

Human Rights Violations by War Crimes: Theory and Practice

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Abstract

The relevance of this study is conditioned upon the real mass violation of human rights against the background of the full-scale invasion of the Russian Federation on the territory of Ukraine and the commission of numerous war crimes by the aggressor state, which encroach on the welfare of individuals. The purpose of this study was to clarify the concept and content of war crimes, their correlation with violations of fundamental human rights and freedoms in the field of public international and humanitarian law. The principal methods used in this study were historical, statistical, analysis method. The study results were as follows: clarification of the historical origin of the term “war crime”, characteristics and differences between the term “war crime”, research of international treaties and other regulations that govern and define this category, clarification of the norms of Ukrainian legislation that make provision for war crimes and sanctions for their commission.

Keywords: Genocide, International Tribunal, Russian-Ukrainian War, Armed Aggression, Inalienable Rights.

Introduction

A human, their inalienable rights, and especially the right to life, are the highest value in any democratic society. All means of regulatory protection should be effective and aimed at practical, not theoretical, counteraction to criminal encroachments on a person’s life. In conditions of armed and military conflicts, emergencies, this right is more difficult to ensure, especially in those territories that are temporarily outside the jurisdiction of the country authorized for such protection. Russia’s full-scale invasion created just such a situation. Taking this into account, the purpose and objectives of this study became necessary to find out the legal nature of war crimes, what rights are encroached on by illegal actions

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committed by the military, how international humanitarian and public law regulates these crimes, etc.

An important aspect of the study is the analysis of the best practices of other scientists on the subject under study.

Thus, A. Chervyakova (2020) analyses the signs and composition of a war crime and points out such an element as “mentality”, which includes a strong-willed and intellectual component. An individual should want to commit an act, as well as be aware of the consequences that will occur after it is committed. An individual should also understand that this act encroaches on an object that is protected by the provisions of international humanitarian law and numerous conventions.

V. Pylypenko (2018) points to the unprecedented severity and public danger of war crimes. The author also points to the position of the United Nations International Law Commission, which is to recognize war crimes as acts that encroach not only on the rights of individuals, but also on international peace and security in general, and pose a threat to public well-being. The subjects of this type of action can be both states represented by authorized individuals, and separate individuals who are representatives of the state. Due to the severity of war crimes, the statute of limitations does not apply to them.

A. Vozniuk (2022) analyses the contradictory norm of the criminal legislation of Ukraine concerning the possibility of releasing war criminals in connection with the exchange of prisoners of war. The subject of this exchange can be either a citizen of Ukraine, or a foreigner, a person with dual citizenship or a stateless person. This decision is made by an authorized person or body both during the serving of the convicted person’s sentence, and before. The author points out that the introduction of this norm makes it impossible for the state to apply fair punishment for a criminal, the possibility of bringing a person to criminal responsibility in the future is lost, etc.

A. Dragonenko (2022) notes that the specific feature of war crimes is that they are characterized as ongoing or continual acts, specifically through the performance of identical or repeated actions, for instance, systematic threats to the civilian population, holding non-military people hostage, captive, attacks against critical, civilian infrastructure, etc.

B. Andrusyshyn & O. Tokarchuk (2022) conducted a comparative analysis of the methods of concealing the facts of the commission of war crimes by the German Nazis during the Second World War and the Russian military during the full-scale invasion of the territory of sovereign Ukraine. Such concealment occurs through mobile crematoria, the creation of filtration camps, intimidation, and the

use of propaganda to protect the Russian-speaking Ukrainian civilian population, which suffers from harassment by the authorities.

Most of the studies of scientists contain a fairly comprehensive and in-depth investigation of the topic, but it is not superfluous to find out the origin of the term “war crime”, the main historical events related to this concept, as well as to compare the experience of world wars and the experience of attracting those responsible for committing war crimes, crimes against humanity, with modern experience in the context of a hybrid Russian-Ukrainian war and systematic violation of international norms by the aggressor state.

Materials and Methods

This study was conducted using various methods of scientific cognition. Specifically, the principal method was the general scientific dialectical method, which analyzed social phenomena related to the specifics of the object under study – war crimes in their development and interrelation. It is also advisable to highlight the historical method of cognition, the use of which allowed characterizing the origin, legal nature of the term “war crime,” its understanding in different times and features of interpretation; changing the qualification of this act in the regulations of countries, international treaties, etc.

The comparative legal method allowed characterizing the intensity of the commission of acts, which in their composition have signs of a war crime, among countries; together with the comparative method, the statistical method was used to highlight the main data related to the number of war crimes committed by the Russian Federation on the territory of sovereign states: Ukraine, Syria, Georgia, etc. The sources that were used in the study to cover up-to-date statistical data were as follows: the Office of the Prosecutor General of Ukraine (2023), etc.

During the analysis of theoretical works, current legislation concerning the protection of the rights and legitimate interests of citizens and its application, a formal and logical approach was used to highlight contradictions in regulations and scientific approaches to research. This allowed proposing changes to the legislation to improve the human rights mechanism. The system-structural approach allowed identifying individuals whose rights may be violated as a result of war crimes in international and national law. Analysis of published surveys using a sociological approach allows establishing the positions and opinions of lawyers, prosecutors, and judges regarding the current state of research on this issue.

The use of the method of legal hermeneutics allowed analyzing international regulations that relate to the qualification and definition of war crimes, highlighting mechanisms for bringing those responsible to justice. The

objects of the study, considering this method, were the Charter of the International Criminal Court or the Rome Statute (2023), as well as the Convention for the Protection of the Civilian Population in Time of War (2023).

Using the method of analysis, issues related to the problems of modern application of regulatory provisions to the fact of systematic commission of war crimes by the Russian Federation on the territory of Ukraine were investigated. Based on the identification of these problematic issues, the ways necessary for their solution are proposed. The synthesis method allowed combining and collectively investigating all the important characteristics and features of war crimes: subjects, objects, subjective and objective sides; specifics of interpretation and investigation, consolidation in legislation, etc. Using the analogy method, the similar and distinctive properties of the concept of a war crime tangent to the object of the study were clarified, as well as the importance of separating these categories.

The method of modelling allowed shaping the future vision and form of international assistance regarding the application of punishments to war criminals, both in the person of the state and in the person of separate individuals who represent the aggressor state. In addition, using induction, a general conclusion related to the subject of the study was formed based on certain clarified and analyzed elements of the above-mentioned institution.

Results

The main international act on the regulation of human rights and freedoms is the Universal Declaration of Human Rights (2023), adopted by the United Nations in 1948. It is based on this declaration that most regulations, conventions, treaties, and charters are adopted. It is advisable to classify human rights according to their generations into civil, political, economic, social, and cultural ones. Given this division, there are various mechanisms for their protection, including legislative initiatives, activities of human rights organizations, public debates, etc. Although some content regarding human rights and freedoms is subject to interpretation, it is possible to say exactly which human rights are not subject to alienation and are absolute: the right to life, the prohibition of torture and slavery, freedom of thought, conscience and religion, etc (Ranaweera, 2022).

Notably, although the absoluteness of these rights is consolidated in many international acts, it is advisable to factor in situations that entail the threat of their encroachment and violation, for instance, through armed and military confrontations, international conflicts, etc. In this case, it is necessary to consider the norms of international humanitarian law established by the Geneva Convention of 1949, which is aimed at protecting both the military and civilians

during war (Convention on the Protection of the Civilian Population in Time of War, 2023).

The origin of the term “war crime” dates back to the second half of the 20th century with the adoption of the Geneva Convention to improve the fate of wounded and sick soldiers (Convention on the Amelioration of the Fate of the Wounded and Sick in Active Armies, 1949). However, there is evidence of rules of warfare that already existed on the territory of Egypt in the third millennium BC; these rules were aimed at limiting the ways of warfare and protecting the civilian population (Moorthy & Naidu, 2022; Taran, Zapototskyi & Starenkyi, 2022). The historical significance of this concept is associated with the conscious desire of individuals to protect both military and ordinary individuals from the destructive influence of military operations, highlighting and prohibiting some methods of warfare, limiting the range of objects of encroachment, etc (Bryant, 2021). Attention was also paid to the normative definition of what should be the behavior of the military with prisoners.

It is important to understand the fundamental difference between the concept of a war crime and a military crime. Whereas a war crime refers to the war itself and consists rather in the violation of the norms of international public and humanitarian law in a certain territory, then a military crime lies in the violation of internal legislation regarding military service, disobeying the rules of military service, etc.

The need to bring war criminals to justice was first stated in the Versailles Peace Treaty. However, detailing the required degree of punishment was reflected already after the end of the Second World War as a result of the creation of military tribunals (Treaty of the Allied Powers with Germany..., 2023). Proceeding from the provisions of both the Versailles Peace Treaty (The Rome Statute ..., 1998) the provisions of the Statute of the International Military Tribunal, the Nuremberg Principles were formed, the essence of which is as follows: any person who commits an act recognized as a war crime pursuant to the provisions of international law, must suffer the necessary measure of punishment; a person cannot be released from responsibility for committing a war crime in the absence of this type of violation in national legislation; if the crime was committed by high-ranking officials of the state acting on its behalf, this is not a reason to exempt such persons from responsibility; a person who acted on the orders of management is also not released from responsibility; a person who is considered guilty of committing a war crime is entitled to a fair trial (Bibikova, 2022).

According to the Rome Statute or the Statute of the International Criminal Court, there are more than thirty types of war crimes; it is worth highlighting some

of them: deliberate murder, torment, torture, attack on the civilian population or separate civilians, attack on civilian objects, critical infrastructure, direct strikes on places, means involved in the provision of humanitarian aid to the civilian population, use flag of temporary truce for illegal purposes, etc.

Considering this list, it is advisable to determine which rights and freedoms of people are under direct threat of violation as a result of committing illegal actions by the military: the right to life, the right to honor and dignity in the context of torment, torture, etc., the right to health, the right to a fair trial, the right to peace and security, the right to freedom and personal integrity in the context of abduction, hostage-taking, the right to private and personal life, cultural rights in the context of attacks on civilian infrastructure, as a result of committing war crimes, the rights of children (not to be separated from their parents in the context of abduction, the right to life, health, etc.) are also under threat.

The current geopolitical situation, which is characterized by Russian aggression against the statehood, sovereignty, and unitarity of not only Ukraine, but also other countries, allows citing data on the war crimes of the Russian military and the Russian top political leadership (Hebert, 2021). For instance, during the Russian-Chechen war, mass attacks against civilian infrastructure, executions, looting, and sexual violence against civilians were recorded. The Russian Federation also chose the same tactics of conducting military operations during the invasion of Georgia: airstrikes of critical infrastructure, torture of military prisoners, looting, etc (Guchua et al., 2022). The European Court of Human Rights considered several cases related to war crimes in which the Russian Federation was the defendant; in more than a hundred verdicts, the Russian Federation was found guilty of murder, torture, and failure to provide access to a fair trial in Chechnya and Georgia.

War crimes committed by Russia on the territory of Ukraine date back to 2013–2014, but they do not differ in the tactics of conducting military operations, which leads to the destruction of civilian infrastructure, encroachment on the life and health of civilians, and torture of the military. The full-scale offensive of the aggressor state on February 24, 2022 marked a new stage of tension between European states and the Russian Federation, given the war and military crimes committed by the Russian military.

It is advisable to provide statistical data on war crimes committed on the territory of Ukraine, starting from February 24, 2022 (Figure 1).

Notably, since the beginning of the full-scale invasion, Russian armed forces have accompanied the fighting with nuclear terrorism through the shelling of nuclear power plants, nuclear waste storage facilities, damage to power units, the threat of damage to nuclear reactors— these actions are a direct encroachment

on human environmental rights, specifically the right to a safe environment (Sandul et al., 2018; Borko & Vilks, 2023). Systematic murders, rape, mutilation, torture of civilians in the temporarily occupied territories, blackmail and threats to local authorities, involvement of underage and minors in military operations have been recorded.

Figure 1. War crimes committed by the Russian Federation on the territory of Ukraine during 24.02.2022–18.04.2023



After the de-occupation of the territories of Kyiv, Chernihiv, Sumy, Kharkiv regions and others, the authorities investigated the facts of mass murder of the civilian population, deliberate destruction of critical infrastructure, namely hospitals, to make it impossible for the civilian population to access medical services. Currently, war crimes against children, including premeditated murder, injuries, kidnappings, and mass deportations to the territory of the Russian Federation, are registered in the media and according to authorized persons of the Office of the prosecutor general of Ukraine, namely A. Kostin. On the territory of the Kherson region alone, over 10 thousand registered war crimes are in criminal proceedings. In addition, due to the obstruction of evacuation, disruption of humanitarian missions, failure to grant permits for the opening of humanitarian corridors, mass deportations to the regions of the Russian Federation, Russian

combatants encroach on the inalienable human right to freedom of movement (Office of the Prosecutor General of Ukraine, 2023).

The situation with the registering and investigation of sexual crimes committed against women, men, and children is still difficult. The problem is that the victims themselves want to avoid applying to law enforcement agencies to register an offence against their bodily integrity, but the Office of the Prosecutor General of Ukraine indicates that it is sexual violence that contains the greatest cruelty and the greatest frequency of commission. For instance, a case of rape of a woman by a Russian soldier, a threat to kill a child and illegal residence in the victim's house was registered in the territory of the Beryslav district of the Kherson region. It is important to understand that sexual violence in its essence contains not only rape, but also mutilation of the genitals, forcing sexual acts without the consent of the victim, forcing nudity, etc. (Tacij, Tjutjugin & Grodeckij, 2014).

Presently, there is a question of bringing the guilty war criminals to justice. At the national level, it is possible to bring individuals to justice, specifically under the provisions of the Criminal Code of Ukraine (2012) in Section 11, e.g., under Article 433 "Violence against the population in the area of military operations", Article 432 "looting", etc. It is also worth referring to Article 438, which summarizes war crimes, although it does not define this concept – "violation of the laws and customs of war". The present study makes provision for the application of sanctions in case of ill-treatment of civilians or prisoners of war who are under convention protection, the use of ammunition or other weapons that are prohibited for use by international law, the looting of museums, other cultural places, etc.

As for responsibility at the international level, it is appropriate to use the practice of establishing ad hoc tribunals, using evidence from the Tokyo, Yugoslav, and Nuremberg tribunals. The most enduring obstacle to bringing the perpetrators to justice for war crimes committed on the territory of Ukraine is their diplomatic immunity, speaking of bringing, for instance, a minister or head of state under the laws of Ukraine, but at the international level such an obstacle does not exist, so the status of a particular war criminal is not relevant. Thus, the options for bringing to justice those responsible for the killing of civilians, airstrikes of critical infrastructure can be as follows: through the conclusion of a multilateral treaty between states that will unite to create an appropriate tribunal, through the conclusion of a treaty between Ukraine and the United Nations, or the creation of a special tribunal based on the legislation of Ukraine and involving Ukrainian judges, prosecutors and lawyers, but on the territory of European countries.

Notably, during the full-scale armed invasion of the Russian Federation on the territory of Ukraine by Europe and other countries, a lot was done not only at the level of national support for the supply of weapons or financial tranches, but also diplomatic aid to bring the perpetrators to justice through the adoption of declarations and resolutions that underlie the activities of future special tribunals (Barabash, Serdiuk & Steshenko, 2020). Such a tribunal will be directed not only directly at the aggressor state, but also at its ally –Belarus.

It is also appropriate to highlight the important decision of the International Criminal Court, which was issued on March 17, 2023 and consisted in the issuance of a warrant for the arrest of the President of the Russian Federation V. Putin and the Commissioner of the Russian Federation for the Childrens' Rights M. Lvova-Belova in connection with the commission of a war crime, which consisted in the illegal deportation and abduction of Ukrainian children, encroachment on their freedom of movement and the right to stay with their parents (International Criminal Court, 2023). Although Ukraine has not ratified the Rome Statute, which is the basis of the ICC's activities, it has recognized the jurisdiction of this institution on the territory of the state. The importance and uniqueness of this decision lies in the fact that at the official level, the head of state is recognized as a war criminal, as well as because of the willingness of states that are signatories to the Statute to arrest the perpetrators if they find themselves on their territory. Thus, it is impossible not to notice the willingness of the international community to promote the conviction and prosecution of war criminals through all possible means.

Discussion

For a more in-depth analysis of the subject under study, it is also necessary to analyze the papers of other authors on this subject. Thus, K. Martz (2022) points out that Russian military actions against Ukraine contradict international humanitarian law and can be recognized as war crimes. Ukraine and Russia are signatories to numerous international treaties on humanitarian law, such as the Geneva Conventions and the Rome Statute of the International Criminal Court. However, as a result of Russian aggression against Ukraine, the legal provisions of the relevant regulations are recognized as violated, in general, due to the ill-treatment of hostages, the use of prohibited weapons, etc., which is a direct violation of a number of human rights and freedoms. The results of the author coincide with the results of the present study because indeed, the full-scale offensive of the Russian Federation against Ukrainian statehood and sovereignty caused many violations of international law and human rights as such due to encroachments on their life, health, security, etc.

L. Gostin & L. Rubenstein (2022) discussed attacks on the human right to healthcare during the war; stressed the importance of bringing those responsible to justice pursuant to international law. The authors argue that attacks on medical facilities and staff not only violate international humanitarian law, but also lead to considerable civilian casualties. They call on all parties to the conflict to respect the inviolability of medical institutions and personnel, and the international community to take the necessary measures to level the corresponding danger on the territory of Ukraine.

Comparable considerations were found in the study by F. Fontanarosa, A. Flahin & R. Golub (2022). Thus, the authors discussed the grave consequences of the ongoing war in Ukraine for human rights to receive aid, healthcare, etc. This confrontation has led to the displacement of millions of people, disrupted healthcare systems and caused a considerable increase in injuries, mutilations, both mental and physical. The authors emphasize the importance of meeting the healthcare needs of those affected by the Russian invasion, including providing access to healthcare, addressing mental health issues, and implementing measures to prevent the spread of infectious diseases; this access can be improved through international cooperation (Cherniavskiy et al., 2019).

Although the authors' results only partially coincide with the results of the present study, it is worth agreeing with them and specifying that it is indeed healthcare institutions that play a decisive role in ensuring the right to access medical services, treatment, etc. Therefore, attacks by the Russian military on objects protected by international humanitarian law are nothing more than a war crime.

Interesting is the study by D. Stoianovych (2022), who discusses the concept of the laws of memory regarding the Yugoslav wars and their consequences. Memory laws refer to legal measures taken to regulate and shape the way history is remembered and interpreted in society. It is argued that the legacy of the Yugoslav Wars continues to shape politics in the region and that the laws of memory are a key tool in analogous conflicts. Even though the author's results do not coincide with the results of the present study, they provide the necessary insight into how it is possible to regulate the current situation on the territory of Ukraine. Specifically, the experience of the Yugoslav wars is important in the context of the creation of a special military tribunal for war criminals, as well as for their persecution and prosecution.

The study by J. Bosse (2022) examines the reaction of the European Union to the military confrontation between Ukraine and the aggressor state of the Russian Federation. The author claims that although the EU has expressed strong condemnation of Russian aggression and violations of international law, the

processes of delaying the supply of necessary weapons to Ukraine are a consequence of the EU's fear of a possible escalation. The study also examines the need to protect EU citizens from genocide, war crimes, ethnic cleansing, and human rights violations (Volkov, 2017). The author concludes that the European Union must find a balance and that the responsibility to protect Europeans must be respected in the face of ongoing conflicts, such as those taking place in Ukraine.

N. Haidin's (2022) study covers the responsibility of private individuals for complicity in the war of conquest. The author argues that individuals can be held accountable for assisting or inciting the state to commit acts of aggression. The study examines the evolution of the concept of aggression in international law and the role of the International Criminal Court in the prosecution of individuals for complicity in aggression. The author also analyses various cases when individuals have been held accountable for their role in facilitating acts of aggression and discusses problems in ensuring such responsibility.

The results of the author's research coincide with the results of the present study, specifically in terms of the importance of bringing individuals to criminal responsibility for committing war crimes. This paper also identifies national provisions of regulations that provide a real opportunity to investigate and condemn military personnel who infringe on fundamental human and civil rights and freedoms by illegal actions.

W. Pons et al. (2022) examine how disability is used as a tool for violating human rights and committing crimes against humanity in the context of military and armed confrontations. The authors argue that people with special needs are more vulnerable to war and that countries do not pay due attention to their status and protection. At the international level, it is proposed to introduce special humanitarian missions that would be equipped and aimed specifically at helping people with disabilities to protect their rights and fundamental freedoms.

Although this paper does not address the subject under study, it is worth agreeing with the above arguments of the authors, since the topic of the role of people with disabilities in armed confrontation appears important. Specifically, it is worth noting that attacks by the Russian military on healthcare facilities and other critical infrastructure objects pose a threat to the normal care and treatment of people with special needs, thereby encroaching on their rights to healthcare and access to treatment.

Also interesting are the considerations of E. Eismedi & E. Pitchford (2022) regarding the impact of the war in Ukraine on sexual and reproductive health and rights, as well as the importance of protecting relevant rights in conflict situations. The results of the authors coincide with the results of the present study, and it is also important to add that violations of reproductive rights, as well as rights that

guarantee the bodily integrity of a person, consist in sexual violence, forced pregnancy and denial of access to medical care or opportunities to receive qualified advice, abortion of unwanted pregnancies, etc. Women, men, and children who are at risk of direct encroachment on the relevant set of rights are properly vulnerable because of the inability of humanitarian missions due to the denial of access by Russia, which is a direct violation of international humanitarian law.

The mass violation of the laws and customs of warfare is the direct responsibility of the Russian Federation, but it is advisable to factor in the initial position of countries, namely the members of the European Union, the United States, and others, which consisted in the policy of pacifying of the aggressor state and failure to provide proper and prompt aid to Ukraine. This factor also plays a crucial role in the massive violation of fundamental human and civil rights and freedoms on the territory of Ukraine through war crimes.

Therefore, countering war crimes in the context of armed confrontation requires a comprehensive approach and joint efforts of different parties, specifically to ensure access to independent international justice mechanisms, such as the International Criminal Court (Toots et al., 2022), as well as through strengthening international cooperation between law enforcement agencies of different countries, improving the mechanisms for exchanging information and practices; ensuring proper funding and resource support for international organizations and mechanisms that deal with countering war crimes, since, as practice shows, most bodies that recognize the maintenance of peace and security on Earth as the basis of their activities do not have effective and high-quality mechanisms for responding to and countering war crimes.

Conclusions

The study clarified the origin of the term “war crime”, its regulatory consolidation at the level of international legal acts, such as the Versailles Peace Treaty, the Geneva Convention, etc. The differences between the related terms “war crime” and “military crime” were determined. The study examined the practice of bringing war criminals to justice through the creation of special tribunals, such as the Yugoslavia, Nuremberg, etc. The paper also analyzed the war crimes of the Russian Federation as an aggressor state in the wars against the sovereign states of Georgia, Chechnya, Syria, as well as the invasion of Ukraine since 2014.

It is indicated that since the beginning of the full-scale armed invasion of the Russian Federation on the territory of Ukraine on February 24, 2022, the Russian military has committed over 70 thousand war crimes, which include

encroachments on a number of fundamental human and civil rights and freedoms, namely the right to life, health, reproductive rights, rights that ensure bodily integrity, the right to access medical services, freedom of movement, private property and private life, the right to education, etc. It was found that at the national level, the concept of a war crime is not defined in criminal legislation, but there are articles that allow bringing separate individuals to justice. At the international level, world leaders are presently guided by the provisions of the Rome Statute and other regulations that condemn war crimes and promote mechanisms for bringing perpetrators to justice. The paper cited the unique decision of the International Criminal Court, which issued an arrest warrant for the president of the aggressor state, as well as the commissioner for children's rights. It was indicated that most of the states that are signatories to the Rome Statute agreed to facilitate this decision and arrest suspects if they stay on the territory of the countries.

For further research on the subject under study, it is suggested to resolve the following issues: the relationship between military conflicts and crimes against humanity; investigation of the dynamics and influencing factors; international cooperation in bringing guilty persons to justice for war crimes; the role of international tribunals in preventing and combating war crimes; the importance of national courts in prosecuting individuals for war crimes; protection of human rights in conditions of armed conflict: challenges and opportunities.

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