutralized zones in areas where hostilities are ongoing, in order to protect civilians from the consequences of war, including the supply of food. Article 23 allows the free movement of food parcels for certain categories of persons. Chapter II of the Convention guarantees the right to food to foreigners who have entered the territory of one of the conflicting parties. According to the provisions of Article 55, the occupying

⁴¹ Волченко Н. В., Курило О. М. Право на продовольство у міжнародному гуманітарному праві. *Альманах міжнародного права*. 2023. № 29. С. 26-33. URL: <http://inlawalmanac.mgu.od.ua/v29/3.pdf>

⁴² International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287. URL: <https://www.refworld.org/docid/3ae6b36d2.html> (date of request: April, the 15th, 2023)

power is obliged to provide the population with food and medical materials, including the supply of necessary food, medical materials and other supplies, if the resources in the occupied territory are insufficient⁴³.

The main part of the Convention on this issue is obviously Chapter III, which is entitled “Food and Clothing” and directly defines the right of individuals to individual food security. In Article 89 stated that “the daily food ration of internees should be sufficient in quantity, quality and variety to ensure a normal state of health and prevent phenomena related to insufficient nutrition”⁴⁴. We previously determined that it is more appropriate to actualize the right to food in the context of the right of access to food, and therefore the formation of the necessary level of individual food security, which in times of armed conflicts acquires special importance.

Separate provisions of the Geneva Convention on the Treatment of Prisoners of War also determine the issue of the right to food. Article 26 defines the requirements for the basic daily diet, which must be sufficient in quantity, quality and variety in order to maintain the good health of prisoners of war and prevent weight loss or the development of malnutrition⁴⁵. The formulation of food requirements in this case is sufficient to refer to the recognition of the right of this persons’ category to meet individual food security.

The Additional Protocol to the Geneva Conventions of August 12, 1949, Concerning the Protection of Victims of Armed Conflicts of a Non-international Nature (Protocol II) contains positions on the inadmissibility of the individuals’ right to have access to food. For example, Article 5 contains a thesis on the permissible conditions for ensuring the right to food security for those deprived of their liberty for reasons related to the armed conflict, regardless of whether they are interned or detained. Article 14 defines the need to protect objects necessary for the survival of the

⁴³ International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287. URL: <https://www.refworld.org/docid/3ae6b36d2.html> (date of request: April, the 15th, 2023)

⁴⁴ International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287. URL: <https://www.refworld.org/docid/3ae6b36d2.html> (date of request: April, the 15th, 2023)

⁴⁵ International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75 UNTS 135. URL: <https://www.refworld.org/docid/3ae6b36c8.html> (date of request: April, the 15th, 2023)

civilian population: “it is forbidden to attack, destroy, remove or render unusable the objects necessary for the survival of the civilian persons, namely: food stocks, agricultural areas that produce food, crops, livestock, facilities providing drinking water, reserves of the latter, as well as irrigation facilities”⁴⁶.

The specified norms contained in the Geneva Conventions, as well as certain customary norms concerning the behavior of states parties to armed conflicts, as well as other norms of international humanitarian law, are automatically applied at the beginning of such a conflict. The signatory states undertake not only to include humanitarian provisions in national law, but also to take the necessary steps to prevent violations of its norms in conflict conditions. For example, Article 87 of the Additional Protocol to the Geneva Conventions relating to the protection of victims of international armed conflicts defines that the parties to the conflict “shall demand from every commander who knows that his subordinates or other persons under his control intend to commit or have committed a violation Conventions or this Protocol, taking the necessary measures to prevent similar violations of the Conventions or this Protocol and, if necessary, to initiate disciplinary or criminal prosecution against those who committed such violations”⁴⁷.

It is obvious that non-observance or improper observance of norms of international humanitarian law entails the emergence of responsibility. Responsibility according to the classical practice of public international law will extend to both states and persons who committed crimes, therefore, it will also have an individual personified character. States will prosecute perpetrators belonging to their armed forces and compensate for damages. Their national criminal laws must contain norms regarding compliance with international humanitarian law. The implementation and practical application of the norms of international humanitarian law of the states participating in the conflict, even before its beginning, should be prompted by the

⁴⁶ Додатковий протокол до Женевських конвенцій від 12 серпня 1949 року, що стосується захисту жертв збройних конфліктів неміжнародного характеру (Протокол II), ООН; Протокол від 08.06.1977. URL: https://zakon.rada.gov.ua/laws/show/995_200#Text (дата звернення: 15 квітня 2023)

⁴⁷ Додатковий протокол до Женевських конвенцій від 12 серпня 1949 року, що стосується захисту жертв міжнародних збройних конфліктів (Протокол I), ООН; Протокол від 08.06.1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text (дата звернення: 15 квітня 2023)

general interest in humane treatment, especially towards those persons who are not direct participants in the armed conflict, as well as the formation of the image of a civilized legal state in the system of international relations. If such levers do not work, then supranational mechanisms should be included: international organizations, international criminal courts, tribunals, etc.

During an armed conflict, the violation of the right to individual food security may be committed intentionally. For example, enemy armed forces can prevent the supply of food products to the conflict zone (actions such as a blockade). In a conflict zone, a warring party may deliberately deprive people of food sources or take food belonging to others, which can lead to hunger and poor health. It is clear that the corresponding actions can already be qualified as a war crime, because a war crime is considered an international crime that is committed intentionally or with gross negligence by a combatant and persons equated to them or in relation to them by a civilian during an armed conflict and consists in a massive and serious violation of international humanitarian law's norms and encroaches on protected persons, their rights or the most important principles of international humanitarian law⁴⁸. In addition, there are possible cases of destruction of food stocks to prevent their use by enemy forces.

At the same time, it is clear that food leftovers will be sold at inflated prices, which will make them unaffordable for the majority of the people. The destruction of infrastructure facilities (roads, bridges, railway tracks) complicates, and sometimes makes it impossible to provide the persons with food. Hostilities can make it impossible for individuals to access even their own households and food supplies. In addition, corruption can lead to the abuse of power and the redistribution of food in favor of certain groups of the people. Deprivation of access to food in international humanitarian law can be qualified as one of the types of cruel, inhuman or degrading treatment. Referring to Article 7 of the Rome Statute of the International Criminal Court can be described as a crime against humanity. A crime against humanity, which

⁴⁸ Репецький В. М., Лисик В. М. Поняття та ознаки воєнних злочинів. Альманах міжнародного права. 2009. Вип. 1. С. 120-125. URL: https://intrel.lnu.edu.ua/wp-content/uploads/2015/09/amp_2009_1_15.pdf (дата звернення: 15 квітня 2023)

according to paragraph 2b includes extermination, through such actions as “intentionally creating living conditions calculated to destroy part of the population, inter alia deprivation of access to food and medicine”⁴⁹.

Conclusions

In our opinion, it is expedient to formulate the provision “the right to a sufficient level of ensuring individual food security” together with clear criteria for the violation of this right, which without a doubt can claim further development in scientific research in this field. It is clear that efforts to ensure, protect and implement the right to food will have an effect only if an integrated approach is taken. The states’ achievement of a sufficient level of food security and food sovereignty will contribute to this.

Having studied the key sources of public international law in the field of human rights protection, we concluded that most of them, in particular, the European, American, and African Conventions do not contain provisions on the protection of the right to food for all without specific categories of citizens, which technically makes it impossible to protect this right in in case of its violation in judicial institutions. In addition, the rights of certain, especially vulnerable group of people, are mostly protected. Therefore, the declarative nature of the international protection of the right to food is obvious.

The means of protection of this right at the national level may be exhausted, which opens up the possibility of applying international judicial and non-judicial mechanisms. The mechanisms for implementing judicial protection are the consideration of a court case, and the extrajudicial – complaints and reporting procedures. In our opinion, the issue of insufficient enshrining of the right to food in international treaties remains problematic, which leads to the need for individuals to address the need to protect related rights. Regional systems should develop effective

⁴⁹ Rome Statute of the International Criminal Court. 17 July 1998. Adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court> (date of request: April, the 15th, 2023)

mechanisms for including these issues in relevant documents to facilitate the protection of violated rights.

Having set the goal of researching the specifics of enshrining the right to food in international humanitarian law, we ultimately determined that the right to food is one of the basic human rights that must be additionally protected during armed conflicts. After all, the deprivation of such a right is direct violence against a person, which in the end can lead to death. The Geneva Conventions contain a sufficient number of norms that regulate the human right to food, however, their implementation is usually complicated by the nature of the military operations themselves. In addition, it can be stated that there is a clear emphasis on the need to observe and ensure individual food security, especially for specific categories of people: children, women, the elderly, prisoners of war, etc. The formulation of food requirements in international humanitarian law is sufficient to talk about compliance with individual food security. The main problem remains in the field of preventing violations of the requirements of the relevant norms regarding the right to food.

In case of non-compliance or improper compliance, responsibility arises both at the level of the state and at the level of individuals. In such a case, the implementation of norms of international humanitarian law into the national legislation of states participating in the conflict, as well as international institutions, becomes of great importance.

Violation of the human right to food is one of the most serious crimes, and therefore those guilty of it should be prosecuted in accordance with the practice of international criminal justice, which is of interest for further research in this area.

Summary

The research of human right to food protection or ensuring food security at different levels, still remains insufficiently developed due to the multi-vector and complexity of the problem, as well as differences in its characteristics for different regions of the world. Individual food security is much broader than the concept of “access to food”, which is most often found in international legal acts. This right forms

the obligation of states to create conditions under which a person will be able to provide himself with food on his own, and provision by the state will be carried out only under appropriate specific circumstances. Today, the problem of realizing the right to food lies mostly in the plane of specificity of the category of target groups. The European, American and African Conventions do not contain specific provisions on the protection of the right to food for all without specific categories of persons, which technically makes it impossible to protect this right in the event of its violation in judicial institutions. The means of protection of this right at the national level may be exhausted, which opens up the possibility of applying international judicial and non-judicial mechanisms. The mechanisms for implementing judicial protection are the consideration of a court case, and the extrajudicial – complaints and reporting procedures. The right to food is one of the basic human rights that must be additionally protected during armed conflicts. The Geneva Conventions contain a sufficient number of norms that regulate the human right to food, however, their implementation is usually complicated by the nature of the military operations themselves.

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