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## INTERNATIONAL-LEGAL BASICS OF THE DUTY OF PROSECUTION OF THE WAR CRIMES

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*The current study is dedicated to the prosecution of the war crimes which are a kind of the international crimes. Public international law has two primary areas what deal with crimes: international criminal law and international humanitarian law. International criminal law is primarily studied from the angle of individual criminal responsibility for international wrongful acts. However, international humanitarian law possesses norms about state responsibility as well. In this regard, war crimes is a concept what combines knowledge of international criminal law and international humanitarian law at the same time. War crimes are a type of crimes that are committed within the period of armed conflict. But sometimes war crimes can be committed after the armed operations. War crimes has no precise definition and scope in international law theory. International tribunals and courts introduce different approaches to the scope and content of war crimes. The article draws attention to the normative documents passed first in regard to prosecution of the war crimes, obligations of the state in connection with the prosecution, and practices of the international criminal tribunals.*

**Keywords:** war crimes, international law, international violation, public law, international crimes, prosecution, international court, criminal tribunal

### INTRODUCTION

Conceptual and practical problems that arise in the prosecution of war crimes in the modern world, as one of the main problems of the field of international criminal law, also complicate the qualitative activity of the courts that administer justice in this direction. In fact, such problems are not only related to war crimes, but also apply to every aspect of the fight against other types of violations of international law. However, in the example of World War II and other wars that have occurred, we must admit that the consequences of war crimes are more terrible and deplorable than the consequences of other international law violations.

The prosecution of war crimes at the international and national levels is of great practical and theoretical importance as a complex aspect of international criminal law. At the same time, the exceptional importance of international criminal law lies in limiting the principle of impunity of officials who rely on functional immunity and immunity from national court jurisdiction. In this regard, the problem of applying international criminal law norms at both the international and national levels in the prosecution of war crimes should be considered relevant.

### MAIN PART

War crimes which are a kind of the international crimes are very essential these days. The concept of a “war crime” emerged alongside these treaties, as a term to describe the most serious violations of these laws of war. The international prosecution of such war crimes in courts became established with the Nuremberg and Tokyo Tribunals following the Second World War, and in the 1990s with international tribunals in the former Yugoslavia and Rwanda set up by the United Nations [8].

In war, it is the existence and enforcement of laws that enables the prosecution of war criminals. In popular usage, the term “war crimes” is broadly used to describe horrific acts of violence



carried out in wars and violent conflicts, acts that seem to violate accepted international rules of war. However, “war crime” is also a legal term with a prescribed meaning spelled out in international treaties that only applies to specific, serious violations of international humanitarian law. It’s essential to understand that violations of the laws in war go beyond war crimes committed by individuals, and include violations by states and others [9].

In actual fact, many countries of the world are suffering the wars, peaceful population are being killed, subjected to tortures, the historical and cultural monuments, villages and settlements are being destroyed unmeaninglessly. In a word, the wars and war crimes have become an evil of the humanity. Refusal from the wars faces as a necessity against the humanity. Unfortunately, the wishes of humans don’t look real. The conducted researches and analyses show that the certain forces not only don’t wish to refuse war, but even develop its new and more dangerous types. In this case, protection of the human rights, protection of the historical and cultural monuments, not making the civilians the victims of conflict are moved to back burner and all line are crossed and opened the way for the crimes.

After the Second World War a movement risen within the international community has clearly made necessary judicial prosecution of the grave violations of the laws of war towards to both traditional responsibility of the countries, and individual responsibility of the individuals. Nevertheless, even during the prosecution of the WW2 crimes there were economic and political implications about the direct and indirect responsibility of different representatives of Nazi Germany [4, s. 174]. It has established confidence in the international community to prevent the wars. The horrible crimes committed by the fascists and the Japan militarists led to coming to agreement between the allied powers and then to establishing of Nuremberg and Tokyo Military Tribunals “to prosecute the war offenders which unlawful acts don’t know a certain place notwithstanding to be committed individually or organized, or in both forms”. It was focusing on the special trial rights, as well as new categories of the crimes against humanity and war crimes.

A principle of individual criminal responsibility for war crimes is a constituted for many years rule of the common international law already accepted in the Liber Code and Oxford Instructions and repeated in many treaties of the international humanitarian law till now. According to the norms of the international law the individuals are criminally responsible not only for committing of the war crimes, but also for attempt to commit war crime, as well as for support, assistance or contribution to commit war crime [1, s. 6].

According to the Article 6 of the Chapter of the Nuremberg International Military Tribunal the followings were considered the war crimes for prosecution of the individuals committed violations of laws and customs of war, murder, ill-treatment or deportation to wave labor of for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages or devastation not justified by military necessity. In regard to the prosecution law towards the individuals “the leaders, organizers, partners or supporters” taken part in preparation of a common plan or agreement to commit any of these crimes or in committing of them were covered by it and all of them were subjected to investigation “for all acts performed by any persons in implementing such plans.” In 1950, the International Law Commission (ILC) passed a report “On the principles of the international law recognized in the Chapter of the Nuremberg Tribunal and in the decision of the Tribunal.” The report didn’t consider as these principles were a part of the positive international law or not, or how close they were to them. By the opinion of the ILC, the General Assembly had already fixed them to be concerned to the international law. Therefore, the ILC contented itself with composing content of these principles.

According to the international law, establishment of two Tribunals – ICTY and ICTR set for a special purpose to investigate the crime committed in the former Yugoslavia and Ruanda accordingly was an important step in a long lasting process towards improving of the rules on the indi-

vidual criminal responsibility [10]. Though these tribunals were not such a constant juridical body, their establishment reflects a significant progress. For example, the International Court for the former Yugoslavia has investigated in particular the certain acts creating war crimes components and brought to responsibility the perpetrators [2].

A party planned war uses the direct and concealed combat methods by more fraud ways. All means of combat are recognized normal. On the one hand the advanced development of the international law and on the other hand the rapidly increasing war threat and keeping the humanity under constant threat. From the World War II to our days, the war crimes have been expressed in the international documents and prohibited, there have been established the certain obligations for the states in regard with it. This notwithstanding it is observed a growth in extent of happening of the war crimes. Maybe one of the reasons of this is an insufficient estimation of the incidents by the international organizations. Thus, if the happened war crimes concern their interests and benefits they are prosecuted and punished seriously, otherwise the perpetrators aren't punished and event not prosecuted and have easy condition for free movement. By our opinion, it is one of the factors leading to growth of the wars and war crimes.

The Geneva Conventions require States to search for persons alleged to have committed, or ordered to have committed, grave breaches and to try or extradite them. The obligation to investigate and prosecute persons alleged to have committed crimes under international law is found in a number of treaties that apply to acts committed in both international and non-international armed conflicts. The preamble to the Statute of the International Criminal Court recalls "the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes".

The rule that States must investigate war crimes and prosecute the suspects is set forth in numerous military manuals, with respect to grave breaches, but also more broadly with respect to war crimes in general. Most States implement the obligation to investigate war crimes and prosecute the suspects by providing jurisdiction for such crimes in their national legislation, and there have been numerous national investigations and prosecutions of suspected war criminals. It is not possible, however, to determine whether this practice was pursuant to an obligation or merely a right. An obligation to investigate and prosecute is, however, stated explicitly in a variety of other State practice, such as agreements and official statements.

In addition, the obligation to investigate war crimes and prosecute the suspects has been reaffirmed on several occasions by the UN Security Council in relation to attacks on peacekeeping personnel and in relation to crimes committed in the non-international armed conflicts in Afghanistan, Burundi, Democratic Republic of the Congo, Kosovo and Rwanda. In 1946, in its first session, the UN General Assembly recommended that all States, including those not members of the United Nations, arrest persons who allegedly committed war crimes in the Second World War and send them back for prosecution to the State where the crimes were committed. Since then, the UN General Assembly has, on several occasions, stressed the obligation of States to take measures to ensure the investigation of war crimes and crimes against humanity and the punishment of the perpetrators. With respect to sexual violence in situations of armed conflict, the UN General Assembly has adopted several resolutions without a vote calling upon States to strengthen mechanisms to investigate and punish all those responsible for sexual violence and to bring the perpetrators to justice.

The UN Commission on Human Rights has adopted a number of resolutions, most of them without a vote, requiring the investigation and prosecution of persons suspected of having committed violations of international humanitarian law in the context of the conflicts in Burundi, Chechnya, Rwanda, Sierra Leone, Sudan and the former Yugoslavia [5]. In a resolution on impunity adopted without a vote in 2002, the Commission recognized that perpetrators of war crimes should be prosecuted or extradited.



In relation to crimes committed in non-international armed conflicts, a number of States have issued amnesties for war crimes, but these have often been found to be unlawful by their own courts or by regional courts and were criticized by the international community [3;250]. There is, however, sufficient practice, as outlined above, to establish the obligation under customary international law to investigate war crimes allegedly committed in non-international armed conflicts and to prosecute the suspects if appropriate [6].

States may discharge their obligation to investigate war crimes and prosecute the suspects by setting up international or mixed tribunals to that effect, a fact commented upon in military manuals, national case-law and official statements. This is evidenced in particular by the creation of the International Military Tribunals at Nuremberg and at Tokyo after the Second World War and, more recently, by the establishment by the UN Security Council of the International Criminal Tribunals for the former Yugoslavia and for Rwanda [7]. The Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea were established pursuant to an agreement between the United Nations and Sierra Leone and Cambodia respectively [2].

At last, it can be made a conclusion the international criminal tribunals established in cooperation of the states to prevent the wars and crimes occurred during the wars and to prosecute the offenders, can be considered development of the international law on the one hand, an individual have been prosecuted in an international level regardless to an office and position he holds, but on the other hand these tribunals have been able to prevent not wars, nor offenders. Today those actions keep the humanity under threat in a new form, with more modern methods.

## CONCLUSION

War crimes are international crimes with an independent component and must be directly related to armed conflicts, and must include serious violations of international humanitarian law.

The acts constituting a war crime are committed by specific individuals and give rise to individual criminal liability. Crimes against international law are committed by specific people, not by abstract categories, and international law can only be observed by punishing individual persons who have committed such crimes.

When punishing persons who have committed war crimes in an armed conflict, linking the crimes committed with the existence of the conflict makes it possible to determine the gravity of the act committed, and sometimes, at least partially, it is possible to take this into account in the punishment (this case can be partially taken into account from the point of view of humanism, as a result of constant threats and self-defense against the personnel of the armed forces, as well as psychological stress in them as a result of systematic attacks).

## REFERENCES

1. Ball, H. Prosecuting war crimes and genocide: the twentieth-century experience / H. Ball. – USA: Kansas: University of Kansas Press, – 1999. – 304 p.
2. Glueck S.S. War criminals: their prosecution and punishment / S.S.Glueck. – New York: Alfred A. Knopf, – 1944.
3. Hagan, J. Justice in the Balkans: prosecuting war crimes in the Hague Tribunal (Chicago Series in Law and Society) / J.Hagan. – USA: Chicago University Press, – 2003. – 304 p.
4. Heller, K.J. The hidden histories of war crimes trials / K.J.Heller, G.Simpson – USA: New York: Oxford University Press, – 2013. – 463 p.
5. Shelton D. International crimes, peace and human rights: the role of the International Criminal Court / D.Shelton. – USA: New York Transnational Publishers, – 2000. – 356 p.
6. [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule158](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158)



7. [www.icrc.org/eng/resources/documents/article/other/57jq2x.htm](http://www.icrc.org/eng/resources/documents/article/other/57jq2x.htm)
8. <https://gijn.org/resource/reporters-guide-to-investigating-war-crimes-chapter-1-what-is-legal-in-war/>
9. <https://gijn.org/resource/reporters-guide-to-investigating-war-crimes-introduction/>
10. United Nations International Residual Mechanism for Criminal Tribunals / Legacy website of the International Criminal Tribunal for Rwanda (official website - <https://unictr.irmct.org/>)

## MÜHARİBƏ CİNAYƏTLƏRİNİ TƏQİB ETMƏK VƏZİFƏSİNİN BEYNƏLXALQ-HÜQUQİ ƏSASLARI

Ə.V. Allahverdiyev

Hazırkı tədqiqat beynəlxalq cinayətlərin bir növü olan müharibə cinayətlərinin təqibinə həsr edilmişdir. Beynəlxalq ümumi hüququn cinayətlərlə məşğul olan iki əsas sahəsi vardır: beynəlxalq cinayət hüququ və beynəlxalq humanitar hüquq. Beynəlxalq cinayət hüququ ilk növbədə beynəlxalq hüquqazidd əməllərə görə fərdi cinayət məsuliyyəti baxımından öyrənilir. Lakin beynəlxalq humanitar hüququn dövlət məsuliyyəti ilə bağlı normaları da var. Bu baxımdan, müharibə cinayətləri eyni zamanda beynəlxalq cinayət hüququ və beynəlxalq humanitar hüquq bilikləri birləşdirən bir anlayışdır. Müharibə cinayətləri silahlı münaqişə dövründə törədilən cinayətlərin bir növüdür. Amma bəzən müharibə cinayətləri hərbi əməliyyatlardan sonra da törədilə bilər. Beynəlxalq hüquq nəzəriyyəsində müharibə cinayətlərinin dəqiq tərfi və əhatə dairəsi yoxdur. Beynəlxalq tribunallar və məhkəmələr müharibə cinayətlərinin miqyasına və məzmununa müxtəlif yanaşmalar təqdim edirlər. Məqalədə müharibə cinayətlərinin təqibi ilə bağlı ilk olaraq qəbul edilmiş normativ sənədlərə, cinayət təqibi ilə bağlı dövlətin öhdəliklərinə, beynəlxalq cinayət tribunallarının təcrübəsinə diqqət yetirilir.

**Açar sözlər:** *beynəlxalq cinayətlər, müharibə cinayətləri, təqib, beynəlxalq cinayət tribunalları*

## МЕЖДУНАРОДНО-ПРАВОВЫЕ ОСНОВЫ ОБЯЗАННОСТИ СУДЕБНОГО ПРЕСЛЕДОВАНИЯ ВОЕННЫХ ПРЕСТУПЛЕНИЙ

А.В. Аллахвердиев

Настоящее исследование посвящено судебному преследованию военных преступлений, которые являются разновидностью международных преступлений. Международное публичное право имеет две основные области, которые имеют дело с преступлениями: международное уголовное право и международное гуманитарное право. Международное уголовное право в первую очередь изучается с точки зрения индивидуальной уголовной ответственности за международные противоправные деяния. Однако международное гуманитарное право также содержит нормы об ответственности государства. В этой связи военные преступления - это понятие, которое одновременно объединяет знания международного уголовного права и международного гуманитарного права. Военные преступления - это вид преступлений, которые совершаются в период вооруженного конфликта. Но иногда военные преступления могут совершаться после вооруженных действий. Военные преступления не имеют точного определения и сферы охвата в теории международного права. Международные трибуналы и суды вводят различные подходы к сфере охвата и содержанию военных преступлений. В статье обращается внимание на нормативные документы, принятые первыми в отношении судебного преследования военных преступлений, обязательства государства в связи с судебным преследованием и практику международных уголовных трибуналов.

**Ключевые слова:** *военные преступления, международное право, международное нарушение, публичное право, международные преступления, судебное преследование, международный суд, уголовный трибунал*