

<https://doi.org/10.18778/0208-6069.106.14>



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INTERNATIONAL AND NATIONAL LEGAL PROTECTION OF THE CIVILIAN POPULATION DURING AN ARMED CONFLICT: THE EXAMPLE OF UKRAINE

Abstract. The protection of civilians is a basic ethical, strategic, and legal requirement for the international community and every democratic state, one of the key aspects of any military (combat) action. Such protection should not only be proclaimed, but also serve as a priority. If armed forces during armed conflicts rely on the foundation laid by international humanitarian law and adhere to civilised rules of military (combat) operations, then the damage caused to the civilian population can be minimised. This problem is also important in terms of the international and national legal protection of the civilian population during the international military conflict in Ukraine.

Keywords: civilian population, international law, international humanitarian law, criminal law, International Criminal Court, war crimes, armed conflict in Ukraine

MIĘDZYNARODOWE I KRAJOWE ASPEKTY PRAWNE OCHRONY LUDNOŚCI CYWILNEJ PODCZAS KONFLIKTU ZBROJNEGO: PRZYKŁAD UKRAINY

Streszczenie. Ochrona ludności cywilnej to fundamentalne zadanie społeczności międzynarodowej i każdego państwa demokratycznego, a także cel każdej akcji zbrojnej. Taka ochrona nie tylko jest proklamacją, ale podstawą działań. Jeżeli siły zbrojne posługują się w swych działaniach międzynarodowym prawem humanitarnym i stosują się do cywilizowanych zasad prowadzenia walki zbrojnej, to zagrożenia dla ludności cywilnej mogą być zredukowane. Zagadnienie to jest także kluczowe z perspektywy rozwiązań krajowych i międzynarodowych z zakresu ochrony ludności cywilnej w kontekście międzynarodowego konfliktu zbrojnego na Ukrainie.

Słowa kluczowe: ludność cywilna, prawo międzynarodowe, międzynarodowe prawo humanitarne, prawo karne, Międzynarodowy Trybunał Karny, zbrodnie wojenne, konflikt zbrojny na Ukrainie

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1. INTRODUCTION

“Russia’s invasion of Ukraine, in clear violation of the United Nations Charter and international law, aggravating is geopolitical tensions and divisions, threatening regional stability, increasing the nuclear threat, and creating deep fissures in our increasingly multipolar world”, UN Secretary-General Antonio Guterres said at the UN Security Council meeting on 20th September, 2023 (UN Secretary-General, 20th September, 2023). As of the end of October, according to the Office of the Prosecutor General of Ukraine, 111,413 military crimes were registered (including: the violation of the laws and customs of war, propaganda of war, planning, preparing or unleashing and waging aggressive warfare, etc.), 16,299 crimes against national security; 680 suspects have been identified, including high-ranking politicians and officials (Ofis Heneralnoho Prokurora Ukrainy 2023). It should be specifically emphasised that the armed conflict between Ukraine and the Russian Federation has caused an immediate and sharp increase in the humanitarian needs of the residents of Ukraine: supplies of essential goods were interrupted, civilians were fleeing the fighting. According to UN estimates, 12 million people will need assistance and protection inside Ukraine in the coming months, and more than 4 million Ukrainian refugees will need support in the neighbouring countries. This requires special attention to the problem of the legal protection of the civilian population of Ukraine, as well as other regions – in particular Nagorno-Karabakh, Gaza – during an international armed conflict.

2. THE LEGAL REGULATION OF ARMED CONFLICTS

The task of international law, as is known, is to facilitate positive social processes in peacetime and to prevent, in every possible way, negative processes in wartime, above all by protecting the innocent civilian population (Buromenskyi 2015, 5–17). Awareness of this has contributed to the development of international humanitarian law (hereinafter referred to as IHL). IHL, which was previously called the “law of armed conflict” (“law of war”), is a set of international legal norms and principles governing the protection of victims of war, as well as regulating the methods and means of warfare. In more detail, IHL is a set of rules that aim to protect human persons and property from the threat of damage or destruction during hostilities, and also to limit the choice of belligerents in the means and methods of warfare. Thus, the law of armed conflict provides the balance between the universal principle of humanism and military necessity (Meltser 2020). It is in these two directions that modern IHL has been developing.

IHL was primarily codified in: the Hague Conventions of 1899 and 1907, referred to as “Hague Law,” which define the laws and customs of war; four Geneva Conventions of 1949, which provide for the protection of rights of civilian and military prisoners of war, of the wounded, the sick and civilians in and around the combat zone, etc.; two additional Protocols of 1977 to the Geneva Conventions of 1949, referred to as “Geneva Law”; resolutions of the UN General Assembly; Conventions of the Council of Europe; and other important international legal documents. IHL is part of public international law, since its provisions are closely related to other provisions of this independent system of law (Ministerstvo z pytan reintehratsii tymchasovo okupovanykh terytorii Ukrainy 2023). However, according to Jean Pictet’s statement, “Humanitarian law is no longer a mere branch of international law but a province in its own right with a wide measure of autonomy” (Pictet 1966, 455).

Thus, IHL applies only to armed conflicts. Through its inherent methods, IHL has created the necessary legal conditions to mitigate the consequences of such conflicts, limiting the choice of means and methods of conducting military (combat) actions, obliging the opposing parties to spare as much as possible those persons who do not participate or have ceased to take part in hostilities. It should be emphasised that the main purpose of IHL is to protect a specific individual during an armed conflict. IHL application covers conflicts of both an international and a non-international nature. It should be emphasised that the rules require all participants in such conflicts – regardless of their role in the conflicts, of the power of their armed forces – to comply with the established rules in order to prevent devastating consequences, including death and injury to civilians.

3. THE DISTINCTION BETWEEN *IUS IN BELLO* AND *IUS AD BELLUM*

Since IHL is sometimes also referred to as the law of armed conflict or the law of war (*jus in bello*), it is important to distinguish between the terms *ius in bello* and *ius ad bellum*, which has traditionally been a subject of investigation and identified as “the two sets of rules” that “necessary apply at different times, at different stages in the deterioration of relations between states... The two sets of rules operate in quite distinct spheres” (Greenwood 1983, 222). *Ius ad bellum* relates to the conditions and provisions for the legitimate use of force in international relations. In general terms, this applies to the following cases: individual or collective self-defence; coercive measures based on the decision or the sanction of the UN Security Council; national liberation wars, etc. In all other cases, resorting to “arms” to resolve disputes is considered illegal. However, in practice, there have been cases where international armed conflicts did not always begin based on the UN Security Council’s decision, just as the concept of “national liberation war” and persons taking part in armed conflicts have not always been

clearly interpreted. Regarding *ius in bello*, it applies directly to the conflict itself, assessing ongoing events and the actions of all parties taking part in it. Therefore, emphasis when applying IHL is placed precisely on *ius in bello*, since it is with the help of these provisions that the main goals of humanitarian law are supposed to be achieved. “*Ius ad bellum* is the law governing the right to go to war, while *ius in bello* govern the conduct of that war once it started” (Greenwood 1983, 222). This fundamental distinction is extremely important, since political, ideological, and other technologies may confuse these concepts, which in many ways makes it difficult or impossible to apply the humanitarian components of this law.

4. THE PRINCIPLES OF IHL

It is also worth to briefly mention the principles of IHL as the main ideas guiding principles mirroring its content and orientation. In general, the principles of IHL reflect the state of the legal consciousness of human society, while acting as a norm-forming source (factor). It is important to emphasise, taking into account the specifics of the provisions of IHL, its principles are (should be) implemented into practice not only through the relevant norms, but also directly. States are also obliged to implement the principles of IHL into their national legislation, since otherwise they may be held liable for failure to comply with the principles of international law in general and the principles of IHL in particular, including: I. Universal (general) principles of international humanitarian law. II. Principles concerning the choice of means and methods of conducting military (combat) operations (principles of “Hague Law”). III. Principles ensuring the protection of victims of war (principles of “Geneva Law”).

5. THE RELATIONSHIP BETWEEN IHL AND IHRL

Considering the longstanding scholarly discussion about the interplay between IHL and international human rights law (hereinafter IHRL) (Draper 1971; Schindler 1982; Hampson 2008, 550), it is relevant at that point to clarify the relationship between IHL and IHRL, since “the leading force of these discussions is the desire to ensure the protection of a human being in times of armed conflicts to the fullest degree possible” (Hnatovskyi 2017, 271). Accordingly, this relationship is based on a common object – a human being. However, there are certain differences. While IHRL is aimed at protecting the individual from the arbitrariness of, figuratively speaking, the authorities in peacetime, IHL provides protection for the individual (group of individuals) during armed conflicts, seeking to minimise the destructive consequences of such a conflict for people. At the same time, the essentially uniform orientation of the legal regulation of both IHL and

IHRL makes it possible to highlight those provisions that are common and uniform to them: the right to life; non-discrimination; the inadmissibility of torture, cruel, inhuman or degrading treatment and punishment; the inadmissibility of slavery or other servitude; the right to procedural guarantees during judicial procedures, etc. Thus, IHL adapts the human rights law to the conditions of an armed conflict, establishing the maximum permissible minimum of individual rights in such conditions, which the state, its representatives, and other authorised persons must ensure. It is important to take these general provisions into account in relation to the events in Ukraine (Hnatovskii 2017).

In Ukraine, there are different bodies that adapt the provisions of IHL, primarily with the aim of maximising the protection of the civilian population; the leading role is being played by the Ministry for Reintegration of Temporarily Occupied Territories of Ukraine. To achieve such goals, the Ministry's function is to collect, analyse, and summarise information on compliance with IHL in the temporarily occupied territories of Ukraine, as well as adjacent territories, and to make proposals for responding to facts of its violation. In addition, in order to ensure proper implementation of the norms of IHL on the territory of Ukraine – in particular the implementation of the international legal obligations of Ukraine arising out of the “Geneva Law”, as well as other international treaties in the sphere of IHL, and taking account of the challenges associated with the armed conflict in eastern Ukraine – there has been established an Interdepartmental Commission on the application and implementation of international humanitarian law in Ukraine by the Resolution of the Cabinet of Ministers of Ukraine dated 26th April, 2017 No. 329 (Pro utvorennia Mizhvidomchoi komisii z pytan zastosuvannia ta realizatsii norm mizhnarodnoho humanitarnoho prava v Ukraini 2017). The work of this commission has facilitated the creation of the platform for identifying the main practical problems in the field of humanitarian law; for determining short-term and long-term priorities for their implementation; for further implementation by all parties responsible; for monitoring the solution to the problems posed and assessing its effectiveness.

6. RESPONSIBILITY FOR THE VIOLATION OF IHL NORMS

Any system of law and any branch of law presupposes a mandatory institution of liability for the violation of the established rules. However, the issue of international legal responsibility in the doctrine of international law and the practice of its application has dealt with certain difficulties. There are many reasons for this, one of which is that the peculiarity of international law presupposes (should presuppose) its effect in sovereign states, while its influence on the latter is often limited and problematic. Therefore, despite the fact that certain mechanisms for implementing responsibility for the violation of

international law have been developed, the process of its coordinated improvement at different levels is permanently going on.

Initially, one should always distinguish between the international legal responsibility of states (other subjects of public international law) and the individual responsibility of individuals who committed an offence, including criminal law. In order to resolve the issue of responsibility for the violation of specific norms of IHL, it is necessary to identify in what capacity the offender acted: as a “private individual,” i.e. he/she has acted based on his/her own interests, pursuing his/her own goals etc., or a state “stands” behind his/her actions, i.e. the motives and goals of his/her actions were “produced” by the state. Therefore, the procedures for implementing the responsibility of the state and an individual differ significantly, and thus offences in the sphere of IHL, according to their subject composition, should be divided into two groups: 1) the violation of IHL norms with the state involvement; 2) the violation of IHL norms by an individual (individuals). Given that in both cases an act may be committed by a specific person, the differentiation in these cases, which is going to play a key role in imposing responsibility, requires careful consideration.

The conditions for the responsibility of opposing (warring) states for the acts of their structures and bodies are defined in Article 3 of the IV Hague Convention of 1907 (hereinafter IV HC 1907) and “duplicated” in Article 91 of the Additional Protocol I of 1977 (hereinafter AP I of 1977). In addition, this condition is specified in relation to prisoners of war and civilians in the III Geneva Convention of 1949 (hereinafter III GC 1949) and the IV Geneva Convention of 1949 (hereinafter IV GC 1949), providing that the state in power where such persons are located is responsible for their treatment, and this does not relieve personal responsibility from representatives of this state.

In the doctrine of IHL, two forms of state participation in the violation of IHL norms are known: the so-called “direct” and “indirect” participation. “Direct” participation of the state means the commission of an offence by an organ, representative, official on behalf of the state. “Indirect” state participation includes situations where the state “allows” within its jurisdiction the commission of an offence by individuals who have no formal relationship with the state apparatus. Therefore, failure to take measures to suppress such offences is considered, subject to certain conditions, “complicity”, i.e. it is also considered government misconduct.

In general, modern international law provides for two forms of international legal responsibility of states: political and material. Political measures employ restrictions on the sovereignty of the state, temporary external control over all or part of the territory, as well as in certain areas of activity related primarily to military production, financial, and economic activities, etc. Material responsibility is understood, provided by ILC 1949 (Articles 51, 52, 131, 145), as the obligation of the party violating the provisions of this convention

to compensate the damage caused to the injured party. At the same time, the IHL doctrine at one time proposed the concept of the criminal responsibility of states, but it did not receive the necessary support, since, for example, drawing analogies, in the absence of the necessary legal provisions, and interpreting some functions of the Security Council as functions of a criminal court did not prove productive (Fesenko 1998).

In general, the issue of the forms of state responsibility raises a number of questions. For example, among such forms there are: sanctions, which are understood as collective measures of international organisations (in the general understanding of this definition); and countermeasures, i.e. measures taken by the injured state against the offender, including armed reprisals to the extent that they are not prohibited by the rules of IHL.

In connection with the international armed conflict in Ukraine, international communities and individual states have begun to apply such sanctions against Russia. For example, the European Union has imposed sanctions in three main areas: limiting Russia's ability to finance war; imposing "noticeable" economic and political costs on the Russian political elite; depriving Russia of economic support, which is practically implemented in sanctions against individuals, enterprises, and organisations; restriction of visa policy; ban (restriction) of import and export; energy sanctions; transport sanctions; restrictions on financial and business services, etc. The head of the European Commission, Ursula von der Leyen, emphasised that "our sanctions greatly erode Russia's economic base, depriving it of any prospect of modernisation" (Yevropeiska komisiia. Sanktsii, zaprovadzhenni YeS shchodo Rosii cherez vtorhnennia v Ukrainu). There have already been known cases of prosecution for violating these sanctions (FOKUS. Zlochyny YeS: u Yevropeiskii radi vidreahuvaly na sproby obiiy sanktsii).

As to the liability of individuals, it should be noted that in the middle of the last century, two important events occurred in the field of IHL: first, the post-World-War-II trials in Nuremberg and Tokyo formally established the personal responsibility of major war criminals for certain acts contrary to international law applicable during armed conflicts. This decision was based on many important statements. For example, one of them was: "People, not abstract entities, commit crimes subject to punishment by applying the sanctions provided for by international law, and only by punishing them can the provisions of international law be strengthened" (Jugement du Tribunal militaire international 1947). Secondly, concepts such as "crimes against peace", "war crimes", "crimes against humanity" were defined and interpreted, which in 1949 were officially enshrined in four GCs of 1949. The consolidation of these concepts made it possible to highlight the concept of a "serious violation" (war crime).

The current state of the institute of responsibility of individuals for violations of IHL norms is characterised by the presence of two models of responsibility: "direct" and "indirect". Historically, the first to emerge was the "indirect" model,

the essence of which is that if the relevant act violates the prohibition of IHL, then the responsibility to punish the person who committed this act rests with a specific state, and the legislative justification for such a decision is enshrined in national legislation, mainly criminal. On the other hand, the “direct” model of responsibility implies punishment of an individual by an international judicial body; that is, the norms of international law do not need national implementation and are applied directly by international courts, tribunals, and other judicial structures (Streltsov 2023).

In this regard, it is important to note that the Rome Statute of the International Criminal Court, which was approved at a diplomatic conference in Rome in 1998 and entered into force on 1st July, 2002, established the competence of this court within the “direct model” of responsibility of individuals, mentioned above, i.e. these provisions do not impose an obligation on states to prosecute war crimes at the national level. However, the peculiarity of this Statute is that it creates a legal regime in which states that have ratified it must show a “desire” to criminalise such acts and prosecute the perpetrators at the national level.

In general, the violation of IHL norms is subject to criminal, administrative, and disciplinary responsibility. It should be noted that the provisions of the GC 1949 and AP (I) 1977 expressly provide that certain serious offences committed during an international armed conflict are to be considered war crimes that include: intentional murders; torture and inhuman treatment, including biological experiments; intentionally causing great suffering or serious injury; damage to health; illegal, arbitrary, and large-scale destruction and appropriation of property not caused by military necessity (for more details, see Articles 50 and 51 of the ILC 1949). According to Art. 147 IV GC, such violations also include illegal deportation (including deportation of children, as happened in Ukraine); movement or arrest of a protected person; taking hostages. A number of serious offences that are considered war crimes are listed in Art. 85 AP I 1977, e.g. making the civilian population or individual citizens the object of attack; carrying out an indiscriminate attack affecting the civilian population or civilian objects, when such an attack is known to cause excessive loss of civilian life or health or cause damage to civilian objects; committing an attack on a person when it is known that he/she has ceased to take part in military (combat) actions, etc. Thus, IHL international humanitarian law provides for individual criminal responsibility for the violation of its provisions (Streltsov 2017). It is necessary to highlight that special responsibility is assigned in this regard to military leaders, who must take all necessary measures to prevent violations of the GC and AP by their subordinates, otherwise they are subject to responsibility within their competence.

In general, as is known, serious violations of IHL (war crimes) are (should be) prosecuted not only by the opposing state, but also by any other state that has the authority to do so (according to the principle of universal jurisdiction).

7. CRIMES AGAINST CIVILIANS IN UKRAINE

As is known, there are many categories of persons who, to one degree or another, are “involved” in international armed conflicts. Among them is the civilian population, which may participate in such conflicts in many capacities: as main victims, the main objects of influence on the part of the warring parties, and the so-called “security shields”. Often, illegal influence on this category during armed conflicts gives rise to significant, even tragic consequences for the civilian population. In general terms, the concept of “civilian population” is presented in Article 50 of the 1977 AP(I), part 1 of which states that a civilian is any person who does not belong to any of the categories of persons specified in Articles 4 A, 1, 2, 3, and 6 III GC and in Article 43 of this Protocol, e.g. do not refer to: the personnel of the forces of the parties to the armed conflict; personnel of regular armed forces declaring their allegiance to the authorities or government; militia or volunteer units that are part of these armed forces, etc. Therefore, if a person (group of persons) does not belong to the listed categories of persons, he/she is considered a civilian, and the totality of such persons is considered the civilian population. Part 2 of Art. 50 stipulates that the civilian population consists of all persons who are civilians. Part 3 states that the presence among the civilian population of individuals who do not fall under the definition of civilians does not deprive the population of its civilian character. It should be taken into account that, in general, the civilian population and groups of such population that can be identified within this general group have, along with general definitions, normative legal acts of more special purposes (Legislative Observatory. Rezoliutsiia pro vplyv viiny proty Ukrainy na zhinok vid 5 travnia 2022 roku).

In general terms, significant violations of IHL and national criminal law in the territory of Ukraine since 2014 include: crimes of aggression, war crimes, crimes against humanity and/or crimes of genocide, and other criminal acts that violate the international legal order. As for crimes against the civilian population (not limited to this list), these are: intentional murder; sexual violence; unlawful imprisonment or other deprivation of liberty that violates fundamental rules of international law; torture and inhuman treatment; forced displacement – deportation and/or transfer of civilians, including children; intentionally causing severe suffering or serious bodily injury or harm to health; deliberately targeting civilians; deliberate attacks on civilian objects, including religious, educational, scientific, charitable, and cultural buildings, including museums, art collections; ecocide, crimes against the environment, including attacks on objects and installations containing hazardous factors; deliberate attacks on objects of humanitarian purposes, including health care facilities, as well as places where the wounded and the sick are concentrated; deliberate attacks on civilian infrastructure essential to the survival of the civilian population, including agricultural, food, energy, and/or other resource facilities;

plunder; acts of violence or threats of violence aimed at spreading terror among the civilian population; persecution of any identified group or collective on national, political, ethnic, cultural, religious, or gender grounds or on other grounds specified in international or national legal acts.

In general, as of September 2023, the Office of the High Commissioner for Human Rights (OHCHR) recorded that since the beginning of the armed conflict, civilian casualties have amounted to 27,768 people, including 9,806 deaths. Among the dead: 5,171 men, 3,156 women, 294 boys and 237 girls; the gender of other 29 children and 919 adults has not yet been determined. The OHCHR believes that the actual number of civilian deaths or injuries is significantly higher, as many reports from places where such incidents have occurred still require further confirmation, while information is being received from some places where the fighting continues, and is thus delayed. However, this information is quite enough to once again understand the tragedy of the events in Ukraine, primarily those directly affecting the civilian population.

Taking this into account, experts tried to compile a general list of the 20 most common significant violations (war crimes) of IHL that have already been committed in Ukraine since 24th February, 2022, and which require special attention, since many are directed against the civilian population. Such an initiative resulted in the creation of the following:

1. *The crime of aggression*, which is considered as the planning, preparation, initiation or execution of an act of aggression, which – by its nature, seriousness, and magnitude – constitutes a flagrant violation of the Charter of the United Nations, by a person in a position of actual direction or control of the political or military actions of the State (Article 8 bis of the Rome Statute of the International Criminal Court / ICC). These are the actions that the UN incriminated against Russia in the Resolution 3314 (XXIX) of the General Assembly. By using the armed forces of the Russian Federation against the sovereignty, territorial integrity, or political independence of Ukraine, Russia, according to this UN definition, has committed aggression.

2. *Destruction of Ukrainian cities*. 143.8 thousand houses were destroyed. Among the most affected regions in terms of housing destruction were the following regions: Donetsk, Kiev, Lugansk, Chernigov, and Kharkov. According to Prime Minister Denis Shmygal, Ukraine's losses total about 600–750 billion USD; damage from the destruction of infrastructure facilities alone amounted to 138 billion USD. He announced such figures during a joint press conference with the European Commission President Ursula von der Leyen.

3. *The Bucha tragedy*. Bucha was included in the ranking of war crimes based on the number of destroyed houses, the massacre of the Ukrainian civilian population in this city of the Kyiv region, accompanied by abductions, torture, rape – including children – and looting, all of which shocked the whole world. More than 420 city residents died.

4. *Mass murder in Izyum.* After the de-occupation of the city on 15th September, 2022, one of the largest mass graves since the beginning of the large-scale war was discovered nearby in the forest – about 450 graves. Among the dead were mainly civilians, children, and at least 17 Ukrainian Armed Forces soldiers. Most of those buried died violently from artillery fire, mine explosions, and, less commonly, airstrikes; bodies were also found with a rope around their necks, with their hands tied, with broken limbs and gunshot wounds; several men had their genitals amputated. In Izyum, 6 places of detention with the use of torture were organised.

5. *Murder of prisoners in Olenovka.* On the night of 28th–29th July, 2022, explosions on the territory of the former Volnovakha correctional colony No. 120, where Ukrainian defenders were kept, killed 53 prisoners and injured more than 130. At the same time, Russia's representatives immediately stated that the shelling was carried out by the Ukrainian Armed Forces from the American HIMARS multiple launch rocket system. Ukraine denied all accusations and demanded that representatives of the UN and the International Committee of the Red Cross be allowed into the colony.

6. *The shooting of the railway station in Kramatorsk.* 61 people were killed (including five children), 114 were injured as a result of Russian troops shelling the station in Kramatorsk, Donetsk region, on 8th April. The Security Service of Ukraine examination showed that the rocket attack on the railway station in Kramatorsk was carried out from the occupied part of Donbass.

7. *Missile attack on a residential building in the city of Chasov Yar.* On 9th July, 2022, the Russian military attacked the town of Chasov Yar in the Donetsk region with Iskander missiles, firing at least four of them. This was announced by the first deputy head of the Main Directorate of the State Emergency Service in the Donetsk region, Colonel Vyacheslav Boytsov, in a comment to Ukrinform. During rescue operations, the State Emergency Service employees discovered 48 dead (including a 9-year-old boy), while nine were rescued from the rubble. The search for people had lasted five days and involved 323 people.

8. *Missile attack on the Dnieper.* On 14th January, 2023, the Russian army launched missiles at the Dnieper. One of the missiles hit an apartment building; as a result of the strike, 72 apartments were destroyed. According to the regional military administration, 46 people were killed and 80 were injured.

9. *Shelling Kharkov by "Grads" and rockets.* On the fifth day of the conflict – 28th February, 2022 – Russian military personnel fired at several districts of Kharkov using "Grad" multiple launch rocket systems and high-precision missiles: Aleksyyevka, Saltovka, Pavlopol. 87 residential buildings were damaged. As a result of the shelling, 11 people were killed and more than 40 were injured, including five children.

10. *Sexual violence,* which, according to the Office of the Prosecutor General, in the temporarily occupied territories, affected women, men, and children – all

aged from 4 to 85 years. The website of the Ukrainian Helsinki Union for Human Rights contains the material titled “Sexual crimes are probably 100 times more than official statistics”, stating that this is one of the types of crimes that have little been investigated in the context of armed aggression during the war. The executive director of the Union Alexander Pavlichenko stated that according to the reports, a hundred crimes of a sexual nature are being investigated: “The real picture is that there are 100 times more of them. We have only about 1–2% of such crimes open.”

11. *Strike by X-22 missiles on a recreation centre in the village of Serhiyivka.* As a result of a missile strike on 1st July, 2022, on the urban resort village of Serhiyivka in the Belgorod-Dnestrovsky district of the Odessa region, a nine-storeyed residential building was partially destroyed, followed by a fire in the store attached to it on an area of about 20 square meters. In addition, three-storeyed and four-storeyed buildings of recreation centre “Goji” were destroyed. As a result of the missile attack, 21 people were killed (among the victims was an 11-year-old boy) and 38 people were injured.

12. *Missile attack on the Amstor shopping centre in Kremenchug on 27th June, 2022.* There were more than a thousand people in the shopping centre at the time of the strike; 18 are now known to have died, 57 were injured, and 36 citizens are still being sought.

13. *The kidnapping and forced displacement of Ukrainian children.* According to the Children of War portal, 19,546 children have currently been deported and/or forcibly displaced, of which 386 have been returned (Dity viiny). The Presidential Commissioner for Children’s Rights and Children’s Rehabilitation, Daria Gerasimchuk, emphasised that such actions are illegal: “They have been preparing for this for a long time... This is part of their ‘denazification and denationalisation programme’ of little Ukrainians, when they kidnap them and move them, when they change their citizenship...” This is prohibited by the Geneva Convention. At the same time, “Movement of part or the entire population of an occupied territory, both within the relevant territory and beyond its borders” is a war crime under Art. 8(2)(b) Rome Statute. Art. 11 of the Convention on the Rights of the Child obliges “States Parties to take measures to combat the illegal movement and non-return of children from abroad.”

14. *Nuclear “terrorism”,* realised primarily due to the threat of a nuclear disaster as a result of damage to Ukrainian nuclear power plants. On 4th March, 2022, the buildings and blocks of Europe’s largest nuclear power plant, Zaporizhzhya, were shelled. As a result of the shelling, the first power unit was damaged. On 16th April, three Russian missiles could have hit the nuclear reactor of the South Ukrainian Nuclear Power Plant. On 25th April, two Russian cruise missiles were recorded flying in critical proximity to the nuclear facilities of the Khmelnytsky Nuclear Power Plant. On 26th April, two cruise missiles flew at low altitude over the Zaporizhzhya nuclear power plant. On 5th June, a Russian rocket

flew critically low over the Southern Nuclear Power Plant. On 18th February, 2023, during another massive Russian missile attack on the South Ukrainian Nuclear Power Plant at 8:25 and 8:27, the flights of two enemy cruise missiles were recorded. The missiles moved along the bed of the Southern Bug in the direction of the city of Pervomaisk, the Nikolaev region, and flew dangerously close to a nuclear facility. The threat of falling into a reactor with possible consequences – a nuclear disaster – was, again, high.

15. *Attacks on Ukraine's critical energy infrastructure* began on 10th October, 2022, when 84 air, sea, and ground-based cruise missiles, ballistic missiles, anti-aircraft guided missiles, reconnaissance and attack UAVs of the Shahed-136 type were used. On this day, 2 people were killed, about a hundred were injured as a result of the attacks, 11 important energy structures in 8 regions and the city of Kyiv were damaged, and some regions were de-energised. Since then, there have been 15 more missile strikes. In total, enemy missiles and attack drones fired at critical infrastructure killed 111 civilians, injured more than 200, and destroyed up to a thousand important structures: airports, ports, bridges, oil depots, transformer substations, and power plants.

16. *Forcing citizens to participate in hostilities against their own state.* Even before the start of the armed conflict, on 18th February, 2022, Russia had announced mobilisation in the temporarily occupied territories of the Luhansk and Donetsk regions. Men from 18 to 55 years old were subject to mobilisation. Because of those events, about 70 thousand people were called up in the first five months. The number of deaths is unknown. It should be recalled that for the illegal mobilisation of Ukrainian citizens into the ranks of the armed forces, representatives of Russia will bear criminal liability in accordance with Art. 438 of the Criminal Code of Ukraine or in the International Criminal Court for violation of Art. 8(2)(b)xv Rome Statute.

17. *Airstrike on the Mariupol maternity hospital*, which took place on 9th March, 2022. Three people were killed, including a child, and 17 people were injured.

18. *The "Uragan" shooting of a kindergarten in Akhtyrts*, which took place on 25th March, 2022. In general, the residential area, bomb shelters, and the Solnyshko nursery garden were damaged. One child and two teachers were killed, 17 children were injured.

19. *The destruction of civilian infrastructure, cultural heritage sites, and health care institutions.* On the territory of Ukraine, more than 3 thousand educational institutions were destroyed; 95 religious sites; 173 medical institutions; 907 cultural institutions; 168 sports facilities; 157 tourism sites.

20. *The blockade and destruction of Ukrainian ports* in connection with the attempt of the world community to organise a "grain corridor" and provide grain to different countries. Such a blockage has caused direct losses to the agriculture

of Ukraine, which, to date, already amount to more than 4 billion 300 million USD (Polishchuk 2023).

It should be borne in mind that this information is constantly changing, but most of these crimes appear to affect the civilian population, which must be constantly taken into account.

8. THE PRACTICAL IMPLEMENTATION OF THE PROVISIONS OF IHL AND NATIONAL CRIMINAL LAW

According to the requirements of international law, any state must search for war criminals and bring them to justice, regardless of the citizenship of the perpetrators of the crimes and the citizenship of their victims, or the place where the crime was committed; or must extradite the perpetrators and organisers of crimes in accordance with the law of the state to which the request for extradition is made for the purpose of legal prosecution. In addition to national institutions that consider such cases, there are also such institutions functioning at the international level. The imposition of responsibility on individuals on the basis of international legal provisions by international judicial structures, as indicated above, is called the international criminal responsibility of individuals. The practice of international criminal justice for violations of IHL had begun in accordance with the Treaty of Versailles, adopted after the First World War, and the Regulations of the Nuremberg and Tokyo International Military Tribunals after the Second World War, and, subsequently, continued in accordance with the decisions of the UN Security Council: on the creation of the Tribunal for the Former Yugoslavia, which was adopted on 22nd February, 1993, and on the creation of such a Tribunal for Rwanda, which was adopted on 8th November, 1994. Further, on 15th–17th June, 1998, a Diplomatic Conference was held under the auspices of the UN, at which the Rome Statute of the International Criminal Court was adopted. All this indicates that over the past decades, a criminal justice system has developed in cases related to violations of IHL, but the last events in the world require its constant development and improvement.

Taking account of the above, let us consider the experience of Ukraine. Recognising Ukraine's legal obligations to prosecute international crimes and the need to ensure effective investigation in this regard, primarily concerning crimes against the civilian population, on the territory of Ukraine since 2014, relevant authorities have structured a plan and have implemented the necessary measures. Along with a range of national activities, these structures have been strengthening cooperation with foreign and international partners to ensure institutional capacity as well as operational and technical efficiency to promote speedy and impartial justice and to hold perpetrators accountable. This, in particular, includes: cooperation with the Office of the Prosecutor of the International

Criminal Court to ensure comprehensive investigation and/or prosecution of international crimes in accordance with the principle of universality and complementarity (Polyakovska 2023); cooperation within the framework of the Joint Investigation Team (JIT) to investigate the commission of international crimes on the territory of Ukraine (Reznikova 2023). The parties to the agreement on the creation of the JIT include Ukraine, the Lithuanian Republic, Poland, the Estonian Republic, the Latvian Republic, the Slovak Republic, and Romania. Eurojust (Ukrainform 2023) and the Office of the Prosecutor of the International Criminal Court are also parties to this agreement; the development of the International Centre for the Prosecution of the Crime of Aggression (ICPA) as an operational centre for documenting, storing, sharing, and analysing evidence for the prosecution of the crime of aggression became an important step prior to the establishment of the Special International Tribunal (Ukrainform 2023a). Other examples of collaboration involve: partnership with the International Serious Crimes Advisory Panel, established by the United States, the European Union; and the United Kingdom to provide strategic advice as well as operational and technical assistance in the investigation and prosecution of international crimes (SShA, YeS i Velyka Brytaniia proponuiut praktychnu pidtrymku Ukrainy u zabezpechenni vidpovidalnosti za voieni zlochyny); cooperation with the Council of Europe in accordance with the Action Plan for Ukraine 2023–2026 “Resilience, Recovery and Reconstruction”, aimed at supporting the recovery process in Ukraine in order to strengthen the sustainability of state institutions, strengthen the rule of law, and protect fundamental rights (Ukrainform 2023b); collaboration with the Office of the Special Representative of the UN Secretary-General on Sexual Violence in Conflict and the UN Group of Experts on the Rule of Law and Sexual Violence in Conflict to strengthen national capacity to investigate and prosecute crimes of conflict-related sexual violence, and ensure that survivors of sexual violence have access to a comprehensive support system (Ofis Heneralnoho prokurora. Eksperty Misii OON obhovoryly pidtrymku diialnosti Koordynatsiinoho tsentru ta dopomohu postrazhdalym vid seksualnoho nasylstva); cooperation with the US Department of Justice under a bilateral Memorandum of Understanding to promote prosecution of war and other crimes through appropriate investigations and prosecutions in each country (Ofis Heneralnoho prokurora. Heneralni prokurory Ukrainy ta SShA pidpysaly Memorandum pro vzaiemorozuminnia); the introduction of the Coordination Centre for Support of Victims and Witnesses, which is the beginning of the formation of a nationwide mechanism for supporting victims and witnesses of war and other international crimes in accordance with Concept 4 of its development (Lex. Novi praktyky pidtrymky poterpilykh ta svdkiv).

The implementation of these measures expectedly facilitates the effective, fair, and prompt investigation of international crimes and the prosecution of those responsible, as well as the application of international and domestic remedies,

including adjudications in accordance with the rule of law, damages, and other compensation to victims.

It is hoped that activities intended by Ukrainian judicial and other law enforcement bodies in collaboration with international judicial institutions, international organisations, foreign states, non-governmental organisations, and society will ensure the effective investigation and prosecution of persons guilty of these crimes. In general terms, the basic norms of international law – in particular, “Geneva Law” and “Hague Law”; Convention on the Prevention and Punishment of the Crime of Genocide, 1948; European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; International Covenant on Civil and Political Rights 1966; Convention on the Elimination of All Forms of Discrimination against Women 1979; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; Convention on the Rights of the Child 1989 and Optional Protocol on the Involvement of Children in Armed Conflict 2000; the Rome Statute of the International Criminal Court of 1998 and the Convention for the Protection of All Persons from Enforced Disappearance of 2006, etc. – may serve as the basis for ensuring a comprehensive and impartial investigation.

The use of effective means of criminal proceedings, including through partnerships with national organisations, foreign states, international judicial institutions, and justice institutions, is ensured by fair and transparent criminal prosecution of persons guilty of committing international crimes, as well as compensation for damage to persons affected by these crimes.

The principles (basic provisions) underlying such activities are the following: ensuring criminal prosecution as an integral component of transitional justice; compliance with the high ethical and professional standards, carrying out its functions independently and impartially; respect for the presumption of innocence, the right to a fair trial; the equality of the parties; the independence of judges and the binding nature of final judicial decisions, as well as support for the fundamental values of the European Union such as democracy, equality, the rule of law, and human rights; compliance with the principles of independence when interacting with any external entities, including governmental and international organisations; providing support and assistance to victims at all stages of criminal proceedings, in particular avoiding repeated “traumatisation”; ensuring the guaranteed right of victims to participate in criminal proceedings; interaction with civil society, etc.

All this requires the mandatory implementation of an effective organisational structure, which should cover: all national authorities responsible for the prosecution of international crimes based on a clear distribution of complementary functions and responsibilities at the national, regional, and local levels; effective coordination of the activities of authorities, pre-trial investigation bodies, and other entities involved in the investigation of international crimes at these levels; initiating legislative changes to ensure effective prosecution of international crimes

at both the national and international levels, providing compensation and redress to victims; the introduction of uniform standards of pre-trial investigation for each type of international crimes committed in Ukraine. These standards should be developed and adapted specifically to Ukraine also with the assistance of lawyers with experience in the fight against international crime by introducing a system of prioritisation and selection of criminal proceedings based on clear and transparent criteria, which will ensure fair justice within a reasonable time as well as the protection of the interests of particularly vulnerable groups, in particular victims of sexual violence in conflict, children, etc.

A separate area is the introduction of a comprehensive system for advanced training of prosecutors and investigators based on national and international standards. In modern conditions, the mandatory implementation of unified innovative IT solutions in the investigation of international crimes is required to ensure the high quality of collection, preservation, and analysis of evidence. It is necessary to change the system of communication between judicial authorities, law enforcement agencies, and society. Particular attention must be paid to ensuring the support and protection of civilian victims and witnesses. In this, it is necessary to: introduce a proactive approach to identifying witnesses and victims for the purposes of criminal proceedings on charges of international crimes; improve mechanisms to ensure the safety of witnesses and victims during pre-trial investigations as well as court proceedings; to provide effective coordination with other governmental and non-governmental organisations, as well as with authorised bodies of foreign states and institutions of international justice in order to strengthen the support and protection of victims and witnesses; to implement and develop a mechanism for supporting victims and witnesses of war and other international crimes, including a referral mechanism based on the creation of institutional mechanisms between the Coordination Centre for Support of Victims and Witnesses, law enforcement agencies, ministries and departments, as well as other support services for taking protective measures and providing security, counselling, and other assistance to witnesses and victims; implement specialised IT solutions to manage and effectively coordinate efforts to identify, protect, and provide quality support to victims and witnesses, which will also ensure effective communication between all parties involved in the processes of the identification, protection, and support of victims and witnesses.

A separate area is the development of sustainable partnerships and effective interaction between international organisations and foreign partners with civil society for the purpose of effective prosecution for international crimes with the participation of international judicial institutions and justice institutions, including the ICC, the Special International Tribunal for the Prosecution of Crimes of Aggression, and also effective assistance to foreign courts in carrying out criminal prosecutions for international crimes committed on the territory of Ukraine, in accordance with the principle of complementarity. It is also necessary to ensure

sustainable coordination and cooperation with international and interstate bodies, including Eurojust, Europol; search for mechanisms for compensation for damages for international crimes committed on the territory of Ukraine; ensure constant interaction and exchange of information with national and international non-governmental organisations involved in the process of documenting international crimes and/or supporting victims; implement a mechanism to coordinate support provided by international donors and partners to ensure effective prosecution of international crimes.

The implementation of such plans should contribute to: improving the quality of recording evidence collected during investigative and other procedural actions, properly ensuring procedural guarantees for participants in criminal proceedings; increasing access to justice for victims and witnesses both nationally and internationally, ensuring their protection and support; an increase in the number of national and international investigations into international crimes related to the armed conflict in Ukraine; an increase in the number of completed trials as well as persons brought to justice for international crimes related to the armed conflict in Ukraine; strengthening the trust of the public as well as national and international partners in the prosecutor's office and pre-trial investigation bodies of international crimes

9. CONCLUSIONS

It should be noted that leading international organisations are constantly working to establish the causes of armed conflicts and contribute in every possible way to the political, peaceful resolution of the existing conflicts. It should be borne in mind that conflicts are a direct violation of human rights, an attack on human life and health, and other human values, despite the fact that respect for human rights is the main component of the stable development of the world and the progressive development of humanity.

The response of the world community and every civilised state to armed conflicts also presupposes the uncompromising prosecution of those responsible for such conflicts, and primarily their organisers. At the same time, bringing to justice should always, especially in countries with transition economies, have three mandatory components: a qualified investigation, a credible accusation, and a well-founded and motivated decision (sentence). It is this combination of preventive and protective measures that should help maintain global law and order.

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