ACTA UNIVERSITATIS LODZIENSIS
FOLIA IURIDICA 106, 2024

https://doi.org/10.18778/0208-6069.106.08

*Oleksandr Sotula**

https://orcid.org/0000-0003-4633-4500

THE VIOLATION OF THE LAWS OF ARMED CONFLICT IN THE UKRAINIAN AND POLISH DIMENSION: THE CRIMINAL LAW DISCOURSE

Abstract. The current Criminal Code of Ukraine has shown that it can effectively respond to the challenges associated with the war unleashed by the Russian Federation against Ukraine. Chapter XX of the Special Part of the Criminal Code of Ukraine contains a number of articles that qualify the criminal acts of Russian occupiers. First of all, this is Article 438 "Violation of the laws and customs of war". In its content, it largely reflects the compliance of Ukrainian national criminal law with the provisions of international law in the field of the regulation of responsibility for committing criminal violations of international humanitarian law (the law of armed conflicts). A comparative legal analysis of Ukrainian and Polish legislation was carried out in terms of criminal liability for the violation of the laws and customs of war. Criminal violations of international humanitarian law are punishable under Articles 122–126 of the Criminal Code of the Republic of Poland. A detailed analysis of the content of these articles of the Criminal Code of the Republic of Poland showed a significant difference between the norms of the Polish criminal law in terms of detailing the acts that the Polish legislator defined as a violation of international humanitarian law. In particular, in addition to the general concept of the civilian population, the Polish criminal law proposes as victims persons laying down their arms or having no means of protection, the surrendered, the wounded, the sick, the shipwrecked, medical personnel, the clergy, unifying the concept of all persons enjoying international protection during armed hostilities. This position of the Polish legislator is more constructive and more closely connected with the relevant international legal acts than the corresponding norm of the Criminal Code of Ukraine. In addition, § 2 of Article 123 of the Criminal Code of the Republic of Poland provides an expanded understanding of ill-treatment of victims, which is not found in Article 438 of the Criminal Code of Ukraine. Also, the Ukrainian legislator ignored those violations of international humanitarian law which are indicated in Article 124 of the Criminal Code of the Republic of Poland – which also works in favour of the Polish criminal law, as it tries to comply with the provisions of international humanitarian law to a greater extent.

Keywords: international law, violation of laws and customs of war, criminal responsibility

* Kherson State University, sotula64@gmail.com

© by the author, licensee University of Lodz – Lodz University Press, Lodz, Poland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution license CC-BY-NC-ND 4.0 (https://creativecommons.org/licenses/by-nc-nd/4.0)
Received: 5.11.2023. Verified: 8.11.2023. Revised: 9.11.2023. Accepted: 17.11.2023.

NARUSZENIE PRAWA KONFLIKTÓW ZBROJNYCH W WYMIARZE UKRAIŃSKIM I POLSKIM: DYSKURS PRAWA KARNEGO

Streszczenie. Obowiązujący Kodeks karny Ukrainy pokazał, że potrafi skutecznie odpowiedzieć na wyzwania związane z wojną rozpętaną przez Federację Rosyjską przeciwko Ukrainie. Rozdział XX części specjalnej Kodeksu karnego Ukrainy zawiera szereg artykułów kwalifikujących przestępcze działania rosyjskich okupantów. Przede wszystkim jest to artykuł 438 „Naruszenie praw i zwyczajów wojennych". W swojej treści w dużej mierze odzwierciedla zgodność ukraińskiego krajowego prawa karnego z przepisami prawa międzynarodowego w zakresie regulacji odpowiedzialności za popełnienie karalnych naruszeń międzynarodowego prawa humanitarnego (prawa konfliktów zbrojnych). Dokonano porównawczej analizy prawnej ustawodawstwa ukraińskiego i polskiego pod kątem odpowiedzialności karnej za naruszenie praw i zwyczajów wojennych. Karalne naruszenia międzynarodowego prawa humanitarnego podlegają karze z art. 122–126 Kodeksu karnego Rzeczypospolitej Polskiej. Szczegółowa analiza treści tych artykułów Kodeksu karnego RP wykazała istotną różnicę pomiędzy normami polskiego prawa karnego w zakresie uszczegółowienia czynów, które polski ustawodawca określił jako naruszenie międzynarodowego prawa humanitarnego. W szczególności, jak widzimy, poza ogólną koncepcją ludności cywilnej, polskie prawo karne jako ofiary proponuje osoby, które składając broń lub nie mając środków ochrony, poddały się, ranni, chorzy, rozbitkowie, personel medyczny, duchownych, ujednolicając koncepcję wszystkich osób korzystających z ochrony międzynarodowej podczas działań zbrojnych. Takie stanowisko polskiego ustawodawcy jest bardziej konstruktywne i ściślej powiązane z właściwymi międzynarodowymi aktami prawnymi niż odpowiadająca im norma Kodeksu karnego Ukrainy. Ponadto § 2 art. 123 Kodeksu karnego RP zapewnia rozszerzone rozumienie złego traktowania ofiar, którego nie ma w art. 438 Kodeksu karnego Ukrainy. Ustawodawca ukraiński zignorował także naruszenia międzynarodowego prawa humanitarnego, na które wskazuje art. 124 Kodeksu karnego RP – co także działa na korzyść polskiego prawa karnego, starając się przestrzegać przepisów prawa międzynarodowego w większym stopniu prawo humanitarne.

Słowa kluczowe: prawo międzynarodowe, naruszenie praw i zwyczajów wojennych, odpowiedzialność karna

1. INTRODUCTION

The tragic consequences of the Second World War did not result in the cessation of military confrontation worldwide. Even after WWII's end, new armed conflicts continue to flare up, accompanied by the perpetration of acts against the life and health of prisoners of war, the civilian population, and the environment. The international community was forced to introduce certain rules for conducting armed conflicts (wars), and formulated legal norms prohibiting such acts and establishing criminal liability for their commission.

This gave rise to a new branch in the field of international law – international humanitarian law (the law of armed conflicts) as "a system of internationally recognised legal norms and principles applied during armed conflicts, establishing the rights and obligations of subjects of international law to prohibit or restrict the

use of certain means and methods of armed struggle, ensuring the protection of the victims of the conflict and defining responsibility for the violation of these norms" (Ministerstvo oborony Ukrainy 2018).

On 24th February, 2022, a full-scale war of the state of "the Russian Federation" against the state of "Ukraine" began (although here it should be immediately noted that Russia committed armed aggression against Ukraine already in 2014, and from 2014 to 2022 there was only an operational break, and from 24th February, only the next stage of this war began). In order to conceal the goals of the war, authorities in the Russian Federation avoided using the term "war" and used the terms "special military operation" (Espreso.tv 2022), "liberation of primordial Russian lands" (Prysedska 2022), and "conflict between fraternal peoples" (Holos Ameryky Ukrainskoiu 2023). But, in fact, the invasion of the territory of Ukraine by the Russian troops, and Russian military aggression, meets all the characteristics of war, which is defined as "a state of affairs between two states, or between two groups of states, or between a state and a group of states, accompanied mainly by the termination of diplomatic relations, further suspension of the application of the general rules of international peacetime law and a general determination to commit acts of violence, even if such acts do not actually take place" (Shunevych 2022). This took place despite the fact that Russia acted as one of the guarantors of the territorial integrity and inviolability of Ukraine when signing the Budapest Memorandum on 5th December, 1994, in which the Russian Federation pledged to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, "in accordance with the principles of the Final Act of the CSCE respect the independence and sovereignty and the existing borders of Ukraine" (United Nations 1994).

2. A SPECIAL MILITARY OPERATION OR WAR?

The Russian Federation, having started the war, called it a "special military operation". At the same time, the state of Ukraine was not obliged to declare war on the Russian Federation, since international law recognises the aggression of one state on the territory of another as a war, without additional resolutions and legislative acts. In the event of a declaration of war, the UN is obliged to recognise one of the parties as the state that unleashed it. With such a country, UN members are required to break off all diplomatic relations (Zaverukha 2023), which did not happen and which, in a certain way, explains the position of Russia on the issue of defining the aggression that it committed against Ukraine.

3. CRIMINAL OFFENCES AGAINST PEACE, HUMAN SECURITY, AND INTERNATIONAL LAW AND ORDER IN THE CRIMINAL CODE OF UKRAINE

Adopted in 2001, the Criminal Code of Ukraine in Section XX of the Special Part "Criminal offences against peace, security of mankind and international law and order" contains a number of articles providing definitions for so-called international crimes (Verkhovna Rada Ukrainy 2001). This is broadly in line with the classification given in Article 6 of the 1945 Statute of the International Military Tribunal for the Trial and Punishment of the Major European Axis War Criminals (the Statute of the Nuremberg Tribunal). In this legal act, international crimes are classified into three main groups: crimes against peace, war crimes, and crimes against humanity – and these acts are given an exhaustive definition: "1) crimes against peace: planning, preparing, authorising, or waging a war of aggression or a war in violation of international treaties, agreements or assurances, or participating in a common plan or conspiracy to carry out any of the above; 2) war crimes: the violation of the law and customs of war. These crimes include: killings, torture, giving into slavery or for other purposes the civilian population of the occupied territory, killing or torturing prisoners of war, killing hostages, robbing public or private property, senseless destruction of cities and villages, destruction not justified by military necessity, and other crimes; 3) crimes against humanity: killings, exterminations and other atrocities committed against the civilian population before or during the war, or persecution for political, religious, racial reasons for the commission of or in connection with any crime that is subject to the jurisdiction of the Tribunal, regardless of whether these acts were a violation of the internal law of the country where they were committed or not" (United Nations 1945).

At the same time, not only Section XX of the Criminal Code of Ukraine contains the above description of criminal acts; they are also placed in Section XIX of the Criminal Code of Ukraine "Crimes against the established procedure for performing military service (war crimes)", in Articles 433 "Violence against the population in the region military actions" and 434 "Bad treatment of prisoners of war" of the Criminal Code of Ukraine (Verkhovna Rada Ukrainy 2001). Comparing the crimes defined by articles 433, 434, and 438 of the Criminal Code of Ukraine, it should be noted that all these articles describe acts prohibited by international legal documents in the form of violence against prisoners of war and civilians in armed conflict. The similarity of the legislative structure gives rise to problems in qualifying these crimes. In my opinion, the difference lies in who the subject of these crimes is.

According to Articles 433, 434 of the Criminal Code of Ukraine, the responsible parties are the "servicemen of the Armed Forces of Ukraine, the Security Service of Ukraine, the State Border Guard Service of Ukraine, the National Guard of Ukraine

and other military formations formed in accordance with the laws of Ukraine, the State Special Transport Service, the State Special Communications Service and protection of information of Ukraine, as well as those liable for military service and reservists during training camps" (Article 401 of the Criminal Code of Ukraine).

In addition, Ukrainian military personnel may be held liable for some acts that may be considered as a violation of the laws and customs of war, but *are* according to special provisions of the Criminal Code of Ukraine, in particular, Article 432 "Looting", 435 of the Criminal Code of Ukraine "Illegal use of the symbols of the Red Cross, Red Crescent, Red Crystal and its misuse".

While liability under Article 438 of the Criminal Code of Ukraine is borne by:

"1) as a rule, combatants from the side of the aggressor state;

2) persons authorised to issue orders to combatants;

3) civilians, including those who, for certain reasons, were not recognised as combatants (for example, those who took up arms and did not join the military formation, spies, saboteurs, mercenaries)" (Khavroniuk 2022).

4. THE DEFINITION OF A COMBATANT – THE NATIONAL AND THE INTERNATIONAL DIMENSION

The important question is – who should be considered combatants? Article 4A of the Geneva Convention Relating to the Treatment of Prisoners of War (United Nations 1949d) as well as articles 43, 44 of the Additional Protocol to the Geneva Conventions of 12th August, 1949, concerning the protection of victims of international armed conflicts (Protocol I) (United Nations 1949e) both refer to combatants as those who have the right to directly participate in hostilities – in particular:

1) the personnel of the armed forces of a party to the conflict (with the exception of medical and religious personnel, as well as spies and mercenaries). Protocol I puts forward one requirement for them – subordination to an internal disciplinary system, which, along with others, ensures compliance with the rules of international law applicable during armed conflicts (United Nations 1949e). If we are talking about the armed forces of the aggressor state of Russia, then these are representatives of: the regular armed forces of the Russian Federation; other armed formations of the Russian Federation: border troops, internal troops ("Rosgvardia"), the Federal Security Service, the Foreign Intelligence Service, state security agencies, civil defence rescue military units, the military prosecutor's office, military investigative agencies of the Investigative Committee, the federal body for providing mobilisation training, special formations, military educational institutions, etc. (Article 2 of the Law of the Russian Federation "On military duty and military service" as amended on 13th December, 2021) (Hosudarstvennaia Duma Rossyiskoi Federatsyy 1998).

2) members of organised resistance movements who meet the following conditions:

a) they are commanded by a person responsible for his subordinates;

b) they have a permanent, distinctive insignia, well recognisable from a distance;

c) they carry weapons openly;

d) they conduct their operations in accordance with the laws and customs of war (Article 13(2) of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12th August, 1949; from the armed forces at sea of 12th August, 1949, Article 4(2) of the Geneva Convention on the Treatment of Prisoners of War of 12th August, 1949, Article 43(1) of the Additional Protocol to the Geneva Conventions of 12th August, 1949, concerning Protection of Victims of International Armed Conflicts (United Nations 1949a, United Nations 1949b, United Nations 1949d, United Nations 1949e)). Arguably, partisans or militants of the so-called "Donetsk and Luhansk people's republics" can be classified as such persons. It is possible, however, that referring to this category of representatives of private military campaigns in that context is a controversial stance. According to Ukrainian professor Mykola Khavronyuk: "On the one hand, the belonging of such persons to organised resistance movements can be questioned if they ignore the laws and customs of war, the observance of which is a mandatory sign of combatants. On the other hand, Article 44, paragraph 2, of Protocol I states that although all combatants are bound by the rules of international law applicable in armed conflicts, violations of these rules do not deprive a combatant of his right to be considered combatants and, if he falls into the power of the opposing side, to be considered prisoners of war (with some exceptions, for example, when a combatant disguises himself as a civilian when participating in an attack)" (Khavroniuk 2022);

3) members of the personnel of the regular armed forces, declaring their allegiance to the government or authorities, not recognised by the state detaining them (as prisoners of war). "The civilian population of the unoccupied territory, who spontaneously took up arms when the enemy approached and did not have time to organise into the regular armed forces of a party to the conflict – *levée en masse* (subject to open carrying of weapons and respect for the laws and customs of war)" (Senatorova 2018, 80).

An important implication of combatant status for the individual is the combatant's privilege, which grants him/her "the right to take a direct part in hostilities" on behalf of a party to an international armed conflict (Article 43(2) Additional Protocol to the Geneva Conventions of 12 August 1949, relating to the protection of victims of international armed conflicts) (United Nations 1949e). This means that combatants, as the lawful representatives of the belligerents, enjoy immunity from prosecution for lawful hostilities – that is, for hostilities carried out in accordance with international humanitarian law (Article 44(2) Additional

Protocol to the Geneva Conventions of August 12, 1949 concerning the Protection of Victims of International Armed Conflicts) (United Nations 1949e). At the same time, "combatants are required to respect international humanitarian law, while combatants are not immune from prosecution for violations of international humanitarian law and are punished under international criminal law or in accordance with the criminal law of the state that took them prisoner" (Meltser 2020, 194).

In general, combatant privileges granted by international humanitarian law to participants in an international armed conflict do not apply to military criminal offences. The "right of a combatant to take a direct part in hostilities provides an immunity from prosecution for lawful hostilities that would otherwise constitute offences under the national law of the capturing State. But combatants are not immune from violations of international humanitarian law punishable under national or international criminal law" (Article 129 (2), (3) of the Geneva Convention Relating to the Treatment of Prisoners of War, 1949) (United Nations 1949e). However, there are no combatant privileges in the event of a non-international armed conflict – or for civilians taking a direct part in hostilities and not enjoying the privileges of a combatant, sometimes characterised as "unprivileged" or "illegal" combatants and not falling under the categories of persons protected by the Geneva Conventions of 1949 (Meltser 2020, 195).

Moreover, any immunities that are granted to a head of state or head of government, a member of government or a member of parliament, an elected representative or official, do not exempt these persons from international criminal responsibility, i.e. from liability for military criminal offences, genocide as a crime, etc. (article of the Rome Statute of the International Criminal Court) (United Nations 1998). The jurisdiction of the International Criminal Court on the territory of Ukraine extends in accordance with the "Statement of the Verkhovna Rada of Ukraine to the International Criminal Court on the recognition by Ukraine of the jurisdiction of the International Criminal Court on the commission of crimes against humanity by the highest officials of the state, which led to especially grave consequences and the massacre of citizens during protests between 21st November, 2013, 22nd February, 2014" (Verkhovna Rada Ukrainy 2014) and the Statement of the Verkhovna Rada of Ukraine "On the recognition by Ukraine of the jurisdiction of the International Criminal Court regarding the commission of crimes against humanity and war crimes by the highest officials of the Russian Federation and the leaders of the terrorist organisations "DPR" and "LPR", which led to especially grave consequences and the massacre of Ukrainian citizens" (Verkhovna Rada Ukrainy 2015). "That is, today the jurisdiction of the International Criminal Court is limited and applied only on these applications", notes G. Anisimov, Secretary of the Third Judicial Chamber of the Criminal Court of Cassation as part of the Supreme Court of Ukraine (Anisimov 2022).

Another important aspect of international humanitarian law is that, in non-international armed conflicts, no immunity from prosecution is granted even for lawful acts of war. This means that any person who takes a direct part in hostilities in a non-international armed conflict bears full responsibility in accordance with applicable national law (Meltser 2020, 198). This is despite the fact that "any damage caused by government forces and police in accordance with international humanitarian law will be justified under national law as a lawful act of the state. However, like any harm caused by non-state armed groups and their civilian supporters, they are subject to prosecution under the standard provisions of national law. International humanitarian law simply recommends that, at the end of hostilities, the authorities shall endeavour to grant the widest possible amnesty to persons who have participated in an armed conflict, except for persons suspected, accused or convicted of war crimes" (Article 6(5) of the Geneva Convention of 12th August, 1949, concerning the Protection of Victims of Non-International Armed Conflicts) (United Nations 1949e).

5. THE ILL-TREATMENT OF PRISONERS OF WAR AND CIVILIANS

Returning to Article 438 of the Criminal Code of Ukraine, it should be noted that the relevant international acts contain norms prohibiting: to kill or injure a surrendered enemy; to use against the civilian population and prisoners of war torture, torment, insulting, degrading treatment, hostage-taking, other acts of violence aimed at terrorising the civilian population; to subject prisoners of war to scientific or medical research that is not justified by their medical treatment and interests. All such actions committed against prisoners of war or the civilian population should be recognised as ill-treatment, specified in Article 348 of the Criminal Code of Ukraine as one of the alternative options for criminal acts provided for by this norm (Verkhovna Rada Ukrainy 2001). Almost all of these actions were committed by the Russian military during the full-scale aggression of the Russian Federation against Ukraine. Thus, on 28th July, 2022, videos of torture, castration, and murder of a Ukrainian prisoner of war in the "Privilege" sanatorium, committed by Russian servicemen, were circulated on the Internet. A video circulated by Russian sources recorded how a Russian castrated, mocked and shot a bound Ukrainian prisoner of war with a knife (Amnesty International 2022). Also widely known is the case of the mass murder of prisoners of war in Olenivka, which was committed on the night of 28th–29th July, 2022 by the Russian troops in the village of Molodyozhny of the Olenovsky village council against Ukrainian prisoners of war, defenders of "Azovstal" in Mariupol. Explosions on the territory of the former Volnovakha correctional colony No. 120, where Ukrainian prisoners were kept, killed 53 people and injured more than 130 (BBC News Ukraina 2022). The situation is no better with regard to the

actions of the Russian occupiers in relation to the Ukrainian civilian population. Thus, the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, Dmitry Lubinets, reports that the occupying Russian troops are carrying out demonstrative filtration measures in southern Ukraine for patriotic local residents. For example, in Kherson, up to 50 civilians were tortured and killed, and about 120 residents of the city were abducted. Their whereabouts are currently unknown (Upovnovazhenyi Verkhovnoi Rady Ukrayiny z prav liudyny 2022).

6. THE EXPULSION OF THE CIVILIAN POPULATION FOR FORCED LABOUR

Forced labour, referred to in Article 438 of the Criminal Code of Ukraine, is such labour during which the civilian population, without their voluntary consent, is forced to participate in military operations, to work outside the occupied territory where this population is located, and who are not paid or paid unfairly. These "jobs" clearly do not correspond to the physical or intellectual abilities of the workers; persons under the age of eighteen are involved in such work, as well as work related to the mobilisation of workers into an organisation of a military or paramilitary nature. However, the forced assignment of civilians who have reached the age of eighteen to perform work necessary for the needs of the occupying army (e.g. work on the construction of enemy defence lines), or work related to the provision of food, housing, clothing, transport and health of the population of the occupied area, does not entail liability under Article 438 of the Criminal Code of Ukraine, since such actions are expressly permitted by the Convention for the Protection of Civilian Persons in Time of War (United Nations 1949c). Forced labour also does not include work that is normally required during detention imposed in accordance with the procedure for the execution of punishment established by law (United Nations 1949c). During the occupation, numerous cases of coercion by the occupying Russian authorities of civilians to perform work were documented (Informatsiine ahentstvo "Ukrainski Natsionalni Novyny" 2022).

7. PLUNDERING NATIONAL VALUES IN THE OCCUPIED TERRITORY

The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 defines the obligations of states and non-state participants in an armed conflict to protect and respect cultural property – in particular, it provides for the obligation to refrain from attacks on cultural property, their use for military purposes, and attempts to rob and destroy (United Nations 1954). Article 1 of the Convention provides a list of property recognised as cultural property: 1) movable and immovable property significant for the cultural heritage of each people, such as architectural monuments, books, and works of

art; 2) buildings intended for the storage and display of cultural property, such as museums and libraries; 3) centres of concentration of cultural values, such as ancient temples and palaces (United Nations 1954). The Russian occupation troops systematically and totally plunder and take out monuments of cultural and historical heritage. In Kherson alone, the invaders stole more than 15,000 unique cultural monuments. In particular, the Russians took out a valuable collection of coins from the ancient cities of the Northern Black Sea region, samples of weapons of the 16th–20th centuries, as well as porcelain and antique furniture from the Kherson Museum of Local Lore (Ukrainer.net 2023).

In Ukraine, the Law of Ukraine "On the Export, Import and Return of Cultural Property" became the law regulating the category of "cultural property", Article 1 of which establishes that cultural property is "artistic, historical objects of material and spiritual culture that have an ethnographic and scientific value and are subject to conservation, reproduction and protection in accordance with the legislation of Ukraine" (Verkhovna Rada Ukrainy 1999).

The concept of "cultural values" includes: original art works of painting, graphics and sculpture, artistic compositions and installations from any materials, works of arts and crafts as well as traditional folk art; items related to historical events, the development of society and the state, the history of science and culture, as well as those related to the life and work of prominent figures of the state, political parties, public and religious organisations, science, culture and art; items of museum significance found during archaeological excavations; components and fragments of architectural, historical, artistic monuments and monuments of monumental art; old books and other publications of historical, artistic, scientific and literary value, separately or in a collection; manuscripts and incunabula, early printed editions, archival documents, including film, photo and audio documents, separately or in collections; unique and rare musical instruments; various types of weapons of artistic, historical, ethnographic and scientific value; rare postage stamps, other philatelic materials, individually or in a collection; rare coins, orders, medals, seals and other collectibles; zoological collections of scientific, cultural, educational, educational or aesthetic value; rare collections and samples of flora and fauna, mineralogy, anatomy and paleontology (Verkhovna Rada Ukrainy 1999). Accordingly, the Law of Ukraine "On the protection of cultural heritage" determines the list and content of measures that must be implemented within the framework of the protection of cultural heritage, in particular: prevention of destruction or harm, ensuring protection, preservation, appropriate use, conservation, registration of cultural heritage objects (Verkhovna Rada Ukrainy 2000).

The protection of cultural property during armed conflicts according to the Ukrainian criminal law is clearly insufficient. Responsibility for the looting of national values in the occupied territory is provided for by Article 438 of the Criminal Code of Ukraine. However, its reach is limited. First, it applies only to armed conflicts of an international character. After all, the Geneva Conventions

for the Protection of War Victims of 12th August, 1949, followed by Article 438 of the Criminal Code of Ukraine, do not provide for liability for the looting of national valuables in non-international armed conflicts. In addition, the subject of looting of national valuables is only property of cultural or other national valuable (i.e. it meets the requirements of the Law of Ukraine "On the Protection of Cultural Heritage", the Convention for the Protection of Cultural Property in the Event of Armed Conflict dated 14th May, 1954). Therefore, it is such property that is national, state or property of individual legal entities and individuals and for which the state has established a special protection regime, including cultural valuables (monuments of architecture, art, history, etc.) The looting of national valuables in the occupied territory covers their arbitrary seizure in any way, combined with their subsequent circulation in favour of another state or individuals, and also, as a rule, with their export outside the occupied territory (Boiko, Brych, Hryshchuk, Dudorov 2019, 1338).

A certain way around this situation is that among the norms of the Ukrainian criminal law there are those that provide for liability for encroachment on cultural property, and they can be applied during a non-international armed conflict. In particular, these are articles of the Criminal Code of Ukraine: 178 "Damage religious buildings or places of worship", 179 "Illegal retention, desecration or destruction of religious shrines", 298 "Illegal prospecting at an archaeological heritage site, destruction, destruction or damage to cultural heritage objects" (Verkhovna Rada Ukrainy 2001).

8. THE USE OF MEANS OF WARFARE PROHIBITED BY INTERNATIONAL LAW, OTHER VIOLATIONS OF THE LAWS AND CUSTOMS OF WAR

Article 438 of the Criminal Code of Ukraine provides for a criminal law prohibition on "the use of means of warfare prohibited by international law, other violations of the laws and customs of war provided for by international treaties, the consent to be bound by which is provided by the Verkhovna Rada of Ukraine" (Verkhovna Rada Ukrainy 2001).

There are a significant number of international legal acts prohibiting the use of certain means and methods of warfare in the course of armed conflicts, both international and non-international in nature.

Thousands of cases of violation by the armed forces of the Russian Federation of the prohibitions established by international humanitarian law have been documented.

Clearly, there was a violation by the Russian military of the provisions of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (United Nations 1980). At different times, the Russian Federation ratified five additional protocols to this convention:

1) Protocol on missing fragments (Protocol I); 2) Protocol on the Prohibition or Restriction of the Use of Mines, Booby-Traps and Other Devices (Protocol II); 3) Protocol on the Prohibition or Restriction of the Use of Incendiary Weapons (Protocol III); 4) Protocol on blinding laser weapons (Protocol IV); 5) Protocol on Explosive Ordnance (Protocol V). The Russian Federation has been proven to have violated at least three of these five additional protocols.

First of all, there is the use by the Russian Federation of booby traps and so-called surprise mines, which can hit both military personnel and the civilian population. Such Russian booby traps were found in post-occupied territories in document covers, machine gun horns, children's toys, gift bags, balls, books, clothes, candy boxes, packs of cigarettes (Defense Express 2022). The most terrible and cynical was the case of the installation by Russian servicemen of a mine between a murdered mother and her living child, which they've tied to the corpse of the woman (ZMINA 2022).

Also, the Russian armed forces have repeatedly used incendiary ammunition throughout the course of hostilities against Ukraine. On 12th March, 2022, near the city of Popasna in the Luhansk region, the use of incendiary ammunition of the 9M22S type by Russians fired from multiple launch rocket systems was recorded (Safronov 2022). Also, the military aviation of the Russian Federation used, in particular during the shelling of Chernigov, Nikolaev, Kherson, OFZAB-500 high-explosive fragmentation bombs on the territory of Ukraine, which, due to their power and uncontrollability, are means of indiscriminate action. The use of OFZAB-500 air bombs in Ukraine was confirmed during interrogations of Major of the Armed Forces of the Russian Federation A. Krasnoyartsev, who piloted a Su-34 military aircraft shot down over Chernihiv (ZMINA 2022a).

According to Article 2 of Protocol V on Explosive Ordnance – Consequences of War, "a Party to an armed conflict shall, after the cessation of active hostilities and as soon as possible, locate, render harmless, remove or destroy explosive ordnance – Consequences of War in territories under its control" (United Nations 2003). However, the military personnel of the Russian Federation who were or controlled the temporarily occupied territories of Ukraine and during the armed conflict in the east of Ukraine, starting from 2014, and during the full-scale invasion of 2022–2023, did not take any of the measures listed by Protocol V, which would be aimed at neutralising explosive items.

The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction provides for the obligation of States Parties to "never and under no circumstances use anti-personnel mines" (United Nations 1997). However, since the beginning of the full-scale invasion of the territory of Ukraine, international organisations and national non-governmental organisations have repeatedly announced the use of anti-personnel mines, such as POM-3, known as "Medallion" by the armed forces of the Russian Federation (Human Rights Watch 2022). This convention was

joined by almost all nations of the world – including Ukraine – in 2005. However, the Russian Federation has not ratified this convention.

The Russian Federation has also not ratified the 2008 Convention on Cluster Munitions, which states that the use of cluster munitions is a flagrant violation of customary international humanitarian law and general prohibitions on indiscriminate weapons (United Nations 2008). At the same time, the use of cluster munitions by the troops of the Russian Federation has been repeatedly confirmed both at the national and international levels. In particular, according to the UN, the Russian Federation has repeatedly used cluster munitions against Ukraine (United Nations 2022).

The 1977 Convention on the Prohibition of Military or Any Hostile Use of Environmental Modifiers (United Nations 1977) was ratified by both Ukraine and the Russian Federation. Despite this, throughout the entire period of full-scale military aggression, the Ministry of Environmental Protection and Natural Resources of Ukraine recorded numerous violations by military personnel and the occupying authorities of the Russian Federation and reported on the catastrophic consequences of the war for the environment of Ukraine. Thus, the explosion of the dam of the Kakhovskaya hydroelectric power station was the greatest catastrophe caused by the Russian invaders since the beginning of the full-scale invasion, the consequences of which the Ukrainian people will have to deal with for decades (Ministerstvo zakhystu dovkillia ta pryrodnykh resursiv Ukrainy 2023).

The above indicates that, during the war against Ukraine, the Russian Federation used and continues to use almost all the means of warfare prohibited by international humanitarian law.

9. THE USE OF WARFARE METHODS PROHIBITED BY INTERNATIONAL LAW

As for the prohibited methods of warfare that the Russian Federation uses during the war against Ukraine, they are interpreted by scientists who comment on the provisions of Article 438 of the Criminal Code of Ukraine as "other violations of the laws and customs of war provided for by international treaties, the consent to be bound by which has been granted by the Supreme Rada of Ukraine" (Verkhovna Rada Ukrainy 2001) (due to the fact that the term "methods of warfare prohibited by international law" itself does not appear in this article). It should be noted that the norms of international humanitarian law prohibit such methods of warfare as: indiscriminate attacks; use of human shields; orders to leave no one alive; attacks on persons deprived of combat capability – the wounded, sick, surrendered; the use of civilian starvation as a method of warfare; attacking, destroying, removing or rendering unusable objects necessary for the survival of the civilian population; the use of military insignia of the enemy, etc.

On a regular basis and systematically, the Russian Federation military personnel carry out indiscriminate attacks, which have been reported many times both nationally and internationally (Ukrainska pravda 2022; ZN.UA 2022a).

In addition, the Russian military has repeatedly resorted to using the Ukrainian civilian population as human shields when planning and carrying out aggressive offensive operations on the territory of Ukraine (ZN.UA 2022). In fact, the Armed Forces of the Russian Federation are not just fighting, but are carrying out a real "campaign of terror", as high-ranking officials of foreign states, in particular, the representative of the US State Department, Ned Price, declare (Orlova 2022).

Another prohibited method of warfare is treachery, i.e. "actions aimed at inspiring the enemy's confidence, making him/her believe that he/she has the right to protection and is obliged to provide such protection in accordance with the rules of international law applicable in armed conflicts, for the purpose of deceiving him/her" (Ministerstvo oborony Ukrainy 2018).

The list of treacherous acts is exhaustive and consists of: "feigning an intention to negotiate under the banner of a truce or feigning surrender; simulation of failure as a result of injury or illness; feigning possession of civilian or non-combatant status; feigning protection status through the use of insignia, emblems or uniforms of the United Nations, neutral States not party to the conflict" (Ministerstvo oborony Ukrainy 2018).

However, international humanitarian law does not prohibit the use of military tricks to mislead the enemy (camouflage, demonstrative actions, disinformation, imitation, etc.)

This allows us to assert that during the full-scale invasion of Ukraine, the Armed Forces of the Russian Federation repeatedly and insidiously used a number of various prohibited methods of warfare.

10. COMPARATIVE LEGAL ANALYSIS OF CRIMINAL UKRAINIAN AND POLISH LEGISLATION FOR VIOLATIONS OF THE LAWS AND CUSTOMS OF WAR

An interesting part of my research was also a comparative legal analysis of Ukrainian and Polish legislation in terms of criminal liability for violation of the laws and customs of war. Despite sometimes differing approaches to the criminalisation of infringements on peace, security of mankind and international legal order, along with liability for other crimes against peace and humanity, the Criminal Code of the Republic of Poland provides for liability for violation of international humanitarian law.[1] A comparative legal analysis of the fight against

[1] Criminal Code of the Republic of Poland 6.06.1997, pol. Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (t.j. Dz.U. z 2024 r. poz. 17). Futher in the text: Criminal Code of the Republic of Poland.

such criminal violations makes it possible to identify positive experiences in the legal regulation of this area as well as gaps and shortcomings in national legislation.

The special part of the Criminal Code of the Republic of Poland opens with Chapter XVI "Crimes against peace, humanity and war crimes", previously unknown to the previous Criminal Code of the Republic of Poland of 1969. Implementing the provisions of Article 9 of the Constitution of the Polish State that the Republic of Poland "respects international law, which is binding for it",[2] Polish legislators established in this section liability for acts provided for by convention and other norms of international legal acts, including the norms of international humanitarian law. In particular, it is the criminal violations of international humanitarian law that entail liability under Articles 122–126 of the Criminal Code of the Republic of Poland. By virtue of Article 105 § 1, the statute of limitations does not apply to all these crimes.

Article 122 of the Criminal Code of the Republic of Poland concerns the fulfilment of international obligations of the Republic of Poland and includes two paragraphs defining two separate crimes. § 1 of Article 122 of the Criminal Code of the Republic of Poland provides for liability for the use of prohibited methods of warfare – an attack on an undefended area or object, a sanitary or neutral zone, or other prohibited methods of combat. Article 122 § 2 of the Criminal Code of the Republic of Poland provides for liability for the use of means of warfare prohibited by international law during hostilities.

Article 123 § 1 of the Criminal Code of the Republic of Poland defines the responsibility of those who, in violation of international law, commit murder: 1) persons who have drawn up arms or who, having no means of protection, have surrendered; 2) the wounded, sick, shipwrecked, medical personnel or clergy; 3) prisoners of war; 4) the civilian population of an occupied territory or one where hostilities are taking place, or other persons enjoying international protection during hostilities. Paragraph 2 of this article establishes liability for violation of international law due to the infliction of grievous bodily harm to persons indicated in § 1 of this provision, as well as subjecting these people to torture, cruel or inhumane treatment, holding them, even when they consent, cognitive experiments, using the presence of civilians in a certain territory or object for their own protection against military operations or their own troops, or holding these civilians as hostages.

In Article 124 of the Criminal Code of the Republic of Poland, the legislator legally determines which actions should be classified as "other violations of international law". Thus, in § 1 of Article 124, it is determined that it is a violation of international humanitarian law to compel persons specified in Article 123 of

[2] Constitution of the Republic of Poland 2.04.1997, pol. Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. Nr 78, poz. 483 z późn. zm.).

the Criminal Code of the Republic of Poland "to serve in the armed forces of the enemy or participate in military operations against their own country", as well as the application of corporal punishment to these persons, force, unlawful threats or deceit, inducing these people to have sexual intercourse or committing such an act, attacking personal dignity, in particular humiliating and degrading treatment, deprivation of liberty, depriving these persons of their right to an independent and impartial court or limiting their right to a defence in criminal proceedings. The same punishment is imposed on anyone who, contrary to international humanitarian law, "delays the repatriation of prisoners of war or civilians, transfers, relocates or deports civilians liable for military service, recruits into the armed forces persons under the age of 18 years, or actually uses such persons in hostilities" (§ 2 article 124 of the Criminal Code of the Republic of Poland).

A separate article, 125 of the Criminal Code of the Republic of Poland, provides for liability for violations of international humanitarian law committed in an occupied territory or one where hostilities are taking place and consist in the destruction, damage, seizure or appropriation of property or cultural property (§ 1 of Article 125 of the Criminal Code of the Republic of Poland). The qualified composition of this norm establishes liability for the same action if it concerns property of significant value or objects of special importance for culture (§ 2 of Article 125 of the Criminal Code of the Republic of Poland).

Such a detailed analysis of the content of the relevant articles of the Criminal Code of the Republic of Poland showed a significant difference between the norms of the Polish criminal law in terms of detailing the acts defined by the Polish legislator as a violation of international humanitarian law. In particular, as we see, in addition to the general concept of the civilian population, the Polish criminal law proposes as victims persons who, laying down their arms or having no means of protection, surrendered, the wounded, sick, shipwrecked, medical personnel, the clergy, unifying the concept of persons enjoying international protection during hostilities. In my opinion, such a position of the Polish legislator is more constructive and more closely connected with the relevant international legal acts than the corresponding norm of the Criminal Code of Ukraine.

In addition, § 2 of Article 123 of the Criminal Code of the Republic of Poland provides an expanded understanding of ill-treatment of victims, which is not found in Article 438 of the Criminal Code of Ukraine.

Also, the Ukrainian legislator ignored those violations of international humanitarian law, which are indicated in Article 124 of the Criminal Code of the Republic of Poland. This too works in favour of the Polish criminal law, as it tries to comply with the provisions of international humanitarian law to a greater extent.

At the same time, in fairness, it should be noted that, of course, Poland did not fully implement in the relevant section the provisions of international legal acts on liability for international crimes and crimes of an international nature. In

particular, in the Criminal Code of the Republic of Poland, there is no such type of violation of international humanitarian law as forced labour of the civilian population of the occupied territories, which makes a case for the need to improve the Polish criminal law.

11. CONCLUSIONS

Thus, the current Criminal Code of Ukraine has shown that it can effectively respond to the challenges associated with the war unleashed by the Russian Federation against Ukraine. Chapter XX of the Special Part of the Criminal Code of Ukraine contains a number of articles that qualify the criminal acts of Russian occupiers, such as Article 438 "Violation of the laws and customs of war". In its content, it largely reflects the compliance of the Ukrainian national criminal law with the provisions of international law in the field of the regulation of responsibility for committing criminal violations of international humanitarian law (the law of armed conflicts). Unfortunately, during the year of hostilities, Russian servicemen committed almost all of the crimes provided for by both Ukrainian criminal law and international legal acts. The list of specific grave international war crimes committed by the Russian aggressors is endless.

It should be noted that, in addition to Article 438 of the Criminal Code of Ukraine, actions in the form of violence against prisoners of war and civilians in armed conflict, prohibited by international legal documents, are also described in Articles 433, 434 of the Criminal Code of Ukraine (Section XIX "Military criminal offences"). The similarity of the legislative structure gives rise to problems in the qualification of these crimes and, in my opinion, the difference lies in who the subject of these crimes is.

Responsibility under Articles 433, 434 of the Criminal Code can only be borne by the military personnel of Ukraine in the conditions of both international and non-international armed conflict. Also, Ukrainian servicemen can be held accountable for some acts that can be considered a violation of the laws and customs of war. But, according to special provisions of the Criminal Code of Ukraine, in particular, under Articles 432, 435 of the Criminal Code of Ukraine, while under Article 438 of the Criminal Code of Ukraine, only foreign combatants and persons equivalent to them can be held responsible.

The protection of cultural property during armed conflicts according to the Ukrainian criminal law is, clearly, insufficient. Responsibility for the looting of national valuables in the occupied territory is provided for in Article 438 of the Criminal Code of Ukraine, but its possibilities are limited. A certain way around this situation is that, among the norms of the Ukrainian criminal law, there are those that provide for liability for encroachment on cultural property, and they

can be applied during a non-international armed conflict; in particular, these are articles 178, 179, 298 of the Criminal Code Ukraine.

Within the framework of this study, it is advisable to analyse the offences of Ukrainian and Polish legislation in terms of criminal prosecution for violation of rules and customs. Criminal violations of international humanitarian law are punishable under articles 122–126 of the Criminal Code of the Republic of Poland. A detailed analysis of the content of the articles of the Criminal Code of the Republic showed a significant difference in the size of the Polish law in terms of detailing acts which, under the Polish law, constitute a violation of international humanitarian law – in particular, as can be seen, the wide dissemination of whom the Polish criminal law recognises as victims – identifying who, orienting themselves by weapons or undetectable means of protection, surrendered, the wounded, the sick, the shipwrecked, medical personnel, the clergy, association of all involved persons, during military actions, using international defence structures. In my opinion, this position of the Polish law is more constructive and closely related to international legal acts than the norms of the Criminal Code of Ukraine. In addition, § 2 of Article 123 of the Criminal Code of the Republic of Poland provides an expanded understanding of ill-treatment of victims, which is not found in Article 438 of the Criminal Code of Ukraine. Ukrainian law-makers missed out on including those international humanitarian rights, which are specified in Article 124 of the Criminal Code of the Republic of Poland, which also positions Polish legislative powers as trying to be more in line with the provisions of international humanitarian law.

As such, the above-mentioned comparison makes it possible to assert that the Polish legislative experience in the criminal law regulation of violations of international humanitarian law can and should be useful to Ukrainian legislators and the Ukrainian judicial practice.

In any case, a proper investigation and qualification of the facts of the use by the Russian occupiers of prohibited means and methods of warfare, both at the national and international levels, will necessarily ensure that military personnel, and the highest military and political leadership of the Russian Federation are held criminally liable for committing crimes against peace, humanity, and war crimes.

BIBLIOGRAPHY

Amnesty International. 2022. “Ukraine: Russian soldiers filmed viciously attacking Ukrainian POW must face justice.” *Amnesty*, July 29, 2023. https://www.amnesty.org/en/latest/news/2022/07/ukraine-russian-soldiers-filmed-viciously-attacking-ukrainian-pow-must-face-justice/ (accessed: 18.12.2023).

Anisimov, Herman. 2022. “Pid chas kvalifikatsii dii osoby yak porushennia zakoniv ta zvychaiv viiny vazhlyvym ye vstanovlennia kontekstualnoho aspektu.” *Verkhovnyi Sud,* July 4, 2022. https://supreme.court.gov.ua/supreme/pres-centr/news/1291154 (accessed: 18.12.2023).

BBC News Ukraina. 2022. "Masova zahybel ukrainskykh polonenykh v Olenivtsi. Shcho vidomo." *BBC*, July 29, 2023. https://www.bbc.com/ukrainian/news-62339684 (accessed: 18.12.2023).

Boiko, Andrij. Larysa Brych. Viktor Hryshchuk. Oleksandr Dudorov. 2019. *Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy*. Ed. by Mykola Melnyk, Mykola Khavroniuk. Kyiv: VD "Dakor."

Defense Express. 2022. "Rashysty pochaly robyty vkrai nebezpechni miny-pastky: choho ne treba robyty za bud-yakykh umov." *Defense Express*, March 27, 2022. https://defence-ua.com/weapon_and_tech/vorog_pochav_robiti_vkraj_nebezpechni_mini_pastki_chogo_ne_treba_robiti_za_bud_jakih_umov-6660.html (accessed: 18.12.2023).

Espreso.tv. 2022. "U RF termin «spetsialna viiskova operatsiia» vyhadaly, shchob ne deklaruvaty tsilei viiny, – ochilnyk Minreintehratsii Chernysh." https://espreso.tv/u-rf-termin-spetsialna-viyskova-operatsiya-vigadali-shchob-ne-deklaruvati-tsiley-viyni-ochilnik-minreintegratsii-chernish (accessed: 18.12.2023).

Holos Ameryky Ukrainskoiu. 2023. "Okupanty-pobratymy." *Holos Ameryky*, March 18, 2023. https://ukrainian.voanews.com/a/okypanty-pobratymy-podibnist-vtorgnennya-rosii-do-nazi/7011190.html (accessed: 18.12.2023).

Hosudarstvennaia Duma Rossyiskoi Federatsyy. 1998. *O voynskoi obiazannosty y voennoi sluzhbe*. March 28. https://www.consultant.ru/document/cons_doc_LAW_18260 (accessed: 18.12.2023).

Human Rights Watch. 2022. "Ukraine: Russia Uses Banned Antipersonnel Landmines." https://www.hrw.org/news/2022/03/29/ukraine-russia-uses-banned-antipersonnel-landmines (accessed: 18.12.2023).

Informatsiine ahentstvo "Ukrainski Natsionalni Novyny." 2022. "Prymusovi roboty na okupovanykh terytoriiakh: yak diiaty ukraintsiam, shchob unyknuty kryminalnoi vidpovidalnosti – porady advokata." *UNN*, May 26, 2022. https://www.unn.com.ua/uk/news/1978592-primusovi-roboti-na-okupovanikh-teritoriyakh-yak-diyati-ukrayintsyam-schob-uniknuti-kriminalnoyi-vidpovidalnosti-poradi-advokata (accessed: 18.12.2023).

Khavroniuk, Mykola. 2022. "Kryminalna vidpovidalnist za porushennia zakoniv ta zvychaiv viiny: dvadtsiaty zapytan ta vidpovidei." *Tsentr polityko-pravovykh reform*. September 19, 2022. https://pravo.org.ua/blogs/kryminalna-vidpovidalnist-za-porushennya-zakoniv-ta-zvychayiv-vijnydvadtsyat-zapytan-ta-vidpovidej (accessed: 18.12.2023).

Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. Nr 78, poz. 483 z późn. zm.). https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970780483/U/D19970483Lj.pdf (accessed: 18.12.2023).

Meltser, Nils. 2020. *Mizhnarodne humanitarne pravo. Zahalnyi kurs: navch. posib*. Kyiv: Mizhnarodnyi Komitet Chervonoho Khresta.

Ministerstvo oborony Ukrainy. 2018. "Pro zatverdzhennia Zmin do Instruktsii pro poriadok vykonannia norm mizhnarodnoho humanitarnoho prava u Zbroinykh Sylakh Ukrainy." October 10, 2018. https://zakon.rada.gov.ua/laws/show/z1233-18 (accessed: 18.12.2023).

Ministerstvo zakhystu dovkillia ta pryrodnykh resursiv Ukrainy. 2023. "Daidzhest kliuchovykh naslidkiv rosiiskoi ahresii dlia ukrainskoho dovkillia za 25 travnia – 9 chervnia 2023 roku." https://mepr.gov.ua/dajdzhest-klyuchovyh-naslidkiv-rosijskoyi-agresiyi-dlya-ukrayinskogo-dovkillya-za-25-travnya-9-chervnya-2023-roku/ (accessed: 18.12.2023).

Orlova, Violetta. 2022. "U Derzhdepi SShA zaiavyly, shcho Rosiia «provodyt kampaniiu z teroru» v Ukraini." *UNYAN*, April 19, 2022. https://www.unian.ua/war/viyna-v-ukrajini-derzhdep-vvazhaye-shcho-rosiya-provodit-kampaniyu-z-teroru-v-ukrajini-novini-vtorgnennya-rosiji-v-ukrajinu-11792301.html (accessed: 18.12.2023).

Prysedska, Viktoriia. 2022. "«My pryishly vas zvilniaty». Yak Rosiia «denatsyfikuie» shkoly na okupovanykh terytoriiakh." *BBC News Ukraina,* May 30, 2022. https://www.bbc.com/ukrainian/features-61619012 (accessed: 18.12.2023).

Safronov, Taras. 2022. "Ne fosfor: Rosiia vykorystovuie po Ukraini zapaliuvalni snariady 9M22S." HO "Ukrainskyi militarnyi tsentr", March 27, 2022. https://mil.in.ua/uk/articles/ne-fosfor-rosiya-vykor1ystovuye-po-ukrayini-zapalni-snaryady-9m22s/ (accessed: 18.12.2023).

Senatorova, Oksana. 2018. *Prava liudyny i zbroini konflikty: navch. posib*. Kyiv: FOP Holembovska O.O.

Shunevych, Kateryna. 2022. "Ne zbroinyi konflikt, ne terorystychna operatsiia – operatsiia «viina»." *YurFem*, March 25, 2022. https://jurfem.com.ua/ne-zbroynyy-konflikt-ne-terorystychna-operatsia-operatsia-viyna (accessed: 18.12.2023).

Ukrainer.net. 2023. "Kraina-kradiika: yaki kulturni tsinnosti Ukrainy vykrala Rosiia." May 6, 2023. https://ukrainer.net/rosiia-vykrala-tsinnosti/ (accessed: 18.12.2023).

Ukrainska pravda. 2022. "Okupanty obstrilialy raketamy misto na Kharkivshchyni, bahato ruinuvan." June 6, 2022. https://www.pravda.com.ua/news/2022/06/6/7350845/ (accessed: 18.12.2023).

United Nations. 1945. Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (Charter of the International Military Tribunal) August 8. https://www.refworld.org/docid/3ae6b39614.html (accessed: 18.12.2023).

United Nations. 1949a. Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. August 12. https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949 (accessed: 18.12.2023).

United Nations. 1949b. Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. August 12. https://ihl-databases.icrc.org/en/ihl-treaties/gcii-1949 (accessed: 18.12.2023).

United Nations. 1949c. Geneva Convention relative to the Protection of Civilian Persons in Time of War (2nd part). August 12. https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-protection-civilian-persons-time-war (accessed: 18.12.2023).

United Nations. 1949d. Geneva Convention relative to the Treatment of Prisoners of War. August 12. https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-treatment-prisoners-war (accessed: 18.12.2023).

United Nations. 1949e. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) August 12. https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and (accessed: 18.12.2023).

United Nations. 1954. Convention for the protection of cultural property in the event of armed conflict. May 14. https://en.unesco.org/sites/default/files/1954_Convention_EN_2020.pdf (accessed: 18.12.2023).

United Nations. 1977. Convention on the prohibition of military or any other hostile use of environmental modification techniques. May 18. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-1&chapter=26&clang=_en (accessed: 18.12.2023).

United Nations. 1980. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III). October 10. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-2&chapter=26&clang=_en (accessed: 18.12.2023).

United Nations. 1994. Budapest Memorandum on Security Guarantees in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons. December 5.

https://treaties.un.org/doc/Publication/UNTS/Volume%203007/Part/volume-3007-I-52241.pdf (accessed: 18.12.2023).

United Nations. 1997. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. September 18. https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.44_convention%20antipersonnel%20mines.pdf (accessed: 18.12.2023).

United Nations. 1998. Rome Statute of the International Criminal Court (United Nations Statute). July 17. https://zakon.rada.gov.ua/laws/show/995_588 (accessed: 18.12.2023).

United Nations. 2003. Protocol on Explosive Remnants of War (Protocol V to the 1980 CCW Convention). November 28. https://ihl-databases.icrc.org/en/ihl-treaties/ccw-protocol-v (accessed: 18.12.2023).

United Nations. 2008. The Convention on Cluster Munitions. December 3. https://www.clusterconvention.org/convention-text/ (accessed: 18.12.2023).

United Nations. 2022. "Ukraine war: Russia used cluster weapons at least 24 times, says UN's Bachelet". https://news.un.org/en/story/2022/03/1115092 (accessed: 18.12.2023).

Upovnovazhenyi Verkhovnoi Rady Ukrayiny z prav liudyny. 2022. "Upovnovazhenyi: rashysty prodovzhuiut zaliakuvannia, filtratsiiu ta vbyvstvo myrnoho naselennia na tymchasovo okupovanykh terytoriiakh." https://www.ombudsman.gov.ua/news_details/upovnovazhenij-rashisti-prodovzhuyut-zalyakuvannya-filtraciyu-ta-vbivstvo-mirnogo-naselennya-na-timchasovo-okupovanih-teritoriyah (accessed: 18.12.2023).

Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (t.j. Dz.U. z 2024 r. poz. 17). https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf (accessed: 18.12.2023).

Verkhovna Rada Ukrainy. 1999. Pro vyvezennia, vvezennia ta povernennia kulturnykh tsinnostei. September 21, 1999. https://zakon.rada.gov.ua/laws/show/1068-14 (accessed: 18.12.2023).

Verkhovna Rada Ukrainy. 2000. Pro okhoronu kulturnoi spadshchyny. June 8, 2000. https://zakon.rada.gov.ua/laws/show/1805-14 (accessed: 18.12.2023).

Verkhovna Rada Ukrainy. 2001. Kryminalnyi kodeks Ukrainy. April 4. http://zakon2.rada.gov.ua/laws/show/2341-14 (accessed: 18.12.2023).

Verkhovna Rada Ukrainy. 2014. Zaiava Verkhovnoi Rady Ukrainy do Mizhnarodnoho kryminalnoho sudu pro vyznannia Ukrainoiu yurysdyktsii mizhnarodnoho kryminalnoho sudu shchodo skoiennia zlochyniv proty liudianosti vyshchymy posadovymy osobamy derzhavy, yaki pryzvely do osoblyvo tiazhkykh naslidkiv ta masovoho vbyvstva ukrainskykh hromadian pid chas myrnykh aktsii protestiv u period z 21 lystopada 2013 roku po 22 liutoho 2014 roku. February 25. https://zakon.rada.gov.ua/laws/show/790-18 (accessed: 18.12.2023).

Verkhovna Rada Ukrainy. 2015. Pro Zaiavu Verkhovnoi Rady Ukrainy "Pro vyznannia Ukrainoiu yurysdyktsii Mizhnarodnoho kryminalnoho sudu shchodo skoiennia zlochyniv proty liudianosti ta voiennykh zlochyniv vyshchymy posadovymy osobamy Rosiiskoi Federatsii ta kerivnykamy terorystychnykh orhanizatsii «DNR» ta «LNR», yaki pryzvely do osoblyvo tiazhkykh naslidkiv ta masovoho vbyvstva ukrainskykh hromadian." February 4. https://zakon.rada.gov.ua/laws/show/145-19 (accessed: 18.12.2023).

Zaverukha, Mykola. 2023. "Viina i voiennyi stan. U chomu poliahaie riznytsia mizh tsymy poniattiamy?" *Expres.online*, February 21, 2023. https://expres.online/lyudi-i-problemi/viyna-i-voenniy-stan-u-chomu-polyagae-riznitsya-mizh-tsimi-ponyattyami (accessed: 18.12.2023).

ZMINA. 2022. "Rosiiski viiskovi vbyly zhinku, prymotaly do nei yii zhyvu dytynu, a mizh nymy zaklaly minu – zhurnalisty." https://zmina.info/news/rosiys%ca%b9ki-viys%ca%b9kovi-vbyly-zhinku-prymotaly-do-neyi-yiyi-zhyvu-dytynu-a-mizh-nymy-zaklaly-minu-zhurnalisty/ (accessed: 18.12.2023).

ZMINA. 2022a. “Rosiiskomu viiskovomu, yakyi letiv bombarduvaty Chernihiv, zahrozhuie dovichne.” https://zmina.info/news/rosijskomu-vijskovomu-yakyj-letiv-bombarduvaty-chernigiv-zagrozhuye-dovichne/ (accessed: 18.12.2023).

ZN.UA. 2022. “Okupanty znovu zbyraiutsia vykorystaty tsyvilnykh yak zhyvyi shchyt.” https://zn.ua/ukr/UKRAINE/okupanti-znovu-zbirajutsja-vikoristati-tsivilnikh-jak-zhivij-shchit.html (accessed: 18.12.2023).

ZN.UA. 2022a. “OON rozsliduie 24 vypadky vykorystannia Rosiieiu kasetnykh boieprypasiv. V orhanizatsii takozh zaiavyly, shcho nevybirkovi ataky RF mozhut vvazhatysia voiennymy zlochynamy.” https://zn.ua/ukr/POLITICS/oon-rozsliduje-24-vipadki-vikoristannja-rosijeju-kasetnikh-bojepripasiv.html (accessed: 18.12.2023).