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Challenges in applying international humanitarian law in contemporary armed conflicts: the case of Russia's war against Ukraine

Проблеми застосування міжнародного гуманітарного права в сучасних збройних конфліктах: приклад війни росії проти України

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Abstract

The aim of the article is to study the problems of applying international humanitarian law under the conditions of modern armed conflicts using the example of war in Ukraine. Methodology. Common and specific methods were applied during the research: logical, dialectical, analytical, method of critical analysis of scientific literature, legal and dogmatic, system and structural, statistical, normative and dogmatic, legal modelling approach. Research Results. It is stated that there is no definition of "hybrid war" in the IHL rules, and this situation does not correspond to the current circumstances. There are gaps in the international legal regulation of the status of civilians, who are guaranteed protection from the

Анотація

Метою статті є дослідження проблем застосування міжнародного гуманітарного права в умовах сучасних збройних конфліктів на прикладі війни в Україні. Методологія. Під час дослідження застосовувалися загальні та спеціальні методи: логічний, діалектичний, аналітичний, метод критичного аналізу наукової літератури, юридично-догматичний, системно-структурний, статистичний, нормативно-догматичний, метод правового моделювання. Результати дослідження. Зазначається, що в нормах МГП немає визначення «гібридної війни», і така ситуація не відповідає нинішнім обставинам. У міжнародно-правовому регулюванні статусу цивільних осіб, яким

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consequences of war. Besides, the violating state does not distinguish between the two legal statuses of persons – civilians and prisoners of war Summarization and treat both these groups of people as war prisoners. It is concluded that the war in Ukraine has exposed a number of problems of the application of IHL during modern armed conflicts.

Keywords: armed conflict, Geneva Conventions, hybrid war, ICC, IHL, Red Cross, war.

гарантується захист від наслідків війни, є прогалини. Крім того, держава-порушниця не розрізняє два правових статуси – цивільних осіб та військовополонених, і ставиться до обох цих груп як до полонених. Підсумок. Зроблено висновок, що війна в Україні оголила низку проблем застосування МГП під час сучасних збройних конфліктів.

Ключові слова: збройний конфлікт, Женевські конвенції, гібридна війна, МКС, МГП, Червоний Хрест, війна.

Introduction

The 21st century was marked by a number of wars and armed conflicts on the territory of dozens of countries: the war in Afghanistan (2001 – 2021); war in Iraq (2003 – 2011); the invasion of the United States and its allies into Iraq (2003); Lebanon War (2006); Russian-Georgian war (2008); the Russian-Ukrainian war (since 2014); the US invasion of Libya (since 2015), etc.

At the same time, it should be noted that these conflicts are not “ordinary” wars – there are traits of hybrid warfare in all of them. As F. Hoffman, a former officer in the US Marine Corps, in his scholarly research, Hybrid Warfare and Its Challenges (2009), correctly notes: "what used to be put on the shelves – this is terrorism and this is conventional war, this is crime and this is guerrilla warfare – today is mixed up... This construct is often referred to as "hybrid warfare", in which adversaries use different, often unique combination of hybrid threats and tactics aimed at state vulnerabilities... Hybrid warfare is much more than just a conflict between states or other armed groups – this is the use of various hybrid forms of conflict". Consequently, "hybrid war" is a modern type of external war aggression.

It is worth noting that international humanitarian law is one of the most effective tools possessed by the international community to ensure the safety of people and respect for their honor and dignity during war. Guided by the principle that even war has its limits, IHL seeks to preserve humanity even during armed conflicts.

International humanitarian law, which regulates relations between States to protect victims of war and limits the means and methods of waging war, is designed to curb violence during armed conflicts by establishing rules for their conduct. It applies from the beginning of such armed conflicts and goes beyond the cessation of hostilities until peace is concluded; or, in the case of internal conflicts, until a peaceful resolution of the conflict is reached. The key principle of IHL is the principle of humanity (the most general principle in international humanitarian law), which obliges humane treatment of persons who do not participate or have ceased to participate in an armed conflict.

For Ukraine, as the country struggling against the armed aggression of the Russian Federation, the effectiveness of international legal mechanisms for the protection of civilians and civilian objects and cultural values during the period of armed conflict, as well as their effectiveness in bringing to justice those responsible for the commission of war crimes, is of particular importance.

However, the concept of "hybrid war" is not enshrined in the norms of international humanitarian law, which is a rather large gap in international legislation and causes disagreements regarding the interpretation and application of this concept.

At the same time, the Russian-Ukrainian armed conflict, which has all the signs of hybrid war (there was no official declaration of war; Russia does not in any way recognize itself as a party to the conflict; Russian propaganda actively works not only on the territory of conflict countries, but also in other States; the Russian-Ukrainian war is no less active in cyberspace; Russia’s absolute disregard for international rules of hostilities and current agreements and arrangements in force) vividly emphasized the ineffectiveness of the international mechanism of influence on the aggressor State, which demonstratively ignores the rules of international law, daily violating the terms of international legal treaties obliging to observe the protection of human rights during war. The Geneva Conventions do not operate with the concept of “hybrid

war", which does not correspond to the current circumstances, because, as it was already stressed, hybrid wars are a type of escalation of conflicts, characteristic of the 21st century.

Therefore, the purpose of the article is to study the inconsistency of IHL norms with modern realities – namely, the absence of the enshrined concept of hybrid war, which is currently taking place in Ukraine, as well as other problems of applying international humanitarian law, indicated in the course of the research (status of civilians, who are guaranteed protection from the consequences of war; status of detained civilians in the occupied territories) using the example of war in Ukraine.

In the framework of the Article, the works by scholars who investigated the essence of the abovementioned terms, as well as their views on the problems of IHL application during the armed conflict in Ukraine, are examined. The methods, used in the course of the research, are substantiated. In the Results and Discussion section, the history of IHL development is studied; the essence of the concepts of "armed conflict", "international armed conflict", "non-international armed conflict", "war" and "hybrid war", as well as the features of the latter are revealed; the problems related to IHL application during modern conflicts using the example of Ukraine are described. The Conclusion section summarizes the conducted research and indicates some of the challenges which faces the IHL under current conditions.

Literature Review

The issue of armed conflict is fundamental to the application of international humanitarian law, as it is the law of war and armed conflict, and it applies only to them. The category of "armed conflict" in international relations was first used in the 1949 Geneva Conventions (common Article 2 of the Geneva Conventions) (International Committee of the Red Cross, 2016), according to which conflict in which one subject of international law uses armed force against another one is recognized as international armed conflict.

According to Article 1 of Additional Protocol I (ICRC, 1977), international ones are also armed conflicts in which peoples fight against colonial rule and foreign occupation and against racist regimes, exercising their right to self-determination. The Convention relative to the Protection of the Civilian Persons in Time of War (United Nations, 1949a) additionally states that "armed conflict may arise between two or more High Contracting Parties, even if one of them does not recognize a state of war".

In national legislation, the definition of this concept is enshrined in the Law of Ukraine "On National Security" (Law of Ukraine No. 2469-VIII, 2018), according to which armed conflict is an armed conflict between States (international armed conflict, armed conflict on a State border) or between warring parties within the territory of one State, as a rule, externally supported (internal armed conflict).

According to J. Pictet (1958), any disagreements that arise between states and lead to the intervention of armed forces are armed conflicts, but classical is the wording provided in the decision of the International Criminal Tribunal for the former Yugoslavia in the *Tadic* case (United Nations International Criminal Tribunal for the Former Yugoslavia, 1999), according to which armed conflict occurs whenever States resort to force or when there is a prolonged armed conflict between government forces and organized armed groups or between such groups within the same State.

Concerning the legal threshold for the IHL initiation, it is clearly marked and almost does not cause any disagreements. It lies in the moment of the first use of force between the armed forces of two states (Pictet, 1952), which initiates the application of the detailed provisions of IHL in their entirety. Given that the first firefight may result in wounded soldiers and prisoners and possible damage to civilians and objects, it is quite logical that IHL should be applied from the very beginning of hostilities. In addition, the IHL rules governing armed conflicts always apply in the case of occupation of all or part of the territory of the state, even if this occupation does not meet any armed resistance.

As some foreign experts note, there is no need for any authority to decide whether there is an armed conflict or whether it is necessary to apply IHL (Grignon, 2014). The assessment of belligerents on the situation may indeed have unacceptable consequences for access to humanitarian aid or effective protection of victims of armed conflicts. If parties refuse to recognize that IHL applies, they can use this argument to deny humanitarian agencies access to an area where there are people affected by armed conflict.

Another situation in which the provisions of IHL designed to regulate the armed conflicts are applied, are enshrined in Par. 4, Article 1 of the Additional Protocol I "armed conflicts in which peoples are fighting against colonial rule, foreign occupation and racist regimes to exercise their right to self-determination, provided for in the UN Charter and in the Declaration on the Principles of International Law Relating to Friendly Relations and Cooperation between States in accordance with the UN Charter." However, in connection with the actual completion of the decolonization process, there is any practical significance of this Article (Hnatovskyi, 2017).

As for the concept of "hybrid" warfare, it was first introduced by General James N. Mattis in September 2005 during the defense conference organized by the US Naval Institute and the Marine Corps Association. This concept was later presented jointly with F. Hoffman in November 2005 in an article entitled "Future Warfare: The Rise of Hybrid Wars". The servicemen believe that in the future we will face not a number of adversaries, each of which chooses a separate, unconventional or other method of resistance, but with adversaries who simultaneously use all available methods of resistance, manifesting them in the form of multimodal (mixed) or "hybrid" wars (Mattis & Hoffman, 2005).

Since at present the concept of "hybrid war" is not enshrined in the IHL rules, a number of scientists consider the concept of hybrid war as a war of a new generation. The representatives of the US legal science examine such terms to determine the scope and content of hybrid warfare. Hybrid – is a combination of disparate elements in a complete physical object, phenomenon or action. As Pynnöniemi & Jokela (2020) poit out: "In modern Western language, the prefix "hybrid" has different meanings: it is most often used to describe the growing unpredictability and variety of threats to nations". Warfare is derived from war (war, the state and situation of a military conflict) and means "a set of means and features of warfare." And the term "hybrid warfare" literally means "hybrid means of waging war" (Pavlenko & Antonov, 2022).

In general, hybrid war can be defined as a set of military, diplomatic and informational actions prepared in advance and quickly implemented by the State, aimed at achieving strategic goals. At the same time, the absence of the need to develop new weapon systems and military equipment is of great importance. Hybrid war includes the implementation of a complex of hybrid threats of various types, namely: traditional, non-standard, large-scale terrorism, as well as subversive actions, during which innovative technologies to counter the military power of the enemy, such as massive cyber-attacks, subversive actions in the energy, economic spheres, etc., are used (Komarchuk, 2018, p. 50).

Methodology

Methodology is a set of methods, techniques for performing the research. Research methodology is a system of rules for the use of methods, techniques and operations. The choice of specific research methods is due to the nature of the actual material, conditions and purpose of the specific research. Methods are an ordered system in which their place is determined according to the specific stage of research, the use of technical techniques and operations with theoretical and actual material in a given sequence.

Common methods are the system of principles and techniques that are of general, universal character, abstract and not strictly regulated. Among general methods applied in this article are logical method, which helped in formulating the concepts of "armed conflict", "international armed conflict", "non-international armed conflict", "war" and "hybrid war". Dialectical approach was useful in the throughout study of the peculiarities of the IHL application in contemporary Russian-Ukrainian conflict. Analytical method was used for the identification of problems related to the IHL application in this armed aggression.

Special methods are those inherent in particular science. The following presented methods are special ones.

Through the application of the method of critical analysis of scientific literature, the works by scholars who investigated the essence of the abovementioned terms, as well as their views on the problems of IHL application during the armed conflict in Ukraine were analysed.

Legal and dogmatic method contributed to the analysis of legal instruments governing the issue under study (United Nations Charter, Convention (III) relative to the Opening of Hostilities, Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva Convention relative to the Treatment of Prisoners of War, etc.).

The system and structural approach was used to identify the features of hybrid wars, the signs of the latter in the Russian-Ukrainian conflict.

Statistical method helped in presenting some data concerning the number of victims of war, the quantity of destroyed or damaged buildings and objects of civil infrastructure.

The normative and dogmatic method made it possible to analyse national legislature which regulates the subject matter of our research (Criminal Code of Ukraine, Law of Ukraine "On the National Security").

The method of legal modelling was used to formulate relevant conclusions on the effectiveness of international humanitarian law during modern armed conflicts.

Results and Discussion

Modern international law prohibits the use of armed aggression against any sovereign State. Thus, the UN Charter (United Nations, 1945) provides that "all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".

According to the rules of international humanitarian law, armed conflict can be international or non-international. It does not provide for a mandatory formal act of declaring war. It is believed that an international armed conflict arises only when one State uses its armed forces against another one. At the same time, neither the intensity, duration of the confrontation, nor the declaration (or non-declaration) of war, its recognition or non-recognition are important. Only the military intention of a single state in specific actions is taken into account.

This intention is sufficient for the application of international humanitarian law, which establishes the rules for conducting armed conflicts. It applies from the beginning of armed conflicts and goes beyond the cessation of hostilities until peace is concluded; or, in the case of internal conflicts, until a peaceful resolution of the conflict is reached. Until then, international humanitarian law continues to be applied throughout the territory of belligerent States or, in the case of internal conflicts, – throughout the territory under one party's control, whether or not actual fighting is taking place there (United Nations International Criminal Tribunal for the Former Yugoslavia, 1999).

IHL is a branch of law that is a set of legal rules reflecting universal human moral norms that apply during armed conflicts. The first and second Hague Peace Conferences of 1899 and 1907 made an important breakthrough in the establishment and development of international humanitarian law as a separate branch of international public law. The subsequently adopted international legal acts on the limitation and use of means and methods of conducting armed conflicts led to the complete codification of the main institutions in this area. However, the most important result of the final formation of international humanitarian law was the adoption of the 1949 Geneva Conventions for the Protection of War Victims and Additional Protocols thereto in 1977. Accordingly, the scope of jurisdiction of this area began to reflect international cooperation interests, rather than the interests of States and their citizens as a whole (Repetskyi, 2015).

«Apogee» of its development this branch of law reached precisely in the 20th century due to the realization of the need for international legal regulation of the protection of victims of military conflicts. This happened due to the impressive number of dead and wounded during the First and Second World Wars, which became the bloodiest in the history of mankind. Therefore, without assessing the legitimacy or illegitimacy of an armed conflict, IHL is designed to protect the civilian population and its most vulnerable groups (women, children, the elderly, people with disabilities) from the terrible consequences of war. This branch of law is based on the principles of humanism, non-discrimination, equality, proportionality and relies on such qualities as mercy, compassion, humanity, which are inherent in human nature.

This connection between moral and legal norms is well reflected in the Martens Clause – the provision enshrined in international treaties, but referring to the rules of humanity and morality: "In cases not provided for by this Protocol or other international agreements, civilians and combatants remain under the protection and effect of the principles of international law arising from established customs, from the principles of humanity, and from the demands of public consciousness". Thus, even in cases where there are no relevant legal rules in specific international treaties, and the principles of humanity and the requirements of public

consciousness, public morality contain them, and are aimed at the protection of civilians and combatants, these norms become an integral part of international law, and acquire a legal form, giving rise to legal obligations to observe them (Voitenko et al., 2016).

The military confrontation between Russia and Ukraine, which began in 2014 with the Russian armed invasion of Crimea with the subsequent occupation of the peninsula, the war in the east of Ukraine (Donbas), which lasted until the beginning of a large-scale invasion on February 24, 2022, is an international armed conflict governed by the rules of international humanitarian law.

However, the Russian-Ukrainian war that began in 2014 was not immediately qualified as an international armed conflict by all international law actors. Evidence of effective control by Russia over organized armed formations in the East of Ukraine was then needed, since the war in Ukraine until 2022 had a hybrid nature, the armed conflict was mediated, the war was not conducted on behalf of Russia. Currently, Russia uses the obligations of the international humanitarian law rules at its own discretion and does not qualify it as an armed conflict either. Direct legal prohibitions on the use of the term “war” have been introduced. However, the current stage of war is open (unlike the initial stage of the armed conflict, which began on February 20, 2014), is characterized by the theater of hostilities in several States, and therefore has all the signs of an international armed conflict (Tsarenko et al., 2023, p. 609).

At the same time, the Geneva Conventions do not operate with the concept of “hybrid war”; only the definitions of “war” (armed confrontation between two or more sovereign States), as well as “international armed conflict” (cases when one international law actor uses armed force against another one) and “non-international armed conflict” (conflicts that occur on the territory of a State between its armed forces or other armed groups which, being under command, exercise such control over part of its territory). This situation does not correspond to the current circumstances, because hybrid wars are a type of escalation of conflicts, characteristic of the 21st century. Examples of modern hybrid wars are the Lebanon War of 2006; the Russian-Georgian war of 2008; Russian aggression in Crimea and Eastern Ukraine since 2014; a full-scale invasion of the Russian Federation into Ukraine in 2022.

The features of hybrid wars are: – aggression without an official declaration of war; – the abuser’s concealment of its participation in the conflict; – widespread use of irregular armed formations (including under cover of civilians); – the aggressor’s disregard for international rules of hostilities and current agreements and arrangements in force; – mutual measures of political and economic pressure (for the formal preservation of ties between the two countries); broad propaganda and counter-propaganda using “dirty” information technologies; – confrontation in cyberspace (Sytnyk, 2017).

Remarkably, that all modern conflicts share these traits. For example, in the course of Russian-Georgian war of 2008, both sides avoided calling this conflict a war – Georgia named it "establishing a constitutional order on the territory of South Ossetia", and Russians declared about "the operation to force peace". Along with the hostilities, an active phase of the propaganda began, in which key Russian mass media played a leading role. They created persistent “images” of the enemy: Georgia, Georgians, President Mikheil Saakashvili, and the collective image of the West. All publications supported the image of the enemy to varying degrees. For this the pronouns "they" and "we", which characterized the journalists' attitude to the war, were used. A year after the end of the war, journalists called Saakashvili "a provocateur and war criminal" and criticized his actions. The media of "Rossiyskaya gazeta" characterized him as a "sick person".

The conflict was initiated by the Russian peacekeeping troops, who began to shell Georgian villages. At that time 4 battalions acted on the territory of Georgia: Russian peacekeeping battalion, Georgian peacekeeping battalion, a South Ossetian peacekeeping battalion and North Ossetian peacekeeping battalion. So, it is clear that three battalions were actually Russian and one Georgian. When shelling began, the Russian representatives pled "not guilty" and said that the shell was supposedly fired from the third party, although near the borders of Georgia there was a group of the Russian army numbering 85 000 people with equipment and ammunition.

Note that the Russian invasion of the territory of Ukraine has all the signs of hybrid war as well: 1) there was no official declaration of war – initially (in February 2014) there was a military invasion operation carried out by Russian troops without insignia on the territory of Crimea for its annexation. The war in eastern Ukraine (April 2014) began with the creation of the terrorist so-called Donetsk and Luhansk

"People's republics" by the special services of the Russian Federation under the guise of "people's" demonstrations. The full-scale invasion of Ukraine was presented by Russian propaganda as a "special military operation"; 2) Russia does not in any way recognize itself as a party to the conflict – from the very beginning, the Russian authorities called the events in Crimea and Eastern Ukraine a "civil war" as the response of Crimean and "people of Donbas" to "coup d'état" in Kyiv (Revolution of Dignity); 3) Russian propaganda actively works not only on the territory of conflict countries, but also in other States, constantly misinforming the local population (by distorting facts, providing false or fiction information) and carrying out psychological influence. In general, Russian propaganda is distributed in at least 40 languages in 160 countries of the world (The Voice of Russia, 2014); 4) the Russian-Ukrainian war is no less active in cyberspace. Thus, Russia is scaling up the number and quality of attacks – from 1,400 in 2021 to 4,500 in 2022 and 2023. And we are talking only about powerful cyberattacks that the Security Service of Ukraine detects and repels. Russia's investments in cyberattacks are measured in billions of rubles – and this amount is constantly increasing. They are trying to combine kinetic, psychological and cyber operations (Melnyk, 2024); 5) Russia's absolute disregard for international rules of hostilities and current agreements and arrangements in force.

And the latter is a huge problem, because Russian soldiers constantly "terrorize" the residents of Ukrainian cities and villages, performing regular attacks on residential buildings and civilian infrastructure, torture, kill, kidnap and rape civilians in the temporarily occupied territories, deprive them of access to food and drinking water, medicines, medical aid, thereby causing a humanitarian catastrophe in these territories (Donbas, occupied areas of Kharkiv, Zaporizhzhia, Kherson regions). At the same time, the occupiers, as a rule, do not allow the humanitarian supplies to pass, violate the agreements on humanitarian corridors, which is also an element of the Russian military strategy.

According to the UN, at least 3,375 civilians died in the war between 2014 and 2021 (that is, before the full-scale invasion); between 7,000 and 9,000 Ukrainian citizens were injured (Office of the High Commissioner for Human Rights, 2021).

During the full-scale invasion, according to the same organization, more than 30 000 peaceful citizens of Ukraine became the victims of Russian aggression: 10 thousand 582 people died and 19 thousand 632 were wounded. More than 100 peaceful Ukrainians died in Russian captivity, one of them was a child. These data reflect only the number of civilian casualties verified by the organization: in fact, they are many more, but it is impossible to establish a precise figure before the war ends (Türk, 2024).

In addition, during the full-scale invasion, the Russians destroyed more than 210,000 buildings in Ukraine. Among them are objects of civil infrastructure (hospitals, schools, churches), the destruction of which is prohibited by the Geneva Conventions. Scientists along with journalists counted at least 106 destroyed hospitals and clinics, 109 religious objects and 708 educational institutions – schools, colleges and universities (Hernandez et al., 2024). However, the figures published by the publication are minimal, because these are only the destruction that the satellite indicated. The scale of the damage is much greater and continues to grow with each passing day of hostilities and shelling by the terrorist State.

Mass violations of the rights of civilians in the occupied territories or during hostilities testify to the gaps in the international legal regulation of their status. Thus, the IV Geneva Convention mentions the wounded, the sick, the elderly, children under 15, pregnant women and mothers with children under 7 as civilians, who are guaranteed protection from the consequences of war (Article 14), as well as special protection of the disabled, killed and wounded (Article 16) (United Nations, 1949a). In the modern world, the terms "vulnerable persons" or "low mobility persons" is used, which includes: persons with disabilities, pregnant women, persons accompanying small children, elderly persons, persons with temporary functional impairments, etc. In general, such persons, even if they are not in the places of hostilities or in the occupied territory, become "indirect victims of the armed conflict", because under conditions of the armed conflict they, for example, experience the lack of medical assistance. For example, oncological patients do not receive the necessary drugs for life support, do not have access to radiation therapy, surgical intervention, etc. The same applies to the patients with AIDS, persons with mental disorders, palliative patients and so on. Such civilians are the most vulnerable categories of persons during an armed conflict. The deterioration of their health is not recorded in relation to the cause – the conduct of hostilities by Russia on the territory of Ukraine. Therefore, there is an urgent need to put the rules of Geneva Convention in line with modern wordings of the said categories of people to ensure their full protection during hostilities.

Separately, we should address the issue of the attitude of the Russians towards Ukrainian prisoners of war, which is also a flagrant violation of the norms of international law. First, the captured Ukrainian fighters are kept in the so-called "information vacuum" – they are not given the opportunity to communicate with relatives and friends, they are told that neither the authorities nor their relatives need them, that Ukraine no longer exists as a State, that they have been abandoned, etc. Prisoners of war are subjected to regular torture and humiliation: they are beaten, deprived of food and water, medical care, medicines, including vital ones (for example, insulin, painkillers), kept in cold unheated rooms, forced to stay in uncomfortable positions for hours (for example, crawling or standing for more than 12 hours), etc.

From the captivity Ukrainian military return thinner by tens of kilograms, with significant health problems and psychological trauma. The head of the UN human rights monitoring mission in Ukraine, Danielle Bell, said that more than 95% of Ukrainian prisoners of war were tortured in the Russian Federation, and this is a war crime. The UN representative added that "fighters are tortured during the first interrogation. They are beaten with metal sticks, severely shocked with electric current. They are undressed. It's terrible. This is the worst I have seen in my 20-year career visiting prisoners on behalf of the UN. Torture is widespread and structural" (Bell, 2024).

In general, lawlessness is thriving in the occupied territories: detentions usually take place even without the intervention of judicial authorities. Prisoners of war cannot be held in general places of deprivation of liberty – official detention camps must be created for them; instead, Ukrainian soldiers are kept in ordinary prisons. There are massive violations of procedural guarantees that concern lawyers and the equality of the process. A violation, for example, occurs when the prosecution presents evidence to the court, and the defendant is limited in this right, or when the court does not take into account arguments that refute the arguments of the prosecution. Citizens of Ukraine are not provided with lawyers, or such lawyers are formal; they often play the role of prosecution, convincing their clients to "plead guilty". Translation during the court session is also not provided (Korolova, 2024).

Geneva Convention III (United Nations, 1949b) governs the issues of treatment of prisoners of war, in particular, prohibiting violence against life and person, including all types of murder, mutilation, ill-treatment and torture, insult to human dignity, i.a. offensive and humiliating treatment (Article 3), but the aggressor state does not recognize their status as combatants, therefore, they are deprived of all the rights of the latter: to send and receive letters, transfers and parcels with food, clothing, medicine, and religious, educational, or recreational items that may meet their needs, including books, religious items, scientific, sport equipment, etc. (correspondence is transmitted through the representatives of the Red Cross).

At the same time, unfortunately, we observe the actual inaction of the International Committee of the Red Cross (ICRC), which is the only organization authorized to record violations of the Geneva Conventions. Its task is to act as a mediator between parties to conflicts with the right of access to prisoners of war. According to its mandate, the ICRC has the right of access to prisoners in order to check the conditions of their detention and make sure that they are not subjected to torture. In accordance with the international humanitarian law, ICRC representatives should have access to all facilities used by prisoners of war: cells, toilets, showers, food blocks, medical station. Another mission is the search for people: the ICRC officially confirms the prisoner's; the representative of the organization can confirm this status if he or she has recorded a military serviceman among the prisoners, or when he receives official confirmation from the belligerent States (United Nations, 1949b).

However, as noted by the Ombudsman of Ukraine Dmytro Lubinets (2023), "the International Committee of the Red Cross does not cope with this mandate at all, they do nothing. You know, they have such an ostrich position: we note that the Russians are not allowed to the places of detention of Ukrainian prisoners of war. And we have been hearing such a refusal since 2014".

The ICRC assures that visits to prisoners in the Russian Federation and the occupation are taking place. Quantitative assessments are not given, because, as they explain, according to their Charter, they are not entitled to. The Red Cross provides the following statistics: since February 24, 2022, representatives of the ICRC have visited 3,000 prisoners of war on both sides of the front line, without specifying how many of them are Russians and how many are Ukrainians. Information on the violations discovered during the visit is not reported to anyone except the prison administration and their management. This is a constant approach of the Red Cross, which it does not conceal. The representatives of the mission simply pass on complaints and comments to the administration of the institution where the prisoners are kept, so that they

can eliminate the shortcomings and improve the conditions of detention. If the problem is not eliminated, the mission can appeal to a higher authority, for example, to the ministry. This information is never made public – complaints remain, in fact, in the hands of the aggressor State. Moreover, the facts recorded by the ICRC cannot be evidenced in court and the representatives of the organization even have immunity from testifying at the International Criminal Court (Nedelko, 2024).

Note that since the beginning of Russia's full-scale invasion of Ukraine, the International Committee of the Red Cross has been constantly criticized both at the State level and at the legal level: it does not speak out about Russia's violation of the Geneva Conventions; uses the rhetoric inherent in Russian propaganda; most of the Ukrainian soldiers did not see its representatives during their captivity; even the recording of the exit from Azovstal was not fully completed by the ICRC. At the same time, the organization does not play any role in the exchange of prisoners during the war, because this does not belong to its mission. Because of all this, prisoners and their relatives often call the ICRC an inactive and unnecessary organization.

Regarding this situation, the executive director of the Ukrainian Helsinki Union for Human Rights Oleksandr Pavlichenko noted that the Red Cross is only a tool for the implementation of humanitarian law, and it is not always effective, because States do not fully fulfill their obligations under the Geneva Conventions. The expert advises not to have high expectations of the Red Cross and not to entertain illusions about application of its mandate (Nedelko, 2024). At the same time, the participation of non-governmental, international organizations in such situations is crucial, since a number of human rights violations and violence on a large scale are recorded during wartime (Shablystyi et al., 2023, p. 34).

Another problem is detention of civilians in the occupied territories – they are not combatants according to the norms of international humanitarian law, but, in fact, they are prisoners. Thus, Geneva Convention III (United Nations, 1949b) considered prisoners of war only civilians accompanying the armed forces, but are not actually part of them (the crews of military aircraft, military correspondents, suppliers, personnel of work units or domestic services of the armed forces, etc.) and the residents of unoccupied territory who, as the enemy approaches, are armed to resist the forces of the invader, without forming regular troops. In fact, we face the situation, when Russians soldiers capture all civilians, who, in their opinion, may pose a threat to their authorities (policemen (former and present), other law enforcement officials, teachers, local activists, etc.)

That is, in violation of the IHL rules, Russia does not distinguish between the two legal statuses of persons – civilians (IV Geneva Convention) and prisoners of war (III Geneva Convention). At the same time, a state can detain a prisoner of war for an indefinite period until the end of the armed conflict, and a civilian must be released as soon as the need to detain him disappears. Civilians of Ukraine should have already been released, but they are still in captivity (currently, more than 8,000 people are in captivity, including more than 1,600 civilians; tens of thousands of people, both civilians and prisoners of war, remain missing (Interfax, 2024). Consequently, the armed conflict in Ukraine revealed the inconsistency of the modern legal regime of Ukrainian prisoners with the qualification of their status in the III Geneva Convention.

As a result, there are a number of Geneva Conventions' rules that the Russian Federation has violated: baseless attacks on civilians, murders, torture, destruction of civilian property, attacks on medical, educational and cultural institutions, obstruction of medical and humanitarian aid, failure to provide basic needs of the residents on the occupied territories, systematic violation of their rights, inhumane treatment of prisoners of war – this is an incomplete list of crimes committed by the Russian authorities, which are documented daily on the territory of Ukraine. Photos and videos that regularly appear on the Internet, as well as eyewitness accounts, confirming the facts of the violations.

At the same time, we note that back in 2019, Russia pulled out from the Geneva Convention relative to the Protection of Civilian Persons in Time of War by withdrawing the declaration made by the USSR upon ratification of the additional Protocol to the Geneva Conventions of August 12, 1949, and, therefore, this country does not recognize the jurisdiction of the UN Special Commission to act as a judicial body investigating violations of this Convention. Therefore, the UN will not be able to prosecute Russia for violating the rights of civilians during the war, because the International Court of Justice is competent to consider disputes only if the interested States have recognized its jurisdiction.

Russia was also a signatory of the Rome Statute, adopted in 1998 at a diplomatic conference in Rome, the essence of which is to establish the functions, jurisdiction and structure of the International Criminal Court

(ICC). However, in 2016, after the International Criminal Court confirmed that the occupation of Crimea is an international armed conflict, Russia withdrew from the agreement. However, unlike the UN Court, this does not prevent the ICC from prosecuting Russian crimes on the territory of Ukraine.

Note that although Ukraine signed this document back in 2000, ratification took place only on August 21, 2024. According to the ICC Statute, the Court's jurisdiction is limited to the most serious crimes that cause concern to the entire international community: a) the crime of genocide; b) crimes against humanity; c) war crimes; d) crime of aggression.

On March 02, 2022, on the basis of an appeal from the countries participating in the Rome Statute, the Office of the Prosecutor of the International Criminal Court announced the start of an investigation into the situation in Ukraine regarding the commission of war crimes, crimes against humanity and genocide on the territory of Ukraine. However, there is no crime of aggression among these international crimes. The Prosecutor Karim Khan explained this by the fact that the ICC does not have jurisdiction over the investigation of the crime of Russian aggression against Ukraine, since neither Ukraine nor the Russian Federation has ratified Pat 5 of the Rome Statute, Article15-bis of which provides that in respect of a State not party to the Rome Statute, the Court shall not exercise its jurisdiction over the crime of aggression committed by citizens of this State or on its territory (International Criminal Court, 2022). Separately, we note that the crime of aggression includes planning, preparation, initiation or execution an act of aggression, which by its nature, seriousness or scale is a gross violation of the UN Charter by the person who may actually direct or control political or military actions of the State. An act of aggression is the use of armed force by a State against sovereignty, territorial integrity or political independence of another State, in any way incompatible with the UN Charter.

At the same time, the Prosecutor's Office of the ICC has already noted that crimes in the form of deprivation of the right to a fair trial have probably been committed on the territory of Ukraine. For example, Ukrainian servicemen from "Azov" were accused of terrorist activities against Russia. However, the Russian authorities did not have the right to try the Azov servicemen on these charges, because they are combatants according to the international law rules, and in the case of being captured, they enjoy the immunity of a combatant – the right not to be tried for participating in hostilities.

Consequently, the armed conflict in Ukraine revealed the inconsistency of the modern legal regime of Ukrainian prisoners with the qualification of their status in the III Geneva Convention. In violation of the international humanitarian law rules, Russia does not separate the two legal statuses of persons – civilians (IV Geneva Convention) and prisoners of war (III Geneva Convention), and considers them as equal. However, the institution of responsibility for the State's failure to fulfill the obligations of the Geneva Conventions are not provided for. The only exception can be considered the rules of Additional Protocol I to the Geneva Conventions of 1977 on the establishment of the International Humanitarian Fact-finding Commission. However, such facts cannot be made public without the consent of the parties to the armed conflict, therefore this mechanism of influence on the offending state is not very effective (Tsarenko et al., 2023, p. 610).

In general, ensuring compliance with international humanitarian law is an extremely difficult task, because the liability lies with the States themselves, which are obliged to take measures to prevent violations of IHL and are responsible for them. They also carry responsibility for infringements committed by all branches of government and persons under their authority or control. The parties to an armed conflict are also obliged to bring persons guilty of violations of IHL to justice. Therefore, the national legislation contains mandatory rules on liability for IHL violations (in Ukraine, it is Article 438 of the Criminal Code) (Law No. 2341-III, 2001).

In addition to the criminal responsibility of an individual at the national level, there is an international criminal responsibility – if the State is unwilling or unable to bring individuals guilty of IHL violations to responsibility at the national level, the liability at the international level is applied.

There is an institution of international criminal liability of individuals in international law, which enables to prosecuting perpetrators of international crimes. Prosecution is carried out by international criminal courts or tribunals, and the components of these crimes are defined in international legal sources, primarily in the statutes of international criminal courts or tribunals.

However, the individual's international legal liability also raised problems. Thus, on March 17, 2023, the International Criminal Court issued a warrant for the arrest of Russian President Vladimir Putin for the war crime in the form of illegal deportation of the population from the occupied territories of Ukraine to the Russian Federation, including children, at least from February 24, 2022 (in the proceedings, in which the Prosecutor's General Office carries out procedural management, the deportation of almost 20,000 children from the occupied regions has been recorded, but the real figure may be much higher). This means that if the head of Russia goes abroad in an ICC member State, he should be arrested and brought to court.

Sadly, the execution of arrest warrants also depends on international cooperation, that is, the State that has ratified the Rome Statute may not fulfill its obligation to the ICC. This is exactly what happened during the visit of the Russian president to Mongolia, where, instead of being treated as a war criminal, he was met with all kinds of honors, because this country has excellent relations with Russia, and all aspects of the visit were discussed in advance.

According to the spokesman of the Ministry of Foreign Affairs of Ukraine, H. Tykhyi (2024), "this is a severe blow to the International Criminal Court and the international system of criminal law. A dangerous precedent will be created, primarily for the countries of the Global South. As a result, the authority of the International Criminal Court will be significantly weakened, which is exactly what Putin is trying to achieve".

Conclusions

As a result of the conducted research, we can say that the war in Ukraine has exposed a number of problems of the application of IHL during armed conflicts. Firstly, the definition of "hybrid war" is missing in its regulations, although it is exactly what is taking place on the territory of our State. This situation does not correspond to the current situation, because hybrid wars are a type of escalation of conflicts, characteristic of the 21st century, which can be seen in the examples of confrontations taking place in a number of countries.

Secondly, there are gaps in the international legal regulation of the status of civilians, who are guaranteed protection from the consequences of war. In the modern world, the terms "vulnerable persons" or "low mobility persons" are used; instead, the IV Convention operates on concepts of "the wounded and sick, as well as the infirm, and expectant mothers". Therefore, there is an urgent need to put the rules of Geneva Convention in line with modern wordings of the said categories of people to ensure their full protection during hostilities.

Another problem is detention of civilians in the occupied territories – they are not combatants according to the norms of international humanitarian law, but, in fact, they are prisoners. Russia does not distinguish between the two legal statuses of persons – civilians (IV Geneva Convention) and prisoners of war (III Geneva Convention). Consequently, the armed conflict in Ukraine revealed the inconsistency of the modern legal regime of Ukrainian prisoners with the qualification of their status in the III Geneva Convention.

Due to the fact that in 2019 Russia withdrew from the Additional Protocol I, the UN will not be able to judge it for violations of the rights of civilians during the war, because the International Court of Justice is competent to consider disputes only if the interested States have recognized it jurisdiction. Consequently, a logical question arises: what is Russia doing in the United Nations and in the UN Security Council, where it blocks decisions to end war crimes on the territory of Ukraine, which are committed on daily basis, using the gaps and weaknesses of international institutions and legal documents?

However, it will not be possible to exclude the aggressor from the UN without reforming the organization itself, because the Security Council includes 15 member States out of 193 countries and it is "paralyzed" by the Russian Federation's right of veto. And the problem is not that the Security Council is ineffective, but that for more than 20 years, the world has allowed Moscow to turn into an absolutely uncontrolled autocracy that transparently ignores international law and the decisions of international organizations.

Russia's third State status under the Rome Statute is not an obstacle for the ICC to prosecute the crimes of Russians on the territory of Ukraine, so the Office of the Prosecutor of the ICC has already announced the beginning of an investigation into the situation in Ukraine regarding the commission of war crimes, crimes

against humanity and genocide on the territory of Ukraine. The collection of materials and the selection of cases that it will consider have now begun, but their number will be limited, as it in other States where the ICC worked. However, among these international crimes there is no crime of aggression, because the ICC does not have jurisdiction over the investigation of the crime of aggression by Russia against Ukraine.

The Ukrainian State should also contribute to the investigation of war crimes: law enforcement agencies should properly collect, document and conduct investigations into these crimes; work with judges, who must understand that they are an impartial branch of government and must diligently examine the evidence base and make decisions impartially; to change the national criminal procedural legislation by introducing the rules of international humanitarian law and transferring all the qualifying signs of violation of the laws and customs of war in relation to war crimes in order to qualitatively qualify and investigate them.

Nowadays, international humanitarian law is at a stage when its norms require updating and refinement for their future observance and implementation by all international law actors. The Russia's full-scale invasion of the territory of Ukraine revealed the lack of IHL rules, which would ensure the implementation of international coercion against the aggressor (violating) state (violating state), and made this issue particularly acute (Tsarenko et al., 2023, p. 611).

The prospects for the further research are finding the ways to bring IHL rules into line with modern conditions, i.e. determining the methods and modes of enshrining the concept of "hybrid war" in Geneva Conventions, review of the civilians' status during such wars and seeking for effective means to bring aggressor state to international responsibility.

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