War crimes and ensuring Ukraine's national security through the prism of Russia's armed aggression

Crimes de guerra e garantia da segurança nacional da Ucrânia através do prisma da agressão armada da Rússia

Mykhailo Loshyskyi¹
Oleksandr Kolotilov²
Roman Bogdanov³
Vitalii Verbytskyi⁴
Anton Cherniienko⁵

Abstract

Modern democratic states of the world make a lot of efforts to ensure national security, which is one of the priority areas of state activity. In recent years, you have observed armed aggression on the part of individual states, evidence of which is the illegal invasion of the territory of Ukraine by Russian troops in February 2022 and the commission of a number of war crimes by them. The article uses general and special scientific methods. A war crime is a violation of international humanitarian law or national legislation by a serviceman or other person participating in an armed conflict or involved in military activities, with the aim of harming the civilian population, prisoners of war, objects of cultural heritage, etc. Such acts

¹ Doctor of Law, Rauf Ablyazov East European University, Akademika Vernad'skoho Blvd, 16B, Kyiv, Ukraine, 03115. E-mail: lmikhail@ukr.net Orcid: https://orcid.org/0000-0003-0533-0079
² Doctor of Law, Ministry of Justice of Ukraine, Arkhiitektoara Horodetskoho St, 13, Kyiv, Ukraine, 01601. E-mail: kolotilov.oleksandr@gmail.com Orcid: https://orcid.org/0000-0003-0436-5421
³ PhD in Law, Kharkiv National University of Internal Affairs, Solomi'ans'ka Square, 1, Kyiv, Ukraine, 03035. E-mail: bogdanov.roman@univd.edu.ua Orcid: https://orcid.org/0009-0004-4790-7627
⁴ PhD in Public Administration, Rauf Ablyazov East European University, Kyiv, Ukraine. E-mail: verbyvit@ukr.net Orcid: https://orcid.org/0009-0005-1052-1832
⁵ PhD in Law, Berdiansk State Pedagogical University, Shmidt'a St, Berdyans'k, Zaporizhia Oblast, Ukraine, 71100. E-mail: cherniienko13@gmail.com Orcid: https://orcid.org/0000-0001-7032-4850
may include, for example, murder, torture, violence, sexual crimes, ethnic cleansing, violence against children, forced displacement of populations and other crimes that entail responsibility under international law. The specified crimes should certainly be considered crimes against humanity, because they are particularly brutal and massive, as well as being exclusively intentional in nature, and are a serious threat to the humanitarian situation both in a specific state and in the whole world in general.


**Introduction**

The concept of national security has been prominent since the Cold War and even more so in the post-Cold War period. The end of the Cold War led to the collapse of the Soviet Union and the Eastern Bloc. This created a power vacuum in Europe and Eurasia. The end of
the Cold War led to a more complex and uncertain international environment. This made it more difficult for states to predict and manage security threats. It also led to the proliferation of nuclear weapons and other weapons of mass destruction. It also led to the rise of new actors on the international stage, such as China, India, and Brazil. These countries are now competing with the United States and other Western countries for influence and power (Rahman, 2023).

The problem of effective provision of the protection of the aggrieved person’s rights has always existed. However, as historical events testify, the Second World War radically changed views on guarantees of world peace because humanity understood the true value of human rights and freedoms, which led to a fundamental update of the legal mechanism for their protection. Starting from this time, protecting human rights is not a purely internal competence of states. It has gained international significance, embodied in the idea of creating a new international law and order, the basis of which is the respect for fundamental rights and freedoms (Ablamskyi et al. 2020; Sokurenko et al. 2023). Today, security plays an important role for Ukrainian society, as the most destructive events are taking place, resulting from the military conflict in the center of Europe after the end of World War II. And this is at a time when the international community has established a number of institutions for the protection of human rights and freedoms, which are designed to ensure the basic conditions and a safe social and cultural sphere for every citizen, for whom life and health are the highest social value protected by law. Security is something without which there can be no guarantee of health and life protection in any state. In this regard, it is important to objectively analyze and rethink the key issues related to the definition of the security problem.

The dynamic growth of the sovereign country, which can guarantee security to its residents, is not possible without functioning of the defence industry. It is impossible to provide state security without the Armed Forces and the defence industry, catering to its needs, in the light of instability of the international environment. The existence of strong defence industry is also the key success factor to the reinforcement of the international cooperation of any country: provision of conditions for its full participation in the collective security systems and systems of control over the supply of defence and dual-purpose products and technologies (Ilchenko, Brusakova, Burchenko, Yaroshenko, Bagan, 2021, p. 439).

It is difficult to overestimate the severity of military aggression, as it is accompanied by particular cruelty on the part of the occupiers. During this time, Russian troops have committed a large number of war crimes, killed and tortured thousands of Ukrainian citizens, destroyed millions of buildings and contaminated thousands of hectares of Ukrainian land with mines. Thousands of children have been deported from Ukraine in a brazen and cynical
manner, which was the main reason for the International Criminal Court to issue an arrest warrant for Mariia Lvova-Bielova and Volodymyr Putin. These events of global significance actualize the direction of scientific research into the essence of war crimes and their characteristic features, which, unfortunately, is an urgent and relevant issue for Ukraine.

Research Purposes

The goal of the article is to formulate the author's understanding of the concept of "war crime" and to identify its key features. To achieve this goal, the following tasks need to be addressed: first, to summarize scientific opinions on the essence of the concept of "war crime"; second, to outline the characteristic features of war crimes based on the analysis of scientific views of scholars.

The work provides a comprehensive and multifaceted analysis of the essence of the concept of "war crime" through the prism of the author's vision of certain features of this category.

Results and Discussion

A number of prominent domestic and foreign researchers have set the foundation for the scientific understanding of the essence of war crimes through the prism of international humanitarian law in their scientific works. At the same time, in today's conditions, war crimes are transforming, becoming more brutal against the civilian population of Ukraine, and therefore require constant scientific reflection, search for ways to counter them, including at the level of progressive scientific developments. Therefore, the relevance and acuteness of the issues raised is extremely important, since repelling armed aggression, restoring and strengthening state sovereignty and territorial integrity within the internationally recognized borders of Ukraine, strengthening Ukrainian national and civic identity, progressive development of Ukraine in the civilized family of European nations and ensuring criminological security are the primary tasks at the ongoing extraordinary stage of state building. This is a reflection of the most pressing problems of society that have affected everyone due to the socio-political situation in the country and the need to ensure national security, territorial integrity of our country, preservation of life and health of every Ukrainian, protection from criminal threats in times of crisis.
At the level of scientific research, attention should be paid to the mental element of international crimes: how the personality of an international criminal is formed, what role culture, religion, folk traditions play in this process, and what are the historical features of the formation of statehood in a particular territory, as well as psychological factors. It is also necessary to emphasize the fundamental need to adapt the criminal law policy of the state and improve the domestic legislation of Ukraine on combating war crimes.

War crimes are a challenge to the entire international community, leaving an irreparable mark not only on destroyed cities and human victims, but also on the very principles of international humanitarian law, thereby threatening to cause unprecedented global catastrophes. Human rights rules offer protection to civilians and combatants in war, yet reconciling these conflicting concerns is an intricate position. The ongoing struggle between protecting civilians and military liberties has become more readily apparent as conflict resolution and international humanitarian laws have evolved over time. Important tenets that govern the actions of parties involved in fighting include the principles of differentiation and proportion, which guarantee distinction between combatants and non-combatants and keep a proportional response to military goals (Singh, Yadav, 2023).

Y. V. Orlov (2022, p. 96) considers the phenomenon of war through the prism of fundamental, tectonic shifts in the foundations of social formation (actualization, rethinking, rediscovery of the value (benefits) and utilitarian principles of the social contract), as well as, possibly, the global political, economic, and security architecture. Indeed, agreeing with this fundamental statement, it is difficult to imagine the scale of the impact of the Russian-Ukrainian war on social processes, restructuring of people's needs at the level of consciousness, as well as traumatization of the collective consciousness, migration processes, and economic destruction, which, unfortunately, have not a one-time "ad hoc" impact within a particular state, but restructure the security foundations of the entire world community, affect the economic and social spheres of a number of states, including creating new challenges in terms of crime, increasing the victimization of Ukrainian migrants abroad, and aggravating the problem of xenophobia.

The military threat from Russia is not just a threat to Ukraine's territorial integrity and state sovereignty. It is a threat of an existential order, embodied in the practice of genocide. Therefore, it is extremely important to take into account the dynamism and multidimensionality of this crime, to reflect this in the components of national and international criminal justice mechanisms, to ensure that the perpetrators are ultimately brought to justice for genocide and to prevent its recurrence in the future. We are coming to
the realization that war can give rise to hate crimes even extraterritorially, where active hostilities are taking place. Therefore, we cannot consider this phenomenon outside the global context, because any war is a massive generation of hatred in the world, leveling democratic values, violating humanistic values, etc.

Today, Ukrainians see that the war generates hate crimes even outside of the countries where active hostilities are taking place. In today's environment, a wide range of areas of influence in the digital space on the population of the aggressor country are being opened up by the international community. S. S. Kovalyov (2022, p. 173) understands hatred as one of the most burning, morally low and, at the same time, very human feelings, the reproduction of which lays the foundation for hostility, discrimination, the spread of the most inhumane practices, the most serious crimes. Sharing the proposed approach to the essential understanding of the phenomenon of hatred, we believe it is appropriate to note that hatred can also be controlled, directed towards a certain category, race, or "enemy class". These mechanisms of managing the mass consciousness date back to the last century, namely the views of Sigmund Freud, which were tested during the formation of the Soviet government and the Nazi regime. And today we see the fact that Russia's top leadership is deliberately manipulating the hatred of Russian citizens towards Ukrainians. Unfortunately, this manipulation of the minds of Russian citizens has been going on for over a decade, and as a result, the latter are even willing to sacrifice the most precious thing - the lives of their loved ones - to justify the illegal and shameful actions of the Russian leadership regarding the need to liberate Ukrainians from the "Kyiv regime". An equally difficult aspect in this matter is the significant migration of the Ukrainian population. Modern migration policy is mainly focused on eliminating threats related to security, primarily national, as well as personal security (citizens and newly arrived members of the immigration society), especially when it comes to such a subdivision of migration policy as the policy of adaptation of immigrants, which, albeit at a slow pace, but still developing in modern recipient countries of migrants. The unparalleled importance of the issue under study is also confirmed by the content of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other, which stipulates the importance of joint management of migration flows between territories and a comprehensive dialogue on all issues in the field of migration, including illegal migration, legal migration, smuggling and trafficking in human beings, as well as the inclusion of problematic issues in national strategies for the economic and social development of migrant regions (Buhaichuk, Varenia, Khodanovych, Kriepakova, Seredynskyi, 2021, p. 403)
H. Lutsyshyn (2014), analyzing the issue of military conflicts in the global context through the prism of current processes affecting the life of a modern person, points out that in the context of globalization, military conflicts pose a significant threat to humanity; they are capable of rapid escalation, turning into large-scale wars with all the tragic consequences. At the same time, expanding on the researcher's position, it can also be noted that globalization processes pose not only a challenge in the context of military conflicts, but also open up new directions for their resolution. For example, in today's environment, the virtual environment unites all countries of the world, social networks and relevant programs allow you to establish communication with representatives of other countries in a moment. All of this opens up a wide range of influence on the population of the aggressor country by the international community. In today's environment, it is difficult to create an information vacuum and isolate the population from the thoughts and ideas of the rest of the world. At the same time, the ability of each individual to influence information flows expands the possibilities for a large-scale information campaign to highlight the consequences of war crimes among the international community. And it can involve not only top state officials, but also representatives of youth and academia, since modern military conflicts take place not only on the battlefield but also require reliable support at the level of information flows.

O. V. Cherviakova (2020, p. 152) points out that "it is advisable to characterize international crimes through their material, mental and contextual elements. The material and mental elements are what correlate to a certain extent with a general criminal offense. If we have only material and mental elements, we will not always be able to distinguish a general criminal (ordinary, general) crime from an international crime. The contextual element allows us to distinguish international crimes from ordinary crimes and at the same time to distinguish them from each other". We believe it is appropriate to add that the material and mental elements of an international crime embody the objective and subjective sides of a general criminal offense and characterize the internal and external manifestation of an international crime.

O. V. Medvedieva (2023, p. 157) believes that war crimes are based on a deep collective unconscious (contempt for the other/stranger) and criminal psychology is a worldview that has been cultivated in Russian society for centuries. Further study of the phenomenon of criminal psychology in Russian society is an extremely promising area, which has its roots in the formation of a criminal subculture in the context of mass imprisonment during the Stalinist repressions. As for contempt for the other, which the researcher also notes, this psychological phenomenon stems from the understanding of technologies for managing
mass consciousness, as well as resentment, artificial creation of conditions, and distortion of mass consciousness in such a way that individuals and society as a whole replace the feeling of hatred with a specifically defined category, which can be the "enemy west," "Banderites," "fascists," etc.

According to the Rome Statute of the International Criminal Court (1998), war crimes are: a) gross violations of the Geneva Conventions of August 12, 1949, namely any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention; b) other serious violations of the laws and customs applicable in international armed conflicts within the established framework of international law.

In the context of the realities of the Russian-Ukrainian war, the issue of war crimes is extremely acute. The use of weapons against the civilian population is becoming systemic, and is carried out on a massive scale throughout the country. Certain war crimes against civilian infrastructure, in particular the energy system of Ukraine, are fundamentally new in the doctrine of international humanitarian law, requiring the directing of the entire intellectual potential of mankind to their thorough understanding.

Y. V. Orlov and N. O. Pribytkova (2022, p. 45) note that "murder, enslavement, eviction, and other massive gross violations of fundamental rights and freedoms of people in the temporarily occupied territories are also among the main challenges of the war. And perhaps the only answer, in terms of adaptive changes in the criminal law policy of Ukraine, was the criminalization of collaboration (Article 111-1 of the Criminal Code of Ukraine)". In view of the above, fully sharing the thorough position of the researchers, we emphasize the fundamental need to adapt the criminal law policy and improve the domestic legislation of Ukraine on combating war crimes. In another study, Y. V. Orlov (2023, p. 110) argues that the Criminal Code of Ukraine does not contain special corpus delicti of crimes against humanity, which indicates an absolute lack of adaptation to the requests for synchronization of national and international criminal proceedings in combating crimes related to the aggression of the Russian Federation against Ukraine. At the same time, the legislator is faced with the issue of criminalizing a number of acts, with their preliminary thorough criminological understanding, including extensive discussion and analysis at the level of the scientific community.

Regarding the responsibility for war crimes in the context of the Russian-Ukrainian war, Denakpon Tchobo (2022, p. 19) notes that Putin can be brought to justice through the chain of command and superior decision-making on the grounds that he failed to take all necessary and reasonable measures within his authority to prevent or stop the commission of
these crimes. In addition, these crimes committed in Ukraine may also potentially constitute crimes against humanity, which is a widespread or systematic attack on the civilian population.

It should also be noted that there is a special subject of proof in the categories of war crimes proceedings, the specificity of which is due, firstly, to the peculiarities of qualification, which is non-standard, in particular, given the construction of Article 438 of the Criminal Code of Ukraine, which refers to the norms of international treaties and includes a wide range of acts that can be attributed to war crimes only if the contextual circumstances are proved. Secondly, the need to establish the contextual circumstances of a criminal offense, which are in a causal relationship with other elements of the subject matter of proof, affects the peculiarities of the proof itself (Hloviuk, Teteriatnyk, 2022, p. 397).

From the very first days of the introduction of martial law, Ukrainian law enforcement agencies, including the National Police, faced fundamentally new challenges in documenting the consequences of war crimes. In close cooperation with the prosecutor's office and the Security Service of Ukraine, the National Police units inspected the sites of artillery shell hits, examined torture chambers where Ukrainian citizens were tortured, and seized the necessary evidence. However, this activity has only recently begun to receive its methodological reflection and understanding at the level of domestic science, so research in this area is not only important, but critically necessary for prompt response and documentation of war crimes.

The war has necessitated the urgent supplementation of legal acts that regulate the procedure for special pre-trial investigation, establish criminal liability for collaboration, glorification of persons who commit armed aggression, and increase the number of criminal offenses related to harm to the national security of Ukraine and relations in the field of protection of peace, human security and international law and order. The novelty of these acts, the lack of practice in applying the relevant norms has caused problems in their application, and sometimes even leads to different interpretations.

O. M. Dufeniuk (2022) notes that "four main groups of sources of significant information about war crimes can be identified: personal sources; material sources (material situation, places of destruction, abandoned equipment, things, weapons, ammunition, explosive objects that did not detonate, fragments of ammunition, corpses with signs of violent death, etc.) digital sources (materials of photo and video recording of events, data from electronic, computer and telecommunication networks, geolocation data of vehicles equipped with GPS beacons, data from open sources of digital information, etc. As we can see, this
category of crimes is extremely difficult to collect evidence, as decisions to commit war crimes are often made at the level of the highest political leadership of the aggressor country.

Prosecution for war crimes is a component of transitional justice, the holistic concept of which is a prerequisite for the restoration of Ukraine's sovereignty and territorial integrity, ensuring national security, and reintegration of the temporarily occupied territories, and should include: a) establishing the truth; b) reparations; c) prosecution; d) institutional restructuring; e) the establishment of judicial and extrajudicial mechanisms of national, international, and hybrid nature (Cherviakova, 2020, p. 157-158).

Regarding certain problematic aspects related to war crimes in the context of the Russian-Ukrainian war, as noted by S. O. Tkachenko and A. S. Diadin (2022, p. 136), we need a creative approach. Creativity is always unforeseen by the enemy. It is necessary to get out of the format of leaflets, wall newspapers and linear thinking. In our opinion, such a creative approach has a significant epistemological potential, which is largely due to the significant opportunities for influence, communication and interaction that are now open to the average person. Such approaches are appropriate and even desirable in the field of understanding war crimes. If we consider creativity that is free from propaganda, aimed at conveying emotions and states of mind, this is an extremely important activity during any military conflict. Also, such creativity in the field of literature, music, and art is a source of unbiased documentation of war crimes and their broader understanding by eyewitnesses. Systematization and dissemination of the results of such creativity in the information space is an activity aimed at the future.

**Conclusion**

The conducted scientific research makes it possible to state that during the full-scale invasion by Russia on the territory of independent Ukraine, Russian troops committed a large number of war crimes, killed and murdered thousands of Ukrainian citizens, destroyed millions of buildings and mined thousands of hectares of Ukrainian land.

Summarizing scientific opinions on the essence of the concept of "war crime", this term, in our opinion, can be defined as a deliberate multifaceted gross and organized violation of the laws and customs of war at the level of states, terrorist organizations or military formations, accompanied by murder, torture, violence, sexual crimes against the civilian population, prisoners of war, civil infrastructure objects, as well as ethnic cleansing, forced displacement of the population, etc.
Taking into account the given concept, it is possible to outline the characteristic features of war crimes, the main ones of which should include the following:

- are committed during an armed conflict;
- are crimes against the peace and security of mankind, as they grossly violate the legitimate interests of the civilian population protected by international humanitarian law, their safety, etc.;
- violate international law on the conduct of armed conflict, in particular the laws and customs of war.

The system of criminal and legal countermeasures needs further improvement:

a) war crimes in terms of detailing the legal features of their elements, criminalizing the responsibility of military commanders;
b) crimes against humanity, in particular by criminalizing a separate group of them as part of crimes against international law and order, etc.

The issue of collaboration activities also requires separate scientific research in terms of, firstly, distinguishing them from criminal offenses under Articles 111-2 and 436-2 of the Criminal Code of Ukraine; secondly, designing sanctions that should correspond to the criminological profiles of criminal offenders.

References


Submetido em: 15.09.2023
Aceito em: 17.10.2023