

# A Historical and Legal Analysis Of The Formation And Development Of The International Legal Foundations Of Liability For War Crimes

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## Abstract

*This article provides a comprehensive analysis of the emergence and evolutionary development of the institution of international criminal liability for war crimes. The author divides the history of the criminalization of war crimes into four main periods and examines the path from ancient times to the formation of the modern system of international criminal justice. Particular attention is paid to the role of the Nuremberg and Tokyo Tribunals in establishing the principles of individual criminal responsibility, as well as to the implementation of norms of international humanitarian law into the national legislation of the Republic of Uzbekistan. In addition, the article examines contemporary challenges in ensuring liability for war crimes in the context of hybrid warfare, artificial intelligence, and cyber technologies.*

**Keywords:** War crimes, international humanitarian law, international criminal law, Nuremberg Principles, International Criminal Court, individual responsibility, implementation, armed conflicts, customs of war.

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## 1. Introduction

Modern wars are being conducted not only by means of conventional weapons, but also through high technologies, autonomous systems based on artificial intelligence, and cyberattacks. This has brought the issue of liability for violations of the laws and customs of war to an entirely new level. In particular, the death of civilians, the destruction of civilian infrastructure, and the commission of other grave crimes directed against humanity in such conflicts require a reassessment of the institutional and normative legal foundations of international criminal liability.

The current global situation confirms that the principle of the inevitability of liability for war crimes must not remain merely declarative. Recent practice in the activities of the International Criminal Court and other tribunals, as well as

national judicial proceedings conducted by certain states on the basis of the principle of universal jurisdiction, have clearly demonstrated both the operational capacity of international legal mechanisms and their objective shortcomings. This, in turn, creates the need for an in-depth scholarly analysis of how the system of international criminal prosecution for war crimes was formed and what historical and legal stages it has passed through.

From this perspective, studying the history of the formation and development of the international legal foundations of criminal liability for war crimes is not simply a retrospective analysis of the past. Rather, it serves as a fundamental scholarly basis for finding solutions to today's complex international legal problems, implementing international standards into national legislation, and creating effective

mechanisms to prevent crimes of this kind in the future. Therefore, the study of the historical and legal development of this institution creates the necessary academic foundation for addressing contemporary international legal challenges and for implementing international standards into national law.

### **PERIOD I: INITIAL FORMATION (UNTIL THE 15TH CENTURY)**

With respect to the periodization of the norms and mechanisms of criminal liability for war crimes, in contrast to I. Bely's three-stage classification, we propose a four-period approach. This is because the practice of liability for war crimes began much earlier, and its roots can be traced back to ancient civilizations.

During the first period (until the 15th century), the foundations began to emerge for prohibitions and restrictions related to the conduct of war, as well as for the practice of criminal liability for their violation. The following features can be observed during this period [1].

First, customary norms dominated the regulation of the conduct of war for a long time. In the history of Central Asian statehood, particularly during the period of Amir Temur, a distinctive national system for maintaining military discipline and protecting the rights of the civilian population operated through the "Temur Tuzuklari" [2].

Second, the restrictions imposed on belligerents were often connected not with humanitarian considerations, but with tactical or economic objectives. For a long period, war had a total character: occupied cities were destroyed, and populations were exterminated or taken into slavery.

Third, religion played an important role in shaping prohibitions related to the conduct of war. The Second Lateran Council of 1139 prohibited the use of certain weapons. In Islamic law, as Sheikh Wahbeh al-Zuhili emphasized, granting protection to innocent persons, women, and children was established as both a religious and legal duty [3].

The first international trial of a war criminal took place in 1474 against Peter von Hagenbach. Hagenbach, the governor appointed by Charles the Bold, Duke of Burgundy, organized murders, rapes, and unlawful taxation. A special court composed of 28 judges representing the coalition found him guilty and deprived him of his knighthood. This may be assessed as an early manifestation of international criminal jurisdiction.

### **PERIOD II: FORMATION OF NATIONAL**

### **MILITARY CRIMINAL LEGISLATION (16TH CENTURY - MID-19TH CENTURY)**

Beginning in the 16th century, the process of criminalizing certain violations of the laws and customs of war began in the military criminal legislation of states. Legal acts were adopted in England and France concerning the rights and obligations of military formations, as well as rules on the treatment of prisoners of war and civilians. Provisions relating to norms limiting military operations were included in the Hungarian Codes of Ferdinand (1526), the Codes of Emperor Maximilian II (1570), and the Codes of Gustav II Adolf (1621).

Military regulations adopted in the early 18th century became the first normative legal acts to include, in a systematized form, provisions on the criminal liability of servicemen for causing harm to the civilian population. They classified crimes against the local population, including violence, looting, and material damage, as war crimes.

Military criminal statutes of the first half of the 19th century provided for a separate group of wartime crimes: (a) violence against civilians; (b) property crimes against civilians; (c) the killing of prisoners of war; and (d) violence against prisoners of war. This period was characterized by the consolidation of domestic state practice, while the influence of international law was barely felt [4].

### **PERIOD III: BEGINNING OF INTERNATIONAL LEGAL REGULATION (SECOND HALF OF THE 19TH CENTURY - UNTIL THE SECOND WORLD WAR)**

The International Committee of the Red Cross, established in 1863, played an important role in the development of international humanitarian law. In 1864, the first multilateral convention on the protection of the wounded and sick in wartime was signed. The following important events occurred during this period:

- 1863 - Francis Lieber prepared military instructions for the United States Civil War, known as the Lieber Code. It established the principle of sparing unarmed civilians and provided for the death penalty for violators;
- 1868 - the St. Petersburg Declaration was adopted, proclaiming the fundamental principles of the law governing the conduct of hostilities;
- 1874 - the draft Convention concerning the Laws and Customs of War was discussed at the Brussels International Conference;

- 1899 and 1907 - the Hague Peace Conferences adopted conventions concerning the laws and customs of war on land.

The Treaty of Versailles (1919), in its section on "Sanctions", provided for three types of jurisdictional mechanisms for war crimes: a special international tribunal for the former German Emperor; military courts of states; and mixed courts in cases concerning the interests of several states. However, for political reasons, this mechanism did not function fully. At the same time, the first attempt was made to codify international norms on criminal liability for war crimes, and the idea of individual criminal responsibility of natural persons was tested in practice [5].

#### **PERIOD IV: MODERN SYSTEM OF INTERNATIONAL CRIMINAL JUSTICE (FROM 1945 TO THE PRESENT)**

The trials following the Second World War opened a new stage in international criminal liability for war crimes. The Nuremberg Trial (1945-1946) acquired fundamental importance for all subsequent development in this field. Article 6 of the Charter of the International Military Tribunal included among war crimes such acts as murder, torture, deportation of civilians, killing of prisoners of war, plunder of property, and wanton destruction [6].

Through its judgments, the Nuremberg International Military Tribunal rejected the doctrine of the act of state and provided a legal basis for the institution of individual criminal responsibility for crimes against peace, war crimes, and crimes against humanity. For the first time, compliance with orders and official status were not accepted as defenses. It was precisely at Nuremberg that the international legal mechanism of criminal jurisdiction over international crimes, including war crimes, was put into operation. In 1946, the Tokyo International Military Tribunal was also established on similar principles.

In the post-war period, criminal liability for war crimes developed in the following directions: (1) the four Geneva Conventions of 1949 and the Additional Protocols of 1977 were adopted; (2) the Nuremberg Principles were codified within the framework of the United Nations; and (3) the national legislation of states was brought into conformity with international standards [7].

From the beginning of the 1990s, the modern stage commenced, marked by the following significant developments:

- 1993 - the International Criminal Tribunal for the former

Yugoslavia was established;

- 1994 - the International Criminal Tribunal for Rwanda was established;

- 1998 - the Rome Statute of the International Criminal Court was adopted and entered into force in 2002. Article 8 of the ICC Statute established four categories of war crimes.

It is also necessary to note the development of national legal systems in the field under consideration during the post-war period. With the ratification of the 1949 Geneva Conventions for the protection of war victims, the practice of national legal implementation of the obligations set out in those conventions began to take shape [8]. Norms of international humanitarian law have been implemented into the national legislation of the Republic of Uzbekistan, particularly into the Criminal Code of the Republic of Uzbekistan adopted in 1994. Today, national legislation establishes strict criminal liability for violating the laws and customs of war, committing violence against the civilian population, ill-treating prisoners of war, and unlawfully using internationally protected emblems.

The information presented above shows that, in the period after the Second World War, the approach of states to taking the international legal factor into account in their national military and military criminal legislation changed significantly. At the same time, the practice of applying norms on criminal liability for war crimes in national courts had not yet been sufficiently improved. As can be seen, the events connected with the conduct and end of the Second World War influenced the activation of an ad hoc mechanism of international criminal jurisdiction over war crimes, as well as the creation of a set of international legal norms containing a list of such crimes and establishing the obligations of states to ensure the inevitability of punishment for those who commit them.

#### **HISTORICAL AND LEGAL PERIODIZATION**

On the basis of the historical and legal analysis conducted, the following four main periods of criminal liability for war crimes can be distinguished:

- Period I (until the 15th century): the emergence of prohibitions and restrictions relating to the conduct of war and of the practice of liability for their criminal violations. During this period, customary norms and religious teachings predominated;

- Period II (16th century - mid-19th century): the formation of domestic state practice concerning the criminalization of certain violations of the laws and customs of war in military

criminal legislation. The emergence of regular armies and the development of military criminal law define this period;

- Period III (second half of the 19th century - beginning of the Second World War): attempts to criminalize violations of the laws and customs of war in international law and to launch an institutional mechanism of criminal liability based on international law. During this period, national and international norms developed in parallel;

- Period IV (from the end of the Second World War to the present): the criminalization in international law of serious violations of the laws and customs of war; the creation of international criminal justice bodies; and the establishment of international legal obligations of states to ensure the inevitability of punishment for those who commit such crimes. During this period, a system of joint operation of national and international mechanisms took shape.

## CONCLUSION

The consideration of the modern stage of development of norms and institutions of international criminal liability for war crimes within the period beginning after the end of the Second World War is predetermined by the decisive importance of its outcomes - the adoption of the UN Charter and the creation of the United Nations system, as well as the role of the Nuremberg Trial of major war criminals - for the formation and development of the modern normative legal basis and mechanism of interstate cooperation in combating crimes against peace and the security of humanity, including war crimes. It is also necessary to take into account the relevance of the task of countering attempts by certain individuals and organizations to revise the legal outcomes of the Second World War.

In conclusion, it should be emphasized that the institution of criminal liability for war crimes has passed through a centuries-long historical evolution, moving from primitive customary norms and religious prohibitions to today's complex, institutionalized, and multi-level system of international criminal justice. The historical and legal analysis conducted in this article shows that this development consists of four main stages, and that each stage is the product of humanity's aspiration to limit atrocities during armed conflicts and to make accountability inevitable.

However, the current global geopolitical situation, complex armed conflicts occurring in different parts of the world, hybrid warfare, the widespread military use of artificial intelligence, drones, and cyber technologies, as well as the growing activity of non-state armed groups, are setting

entirely new and non-traditional tasks for international criminal law. Contemporary realities demonstrate that, however important the existing international legal mechanisms may be - including the International Criminal Court and various ad hoc tribunals - these mechanisms alone are not sufficient to prevent war crimes and ensure the inevitability of punishment.

Therefore, the main scholarly and practical need today is to further strengthen cooperation between international criminal justice bodies and national law enforcement systems, and to ensure that states fully implement norms of international humanitarian law into their national criminal legislation on the basis of the principle of complementarity. Only in this way - through the harmonious and effective operation of international and national legal mechanisms - will it be possible to prevent war crimes in modern armed conflicts, protect human rights, and fairly punish the guilty. In this process, the strict protection of the legal outcomes of the Second World War, in particular the enduring principles of the Nuremberg Tribunal, and resistance to any actions aimed at revising or distorting them, remain among the most urgent tasks of the international community and national legal systems.

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