

APPLICABILITY OF CYBERCRIME CONVENTIONS TO INTERNATIONAL COOPERATION IN THE FIGHT AGAINST CHILD ABUSES ON THE INTERNET DURING ARMED CONFLICTS

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Abstract: *Information and telecommunication technologies are intensively used to aggravate the humanitarian condition of children being disproportionately affected by military conflicts. Although international humanitarian law contains a significant number of norms providing special protection of children, most issues related to child abuses on the Internet are enshrined in specific treaties that may be not applicable during international military conflicts. The present article addresses the norms of the law of treaties related to the effects of armed conflicts on treaties, including cybercrime conventions; it discusses the applicability of the existing cybercrime treaties during armed conflicts.*

Key words: *online sexual abuse, armed conflict, operation of treaties.*

1. Introduction

Children are the most affected by armed conflicts and unfortunately can be subjected to different forms of violence, including killing and maiming, sexual violence, abduction and forced displacement. As for 2023 “violence against children in armed conflict reached extreme levels, with a shocking 21 per cent increase in grave violations”, the UN Secretary General reports (Report of the Secretary-General, 2024, para 4). In particular, “the United Nations verified 32,990 grave violations” against children (Report of the Secretary-General, 2024, para 5).

Children enjoy the freedom from all forms of violence, including sexual abuse, under article 19 of the Convention on the Rights of the Child, 1989. However, children are still greatly exposed to sexual-related violence and abuse (Sapiezynska, 2021). Despite the fact that international humanitarian law provides for special protection of children in armed conflicts, it doesn't impose any duty to cooperate to suppress isolated acts that are not committed in the context of military conflicts per se.

The online environment may set the preconditions for the multiplication of malicious

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effects of any crime committed during military conflicts, including sexual abuse committed against children. The Special Rapporteur indicates that modern information and telecommunication technologies “transformed what is meant by possession [of child pornography], since the growth in Internet speeds means that it is no longer necessary to download images because they can be viewed online” (Human Rights Council, 2014, para 27), they are paid with a cryptocurrencies and are traded, moving away from the web to peer-to-peer networks (Ibid, para 28). The Special Rapporteur also emphasizes that “child prostitution is facilitated by the Internet in a number of ways, including through mobile telephone applications and websites which offer children for prostitution on online covert advertising sites (Ibid, para. 31). Moreover, child abuse is frequently streamed online (Ibid, paras. 42-43).

Armed conflicts have been identified as “the contributing factors” to the sale of children, child prostitution and child pornography in the Preamble of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000.

However, international humanitarian law, international criminal law don’t contain any specific duties of states parties to international armed conflicts or affected by a non-international armed conflict to cooperate with any other states to suppress the crime that doesn’t reach the threshold of international crime (genocide, war crimes and crimes against humanity).

Moreover, none of the existing treaties regulating international cooperation in combating cybercrime either at universal or regional level contains specific provisions addressing their applicability during armed conflict.

The fact that any situation of armed conflict promotes the expansion of sexual abuses committed transnationally, included by organised criminal groups, and that any harmful effects resulted from such crime may be multiplied and aggravated by the use of information and telecommunication technologies requires specific legal response.

Scholars significantly addressed different aspects of international cooperation in the fight against child abuses on the Internet during armed conflicts (the protection of children in armed conflicts (Millard, 2001; McGhee, 2015; Lee-Koo, 2018); international cooperation in combating crimes related to the sexual abuse of children (Netkova, 2021), (Liefwaard, 2016); the effects of armed conflicts on treaties (Pronto, 2013), (Dennis, 2005) etc. However, this topic hasn’t been discussed as a complex problem and, therefore, requires specific academic analysis.

Thus, the present research addresses the legal framework for the obligation to cooperate in the fight against online child sexual exploitation and abuse during armed conflicts and suggests certain practical ways to improve it.

2. International Legal Framework to Combat Online Child Sexual Exploitation and Abuse

Armed conflict is conducive to the commission of the most serious offences that amount to international crimes. However, as Gh. Waly, Executive Director of the United Nations Office on Drugs and Crime indicates “states and regions affected by conflict are considered environments conducive to <...> organised crime, which takes advantage of

weak institutions and the absence of law enforcement and good governance (Organized crime and corruption in conflict settings). Instability and the lack of resources in conflict-affected states to maintain legal order and prevent crime, especially those committed by organised criminal groups, pose serious risks to children.

The treaties concluded at universal level and that may be applicable to specific types of offences related to sexual abuse committed against children online don't contain any provisions with respect to their operation during armed conflicts.

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography enshrines the principle "extradite or prosecute" (articles 4(3), 5-6). Article 6(1) of the Optional Protocol provides for "the greatest measure of assistance in connection with investigations or criminal or extradition proceedings" that States Parties shall grant one another with respect to the offences set forth in this treaty.

Acts of online child sexual exploitation and abuse against children may fall within the scope of the UN Convention against transnational organized crime. In this situation the rules on international mutual cooperation are applicable (article 18). The Convention against transnational organized crime stipulates the principle "extradite or prosecute" in relation to offences prohibited in it (article 15(3)).

The Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse provides for the principle "extradite or prosecute" as well as provisions regulating international cooperation (article 25(2), 38). However, it also fails to include any norms clarifying its application during armed conflicts.

Some cybercrime conventions enshrine the principle "extradite or prosecute" (article 22(3) of the Council of Europe Convention on cybercrime; article 31(6) of the Arab Convention on Combating Information Technology Offences). This principle is necessary to fight against impunity of the offenders present on the territory of state which are parties to these conventions. However, all other regional treaties against cybercrime regulate only mutual legal assistance in criminal matters (articles 6-7 of the Agreement on the cooperation of members of the Commonwealth of Independent States in the fight against crimes in the field of information technologies, 2018, articles 6-9 of the Protocol on the interaction between member states of the Collective Security Treaty Organization in combating criminal activity in the information sphere, 2014). The exercise of mutual legal assistance regulated by these treaties may be delayed or refused under specific circumstances (article 7 of the Agreement on the cooperation of members of the Commonwealth of Independent States in the fight against crimes in the field of information technologies, 2018, article 7-9 of the Protocol on the interaction between member states of the Collective Security Treaty Organization in combating criminal activity in the information sphere, 2014).

Thus, none of the existing treaties governing international cooperation in combating cybercrime at either the universal or regional level contains specific provisions addressing their applicability during armed conflicts (Maroz, 2024).

Despite the fact that the existence of an armed conflict does not ipso facto terminate or suspend the operation of treaties between States participating in the conflict as well as between a State that is a conflicting party and a State that is not, the treaties on

cybercrime not necessarily continue their effect in such situation (International Law Commission, 2011). In particular, articles 60-62 of the Vienna Convention on the Law of Treaties of 1969 provide grounds for possibly terminating or withdrawing from a treaty due to armed conflict. When assessing whether a specific treaty is subject to termination, suspension, or withdrawal due to armed conflict, the nature of the treaty and the characteristics of the conflict must be considered, as outlined in Article 6 of the Draft Articles on the Effects of Armed Conflicts on Treaties of 2011.

Therefore, it can be concluded that multilateral treaties against cybercrime are not automatically suspended or terminated by states involved in a conflict, nor between a conflicting state and a non-conflicting state (Maroz, 2024). Nonetheless, the nature of the treaty and the characteristics of the armed conflict may influence its operation (Maroz, 2024). Additionally, an armed conflict may constitute a fundamental change of circumstances, a material breach, or a supervening impossibility to perform a treaty, potentially leading to its termination or withdrawal by one or more state parties (Maroz, 2024).

3. Legal framework for Cooperation in the Fight against Online Child Sexual Exploitation and Abuse during Armed Conflicts under the Draft United Nations Convention against Cybercrime

The Draft UN Convention against cybercrime prohibits “offences related to online child sexual abuse or child sexual exploitation material” (article 14) and “solicitation or grooming for the purpose of committing a sexual offence against a child” (article 15).

Under article 22(4) each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with the Convention when the alleged offender is present on its territory, and the respective state does not extradite the person. Article 22(5) establishes the obligation to consult one another with a view to coordinating their actions when 2 or more states are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct. Article 40(4) of the document stipulates that “without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention”.

These rules are a basic guarantee against impunity for online child sexual abuse or child sexual exploitation materials. However, the Draft doesn't contain any provisions with respect to the operation of the convention during armed conflicts or between States parties to the conflict as well as between a State party to the conflict and a State that is not.

Cybercrime treaties or international criminal law conventions are not included in the indicative list of treaties that shall not be suspended or terminated during armed conflicts (International Law Commission, 2011).

Therefore, a provision to ensure the applicability of the UN Convention against

cybercrime in combating online child sexual exploitation and abuse during armed conflict is necessary. Based on the above considerations, the following provision is proposed for the draft UN Convention against cybercrime:

«Application of the Convention in the Event of Armed Conflict

1. In the event of an armed conflict between two or more High Contracting Parties, this Convention shall not automatically cease to apply either between them or concerning third States.

2. In any event of suspension or termination of this Convention during armed conflict, the Parties shall nonetheless continue their cooperation to the maximum practicable extent in combating offences related to online child sexual abuse, child sexual exploitation materials, or other online sexual acts against children. This is to ensure accountability and to punish perpetrators present on their territory (Maroz, 2024).

4. Conclusions

None of the existing treaties governing international cooperation in combating cybercrime at universal or regional level contains specific provisions addressing its operation during armed conflicts. Moreover, cybercrime treaties or international criminal law conventions are not considered in the same way as those that shall not be suspended or terminated during armed conflicts. Thus, in order to ensure the fullest protection of children's rights, a specific provision on the operation of treaties against cybercrime during armed conflicts as regards international cooperation in the fight against online child sexual exploitation and abuse should be prescribed. Based on the above considerations, such a norm should also be added to the text of the draft UN Convention against cybercrime. Such an amendment would enable the principle of zero tolerance to sexual violence against children and the fullest implementation of the principle of inevitability of criminal responsibility for such acts.

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