

DEFINITION OF WAR CRIMES IN INTERNATIONAL LEGAL NORMS

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Abstract

After the Second World War, many international legal acts were adopted to define the concept and content of war crimes. In this regard, the 1949 Geneva Conventions and the 1977 Additional Protocols I and II should be emphasized. All these documents regulated the theoretical problems of war crimes and prosecution for those crimes. However, important steps have been taken to regulate war crimes from a practical point of view. The activities of international criminal tribunals (Nuremberg, the former Yugoslavia, Rwanda) and, in particular, the International Criminal Court should be noted in this regard. Thus, both international legal acts, as well as the activities of international tribunals and courts have played an important role in revealing the essence of war crimes, identifying its theoretical and practical problems. All this gives grounds to say that the formation of the concept of war crimes is formed not only as a result of theoretical work (various concepts, theories and views), but also as a result of practical work arising from the application of legal norms. In interpreting war crimes, the Rome Statute of the International Criminal Court took into account the provisions of previous international legal acts, in particular the Nuremberg Tribunal, the International Tribunal for the Former Yugoslavia, and the International Tribunal for Rwanda. We believe that the difference between war crimes and other crimes is, first of all, that the offense is committed in the context of armed conflict and is closely related to it. This criterion, that is, the existence of an armed conflict, is reflected in the approaches of most authors to war crimes.

Keywords: *war crimes, international crimes, international tribunals, armed conflicts, Nuremberg Tribunal, Geneva Conventions, International Criminal Court, Rome Statute.*

The growing number of wars and armed conflicts threatening the existence of civilization has necessitated the development of a mechanism to control international crime. One of the most influential historians of the twentieth century, K. Popper, believes that "once a solid and rational approach to the control of international crime is formed, the solution to its problems will not be as complicated as it seems" [6, 124]. However, the establishment of such "control" requires a deep understanding of war as an extraordinary social phenomenon.

The causes of armed conflicts are usually covered up under various pretexts. The causes of wars and military conflicts are very different, although it is not difficult to determine them analytically, in which case the goals of the conflict must be determined. Usually, the seizure of wealth, the conquest of new territories, the conquest of neighboring peoples, the spread of new religions, cultures and customs are especially different as such targets. According to some experts, armed conflicts in the country (revolution, civil war) occur for the same reasons and to achieve the same goals [3, 134-140].

Without deviating from the topic, it should be noted that in the theory of law there is no general idea of which branch of law regulates the conduct of armed struggle. However, it seems that for obvious historical reasons, the modern rules of warfare are primarily regulated by international law.

The history of the adoption of international legal acts in this area is well known (many of these acts are still in force), and a large number of topics in the legal literature are devoted to this area. Therefore, we consider it expedient to stop at a new historical stage of international legal regulation of armed conflicts, in particular, war crimes, at the end of the XIX century. This is

because the number of wars and various armed conflicts, as well as the number of war crimes committed at this stage, has become more and more complex.

The first attempts to establish an international system of liability for violations of the law of war were initiated after the First World War.

On November 11, 1918, the Union Commission was established to determine the responsibility of "war criminals" (the term was first used). The Treaty of Versailles proposed that Kaiser Wilhelm II and other German citizens be prosecuted for war crimes. In addition, it was proposed to establish international and national courts to prosecute all types of war criminals. These proposals were not implemented, Kaiser escaped by fleeing to the Netherlands, and the other defendants were either acquitted or sentenced to symbolic sentences. As already noted, before the First World War, violations of the customs and laws of war were recognized as crimes in the Hague documents of 1899 and 1907.

In 1945, Article 6 of the Statute of the Nuremberg Tribunal defined war crimes. Accordingly, it should be noted that Nuremberg and its tribunals are international in terms of both their legal source and their jurisdiction. The Statute of the Nuremberg Tribunal, its judgment and Law No. 10 of the Supervisory Board of Germany provide for the recognition of the principles of individual criminal liability in international law.

In fact, the resolution of the first session of the UN General Assembly on December 11, 1946, recognized the Charter of the Nuremberg Tribunal as a confirmation of these principles. The resolution notes that the General Assembly emphasized the important role of the statutes of the Nuremberg and Tokyo international tribunals in the codification of crimes against peace and humanity [5, 136].

Further development of the international legal framework for war crimes was carried out within the UN. The Code of Laws Ensuring the Peace and Security of Mankind, drafted by the International Law Commission and adopted by the General Assembly in 1950, established the basic provisions of international criminal law.

Many international conventions developed under the auspices of the United Nations contain provisions on war crimes. Examples of such documents are the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the four Geneva Conventions for the Protection of Victims of War (1949), and Additional Protocols I and II (1977).

The 1949 Geneva Conventions, which codified international humanitarian law after World War II, established a comprehensive list of war crimes for the first time in history. Each of the four Geneva Conventions sets out its own list of "serious violations" of the rules and means of conducting military operations, which are now unequivocally considered war crimes in international law.

On the role of the 1949 Geneva Conventions in the determination of war crimes, Gabriel Kirk McDonald, a judge at the International Criminal Tribunal for the Former Yugoslavia, said that although the text of these conventions did not explicitly mention "war crimes", it was a "serious violation" of its provisions. determines[4, 70-72].

Such terminological uncertainty can be explained by the attempt to define the obligations of the Contracting States in the fight against war crimes during the adoption of the Geneva Conventions. Thus, Articles 49 of the Geneva I Convention, 50 of the II Geneva Convention, 129 of the III Geneva Convention and 146 of the IV Geneva Convention provide for such a norm common to these international conventions - "each of the High Contracting Parties Irrespective of their nationality, they are obliged to search for and bring to their courts persons accused of committing or ordering the commission of such serious violations. The parties may, if necessary and on reasonable grounds, extradite those accused to other interested parties.

The obligations under the Geneva Conventions to take the necessary measures to prevent violations are part of the general obligation of Article 1, which is common to these conventions, which requires States to "comply" with the provisions of these conventions and to "enforce"

them. [1, 123] It states that States should enact criminal law to punish those accused of serious violations of the Conventions (ie war crimes). They must also sue those who have committed serious offenses.

As a rule, the criminal law of a state is applied only to acts committed in its territory or by its citizens. The provisions of the Geneva Conventions oblige states to search for and punish perpetrators, regardless of their nationality or the place where the crime was committed. This principle, called universal jurisdiction, is the basis for ensuring the effectiveness of war crime prevention.

Based on the analysis of the provisions of the Geneva Conventions, it should be noted that a list of war crimes can be compiled, which, in accordance with the obligations of states, should be prohibited by national law and punishable. The importance of this issue is that in most civilized countries, including the Republic of Azerbaijan, a constitutional norm on the priority of international law over national law has been established.

Thus, other norms of international law that define the violation of the Geneva Conventions and the rules of conduct of armed conflicts as a war crime have binding legal force for the national law enforcer. In addition, the norms set forth in international law on violations of the rules of war must be implemented in national criminal law.

On the other hand, international law does not contain specific provisions on the classification of serious violations, which could serve as a basis for their classification. International norms specify only those types of crimes or offenses that, by their nature and gravity, "cannot go unpunished by States."

In general, the following crimes can be distinguished in violation of the rules of conduct of military operations, which are recognized as war crimes in the Geneva Conventions:

According to Article 50 of the I Geneva Convention, Article 51 of the II Geneva Convention, Article 130 of the III Geneva Convention, Article 147 of the IV Geneva Convention:

- intentional homicide;
- torture and inhuman treatment;
- biological tests;
- Intentional infliction of severe suffering;
- serious injury or damage to health.

According to Articles 50 of the I Geneva Convention, Article 51 of the II Geneva Convention, and Article 147 of the IV Geneva Convention:

- committing large-scale destruction, seizure of property not arising from military necessity;

- Forcing prisoners and other persons protected by international humanitarian law to serve in the armed forces of the hostage party, as well as to force citizens of the hostile state to take part in military operations against their country.

According to Articles 130 of the III Geneva Convention and 147 of the IV Geneva Convention:

- to deprive captives or dependents of impartial and normal justice;
- illegal deportation or relocation of a protected person;
- illegal arrest of a ward.

According to Article 147 of the IV Geneva Convention: to take captive [8].

One of the most important sources of international law defining war crimes is the Additional Protocols I and II to the Geneva Conventions of 1977. However, Additional Protocol II has more distinctive and important provisions. It is this document that established the crimes committed in the course of non-international conflicts.

It should be noted that previously adopted documents in the Geneva Conventions and Additional Protocol I list all the crimes mentioned in the list of war crimes [7, 225].

Serious violations of the rules of war established by Annex I to the Geneva Conventions may include damage to the health, physical and psychological condition of a person imprisoned, detained or detained in one way or another as a result of an armed conflict.

In particular, physical injury, medical and other scientific tests, amputation of skin or organs for placement, as well as any medical procedure that is not required due to the person's state of health and does not comply with generally accepted medical standards (art. 11). Serious violations also include intentional actions that lead to death and bodily injury, as well as health problems (art. 85.3) [2, 170].

Additional Protocol II, which extends the scope of the Geneva Conventions to non-international armed conflicts, recognizes the following acts as war crimes:

- acts of violence or threats of violence, the main purpose of which is to intimidate the civilian population;
- to use hunger among the civilian population as a method of conducting military operations;
- attacking, destroying, destroying or destroying facilities necessary for the survival of the civilian population;
- attacking dangerous objects and facilities;
- committing any acts of hostility against historical monuments, works of art and areas of culture that constitute the cultural or spiritual heritage of the people;
- displacement of civilians due to armed conflict.

Thus, we have witnessed the establishment of a broad composition of this category of crimes in the 1949 Geneva Conventions and Additional Protocols, which define war crimes. However, it should be noted that there are other acts that establish war crimes at the international legal level. Given the large number of these acts, we consider it expedient to mention the most important:

- The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954);
- Convention on the Prohibition of the Use of Means of Military or Any Other Hostile Impact on the Environment (1977);
- Convention on the Prohibition or Restriction of the Use of Certain Types of Conventional Weapons or Extremely Influential Weapons (1981);
- Convention on the Prohibition of the Development, Production and Collection of Bacteriological and Toxic Weapons and Their Destruction (1972);
- International Convention for the Suppression of the Recruitment, Use, Financing and Training of Employees (1989);
- Convention on the Marking of Plastic Explosives for Detection (1991);
- Convention on the Prohibition of the Development, Production, Assembly and Use of Chemical Weapons (1993);
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines (1997).

As we have already mentioned, ad hoc tribunals have played an important role in the international legal framework of war crimes and in the field of international legal regulation of such crimes in general. The work of the tribunals of the former Yugoslavia and Rwanda is of particular importance in this regard.

The importance of international criminal tribunals has been repeatedly emphasized in the legal literature. International criminal tribunals can be seen as an effective international organizational mechanism for prosecuting and punishing perpetrators of war crimes, and thus for combating war crimes. In the future, the national courts of some countries may become an important tool in the prosecution and punishment of those guilty of war crimes, in accordance with the principle of universal jurisdiction. So far, such processes have taken place in only a few

countries, but given the changes in international law, the activation of human rights initiatives in the world at the same time may lead to an increase in the number of such processes.

The Rome Statute of the International Criminal Court of 17 July 1998 can be considered as the main mechanism for the formation and development of the international legal framework for war crimes in modern international law. This document came into force on July 1, 2002. The Rome Statute defines the concept and types of "war crimes", the limits of applicable law, the general principles of international and national jurisdiction, as well as the principles of international criminal law (art. 8). However, most of the provisions of the Rome Statute are devoted to procedural and judicial matters. The main issue is that this document, for the first time, formalized (drafted) a whole system of war crimes under international law.

The International Criminal Court, established by the Rome Statute, deals with the most serious crimes committed by individuals: genocide, crimes against humanity, war crimes and rape. War crimes include serious violations of the 1949 Geneva Conventions and other serious violations of the Charter, committed on a large scale in the course of international and non-international armed conflicts.

The Rome Diplomatic Conference on the Adoption of the Rome Statute noted that the majority of mass human rights abuses over the past half-century have been recorded in armed conflicts in individual states, rather than in international armed conflicts. Therefore, the Charter of the International Criminal Court includes modern standards of international humanitarian law, which include internal armed conflicts as punishable war crimes, with the exception of internal rallies, protests and riots.

The notion of crime in the Rome Statute is the result of a long and persistent work carried out by many delegations and their experts. Each of the concepts is clearly summarized, reflects the current norms of international law and meets the requirements of certainty in criminal law. Judges should explain these concepts seriously and not apply them by analogy. The purpose of the statute is to establish objective international standards that do not allow free decision-making. In case of doubt, these concepts should be interpreted in favor of the suspect or accused.

Thus, by the beginning of the XXI century, a whole system of sources defining the laws and customs of armed conflict in international law has been formed. The main ideas about the need to regulate military operations appeared in the late nineteenth and early twentieth centuries (The Hague Conventions and their Annexes). However, the basis for the creation of a modern legal system for military operations is related to the activities of the international tribunals in Nuremberg and Tokyo. Currently, the main sources governing military operations are the 1949 Geneva Conventions and Additional Protocols.

After the Second World War, many international legal acts were adopted to define the concept and content of war crimes. In this regard, the 1949 Geneva Conventions and the 1977 Additional Protocols I and II should be emphasized. All these documents regulated the theoretical problems of war crimes and prosecution for those crimes. However, important steps have been taken to regulate war crimes from a practical point of view. The activities of international criminal tribunals (Nuremberg, Tokyo, the former Yugoslavia, Rwanda) and, in particular, the International Criminal Court should be noted in this regard. Thus, both international legal acts, as well as the activities of international tribunals and courts have played an important role in revealing the essence of war crimes, identifying its theoretical and practical problems.

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