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de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
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Prevention of crimes performed by the Russian federation against humanity in Ukraine

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Vasil Felyk *
Vyacheslav Tylchyk **
Rostislav Lemekha ***
Iryna Kurbatova ****
Andrii Hmyrin *****

Abstract

The purpose of the investigation is to improve criminal legislation in accordance with international standards in the context of the prevention of crimes against humanity in Ukraine. The issue of combating crimes against humanity in the twenty-first century was addressed. The commission of such crimes violates a number of international conventions and treaties, including the Rome Statute of the International Criminal Court of 17 July 1998, the Charter of the United Nations of 26 June 1945, the Universal Declaration of Human Rights of 10 December 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, etc. The methodological basis of the research consists of general and special scientific methods of scientific knowledge. The conclusions have established that the invasion of the territory of Ukraine by the Russian Federation, the use of weapons of mass destruction, missiles and machine guns against the civilian population is a usurpation not only of the territorial integrity of Ukraine, but also of the European values that have been built over centuries in response to the experience of war.

Keywords: war crimes; crimes against humanity; international criminal court; prevention of crimes; financial sanctions.

* Professor, Rector of the Kyiv Institute of Intellectual Property and Law of the National University "Odesa Law Academy", Doctor of Law, Ukraine. ORCID ID: <https://orcid.org/0000-0002-9326-4317>

** Professor, Vice-Rector for Research of the Kyiv Institute of Intellectual Property and Law of the National University "Odesa Law Academy" Doctor of Law, Ukraine. ORCID ID: <https://orcid.org/0000-0001-5964-3439>

*** Professor of the Department of Medical Law, Danylo Halatskyi Lviv National Medical University, Doctor of Law, Ukraine. ORCID ID: <https://orcid.org/0000-0001-9013-8318>

**** Prosecutor of the Department of Kyiv City Prosecutor's Office, Doctor of Law. Ukraine. ORCID ID: <https://orcid.org/0000-0001-6636-2408>

***** Associate Professor of the Department of Criminal Justice, Candidate of Juridical Science, State Tax University, Ukraine. ORCID ID: <https://orcid.org/0000-0001-9343-5684>

Prevencción de crímenes realizados por la federación rusa contra la humanidad en Ucrania

Resumen

El propósito de la investigación es mejorar la legislación penal de acuerdo con los estándares internacionales en el contexto de la prevención de crímenes de lesa humanidad en Ucrania. Se abordó el tema del combate a los crímenes de lesa humanidad en el siglo XXI. La comisión de tales crímenes viola una serie de convenciones y tratados internacionales, incluidos el Estatuto de Roma de la Corte Penal Internacional de 17 de julio de 1998, la Carta de las Naciones Unidas de 26 de junio de 1945, la Declaración Universal de Derechos Humanos de 10 de diciembre de 1948, la Convención para la Protección de los Derechos Humanos y las Libertades Fundamentales de 4 de noviembre de 1950, etc. La base metodológica de la investigación consiste en métodos científicos generales y especiales del conocimiento científico. En las conclusiones se ha establecido que la invasión del territorio de Ucrania por parte de la Federación Rusa, el uso de armas de destrucción masiva, misiles y ametralladoras contra la población civil es una usurpación no solo de la integridad territorial de Ucrania, sino además de los valores europeos que se han construido durante siglos en respuesta a la experiencia de la guerra.

Palabras clave: crímenes de guerra; crímenes de lesa humanidad; corte penal internacional; prevención de crímenes; sanciones financieras.

Introduction

Nobody could expect that the 21st century would give a place for such terrible crimes against humanity known during the World War Two. But Ukraine has faced such terrible crimes.

Despite the Minsk agreements, on February 24, 2022, the Russian Federation has invaded the territory of Ukraine and opened hostilities aimed at its occupation. According to the Office of the United Nations High Commissioner for Human Rights this resulted in great civilian casualties: From 24 February, 2022, when Russia started the war against Ukraine, to 0:00 AM on 12 March, 2022 they amounted to 1,663 civilians, including 596 dead.

During a press conference with foreign journalists, the President of Ukraine Volodymyr Zelensky named the number of dead victims among the Armed Forces of Ukraine for the first time. According to him, during 17 days of the war about 1300 Ukrainian military men were killed, and Russian

military casualties amounted to more than 12 thousand (Khan, 2022). Irreparable damage to the Ukrainian economy, private property of citizens and objects of cultural value has been caused. According to KSE data received from volunteers as of 10 March, 2022, at least 200 educational institutions, 30 health care facilities, 8 churches, 1,600 residential buildings, 19 office buildings, 23 factories and their warehouses, 12 airports, 5 thermal power plants and hydropower plants were damaged or completely destroyed. In addition to that, more than 15,000 km of roads, 5,000 km of railways and 350 bridges were destroyed or disabled (Svyrydenko, 2022).

1. Literature review

Some aspects of this problem have already been studied by many scientists and scholars.

M.I. Khavroniuk researched the issue concerning harmonization of the criminal legislation of Ukraine with legislation of foreign countries and requirements of international agreements (Khavroniuk, 2005). The relevance of this topic has been also confirmed by existing thesis works on this issue. G.V. Epur has studied the issue concerning implementation of international legal acts in the criminal legislation of Ukraine (Epur, 2005). S.P. Kuchevska has studied problems concerning harmonization of Ukrainian legislation on criminal liability with the Statute of the International Criminal Court (Kuchevska, 2008).

At the same time, taking into account the events taking place in Ukraine, it preserves its relevance. But this gives grounds to argue that it is appropriate to conduct research on countering crimes against humanity

2. Materials and methods.

Application of the dogmatic method contributed to clarifying content of international treaties that provide for liability for war crimes, content of international treaties which provide for fundamental human rights. The dialectical method has contributed to analysing the concept of war crimes and crimes against humanity in international and national criminal law. The comparative-legal method was used in international criminal law standards for the purpose to use the world experience of establishing responsibility for war crimes and crimes against humanity. Methods of deduction, analysis and generalization were used within the framework of the studying doctrinal provisions on the investigated issue. The system-functional method gave an opportunity to analyze the available domestic literature, which covers the issue of responsibility for war crimes and concepts and characteristic features of implementation.

3. Results and discussion

Among other things the Preamble to the Rome Statute states that in the 21st century, millions of children, women and men have fallen victims of inconceivable crimes that have deeply shaken the conscience of mankind; these most serious crimes threaten general peace, security and prosperity; the most serious crimes causing concern for the entire international community must not go unpunished and their effective prosecution must be ensured both by measures taken at the national level and by the intensification of international cooperation (Law of Ukraine, 1998).

This problem is a concern not just of a single country, but of all the mankind. In this situation, after the aggression against Ukraine there is a threat to the security of other countries of the world.

The level this problem has united the countries of the world is amazing. Various countries help Ukraine as much as they can by means material support, weapons, and an information attack about the RF. Poland has accepted more than a million Ukrainians, supported families who agreed to host them, Poland has offered to admit Ukraine to the EU. Moldova, Romania and other countries also accept Ukrainians, EU countries agreed to exclude the RF from the SWIFT system, imposed financial sanctions on the RF, arrested funds in banks; many brands refused to work in the RF.

However, as of March 17, 2022 NATO is still refusing to “close the Ukrainian sky,” as well as to provide fighter planes, because it does not want to enter into direct confrontation with the Russian Federation. And active combat actions are going on in particular in Kyiv, Kharkiv, Mariupol, Mykolayiv, Melitopol.

The Russian Federation is currently showing disrespect not merely to the integrity of the territory of Ukraine, but to international values in general. This state sets at nought agreements, official documents ratified by it, as well as principles of international law. The parties agree on humanitarian corridors, the time of silence for evacuation of people, the RF violates these agreements as well. Russian soldiers kill civilian population, open fire on humanitarian aid vehicles, steal them, rape captured women, use heavy weapons to destroy people’s homes, hospitals, nurseries and hostels. This is terrible and this is a violation of international norms. And political leaders of the Russian Federation distort information in their favor in terms of defense against Ukraine. In particular during negotiations in Turkey the Minister of Foreign Affairs of the Russian Federation Sergey Lavrov told journalists that “Russia did not attack Ukraine.” Russia has introduced its troops into Ukraine and kills peaceful population. And according to the RF it is called “defense”.

On 28 February, 2022, the Prosecutor of the International Criminal Court (ICC) announced his decision to request permission to open an investigation of the Situation in Ukraine on the basis of the preliminary conclusions of the Office resulting from its preliminary consideration and covering any new alleged crimes under the ICC's jurisdiction. The office of the ICC prosecutor received an appeal concerning the situation in Ukraine from 39 states-participants of the ICC as required according to Article 14 of the Statute. These appeals made it possible to launch an investigation of the Situation in Ukraine since 21 November 2013, thus covering any previous and current allegations of war crimes, crimes against humanity or genocide committed in any part of Ukraine by any person.

During the preliminary review of the situation in Ukraine the Office has already found reasonable grounds to believe that crimes within the jurisdiction of the Court have been committed in Ukraine and the Office has identified potential cases admissible to be viewed by the Court. (Khan, 2022). On 07 March, 2022, public hearings of this case began in the International Court of Justice (the Hague).

Any witness who can report any facts on killing of civilians performed by the Russian occupiers, barbaric rocket bombings and artillery strikes on hospitals, schools, houses and other civilian objects can do so by means of direct sending information to the ICC Prosecutor by e-mail. A special site <https://www.ukrainetjdoc.org/> has also been created to document war crimes.

On 16 March, 2022, the order of the International Court of Justice in the dispute over interpretation of the Convention on the Prevention and Punishment of the Crime of Genocide was announced. First, the Russian Federation got a refusal as to closing the case, the case will be considered on the merits; an armed attack cannot be conditioned and justified by accusations of the victim of aggression in genocide; the Court did not find any evidence to support Russia's allegations of genocide in Ukraine; the Court orders the Russian Federation to take the following temporary measures: immediately stop military operations, launched on 24 February, 2022 in the territory of Ukraine; ensure that any military organisations or any other organisations or persons under Russian control do not continue military operations. The court unanimously orders the both parties to refrain from actions that worsen the situation (International court of justice, 2022).

In accordance with Article 1 of the Charter of the United Nations dated 26 June 1945. The UN has the following goals: to maintain international peace and security and, to that end, to take effective collective action to prevent and eliminate threats to peace and suppress acts of aggression or other violations of peace, and to carry out peaceful means in accordance with the principles of justice and international law for settling or resolving international disputes or situations, which may lead to violations of peace.

Chapter 7 of the Statute establishes “actions concerning threats to peace, breaches of peace and acts of aggression”.

In addition, for participants of armed hostilities in Ukraine it is also important to strictly adhere to current norms of international humanitarian law. And although it is difficult to talk about the justice and expediency of war and bloodshed, it is the observance of preliminarily known rules and agreements that puts the parties within relatively clear norms. Of course, laws supposed to regulate something as radical as war will fall into the same pitfalls as simpler laws. The Law on Armed Conflicts is designed to protect those who cannot defend themselves and to encourage nations and combatants to fight within the framework of the Law on Armed Conflicts (Leheza *et al.*, 2020).

No person has the right to commit crimes within the jurisdiction of the International Criminal Court, including Ukraine (where these horrific events are taking place) and citizens of that country. Ukrainians often show dissatisfaction with the humane attitude to prisoners, their feeding, maintenance of hygienic norms, provision of necessary clothes and medicines. But if Ukrainians treat them with cruelty, Ukraine will also be violating international norms, in particular the Geneva Convention ratified by Ukraine (Leheza *et al.*, 2018).

According to Article 3 of the Geneva Convention on the Treatment of Prisoners of War dated 12 August 1949 Persons who do not actively participate in military activities, in particular those from the Armed Forces who have ceased hostilities, as well as those who have stopped participating in military activities in connection with illness, injury, detention or for any other reason should be treated humanely in any circumstances, without any discrimination on grounds of race, color of skin, religion or beliefs, sex, origin or property status or any other similar criteria. To this end, it is forbidden to continue such actions as (a) violence against life and person, in particular all kinds of murder, mutilation, cruel treatment and torturing; (b) seizure of hostages; (c) violation of human dignity, including abusive and humiliating behavior; (d) conviction and application of punishment without a preliminary court decision, which was duly established and which provides judicial guarantees recognized by civilized Nations as necessary (Law of Ukraine, 1990).

Section 20 (XX) of the Criminal Code of Ukraine provides criminal liability for criminal offenses against peace, security of mankind and international law. These offenses in particular include: War propaganda (Article 436), planning, preparation, connection and conduct of aggressive war (article 437), violation of laws and customs of war (Article 438), use of weapons of mass destruction (Article 439), genocide (Article 442), ecocide (Article 441), etc. The new Criminal Code of Ukraine (text as of 18 January 2022), developed by a group of scientists since 2019, also provides for

criminal responsibility for crimes against basics of international law and international order (Book eleven). The book is structured into the following sections: Section 11.1 (Genocide), Section 11.2 (Crimes against humanity), Section 11.3 (Crime of aggression), Section 11.4 (Military crimes), and Section 11.5 (Crimes against international law and order) (Law of Ukraine, 2001).

When noting the need to bring the national criminal laws into line with the international criminal laws it is necessary to take into account significant differences in approaches chosen by the international legal system and the national legal system concerning definition of an act as a criminal offense. In national law, the Criminal Code provides for legal components of crime (*corpus delicti*), determines the type and severity of punishment. The norms of international law establish the crime of certain acts, mostly the composition of crimes, but generally do not contain clear explanations regarding the types and extent of punishment. This is at the discretion of the state (Tylchuk *et al.*, 2022).

Conclusion

Despite the huge number of international instruments and institutions aimed at ensuring peace, there are still wars in the world, encroachments on the territory of other states, mass killing of people and destruction of civilian buildings.

Violation of fundamental human rights and freedoms provided for in international instruments has been defined as inadmissible. It has been found that ratification of international instruments and the existence of institutions aimed at ensuring peace in the modern civilized world should prevent encroachments on the territory of other states, mass killing of people and destruction of civilian buildings.

Every person is a value, human rights are a value. And no political ambition is worth human life. Russian Federation's invasion of the territory of Ukraine, the use of mass destruction weapons, missiles and machine-guns against the civilian population is an encroachment not only upon the territorial integrity of Ukraine. It has been established that any armed invasion of the territory of another state in the 21st centuries is an encroachment not only upon territorial integrity. This is an encroachment on European values. These values have been built for centuries in response to the experience of war. Thus, other states are also at risk if an effective mechanism of counteraction has not been developed.

The conclusion is drawn on the necessity of integration and unity in preventing crimes against humanity and military crimes. Integration of

the international community to ensure peace is particularly conditioned by existence of global problems, environmental and economic crisis, epidemics, epizootics, poverty and other problems; and it must be executed as never before.

It is proposed to provide additional guarantees for implementation of decisions made by international institutions against the aggressor state, to improve the mechanism for imposing sanctions on a state that has violated international agreements.

Determined is the necessity to observe standards of human rights standards in criminal prosecution of persons who have committed crimes against humanity and aver been involved in such crimes. The civilized world must meet civilized standards and ensure security through civilized means.

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