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GENESIS OF THE CONCEPT OF "PRISONER OF WAR" IN THE XX–XXI CENTURIES

The article is devoted to the evolution of the meaning of the concept of "prisoner of war" from the First World War to the present day. International military law is subject to significant efforts toward codification. The author studies the legal regulation of the international status of "prisoner of war" in Ukrainian and foreign historiography. The author establishes that since the open Russian invasion of Ukraine, Ukrainian legal science has been facing the issue of mass captures of Russian combatants, as well as fighters of the private military company "Wagner" and other private companies.

Keywords: *prisoner of war, international law, combatant, private military company "Wagner", war crime.*

Statement of the problem. The scientific community has traditionally been interested in the legal aspects of life support and the rules governing prisoners of war. These issues become particularly relevant during armed conflict when they move from theory to practice. Considering the practical implications of international humanitarian law, the most significant advancements have been observed in countries that have frequently engaged in military conflicts. As a result, the matter of prisoners of war holds practical significance for them rather than being purely speculative.

Analysis of recent research and publications. The surge of theoretical interest in the interpretation of the concept of "prisoner of war" is closely related to the conduct of hostilities and the urgent need for the practical application of this concept in legal practice. Most of the academic discussions in the Western paradigm on this issue took place before the adoption of the Geneva Convention. After the legal formalization of the document establishing the principles of treatment of prisoners of war, the general definition and the necessity of the institution of captivity were studied by D. Hickman [1] using the example of conflicts in African countries.

The legal status of captured persons and other aspects of military law have become important in the Ukrainian academic paradigm due to the Russian armed aggression in 2014. In this context, the research of M. Gnatovsky is of particular interest. He examines the problems of international humanitarian law, particularly in its practical application to the occupied Crimean Peninsula [2, 3]. J. Hodzek is interested in the legal status of prisoners of war in modern international law [4]. M. Hrushko [5] and others have conducted a comparative analysis of military law in historical retrospect.

Thus, researchers have been interested in certain issues of military law. However, as a result of the full-scale attack by the Russian Federation, several theoretical problems have arisen that need to be reconsidered and revised.

The purpose of the article is to study the genesis of the concept of "prisoner of war" under the influence of evolutionary changes in worldview reflected in legal science during the XX–XXI centuries.

Summary of the main material. The horrors of the First World War led to the emergence of various theoretical reflections which, in one way or another, address the question of the legality and humanity of the treatment of people fighting on different sides of the front. According to J. J. Rousseau, war is a manifestation of inter-state rather than inter-personal relations. Consequently, people become enemies by accident, not by conviction. If the purpose of military action is officially declared to be the destruction of a state that has been declared an enemy, then that state has the right to destroy its defenders, but only as long as they are armed. From the moment they surrender or cease to be armed, they cease to be enemies, and no one has the right to take their lives [6, p. 150].

These humanistic ideas formed the basis of the legal codification of war, the Oxford Manual or, as it is also called, the Manual on the Laws of War on

Land. According to this normative document, imprisonment should not be considered as a punishment or as an enforced restriction of liberty, as is customary for criminals convicted in a court of law, but only as a temporary detention, the sole purpose of which is to prevent the detainees from further participation in hostilities (paragraph 61) [7, p. 68]. Although this document never entered into force, it contributed to the development of legal thinking in the field of international humanitarian law and also helped to stimulate the further process of codification of this branch of jurisprudence.

Ukrainian scholars have been actively developing similar issues at the University of St Volodymyr in Kyiv. The urgent task of codifying the law of war, which is a matter of great importance for European scholarship, has been the subject of research by a number of legal scholars. In particular, certain legal aspects related to the provision of timely medical care to wounded soldiers (combatants) and civilians affected by hostilities were the subject of research by R. Baziner.

Another scholar at St Volodymyr's University in Kyiv, V. Nezabytovsky, has gained international recognition for his research on customary international law related to warfare. According to him, war cannot be used as a means of settling disputes in the international sphere. He emphasized that all controversial aspects of state interaction should resolved through negotiations within international congresses and forums. However, as long as war exists, its limits and forms must regulate. For example, once the enemy is no longer a threat and has laid down his arms, he cannot be killed but only captured [8]. After all, the purpose of war is to impose one's terms on the enemy, not to cause bloodshed and plunder, the researcher argued. In general, before the signing of the Geneva Convention in 1921, the concept of "prisoner of war" in international humanitarian law was rather vague and was defined in Annex IV of the 1907 Hague Convention [9]. The Hague Convention divides the parties into "belligerents" and "non-belligerents". The belligerents are the army, the militia, the volunteers, and the population of the territories who meet the enemy with arms in hand. Therefore, all these categories of people could be captured.

The concept of "prisoner of war" was thus closely linked to the definition of "captivity". While in the late nineteenth and early twentieth centuries the very idea of preserving the life of a prisoner of war, and of viewing captivity as a temporary restraint on the will of an enemy combatant in order to limit his ability to rejoin the ranks of the enemy army, was considered progressive, the realities of the First World War forced legal scholarship to go much further. Thus, at the Xth World Conference of the Red Cross in Geneva, the need for legal harmonization of the law of captivity was discussed in detail, with emphasis on the need to limit the uncontrolled use of the free labor of prisoners in order to ensure normal living conditions, including working conditions. The need to organize assistance to prisoners of war at national and international levels was also discussed separately, with regular inspections of prison camps by representatives of international organizations [10].

The academic views of O. Eichelman deserve special attention in this context. In his research, the scholar considered the implementation of general issues of international law in the course of warfare. The researcher recognizes that war cannot be conducted chaotically. During hostilities, certain rules, laws, and customs must be in force, according to which insurgents are not considered criminals, but only belligerents. According to his deep conviction, war should be humanized as much as possible to make it as humane as possible [11, p. 37]. In particular, O. Eichelman stressed that the detention of a prisoner of war was not obligatory. In his opinion, it would be sufficient to expel a person to an area that he undertakes not to leave until the end of the armed conflict [7]. It should be noted, however, that this position was an exception rather than a reflection of public opinion. Most researchers believed that captivity could be considered as the temporary detention of a combatant (representative of the enemy army) for the duration of the hostilities to prevent further participation of the enemy military in the hostilities [12].

As a result of the First World War, there was a significant increase in interest in codifying the rules of war. Scholars at Kharkiv University published several studies on the subject, including V. Danevskyi, who gained international recognition for his research in legal codification. Danevskyi believed that international treaties could serve as a legitimate basis for further codification of international law, particularly in the field of war. The author believed that the Brussels Conference failed due to state's reluctance to commit to normative documents [13]. The author proposed an intriguing idea in their work, which has since been partially implemented in various international conventions. The researcher proposed starting with a scientific codification of certain legal norms before proceeding to a legislative codification. This involves giving the status of law to specific legal provisions [13, pp. 21, 25]. The idea was suggested for the institution of imprisonment in particular.

Another Ukrainian researcher of military issues, M. Dogel, rightly saw international law as the only way to adequately legislate the laws of war and humane treatment of human beings on the territory of their homeland in times of war, as well as on the territories of other states, in particular when a person is held there as a prisoner of war.

P. Kazansky, a researcher at the University of Novorossiysk (Odesa), went beyond theoretical considerations in his scientific research, arguing that international humanitarian law requires a combination of the study of legal treaty norms and international customs generally accepted in the field of the institution of captivity. The scholar insisted on the necessity of a reasonable attitude towards prisoners: he agreed that in ancient times the deprivation of the enemy army of commanders and soldiers contributed to a quick victory, but stressed the inadmissibility of killing unarmed people from the point of view of humanity. In his writings, P. Kazansky also touched upon the expediency of exchanging prisoners of war for rewards. He considered this perfectly acceptable but strongly condemned any attempt to extract profit directly from the prisoner himself, calling such acts immoral and contrary to basic principles of international humanitarian law [5, p. 34].

One of the conceptually important aspects that allows us to understand the concept of "captivity" is who can actually be considered a prisoner of war. According to the current doctrine of international humanitarian law, persons involved in international conflicts are divided into combatants and non-combatants [14]. The famous Austrian legal theorist and philosopher A. Ferdross believed that the subjects and objects of hostilities to which the concept of military law should be applied are combatants, i.e. people with weapons [15]. As a result of further debate in the legal community, the definition of a combatant was adopted as "a person who is a member of the armed forces of one of the parties to the war and who is engaged in hostilities with arms" [5]. Thus, the main characteristic of a combatant is participation in the war on the side of one of the parties as part of a regular or irregular army. The American researcher C. Hyde added to the definition of legal participation in a legitimate armed struggle the need to have relevant documents confirming this affiliation.

When analyzing the development of the scientific coverage of the issue of prisoners of war, it should be noted that in the Ukrainian scientific paradigm, a new wave of interest in this issue coincides with the attack of the Russian Federation on the territory of Ukraine: since 2014 a whole galaxy of researchers has emerged who include in their research interest's certain aspects of international humanitarian law in the field of prisoners of war. These works cover various aspects of the legal status of prisoners of war. They have in common the emphasis on the need for humane treatment of persons captured during military conflicts by the applicable provisions of the Geneva Convention, and they analyze the status of the Ukrainian-occupied territories, which is because Ukrainian soldiers were most often captured and needed legal protection. Already in 2022, since the open Russian invasion of Ukraine, Ukrainian jurisprudence has faced several practical problems related to the mass detention of Russian combatants and other persons who took part in the hostilities, but who cannot be recognized as prisoners of war under current legislation and applicable international legal norms. According to the norms of international humanitarian law, only captured combatants acquire the status of prisoners of war. Thus, as M. Hrushko notes, "the status of a prisoner of war is derived from the status of a combatant" [5, p. 44]. Any person who lawfully participates in an armed conflict, after ceasing to participate in hostilities (voluntarily or involuntarily) due to injury, illness, capture, etc., acquires the status of a prisoner of war.

According to Ukrainian legislation based on international humanitarian law [16, 17], prisoners of war are included in the category of persons protected by international law. According to Article 4 of the Geneva Convention, prisoners of war include personnel of the belligerent army, as well as members of volunteer units or militias, organized resistance movements acting on their territory or the territory of the enemy, in particular in the event of occupation of their territory.

At the same time, the Russian Federation has involved persons in the war who cannot be qualified as combatants due to their illegitimate status as participants in the armed conflict. The international legal status of these persons does not fall under international humanitarian law [18]. Ukrainian legislation is also working towards recognizing the criminal status of the private military company (PMC) Wagner, involved in the Ukrainian-Russian war [19]. In this regard, it should be subject to the provisions of the Criminal Code of Ukraine rather than the Geneva Convention, in particular, the procedure for the detention of prisoners of war. These categories include mercenaries of the Wagner PMC; persons who were formally expelled from the ranks of the Russian Federation armed forces after being sent to the territory of Ukraine; persons with Ukrainian citizenship who were mobilized in the occupied territories. The legal status of these categories of persons requires a detailed analysis of the current norms of international humanitarian law, which should be the subject of several future research studies.

Conclusion

Thus, in the context of international humanitarian law, it is essential to analyze the legal status and situation of prisoners of war using scientific methods. Ukrainian scholars in the field of jurisprudence have

consistently shown great interest in this subject. The military operations on our country's territory have shifted the focus of this issue from a purely theoretical level to practical research.

Experts in the field of international humanitarian law encounter various legislative challenges in jurisprudence. One such challenge is the development of a strategy for dealing with persons not covered by the Geneva Convention.

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ГЕНЕЗА ПОНЯТТЯ «ВІЙСЬКОВОПОЛОНЕНИЙ» УПРОДОВЖ XX–XXI СТОЛІТЬ

Досліджено еволюцію смислового навантаження поняття «військовополонений» з Першої світової війни і до сьогодні. Сплески теоретичних роздумів у сфері правового регулювання міжнародного статусу військовополонених співвідносяться з практичною актуальністю проблеми під час воєн і бойових дій. Таким чином, після Другої світової війни поняття учасника бойових дій та законодавчі вимоги щодо нього були остаточно сформульовані, є документи, що підтверджують цей статус.

Значну увагу приділено питанням кодифікації міжнародного військового права. Вивчено українську та зарубіжну історіографію у галузі правового регулювання міжнародного статусу «військовополонений».

З моменту відкритого російського вторгнення в Україну українська правова наука зіткнулася з низкою практичних проблем, пов'язаних із масовим захопленням російських бойовиків, а також інших осіб, зокрема бійців приватної військової компанії «Вагнер», які брали участь у бойових діях, але з огляду на чинне законодавство та міжнародно-правові норми не можуть бути визнані військовополоненими. У зв'язку з цим до них слід застосувати норми Кримінального кодексу України. Отже, через це особи, які є членами приватних військових компаній, як-от ПВК «Вагнер», не можуть претендувати на статус учасників бойових дій, а є військовими злочинцями.

Установлено, що з моменту відкритого російського вторгнення в Україну перед українською юридичною наукою постало питання щодо масового захоплення у полон російських комбатантів, а також бійців приватної військової компанії «Вагнер» та інших приватних компаній.

Ключові слова: *військовополонений, міжнародне право, комбатант, приватна військова компанія «Вагнер», військовий злочин.*

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