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ADDRESSING WAR CRIMES IN UKRAINE: INTERNATIONAL RESPONSE, ACCOUNTABILITY AND THE PATH TO REPARATIONS FOR VIOLATIONS COMMITTED AS A RESULT OF RUSSIAN AGGRESSION

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Bondarenko Ye. Addressing war crimes in Ukraine: international response, accountability and the path to reparations for violations committed as a result of russian aggression.

It is indicated that russia's aggression against Ukraine, which began in 2014 with the annexation of Crimea by the russian federation, has since intensified significantly, especially after the large-scale invasion of russia in February 2022. This armed aggression of the russian federation against Ukraine led to a serious humanitarian crisis, serious violations of international humanitarian law (IHL), international criminal law (ICC) and international human rights law (IHRC).

The article explores the international legal responses to russia's ongoing aggression against Ukraine, beginning with the annexation of Crimea in 2014 and intensifying with the full-scale invasion in February 2022. This war has led to severe humanitarian crises and widespread violations of international humanitarian law, international criminal law, and international human rights law. The paper focuses on war crimes, including targeting civilians, the use of prohibited weapons, and the unlawful deportation of children to russia.

This article addresses the scientific literature on the war crimes committed by russia against Ukraine and IHL implementation, noting the lack of research on forensic methodologies for war crime investigations in Ukraine. While Ukrainian scholars emphasize integrating international law into national legislation, foreign experts provide more detailed forensic approaches. The study evaluates the actions of international bodies like the International Criminal Court (ICC) and the United Nations, alongside efforts by the European Union and others, to ensure accountability and reparations, with particular focus on the various mechanisms established to address war crimes, human rights abuses, and the path toward reparations and justice for Ukraine.

Special attention is given to international initiatives, such as the Atrocity Crime Advisor Group (ACA) and the International Centre for the Prosecution of the Crime of Aggression (ICPA), which are crucial in enhancing Ukraine's ability to prosecute atrocity crimes. The article underscores the need for coordinated international legal and financial support to achieve justice for the victims and rebuild Ukraine.

Key words: international humanitarian law, international criminal law, international human rights law, International Criminal Court, war crimes.

Бондаренко Є. Протидія воєнним злочинам в Україні: міжнародне реагування, відповідальність та шлях до репарацій за порушення, вчинені внаслідок російської агресії.

Вказується, агресія росії проти України, яка почалася в 2014 році з анексії Криму російською федерацією, відтоді значно посилилася, особливо після широкомасштабного вторгнення росії в лютому 2022 року. Ця збройна агресія рф проти України призвела до серйозної гуманітарної кризи, серйозних порушень міжнародного гуманітарного права (МГП), міжнародного кримінального права (МКП) і міжнародного права прав людини (МПЧ).

У статті досліджуються міжнародні правові реакції на триваючу агресію росії проти України, яка почалася з анексії Криму у 2014 році та загострилася повномасштабним вторгненням у лютому 2022 року. Війна призвела до серйозної гуманітарної кризи та масштабних порушень міжнародного гуманітарного права, міжнародного кримінального права та прав людини. Основна увага приділяється військовим злочинам, включаючи напади на цивільних осіб, використання заборонених видів зброї та незаконне вивезення українських дітей до росії.

У статті проаналізовано наукову літературу щодо воєнних злочинів, скоєних росією, та імплементації міжнародного гуманітарного права (МГП), вказуючи на брак досліджень щодо експертних методик розслідування воєнних злочинів в Україні. Хоча українські науковці зосереджують увагу на інтеграції міжнародного права в національне законодавство, зарубіжні експерти надають більш детальні експертні підходи щодо кваліфікації відповідних злочинів.

У статті оцінюються дії міжнародних органів, таких як Міжнародний кримінальний суд (МКС) та ООН, а також зусилля Європейського Союзу та інших суб'єктів щодо забезпечення відповідальності та компенсацій за воєнні злочини. Особливу увагу приділено міжнародним ініціативам, таким як Консультативна група з питань найтяжчих міжнародних злочинів (Atrocity Crime Advisor Group) та Міжнародний центр з переслідування злочину агресії проти України (ICPA), які мають важливе значення для підвищення спроможності України переслідувати злочини агресії. У дослідженні підкреслюється необхідність скоординованої міжнародної правової та фінансової підтримки для досягнення справедливості для жертв воєнних злочинів і відновлення України.

Ключові слова: міжнародне гуманітарне право, міжнародне кримінальне право, права людини, Міжнародний кримінальний суд, воєнні злочини.

Introduction.

Russia's aggression against Ukraine, which began in 2014 with the annexation of Crimea by the Russian Federation (Russia), has since escalated significantly, particularly following the large-scale invasion by Russia in February 2022. This armed aggression by Russia against Ukraine has led to severe humanitarian crises, extensive violations of international humanitarian law (IHL), international criminal law (ICL), and international human rights law (IHRL). This paper addresses the relevance of analysing the legal frameworks governing the conflict, including actions by international legal bodies such as the International Criminal Court (ICC), and various mechanisms established to address war crimes, human rights abuses, and the path toward reparations and justice for Ukraine.

Russia's aggression against Ukraine, represents one of the most severe breaches of international law in recent history. According to multiple United Nations (UN) bodies, this has resulted in widespread civilian casualties, the destruction of infrastructure, and a humanitarian crisis characterized by mass displacement and refugee flows [1].

This war has been marked by systematic violations of international legal standards. Reports from the UN and non-governmental organizations have documented various war crimes committed by Russian and Russian-affiliated forces, including the targeting of civilians, the use of prohibited weapons, and unlawful deportation of children [2]. These atrocities underscore the need for an effective international legal response, including the work of the ICC and other judicial bodies to address the violations and ensure accountability.

Russian troops brutally violate the Chemical Weapons Convention, by using gas, gas grenades as well as improvised explosive devices equipped with irritant substances and conducts artillery shelling with chemically hazardous substances in violation of the rules of war. In total, between February 2023 and June 2024, the Ukrainian Defense Forces recorded 4,035 cases of use of ammunition containing hazardous chemicals. In total, 1,945 cases of servicemen seeking medical care with symptoms of chemical exposure of varying severity were recorded as well as deaths from acute poisoning by an unknown chemical substance [3]. Despite the condemning reaction of the international community, the Russian Federation continues to blatantly violate the norms of international law. In this regard, the intentions of the Russian side to be elected to the Executive Council of the Organization for the Prohibition of Chemical Weapons for the period 2025-2027 are particularly cynical [4].

Analysis of scientific publications.

The subject of study in the scientific literature has primarily focused on the legal qualification of war crimes and the implementation of international humanitarian law (IHL) into national legislation. Scholars such as I. Kolotukha, O. Batiuk, S. Dmytriv, S. Mokhonchuk, M. Pidubna have contributed extensively

to the analysis of IHL within the Ukrainian legal context, offering insights into how international legal norms can be integrated into domestic law.

However, research on the forensic methodology for investigating war crimes – specifically, the forensic characterization of war crimes, typical investigative scenarios, procedural sources of evidence, and the tactics involved in different stages of investigation – remains relatively scarce. This gap is particularly noticeable when looking for relevant works in the Ukrainian legal domain. In contrast, foreign legal scholars have actively explored these issues, contributing significantly to the development of forensic techniques in war crime investigations. Researchers such as David P. Forsythe, L. Freeman, M. Klinkner and E. Smith have provided detailed studies on investigative methods, offering practical guidelines for handling complex war crime cases. Their works highlight the importance of a structured approach to gathering evidence and analyzing war crime scenarios, which can significantly enhance the effectiveness of investigations. This analysis shows a clear divergence in the focus of research between Ukrainian and foreign scholars, with the latter offering more comprehensive coverage of forensic techniques, while Ukrainian publications are more centered on the integration of international law into national frameworks.

The aim of the work. The aim of this research article is to evaluate the international response to war crimes committed in Ukraine, analyse the mechanisms for ensuring accountability, and discuss the reparations process for victims. The study aims to explore the international legal frameworks applied to the Ukraine conflict, assess the actions of international bodies such as the International Criminal Court (ICC), and examine the mechanisms established to address war crimes, human rights violations, and the path toward reparations and justice for Ukraine.

Review and discussion.

The ongoing russia's aggression against Ukraine has involved substantial breaches of international law, particularly IHL, as defined by the Geneva Conventions, and ICL. Numerous reports have documented deliberate attacks on civilians, extrajudicial killings, the destruction of civilian infrastructure, and the use of prohibited weapons such as cluster munitions. Additionally, conflict-related sexual and gender-based violence, as well as arbitrary detentions and torture, have been widely reported by Amnesty International, International Committee of the Red Cross (ICRC), UN Human Rights Monitoring Mission in Ukraine (HRMMU), Organization for Security and Cooperation in Europe (OSCE) and others international and Ukrainian organizations.

Of particular concern is the forced deportation of Ukrainian children into russia territory, a violation prohibited under IHL (Geneva Convention IV, Article 49). This act has led to the ICC issuing arrest warrants for high-ranking Russian officials, including President Vladimir Putin and Presidential Commissioner for Children's Rights, Maria Lvova-Belova, in March 2023. Based on the Prosecution's applications of 22 February 2023, Pre-Trial Chamber II of the International Criminal Court considered that there are reasonable grounds to believe that each suspect bears responsibility for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children [6]. These charges represent significant milestones in the international community's efforts to hold perpetrators accountable under international law.

To address these widespread russia violations against Ukraine, several international legal bodies have mobilized. The ICC opened an investigation into war crimes committed in Ukraine, with arrest warrants already issued for senior russia officials. The UN has also established various mechanisms to monitor and document violations, such as the UN Human Rights Monitoring Mission in Ukraine and the International Independent Commission of Inquiry on the Conflict in Ukraine.

Additionally, the European Union's Agency for Criminal Justice Cooperation (EUROJUST) has played a pivotal role in supporting legal initiatives aimed at prosecuting crimes of aggression, establishing the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) in the Hague.

It's important to mention that ICPA by nature is the first judicial hub on an international level since Nuremberg and Tokyo, with a specific mandate to secure crucial evidence related to the crime of aggression and facilitate the process of case-building at an early stage. Currently, the ICPA team is composed of Ukrainian, Lithuanian, Latvian, Estonian, Polish, and Romanian prosecutors, United States has also seconded a Special Prosecutor. In total, there are 16 prosecutors and 4 investigators, along with 7 participants from the International Criminal Court [7].

The UN General Assembly has taken significant steps toward ensuring justice and reparations for Ukraine. On November 14, 2022, the Assembly adopted the resolution “Furtherance of remedy and reparation for aggression against Ukraine,” recognizing Ukraine’s right to reparations under international law [8]. This resolution also called for the establishment of a Register of Damage, which was formally created by the Council of Europe in May 2023, with 43 states and the European Union joining as of April 2024. This Register, intended to serve as part of a broader reparation mechanism, marks an essential step toward providing compensation for the victims of the conflict and supporting Ukraine’s long-term recovery. The European Commission, alongside G7 partners, has also established the Multi-Agency Donor Coordination Platform to facilitate Ukraine’s reconstruction efforts [9, 10].

It is important to highlight the significant efforts in fostering bilateral and multilateral inter-state partnerships. In addition, exceptional initiatives are being undertaken at the national level by various states, both individually and collectively, to investigate and prosecute international crimes committed in Ukraine. National investigations have been launched by more than 20 countries, as well as by the Joint Investigation Team (JIT) – comprising Ukraine, Lithuania, Poland, Estonia, Latvia, Slovakia, and Romania – under the auspices of EUROJUST, with the participation of the ICC and the United States. Recently, the JIT’s mandate was extended for another year [7].

The European Union, the United States, and the United Kingdom launched the Atrocity Crime Advisor Group (ACA) in May 2022, announcing their collective efforts via a joint ministerial statement. The ACA provides coordinated, timely, multidisciplinary expert assistance to the Office of the Prosecutor General (OPG) of Ukraine, which has the primary authority and responsibility for prosecuting atrocity crimes that took place on its territory. ACA’s model enhances national authorities’ ability to bring justice for victims of atrocity crimes through domestic mechanisms and in coordination with international expertise and bodies. [11].

Notably, that ACA serves solely in an advisory and supporting role to the OPG in a manner that complements, does not conflict with or duplicate, the work of Eurojust’s joint investigative team (JIT) and the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA), the International Criminal Court, Europol, or other international bodies. The United States, in consultation with the UK and the EU, established a Multi-National Fund (MNF) in 2023 to secure the ACA’s longevity for Ukraine and allow additional partners to join the mission of the ACA.

Conclusion.

In result of Russia’s aggression against Ukraine, ongoing since 2014, nearly 27% of Ukraine’s territory is temporarily occupied. This armed conflict in Ukraine has not only led to immense human suffering but has also raised significant challenges for the international legal system. The establishment of international legal mechanisms to address violations of IHL and ICL, coupled with efforts to ensure reparations and justice for Ukraine, represents a critical step forward. However, the complexities involved in prosecuting international crimes and the need for coordinated global efforts to support Ukraine’s legal and institutional capacity remain paramount.

Ongoing international support, both legal and financial, will be essential to ensure that justice is delivered to the victims of this conflict and that Ukraine can rebuild in the wake of such extensive destruction. The international community must continue to uphold its commitments to IHL and ICL to prevent further violations and ensure accountability for war crimes.

The lack of expertise within Ukraine’s justice sector institutions in addressing international crimes presents a significant challenge. International crimes are complex and require specialized knowledge, training, and expertise for effective investigation and prosecution. Apart from a small unit established after the 2014 invasion of Crimea by the Russian Federation, there was no expertise in international humanitarian law or international criminal law within the Office of the Prosecutor General or regional prosecutors’ offices. Despite concerted efforts and increased assistance from the international community in recent years, the level of support and training for handling these crimes remains insufficient, resulting in concerns regarding the quality of investigations and prosecutions.

To address this, the Atrocity Crime Advisor Group (ACA) was established in May 2022 by the European Union, the United States, and the United Kingdom. The ACA provides multidisciplinary expert assistance to the OPG, enhancing Ukraine’s capacity to prosecute atrocity crimes through domestic legal mechanisms and in coordination with international bodies such as the ICC and EUROJUST. As a new approach to advancing justice in a conflict setting, ACA’s innovative model enhances national authorities’ ability to bring justice for victims of atrocity crimes through domestic mechanisms and in coordination with international expertise and bodies.

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