

## ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА; ІСТОРІЯ ПОЛІТИЧНИХ І ПРАВОВИХ УЧЕНЬ

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DOI <https://doi.org/10.32782/chern.v4.2023.1>**S. B. Karvatska***Doctor of Law, Professor,**Acting Head of the Department of International Law and Comparative Law**Yuriy Fedkovych Chernivtsi National University**[orcid.org/0000-0001-9948-4866](https://orcid.org/0000-0001-9948-4866)***R. V. Ivaniuk***Lawyer**Bobrovnikov, Ivaniuk and Partners JSC;**Postgraduate Student at the Department of the Theory of Law and Human Rights**Yuriy Fedkovych Chernivtsi National University**[orcid.org/0000-0002-3459-3428](https://orcid.org/0000-0002-3459-3428)*

### PROBLEMS OF SEXUAL VIOLENCE AS A HUMAN RIGHTS VIOLATION IN THE CONTEXT OF ARMED CONFLICTS

The article analyzes sexual violence as a violation of human rights. It is argued that during an armed conflict, cases of such violence can be interpreted as crimes against humanity, war crimes, or genocide. Violence against women, especially sexual violence, has been used during armed conflicts throughout human history.

Sexual violence is only one of many forms of violence in armed conflict. They can be paired with mass killings, displacement of civilians, arbitrary detention, abductions, looting, and massive destruction of civilian property and critical infrastructure as a form of violence. The risk of violence, including sexual violence, is higher in certain cases and under certain conditions, such as in detention.

It is crucial to emphasize the absence of various legal and organizational mechanisms (procedures) that ensure social and legal protection of a person, functioning to provide the most favorable conditions for the realization of the constitutionally enshrined human status in armed conflict. In this regard, it makes sense to pay attention to international legal acts regulating the situation of women during military conflicts.

It is proved that at the moment, Ukraine lacks the necessary effective and comprehensive mechanisms for documenting and recording crimes of sexual violence related to the armed aggressive war of the Russian Federation against Ukraine. In addition, employees of competent law enforcement and prosecutor's offices are not always familiar with the principles and standards of working with victims of such crimes. In conclusion, it is stated that it appears necessary for the relevant authorities of Ukraine to ensure the systematic collection of information on cases of sexual violence.

*Key words:* human rights, crimes against humanity, armed conflict, women's rights, sexual violence

#### **Карвацька С. Б., Іванюк Р. В. ПРОБЛЕМИ СЕКСУАЛЬНОГО НАСИЛЬСТВА ЯК ПОРУШЕННЯ ПРАВ ЛЮДИНИ В КОНТЕКСТІ ЗБРОЙНИХ КОНФЛІКТІВ**

У статті аналізується сексуальне насильство як порушення прав людини. Стверджується, що під час збройного конфлікту випадки такого насильства можна тлумачити як злочини проти людяності, військові злочини або геноцид. Насильство над жінками, особливо сексуальне, застосовувалося під час збройних конфліктів протягом всієї історії людства.

Насильство над жінками, особливо сексуальне насильство, використовувалося у збройних конфліктах протягом всієї історії людства. Сексуальне насильство є лише частиною гендерно зумовленого насильства, яке відрізняється від будь-якої іншої форми насильства не самим актом

Сексуальне насильство є лише однією з багатьох форм насильства під час збройного конфлікту. Вони можуть поєднуватися з масовими вбивствами, переміщенням цивільних осіб, свавільними затриманнями, викраденнями, пограбуванням і масовим руйнуванням цивільного майна та критичної інфраструктури як форми насильства.

Важливо підкреслити відсутність різноманітних правових та організаційних механізмів (процедур), що забезпечують соціально-правовий захист особи, що функціонує з метою забезпечення максимально сприятливих умов для реалізації конституційно закріпленого статусу людини в умовах збройного конфлікту. У цьому плані має сенс звернути увагу на міжнародно-правові акти, що регулюють становище жінок під час військових конфліктів.

Доведено, що на даний момент в Україні відсутні необхідні дієві та комплексні механізми документування та фіксації злочинів сексуального насильства, пов'язаних із збройною агресивною війною Російської Федерації проти України. Крім того, працівники компетентних правоохоронних органів та органів прокуратури не завжди обізнані з принципами та стандартами роботи з потерпілими від подібних злочинів. На завершення зазначено, що вбачається за необхідне забезпечити відповідним органам України систематичний збір інформації про випадки сексуального насильства.

*Ключові слова:* права людини, злочини проти людяності, збройний конфлікт, права жінок, сексуальне насильство

**Introduction.** Violence against women, especially sexual violence, has been used in armed conflicts throughout human history. Sexual violence is only a part of gender-based violence, which differs from any other form of violence not by the act itself (e.g., murder, rape, injury) but by the fact that such acts are conditioned by gender. These include rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of similar gravity against women, men, girls, or boys that includes tactics of war or instruments of political intimidation [5]. For a long time, it was not prohibited by the laws of war, and society perceived it as an undesirable but inevitable consequence of the conflict. Such violence could be committed by the military, representatives of volunteer armed groups, guerrillas, militants, and representatives of peacekeeping missions [7].

**Main body.** The main international documents on ensuring women's security are: the Universal Declaration of Human Rights (1948); the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949); the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949); UN Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974); UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW or Women's Convention) (1979); the UN Declaration on the Elimination of Violence against Women (1993); the Platform for Action for Equality, Development and Peace (1995) and the Beijing Declaration (1995); the Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination against Women (1999); the UN Millennium Declaration (2000).

Among the international documents directly related to the protection of women's rights during armed conflict are the following: UN Security Council Resolution 1325, as the primary document on the problems of women, peace, and security, confirms the idea of protecting women and enhancing their role in conflict prevention and resolution (2000); UN Security Council Resolution 1820, which for the first time in history raised the issue of sexual violence in conflict and emphasized that sexual violence in conflict is a war crime (2008); UN Security Council Resolution 1888 which stresses the need to ensure the protection of women and children from sexual violence in armed conflict (2009); UN Security Council Resolution 1889, which reaffirms the need to increase women's participation in political processes (2009); UN Security Council Resolution 1960, which expands and deepens the theme of combating sexual violence in the context of women, peace and security (2010).

Thus, the last three resolutions mentioned above focused on preventing and combating sexual violence in conflict. A relevant UN structure was established: a special representative on conflict-related sexual violence was appointed; a team of experts on the rule of law and conflict-related sexual violence was established to work with the UN on the ground and assist national authorities in strengthening the rule of law; women's protection advisers were deployed; and monitoring, analysis, and reporting mechanisms were established. In the above-mentioned resolutions, the Security Council noted that acts of sexual and gender-based violence can be used as a tactic of terrorism (Resolution 2242, adopted in 2015). The interconnection between human trafficking, sexual violence, terrorism, and transnational organized crime was highlighted by the UN (Resolution 2331, adopted in 2016). July 20, 2018. The UN Secretary-General's Special Representative on Sexual Violence in Conflict and the Committee on the Elimination of Discrimination against Women signed the Conceptual Framework for Cooperation, a document that reaffirms common commitments to promote and protect the rights of women and girls who have suffered sexual violence in conflict.

In 1998, the Rome Statute of the ICC was adopted, according to which sexual violence is an international crime and, under different circumstances, can be considered genocide, a crime against humanity, and a war crime. Sexual violence as a war crime is an act of a sexual nature against one or more persons or coercion of such a person or persons to participate in the act of a sexual nature through the use of force or threats of force or coercion. It is conditioned by the fear of violence, detention, psychological pressure, or abuse of power against such person or persons or another person. It may also be triggered by circumstances characterized by coercion or persons' inability to consent to express their true will. The elements of this crime include: violence of comparable gravity to the grave breaches provided for in the Geneva Conventions or Article III of the Geneva Conventions; the perpetrator of such violence is aware of the factual circumstances that indicate the gravity of the crime; the violence occurred in the context of and was connected with an international or non-international armed conflict; the perpetrator was aware of the existence of an armed conflict.

On the occasion of the International Day for the Elimination of Violence against Women on November 25, 2022, the Organization for Security and Co-operation in Europe (OSCE) leaders called on participating States to intensify efforts to prevent and eliminate violence against women in conflict. In the context of Russia's aggression against Ukraine, they emphasized the problem of not only unjustified military aggression and violence but also disregard for human dignity [8], and also stressed the strength-

ening of measures by States Parties to protect women and girls from violence and to ensure sufficient means for adequate and timely access to quality services for victims.

Armed conflicts and fragile security situations, as the OSCE Statement emphasized, allow perpetrators to commit sexual and gender-based violence on a large scale and with relative impunity, leading to an increase in the number of cases, which makes it essential that all allegations of such crimes are investigated, and perpetrators are brought to justice.

The Russian military uses sexual violence against girls and women, as well as boys and men. Sexual violence is a proven and widespread "weapon" of war around the world. According to the Office of the United Nations High Commissioner for Human Rights, there have been numerous reports of sexual violence committed by the Russian military in Ukraine in the context of the armed conflict. The EU Advisory Mission Ukraine (EUAM) will therefore continue to provide strategic advice and support to the Office of the Prosecutor General as it works to bring perpetrators to justice [6].

As of July 2022, the UN recorded 124 cases of sexual violence during the full-scale war in Ukraine. However, this data is only the "tip of the iceberg" and does not show the true scale of sexual violence in the context of Russia's war against Ukraine [4].

In a broader sense, sexual violence is a form of gender-based violence, a severe and discriminatory violation of human rights. Sexual violence is defined as intentional, non-consensual acts of a sexual nature. There is a wide range of actions that can be qualified as sexual violence, including non-physical acts [1].

Regarding the current situation in Ukraine, it is worth noting the European Parliament's Resolution on the impact of the war against Ukraine on women on May 5, 2022, in which the European Parliament strongly condemned the Russian military aggression against Ukraine and stated the enormous impact of the war in Ukraine on women in general, as well as gave detailed examples of such consequences. The European Parliament pointed out that the war has led to a difficult situation and violation of the rights of both those women who arrived in the EU as refugees and those who remained in Ukraine. The European Parliament condemned any war crimes committed against civilians, in particular women and girls, and gender-based and sexual violence should be prosecuted in accordance with international law. In addition, the European Parliament emphasized that trafficking for sexual exploitation and other purposes is one of the biggest risks for women and children fleeing the war in Ukraine [3]. The Resolution is a "soft law" act; it is advisory in nature and does not provide for consequences for non-compliance. However, it indicates what kind of protection and

support women fleeing war and women who experience the impact of war every day urgently require and how to provide such protection and support. The Resolution also shows the shortcomings of the practical application of EU "hard law" acts, such as the Temporary Protection Directive. It is a tool to amend and fill in the gaps in the national legislation of EU member states. These detailed recommendations can and should unite the European community to actively cooperate in combating such phenomena as the trafficking of women and children, sexual violence, gender-based violence, and multiple discrimination; providing systematic assistance to Ukraine in recording war crimes against civilians, in particular against women and children, and bringing perpetrators to justice under national and international law.

Ukraine currently lacks the necessary effective and comprehensive mechanisms for documenting and recording conflict-related sexual violence crimes. In addition, employees of the competent law enforcement and prosecutorial departments are not always familiar with the principles and standards of working with victims of such crimes. Therefore, it is essential that the relevant Ukrainian authorities ensure the systematic collection of information on cases of conflict-related sexual violence, in particular for the purpose of submitting it to the Office of the Prosecutor of the International Criminal Court [2].

It is crucial to emphasize the absence of various legal and organizational mechanisms (procedures) that ensure social and legal protection of a person, functioning to provide the most favorable conditions for the realization of the constitutionally enshrined human status in armed conflict. In this regard, it makes sense to pay attention to international legal acts regulating the situation of women during military conflicts.

In the context of the Russian aggression in Ukraine, it is important to raise the issue of sexual and gender-based violence in the context of this armed conflict. Thus, the OSCE has prepared and published on its official website a fact sheet, "Sexual and Gender-Based Violence in Armed Conflict," on the nature of sexual and gender-based violence committed during the armed conflict, providing an overview of international and domestic efforts to bring perpetrators to justice [9].

Sexual violence refers to any sexual act, attempted sexual act, unwanted sexual comment or harassment, trafficking or act against a person's sexual life, using coercion against any person, regardless of their relationship to the victim, in any setting. Sexual violence is often used as a "strategy" or "tactic" of war, for example, to intimidate civilians or to extract confessions from detainees. Certain forms of sexual violence are more prevalent in armed conflict than in peacetime, including sexual slavery and gang rape.

Sexual violence is only one of many forms of violence in armed conflict. They can be paired with mass killings, displacement of civilians, arbitrary detention, abductions, looting, and massive destruction of civilian property and critical infrastructure as a form of violence. The risk of violence, including sexual violence, is higher in certain cases and under certain conditions, such as in detention.

UN Security Council Resolution 1820 (2008) states: "... civilians constitute the vast majority of those seriously affected by armed conflicts; ... women and girls are particularly targeted for sexual violence, including as a tactic of war to humiliate, oppress, instill fear, disperse and/or forcibly displace civilian members of a community or ethnic group; sexual violence committed in this manner may in some cases continue after the cessation of hostilities. ..."

In international armed conflicts, the Geneva Conventions of 1949 protect combatants not taking part in active hostilities from "violence against their person"; prisoners of war "entitled in all circumstances to respect for their persons and their honor"; civilians "shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity" and women "shall be particularly protected from any attack on their honor, in particular from rape, forced prostitution or any form of indecent assault." Similar protections apply under Additional Protocol I to the Geneva Conventions.

Significant challenges remain in ensuring justice for sexual violence survivors. International courts can only prosecute a small number of the most high-profile cases, while national authorities struggle with a lack of capacity and/or willingness to meaningfully address conflict-related sexual violence, often complicated by inadequate national laws and evidence protocols. More must be done to prosecute political and military leaders for their involvement in sexual violence committed by their subordinates.

**Conclusions.** Sexual violence is a violation of human rights. During armed conflict, cases of such violence can be interpreted as crimes against humanity, war crimes, or genocide.

At present, Ukraine lacks the necessary effective and comprehensive mechanisms for documenting and recording crimes of sexual violence related to Russia's armed aggressive war against Ukraine. In addition, employees of competent law enforcement and prosecutor's offices are not always familiar with the principles and standards of working with victims of such crimes. That is why it seems necessary that the relevant Ukrainian authorities ensure systematic collection of information on cases of sexual violence.

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